

ABOLITION OF THE DEATH PENALTY

A PRACTICAL GUIDE FOR NHRIs



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A PRACTICAL GUIDE FOR NHRI

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LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AFCNDH	<i>Association francophone des commissions nationales des droits de l'homme</i> (Francophone Association of National Human Rights Institutions)
ANU	Australian National University
APF	Asia Pacific Forum of National Human Rights Institutions
ASF	Avocats sans frontières (Lawyers without Borders)
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHRP	Commission on Human rights of the Philippines
CNDH-Maroc	<i>Conseil national des droits de l'homme du Royaume du Maroc</i> (National Human Rights Council of the Kingdom of Morocco)
CNDH-Niger	<i>Commission nationale des droits humains du Niger</i> (National Human Rights Commission of Niger)
CNDH-RDC	<i>Commission nationale des droits de l'homme de la République démocratique du Congo</i> (National Human Rights Commission of Democratic Republic of Congo)
CODDAE	<i>Collectif des associations pour la défense du droit à l'énergie</i> (Collective of Associations for the Defense of the Right to Energy)
DRC	Democratic Republic of Congo
ECPM	<i>Ensemble contre la peine de mort</i> (Together against the Death Penalty)
ENNHRI	European Network of National Human Rights Institutions
EU	European Union
GANHRI	Global Alliance of National Human Rights Institutions
GSP	Generalised System of Preferences
HRC	Human Rights Committee
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
INCHR	Independent National Commission on Human Rights of Liberia
Komnas HAM	National Commission on Human Rights of Indonesia
MHRC	Malawi Human Rights Commission
MNHRM	Myanmar National Human Rights Commission
NANHRI	Network of African National Human Rights Institutions
NCHRF-Cameroon	National Commission on Human Rights and Freedoms
NGO	Non-governmental organisation
NHRCN	National Human Rights Commission of Nigeria

NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
OP2	Optional Protocol 2 (Second Optional Protocol to the International Covenant on Civil and Political Rights)
PGA	Parliamentarians for Global Action
SALI	Saving Lives Project
SUHAKAM	<i>Suruhanjaya Hak Asasi Manusia Malaysia</i> (Human Rights Commission of Malaysia)
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UPR	Universal Periodic Review
WFHR	World Forum on Human Rights

GLOSSARY

Abolitionist countries for all crimes

States or territories where the death penalty has been completely abolished.

Abolitionist countries for ordinary crimes

States or territories where the death penalty has been abolished, except in exceptional circumstances.

Countries with a moratorium on executions

States or territories which retain the death penalty, but where no executions have been carried out for at least ten years and which did not vote against the most recent United Nations Resolution calling for a universal moratorium on executions.

Retentionist countries

States or territories which apply the death penalty.

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METHODOLOGY

This Guide has been produced as part of an ECPM (Together against the Death Penalty) project entitled “Supporting members of Parliaments, National Human Rights Institutions (NHRIs) and civil society for the abolition of the death penalty in Central Africa and South-East Asia”. This three-year project was launched in January 2017. It has been implemented with the financial support of the European Union (EU), Australia and Norway.

The Guide is based primarily on the activities and experiences of NHRIs, as described in response to a questionnaire submitted to them. One of the objectives of this Guide is to share experiences and disseminate them among the entire NHRI community across Asia and Africa. Preparation of the Guide was motivated by the conviction that sharing best practices and promoting dialogue between NHRIs will contribute to the promotion of abolition of the death penalty and to committing retentionist countries and/or those applying a moratorium to move towards abolition. This Guide also responds to the needs expressed by various NHRIs for access to more tools in the fight against the death penalty.

In addition to data compiled on the basis of responses to the questionnaire and individual interviews conducted with NHRIs, in preparing this Guide it was necessary to draw on information from the main international treaties, scientific articles, reports by international and civil society organisations and media articles. It is also based on the Proceedings of the 6th World Congress against the Death Penalty.

In addition, some of the aspects covered in this Guide emerged from the report of the roundtable of National Human Rights Institutions on the issue of the death penalty organised by the Asia Pacific Forum of National Human Rights Institutions (APF) on 20 September 2018 in Hong Kong. Finally, information from the database of the Cornell Center on Death Penalty Worldwide has also been included.

During preparation of the Guide, several meetings with partner NHRIs were held, including during the 13th International Conference of the Global Alliance of National Human Rights Institutions (GANHRI),

INTRODUCTION

held in Marrakech (Morocco) from 10 to 12 October 2018 and during the 7th World Congress against the Death Penalty held in Brussels (Belgium) from 26 February to 1 March 2019. A specific working session on the development of the guide was organised in parallel to the 7th World Congress. During this meeting, which took place in a spirit of dialogue and adopted a participatory approach, participating NHRIs reiterated their willingness to contribute to the Guide and share their experiences.

A steering committee composed of ECPM members was established and was involved in the development of the Guide and its final approval.

NHRIs play a pivotal role in the protection, promotion and monitoring of human rights standards and legislation within each State. They are governed by the Paris Principles which establish their objectives, grant them a broad human rights mandate and define guarantees of independence such as adequate funding and a transparent process to select and appoint their members. The law under which they are established provides for their independence.

The past few years have seen the growing influence of this new type of actor, independent institutions with a constitutional or legislative basis giving them strong legitimacy to conduct their activities, and distinct from non-governmental organisations (NGOs).

In parallel, the international human rights context continues to raise numerous concerns. Human rights violations are commonplace and States are showing increasing disengagement from the multilateral system. In this generally unfavourable context to the strengthening of international human rights instruments, the role played by NHRIs in the promotion and protection of human rights is essential.

Abolition of the death penalty is widely recognised as a marker of respect for human rights. The death penalty negates the very essence of the right to life and the path towards its abolition seems inevitable. Thus, exploring the history of the death penalty means above all exploring the history of its abolition. However, such a historical perspective must not obscure the resistance frequently encountered today on the path towards universal abolition. In 2018, at least 690 executions in twenty countries were recorded, 993 executions in 2017, 1,032 executions in 2016 and 1,634 in 2015 (year with highest number of executions since 1989)¹. Furthermore, these figures, which stir our collective conscience (in 2018, an execution took place approximately every

¹ Figures from reports by Amnesty International, including: *Death Penalty in 2018: Facts and figures*, <https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>

twelve hours), fail to take into account executions carried out in China, the number of which, estimated to be in the thousands, is kept secret. In this context, the role played by NHRIs in favour of abolition proves decisive.

During the 6th World Congress against the Death Penalty held in Oslo from 21 to 23 June 2016, one of the two plenary sessions of the Congress was entirely dedicated to NHRIs. The Congress thereby recognised that abolition is central to their mandate and that the abolitionist movement should engage more with them in the course of their missions. From the point of view of civil society organisations, NHRIs, as independent organisations integrated within the state apparatus, represent important channels. The mobilisation of NHRIs around the abolition of the death penalty, as actors which are still too often overlooked by the abolitionist movement, is therefore a major challenge for civil society organisations. From the perspective of NHRIs, it also appears necessary to draw on the input of civil society organisations. Indeed, they can provide knowledge, know-how and the resources necessary to fulfil the missions entrusted to them under their mandate. During the 6th World Congress, it was recalled that NHRIs are not all the same and their independence in relation to the authorities varies between countries. However, it is also clear that by working with these actors, the abolitionist movement will make progress on abolition across the world².

As a leader in the abolitionist movement, ECPM has been contributing to the fight against the death penalty at the international level since 2000. This French association endeavours to federate and mobilise international abolitionist forces, promote universal abolition through education, information and public awareness-raising, strengthen the capacity of abolitionist civil society and take action on behalf of death row prisoners throughout the world³. Moreover, ECPM was behind the establishment of the World Coalition against the Death Penalty in May 2002 and organises the triennial World Congress against the Death Penalty. The 7th World Congress took place in Brussels, Belgium, from 26 February to 1 March 2019⁴.

² ECPM, "Proceedings of the 6th World Congress against the Death Penalty, 21-23 June 2016, Oslo", *Cahiers de l'abolition* No. 4

³ For more information see www.ecpm.org

⁴ For more information see <http://congres.ecpm.org/en>

It is now accepted that the issue of death penalty and related subjects, such as compliance with international human rights standards and minimum standards on fair trial and detention, are entirely within their mandate. Abolition of the death penalty must therefore become a priority for NHRIs, on the same basis as the fight against torture and other cruel, inhuman and degrading punishments or treatments. Living conditions on death row very often amount to cruel, inhuman and degrading treatment, or even a form of torture⁵. NHRIs must fully embrace these issues.

Developed in collaboration with ECPM's partner NHRIs, this innovative guide is intended to be a practical tool to support NHRIs' future activities on the death penalty by strengthening their capacities.

The Guide is structured around five main sections:

- International approach to abolition of the death penalty;
- Functioning of NHRIs;
- Suggested activities to be implemented to achieve abolition of the death penalty;
- Focus on the role of NHRIs in Africa and Asia;
- Recommendations.

The figures cited reflect the global situation of death penalty in 2018-2019. Some data will therefore be subject to evolution.

⁵ See "Living conditions on death row", Detailed factsheet, World Day against the Death Penalty, 10 October 2018, World Coalition against the Death Penalty. http://www.worldcoalition.org/media/resourcecenter/EN_FactSheet_WD2018

INTERNATIONAL APPROACH TO ABOLITION OF THE DEATH PENALTY



THE DEATH PENALTY UNDER INTERNATIONAL CONVENTIONS

Nine core international human rights treaties⁶ form the basis of international human rights law⁷. Four international texts and three regional protocols deal specifically with the death penalty (see p. 18).

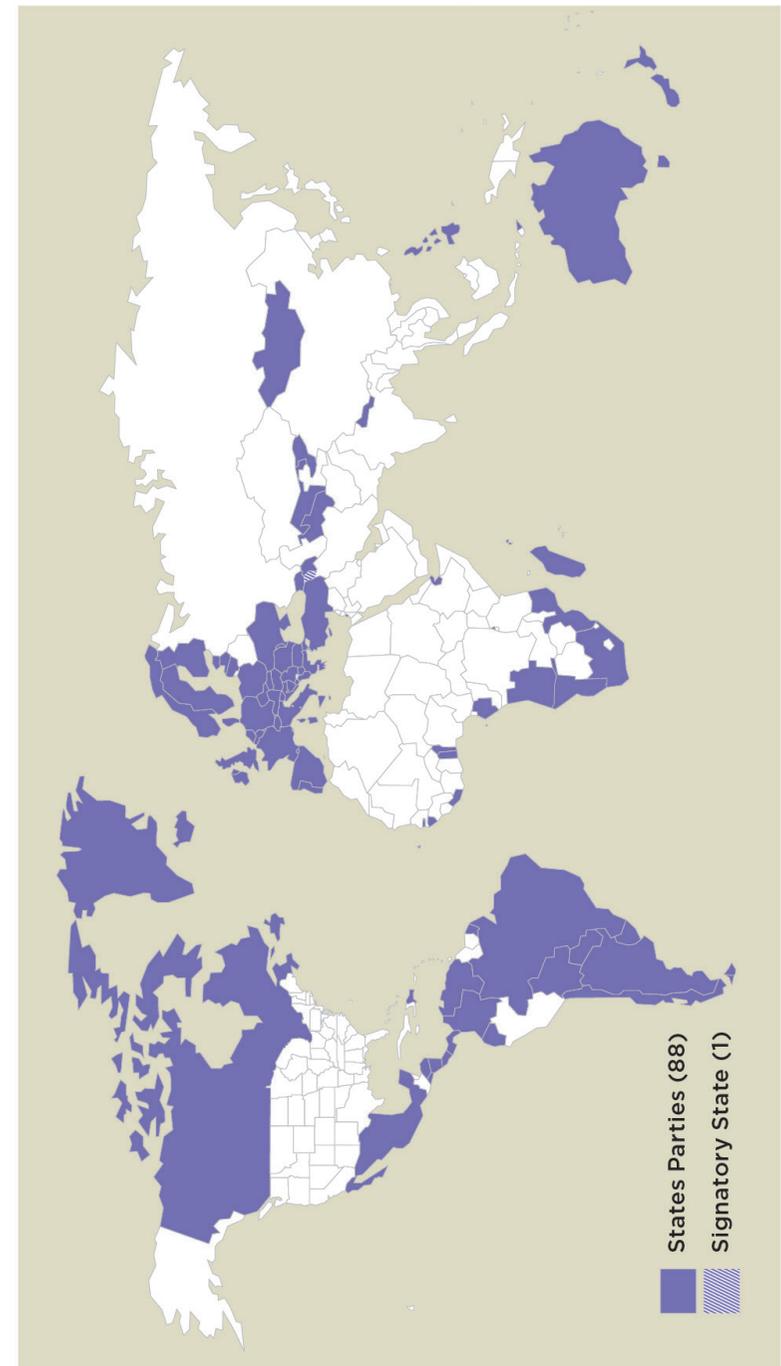
The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (OP2), is the only universal instrument which prohibits executions and provides for the total abolition of the death penalty. This text obliges ratifying States to permanently end the use of the death penalty, thereby contributing to making abolition permanent. Therefore, countries which have abolished the death penalty are encouraged to ratify this text in order to complete the abolition process and prevent potential reinstatement of the death penalty under domestic law. So far, 88 States Parties have ratified OP2.

“The death penalty is incompatible with the fundamental tenets of human rights, in particular human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. This bedrock statement is confirmed by the evolution of international human rights law and jurisprudence, and by State practice.”⁸

Zeid Ra’ad Al Hussein, then United Nations High Commissioner for Human Rights, at the 6th World Congress against the Death Penalty.

- ⁶ The nine treaties can be consulted at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>
- ⁷ Numerous authors have addressed this issue and abundant literature exists in this area. To explore this issue in more detail see, in particular, William A. Schabas, *The Abolition of the Death Penalty in International Law* (Cambridge University Press, 2002), Nadia Bernaz, *Le Droit international et la peine de mort* (La Documentation française, 2008) and Magali Lafourcade, *Les Droits de l’homme* (Presse universitaire de France, “Que sais-je ?” series, 2018).
- ⁸ Zeid Ra’ad Al Hussein, in ECPM, “Proceedings of the 6th World Congress against the Death Penalty, 21-23 June 2016, Oslo”, *Cahiers de l’abolition* No. 4.

ADOPTION OF OP2
2019



CORE INTERNATIONAL TEXTS
AIMING AT ABOLITION OF THE DEATH PENALTY

DATE	TEXT	SCOPE	MAIN PROVISIONS ON THE DEATH PENALTY	APPLICATION
1948	Universal Declaration of Human Rights	Universal	<i>"Everyone has the right to life, liberty and security of person"</i> Article 3	Enshrines the right to life
1966	International Covenant on Civil and Political Rights (ICCPR)	Universal	<i>"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"</i> Article 6-2	Restrictive & evolutive interpretation of crimes carrying the death penalty. Strict limitation of the scope of the death penalty.
1989	Convention on the Rights of the Child	Universal	<i>"Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age"</i> Article 37 a	Prohibition of use of the death penalty against minors.
1989	Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2)	Universal	<i>"No one within the jurisdiction of a State Party to the present Protocol shall be executed"</i> Article 1-1	Abolition of the death penalty may not be subject to any derogation.
1983	Protocol No.6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty	Regional (Europe)	<i>"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed"</i> Article 1	Abolition of the death penalty in peacetime.
2002	Protocol No.13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty	Regional (Europe)	<i>"Being resolved to take the final step in order to abolish the death penalty in all circumstances"</i> <i>"The death penalty shall be abolished. No one shall be condemned to such penalty or executed"</i> Article 1	Abolition of the death penalty in all circumstances, even for acts committed in time of war or of imminent threat of war.
1990	Protocol to the American Convention on Human Rights to Abolish the Death Penalty	Regional (America)	<i>"The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction"</i> Article 1	Total abolition of the death penalty in peacetime.

THE UNITED NATIONS RESOLUTION CALLING FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY

Every two years, abolition of the death penalty is also highlighted by the United Nations General Assembly (UNGA). Since 2007, seven resolutions have been adopted by the UNGA calling for a universal moratorium on executions⁹. These resolutions develop a series of legal arguments for the establishment of a universal moratorium on the death penalty. They consider in particular 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 *"that there is no conclusive evidence of the deterrent value of the death penalty"*.

It is also interesting to note that Resolutions 71/187 of 19 December 2016 and 73/175 of 17 December 2018 expressly mention the role of NHRIs *"in contributing to ongoing local and national debates and regional initiatives on the death penalty"*.

Furthermore, the Resolution adopted in December 2018 calls upon *"all States:*

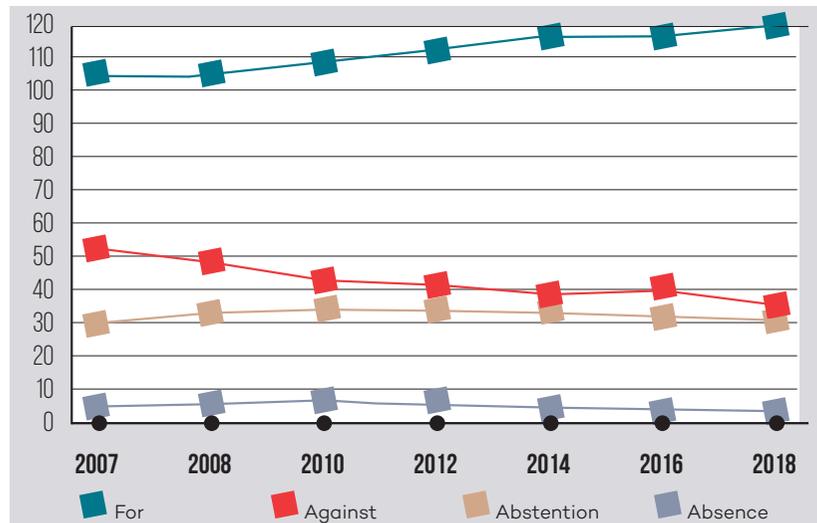
- a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty [...];*
- b) To comply with their obligations under article 36 of the 1963 Vienna Convention on Consular Relations [...];*
- c) To make available relevant information [...] with regard to their use of the death penalty [...];*
- d) To progressively restrict the use of the death penalty [...];*
- e) To reduce the number of offences for which the death penalty may be imposed [...];*

⁹ Resolutions 62/149 of 18 December 2007: <https://undocs.org/en/A/RES/62/149>; 63/168 of 18 December 2008: <https://undocs.org/en/A/RES/63/168>; 65/206 of 21 December 2010: <https://undocs.org/en/A/RES/65/206>; 67/176 of 20 December 2012: <https://undocs.org/en/A/RES/67/176>; 69/186 of 18 December 2014: <https://undocs.org/en/A/RES/69/186>; 71/187 of 19 December 2016: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/%20RES/71/187; and 73/175 of 17 December 2018: <https://undocs.org/pdf?symbol=en/A/%20RES/73/175> calling for a moratorium on the use of the death penalty.

- f) To ensure that those facing the death penalty can exercise their right to apply for pardon or commutation of their death sentence [...];
- g) To ensure that the death penalty is not applied on the basis of discriminatory laws [...];
- h) To establish a moratorium on executions with a view to abolishing the death penalty [...].”

The evolution of votes on this resolution is a good indicator of the global progression of the abolitionist movement and, each time the resolution is voted upon by the UNGA, the resolution is adopted by an increasing number of States.

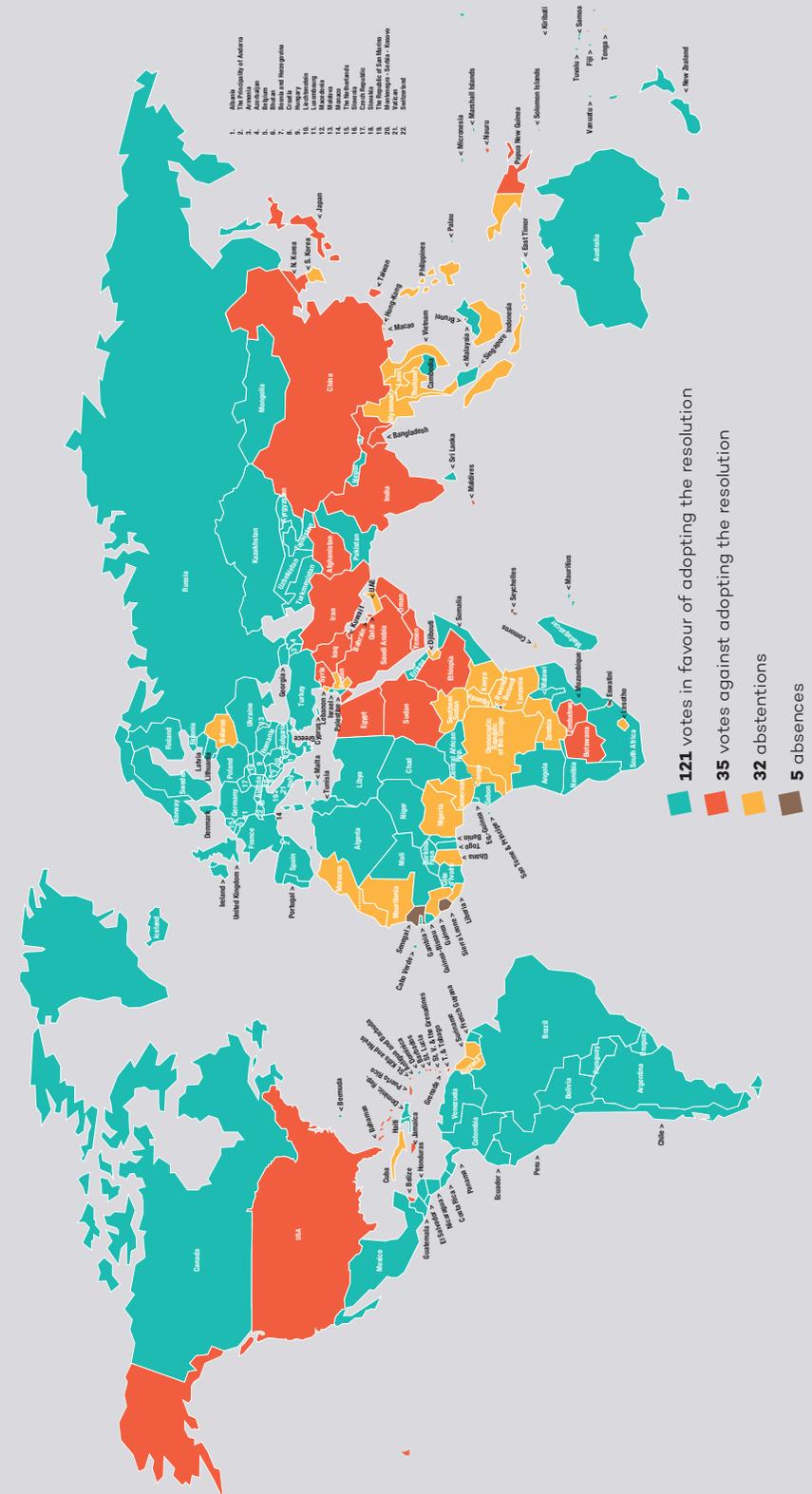
Evolution of votes on the resolution since 2007



The results of votes are public¹⁰, enabling States’ commitments at the international level to be easily verified. The 2018 Resolution was adopted by a very large majority of States. The increase in votes in favour of this resolution clearly indicates that the abolitionist movement is growing within the international community and that an ever-greater number of States wishes to establish a moratorium with a view to abolition.

¹⁰ The results of votes are available at <https://www.un.org/en/ga/documents/voting.asp>. To access them, search using the reference (or classification number) of the resolution.

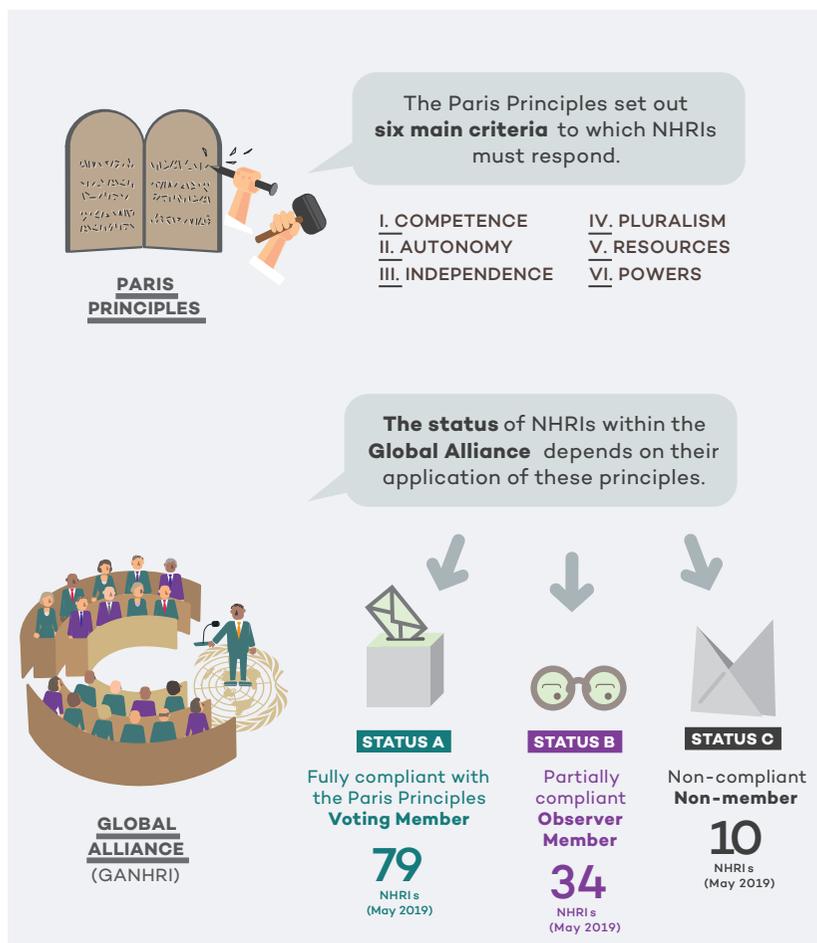
Votes on the UN resolution for a universal moratorium on use of the death penalty in 2018



FUNCTIONING OF NHRIs



NHRI ACCREDITATION PROCESS AND COMPETENCE



C status is no longer granted by GANHRI. This status is maintained only for institutions that were accredited before October 2007.

NHRIs' competence under the Paris Principles

<p>1 ● To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them.</p>	<p>2 ● To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.</p>
<p>3 ● To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.</p>	<p>4 ● To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.</p>
<p>5 ● To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights¹¹.</p>	<p>6 ● To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.</p>
<p>7 ● To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.</p>	

Source: Paris Principles

¹¹ In many States, OHCHR supports the creation and functioning of NHRIs. See <https://www.ohchr.org/Documents/Publications/FactSheet19en.pdf>

NHRI NETWORKS

In order to implement their responsibilities, **certain methods of operation are encouraged and promoted**. NHRIs may establish working groups from among their members, consider freely without higher referral any matter falling within their competence and address public opinion directly through press organs in order to publicise their opinions and recommendations.

NHRIs thus have a broad mandate for the protection and promotion of human rights and particularly ambitious methods of operation. Some NHRIs also have a mandate as a National Preventive Mechanism (NPM)¹² which automatically grants them the power to monitor places of deprivation of liberty. They therefore have competence to address the issue of the death penalty and also enjoy significant leeway in the performance of their duties. Issues related to the death penalty, such as the right to a fair trial and procedural guarantees, compliance with international human rights standards, conditions of detention on death row which, in the majority of cases, may amount to cruel, inhuman or degrading treatment, or even a form of torture, also fall within NHRIs' mandate.

¹² The Optional Protocol to the United Nations Convention against Torture (OPCAT) establishes a system for the prevention of torture based on visits to places of detention, undertaken by international bodies and national bodies: National Preventive Mechanisms (NPMs). States may choose to designate one or more existing institutions as NPMs or create new bodies. Numerous NHRIs have been designated as NPMs by States.

- **Global Alliance of National Human Rights Institutions (GANHRI):** As the main network of national human rights institutions, GANHRI has 123 members. It strengthens and encourages NHRIs to comply with the Paris Principles, in particular through the accreditation process, and provides leadership in the promotion and protection of human rights.
- **Asia Pacific Forum of National Human Rights Institutions (APF):** This forum, established in 1996, operates in the Asia-Pacific region, with 25 member NHRIs located throughout the Asia-Pacific region. Based in Sydney, Australia, it supports its members through capacity-building programmes and aims to establish independent NHRIs throughout the region¹³. It conducts a project on capacity building of NHRIs, which focuses specifically on the fight against the death penalty¹⁴.
- **Network of African National Human Rights Institutions (NANHRI):** Established in 2007 and based in Nairobi (Kenya), it brings together 44 NHRIs in Africa¹⁵.
- **European Network of National Human Rights Institutions (ENNHRI):** The European group of NHRIs for the promotion and protection of human rights is composed of European NHRIs, the majority of which have A-status accreditation. It holds regular regional conferences and roundtables.
- **Network of National Institutions for the Promotion and Protection of Human Rights in the Americas:** Established in 2000, it aims to promote the culture of human rights, strengthen recognition of and compliance with international commitments, contribute to democratic development, strengthen existing NHRIs and support the development of new and emerging NHRIs in accordance with the Paris Principles.

¹³ See the services offered by APF: <http://www.asiapacificforum.net/support/>

¹⁴ Through the "Abolition of the Death Penalty" project, APF provides financial and technical assistance to NHRIs in the Asia-Pacific region (Malaysia, Philippines, Myanmar) to support their advocacy work.

¹⁵ See NANHRI's history and missions at <https://www.nanhri.org/our-history/>

- **Francophone Association of National Human Rights Commissions (*Association francophone des commissions nationales des droits de l'homme - AFCNDH*)**: It brings together NHRIs in francophone countries. Established in May 2002, it has 35 national members, including 27 members in Africa¹⁶. AFCNDH organised, in particular, a seminar on the death penalty in Morocco in October 2017¹⁷. The seminar was an opportunity to reiterate the important role played by NHRIs in the abolitionist struggle and to consider the means by which to encourage them to participate in the fight against the death penalty.

¹⁶ See AFCNDH's membership at <http://afcndh.org/membres/>

¹⁷ See <https://www.cndh.org.ma/an/article/abolition-death-penalty-african-french-speaking-countries-driss-el-yazami-after-de-facto>

**SUGGESTED
ACTIVITIES
TO BE
IMPLEMENTED
TO ACHIEVE
ABOLITION
OF THE DEATH
PENALTY**



The activities presented in this section are consistent with the powers assigned to NHRIs under the Paris Principles. They can be considered as gradual steps to progress towards abolition of the death penalty and therefore can be implemented in the order in which they appear below or carried out independently of each other without respecting a specific chronological order. Thus each NHRI, taking into account its national context, can decide which actions to carry out and the order in which to do so.



DOCUMENT

Several studies have reported serious challenges in accessing reliable data on the use of the death penalty. Access to such information varies according to the national context and the category of NHRI. Some NHRIs have an explicit mandate to visit places of detention under the law establishing the institution (e.g. Côte d'Ivoire) that others do not have. There is also another category of NHRIs which, as mentioned above, integrate an NPM: these NHRI-NPMs have access to all data and information concerning places of detention (e.g. Cameroon, Morocco, Rwanda) and have a mandate to monitor such facilities.

In Democratic Republic of Congo (DRC), there are virtually no sources or statistics presenting data on the number of individuals sentenced to death, conditions of detention in places of detention in general and on death row in particular. In Indonesia or Malaysia, it is also very difficult to obtain transparent data on the number of executions carried out and their grounds. In the absence of such data, NHRIs can initiate, where practicable, national data-collection campaigns,

in collaboration with the judicial authorities (prosecutors and judges) and penitentiary authorities in particular. These data will enable the publication of empirical reports and the establishment of statistics on the use of the death penalty (number of executions, number of death sentences, time spent on death row, socio-economic status of death row prisoners, etc).

Furthermore, in the framework of the preparation of “reports on the national situation with regard to human rights in general and on more specific matters”¹⁸, NHRIs should examine and document conditions of detention of prisoners through regular visits and the monitoring of detention facilities. During these visits, areas reserved for death row prisoners must be subject to a particular focus, due to their specificity. Death row prisoners do not generally share the same places of detention as ordinary prisoners and they are very often victims of discrimination, “forgotten” and dehumanised by the prison administration. The isolation and discrimination faced by death row prisoners while awaiting the execution of their sentence generate extreme anxiety, referred to as “death row syndrome”.

In the framework of prison visits, NHRIs can ask to interview death row prisoners, their lawyers, prison administrators, families of prisoners or NGOs operating in the places of detention where they are held. During interviews conducted with such persons, questions can relate to the profiles of prisoners, legal representation, conditions of detention (cells, access to health care, access to work and activities, contact with the outside world, sanitation and hygiene), torture and ill-treatment, disciplinary measures, consular assistance (for foreign prisoners), etc.

Under their mandate, NHRIs can also inform public authorities in charge of the prison administration of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules¹⁹), through training sessions, such those conducted in Liberia, for example. The Nelson Mandela Rules apply to all prisoners without exception, including death row prisoners.

¹⁸ Article 3.I of the Paris Principles: “Competence and responsibilities”.

¹⁹ See the United Nations Standard Minimum Rules for the Treatment of Prisoners (referred to as the “Nelson Mandela Rules”), as adopted by Resolution 70/175 of the United Nations General Assembly of 17 December 2015. See https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf



ORGANISE COLLABORATION

According to the methods of operation defined in the Paris Principles, NHRIs can establish from among their members “*working groups [...] and set up local or regional sections to assist [...] in discharging [their] functions*”. They can also “[*m]aintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions)*”. In the framework of their activities on the abolition of the death penalty, NHRIs would benefit from reaching out to actors from civil society and the abolitionist movement. They could discuss their practices and progress together towards abolition.

NHRIs can also organise regular meetings with a range of actors in this area (government agencies, parliamentarians, diplomatic services, religious bodies, NGOs, NPMs, where applicable, legal practitioners, academics and students). A number of means for action in favour of abolition are indeed in the hands of other relevant actors in the human rights field. First and foremost, parliamentarians have a decisive role to play. In this respect, NHRIs may wish to consider drawing on the expertise and work of the Global Parliamentary Platform for the Abolition of the Death Penalty, established by Parliamentarians for Global Action (PGA). This platform informs and mobilises parliamentarians to achieve abolition and be an important relay to promote the work carried out by NHRIs within Parliaments.



RAISE PUBLIC AWARENESS

In retentionist States and those applying a moratorium, public opinion is very often raised by political authorities to justify maintaining the *status quo*. For example, in Cameroon the Government states that the death penalty should be retained in domestic law as capital punishment has popular support. This claim is not based on any credible study or survey of popular support for the death penalty. In Cameroon, as in numerous other States, the death penalty is not the subject of debates in the media, by parliamentarians or opinion leaders.

A study carried out by Roger Hood in Malaysia²⁰ shows that popular support for the death penalty is not as significant when placed in the context of criminal justice. While respondents initially express support for the death penalty in general, their replies are much more nuanced when they are presented with alternatives to fight criminality (for example, better enforcement of prison sentences, better education or a more efficient judiciary and police system).

How can NHRIs raise public awareness? “[*P*]ublicize human rights [...], by increasing public awareness, especially through information and education and by making use of all press organs.”²¹

To this end, it is essential to conduct opinion polls in order to measure the level of public knowledge and public perception.

²⁰ Roger Hood, *The Death Penalty in Malaysia, Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences*, The Death Penalty Project, in association with the Malaysia Bar Association, 2013.

²¹ Resolution 48/134 of the United Nations General Assembly of 20 December 1993 on the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

DO YOU SUPPORT THE DEATH PENALTY FOR MURDER?

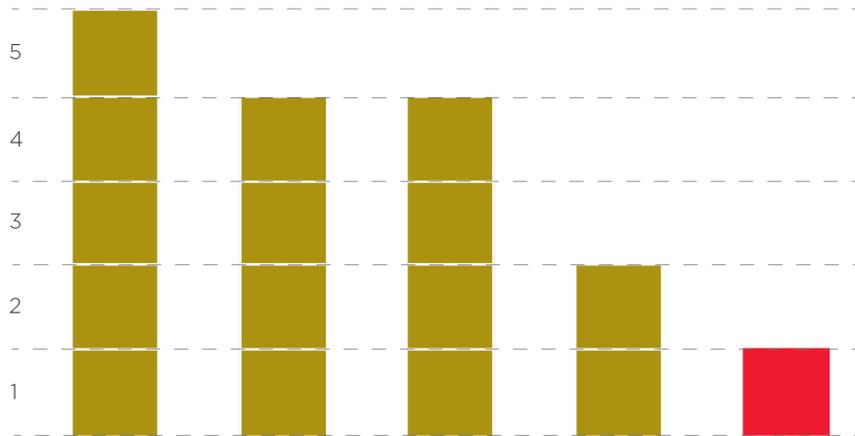
YES
91%



LET'S HAVE
A CLOSER
LOOK

WHEN ASKED TO RANK A RANGE OF POLICIES TO TACKLE VIOLENT CRIMES THAT LEAD TO DEATH, RESPONDENTS PLACE THE DEATH PENALTY IN THE LAST POSITION

MOST EFFICIENT POLICY



- EDUCATION**
BETTER MORAL EDUCATION OF YOUNG PEOPLE
- MORE JUSTICE**
MORE EFFECTIVE POLICIES TO BRING CRIMINALS TO JUSTICE AND MAKE PUNISHMENT MORE CERTAIN
- CONTROL DRUG CONFLICTS**
MORE EFFECTIVE POLICIES TO CONTROL CONFLICT BETWEEN DRUG TRAFFICKERS AND DEALERS
- CONTROL FIREARMS**
MORE EFFECTIVE POLICIES TO CONTROL THE POSSESSION OF FIREARMS
- DEATH PENALTY**
GREATER NUMBER OF EXECUTIONS

Public perception of the death penalty in the Philippines

In the Philippines, the Commission on Human Rights (CHRP) carries out numerous activities to better determine public opinion. It emerges from these actions that the Philippine population is strongly opposed to the death penalty and to any constitutional amendment enabling its reinstatement. In March 2018, a survey carried out by the Social Weather Station on behalf of the CHRP on public perceptions on the death penalty (National Survey on Public Perceptions on the Death Penalty) showed that at most only 33% of the population of the Philippines are in favour of the death penalty in relation to six out of seven crimes related to drug trafficking or use. In the course of this survey, the first of this type on the death penalty in the Philippines, 2,000 persons were interviewed. It reveals that the vast majority of the population in the Philippine Archipelago still supports abolition. The CHRP also conducts dialogue with representatives of the various communities in the Philippines. These exchanges are very useful to raise awareness and obtain their opinions. The CHRP and many other NHRIs also make use of the potential of social networks to reach out to as many people as possible and conduct on line awareness-raising campaigns, while combating misinformation on the death penalty disseminated on such media.

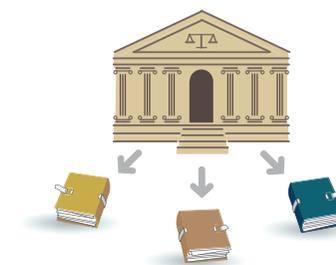
Other public awareness-raising activities can be considered. For example, NHRIs can publish and communicate to the press a letter setting out arguments in favour of abolition, following the example of the Human Rights Commission of Sri Lanka (HRCSL). The World Day against the Death Penalty (on 10 October each year) is an appropriate date to carry out this type of action²².

Organising events to mark the World Day against the Death Penalty or on the anniversary of the adoption of a national abolitionist law has proven to be an excellent way of pursuing advocacy in favour of abolition. NHRIs can organise educational and cultural activities to raise public awareness and can support abolitionist NGOs to

²² World Day against the Death Penalty, at <http://www.worldcoalition.org/worldday.html>

For more information: Roger Hood, *The Death Penalty in Malaysia Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences*, the Death Penalty Project in association with the Bar Council of Malaysia, 2013.

make educational presentations in schools, for example, to reach out to younger audiences. These activities go hand in hand with the publication and dissemination of information tools to reach out to a wider audience. Finally, the role of the traditional media is also crucial and numerous NHRIs strive to interact with them, through the organisation of press conferences, sending press releases, participating in interviews or radio or televised debates.



MAKE RECOMMENDATIONS TO THE STATE ON THE NEED FOR LEGISLATIVE REFORMS

In accordance with the Paris Principles, one of the main tasks assigned to NHRIs is “[t]o submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights”.

More specifically, the Paris Principles grant NHRIs the competence to monitor laws, allowing them to recommend adoption of new legislation, amendment of legislation in force and adoption or amendment of administrative measures.

In order to promote abolition, legislative proposals promoted by NHRIs may concern a constitutional reform or reform of the Criminal Code or Criminal Procedure Code. In case of constitutional reform, it should be done through a draft constitutional amendment, in accordance with the provisions in force at the domestic level. For example, the right to life and the prohibition of the death penalty were enshrined by Côte d’Ivoire in its new Constitution in 2016. Constitutional amendments are generally strictly regulated by the provisions of the Constitution itself, which limits recourse to such actions. However, abolition of the death penalty through an amendment to the Constitution ensures such a step will have historic recognition, sufficient resonance and status to prevent any going back.

As a general rule, such constitutional or legislative reforms should enable the death penalty to be abolished, any moratorium on executions to be formalised, the number of crimes punishable by death to be reduced or a reform of the Criminal Procedure Code to be instituted in order to guarantee respect for the rights of death row prisoners. In this respect, NHRIs should work closely with the relevant authority (the Parliament or the Government) which has the power to take legislative initiative under domestic provisions. The Belgrade Principles, adopted in Serbia in 2012, specifically define the relationship between NHRIs and parliaments and identify areas of cooperation²³.



ENCOURAGE THE STATE TO RESPECT ITS INTERNATIONAL COMMITMENTS

NHRIs also have the power to promote and ensure the harmonisation of national legislation, regulations and practices with international human rights instruments, to encourage ratification of such instruments or accession to such instruments, and to ensure their implementation.

In the area of the fight against the death penalty, relevant NHRIs should promote ratification of OP2, the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT) and its optional protocol (which specifically provides for the establishment of NPMs), regional instruments and votes in favour of the United Nations General Assembly resolution calling for a moratorium on executions²⁴. Thus, NHRIs from abolitionist States which are not parties to OP2 should encourage their respective States to express their domestic commitments at the international level. This is the case in particular of Bhutan, Burundi, Cambodia, Congo, Côte d'Ivoire, Guinea, Kazakhstan, Mauritius and Senegal. Similarly, NHRIs from States Parties to OP2 should encourage national authorities to adopt laws leading to the abolition of the death penalty throughout the national territory, in particular in Liberia and the Gambia.

NHRIs also have the task of cooperating with the United Nations system. In this respect, they can contribute to the reports which States are required to submit to the various United Nations bodies and committees.

²³ Belgrade Principles on the relationship between NHRIs and parliaments, adopted by the International Seminar on the Relationship between National Human Rights Institutions and Parliaments, Belgrade (Serbia), 22-23 February 2012: <https://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>

²⁴ See Section I of this guide.

The Universal Periodic Review (UPR) of Malawi

For example, during the UPR of Malawi, the NHRI of Malawi, which was a member of the national UPR task force, took the opportunity of the preparation of Malawi's initial report to the United Nations Human Rights Council in 2014 to make a recommendation to the authorities to abolish the death penalty. It participated in the preparatory meetings and the drafting of the national report and consistently took a position in favour of abolition. Indeed, within the framework of the UPR, each United Nations Member State is required to draft a report on the situation of human rights and then present it before the United Nations Human Rights Council for peer review.



NHRIs can therefore use this opportunity to underline the importance of abolishing the death penalty, restricting its scope and/or ensuring the compliance of domestic legislation with the State's international commitments on the death penalty. They can also produce parallel reports within the framework of this review and/or express their views (in the case of A-status NHRIs) during the UPR plenary session on the country concerned and during the adoption of the final report. Furthermore, NHRIs have an important role to play during the subsequent stage, by organising the publication and follow-up of recommendations, in partnership with civil society organisations, and by monitoring implementation at the national level of voluntary commitments made by the State during the review.

There are other opportunities for NHRIs to convey the abolitionist message. NHRIs can, for example, send lists of issues to the various UN committees or organise advocacy meetings with special procedures (special rapporteurs and working groups). As is the case during the UPR, A-status NHRIs can make oral statements during the Human Rights Council sessions in Geneva, under all agenda items, and submit written statements to the Council.

Selected resources to implement activities

- "Living conditions on death row. Factsheet on how to conduct a prison visit", 16th World Day against the Death Penalty: http://www.worldcoalition.org/media/resourcecenter/EN_AccessPrisonsWD2018
- "Living conditions on death row. Factsheet for media". See ECPM and the World Coalition against the Death Penalty's toolkit: http://www.worldcoalition.org/media/resourcecenter/FactsheetMediaWD2018_EN.pdf
- On the prevention of torture: "Preventing Torture. An Operational Guide for National Human Rights Institutions", Asia Pacific Forum, Association for the Prevention of Torture and United Nations Office of the High Commissioner for Human Rights: <https://www.ohchr.org/Documents/Publications/PreventingTorture.pdf> This guide includes a chapter on monitoring detention facilities.
- "Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules)", Resolution 70/175 adopted by the United Nations General Assembly on 17 December 2015: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf
- "Monitoring Places of Detention. A Practical Guide", Association for the Prevention of Torture: https://www.apr.ch/content/files_res/monitoring-guide-en.pdf

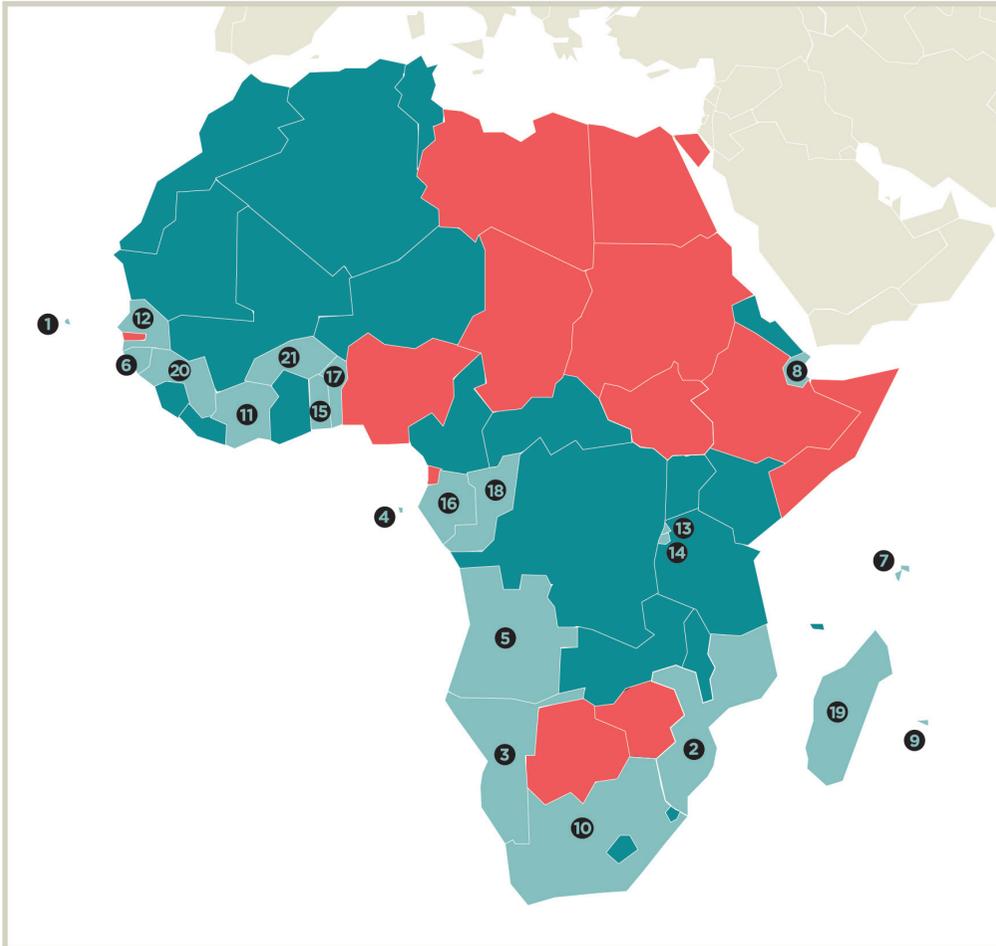
**FOCUS
ON THE ROLE
OF NHRIs
IN AFRICA
AND ASIA**



AFRICA

ABOLITION TIMELINE

1981/2019



21 ABOLITIONIST STATES

21 STATES WITH A MORATORIUM

12 RETENTIONIST STATES

- | | |
|---------------------------------|--------------------------------|
| 1 Cabo Verde - 1981 | 12 Senegal - 2004 |
| 2 Mozambique - 1990 | 13 Rwanda - 2007 |
| 3 Namibia - 1990 | 14 Burundi - 2009 |
| 4 S.Tome & Princ. - 1990 | 15 Togo - 2009 |
| 5 Angola - 1992 | 16 Gabon - 2010 |
| 6 Guinea Bissau - 1993 | 17 Benin - 2012 |
| 7 Seychelles - 1993 | 18 Congo - 2015 |
| 8 Djibouti - 1995 | 19 Madagascar - 2015 |
| 9 Mauritius - 1995 | 20 Guinea - 2017 |
| 10 South Africa - 1997 | 21 Burkina Faso - 2018* |
| 11 Côte d'Ivoire - 2000 | |

* Abolitionist for ordinary crimes only

Some NHRIs have placed a particular focus on the issue of abolition, implementing activities that could be replicated by other institutions. Some of them have responded to questionnaires, providing data and examples which are included in the cases studies presented in this Section. The list of NHRIs mentioned is therefore not exhaustive, case studies are not presented in a uniform way and contain varying levels of detail depending on the responses we received.

IN AFRICA

Status of abolition in Africa

In Africa, the trend towards abolition seems to be inexorable. It continuously advances and has tended to accelerate since 2009. Considered the next abolitionist continent in view of the latest positive developments, in particular recent abolition in Burkina Faso, Guinea, Benin, Madagascar and Congo, Africa today includes 42 abolitionist countries in law or with a moratorium.

On this continent, NHRIs have a crucial role to play to encourage and support this movement. For example, in DRC, the CNDH-RDC submitted an opinion to the Government in which it formalised its position in favour of abolition. At the continent level, this dynamic would be further reinforced by the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty²⁵.

²⁵ Discussions are currently ongoing at the African Union concerning drafting and adoption of a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty. Like the European and American protocols, this protocol confirms the trend towards the adoption of continental instruments allowing regional specificities to be integrated within human rights continent-wide instruments. Its adoption would enable the African continent to invoke a specific instrument, complementing the universal instrument (OP2) and with the legitimacy necessary for its ratification by the continent as a whole.

Status of African NHRIs in the Global Alliance (October 2019)

A = Fully compliant with the Paris Principles – Voting Member
B = Partially compliant – Observer Member
C = Non-compliant – Non-member

Algeria	National Human Rights Council	B
Benin	Human Rights Commission of Benin	C
Burundi	Independent National Commission on Human Rights	B
Cameroon	National Commission on Human Rights and Freedoms	A
Chad	National Human Rights Commission	B
Congo	National Human Rights Commission	B
Côte d'Ivoire	National Human Rights Commission	B
DRC	National Human Rights Commission	A
Egypt	National Council for Human Rights	A
Ethiopia	Ethiopian Human Rights Commission	B
Ghana	Commission on Human Rights and Administrative Justice	A
Kenya	National Commission on Human Rights of Kenya	A
Liberia	Independent National Commission on Human Rights	A
Libya	National Council for Civil Liberties and Human Rights	B
Madagascar	National Human Rights Commission of Madagascar	C
Malawi	Human Rights Commission of Malawi	A
Mali	National Human Rights Commission of Mali	B
Mauritania	National Human Rights Commission	B
Mauritius	National Human Rights Commission	A
Morocco	National Human Rights Council	A
Namibia	Office of the Ombudsman	A

Niger	National Human Rights Commission	A
Nigeria	National Human Rights Commission of Nigeria	A
Rwanda	National Commission for Human Rights in Rwanda	A
Senegal	Senegalese Human Rights Committee	B
Sierra Leone	Human Rights Commission of Sierra Leone	A
South Africa	South African Human Rights Commission	A
Tanzania	Commission for Human Rights and Good Governance	A
Togo	National Human Rights Commission	A
Tunisia	High Committee on Human Rights and Fundamental Freedoms	B
Uganda	Uganda Human Rights Commission	A
Zambia	Human Rights Commission	A
Zimbabwe	Zimbabwe Human Rights Commission	A

Case studies

CAMEROON

National Commission on Human Rights and Freedoms (NCHRF)

Date of establishment: 2004

Context

- *De facto* moratorium on executions since 1997
- Treaties ratified: ICCPR, CAT
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **330**
- Number of death sentences recorded in 2018 : **more than 4**

Although Cameroon has applied a moratorium since 1997, several developments of particular concern have been observed. In addition to the death sentences issued by competent Cameroonian courts, death sentences are also issued by the traditional justice system which is not regulated under national laws. Moreover, conditions of detention on death row are particularly difficult. These concerns are at the core of the work carried out by the NCHRF in the area of the fight against the death penalty.

Reported actions undertaken:

- **Preparation of annual reports on respect for human rights in the country:** in its 2015 and 2016 reports on the Rule of Law in Cameroon, for example, the NCHRF reported death sentences related to customary sentences²⁶.
- **Transmission of information to the authorities concerning practices contrary to human rights,** including those related to community justice which fall outside State control.
- **Adoption of a strategy targeting ordinary institutional actors (State representatives, members of the Government and Parliament) and customary actors (traditional leaders) to put an end to the practice of customary sentences.**
- **Establishment of working groups and carrying out studies to gain a better understanding of traditional justice in Cameroon.**
- **Visits to detention centres, in particular of death row prisoners.** During the visit to Yoko prison in 2016, the NCHRF observed

that Noah Atangana, aka “Longuè Longuè”, on death row, was chained by his feet and hands and alone in a cell. The NCHRF alerted the authorities to this situation and measures were taken to improve his detention conditions and provide him with medical and psychological care. A further visit was carried out on 31 January 2018, during which Noah Atangana himself indicated that he was benefiting from medical care.

- **Documentation of human rights violations in places of deprivation of liberty and alerting the relevant authorities to the urgency of the situation.**
- **Conducting monitoring on the detention centres visited.**
- **Production of guides and educational materials on the issue of human rights, accessible to all.** The NCHRF, in partnership with the United Nations Development Programme (UNDP) and in collaboration with the Education Minister developed a human rights education programme for the primary and secondary levels, which includes in particular protection of the right to life and physical and psychological integrity. To this end, the NCHRF, makes an educational kit and a guide on human rights in Cameroon available to teachers.

²⁶ Reports are available at <http://www.cndhl.cm/?q=en/documentation/rapports-edh>

DEMOCRATIC REPUBLIC OF CONGO

National Human Rights Commission of DRC
(*Commission nationale des droits de l'homme de RDC*
[CNDH-RDC])

Date of establishment: 2013

Context

- **De facto moratorium on executions since 2003**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **350 to 500**
- Number of death sentences recorded in 2018: **41**

Although the country has adopted a moratorium on executions, the Congolese justice system continues to issue death sentences and support for use of the death penalty resurfaces at regular intervals in public debate, in particular in response to violence perpetrated in the east of the country. It is also very difficult to obtain reliable information on the number of detainees in DRC and on their living conditions.

Reported actions undertaken:

- **Direct questioning of the Government and submitting opinions and recommendations on the death penalty situation in the country.** The CNDH-RDC questioned the Government on the situation in relation to the moratorium on the use of the death penalty in DRC, submitting an opinion and proposals on the issue in September 2017. This document is the first official position statement by the CNDH-RDC in favour of abolition of the death penalty. In it, the CNDH-RDC underlines that, “*The right to life is the supreme right from which no derogation is permitted, even in the case of public emergency,*” and that it is guaranteed by Article 61 of the Constitution of 18 February 2006. The CNDH-RDC also makes reference to the country’s international commitments, in particular the ICCPR (Article 6) and the African Charter on Human and Peoples’ Rights (Article 4).
- **Promoting the harmonisation of laws, regulations and practices in force at the national level with international human rights instruments to which the State is a party.**

- **Drafting a legal argument based on both international and domestic law to call on the State to commit to a process leading to abolition and participating in the UPR process.** In its report to the Human Rights Council in the framework of the UPR²⁷, the CNDH-RDC points out that Articles 16 and 61 of the Congolese Constitution of February 2006 provide a basis for abolition of the death penalty and commit the Congolese State to a process which should lead to abolition. The CNDH-RDC also calls on the Government to vote in favour of the United Nations Resolution on a universal moratorium on the use of the death penalty.

²⁷ Available (in French) at https://www.upr-info.org/sites/default/files/document/congo_democratic_republic/session_33_-_may_2019/cndh-rdc_upr33_cod_f_main.pdf

LIBERIA

Independent National Commission on Human Rights of Liberia (INCHR)

Date of establishment: 2005

Context

- **De facto moratorium on executions since 2005**
- Treaties ratified: **ICCPR, CAT, OP2**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **unknown**
- Number of death sentences recorded in 2018: **0**

The context in Liberia is specific: the Criminal Code of Liberia still provides for the death penalty²⁸, even though the country acceded to OP2 in September 2005. The persistence of provisions which are contrary to Liberia's international commitments is systematically highlighted by the INCHR, which, since its creation, promoted the view that the death penalty amounts to a cruel, inhuman and degrading punishment, incompatible with the values of civilised societies, and must be immediately abolished.

Reported actions undertaken:

- **Organisation of study tours** in Geneva, Kenya, Sierra Leone and Morocco to better understand how recognised older institutions conduct effective advocacy in favour of human rights in their country.
- **Preparation and publication of reports.** In April 2017, the INHCR published a report on the state of prisons in Liberia and made a number of recommendations to relieve congestion. On the basis of the recommendations contained in this thematic report, the judiciary set up a committee composed of lawyers which can refer cases to court and works with the INHCR to improve the state of prisons across Liberia.
- **Collaboration with civil society organisations.** On the basis of the memorandum of understanding signed between the INHCR and civil society organisations, the INHCR holds a monthly meeting with the group in charge of human rights protection.

- **Regular meetings with the country's political authorities.** The INCHR raises the issue of the death penalty during these meetings. These efforts contribute to "maintaining pressure" on members of the Government and Parliament. The INCHR also draws the Government's attention to the fact that the adoption of the Law on armed robberies (2008), which includes a provision on the use of the death penalty is incompatible with Liberia's international commitments.
- **Organisation of human rights training.** In this framework, INCHR raises the awareness of agencies in charge of law enforcement, including the National Police of Liberia, on the importance of respecting human rights.
- **Networking.** The INCHR works jointly with GANHRI and NANHRI, submitting to them thematic reports on their request, for example. The INCHR also participates in regional and international human rights fora, and attended, in particular, the 7th World Congress against the Death Penalty.

²⁸ Articles 50.2 and 51.3 of the Criminal Code of Liberia.

MALAWI

Malawi Human Rights Commission (MHRC)

Date of establishment: 1994 (operational since 1999)

Context

- **De facto moratorium on executions since 1992**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **in favour**
- Number of death row prisoners as of end of 2018: **15**
- Number of death sentences recorded in 2018: **0**

The MHRC has taken part in several initiatives related to the abolition of the death penalty, in particular the Kafantayeni project on the redetermination of sentences. It is named after Francis Kafantayeni who was tried in 2002 for allegedly tying up and killing his two-year-old stepson. Mr. Kafantayeni admitted to killing his stepson, but, in his defence, he said he had lost control after smoking Indian hemp (*chamba*). He was convicted and sentenced to death. In September 2005, the convict initiated a court action to seek a declaration that the mandatory death penalty was unconstitutional. The lessons learned by MHRC from this project are set out in the presentation made by Justin G. K. Dzonzi²⁹, Chairperson of the Malawi Human Rights Commission, at the 6th World Congress against the Death Penalty in 2016.

Reported actions undertaken:

- **Participation in the UPR process.** The MHRC made recommendations to Government authorities on the abolition of the death penalty during the drafting of the national report to be submitted to the United Nations Human Rights Council in the framework of the UPR process.
- **Training and awareness raising actions** to benefit a very wide range of actors (judicial bodies, lawyers, NGOs, ministries) in order to broaden the support base for abolition as far as possible.

²⁹ See presentation on http://congres.abolition.fr/wp-content/uploads/2016/06/NHRI-Presentation-J-Dzonzi_-Malawi-Human-Rights-Commission_230616.pdf

- **Participation as a “friend of the court” (*amicus curiae*) in an application contesting the constitutionality of the mandatory application of the death penalty in the case of Kafantayeni and others against the Attorney General of Malawi.** In the course of this project, 154 cases were the subject of court re-hearings and 112 people sentenced to death were freed, the court holding that they had been wrongly convicted or that they had already served their sentence. 41 others had their sentences revised. The MHRC worked with *pro bono* lawyers on each individual case. Those formerly sentenced to death also had access to training to support their reintegration into their communities³⁰. In 2017, a survey of community leaders affected by the project showed that 94% of traditional leaders were against the idea of the death penalty³¹.

³⁰ A selection of jurisprudence from the Kafantayeni project is available at the following address: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Malawi-Jurisprudence-Compendium-2017.pdf> For more information on the Kafantayeni project in the press, see, “Kafantayeni Project frees 112 murder convicts”, *The Nation*, 27 July 2017, <https://mwnation.com/kafantayeni-project-frees-112-murder-convicts/> and “130 prisoners walk to freedom from death row in Kafantayeni project”, *Nyasa Times*, 27 July 2017, <https://www.nyasatimes.com/130-prisoners-walk-freedom-death-row-kafantayeni-project/>

³¹ See the results of the investigation at <https://repreive.org.uk/wp-content/uploads/2018/04/Malawian-Traditional-Leaders-Perspectives-on-Capital-Punishment.pdf>

MOROCCO

National Human Rights Council of the Kingdom of Morocco (*Conseil national des droits de l'homme du Royaume du Maroc* [CNDH])

Date of establishment: 2011

Context

- **De facto moratorium on executions since 1993**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **9132**
- Number of death sentences recorded in 2018: **10**

The CNDH is one of the most active and dynamic NHRIs on the African continent. In the framework of its external relations, it has developed numerous links with the other NHRIs in the region, in particular through study missions and exchanges of best practices. It has very close relationships with members of Government and Parliament and ensures collaboration with Moroccan, regional and international civil society organisations, including those campaigning for abolition of the death penalty. Furthermore, it actively participates in regional and international human rights mechanisms.

Reported actions undertaken:

- **Relationships and meetings with the authorities, in particular with Parliament in the framework of the Belgrade Principles, and establishing a mixed committee responsible for the organisation and follow-up of such meetings.** The CNDH presented its annual report to both chambers of Parliament, reaffirming its position in favour of abolition of the death penalty. In addition, the CNDH regularly submits memoranda to the Head of Government with a view to including certain priority human rights issues in the governmental programme to be presented to Parliament. Among these issues are that of voting in favour of upcoming draft UN General Assembly resolutions on a moratorium on the use of the death penalty and that of accession to OP2.

³² Marking twenty years of his reign, in July 2019, King Mohammed VI granted the royal pardon to 4,764 persons. They included 31 death row prisoners. At the end of the summer 2019, there were 63 persons, including one woman, on death row in Morocco.

- **Conducting studies on conditions of detention.** On World Day against the Death Penalty, 10 October 2016, the CNDH launched an empirical study on conditions of detention on death row on the basis of visits and confidential individual interviews. The results of this study revealed the extreme vulnerability of prisoners facing the death penalty and will be the subject of a thematic report with observations and recommendations by the CNDH. In addition, in 2012 the CNDH published a thematic report entitled, "*La crise des prisons, une responsabilité partagée: cent recommandations pour la protection des droits des détenu(e)s*" ["The prison crisis, a shared responsibility: one hundred recommendations for the protection of the rights of detainees"], in which the CNDH made recommendations on death row prisoners. It also conducted studies on the detention conditions of women and foreign detainees and on the appropriate response when detainees go on hunger strike.
- **Alerting public authorities** in charge of the prison administration on international rules governing detention conditions (Nelson Mandela Rules) and on situations which may constitute cruel, inhuman or degrading treatment in detention centres.
- **Conducting studies and surveys on the death penalty and public perception.** A survey conducted by the CNDH revealed changes in Moroccan society on the issue of the death penalty since approximately 50% of the 3,685 households interviewed stated that they were in favour of abolition.
- **Organisation of workshops, conferences and awareness raising events with civil society.** The CNDH organised, for example, in October 2008, in collaboration with ECPM, a seminar on the death penalty, the proceedings of which were published in Arabic and French.
- **Contribution to the organisation of the first Regional Congress against the Death Penalty (Rabat, Morocco), participation in and oral statements at the Regional and World Congresses against the Death Penalty.**

NIGER

National Human Rights Commission of Niger (*Commission nationale des droits humains* [CNDH])

Date of establishment: 2012

Context

- **De facto moratorium on executions since 1976**
 - Treaties ratified: **CCPR, CAT**
 - Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **in favour**
- Number of death prisoners row as of end of 2018: **unknown**
Number of death sentences recorded in 2018: **0**

Niger has applied a moratorium for more than forty years and, despite showing willingness at the international level and highlighting efforts towards abolition (for example, development of a road map to accede to OP2), the Government continues to fail to provide for abolition at the national level. Custom, which is very present in Niger, may explain the slow nature of the abolition process. In rural areas in the east of the country, the State is almost absent in relation to the pastoral populations, whose communities are governed by their own rules (for example, the Toubou and Buduma communities). Clan identity is very important to them and *“the law of an eye for an eye still applies in these regions”*³³. However, in certain communities, revenge is not the rule. In Zarma areas, pardon is common, and the populations leave it to God to judge the criminal and potentially to avenge the victim.

Reported actions undertaken:

- **Commemoration of the World Day against the Death Penalty every 10 October by organising public demonstrations in collaboration with civil society, partner diplomatic missions (France, EU) and universities.** In 2018, the CNDH organised and sponsored two demonstrations to mark World Day: a meeting of the law students’ society at the Abdou-Moumouni University in a one thousand-seat amphitheatre and a conference at the Commission’s premises on the theme: *“Dignity*

for all: living conditions on death row”, in collaboration with civil society and abolitionist movement organisations.

- **Collaboration with religious and customary authorities to raise awareness on abolition of the death penalty.** Traditional and religious leaders are key actors and act as important relays in public awareness raising efforts by civil society organisations and the CNDH.
- **Cooperation and exchange of good practices with NHRIs in the region.** For example, in May 2017, a visit by a delegation from the National Human Rights Council of Morocco took place. It enabled a joint working session to be held with officials from the National Human Rights Commission of Niger.
- **Participation in the World Congresses against the Death Penalty (in 2016 and 2019).**

³³ According to explanations given by Moustapha Kadi Oumani, President of the *Collectif des associations pour la défense du droit à l’énergie* (CODDAE).

NIGERIA

National Human Rights Commission of Nigeria (NHRCN)

Date of establishment: 1995

Context

- **Retentionist**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **over 2,200**
- Number of death sentences recorded in 2018: **more than 46**
- Number of executions recorded in 2018: **0**

The context in Nigeria is of particular concern. The country sentenced 621 persons to death in 2017 and there are more than 2,200 on death row. In 2017 alone, Nigeria issued twice as many death sentences as all the other States in Sub-Saharan Africa combined. Furthermore, although a significant reduction in the number of death sentences in 2018 has been observed, certain Nigerian States have adopted legislative measures broadening the scope of the death penalty³⁴.

Reported actions undertaken:

- **Advocacy with national authorities.** The NHRCN called for the scope of application of the death penalty in Nigeria to be restricted, in line with the country's international commitments, and advocated in particular for it to be limited to the "most serious crimes", in accordance with Article 6 of the ICCPR.
- **Promoting respect for the country's international commitments on procedural guarantees and the right to a fair trial,** as specified in Article 6 and Article 14 of the ICCPR. During the relevant period, the NHRCN called on the governor of Edo state, in southern Nigeria, not to carry out four executions. It then spoke out against hasty executions ordered by the governor while applications by those sentenced to death for stays of execution were pending before the Federal High Court³⁵.
- **Collaboration with representatives of national and international civil society, in the context of multi-stakeholder**

³⁴ Amnesty international, Death penalty in 2018: Facts and figures, available at <https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>

³⁵ See: <https://allafrica.com/stories/201403190544.html>

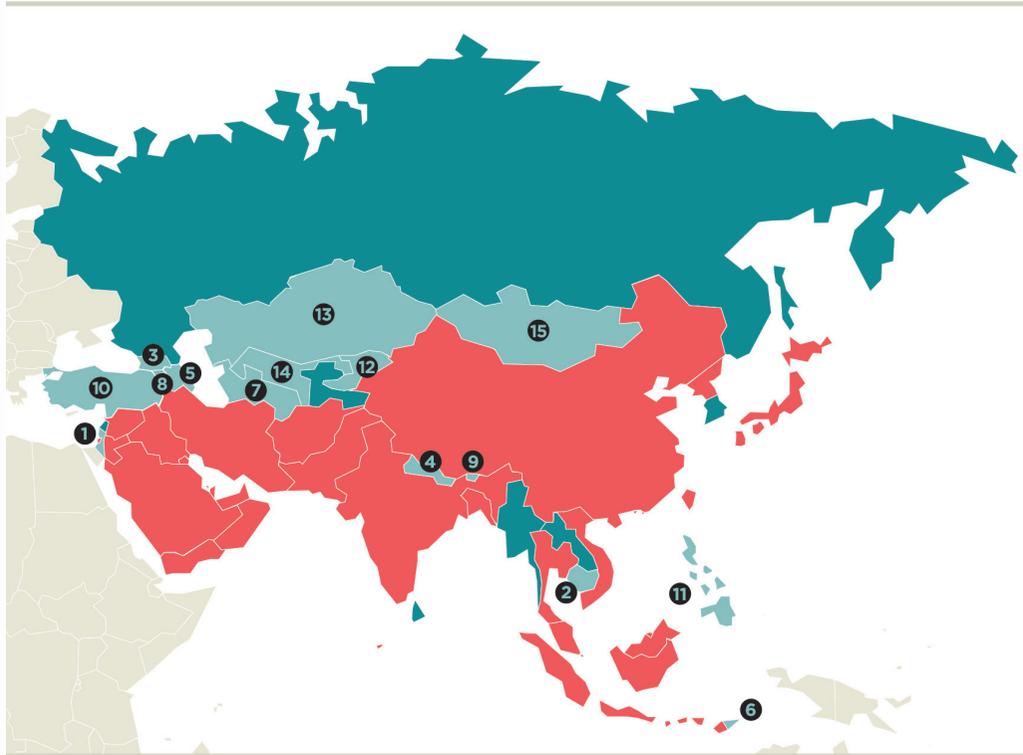
projects aimed at providing legal aid to those charged with offences carrying the death penalty. The NHRCN worked in particular with *Avocats sans frontières* France (ASF) on the Saving Lives Project (SALI Project)³⁶. This collaboration was encouraged and made possible by the ASF office in Nigeria which sought to involve the NHRCN in order to persuade it to support abolition. The project was implemented over a 3-year period and provided free legal aid in seven Nigerian states and enabled the liberation of 35 individuals charged with offences carrying the death penalty and 7 pardons to be issued by the state governors³⁷. The NHRCN played a key role in the project through its strong knowledge of local actors, which facilitated the legal aid team's work in the field. The NHRCN embraced the project and acted as a relay between project teams, the authorities and the population. That contributed in particular to better acceptance of the project by the local authorities. Overall, the project contributed to generating debate on the death penalty in Nigeria and led to concrete results in the country.

³⁶ The SALI Project was implemented from 17 January 2011 to 16 July 2014 by ASF France, its office in Nigeria, in partnership with NHRCN, the Bar Council of Nigeria and the NGO *Access to Justice*. It aimed to strengthen the moratorium on the death penalty and to contribute to the development of new jurisprudence on the rights of persons facing the death penalty, on the basis of international standards. For more information, see the ASF France website: <http://avocatssansfrontieres-france.org/web/en/142-nigeria-fight-against-death-penalty.php>

³⁷ Data from the Proceedings of the 6th World Congress against the Death Penalty, 2016: <http://www.ecpm.org/wp-content/uploads/actes-Oslo-GB-220217b.pdf>

ASIA

ABOLITION TIMELINE 1954/2019



15 ABOLITIONIST STATES

7 STATES WITH A MORATORIUM

26 RETENTIONIST STATES

- | | |
|-----------------------|-----------------------|
| 1 Israel - 1954* | 9 Bhutan - 2004 |
| 2 Cambodia - 1989 | 10 Turkey - 2004 |
| 3 Georgia - 1997 | 11 Philippines - 2006 |
| 4 Nepal - 1997 | 12 Kyrgyzstan - 2007 |
| 5 Azerbaijan - 1998 | 13 Kazakhstan - 2007* |
| 6 Timor-Leste - 1999 | 14 Uzbekistan - 2008 |
| 7 Turkmenistan - 1999 | 15 Mongolia - 2017 |
| 8 Armenia - 2004 | |

* abolitionist for ordinary crimes

IN ASIA

Status of abolition in Asia

Asia remains the continent where there is most use of the death penalty worldwide. The five States which carried out the most executions in 2018 are China, Iran, Saudi Arabia, Vietnam and Iraq. It is estimated that China conducts more executions than all other States worldwide combined.

However, there are some countries in Asia which have abolished the death penalty. The highest number of abolitionist States are in Central Asia. Azerbaijan, Kyrgyzstan, Uzbekistan, Turkmenistan and Mongolia have abolished the death penalty and ratified OP2, committing them to their decision on a definitive basis.

Status of Asian NHRIs in the Global Alliance (October 2019)

A = Fully compliant with the Paris Principles – Voting member
 B = Partially compliant – Observer member
 C = Non-compliant – Non member

Afghanistan	Afghan Independent Human Rights Commission	A
Armenia	Human Rights Defender of the Republic of Armenia	A
Azerbaijan	Commissioner for Human Rights (Ombudsman)	A
Bahrain	National Human Rights Institution of the Kingdom of Bahrain	B
Bangladesh	National Human Rights Commission of Bangladesh	B
Georgia	Public Defender (Ombudsman) of Georgia	A
India	National Human Rights Commission	A
Indonesia	National Commission on Human Rights	A
Iran	Islamic Human Rights Commission	C
Iraq	High Commission for Human Rights	B
Jordan	National Centre for Human Rights	A
Kazakhstan	Commissioner for Human Rights (National Ombudsman)	B
Kyrgyzstan	Ombudsman of the Kyrgyz Republic	B
Malaysia	Human Rights Commission of Malaysia	A
Maldives	Human Rights Commission of the Maldives	B
Mongolia	National Human Rights Commission of Mongolia	A
Myanmar	Myanmar National Human Rights Commission	B
Nepal	National Human Rights Commission	A
Oman	National Human Rights Commission of Oman	B
Palestine	Independent Commission for Human Rights in Palestine	A
Philippines	Commission on Human Rights of the Philippines	A

Qatar	National Human Rights Committee	A
Russia	Commissioner for Human Rights in the Russian Federation	A
South Korea	National Human Rights Commission	A
Sri Lanka	Human Rights Commission of Sri Lanka	A
Tajikistan	Human Rights Ombudsman of the Republic of Tajikistan	B
Thailand	National Human Rights Commission of Thailand	B
Timor-Leste	Provedoria for Human Rights and Justice	A

INDONESIA

National Commission on Human Rights (Komnas HAM)

Date of establishment: 1993

Context

- **Retentionist**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **more than 308**
- Number of death sentences recorded in 2018: **more than 48**
- Number of executions recorded in 2018: **0**

Komnas HAM was established by Presidential Decree on 7 June 1993. Its legal basis was subsequently revised by the adoption of legislation by the Indonesian Parliament (Law No. 39 of 1999 on human rights) which enabled the Commission to:

- Provide human rights education and disseminate information on human rights at the national and international level;
- Monitor international human rights treaties that the Commission may propose to the Government for ratification or accession;
- Monitor implementation of human rights in Indonesia..

Reported actions undertaken:

- **Development of bilateral relations to prevent execution of its nationals abroad.** Executions of Indonesian nationals on death row in Saudi Arabia, Malaysia and China were avoided as a result of the action taken by Komnas HAM.
- **Drafting reports and advocacy with international human rights protection bodies.** In December 2012, Komnas HAM submitted to the United Nations Human Rights Committee a list of issues which the Commission considered the Committee should assess during consideration of Indonesia's initial report on implementation of the ICCPR³⁸. It notes that Article 6 of

the ICCPR on the right to life is not respected in Indonesia because use of the death penalty is not limited to the most serious crimes. The Commission underlines that no derogation can be made with regard to the right to life, recommends that the scope of application of the death penalty should be reduced and limited to the most serious crimes and encourages Indonesia to ratify OP2.

- **Organisation of advocacy meetings with the national authorities.** While the Criminal Code was being revised, Komnas HAM conducted a series of meetings to promote abolition of the death penalty with relevant actors (members of the Government and Parliament).
- **Regular participation in World Congresses against the Death Penalty.**

³⁸ The report written by Komnas HAM and submitted to the Human Rights Committee is available at https://www2.ohchr.org/english/bodies/hrc/docs/ngos/nationalcommissiononhumanrights_indonesia_hrc107.pdf

MALAYSIA

Human Rights Commission of Malaysia (SUHAKAM)

Date of establishment: 1999

Context

- **Retentionist**
- Treaties ratified: /
- Vote on 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **in favour**
- Number of death row prisoners as of end of 2018: **1,275**
- Number of death sentences recorded in 2018: **190**
- Number of executions recorded in 2018: **0**

SUHAKAM is one of the most active NHRIs in the region. Its advocacy and public awareness-raising work should be emphasised in a country where, despite recent positive political developments, public opinion remains predominantly in favour of the death penalty, especially in cases of murder. However, several surveys have reported a certain volatility in public opinion, given that it is prepared to support Government reforms promoting abolition.

Reported actions undertaken:

- **Organisation of regular meetings, seminars, conferences and exhibitions across the country aimed at raising public awareness.** In June 2018, a national conference on the death penalty was organised. It had the following objectives: to raise awareness of participants on the issue of the death penalty and the right to life; to facilitate and support Government efforts to abolish mandatory death sentences; to raise awareness and inform the public on the issue of the death penalty from religious perspectives and support the Government to take concrete measures to reform the Malaysia penal system, to provide for effective and humane sentences. The conclusions and debates of the national conference were translated into operational recommendations addressed to the Government and presented to Parliament for in-depth evaluation. This event took place as part of a broader framework of activity including organisation of student debates, meetings with relevant stakeholders and exhibitions on abolition of the death penalty.
- **Organisation of meetings with the political authorities.**

- **Organisation of meetings with religious authorities and development of argumentation addressed to them.** SUHAKAM organised round tables with religious associations to establish their views on the death penalty. These events were held at regular intervals in different parts of the country (for example, in November 2017 at the University of Selangor and in December 2017, at the University Pendidikan Sultan Idris [UPSI]). At the conclusion of these meetings, the religious authorities predominantly supported SUHAKAM's activities.
- **Adoption of an inclusive approach in the organisation of bilateral meetings and conferences.** Invitation of participants from different backgrounds: Government agencies, members of Parliament, diplomatic service, religious bodies, NGOs, legal practitioners, academics and students. At the end of these meetings and conferences, a report with recommendations to the Government was drafted and presented to Parliament for in-depth evaluation.
- **Participation in international projects on abolition of the death penalty.** SUHAKAM participates in the project led by *Asia Pacific Forum of National Human Rights Institutions* (APF) aimed at strengthening the capacity of national human rights institutions, in particular those in retentionist States, in order to promote abolition of the death penalty. SUHAKAM also regularly participates in the World Congresses against the Death Penalty.

MYANMAR

Myanmar National Human Rights Commission (MNHRC)

Date of establishment: 2011

Context

- **De facto moratorium on executions since 1988**
- Treaties ratified: /
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **unknown**
- Number of death sentences recorded in 2018: **more than 9**

Over the past few years, MNHRC has participated in various regional and international networks. Between October 2017 and April 2018, MNHRC participated in the APF project on abolition of the death penalty.

Reported actions undertaken:

- **Organisation of awareness-raising workshops throughout the country.** In the framework of the APF project, MNHRC organised a workshop on abolition of the death penalty in October 2017 in Nay Pyi Taw, with the aim of recommending to the Government to consider abolition of the death penalty and, pending abolition, to consider a moratorium on use of capital punishment. The organisation of this workshop was an opportunity to invite representatives from the academic community, in particular Professor Jon Yorke, human rights expert at the University of Birmingham (United Kingdom), and to share the experiences of the MNHRC in this area. The workshop concluded with the following observations and recommendations:

1 In domestic law, establishing a moratorium on the death penalty contributes to the following:

- a. Identifying effective alternative sentences;
- b. Preventing the spread of misconceptions about a possible rise in crime rates due to abolition of the death penalty;
- c. Raising public awareness on the benefits of a more humane criminal justice system;
- d. Defining the next steps towards abolition of the death penalty in the country.

2 At the international level, a moratorium on the death penalty contributes to the following:

- a. Providing Governments with the legal and political means to participate in the issue of the death penalty at the international level;
 - b. Contributing to putting in place the moratorium on the death penalty underway in the Asia-Pacific region;
 - c. Providing the Government with the legal and political basis to accede to the ICCPR. The workshop also led to the submission of recommendations to the Government to prohibit the death penalty in relation to pregnant women, women with dependent children, elderly persons and persons with disabilities, in accordance with the provisions of the United Nations Convention on the Rights of the Child to which Myanmar is a party.
- **Advocacy with the country's political authorities.**

PHILIPPINES

Commission on Human Rights of the Philippines (CHRP)

Date of establishment: 1987

Context

- **Abolitionist since 2006**
- Treaties ratified: **ICCPR, CAT, OP2**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**

The CHRP is currently under considerable strain, since President Rodrigo Duterte has made reinstatement of the death penalty one of the priorities of his security policy.

Reported actions undertaken:

- **Conducting opinion polls on attitudes to the death penalty in order to have a better idea of public opinion on this issue.** The survey conducted in March 2018 by the CHRP is the first survey to explore the differing perceptions of the death penalty by the population of the Philippines.
- **Collaboration with the academic community to provide a solid scientific basis for positions taken.** The CHRP in particular published an article co-authored with Dr Christopher Ward from the Australian National University (ANU), entitled: “In Defense of the Right to Life: International Law and Death Penalty in the Philippines”³⁹. The CHRP also launched a campaign called “Universities against the Death Penalty” to bring together Filipino researchers and members of the scientific community around the issue of the death penalty.
- **Advocacy with the legislature (National Assembly and Senate).** This awareness-raising work is particularly important since the reinstatement of the death penalty proposed by the Duterte Government and adopted by the National Assembly ultimately came up against a negative vote at the Philippine Senate. Without opposition from the Senate and the active role of the CHRP in organising meetings, awareness-raising

³⁹ See “*In Defense of the Right to Life: International Law and Death Penalty in the Philippines*”. A study by the Commission on Human Rights of the Philippines and Dr Christopher Ward, Australian National University, at <http://regnet.anu.edu.au/sites/default/files/uploads/2017-03/In-Defense-of-the-Right-to-Life-IL-and-Death-Penalty-in-the-Philippines.pdf>

and educational activities for Filipino senators, it is certain that the death penalty would have been reinstated.

- **Regular meetings with civil society working on human rights protection, the Government and Parliament** (parliamentarians and members of the administration).
- **Establishment of a working group on the death penalty within the Commission.**
- **Organisation of commemorative events** such as the World Day against the Death Penalty, on 10 October each year, and to mark the adoption of the national law prohibiting use of the death penalty on 24 June⁴⁰.
- **Organisation of an awareness-raising campaign on social networks.** For example, CHRP is conducting a campaign against the death penalty through the “Right to Life” network.
- **Strengthening the capacity of Parliament in the area of human rights.** The CHRP’s programme entitled, “A Human Rights-Based Approach to Legislation,” evaluates the contents of laws under consideration, draft laws and legislative proposals and provides for systematic opposition to any legislative measure reintroducing the death penalty.
- **Participation and statements at the 7th World Congress against the Death Penalty.**

⁴⁰ Republic Act (RA), No. 9346, “An Act Prohibiting the Imposition of the Death Penalty in the Philippines”.

SRI LANKA

Human Rights Commission of Sri Lanka (HRCSL)

Date of establishment: 1996

Contexte

- **De facto moratorium on executions since 1976**
- Treaties ratified: **ICCPR, CAT**
- Vote on the 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **in favour**
- Number of death row prisoners as of end of 2018: **1,299**
- Number of death sentences recorded in 2018: **more than 17**

The President of the Republic of Sri Lanka, Maithripala Sirisena, elected in January 2015, came to power with a coalition which had promised numerous reforms aimed at the democratisation of the country. However, in July 2018, the Office of the President announced that it wanted to resume executions of those convicted of drug-related offences, even those whose death sentences had been commuted.

Reported actions undertaken:

- **Direct questioning of the President of the Public to suggest paths towards abolition.** In response to the concerning announcements by the Government in 2018, HRCSL wrote a letter to the President⁴¹, which attracted significant media attention following its publication⁴². This letter echoes an earlier letter, dated 1 January 2016, in which HRCSL had already developed its arguments in favour of abolition⁴³ and which also called on Sri Lanka to accede to OP2 and to commute death sentences to sentences of imprisonment.
- **Development of relevant arguments, adapted to the context, to support abolition of the death penalty.** According to HRCSL, the most effective argument in favour of abolition

41 The letter can be consulted on the HRCSL website: http://hrctl.lk/english/wp-content/uploads/2018/07/Letter-to-HE-President-on-13-07-2018_-_English-Translation.pdf

42 As illustrated by the many press articles published. See <http://www.newindianexpress.com/world/2018/jul/14/human-rights-commission-of-sri-lanka-urges-president-maithripala-sirisena-to-reconsider-re-imposing-1843346.html> or <http://www.asianmirror.lk/news/item/27814-human-rights-commission-of-sri-lanka-writes-to-president-against-decision-to-sanction-death-penalty>

43 This earlier letter of January 2016 can be consulted on the HRCSL website: <http://hrctl.lk/english/wp-content/uploads/2016/01/RECOMMENDATION-TO-ABOLISH-THE-DEATH-PENALTY-IN-SRI-LANKA-E.pdf>

of the death penalty is found in trade agreements between the EU and Sri Lanka. Sri Lanka benefits from preferential EU trade in the framework of the Generalised System of Preferences (GSP). In order to continue to benefit from favourable trade tariffs, Sri Lanka is required to respect the provisions of various international human rights conventions (including the ICCPR)⁴⁴. By extension, one of the conditions to enjoy trade benefits granted by the EU is to abolish the death penalty or, at least, to significantly reduce its scope.

- **Extensive use of social networks to raise public awareness and combat fake news relating to the death penalty which regularly circulates online.**

44 Article 19 of the Regulation establishing the GSP provides for withdrawal of preferential trade arrangements in certain cases: serious unfair trading practices and violations of international conventions concerning human rights (including the ICCPR) and labour rights. The text of Regulation No. 978/2012 of the European Parliament and of the Council (2012) applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 can be consulted at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0978>

THAILAND

National Human Rights Commission of Thailand

Date of establishment: 1997

Context

- **Retentionist**
- Treaties ratified: **ICCPR, CAT**
- Vote on 2018 United Nations Resolution calling for a universal moratorium on the use of the death penalty: **abstained**
- Number of death row prisoners as of end of 2018: **551**
- Number of death sentences recorded in 2018: **more than 33**
- Number of executions recorded in 2018: **1**

In Thailand, the reinstatement of executions in 2018, following a nine-year moratorium, represents a major setback. It constitutes a serious obstacle to the approach adopted by the National Commission aimed at promoting gradual abolition of capital punishment.

Reported actions undertaken:

- **Research and reflections on the issue of the death penalty.** In its suggestions of avenues for further reflection, the National Commission considers that the Government should promote restorative justice, encouraging and establishing relations between convicted persons and the victims or their relatives. In Thailand, the behaviour of the convicted person plays a major role in determining sentence. Obtaining a pardon from the family of the victim is a decisive factor in commuting sentences. On a large scale, the National Commission also considers that it would have a positive impact on the perception of the death penalty in Thai society, with a view to abolition.
- **Recommendation to the Government.** In July 2018, the Commission submitted a recommendation to the Prime Minister calling on the Government to carry out an evaluation of its policy aimed at abolishing the death penalty and raising public awareness.
- **Development of an argument against the death penalty and adoption of a public position.** The Commission restated its position in favour of abolition in the course of the development

of the third National Human Rights Action Plan for the period 2014-2018⁴⁵.

⁴⁵ The Action Plan is available at http://www.rlpd.go.th/rlpdnew/images/rlpd_1/2556/thaigov_Plan3/10plan3.pdf

RECOMMENDATIONS

RECOMMENDATIONS TO NHRIs

Document

- Produce thematic research-based reports on issues related to the death penalty, in collaboration with academics and researchers;
- Conduct visits to prison facilities and, in particular, to prisoners on death row and carry out follow-up to assess evolution of detention conditions;
- Collect and share gender- and age-disaggregated data on the number of executions and individuals sentenced to death;
- Mandate local NHRI sections, where they exist, to collect such data;
- Call on the authorities to show transparency by publishing such data on an annual basis;
- Monitor cases of persons facing the death penalty (including by investigating allegations of torture and other violations of Articles 6 and 7 of the ICCPR);
- Systematically include the issue of the death penalty when drafting reports on human rights;
- Establish a working group on the death penalty within the institution;
- Collaborate with the National Preventive Mechanism (NPM) against torture, if the NHRI does not have this mandate;
- Monitor the cases of nationals sentenced to death or facing the death penalty abroad, in particular in cooperation with the local NHRI, where relevant;
- Conduct studies on issues related to the context in the country concerned (the lack of deterrent effect of the death penalty in the fight against terrorism or drug-trafficking, for example) and promote implementation of other means to combat them, such as reform of the judicial system, strengthening criminal procedures and using new technologies;
- On the basis of such studies, organise free training sessions for the general public on each country's criminal justice system.

Organise collaboration

- Work jointly with regional NHRI networks by submitting thematic reports to them and participating in regional and international human rights fora to share good practices;
- Organise regular and specific meetings on the issue of the death penalty with national authorities;
- Meet with religious authorities and develop specific arguments addressed to them;
- Cooperate with customary authorities in countries where traditional justice plays a significant role;
- Organise meetings, seminars and conferences on abolition of the death penalty on a regular basis and throughout the country;
- Organise workshops for all actors involved in the death penalty (lawyers, legal experts, judges, prosecutors, civil servants in the prison administration, the Ministry of Justice and the Ministry responsible for security and internal affairs, civil society organisations, parliamentarians), in order to initiate joint reflections in favour of abolition;
- Organise training sessions within the NHRI on the basis of this guide;
- Establish an NHRI network for abolition of the death penalty.

Raise public awareness

- Promote understanding of recommendations made to the country's authorities by drafting press statements and sending them to national media, to make such recommendations more accessible to the general public;
- Produce a simplified guide on the issue of the death penalty, for school children and booklets using plain and simple language;
- Use social networks to conduct campaigns against the death penalty and combat *fake news* which regularly circulates online;
- Organise public awareness raising and educational activities on the issues raised by the death penalty, in particular to mark the World Day against the Death Penalty, including in abolitionist countries.

Make recommendations to the State on the need for legislative reforms

- Systematically make use of its power to hear a matter without higher referral to submit to the Government advisory opinions on legislative texts or reforms which restrict or modify use of the death penalty;
- Work with Parliament on alternatives to the death penalty, prioritising the restorative aspect of justice, in particular during periods of moratorium;
- Advocate with Parliament for reforms of the Criminal Code to reduce the number of crimes punishable by death, on commutations of sentences or aimed at the abolition of mandatory death sentences or total abolition.

Encourage the State to respect its international commitments

- Remind the judiciary of the country's international commitments, where relevant, in the area of procedural safeguards and the right to a fair trial, as specified in Articles 6 and 14 of the ICCPR;
- In retentionist States, as a first step ensure that use of the death penalty is limited to "*the most serious crimes*" pursuant to Article 6 of the ICCPR and General Comment No. 36 of the UN Human Rights Committee on the right to life, adopted in 2018 and which promotes an abolitionist interpretation of Article 6 of the ICCPR on the right to life;
- Encourage accession to or ratification of the ICCPR, OP2, CAT, OPCAT and regional protocols, where applicable, through the organisation of advocacy meetings with national authorities;
- Advocate for a vote in favour of the United Nations General Assembly Resolution calling for a universal moratorium, during meetings with national authorities (Ministry of Justice and Ministry of Foreign Affairs);
- Play an active part in the various stages of the UPR process;
- Encourage inclusion of a provision in extradition treaties prohibiting its application where countries use the death penalty.

RECOMMENDATIONS TO NHRI NETWORKS

- Promote projects to strengthen the capacities of NHRIs in the fight to end the death penalty;
- Include sessions specifically focused on the death penalty and related issues on the agendas of international (GANHRI) and regional meetings;
- Establish within NHRI networks a working group on the death penalty which contributes to pooling expertise and coordinating action in favour of abolition;
- In the accreditation process carried out by GANHRI, include among evaluation criteria the position of the NHRI on the death penalty and actions undertaken in favour of abolition.

APPENDIX
**CALL BY NHRIs ISSUED
AT THE 7TH WORLD CONGRESS AGAINST
THE DEATH PENALTY**

**Call by NHRIs to strengthen
and broaden the fight against the death penalty
Brussels, 26 February – 1 March 2019**

The World Congress is a high point of mobilisation for the fight of the international abolitionist movement against the death penalty. This 7th Congress, by its influence, the debates it enabled, in particular by organising opportunities to exchange with high-level representatives of de jure or de facto abolitionist countries, intergovernmental and non-governmental organisations, is an important step in the process leading to the universal abolition of the death penalty.

Considering that abolition is a global trend since 144 countries and territories have already abolished the death penalty;

We are undoubtedly witnessing a decisive historical period in the long abolitionist struggle.

Noting nevertheless that the situation is contrasted, with more than 20,000 people still on death row around the world, and countries that are applying or considering reintroducing the death penalty into their legal arsenal.

We,
Presidents and representatives of National Human Rights Institutions (NHRIs) from eleven (11) countries, from Cameroon, Côte d'Ivoire, Central African Republic, Democratic Republic of Congo, Indonesia, Liberia, Mali, Morocco, Niger, the Philippines, Tunisia, having actively participated in the work of the 7th World Congress held in Brussels from February 26 to March 1, 2019, adopt a joint declaration, following rich and intense exchanges and sharing of experiences, on the current challenges related to the abolitionist struggle at the international and regional levels.

National Human Rights Institutions (NHRIs) have a mandate to protect and promote human rights. The issue of the abolition of the death penalty and related issues, such as the right to a fair trial and conditions of detention, fall within this mandate.

Based on this observation and in line with similar previous declarations (Oslo 2016, Rabat 2017), we wish to plead in favour of intensifying abolitionist action, relying on all levers, in particular by inaugurating a new phase in favour of a better involvement of NHRIs and a stronger articulation of their action with governmental authorities, parliaments and non-governmental civil society organisations.

In this perspective, it is necessary to work towards the implementation of two preconditions: on the one hand, that NHRIs, in accordance with the Paris Principles, can benefit from the powers and means guaranteeing them autonomy and legitimacy to bring the abolition of the death penalty to governments and parliaments, and on the other hand, that NHRIs include the abolition of the death penalty among their priority areas of intervention.

This new stage is based on the following recommendations:

- Ensure that the abolition of the death penalty is on the agenda of the working meetings of National Human Rights Institutions, whether it be within the framework of GANHRI or within regional networks.
- Establish within NHRI networks, particularly at a regional level, a working group on the death penalty that will enable NHRIs to pool their expertise and act in a coordinated manner to promote abolition.

NHRIs, in accordance with their prerogatives, must:

- Act more effectively in order to make recommendations to governments and parliaments or constitutional or legislative reforms leading to abolition, or to a moratorium on executions or to reduce the number of crimes punishable by the death penalty.
- Monitor and advocate with governments to harmonise national laws, regulations and practices with international human rights instruments.
- Encourage ratification of or accession to these instruments and ensure their implementation, including ratification of the

Second Protocol to the International Covenant on Civil and Political Rights aiming for the abolition of the death penalty (OP2) and work towards the adoption of the Resolution on the establishment of a moratorium on executions.

- Make recommendations on the issue of the death penalty at the Universal Periodic Review (UPR) by the States concerned.
- Document and collect data on the situation of death row prisoners from their missions to visit prisons and assess their situation.
- Involve civil society and abolitionist movement actors, by promoting the creation of a multi-stakeholder network (civil society, parliamentarians, lawyers, media, youth, religious and community leaders) to advance on the path to abolition, in accordance with a recommendation made by the World Forum on Human Rights [WFHR in November 2014 in Marrakech.
- Encourage parliamentary initiatives and debates on the abolition of the death penalty, in particular by supporting the creation of abolitionist networks within parliaments.
- Promote public awareness and reflection on alternatives to the death penalty and contribute to education on abolition.

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ABOLITION OF THE DEATH PENALTY

A PRACTICAL GUIDE FOR NHRIs

National Human Rights Institutions (NHRIs) are public bodies with a mandate to protect and promote human rights in their country. The past few years have seen the growing influence of this new type of actor, independent institutions with a constitutional or legislative basis providing them with strong legitimacy to conduct their activities in accordance with their mandate.

Since abolition of the death penalty as an indicator of respect for human rights is now well recognised, NHRIs have a key role to play in the fight for abolition of the death penalty.

Whether they are in States which continue to use the death penalty, apply a moratorium or have abolished the death penalty, every NHRI has a range of actions at its disposal, suited to their country's needs and unique situation. This guide was written by ECPM (Together against the Death Penalty) to share with NHRIs the best practices reported by some of them and implemented locally to progress towards abolition.

ECPM is the leading French association in the **fight for universal abolition of the death penalty**. Established in 2000, it founded the World Coalition against the Death Penalty and the World Congresses.

ECPM's missions are:

- to bring together abolitionists worldwide;
- to strengthen the capacities of local actors;
- to advocate for universal abolition;
- to educate and raise awareness on abolition of the death penalty.



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