

CAHIERS DE L'ABOLITION #5

7<sup>TH</sup>

# WORLD CONGRESS AGAINST THE DEATH PENALTY

26<sup>TH</sup> FEBRUARY - 1<sup>ST</sup> MARCH 2019 - BRUSSELS - BELGIUM



ORGANISED BY

# PROCEEDINGS

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**PROCEEDINGS**  
7<sup>TH</sup> WORLD CONGRESS  
AGAINST THE DEATH PENALTY  
**BRUSSELS 2019**

## LES CAHIERS DE L'ABOLITION

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- #2 Iran: the death penalty in question (2014)
- #3 5<sup>th</sup> World Congress against the Death Penalty • Madrid 2013 • Proceedings (2014)
- #4 6<sup>th</sup> World Congress against the Death Penalty • Oslo 2016 • Proceedings (2017)
- #5 7<sup>th</sup> World Congress against the Death Penalty • Brussels 2019 • Proceedings

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## CAHIERS DE L'ABOLITION #5

# PROCEEDINGS 7<sup>TH</sup> WORLD CONGRESS AGAINST THE DEATH PENALTY BRUSSELS 2019

*"An eye for an eye makes the whole world blind."*

**Mahatma Gandhi**

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People chant "abolition now" at the Global March for the abolition of the death penalty in Brussels' streets



**SAY NO  
TO THE DEATH PENALTY**

## INDEX OF ABBREVIATIONS USED

ACHPR: African Commission on Human and Peoples Rights  
ACP: Cotonou Agreement  
ADFM: Association démocratique des femmes du Maroc AU: African Union  
CCJ: Caribbean Court of Justice  
CEO: Chief Executive Officer  
CIFDHA: Centre d'Information et de Formation en matière des Droits Humains en Afrique (Information and Formation Center for Human Rights in Africa)  
CRC: Convention on the Rights of the Child  
ECHR: European Convention on Human Rights  
ECPM: Together Against the Death Penalty  
EU: European Union  
FIACAT: International Federation of ACATs (Action by Christians for the Abolition of Torture)  
FIDH: International Federation for Human Rights  
ICCPR: International Covenant on Civil and Political Rights  
ICDP: International Commission against the Death Penalty  
ICJ: International Commission of Jurists  
IHR: Iran Human Rights  
ILGA: International Lesbian, Gay, Bisexual, Trans and Intersex Association  
ISIS: Islamic State of Iraq and the Levant  
KMMK-G: The Association for Human Rights in Kurdistan of Iran-Geneva  
LGBTI: Lesbian Gay Bisexual Trans Intersex  
MEP: Member of the European Parliament  
NGO: Non-governmental Organization  
NHRI: National Human Rights Institutions  
OIF: International Organization de la Francophonie  
OMDH: Moroccan Organization for Human Rights  
OP: Optional Protocol  
PGA: Parliamentarians for Global Action  
REPECAP: International Academic Network for the Abolition of the Death Penalty  
RPCPM: Parliamentary Network Against the Death Penalty (Morocco)  
SOGI: Sexual Orientation, Gender Identity  
TAILS: The Amnesic Incognito Live System  
TOR: The Onion Router  
UDHR: Universal Declaration of Human Rights  
UIA: International Association of Lawyers  
UN: United Nations  
UNGA: General Assembly of the United Nations  
UNODC: United Nations Office on Drugs and Crime  
VIP: very important person  
VPN: Virtual Private Networks  
WCADP: World Coalition Against the Death Penalty  
WFDH: World Forum on Human Rights



Pavel Telička, Vice-President of the European Parliament, next to the co-sponsors of the Congress, pronouncing the first words of the Official Opening Ceremony.



The Hemicycle of the European Parliament in Brussels, host to the Official Opening Ceremony of the 7<sup>th</sup> World Congress against the Death Penalty.

# PREFACE



**RAPHAËL CHENUIL-HAZAN**  
Executive Director ECPM

*“Conscience is the light of intelligence used to distinguish good from evil.”*

**Confucius**

The fight to abolish the death penalty transcends divisions and crosses continents and cultures. It unites what separates us and for this reason it is both unique and essential.

Violent impulses and the desire for vengeance have certainly influenced the course of history, but societies that abolished the death penalty have also marked it by their desire to build peace and tolerance. In addition, they have never taken a step back, knowing that to do so would betray later generations. Grounded in human rights, the struggle for abolition articulates a human aspiration that is several centuries old: to end sanctions against the fundamental right to life. To assault this right is to assault humanity and what it is to be human. This truth, the majority of States and the majority of citizens have now understood. Two thirds of countries voted in favour of the last UN resolution

1500 participants  
from 100 countries  
took part in the  
Brussels Congress.

calling for a moratorium on executions – four fifths if one includes countries that were absent from the vote or abstained. The World Congress draws its energy from the universal desire for abolition which, in the words of Confucius, separates ‘good from evil’.

In Oslo, now in Brussels, the World Congresses succeed each other, bearing witness to the drive for abolition. We give a voice to those who have experienced the horrors of the death penalty (those who have been condemned, their families and lawyers) and to those who every day struggle to end it (government officials, parliamentarians, human rights activists).

For eighteen years, the World Congresses have given an opportunity to all abolitionists to come together to prepare the next phase of campaigning. Each Congress breaks new ground, brings the issue to the attention of a new public. In Madrid in 2013, we appealed to parliamentarians. In Oslo in 2016, we engaged for the first time with national human rights institutions.

### A new debate with the private sector

This year, in Brussels, we began a debate with the private sector and business. The opening session of the Congress included a first exchange on the economic sphere. There is immense potential for strategic cooperation between business and abolitionists. It is vital to make sure that the abolition of the death penalty, and more generally the protection of civil and political rights, is not a secondary issue when business and human rights are discussed, notably during the annual forum on Business and human rights in Geneva.

### Will Africa be the next continent to abolish the death penalty?

We also gave attention to Africa, which has made significant progress towards abolition, while experiencing important resistances. Will it be the next continent to abolish the death penalty? We fervently hope so. To ensure that States mobilized fully, we organized a preparatory conference in Abidjan in April 2018. Africa’s strong presence in Brussels was opportune because negotiations to revise the Cotonou Agreement (ACP) between the EU and Africa, the Caribbean and the Pacific Group of States have also just started.

### Spreading knowledge and innovative strategies for abolition

The Acts of each Congress help to spread knowledge and research on abolition. They disseminate beyond the Congress major debates within the movement,

and give birth to emerging strategies. Brussels addressed many new fields of activity, including women and the death penalty, new strategies, and the thorny question of terrorism. Hugo Pratt put these words into the mouth of his hero, Corto Maltese: “Vengeance will never restore a lost friend”. Nothing can bring back to life a loved one, not even the execution of his or her killer. Capital punishment is not a zero sum game; it adds suffering on suffering. This reflection should give food for thought to all those who seek justice and peace of mind.

ECPM’s involvement in the issue of jihadists in Iraq and Syria who have been condemned to death (or might be) draws on this logic. Not to see it is to deny the values of the abolition movement. We must stand for our values even (and especially) in the most difficult situations, which touch us most nearly. Our response to terrorism is of this kind. Terrorists set a trap for us. They want us to do wrong. It is for us to refuse.

### From politikos to politeia avoiding politike.

The term ‘politics’, borrowed from ancient Greek, carries at least three different meanings. It refers broadly to the political community (the city, politikos), more narrowly to the organization of political institutions (politeia), and thirdly and most exactly to the art of exercising power, to personal competition and the struggle for power (politike). To avoid falling into perverted expressions of power, the city must profoundly sanitize its institutions around the principle of universal justice. The Congresses remind us to think of politics in terms of courage and commitment. Nelson Mandela said that “courage was not the absence of fear, but the triumph over it”. Abolition is often achieved because a Head of State is courageous, or a Parliament shows political will. The abolitionist cause gives us an opportunity to reflect on how power is exercised, on its capacity to protect dignity and respect the person, on the limitations of human beings and the institutions that human societies create. All of us are fallible, in democracies and even more in States that are authoritarian. The power over life and death should never be left in the hands of rulers with limitless authority, or delegated to the sometimes random mechanisms of justice systems that are never infallible. It should never be surrendered to the instinctual vengeance and passion of mob justice.

The presence of so many political actors prepared to move together towards abolition is a sign of profound change. 1500 participants from 100 countries took part in the Brussels Congress, including politicians, diplomats, lawyers, scholars and activists from 150 NGOs. The four day programme was richer than ever before: two official ceremonies, a hundred hours of discussion, 35 debates, round tables and workshops, two plenary meetings, 50 artists, 17 cultural events, seven film projections, four cultural evenings, five art exhibitions...



## Unprecedented political mobilization

The presence of 350 political personalities, including 25 Ministers and VIPs, more than half of whom came from non-abolitionist States, shows the scale of political mobilization that the Congress achieved. It made a major political statement in support of abolition. Numerous countries and institutions were present at senior level. The European Union was represented by the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, the European Parliament by its Vice-President, Pavel Telička, joined representatives from the Kingdom of Belgium, the Swiss Confederation, the Kingdom of Norway, the Principality of Monaco, the Republic of Bulgaria and the Republic of Belarus (the only non-abolitionist country on the continent of Europe), and many personalities and officials from abolitionist and non-abolitionist countries outside Europe: the Republic of Cabo Verde, the Republic of Gambia, the Republic of Guinea, the Republic of the Congo, Burkina Faso, the Republic of Kenya, the Republic of Benin, the Kingdom of Eswatini, the Kingdom of Lesotho, the Republic of Uganda, the Republic of Zambia, the Republic of Tunisia, the Kingdom of Morocco, Mongolia, the Democratic Socialist Republic of Sri Lanka and the United States of America.

In addition, messages from António Guterres, the UN Secretary General, Michelle Bachelet, the UN High Commissioner for Human Rights, Louise Mushikiwabo, the Secretary General of the International Organization of the Francophonie (OIF), as well as His Holiness Pope Francis, underlined the depth of international commitment to universal abolition of the death penalty.

*“Progress towards abolition of the death penalty is one of the great success stories of human rights. When the Universal Declaration was adopted 70 years ago, only ten countries had abolished the death penalty. Today, some 170 States with a variety of legal systems, traditions, cultures and religions have either abolished the death penalty in law or do not carry out executions in practice.”*

**Michelle Bachelet**  
UN High Commissioner for Human Rights

## PROGRESS TOWARDS ABOLITION SINCE LAST CONGRESS



# || OPENING CEREMONY

## Speakers

- Pavel Telička** • Vice president of the European Parliament speaks on behalf of Antonio Tajani, President of the European Parliament.
- Federica Mogherini** • High Representative of the European Union for Foreign Affairs and Security Policy.
- Didier Reynders** • Deputy Prime Minister, Minister of Foreign and European Affairs, Kingdom of Belgium
- Christian Meuwly** • Ambassador of Switzerland in Brussels, Belgium, on behalf of Pascale Baeriswyl, State Secretary of the Federal Department of Foreign Affairs, Swiss Confederation.
- Audun Halvorsen** • State Secretary to the Minister of Foreign Affairs, Kingdom of Norway.
- Raphaël Chenuil-Hazan** • Executive Director, ECPM.
- Aminata Niakate** • Board member, ECPM.
- His Holiness Pope Francis**
- Vanessa Place** • Writer and attorney, United States.
- António Guterres** • Secretary-General of the United Nations and United Nations High Commissioner for Refugees from 2008 to 2014.
- Navanethem Pillay** • President of the International Commission against the Death Penalty (ICDP) and United Nations High Commissioner for Human Rights from 2008 to 2014.
- Georges Nakseu Nguefang** • On behalf of Louise Mushikiwabo, General Secretary of the International Organization de la Francophonie (OIF).
- Aramis Ayala** • State Attorney for the Ninth Judicial Circuit Court of Florida, The United States of America.
- Typh Barrow** • Musician, Belgium.
- Thalatha Atukorale** • Minister of Justice and Prison Reform, Democratic Socialist Republic of Sri Lanka.
- Jean-Claude Gakosso** • Minister of Foreign Affairs, Republic of the Congo.
- Cheick Sako** • Minister of Justice, Republic of Guinea.
- Bessolé René Bagoro** • Minister of Justice, Human Rights and Civic Promotion, Burkina Faso.
- Abubacarr M. Tambadou** • Attorney General and Minister of Justice, Republic of the Gambia.
- Mohamed Aujjar** • Minister of Justice, Kingdom of Morocco.
- Ndume Olatushani** • Former death row prisoner, The United States of America.
- Nouzha Skalli** • Member of the Scientific Committee of the 7<sup>th</sup> World Congress against the Death Penalty; Founding member of the Parliamentary Network Against the Death Penalty (RPCPM). Former Minister for Social Development, Family and Solidarity – former MP of the Kingdom of Morocco. Founding member of OMDH and ADFM.
- Robert Badinter** • Honorary Chair of ECPM; Former Minister of Justice who abolished the death penalty in France in 1981, former President of the Constitutional Council, member of the International Commission Against the Death Penalty, France



Joaquin Martinez, Spanish former death row prisoner - One of the 17 "Portraits of Abolition" by the photographer Christophe Meireis, exhibited in the Menuhin Space of the European Parliament.



*“We believe... that every human life matters, no matter how it is used, no matter how many mistakes a person makes. We believe that a State should not dispose of the life of a human being. We believe that the response to a crime must never be another crime... We believe in justice not revenge.”*

**Federica Mogherini**

EU High Representative for Foreign Affairs and Security Policy

Opening the Conference on behalf of the President of the European Parliament, Mr Tajani, the Parliament's Vice President, Mr Pavel Telička, welcomed Ministers, members of the diplomatic corps and delegates to the European Parliament. He congratulated all those present for their tireless efforts to abolish capital punishment, underlined the commitment to abolition of the European Union, and welcomed the fact that some governments that have not yet abolished the death penalty will participate in the Congress and engage in its discussions. Mr Telička spoke of the universal values that unite those who fight for abolition. Though Protocol 6 to the European Convention on Human Rights (ECHR) was the first legally binding instrument to abolish the death penalty in peacetime, the abolition movement is global and not, as some claim, inspired by Europe. He looked forward to the day when no country on the European continent would practise the death penalty, as Belarus still does, and re-emphasized the European Parliament's absolute commitment to abolition “in all cases and under all circumstances”, and full implementation of the *EU Guidelines on the death penalty*<sup>1</sup>. In closing, he wished the delegates a successful and fruitful conference. Welcoming the Congress on behalf of the European Union, the EU's High Representative for Foreign Affairs and Security Policy, Ms Federica Mogherini, said that she is proud that Europe is the world's largest space free of capital punishment. She affirmed that no State should condemn any citizen to death, however serious his or her crime: the response to a crime must never be another

<sup>1</sup> At: [http://eeas.europa.eu/archives/delegations/nepal/documents/eu\\_nepal/eu\\_guidelines\\_on\\_death\\_penalty\\_en.pdf](http://eeas.europa.eu/archives/delegations/nepal/documents/eu_nepal/eu_guidelines_on_death_penalty_en.pdf).

crime because “we believe in justice, not revenge”. Capital punishment isn't rooted in a country's culture, as some say, for laws and culture can change. She underlined the progress that has been achieved, noting that 31 countries have abolished the death penalty since the first World Congress was held in 2001.

Mr Didier Reynders, the Deputy Prime Minister and Minister of Foreign Affairs of the Kingdom of Belgium, began by quoting Albert Camus: “There will not be sustained peace either in men's hearts or in society's values until death has been made illegal”. Confirming Belgium's commitment to abolition in the 30<sup>th</sup> anniversary year of the second Optional Protocol (OP) to the International Covenant on Civil and Political Rights (ICCPR), Mr Reynders highlighted the discriminatory nature of capital punishment, which is imposed disproportionately on the poor and on minorities, and underlined the effect on the relatives and children of those sentenced to death.



*“The death penalty is frequently applied in a discriminatory way. In particular, those who are most poor, most vulnerable economically, are disproportionately affected. Other groups, including foreigners, racial and ethnic minorities, sexual minorities, and women, are also impacted disproportionately. It is crucial to keep in mind the point of view of victims, understood broadly. The current information we have suggests that the death penalty creates victims and can affect whole communities, across many generations.”*

**Didier Reynders**

Deputy Prime Minister  
and Minister of Foreign Affairs of Belgium

Ambassador Christian Meuwly, Head of Switzerland's Mission to the EU, on behalf of Pascale Baeriswyl, State Secretary of the Federal Department of Foreign Affairs, Swiss Confederation, reminded the Congress that it is vital to raise public awareness, especially among young people. He explained the three main

objectives of Switzerland's 2017-2019 Action Plan to achieve universal abolition of the death penalty and commended Malaysia for its decision to abolish capital punishment, Pakistan for acquitting and releasing Aasiya Noreen (Asia Bibi), who had been sentenced to death for blasphemy, and Iran for reducing penalties for drug offences. Agreeing with former UN Secretary General Ban Ki Moon that "the death penalty has no place in the 21<sup>st</sup> century", he called on the 38 States that still apply the death penalty to change their laws and join other States in abolishing it.

*"The death penalty violates the most fundamental human rights through the delay that precedes execution and the years passed in isolation, which are forms of psychological torture inflicted on the condemned and his or her loved ones."*

**Pascale Baeriswyl**

State Secretary of the Federal Department of Foreign Affairs,  
Swiss Confederation.

Audun Halvorsen, State Secretary to the Minister of Foreign Affairs of Norway, recalled the last World Conference held in Oslo three years ago. He agreed that it is important to engage young people, who are the next generation of abolitionists, and underlined the value of rehabilitating those who commit crimes and reintegrating them into society, which the death penalty renders impossible. Noting that sexual minorities may still be sentenced to death in certain countries, he deplored the fact that, in 2019, people can be executed because of who they love.

*"Justice systems should ensure that perpetrators of crimes are held accountable – but the underlying principle should also be one of rehabilitation and reintroduction into society. The death penalty makes this impossible. It is absolute, irreversible and irreparable."*

**Audun Halvorsen**

State Secretary to the Minister of Foreign Affairs of Norway

In welcoming the delegates to the 7<sup>th</sup> World Congress, the Executive Director of ECPM praised their commitment and passion. Mr Raphaël Chenuil-Hazan declared that, in a few years, he was confident that the UN Secretary General "will declare a world free of the death penalty".

He noted the reasons why some people remain unconvinced by arguments against capital punishment. He invited them to engage in an open-minded discussion with abolitionists.

Mr Chenuil-Hazan said that proponents of capital punishment claim that it is validated by public opinion, or sanctioned by culture, or a matter of State sovereignty. To the first of these claims, he replied that, in reality, 'public opinion follows, in every country, in every continent'. The case for abolition is based on principle and in the long term honourable and honest positions are persuasive. He also took issue with the view that culture is immovable. Europe, now a leader of abolition, was historically an avid supporter of execution. It was practising capital punishment during the Tang dynasty when China (temporarily) abolished capital punishment. Latin America was the first continent to largely eliminate its practice. In Africa, its adoption was largely due to European colonization. While praising the progress that the abolition movement has made, Mr Chenuil-Hazan underlined that campaigners must not be content with suspending capital punishment because moratoria leave open the risk that executions might return. He ended by declaring that "For some of you life is worth nothing, but for us nothing, nothing, is worth more than life"

Ms Aminata Niakate, a member of ECPM's Executive Board, reminded the Congress that nine young men, after being subjected to torture, had been executed in Egypt the previous week. Looking further forward, she hoped that one day there would be no need for abolition conferences. "Just as the hummingbird, according to the story, brought water drop by drop to put out a fire", she said, every campaigner counts. "We cannot abandon these men on death row to their last meal, their last cigarette, watching the clock."

Speaking on video, His Holiness the Pope declared to the Congress that the life and dignity of every person must be protected without exception. In addition, every person should have a chance to change, to repent and be forgiven. In an era in which detention systems are constantly improving, we must fight so that no more lives are lost but, on the contrary, "won for the common good of society".

*"For believers, a human being has been created in the image of God. But whether you are a believer or not a believer, each life is precious and its dignity needs to be safeguarded without exception. The death penalty is therefore a very serious violation of every person's right to life."*

**His Holiness Pope Francis**

The Secretary-General of the UN, António Guterres, then spoke, also on video. He welcomed the progress of the UN General Assembly resolution for a moratorium on the death sentence, first adopted in 2008 and approved by the largest majority ever in 2018 (A/RES/71/187). Mr Guterres said that there is still work to do, nevertheless. He encouraged the Congress and all those who campaign for abolition to maintain their efforts.



Group picture at the Official Opening Ceremony of the 7<sup>th</sup> World Congress.

Ms Vanessa Place then read a poem that satirized and condemned the insensibility and greed of the judicial system in the face of the suffering of prisoners sentenced to death.

Three speeches were then delivered by Navanethem Pillay, President of the International Commission against the Death Penalty (ICDP); on behalf of Louise Mushikiwabo, General Secretary of the International Organization de la Francophonie (OIF); and by Aramis Ayala, State Attorney for the Ninth Judicial Circuit Court of Florida, USA.

Ms Pillay explained that she and her colleagues in the International Commission against the Death Penalty have been examining the different strategies that have successfully led to abolition. In Mongolia and France, for example, abolition was achieved through personal leadership. In South Africa and Guatemala, the country's courts led the way. In Rwanda, Haiti, Cambodia and Timor Leste, momentum for abolition was created by civil war and genocide. While most of Europe and Latin America, and now most African countries, no longer apply the death penalty, Ms Pillay highlighted the risks of recidivism, and its continued widespread use in large areas of Asia as well as the United States. She reminded the Congress that the inclusion of a sovereignty clause in the UN's recent moratorium resolution represented an attempt to remove human rights from the legal case for abolition, framing it solely in terms of criminal law, and stressed that the eventual success of the abolitionist movement will depend on continuing to create new strategies and narratives and concerted effort by States, civil society and international organizations – and, indeed, all of society.

*Gatherings like the World Congress... are important for the abolitionist movement as they provide a platform for different actors to meet, for trends to be identified, new strategies to be discussed, new actors to be engaged..." "The abolition of the death penalty is only achievable through the combined efforts of States, of civil society organizations, of international government organizations – and, literally, all of us..."*

**Navanethem Pillay**

former UN High Commissioner for Human Rights,  
President of the International Commission  
against the Death Penalty

The speech made on behalf of Louise Mushikiwabo, General Secretary of the International Organization de la Francophonie (OIF), highlighted the role of civil society. It affirmed the OIF's commitment to universal abolition, and welcomed the fact that three quarters of the countries on the African continent have taken or are taking steps to abolish the death penalty.

Ms Aramis Ayala spoke of her experience as a State Attorney in Florida, where the death penalty is still legal, She asked the Congress to consider what justice looks like. Underlining that justice must be objective and fair, never driven by emotion, she declared that as an attorney she is bound by the law but will never request the death penalty, even though she is required to consider it as an option, because capital punishment is morally unacceptable, is exercised in a racially discriminatory manner, is unjustifiably expensive for the state and taxpayers, and imposes intolerable suffering on condemned prisoners, their families, and prison staff.

*"The costs associated with the death penalty are astronomical, yet they're not borne by any of those who make the decision to perpetuate this failed policy. "...The post traumatic stress associated with the responsibility of killing human beings and the difficulty processing one's own physical contribution to the death of another must never be ignored."*

**Aramis Ayala**

State Attorney, Florida, United States

The singer, songwriter and composer Typh Barrow then sang two of her songs. There followed presentations by government representatives from Sri Lanka, the Republic of the Congo, Guinea, Burkina Faso, The Gambia, and Morocco. Each country has taken or is expecting to take steps towards abolition or a moratorium on capital punishment.

Ms Thalatha Atukorale, Minister of Justice and Prison Reform of Sri Lanka, began by denying the truth of press reports that Sri Lanka might resume executions after a moratorium of 40 years. She declared that the moratorium remains in place but requested the international community to help the authorities fight organized criminal gangs and drugs cartels without recourse to the most severe legal sanctions. Mr Jean Claude Gakosso, Minister of Foreign Affairs of the Republic of Congo, announced that the Government of Congo had removed the death penalty from the country's new and progressive 2015 constitution. A moratorium was already in place and no executions had taken place in Congo for 33 years. The public had been convinced of its ineffectiveness. He affirmed his country's commitment to abolition at international and regional level. Congo supports adding a Protocol on the death penalty to the African Charter on Human and People's Rights.

Cheick Sako, Minister of Justice of the Republic of Guinea, clarified that the death penalty has not been formally abolished in Guinea. However, it has been removed from the Criminal Code and other legal texts and is therefore de facto inapplicable. The sentences of prisoners condemned to death have been commuted to life imprisonment. Mr Sako explained that, although the government is ready to ratify the second Optional Protocol and a de facto moratorium has

been in place since 2002, public opinion continues to favour capital punishment on security grounds. He asked the Congress to understand that each country's situation is specific and must be allowed to manage its affairs accordingly.

*“Why did we do it this way? In effect, one has to take account of the specific circumstances of each country while respecting the principle of abolition. In other words, abolition is irreversible, but we need to be aware as responsible politicians that we must bring the people and decision-makers with us, even via a windy road, to get to this goal.”*

**Cheick Sako**

Minister of Justice of the Republic of Guinea

Bessolé René Bagoro, the Minister of Justice, Human Rights and Civic Promotion of Burkina Faso, announced that Burkina Faso had abolished capital punishment in January 2018. Recognizing that this decision had been sensitive because of public opinion, he thanked civil society for its support and urged States that continue to apply the death penalty to abolish it, saying “We will back you in your efforts”. Abubacarr M. Tambadou, Attorney General and Minister of Justice in The Gambia, explained that his country had first abolished the death penalty in 1993, only to reintroduce it in 1995 after a coup d'état. The Gambia's constitution stated that the subject should be reviewed after ten years, but a review did not occur until 2018, after President Yahya Jammeh was defeated in elections and the present government took office. A moratorium has been in place since 2018. Because capital punishment is enshrined in the constitution, to abolish it would require a constitutional amendment, which is difficult to achieve. Mr Tambadou nevertheless assured the Congress that the government supports abolition.

*“Victor Hugo predicted [the abolition of capital punishment] in Actes et Paroles... Of the 18<sup>th</sup> century, he said that it was 'part of its glory to have abolished torture'. The 19<sup>th</sup> century, he said, 'will abolish capital punishment'. In the end, the 19<sup>th</sup> century abolished slavery. The 20<sup>th</sup> century was to be the century of male-female equality. It is therefore now time for the 21<sup>st</sup> century to be the century that achieves universal abolition of the death penalty!”*

**Raphaël Chenuil-Hazan**

Executive Director of ECPM

Finally, Mr Mohamed Aujjar, Minister of Justice of Morocco, noted that Morocco's constitution affirms the right to life, indicating its commitment to abolition. Moreover, no executions have been carried out since 1993. The new criminal code will also restrict the number of crimes that are subject to capital punishment. Though the Minister said that he is personally in favour of abolition, he also recognized that more groundwork is required to pave the way for reform and he praised civil society organizations for resisting the influence of conservative ideas at regional and international level.

Mr Ndume Olatushani then spoke. A former prisoner who had spent 28 years in prison, including 20 years on death row, in Tennessee. Mr Olatushani spoke movingly about life in prison and described how he had become a painter. Taking painting classes had saved his life, he said. It had given him hope, something to wake up for, especially after his mother was killed in a car accident. Later, his art attracted attention to his case, and led more people to help him seek a review. He now works with children, teaching them to paint and how to protect themselves from the kinds of problems he has experienced. He thanked everyone present for their efforts to end the death penalty, but stressed how necessary it is to keep fighting.

The opening ceremony was brought to a close by Nouzha Skalli, a Member of the Scientific Committee of the 7<sup>th</sup> World Congress and a former Minister of solidarity, family and social development in Morocco, and Robert Badinter, Honorary Chair of ECPM and former Minister of Justice in France.

Ms Skalli encouraged Africa to become the next abolitionist continent. She said the path to abolition is the path of progress. While emphasizing that the overall trends are positive, she drew attention to the slow progress that Morocco has made towards abolition, hindered by its patriarchal system, the oppression of and violence against women, and the continued legal problem that persons may be condemned to death on religious grounds.

Mr Badinter spoke to the Congress by video. Regretting that he could not be present personally due to illness, he urged the Congress to avoid euphoria. Many of the largest and most powerful nations, including China, the United States, Russia and India, retain the death penalty, as do Saudi Arabia and Iran. It is critical to work with activists in these countries, and indispensable to protest against all and every execution.

**“The task is incomplete and difficult,  
but the Movement depends on you”**

Mr Robert Badinter.

## HIGHLIGHT



### NDUME OLATUSHANI

Former death row prisoner, USA

“Art really saved my life, literally and figuratively. If you were to imagine being in a cell where I could not even stretch my arms out like this, it was a 4 foot by 9 foot cell, sitting there 23 hours of the day and every time I came out I was shackled and chained like some imaginary monster... Under these circumstances, it was really hard to try to keep hope and maintain everything that you need to maintain to actually survive – and art for me did that... Those of us who are fighting against this thing, we have to keep our hands all over it, we have to. Because I’m telling you that if it weren’t for people like the one in this room and around the world who are fighting against this thing, I’m telling you, I wouldn’t be standing here. It was that that gave me hope, that allowed for me to get up every day and maintain hope and try to put my best foot forward even in the face of hopelessness. I still got up... Two years after my imprisonment my mother was killed in a car accident. And, it’s really hard for me, I get emotional even when I think about it actually, yeah... The worst thing that can happen to someone sitting in prison – I know, it’s true in life, really – but especially in prison, you have no control and the worst thing that can happen is for people to come to you and say ‘Listen, you need to make a phone call home’. Because you know when they come and do this, something has happened to somebody at home, it’s got to be serious for them to give you a free phone call. And when people came to my door... I was thinking the whole time ‘What my mother going to tell me when I get down there what happened to somebody else?’ But when I got down there it was my sister telling me what happened to my mother... For the first three day after that, if my eyes was open I was crying. If I wasn’t crying, I was balled up in a tear-soaked sleep, trying to escape that reality... Three days after I am laying down, couldn’t get out of bed, didn’t want to get out of bed, my mother came to me as clear as I’m standing here now and the only thing she said was ‘Get up’. It was after that, when I’m sitting in this cell... and I’m looking at this picture I wanted to send her, that’s when art found me... And it was through art that I found freedom, sitting in that cell.”

# FINAL DECLARATION

We,

The participants of the 7<sup>th</sup> World Congress Against the Death Penalty, organized in Brussels from February 26 to March 1<sup>st</sup>, 2019, by the organization Ensemble Contre la Peine de Mort (ECPM) under the sponsorship of Belgium, the European Union, European Parliament, Swiss Confederation and Norway, in partnership with the World Coalition Against the Death Penalty, hereby:

**ADOPT** the present declaration following four days of intense debates, exchanges of experiences, testimonies, cultural events.

#### **WELCOME:**

- the abolitionist movement’s expansion in a world where more than 2/3 of countries have abolished the death penalty in law or in practice and where 121 countries, the highest number ever, voted in favor of the UNGA moratorium resolution in December 2018;
- the abolition of the death penalty in 3 countries since the Oslo World Congress in 2016: abolition for ordinary crimes in Burkina Faso and Guatemala and abolition for all crimes in Guinea, as well as the decision of the Supreme Court of the State of Washington in the USA, that found the death penalty unconstitutional;
- the revision of catechism of the Catholic Church stating that the death penalty is ‘inadmissible’;
- the commitments taken during the opening ceremony of the 7<sup>th</sup> Congress by the Gambia to abolish the death penalty in its constitution, by the Republic of the Congo and Guinea to ratify the Second Optional Protocol to the ICCPR and to support the draft Additional Protocol to the African Charter on Human and Peoples’ Rights for abolition, by Burkina Faso to extend the abolition of the death penalty from ordinary crimes to all crimes, and by Morocco to reform the penal code to reduce the number of crimes punishable by death.

#### **BUT ARE CONCERNED:**

- that the retention of the death penalty is used as a pretext by some governments such as Egypt, where 9 people were executed on 20 February, to counter-terrorism and mute dissenting voices;



- that 56 countries and territories are retentionists, such as China, Iran, Iraq, Pakistan, Saudi Arabia and the USA and that in many cases the death penalty is applied arbitrarily;
- that retentionist countries continue to sentence to death and execute juveniles, such as Iran, and people with intellectual and psychosocial disabilities, including Japan and Taiwan;
- that it is applied in a way that disproportionately impacts people from ethnic, racial, or religious minorities or from disadvantaged socio-economic background, or on the grounds of sexual orientation or gender-based discrimination;
- that conditions on death row violate human dignity and are a cruel, inhuman and degrading treatment.

### **UNDERLINING THE NECESSITY TO TAKE FURTHER SIGNIFICANT STEPS TOWARDS THE COMPLETE AND UNIVERSAL ABOLITION OF THE DEATH PENALTY.**

#### **WE CALL UPON:**

- Actors from the private sector to join massively the call initiated by civil society all over the world in favor of the abolition of the death penalty;
- African countries to make Africa an abolitionist continent;
- Retentionist countries to engage in concrete reforms to reduce the scope of the death penalty in view of its abolition;
- Abolitionist countries to support as a matter of principle their citizens facing the death penalty everywhere in the world, whatever the crime they are judged for.

#### **WE ENCOURAGE:**

##### **International and Regional Intergovernmental Organizations:**

- to continue and intensify their cooperation with states and civil society to promote the universal abolition of the death penalty;
- to continue and intensify their position for abolition across all UN bodies, including in the discussions between the UNODC and all stakeholders;
- to continue and systematically address the issue of the death penalty in the work done by UN special rapporteurs, especially on terrorism, executions, torture, migrants, and extreme poverty.

##### **Retentionist states to commit:**

- to abolish the mandatory death penalty where it exists and promote alternative sentences which recognize each person's ability to make amends;
- to implement the Convention on the Rights of the Child, for its 30<sup>th</sup> anniversary in 2019, by abolishing the death penalty for juveniles below the age of 18 at the time of the crime for which they have been convicted, and by systematically giving them the benefit of the doubt if there is no official record of their age and date of birth;

- to collect and publish regular, reliable and independent information on the manner in which they use the death penalty, disaggregated by sex, age, nationality and race, and on the state of public opinion on the death penalty;
- to take the path toward the abolition of capital punishment by implementing a moratorium on death sentences and executions, in compliance with the resolution for a moratorium on the use of the death penalty voted by the General Assembly of the United Nations since 2007, and to join the 86 countries that have already ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- to guarantee effective legal aid and an effective and reliable investigation system for all people facing the death penalty.

##### **Abolitionist states:**

- to vehemently condemn the use of the death penalty and systematically raise this issue in the framework of their diplomatic and economic relations with retentionist countries;
- to make the financial aid granted to the international "war on drugs" conditional to sufficient guarantees that those funds will not be used in any manner to enforce the death penalty;
- to actively oppose the use of the death penalty in the fight against terrorism;
- to promote and respect human rights;
- to support actors in civil society working in favor of abolition;
- to cosponsor and vote in favor of the UNGA resolution calling for a universal moratorium on capital punishment in 2020;
- to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- to commit not to reintroduce the death penalty and not to resume executions.

##### **Parliamentarians and National Human Rights Institutions (NHRIs):**

- from across the world to gather in regional, national, and international networks to carry the abolitionist debate into the heart of their institutions;
- from abolitionist states to support their colleagues from retentionist states, including to propose abolitionist bills;
- to systematically add questions on the death penalty to their agendas;
- to encourage their states to abolish the death penalty.

##### **Legal professionals:**

- for lawyers, to seek training and cooperate in order to better defend clients facing the death penalty;
- for prosecutors not to ask for imposition of the death penalty, in the name of justice;
- for judges to exercise their power of discretion to not impose any death sentences and to encourage non-professional juries to do the same;

- for bar associations, to join the call of the Paris Bar and the International Association of Lawyers (UIA) by signing the Resolution on the Death Penalty and the Conditions of Detention and Treatment of Persons Sentenced to Death.

**Private sector and cultural actors:**

- to recognize that capital punishment is an archaic and degrading punishment, harmful to the harmonious development of the economy, tourism, and cultural exchanges;
- to express preference to invest on countries that do not use the death penalty;
- to incorporate in existing business and human rights policies, advocacy in favor or abolition.

**Academia:**

- to carry out more research on the death penalty, including to make women on death row visible and to demystify arguments used to retain the death penalty, including public opinion, deterrence, terrorism;
- to join the International Network of Universities against the Death Penalty and REPECAP;
- to join forces with civil society and jointly establish law clinics.

**Abolitionist actors from civil society:**

- to carry out awareness-raising and educational campaigns on abolition for the public, political decision-makers, and students, joining the international network for education;
- to participating in the annual World Day Against the Death Penalty on 10 October and in the “Cities for Life” on 30 November;
- to join forces with other rights’ movements, including women’s rights movements and children rights movements;
- to act together, by joining the World Coalition Against the Death Penalty, to strengthen abolitionist collaborations.

Adopted by acclamation  
in Brussels on 1<sup>st</sup> March 2019.



Artistic interlude of La Triochka, trio of acrobatic lifts, during the “Evening of testimonies” at Bozar.



Juliette Sanchez-Lambert, general secretary of "LGBTI Intergroup", during the panel "The death penalty and LGBTI persons", organized by ECPM, the Netherlands' Ministry of Foreign Affairs and the Mission of Canada to the European Union

# NEW THEMES OF THE WORLD CONGRESS

BUSINESS  
WOMEN  
LGBTI  
TERRORISM





Extract from Lush Cosmetics' campaign "Death # Justice", launched in North America

# IV BUSINESS AND THE DEATH PENALTY

## Moderator

Maya Foa • Reprieve, UK

## Speakers

Antonio Panzeri • Chair of the DROI Subcommittee of the European Parliament, Italy.

Richard Branson • Founder of Virgin Group, UK (by video).

Carleen Pickard • Ethical Campaigns Specialist, LUSH Cosmetics, Canada.

Nadia Benhida • Executive Director, Zino Mar, Morocco.

Emmanuel Oudar • CEO, Tout Terrain, ECPM Board member, France.

Sune Skadegård Thorsen • CEO, Global CSR, expert in corporate social responsibility, Denmark.

Cecilia Malmström • European Commissioner for Trade, European Union (by video).

The World Congress addressed the contribution that businesses can make to abolition for the first time in 2019, in a public session held in the European Parliament.

A business may engage with issues of public concern, including human rights issues, for two kinds of reason: voluntarily, on the basis of conviction or solidarity, in the same way that an individual may campaign for human rights principles or certain reforms; or because it has a duty to do so, because the company's activities involve it in or connect it to contested or illegal conduct or violations of rights, creating an obligation on the company to change its policies or behaviour.

Both forms of response were discussed in the session. Speakers recognized that it is critical to distinguish between them, because, while companies may choose to support abolition or condemn capital punishment on moral grounds or to improve the company's reputation, they have no obligation to do so unless there is an operational link between the company's activities and a violation of international humanitarian law, international human rights law,

## Companies can do a lot voluntarily to support abolition

or national laws. Companies do have a duty to avoid participating in activities that violate human rights, and must exercise due diligence to ensure that their operational activities and commercial relationships do not cause them to be responsible for violations or complicit with violations.

The distinction is crucial when it comes to engaging with businesses on the question of abolition. Advocates need to adopt clear arguments. They can encourage companies to support abolition voluntarily, on moral or ethical grounds (see the interview with Carleen Pickard of Lush). They can develop self-interest arguments to show why companies might want to disinvest from countries that practise the death penalty (see the quote from Richard Branson below). And in a more limited number of cases, they can argue that companies have a duty to change their business practices or business relationships because they are complicit in cruel or illegal activities or activities that otherwise violate rights.

### Voluntary action

Companies can do a lot voluntarily to support abolition. Three speakers described the contributions of companies in the United States, France, and Tunisia. Lush, a soap company, ran a campaign called “Death≠Justice” in 2017 in partnership with the National Coalition to Abolish the Death Penalty and the Innocence Project. It chose to do so because it has a tradition of promoting causes, but also because the timing was favourable: death sentences and executions in the US were falling and public support for abolition was high. The campaign called explicitly for abolition and promoted four key messages: the death penalty is unjust, it fails to address the root causes of crime, it does not improve public safety, and it is discriminatory. To support the campaign, Lush produced a video (Exonerated), spread information on its online platforms, and produced an abolition bathbomb. Lush continues to support abolition and groups that campaign for it.

Tout Terrain is a smaller French company that provides materials for events. After its Director became personally committed, Tout Terrain linked up with Together Against the Death Penalty (ECPM), and the company now regularly provides signage and other services to support abolition events and activities. The Director of Zino Mar, thirdly, is a founding member of the Observatory of Moroccan Prisons. After realizing that she could not make a difference on her own, she started to use the resources of her company to print materials for abolitionist organizations and resolve logistical problems. Some of Zino Mar’s customers support abolition while others are hostile and consider abolition to be a Western import, but no clients have refused to work with Zino Mar because of its stance on capital punishment.

## Self-interest arguments

As Richard Branson pointed out, investors have reasons to avoid countries that practise capital punishment even if company executives are not personally motivated morally or ethically. Precisely because the death penalty is unjust, and does not address the causes of crime, does not improve public safety, and is discriminatory, countries that continue to practise it are likely to have low respect for the rule of law, less fair justice and social systems, and higher levels of insecurity. These are sound reasons for not investing in such countries and for considering disinvestment.

### Richard Branson on why businesses should shun countries that retain the death penalty

*I consider the death penalty a barbaric and inhumane practice that deserves no place in modern society... [It] is a deeply flawed and immoral punishment [that] fails to deliver justice or act as a deterrent against crime... Thankfully I see more and more companies waking up to the need to speak out on these issues and I commend companies like Lush that have taken a lead in bringing the fight against the death penalty to a wider audience. My opposition to the death penalty is, at its heart, a moral opposition. But I can also see other compelling reasons why businesses should get involved. From the perspective of an entrepreneur and investor, I think that capital punishment is a strong indicator of a country’s approach to governance, to fairness, and the rule of law. It also tells a lot about misguided priorities and a lack of fiscal responsibility. While the moral argument against the death penalty alone should be strong enough, these are good reasons why business leaders everywhere should become global advocates for universal abolition.*

Full interview on Youtube: “Richard Branson, Message to the abolitionists, 7th World Congress against the Death Penalty”  
<https://www.youtube.com/watch?v=yOo2fFrZq4&feature=youtu.be>

## The duty of companies to respect human rights and the law

Sune Skadegård Thorsen outlined the international policy framework that regulates the human rights obligations of private companies. He stressed that

Companies have an obligation to ensure that their own operations and activities do not violate rights.

an international consensus on this issue was reached so recently that the new standards have had little effect so far on the conduct of small and medium sized organizations.

States, companies and civil society reached agreement on the human rights responsibilities of private companies in 2008, when the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights, drafted by Professor John Ruggie after

several years of careful consultation. It takes a 'protect, respect and remedy' approach.

In summary, States are primarily responsible for making sure that human rights are respected but companies have an obligation to ensure that their own operations and activities do not violate rights and also that their relationships do not indirectly involve them in violations; where violations do occur, companies must provide redress. To meet these obligations, companies are required to put in place a management system that monitors for violations of rights, can detect violations when they occur, and can respond by mitigating and preventing their recurrence. Companies must continuously assess the human rights impacts of their operations and activities and must exercise due diligence by taking appropriate steps to foresee and avoid likely violations for which they or their relationships might have direct or indirect responsibility. They are also required to establish effective and transparent grievance and compensation mechanisms to deal with violations, or allegations of violations, for which they have some responsibility.

The framework is founded on principles of human rights accountability but also appeals to business self-interest in that companies that fail to exercise due diligence and consequently commit violations incur major reputational risks as well as potentially crippling costs. As the new rules come to be adopted, both businesses and investors are likely to choose increasingly to work with companies that respect human rights. Although the operations of relatively few companies touch directly on the death penalty and executions, where companies' activities do relate to capital punishment they have a duty to exercise due diligence and need to show what they are doing to prevent or mitigate any violations of rights that are associated with their operations or relationships.

As noted, the human rights accountability framework regulating companies is new: it is only beginning to be implemented and most companies are not aware of it. Its impact will become apparent in the future. Mr Thorsen encouraged the participants and all those campaigning for abolition to follow the work of UN bodies that monitor business and human rights and to participate in the business consultation on this issue that meets annually in Geneva. Though progress may appear to be slow, better practices are gradually emerging, particularly in the

field of gender mainstreaming. However, capital punishment is likely to become an advocacy issue only in the context of business-to-consumer relationships; it will probably not be relevant in business-to-business relationships.

He stressed that few companies are likely to be directly affected by legal human rights norms because relatively few companies are directly engaged in executions or activities associated with them. This said, a number sell equipment that is relevant, and a larger number may be indirectly implicated because they provide services to prisons and justice systems in countries that retain the death penalty.

With regard to these cases, where companies' operations are linked to capital punishment, Antonio Panzeri MEP praised the EU's decision to prohibit the use for executions of pharmaceuticals originating in the EU, and the consequent decision of pharmaceutical companies to cease selling certain chemicals to United States prison authorities, while Cecilia Malmström, European Commissioner for International Trade and Trade Agreements, underlined that governments are taking action to end torture and capital punishment. She cited the Alliance for Torture-Free Trade, launched by the EU with Argentina and Mongolia, in which more than 60 countries now participate, and said plans are being developed to regulate trade in items that can be used for torture or the death penalty.

*"The private sector must be included in the fight for abolition. Businesses are often complicit in violations of human rights and it is important to hold them accountable - but businesses are also ingenious, skilled at finding solutions, and staffed by persuasive people. They can help advance respect for human rights."*

**Anthony Panzeri**

Chair of the DROI Subcommittee of the European Parliament

## Reading

UN Guiding Principles on Business and Human Rights.

## INTERVIEW



**CARLEEN PICKARD**

Ethical Campaigns Specialist, LUSH Cosmetics, Canada

### **How would you advise another company that was thinking of campaigning for abolition?**

It took LUSH time to decide to definitely take a clear abolitionist stand. First off, I think it is really important to understand the issue inside and out. There are amazing organizations and experts who in our case were enthusiastic and helpful in helping us get to a place where we felt comfortable about taking a strong abolitionist stand. So definitely do internal research.

We spent a lot of time talking about what people's experience might be in the United States, from a customer's point of view – for example what would it be like for customers coming into our stores who had been touched by any aspect of the death penalty. Look, for us at Lush our critical concern has been to be of service to the movement, so we wanted to be sure we made a contribution.

On messaging, I think the worst thing is to get involved and get it wrong. That doesn't have to happen because so many great people and organizations have the messaging figured out, because they have been working on it for decades. So don't think that you have to invent anything new!

For us, I believe we are a stronger company having done our campaign. I believe we are more engaged in issues that actually matter to people. We had so many customers come in and talk to us about their experiences, and had a lot of staff do so as well. [And] the tougher questions we had to wrestle with just made us stronger.

So if I was talking to a company I would say that you will benefit if people care about each other and the company's place in the world. The question is always: 'Isn't it risky?' or 'Isn't it controversial?' The messaging we came to at Lush was really pragmatic and quite sensible. Again, abolitionists have known for a long time that the death penalty does not create safer

communities, does not address the root causes of crimes, is not applied fairly across the United States. We felt courageous enough to do it but also obligated to understand the facts and make the transformation from saying 'Oh that's something over there that doesn't actually impact me'. My personal experience is that you become complicit if you do nothing, so really it was an honour to make sure we got the messaging right and to have touched and I believe changed people's hearts and minds.

The conversation might be 'Isn't that strange for a soap company to take a stand on the death penalty?' I hope that people take stock and think 'Well, if a soap company thinks it should care about the death penalty, maybe that's a good reason for us to do it as well'.

### **What are the merits and what are the risks of running an open-ended campaign?**

We said as a business that we were campaigning for abolition. We didn't design a campaign that said: 'Here is some stuff to think about, people. Make up your own minds.' We have done that in other campaigns. We campaigned on trophy hunting grizzly bears, for example, and, because we're a company that is against animal testing, even if we presented it as 'Here's why you should shoot bears' and 'here's why you shouldn't', it would be clear what side we were on. Whereas with abolition of the death penalty, it seemed to me that we needed to be very clear about what our stance was. We did a ten-day thing in 2017 but have continued to show up in spaces and through the organizations we fund on a long term basis. As a brand, we never wanted to look back on this issue and say 'Well that is something we did in the past'. [...] It's exciting to be part of something that is compassionate and loving and vibrant and that really matters.

### **What advice would you give an activist organization that wants to persuade a company to support abolition?**

First, where are you? We work in Canada and the United States and we did not run a campaign in Canada because we thought 'What would we be telling Canadians?' and the most obvious thing would be to encourage Canadians to say something to Americans and it was 2017 and the political environment was pretty hostile and it didn't feel that would be useful. [...] I think the conversation in Europe is interesting. Talking to companies about the standards coming out of the UN is much more common in Europe. The ability to use those tools and say to companies 'Here are some things that you should think about' - it's a different strategy that I think can be done really well. In the US, a new organization called the Responsible Business Initiative on the Death Penalty specifically exists to help individuals and companies to think about how to be part of the abolitionist movement. It has a toolkit on the website with a bunch of ideas but also everything can be tailored to the way that you operate. I think advocates could check out the tools available there.

Be really strategic. Recognize that an ocean separates us. Activist groups in Europe saying we want to target X company in the United States – think twice. The Responsible Business Initiative suggests a more strategic act would be to have the company go after the Governor, as opposed to going after the company. There is some fun thinking to do about the way the system works...

**There are many kinds of activist and many kinds of company, but not all activists are familiar with the way companies work. What would be your elevator advice to activists? What language should they use? What do they have to know about the company?**

I don't know that there's one answer to that question. A lot of corporations are motivated by profit but I don't know that that is the top thing to think about. People certainly ask me 'How was your risk?' but I don't think that was a key consideration for us. You don't say 'We don't care if we turn everybody off and nobody ever shops in our store again' and you certainly say 'We have this amazing opportunity to be able to really educate people in ways that they would not be otherwise'. So spending a lot of time thinking about the so-called 'risk factor' is worth doing, but I don't think it's necessarily going to be the pitch. The people on the inside are always going to know that better. You can really make a difference by having the right conversation with somebody. We came around to the arguments after really doing some full investigation and conversations with exonerees, so certainly going with the hard stuff first is important. I appreciate that the activist will want to get stuff done and move on but really a lot of this is going to be new to people and they have not thought about it. For example, I knew about the death penalty but I had not thought how I could be implicated or how knowing about it could be the first step.

**In practice there are important differences between companies that have a link to capital punishment and those that do not. Are you saying that banging ever harder on the door may not work in companies that have no link unless they are already curious and ready to engage?**

From a campaigning perspective, it is the difference between stopping harm from happening, looking at companies that are complicit, and the education and outreach part. [...] In the US there is still quite a lot that can be done through civil society and political process. We wanted to build up people's understanding of where each US State was on abolition and encourage people to think that their vote matters. 'Is your Governor an abolitionist or not?' It's important to get the right people in office – people who may not be exactly aligned with you politically but who have had conversations, have had visits from exonerees, have seen the justice system so broken, and have alternative visions of a justice system that might do other things than execute people.

# V WOMEN AND DISCRIMINATORY APPLICATION OF THE DEATH PENALTY

## Moderator

**Aurélie Plaçais** • Director of the World Coalition Against the Death Penalty, France.

## Speakers

**Delphine Lourtou** • Executive Director, Cornell Center on the Death Penalty Worldwide, USA.

**Susan Kigula** • Former prisoner, Uganda.

**Danthong Breen** • Principal Adviser, Union for Civil Liberty, Thailand.

**Angela Uwandu** • Director of the Nigerian Office of Avocats Sans Frontières, France/Nigeria.

**Agnès Callamard** • UN Special Rapporteur on extrajudicial, summary or arbitrary killings, France.

The World Congress had never before devoted a session to the specific experience of women. The discussion raised and began to explore a number of important questions.

## Lack of data

Introducing *Judged for More than Her Crime*, a report that reviewed the global situation and experiences of women condemned to death, Delphine Lourtou underlined a basic problem: that there is little literature or quantitative information on women prisoners, especially women who have been sentenced to death. Women on death row have never been seen as a distinct category; they have always been adjunct to the male majority. As a result, those researching the Cornell report were not even in a position to assess accurately how many women have been sentenced or executed. It is true that women represent a small percentage of the death row population; but juveniles represent an even smaller minority, and their situation has been documented. Women on death row are currently invisible.





Susan Kigula, former death row prisoner in Uganda - One of the 17 "Portraits of Abolition" by the photographer Christophe Meireis, exhibited in the Menuhin Space of the European Parliament.

Given this situation, Ms Lourtou advised researchers to collect stories and testimonies to support their advocacy work. In the longer term, however, it is essential to obtain more information about the situation of women prisoners. She urged the abolitionist community to promote quantitative as well as qualitative research on this group of women. "While there are knowledge gaps, there will be advocacy gaps."

### Gender violence and female violence

All members of the panel noted that a very high proportion of women condemned to death are victims of gender-based violence, including child or forced marriage; and that many are condemned for murdering the partner responsible for that violence. Women rarely commit other forms of serious violence. Illustrating this point, it was noted that 102 Thai women have been sentenced to death in Thailand, all but seven of whom were sentenced for drug-related offences. This reinforces the argument that the situation of women prisoners, including women on death row, should be analysed in its own terms, separately from men.

### Flawed judicial evaluation

Many jurisdictions do not (or did not in the past) accept pleas of self-defence in cases where women have killed partners who abused them. This failure of assessment is worsened by the fact that many courts do not or did not recognize that abuse accumulated over a long period can trigger extreme violence in a victim. In many instances, where the act of abuse that triggered the murder was not worse than the pattern of abuse that preceded it, courts have refused to consider pleas of self-defence or mitigation. In addition, although women tend to receive more lenient sentences because they are presumed to be less violent (a form of gender bias), women who are seen to have transgressed 'female values' (who are portrayed as Jezebels, adulterers, bad mothers, or femmes fatales) are judged harshly and are more likely to be condemned to death.

### The nature of female criminality

The panel was asked whether "men are criminal by nature, whereas women become criminal because of their circumstances?", sparking a discussion. Ms Lourtou said she resisted a gender essentialist approach, or the idea that women are not potentially violent. She thought it was dangerous to concentrate exclusively on women who are wrongfully imprisoned or who are survivors of gender-based violence. Focusing overly on female victims may obscure the fundamental case against capital punishment and the right to justice of both men and women who are guilty of crimes.

It is vital to recognize the specific character of women's experience in order to apply a universal standard of justice.

### The notion of women as victims

Ms Callamard took this argument further. From a human rights law angle, human rights advocates are bound to describe prisoners as victims because, in order to show that their rights have been violated, it is necessary to identify a 'perpetrator' and a 'victim'. In this sense, human rights advocates will always press the case that women on death row are victims of State practices. "The fact that a woman is a cold-blooded killer does not mean she has not been victimized by the State." Ms Lourtou agreed: in human rights law terms, women on death row are victims of the State; in the same way, men are also.

Taking the discussion of victimhood a step further, Ms Callamard went on to add that during the session some people had referred to 'mothers' rather than 'women', and the higher claims of mothers to protection. She thought that, while pragmatically the protection of children requires us to consider mothers, a focus on motherhood will not bring us very far. "There is no problem in considering that children are a mitigating factor, (...) but the image of the mother can be dangerous if it is understood that the only women entitled to protection are women who have children."

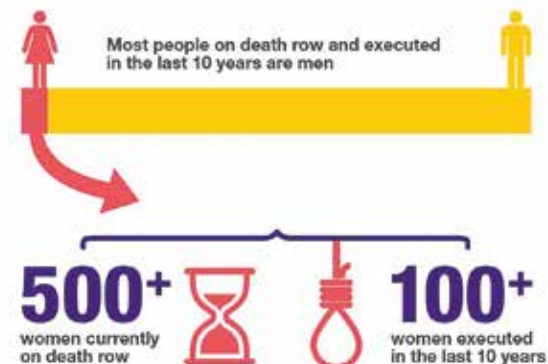
### The specific experience of women

All these exchanges underlined that it is vital to recognize the specific character of women's experience in order to apply a universal standard of justice. If societies do not recognize the differences of effect experienced by people with specific characteristics (men, women, children, minorities, etc.), systemic patterns of discrimination become invisible and members of those societies become complicit in the discrimination and denial that women and other minorities experience. This is a fundamental reason why it is essential to study the situation of women discretely, and to do so without explicit or implicit forms of special pleading or gender bias.

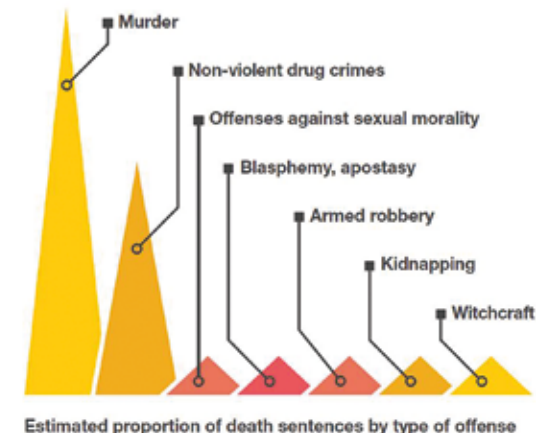
### The importance of alliances

This raised a final issue. Ms Uwandu encouraged the abolitionist movement to "bring in new partners to the struggle" by making alliance with the women's rights movement. She said that women's organizations in Nigeria work for women in prison, but not for women on death row, because so few women are condemned to death. Even if they are few, however, women on death row have

#### AN ESTIMATE OF WOMEN ON DEATH ROW AND EXECUTED IN THE LAST 10 YEARS



#### COMMON OFFENSES FOR WHICH WOMEN ARE SENTENCED TO DEATH



#### COUNTRIES THAT EXECUTE THE GREATEST NUMBER OF WOMEN



specific needs that must be addressed, and women's organizations should be educated in abolitionist issues and encouraged to join the movement.

### Challenges and recommendations

- It is essential to gather more quantitative information about the number and situation of women on death row.
- We also need more descriptions of the life stories of such women, including their treatment and experiences before and during their trial, and after sentencing.

### Reading

The Cornell Center on the Death Penalty Worldwide, *Judged for More than Her Crime: A global overview of women facing the death penalty* (2018). At: <http://www.deathpenaltyworldwide.org/pdf/judged-for-more-than-her-crime.pdf>.

*“What troubles me is the idea that women as a group must be seen as victims in order to receive clemency. I propose a framework where we can speak about individuals receiving justice.”*

#### **Delphine Lourtou**

Executive Director, Death Penalty Worldwide,  
Cornell University.

# VI THE DEATH PENALTY AND LGBTI PERSONS

### Moderators

**Mark Reichwein** • Head of human rights unit at the Dutch Ministry of Foreign Affairs  
**Alan Bowman** • Deputy Head of Mission, Deputy Head and Minister-Counsellor of the Mission of Canada to the European Union

### Speakers

**Agnès Callamard** • UN Special Rapporteur on extra-judicial or arbitrary execution.  
**Yahia Zaidi** • Advocate for LGBT rights, social worker on asylum; Omnya association on sexual diversity and homophobia.  
**Nikki Brörmann** • International Advocacy Officer at COC Netherlands.

It was noted to start with, that the death penalty (where it is not abolished) is restricted under international law to the most serious crimes, which do not include expressions of sexual orientation and gender identity (SOGI). Dr Agnes Callamard underlined the important role that expressions of SOGI play as identity markers. Taken in conjunction with sex, gender and class, they predict a person's exposure to risk or lethal harm.

It was also noted that reliable information is not available on either the sentencing or detention conditions of lesbian, gay, bisexual, transgender and intersex (LGBTI) prisoners, and more work needs to be done to document their numbers and treatment.

The discussion raised a variety of threats that LGBTI individuals face because of their sexual orientation and gender identity. They include: the threat of execution in countries that still impose the death penalty for homosexuality or other expressions of SOGI; the dangers of imprisonment for the same 'crimes' in certain countries; the execution, mistreatment and abuse faced by LGBTI individuals at the hands of some non-State armed groups; and the general risk of killing and persecution that LGBTI persons face, exacerbated by the State's failure to either protect them or investigate crimes against them.

Persons perceived to be LGBTI suffer the same discrimination as those who are LGBTI.

The right to life means much more than the right not to be killed. It contains intrinsically the notions of dignity, security and integrity. From this perspective, many people in the LGBTI community are deprived of enjoyment of the right to life. Quoting a trans woman who described her life as a “slow death”, Agnès Callamard noted that the life expectancy of trans women is significantly lower than average.

Poverty is an exacerbating factor. The majority of people condemned to death belong to the poorest ranks of society, deepening its inherent bias.

*“If you cannot imagine putting someone to death for engaging in consensual, adult, same-sex activity, how can you accept the death penalty for people because they are poor?”*

**Agnès Callamard**

UN Special Rapporteur on extrajudicial, summary or arbitrary killings.

### Risk of execution

In this context, the greater risk to LGBTI people is not the death penalty but criminalization more generally. No executions on the basis of SOGI have been confirmed in the last 12 months. What needs to be emphasized is that legal systems that discriminate against LGBTI people increase their vulnerability and increase the risk that they may suffer extra-judicial discrimination, violence or death.

### Execution by non-State armed groups

By contrast de facto governments and certain armed groups do execute LGBTI people, extra-judicially or following deeply flawed quasi-judicial processes. Daesh (or ISIS), for example, killed both men and women for their sexual orientation, but other groups have been guilty of similar crimes. Such crimes should be prosecuted, under international human rights law or national criminal law, but it remains difficult to hold non-State actors accountable because they are not always bound by international law and mechanisms of recourse are almost non-existent.

### Denial of due process

A further concern is that, in States that impose the death penalty for SOGI, or criminalize certain expressions of SOGI, trials are not fair and LGBTI persons



Agnès Callamard, UN Special Rapporteur on extrajudicial, summary or arbitrary killings, during the panel “The death penalty and LGBTI persons”

rarely have access to a proper defence. Many LGBTI detainees do not have access to legal aid and therefore cannot defend themselves adequately. In too many jurisdictions that criminalize LGBTI identity, LGBTI persons are deprived of their human rights.

### Risks in detention

Specific issues arise when LGBTI persons are detained. Whether LGBTI people are on death row because of their SOGI status and for other reasons, LGBTI detainees are particularly at risk from violence, and may be killed as a result of official negligence, or intentionally, because of who they are. In Chechnya, for example, some LGBTI were tortured to death because they were LGBTI. Trans and intersex people also face particular risks if they do not receive medicines they need; some States, such as Vietnam, do not make such medicines available.

### Wider risks of persecution and lack of State protection

All the speakers underlined that LGBTI people face the greatest risks outside the judicial process. Many States fail to protect LGBTI people or are complicit in violence against them. In some regions, States tolerate honour killings of both men and women and perpetuate practices that make prosecution of those who commit them improbable. Mr Zaidi listed a number of brutal cases of violence<sup>2</sup>. A Syrian trans woman was killed in Turkey in 2016; the police did not investigate her death. When a Nigerian lesbian reported her father to the police after he beat her, she was shamed and told that she could not report violence committed by her father. An Algerian man had been murdered 18 days before the panel. The killers used his blood to write in English “he is gay”, thereby ostracizing him and his family, shaming him in death, linking homosexuality to Western ideas, and socially validating his murder.

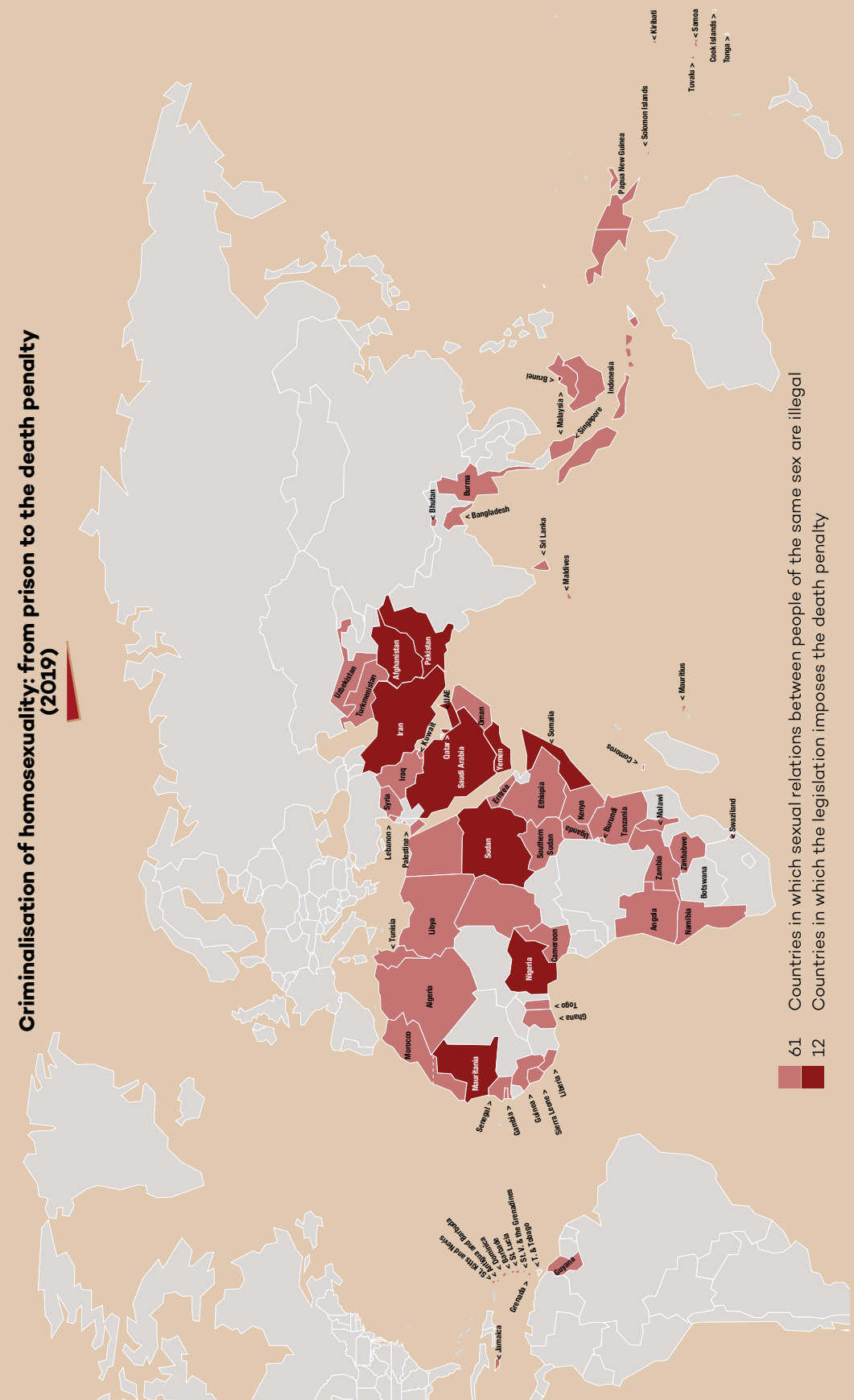
### Political and cultural concerns

The speakers agreed that many people consider LGBTI identities to be ‘foreign imports’ borrowed from the West. As a result, the international community and Western governments can put LGBTI people at risk when they demand decriminalization. It is usually more effective to promote social acceptance of LGBTI. For similar reasons, when religious leaders or scholars condemn LGBTI identities, it is usually better to engage them in discussion rather than attempt to impose alternative opinions on them.

Nikki Brörmann described how COC, her organization, works with community-based organizations to share information on the ground. In her experience,

<sup>2</sup> He noted that the information available refers only to LGBT people; no data is available on intersex persons.

**Criminalisation of homosexuality: from prison to the death penalty (2019)**



61 Countries in which sexual relations between people of the same sex are illegal  
12 Countries in which the legislation imposes the death penalty

strengthening and supporting local movements and helping them to do the work themselves is the best way forward, because local movements know their context and risks, and what they need.

Governments can still play an important role by providing safe spaces and emergency response capacity, to help those on the ground.

### Challenges and recommendations

- It is important to strengthen mechanisms to increase the accountability of non-State actors who execute or commit other crimes against LGBTI people.
- It is also important to remove the impunity of individuals who commit honour crimes; States should be pressed to prosecute all such crimes.
- Efforts should be made to improve prison conditions for LGBTI detainees, and protect them from harassment and violence of all kinds.
- Efforts should be made to document and prevent anti-gay propaganda emanating from Western groups, including conservative churches originating in the US.

### To read

International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), State Sponsored Homophobia (published annually).

# VII

## FOREIGNERS SENTENCED TO DEATH AS PART OF THE FIGHT AGAINST TERRORISM

### Moderator

**Raphaël Chenuil-Hazan** • ECPM Executive Director, France

### Speakers

**Fionnuala Ní Aoláin** • UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ireland.

**James Connell** • Lawyer, Military Commissions Defense Organization, US.

**Hédi Yahmed** • Journalist, Tunisia.

**Martin Pradel** • Lawyer, France.

*“The issue of punishment is a really important question. There is extraordinary experience of extraordinary crimes in many parts of the world... We make deals even on the most atrocious crimes, systemic crimes, and we have found ways to do that which don't include the death penalty... It seems to me that treating [terrorism] as a category that is unlike any other category that we deal with is both intellectually and politically flawed and deserves really serious attention from States as well as advocates.”*

### **Fionnuala Ní Aoláin**

UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

This session examined how States deal with citizens who are detained abroad after joining non-State armed groups that have been listed as terrorist by the United Nations. This is by no means a new issue for States but it suddenly became prominent after the collapse of Daech (ISIS) in Iraq and Syria in late 2018, when thousands of ‘foreign fighters’ were detained in the region, many of whom have been charged, or could be charged, with crimes that carry the death penalty in the countries in which they are being held.

All the speakers agreed that States have responded superficially and inappropriately to this issue, which needs to be addressed by long-term strategies. Asked to say how much public opinion conditions or drives the positions that States take on foreign fighters and terrorism, they responded that governments shape public opinion rather than the other way round, and that governments have acted irresponsibly by making derisory comments in public, tweeting, and pre-emptively sharing information before cases have been legally adjudicated. In addition, some governments have failed to provide consular protection to certain individuals. In France, the Government initially said that it would take back its nationals and try them, but changed its mind when the media and public opinion argued that returning fighters would disseminate hate speech and continue to commit terrorist crimes. In most matters, nevertheless, public opinion can be educated and persuaded and Governments have a duty to defend and explain their legal and international obligations as well as honour them.

The discussants made a number of specific points.

- A State has legal obligations to its citizens that do not fall away if they commit crimes abroad.
- It has a duty to represent and protect them (consular access).
- It is not broadly entitled to wash its hands of difficult nationals, however unpopular they may be, by cancelling their citizenship.
- ‘Foreign fighters’ who return to their countries of nationality, privately or as a result of diplomatic negotiation, represent a security risk but it is one that their countries of nationality should shoulder and should not palm off to third countries, such as Iraq, that are emerging from conflict and lack the resources to host large numbers of potentially hostile ex-combatants.
- Detainees have the right to fair treatment and justice, whatever their crimes. While it is clearly expensive and difficult to assemble the evidence required to try ex-combatants in court, States of origin have a legal duty to their citizens and should not leave them undefended to be sentenced abroad by weak and overstretched justice systems that cannot guarantee due process or legal protections.
- Terrorism has always been cyclical and its ‘push and pull’ factors will not disappear. Failure to treat detainees accused of terrorist crimes justly will increase the likelihood that terrorism will persist or recur.

## The State’s responsibility to represent its citizens

Ms Fionnuala Ní Aoláin focused on the issue of foreign fighters in Syria and Iraq. She argued that, whereas States were able to defer action for a period on the grounds that they lacked information on foreign fighters, they can no longer do so because they now possess an enormous amount of data about the location and identity of foreign fighters who are their nationals. They have a clear duty to clarify and fulfil international state obligations in relation to nationals who are detained abroad for having joined armed groups classified as terrorist. She specifically criticized Western States that have failed to provide consular access or protection to foreign fighters detained in conflict zones. States have argued that their officials would be endangered if they travelled to conflict areas; but, in fact, States are failing to take measures they could reasonably adopt. Some are modifying consular rules in order to decline responsibility for nationals who have fought for terrorist organizations. To protect human rights and the international rule of law, it is critical to protect the rights, including the right to life, especially of those who are “neither sympathetic nor benevolent”. Those who may have committed grave violations of human rights are entitled to due process and a fair trial. If they are denied justice and treated as exceptional cases in law, “foreign fighters may be used as a Trojan horse to nullify the right to life from the inside out”.

## The defence of Tunisian detainees in Iraq

Hédi Yahmed described the Tunisian Government’s response to the cases of Tunisian fighters detained by the Iraqi authorities in Iraq. Proportionally, Tunisia was the source of more foreign fighters than any other country. A large number of Tunisians have been detained in Syria and Libya, where they are neither tried nor formally condemned to death. In Iraq, by contrast, detained Tunisians have been tried and condemned to death, and some have been executed. The Tunisian Government has not chosen to represent or provide consular access to these citizens. Since 2011, it has limited its action to providing administrative assistance to family members who seek to visit or make contact with relatives imprisoned in Iraq.

The situation is complicated by the fact that the Iraqi government does not disclose the names of foreign nationals who are executed, but only reports their nationality.

## The defence of detainees in Guantanamo

James Connell spoke in his personal capacity. He is a lawyer for the Military Commissions Defense Organization, which provides legal representation to non-American citizens detained for terrorist offences in Guantanamo. He is the defence lawyer of Amar al Baluchi (@BaluchiGitmo), a Pakistani citizen.

Mr Connell stressed, first of all, that the time to assist a person subject to a capital sentence is before, not after, he has been sentenced. He then described the legal regime that the United States applies to Guantanamo. Detainees there are judged before Military Commissions, which are supposed to be faster and cheaper than regular courts, but in fact are slow and very expensive; cases are not settled for many years, and large numbers of lawyers, judges and staff must be flown in for each hearing. It would be cheaper and more efficient to hold and judge prisoners in the United States. In reality, Mr Connell said, the Military Commissions are not organized to execute justice but to conceal evidence of US torture. Trials are held before military officers instead of a jury, statements obtained under coercion are permitted, and the defence has no power to call witnesses. Indeed, the military authorities rather than the defendant are responsible for appointing representation for the accused. The Commissions are also reserved for non-US citizens.

He urged those concerned about the situation of terrorist detainees in Guantanamo to continue to monitor the situation there. Though applications to attend hearings in Guantanamo are made complicated, and must be submitted from within the United States, NGOs and reporters are entitled to observe hearings and he encouraged organizations to do so.

### The defence of French detainees in Iraq

Martin Pradel, a French lawyer, has defended two women detained in Iraq accused of terrorist offences. He criticized the French Government for failing to provide consular support that he requested when he agreed to represent clients in Iraq. Mr Pradel argued that France and other European countries have a duty to repatriate their citizens detained in Iraq (and similar countries), because those detained are their citizens, but also because Iraq is a society traumatized by war, whose institutions are weak, whose judicial officials are not independent and live under threat of assassination, and whose people want revenge for the horrors they have experienced. Iraq is not in a position to judge the crimes of detained foreigners fairly and in accordance with due process. Challenging the claim that Iraq's sovereignty must be respected and its judges allowed to pass tough sentences, Mr Pradel argued that France was not respecting Iraq's sovereignty but simply requiring the Iraqi authorities to do its dirty work by neutralizing at a distance the threats that French and other terrorists could represent in Europe.

The speakers emphasized the critical importance of defence lawyers. They are often the only source of assistance available to detained combatants, and frequently work in hazardous environments without adequate support.

### Challenges and recommendations

- The provision of a defence lawyer for detainees is critical.
- States have a duty to provide consular protection and should do so consistently and more firmly.
- All States should receive back nationals who have been detained for joining armed groups that are classified as terrorist. Recognizing the security risk they represent and the cost of bringing them to trial, it is nevertheless the only approach that can provide justice, address the causes of terrorism, and share the international burden fairly.





The LXB Chair, by artist Wang Keping, in honour of Nobel Peace Prize winner Liu Xiao Bo, exhibited in the Menuhin Space of the European Parliament.

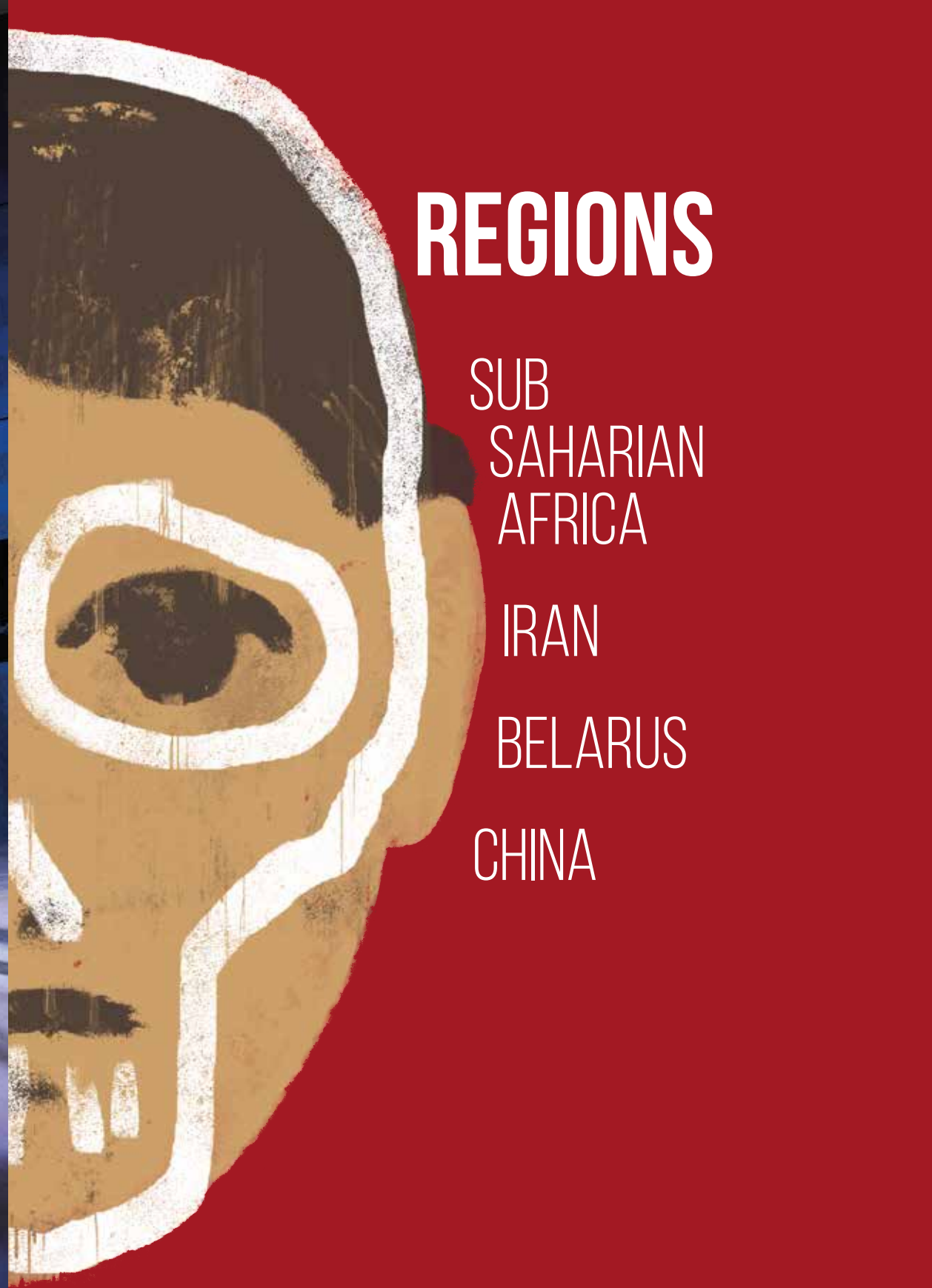
# REGIONS

SUB  
SAHARIAN  
AFRICA

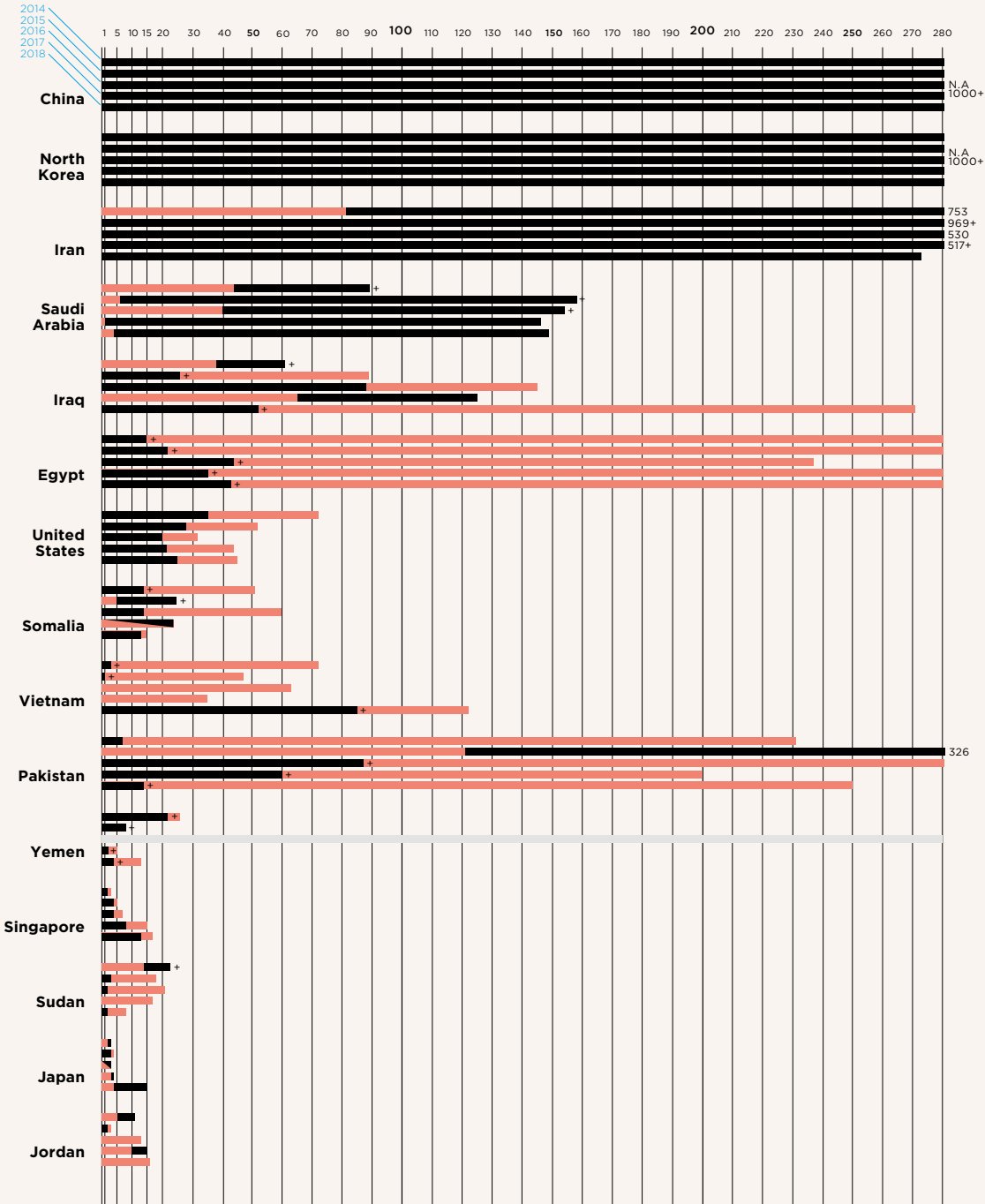
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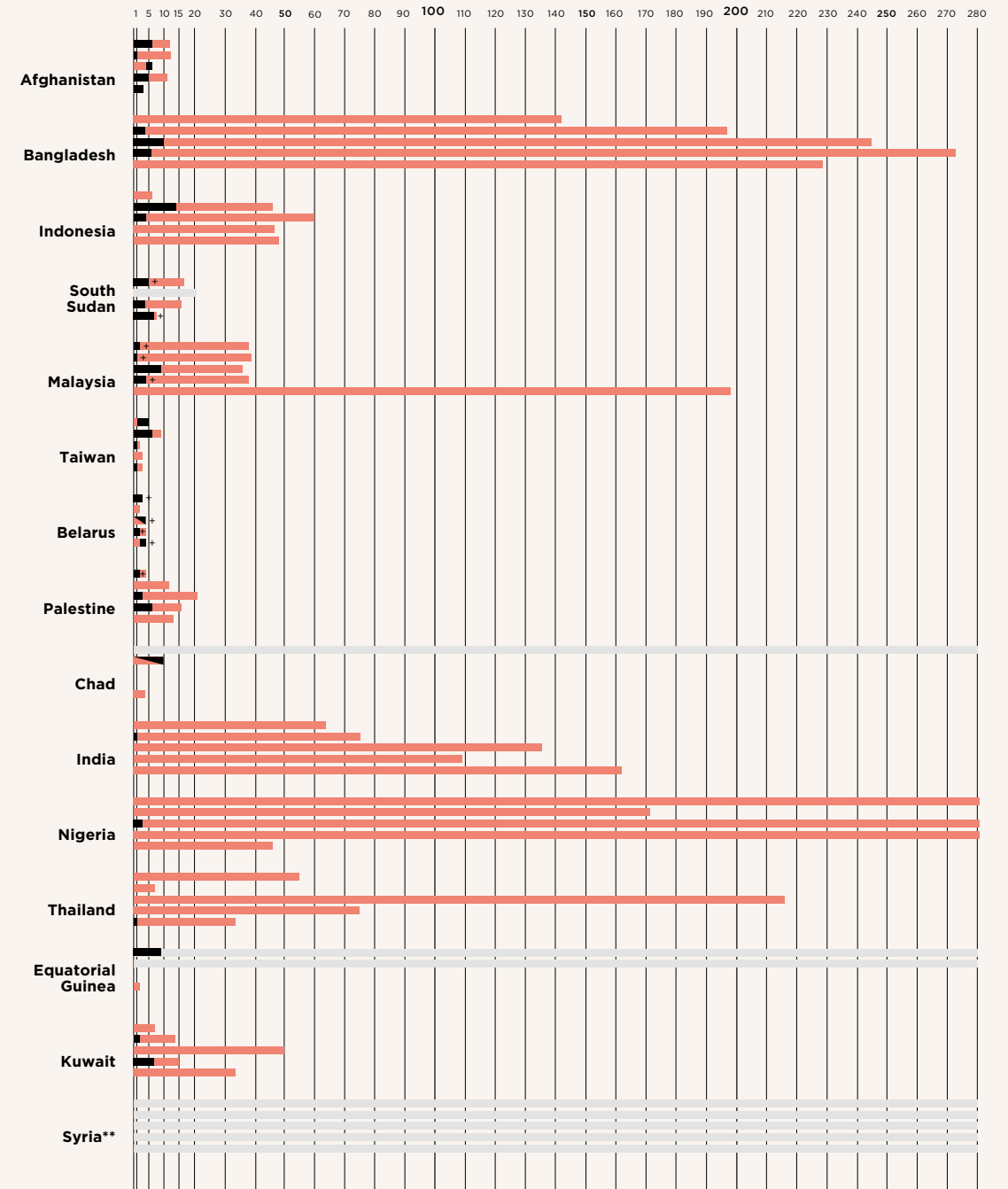
CHINA



# EVOLUTION OF DEATH SENTENCES & EXECUTIONS BETWEEN 2014 AND 2018



The 30 countries shown are those that have the highest number of recorded executions between 2014 and 2018\*



EXECUTIONS  
 DEATH SENTENCES  
 N.A. : DATA NOT AVAILABLE  
 + ESTIMATED MINIMUM FIGURE OF EXECUTIONS

\*Botswana, Oman, Libya, the United Arab Emirates and Bahrain are not included in the graphics because they have each executed less than 10 people in the last 5 years, but still sentence to death.  
 \*\*Syria: Due to the internal armed conflict, it is not possible to confirm the figures for judicial executions.

Sources : Amnesty International Global Report - "Death sentences and executions" 2014 to 2018 / Iran Human Rights / ECPM's partners

## INTERVIEW



**ALICE MOGWE**

Director of Ditshwanelo, the Botswana Centre for Human Rights,  
on contextualizing abolition and human rights

### **What have you learned from the work you have done on capital punishment that you would like to share with people in other parts of Africa particularly?**

I think capital punishment has been seen to be an imposition of the Western world. This is an argument used by those who support the death penalty and don't want to see it abolished. Through my experience of working in the African Commission, it's become really clear that to engage in a constructive and effective way on the continent we need to find a hook. And the hook needs to be what links us with our contextual reality – in other words, with the cultures of the continent. As you know, we have a value concept called ubuntu or butu, which speaks very much to the relationships between the individual and his or her community or society. Underpinning ubuntu is the concept of dignity, which is really core to how Africans see human rights. So the African Commission's Working Group, in interpreting the Article of the African Charter that looks at the right to life, has focused on the right to a dignified life. The Working Group has used that approach to begin to address the question of the abolition of the death penalty in the African context.

In short, one thing I have learned is the importance of context, in terms of dealing with human rights issues generally but particularly in relation to the death penalty.

### **Is this contextualization already occurring, or does much more still need to be done?**

When we talk about the African continent we often make reference to statistics. We say 'x countries have abolished the death penalty, x countries have agreed to a moratorium'. But when one looks at where the

majority of these countries are located on the continent they are often in areas which were colonized by the French. Not by the British. And I have often asked myself why. There is a tendency to blame colonization for everything, and yet we know historically that even before the colonial period there were instances in which the death penalty was imposed – though not in a wide-ranging way and in fairly limited circumstances. And the death penalty was one of a number of forms of punishment. Others would be banishment or compensation, etc. So, while on the one hand there appears to be movement, you have got to look at how sustainable that movement is and how deeply rooted the decision-making process was, to ensure that it continues. If you look at those countries that were colonized by the French, [...] they use the CFA, a common currency which is controlled by France, and therefore one has to ask oneself to what extent their decisions to abolish the death penalty are rooted in their historical traditional African context, and how much of their decision-making is the result of the influence of France.

So one needs to look behind the statistics [...] Earlier today, in the Plenary Session, somebody spoke about needing to ensure we don't have a reversal of the gains that have been made and that is important to keep in mind and keep an eye on.

### **Are you making a general human rights point about the integration of cultural values?**

Absolutely. The death penalty is not an exception. We just happen to focus here on the death penalty. But when one meets resistance from the modern State on the continent, one of the arguments is 'Oh, that is alien and foreign' because the activists have not done enough to find out about our historical context, our own story. We all know that paganism pre-existed Christianity and the Goddess of Easter was linked to Easter in the Christian faith, but no such attempt was made when human rights were shared with the African continent. No attempt was made to try and ensure that we contextualized our understanding of human rights. I think that is part of the problem that we see reflected in resistance to human rights – for example, when people say that gay rights is a foreign thing, or that the death penalty 'was imposed by the colonizers so why are they now telling us to get rid of it?'

### **From this perspective, what advice do you give the international community? How can they act differently to help the process of acculturation you describe to occur organically?**

I have reflected on whether I believe in the universality of human rights and I have reached a position that I believe in the universality of human dignity. More and more I see rights, culture, religion, as different forms or tools which have been created to protect dignity. We end up engaging in so much

I have learned the importance of context, in terms of dealing with human rights issues generally but particularly in relation to the death penalty

disagreement and conflict about these tools, yet we all believe in human dignity. That point was made by somebody at the opening session today. I think we've really got to try to be critically aware of the unconscious imposition of a particular world view on the rest of the world. Sitting in the European Parliament today, I heard the term 'European values' more than once. I heard 'European values' last year when we held the human rights defenders' conference. I heard 'European values' being used again during the EU-NGO Forum last year in Brussels. It is always used in relation to human rights. I asked a ques-

tion last year about why this was. I got quite a candid response. I was told European values are 'international' values and that was a statement of fact. So one should not be surprised when human rights activists from the South raise the kinds of questions that I do because there doesn't seem to be sufficient space for us to acknowledge that there are different roads to Rome. We have been told that to get to Rome, we have to take this route and only this route. And that if we start talking about different cultures, or Asian values or African values we are being a cultural relativist, which for human rights activists is an incredible insult, as you know. So people shut up. But let me ask you a question. Do our African States mean it when they ratify international standards? After all, when the UDHR came into being in 1948 - we all celebrated that it was 70 years old last year - a lot of those countries that signed on to the UDHR had colonies at the same time. That intrinsic contradiction, at the conceptual level, the practical level, the economic level, the political level, must have some influence in terms of how we see those international instruments. There's never time or space to talk about it because as soon as you raise it you're a cultural relativist. 'Don't you believe in human rights?'. There's often a very easy movement from European values to human rights and then to universal. Don't get me wrong. I believe in everything human rights stand for.

All I am saying is that we are at a time in our history when there is contestation for meaning and recognition of difference. We are fearful of difference. There is nothing wrong with being different as long as one is not discriminating against or undermining the dignity of the next person. We should not fear difference. We are pushed into believing we are all the same but that some people are more the same than others. That is part of the challenge.

**You have created a variety of NGOs. Looking ahead, what priorities do you have for making that work legitimate and sustainable and rooted.**

First of all, my understanding of human rights does not begin with learning about the UDHR which was written in 1948. My understanding of human

rights really began as I grew up in a part of the world where apartheid existed - hearing stories, reading the papers, listening to relatives, seeing refugees. I knew that apartheid was wrong, but not because I had a strong culture of human rights and UDHR. Second, international instruments do not necessarily contain all the rights, if you want to call them that, in which I believe. In terms of ubuntu, for example, not returning a greeting is a huge insult, but I can't take you to court for it. It's not justiciable and therefore it doesn't exist. And that is part of the problem of turning dignity into a right. There's no other cultural way to settle it. Is [justiciability] what we are talking about when we talk about dignity?

So [...], it's a matter of seeing the link between global and local or national or regional in a way that permits us to grow towards ensuring that everyone is able to live their life with dignity, and we know that means having jobs, having shelter, health care, etc. So in future I think that will be an important part of it.

Our organization is very small. I remember in very early years I was involved with the feminist movement. There was that phrase: 'The personal is political'. One does not separate oneself from the bigger picture. Culturally, one does not separate the individual from society and the community. [...] So I think, starting off in one's own community, [find a way to engage] based on what we have in common with one another, civil society organizations and Governments. ... Building on what we have in common, as opposed to focusing on what divides us, I believe is one way forward. And that feeds into a less confrontational relationship with the State - which is another hallmark of human rights. Challenging this, challenging that, winning battles - at times it's not very constructive. There are times to fight but one should not forget to look for times when you can actually engage.



Doreen N. Kyazze, Director, Sub-Saharan Office, Penal Reform International (Uganda) during the Plenary session “Abolition strategies: challenges and opportunities in Sub-Saharan Africa”

## VIII

# ABOLITION STRATEGIES: CHALLENGES AND OPPORTUNITIES IN SUB-SAHARAN AFRICA

### Moderator

**Doreen N. Kyazze** • Director, Sub-Saharan Office, Penal Reform International, Uganda.

### Opening remarks

**Maya Sahli Fadel**<sup>3</sup> • Commissioner, African Commission on Human and Peoples Rights, Algeria.

### Speakers

**Cheick Sako** • Minister of Justice, Guinea.

**Urbain Yameogo** • Executive Director, CIFDHA, and Chair at the Coalition Against the Death Penalty, Burkina Faso.

**Maryann Njau-Kimani** • Chair, Taskforce on the review of the mandatory nature of the death penalty, Kenya.

**Mohamed Ali Mossaad** • Director, African Centre for Justice and Peace, Sudan.

**Raphaël Nyabirungu Mwene Songa** • Professor and lawyer, Democratic Republic of the Congo.

Sub-Saharan Africa is among the continents that have made most progress towards abolition. A number of countries nevertheless retain the death penalty. Nigeria, Sudan, South Sudan and Somalia continue to issue many death sentences. Somalia executed 20 people in 2016.

The discussion raised a number of key issues.

<sup>3</sup> Ms Sahli Fadel replaced Zainabo Sylvie Kaytesi, who chairs the African Commission's Working Group on the death penalty.

# THE DEATH PENALTY IN AFRICA IN 2018



## 20 COUNTRIES WHICH ARE ABOLITIONIST FOR ALL CRIMES

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

## 1 COUNTRY WHICH IS ABOLITIONIST FOR COMMON LAW CRIMES

States or territories where the death penalty has been abolished except under exceptional circumstances

## 22 STATES WITH A MORATORIUM ON EXECUTIONS

States or territories where the death penalty is in force but no executions have taken place for 10 years and which did not vote against the last UN resolution in favour of a universal moratorium on executions.

## 12 RETENTIONIST COUNTRIES

States or territories applying the death penalty.

- STATES WHICH HAVE RATIFIED the 2<sup>nd</sup> Optional Protocol to the ICCPR for abolition of the death penalty.
- STATES WHICH HAVE SIGNED the 2<sup>nd</sup> Optional Protocol to the ICCPR for abolition of the death penalty.

## Regional action

At regional level, support for abolition of the death penalty has grown, but at the same time certain countries remain strongly opposed. An initiative at the level of the African Union that would have taken Sub-Saharan Africa towards a region-wide moratorium was blocked on procedural grounds in 2016. Diplomatic efforts continue to be made to establish a wider consensus on how to progress the issue.

## Progress at national level

Several governments have taken steps towards ending the death penalty or its application, but the majority have preferred to introduce a moratorium or have removed the death penalty from the statute book rather than abolished it outright. (See case studies below.) In most instances, as government representatives explained, they have done so because politically this was the option that could succeed in Parliament, where opposition to abolition remains significant. Governments in the region have also become cautious after seeing efforts to reform blocked in some States, such as Morocco. In practice, reformers have taken a step-by-step approach: (1) adopt a moratorium, (2) reduce the number of crimes subject to capital punishment, (3) remove capital punishment altogether from the statute book, and (4) abolish the death penalty (preferably through the constitution).

Specific challenges face countries that practise sharia law, such as Sudan and Somalia, because judges in those countries may consider to be hudud crimes acts that are not crimes (or are misdemeanours) in other forms of jurisdiction. Some of these are capital offences. In Sudan, for example, apostasy, adultery and sodomy are punishable by death. Both socially and politically, the proximity of religious beliefs and law complicates efforts to reform.

Speakers argued that success depends on recognizing the specific context of each country and allowing each country to make progress towards abolition in its own way. They emphasized the importance of cooperating with civil society and other actors, addressing the core issues and discussing them with all parties.

## Military law

In a number of legal regimes, capital offences are listed in the military as well as the civil code. It can take longer to remove these than to remove capital offences from the civil code. Militaries may be jealous of their prerogatives and reluctant to allow civil authorities to reform the military code; and where the civil authority is relatively weak, it may lack power to force reform. New governments with a popular mandate have been able to act; democratically elected governments that show firmness have also been able to impose their will. (See Guinea below.)

Alongside negotiation and advocacy, training and raising public awareness are important dimensions of action.

At least in certain countries, nevertheless, the civilian authorities may be obliged to exercise discretion and judgement in this area.

**Build consensus: dialogue locally, network internationally, build a coalition**

Several speakers underlined that success depends on building alliances and addressing the concerns of key constituencies, including parliamentarians, officials in relevant ministries and commissions, the military and police, the

media, women, youth, civil society organizations, religious leaders, and specific groups that support capital punishment – as well as regional and international agencies and networks that facilitate or promote abolition. Alongside negotiation and advocacy, training and raising public awareness are important dimensions of action. The case studies below illustrate some of the strategies that have been effective.

Speakers emphasized that political leadership can also be critical to successful reform, as it was in both Burkina Faso and Guinea.

*“What matters is communication. To change minds, you need to bring on board religious leaders, organizations, civil society and other stakeholders that can have influence.”*

**Urbain Yameogo**

Chair of the Coalition Against the Death Penalty,  
Burkina Faso

## The African Commission on Human and Peoples’ Rights

The African Commission adopted a resolution in favour of continental abolition in 2005. Since then, it has worked with civil society, Governments and international institutions to collect information on death penalty and advocate for its abolition. The Commission’s Working Group on the death penalty in Africa is mandated to assess progress towards abolition and propose strategies and recommendations. In view of the fact that the African Charter on Human and Peoples’ Rights affirms the right to life but makes no reference to the death penalty, The Commission adopted a draft protocol to the Charter which recommends abolition in States that already have a moratorium on executions

and a moratorium on executions in States that still impose the death penalty. The draft protocol was submitted to the African Union (AU) in 2015 but subsequently blocked, because the AU did not present it in accordance with procedure. It is planning new strategies for moving forward, recognizing that certain AU member states are not yet willing to support abolition. The draft protocol would bridge the normative gap that currently exists in the Charter and provide restorative rather than retributive justice. (See the interview below with Maya Sahli Fadel.)

## Guinea

The new Government in Guinea has declared a moratorium on executions, but achieving this outcome was not straightforward. The Government needed to take action at several levels and make progress slowly, step by step. In the Minister’s judgement, legislation to abolish capital punishment would have failed in Parliament, as it did in Morocco. The Ministry therefore chose to remove the death penalty from the new criminal code and replace it by a life sentence (30 years). Parliament voted unanimously in support of this proposal.

In addition, it was necessary to act urgently because a large number of prisoners were awaiting sentence, and important trials were pending following massacres in the Forest region. Swift action was needed to remove from courts the option of imposing capital sentences.

The Military Code in Guinea also authorized death sentences and the military lobbied to retain this punishment. The Government stood firm, however, arguing that it would be contradictory to retain the death penalty in one code and not in another.

## Burkina Faso

Burkina Faso also declared a moratorium. The penal code authorized the death penalty from 1966; the military code and another law authorized it from 1972. Previous efforts to pass a draft abolition law were scotched by a coup attempt in 2015. After 2015, however, when the incoming Government undertook to prepare a new criminal code, it became possible to explore removing all references to capital punishment from the penal code.

Civil society was actively involved in the reform process, and a national coalition against the death penalty was formed. Inter-ministerial co-operation was supported by a civil society awareness campaign to bring the public on board. Meetings were organized with public institutions, government representatives and civil society. The Minister, an abolitionist, was also supportive. This wide alliance, including the executive, was decisive. Burkina Faso adopted a new Penal Code in May 2018 that removed the death penalty.

The death penalty remains in the Military Code (and in the railways police law).

## Kenya

Though no executions have been carried out in Kenya since 1987, the country retains a mandatory death penalty, for which public support remains high. In 2018, the Attorney-General appointed a Taskforce to review the mandatory nature of the death penalty, which recommended its abolition.

Its finding is currently only a recommendation, which must be turned into law by Parliament. Ms Njau-Kimani, Chair of the Taskforce, recognized that this step will require the goodwill of both the judiciary and the political elite. Though she was optimistic, she observed that “the death penalty is regarded as the most effective punishment for violent crimes and there is also some lack of faith in the justice institutions”. Kenya remains in a relatively early phase of the abolition process.

## Sudan

In January 2019, the prospects for abolition in Sudan were not promising. Sudan had among the highest rates of capital punishment in Africa. More than 49 individuals were currently held on death row. Under Sharia law, the death penalty was applicable to a number of crimes defined by the Koran as hudud crimes, including apostasy, adultery, and sodomy as well as murder. Modes of execution included crucifixion, hanging and stoning. Unfair trials are an issue. Many detainees lack legal representation; many have been tortured.

Capital punishment also had a political dimension. Political activists and human rights defenders have been executed. A number of Southern Sudanese were sentenced to death for having joined a rebel group, but subsequently released after the Government signed an amnesty agreement with the group in question. It is critical, first of all, to reduce the number of crimes that carry the death penalty, and bring Sudanese law in line with the African Charter. Sudan has accepted the authority of African mechanisms, but rejected international standards. It will be important to bring cases before UN human rights bodies, but to date this work has been done from abroad because human rights defenders were often denied permission to leave Sudan.

## Democratic Republic of the Congo

The DRC’s criminal and military codes both authorize the death penalty for certain crimes but the last execution occurred in 2003. There is therefore a de facto moratorium. Efforts have been made to raise the issue in Parliament, and a parliamentarian submitted a draft abolition law in 2010. However, no law has been passed, partly because of the DRC’s dysfunctional institutional culture. The military has opposed abolition.

The DRC ratified the Rome Statute in 2002. However, the DRC’s implementing law (2015) authorizes the death penalty for crimes that may be capital crimes under the Rome Charter.

## INTERVIEW



### MAYA SAHLI FADEL

Commissioner of the African Commission on Human and Peoples Rights, on the work of the African Commission on Human and Peoples’ Rights

#### **What is the purpose of the African Commission on Human and Peoples Rights?**

The Working Group of the African Commission, set up in 2005 and composed of Commissioners and independent experts, started by looking at the death penalty in Africa. [...] A study adopted in 2011 is currently being revised to take into account several emerging issues including the death penalty in the context of the fight against terrorism and the important question of vulnerable groups, including women, foreigners on death row, etc. We have also taken a number of advocacy and awareness-raising actions, adopted many resolutions on abolition, supported the UN moratoriums, and called on States to adopt moratoriums in practice or take steps to establish moratoriums in law.

The situation in Africa has evolved for the better, notably in francophone Africa, which has shown a real willingness to abolish the death penalty. Numerous States have already abolished capital punishment or are abolitionist in practice. It is important to focus on East Africa which has been hesitant to commit to abolition or a moratorium. It was encouraging this year to see that the last moratorium resolution adopted by the UN General Assembly was supported by several more African States. We continue on the ground to make African States aware that human dignity and the right to life are fundamental rights. We also visit countries, and when we are in a country that continues to practise the death penalty, we call on that State to at least move to a moratorium in practice. [If it does] we then ask it to take another step towards abolition by revising



We continue on the ground to make African States aware that human dignity and the right to life are fundamental rights.

its laws on capital punishment, and eventually to protect the right to life by abolishing the death penalty constitutionally.

The presentation of periodic State reports to the African Commission is a second important area. When these reports are presented, we prepare questions in advance. When a State is not an abolitionist State, we call on it to explain why it continues executions and in the concluding resolutions invite it to move towards a moratorium or abolition. So we have several tools and instruments that enable us to advocate with African States. What I stress is

that we are on a path towards abolition: I often say that the next continent to become abolitionist is likely to be Africa.

#### **Looking ahead more broadly, what challenges remain to be resolved, and what opportunities can Africa seize?**

There are many challenges. First of all, there is the political will of certain States to move towards abolition. One of the challenges for the African continent will be to open a discussion in our regional institutions. I say that because the African Commission has prepared a draft Protocol to the African Charter on abolition of the death penalty. [...] Unfortunately, some States that retain the death penalty blocked the proposal in the African Union because they do not want to open a debate on the matter. This is a major challenge and our strategy now is to open a discussion with these States on the need for a participatory and inclusive dialogue in the African Union. To do this, we are counting on States we are calling 'champions', in other words abolitionist States such as Benin, which held a major international conference on the death penalty in 2014 that established a consensus in favour of moving towards abolishing the death penalty. We will talk to these lead States and ask them to be spokespersons for abolitionist States in Africa in discussions with retentionist States.

Second challenge: the arguments presented by retentionist States are political - the fight against terrorism, or religious and cultural traditions. Here too, work needs to be done to foster inter-religious dialogue involving religious leaders, notably Muslim leaders and also leaders of Christian churches in countries where the death penalty exists. It is important to have such an inter-faith dialogue because I think we lack fora in which to debate the relation between religion and the death penalty. Currently, those with conservative points of view dominate discussion of the death penalty. Although in the Muslim context we are seeing new openings and interpretations, I would say we need the emergence of new thinkers, who can provide a new reading of what the Koran says on the subject

of the death penalty. When you read the Koran, the sacredness of life is mentioned 17 times. Life must be protected because it was created by God and only God may take life away. By contrast, I believe - though I am not an expert - that only two verses refer to the death penalty. At all events, I think that, when weighing the two approaches, consideration must be given to the sacredness of life, which is clearly recognized. We need this opening to religious thinking about the death penalty, involving the three religions, underlining human dignity and the sacredness of life. This is a challenge which could also lead us to the universal character of abolition. In Africa, this is a major issue. As I have said, the absence of abolition is due sometimes to religious, sometimes to cultural, and sometimes to political factors. We must work in all three dimensions to advance progressively towards eventual complete abolition in Africa.

#### **How important are the issues of terrorism and the drug trade?**

These are emerging issues. To begin with [...], if the death penalty is retained, it must be imposed for the most grave crimes, but in certain countries drug trafficking carries the death penalty. In certain countries, economic crimes were subject to the death penalty, or adultery. With respect to terrorism, a number of countries that had a moratorium on the death penalty have had problems of insecurity [...]. Take the example of Chad: it adopted a law to fight terrorism that re-introduced the death penalty for acts of terrorism. Tunisia did the same. [...] We must keep our eye on this fragility, because we have seen that on terrorism States can go backwards from one day to the next. With respect to other crimes, the key issue remains that States that retain the death penalty may only do so for the most grave crimes. The issue there is that the interpretation of 'most grave crimes' is discretionary. What one State says is a most grave crime, another says is not. On crimes other than the death penalty, there has been a debate about decriminalizing certain offences, for example, begging. Within the Commission, a Commissioner responsible for this issue has put together guidance on the decriminalization of a certain number of offences which do not justify depriving a person of their liberty. With respect to the death penalty, the Commission considers that intentional homicide remains a 'grave crime', likewise abduction, and the assassination of a child. By contrast, an economic crime, even human trafficking, should not lead to the death penalty.

For us what is important is that the draft Protocol on the death penalty should be discussed in the African Union. That's the next stage for 2019, because, if it is discussed and adopted [...], we know that some 15 States are abolitionist and that this Protocol could enter into force if 15 States ratify it. Other States will then follow.

# IX STRATEGIES FOR ABOLITION IN IRAN

## Moderator

**Kambiz Ghafouri** • Iran Human Rights

## Speakers

**Mahmood Amiry-Moghaddam** • Director of Iran Human Rights.

**Javaid Rehman** • Special Rapporteur on the situation of Human Rights in the Islamic Republic of Iran.

**Taimoor Aliassi** • Representative of KMMK-G at the UN.

**Monireh Shirani** • Balochistan Human Rights Group.

**Neda Shahidyazdani** • Director of Impact Iran.

**Julia Bourbon Fernandez** • MENA coordinator at ECPM.

After China, Iran is among the countries that hold the most execution and condemn most prisoners to death. While welcome reforms to Iran's drug laws sharply reduced the number of executions in 2018, the panel identified a number of serious rule of law issues, violations of the rights of children and women, imposition of the death penalty for 'less serious crimes' including economic crimes, application of the death penalty to sanction political opponents, and discriminatory application of the death penalty against minorities. Many of these concerns were raised during Iran's last hearing before the Universal Periodic Review (2014), where one in five of the recommendations made related to the death penalty.

## Use of the death penalty to sanction 'less serious crimes'

The first set of issues concerns the scope of the death penalty. Iran imposes the death penalty for an unusually wide range of crimes. It is critical to bring pressure on the Government to further reduce the scope of the death penalty. Although Iran has reduced capital punishment for drugs crimes, it continues to sentence people to death for 'less serious crimes', including economic crimes such as corruption, fraud or bribery, in violation of international law.



Mahmood Amiry Moghaddam, Director of Iran Human Rights (IHR), during the press conference about the release of the 11<sup>th</sup> "Annual report on the death penalty in Iran" by IHR and ECPM

## Application of death penalty to children

It also continues to sentence to death and execute minors, in violation of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). It is estimated that at least 85 children are currently on death row in Iran, although a 2013 amendment to Article 91 of the Penal Code permits judges to exclude children from the death penalty.

## Women

Women who have suffered many years of gender violence continue to be convicted for murder if they kill those responsible for the violence against them. A plea of self-defence is not recognized and other mitigating circumstances are not taken into account.

## Lack of due process, mistreatment

Iran's judicial process does not provide adequate defendant guarantees, prejudicing the outcome of trials. Judgements are often reached behind closed doors, especially judgements made by the revolutionary courts. Many prisoners are sentenced after summary trials, isolated, and lack legal representation. In many cases, families are not informed that their relatives have been arrested or where they are held. Mistreatment after sentencing is also an issue. Prisoners are often beaten, for example after members of their own social or minority group have protested ('double sentencing').

## Discriminatory application of the death penalty against minorities

Iran has sentenced and executed many opponents of the Islamic Revolution since it first came to power 40 years ago and individuals continue to be convicted and sentenced to death for political crimes.

In addition, the authorities discriminate against minorities in their application of the death penalty and imprisonment. Kurds represent about 13% of Iran's population but one quarter of those who are executed and almost half of Iran's prisoners. The majority of the crimes for which Kurdish people are prosecuted relate to national security and 'offences against God'. The Government also discriminates against Kurds when it refuses to return to their families the bodies of Kurds who have been executed.

Balochis, similarly, represent 2% of the population of Iran but 20% of those who are executed.

Extrajudicial killings, notably by Revolutionary Guards, are a major concern.

## Looking forward

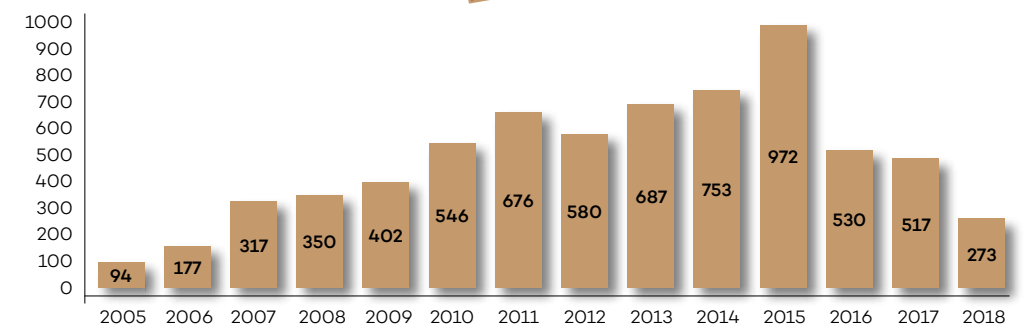
Although this description is bleak, there has nevertheless been significant progress. Two key goals were recently achieved. First, stoning to death has ceased. In 1996-1997, shortly after Iran and the European Union (EU) established diplomatic relations, videos of stoning emerged. As a condition of maintaining diplomatic relations, the EU required Iran to cease this form of punishment, and in 2002 Iran announced a moratorium on stoning with a view to ending the practice, although stoning incidents continued. Stoning finally ceased after a major campaign in 2010, called 'Stop Stoning Forever'; it remains formally authorized in the criminal law.

Second, in 2017 Iran amended its narcotic laws to remove many drugs crimes from the list of offences subject to capital punishment. As a direct result of this reform, the number of people condemned to death fell significantly and many prisoners were removed from death row.

## Challenges and recommendations

- Law reforms are essential.
- Even without law reforms, the Iranian authorities could significantly reduce the number of convictions and executions if they respected Iran's Constitution and their international obligations. The international community should encourage them to do so.

Execution Trends in the Last 14 Years



The number of executions in 2018 was the lowest since IHR published its first annual report on the death penalty in 2008. Numbers prior to 2008 are reported by Amnesty International while the numbers in the last 11 years are based on IHR reports. One cannot rule out the possibility that the pre-2008 figures are underestimated since they are mainly based on official reports.



Jerry Givens, former executioner from USA who has become an abolitionist activist, at the Global March for the abolition of the death penalty in the streets of Brussels

# X

## WHY THE DEATH PENALTY CONTINUES TO BE APPLIED IN BELARUS

### Moderator

**Julia Ouahnon** • International Federation for Human Rights (FIDH)

### Speakers

**Valiantsin Stefanovic** • Lawyer, Human Rights Centre Viasna.

**Lyubov Kovaleva** • Mother of Vladislav Kovalev, who was executed in 2012.

**Aliaksandra Yakavitskaya** • Daughter of Henadz Yakavitski, who was executed in 2016.

**Andrei Paluda** • Co-ordinator of 'Human rights defenders against the death penalty in Belarus', Human Rights Centre Viasna.

**Anaïs Marin** • UN Special Rapporteur on the situation of human rights in Belarus.

**Andrei Naumovich** • Chair, Standing Committee on Human Rights, National Relations and Mass Media; Head, Parliamentary Working Group on Death Penalty Issues.

**Tatiana Termacic** • Head, Coordination and International Cooperation Division, Directorate General of Human Rights and Rule of Law, Council of Europe.

*"I do not have an answer for why the death penalty is still in place in Belarus. Belarus is not some exceptional state – there are no conflicts between religions or ethnic groups, no international conflicts, the crime rate is not high."*

**Valiantsin Stefanovic,**

Lawyer, Human Rights Centre Viasna

Belarus originally brought the death penalty into its criminal law from the Soviet Union, where executions were frequent in the 1930s. Both men and women were

executed, including for economic crimes. Executions continued to occur after 1991, when Belarus became fully independent: 12 articles in the criminal code authorize capital punishment, as well as two crimes in wartime.

Today, women are no longer sentenced to death; the death penalty applies to men between the ages of 18 and 65. Since 1991 fewer executions have taken place, but they still occur. In practice, the death penalty is now applied only in murder cases. Last year four people were executed and two people have already been placed on death row in 2019. A prisoner who has been sentenced to death may appeal for a pardon from the President, but this has only been granted once.

“Belarus officials claim that the death penalty reduces crime rates, but statistics show no correlation between crime rates and the death penalty.”

### Issues of due process

As Julia Ouahnon noted, “human rights violations happen at every stage of the judicial process”. Judicial officials are not independent. There is no presumption of innocence. Many accused have no access to a lawyer and trials often take place without a lawyer present. Prisoners are often tortured physically or psychologically to sign declarations of guilt which are subsequently difficult to retract. Socially or economically vulnerable detainees are often represented by state lawyers who encourage them to plead guilty in order to reduce their sentences.

The absence of an appeal mechanism in Belarus is a particular concern. The Supreme Court imposes sentences as the court of first instance and there is no option of appeal to a higher court. This procedure violates the ICCPR and means that sentences are arbitrary and lack due process. The effect is to permit execution of potentially innocent people.

### Violations of the rights of families

The current system in Belarus violates the rights of the accused but also their families. The UN has identified numerous violations of the rights of family members, including withholding information from them, failure to return the body after execution, and refusal to disclose the location of the grave.

Neither condemned prisoners nor their families are informed about the execution process. Noting that “it is an old Soviet practice to punish the family of a guilty or accused person,” Anaïs Marin confirmed that States must refrain from executing in secret and must make information available to families.

Andrei Paluda drew attention to the practice of publishing cruel and libellous articles about the families of prisoners who are executed. He argued that this should be inadmissible. In his view, “the existence of the death penalty creates a spiral of hatred that affects the whole society”..

*Before her father’s arrest, Mr Yakavitski’s daughter, Aliaksandra Yakavitskaya, had not been aware that Belarus retained the death penalty. At her father’s trial, she said, some witnesses were not sober and made contradictory statements. “The main argument in my father’s conviction was that there was simply no one else to blame and he already had a prior conviction.” While he was held in the pre-execution facility, she was given little information and he was subject to heavy security measures and cruel treatment. Neither Mr Yakavitski nor his family were told the date of execution. The family was only notified a month after the execution had taken place. They did not receive his body for burial, or his personal belongings, and do not know where, or if, he is buried. After articles were published in the media, people said that she and Mr Yakavitski’s wife had murderous blood in their veins and deserved the same fate as her father.*

#### About Henadz Yakavitski’s family

He was executed in 2016

### The need for information and debate

It is frequently argued in Belarus that the death penalty cannot be abolished because it has public support. A recent survey found that 60% of the public support capital punishment and that 23% are unaware that the death penalty is applied. The panellists pointed out that the secrecy of the authorities makes it difficult for people to inform themselves. The Government provides no official figures and discloses little information about its decisions and procedures. The media do not provide sound information either. The subject of capital punishment is rarely debated in the country. Abolition might be introduced into law by the President, by Parliament or through a referendum. The panellists discussed these various options.

The current President has stated that he cannot go against the will of the people. However, Andrei Paluda argued that public opinion should not be the decisive factor. France abolished the death penalty at a time when the majority of French people supported it.

Belarus could declare a moratorium, and convert all pending sentences to imprisonment. By their decisions, judges and prosecutors could also establish a de facto moratorium without any form of declaration.

Mr Naumovich was more cautious. As a member of the Parliamentary Working Group on Death Penalty Issues, he acknowledged that a majority of the public and many members of Parliament remain in favour of the death penalty. A referendum held now would not necessarily succeed and, if either a referendum or

Parliament voted against abolition, “it would block progress for many years to come. [...] Every country has its own way to solve this problem, and everyone is working in their own pace.”

All agreed that abolitionists need to reach out to the public, not just in Minsk but throughout the country. Arguing that “the more people know about the death penalty, the more they are against it,” Tatiana Termacic suggested that the government should lead a national public debate on the question.

## International institutions

Belarus is the only country in Europe that retains the death penalty, and the Council of Europe has prioritized abolition in Belarus, believing it is eventually inevitable. Belarus has a poor record of international cooperation with human rights bodies in this area. The Belarus authorities do not recognize the European Court in Strasbourg and consider recommendations made by UN human rights bodies to be non-mandatory. They have ignored recommendations of the UN Human Rights Committee and have carried out executions while it is still considering appeals. In the absence of a national appeals process in Belarus, nevertheless, appeals through UN bodies are a particularly important recourse for Belarus citizens.

## Challenges and recommendations

- Pending abolition, Belarus should introduce an appeals system for capital cases.
- Belarus should work in cooperation with UN human rights bodies to improve justice.
- The Government should immediately meet its international obligation to release information about the death penalty, provide information to those condemned to death as well as their families, and return to their families the bodies and possessions of those who have been executed.
- The Government should encourage a public debate on the death penalty. Activists should encourage public discussion of the issue throughout the country.

*“There are many obstacles on the road to recognition of human rights. That road is made by walking. I am sure the death penalty in Belarus will be abolished. But how many people do we have to lose before it is?”*

**Lyubov Kovaleva**

whose son Vladislav Kovalev was executed in 2012

# XI CHINA

China continues to be responsible for more executions than any other country, although the number of executions, the identity of those executed, and the crimes for which they were executed are not fully known because this information is considered a State secret.

The Rights Practice held a side event at the Congress, titled ‘Engaging China on the death penalty: challenges and opportunities’, to discuss how the death penalty might be challenged in China’s authoritarian environment. The discussion was chaired by Nicola Macbean, Director of The Rights Practice.

Three panellists – a lawyer, a legal scholar and an NGO staff member – shared their experience and insights. Because of the politicised nature of the death penalty in China, they saw little prospect for abolition in the short term. However, they believed the number of executions could be reduced and this was the main focus of their research, training, case work and policy advocacy.

The legal scholar said that some good research on the death penalty is now available in Chinese, but lawyers and practitioners are either not aware of it or do not find most of it useful. A number of researchers have focused on the notion of ‘most serious crimes’ in domestic Chinese law, but little research has been done on other important topics, such as the use of *sihuan*, the Chinese practice of imposing death sentences suspended for two years.

Domestic Chinese researchers are largely unfamiliar with international standards on capital punishment. As a result, international law tends not to influence their work. Little empirical research is being done in China. This is partly because relevant data are categorized as a state secret and unavailable, and partly because researchers lack training in empirical research methods. Lawyers often complain that the research that is available is too theoretical and without practical value.

Training is taking place, however. Several workshops have been held to introduce young scholars to new research approaches and international debates on the death penalty. Unfortunately, restrictions on foreign funding mean that it is difficult to hold these workshops in mainland China and domestic sources

of funding are inadequate or unavailable. A book is currently being prepared on the role of research in policy advocacy with the aim of encouraging more empirical research on the death penalty in China.

The lawyer highlighted the challenges that lawyers face in China, particularly when they defend death penalty cases. A key challenge is that criminal cases are under the control of the three state judicial institutions (the police, the procuratorate and the courts) and, in practice, defence lawyers are treated as adversaries. The police often face pressure from the public and other institutions to secure a guilty verdict and are unwilling to share information with defence counsel. The evidence chain in cases is often weak, but there is little that defence lawyers can do to investigate the case themselves. For their part, judges often refuse defence arguments but do not provide the reasoning for their decision. In civil cases lawyers can actively raise and put forward evidence, but most lawyers are wary of doing so in criminal cases. Public pressure on the authorities also means that lawyers who appear for the defence in death penalty cases can be at risk themselves.

As already noted, Chinese lawyers either have a very limited understanding of international law or do not consider it relevant. This is partly because judges do not consider international standards. If lawyers cite international law, judges usually refuse to accept their arguments; indeed, citing international law can be detrimental to a case.

On the positive side, international law principles are starting to have some influence as lawyers become more aware of their relevance, and there have been some relevant legal reforms in recent years. The regulations on evidence in death penalty cases were redrawn in 2010, for example, and a legal aid law is currently being drafted. (Researchers will have an opportunity to comment on it later in 2019.) Since 2007 all condemnations due for immediate execution have been reviewed by the Supreme People's Court, a decision that appears to have reduced the number of executions.

The Chinese NGO partner described the role of civil society, the media and public opinion. She said that the topic of capital punishment is not itself sensitive for NGOs. The Chinese authorities are less concerned by what issues NGOs address than by how they run their activities and who participates. For example, they frequently disrupt trainings because they fear they promote human rights ideas. NGOs must be creative to work in this restrictive environment but it is still possible to raise awareness, discuss issues at local level, and publish information on certain cases through the local media.

A question was raised about the death penalty in Xinjiang, given the large-scale detentions that have taken place in the region as well as reports of deaths in custody. Unfortunately, reliable information is not available and we do not know whether the number of executions has increased. The Rights Practice was aware of reports that the former Xinjiang University President had been given a two-year suspended death sentence in 2017.

## Recommendations by The Rights Practice to the international community

- Press for transparency. Request the Chinese authorities to publish the number of executions and all final judgements.
- Encourage the Chinese authorities to review China's policies on drug crimes and work towards ending executions for drug crime cases.
- Continue to argue that lawyers should not be restricted when they defend clients and that China's judicial system should respect and protect fair trial rights and the independence of courts.
- Press the Chinese authorities to make space for civil society activities and remove restrictions on NGO cooperation with international NGOs.
- Provide more resources to support research, capacity building and advocacy on the death penalty in China.

## Reading

The Rights Practice, Respect for Minimum Standards?









Typh Barrow, Belgian singer performing during the Official Opening Ceremony of the 7<sup>th</sup> World Congress.



# VOICES AND INSTITUTIONS

CLOSING CEREMONY

UN EXPERTS / PARLIAMENTARIANS

NHRIS / BAR COUNCILS

YOUNG PEOPLE / FAMILIES



Hsin-Yi Lin, Director of Taiwan Alliance to end the death penalty, next to Kevin Miguel Rivera-Medina, President of the World Coalition Against the Death Penalty, during the Official closing Ceremony at Bozar

# XII

## CLOSING CEREMONY

### Moderators

**Susan Kigula** • Former death row prisoner, Uganda.  
**Alexandria Marzano-Lesnevich** • Lawyer and writer, US

### Speakers

**Paul Dujardin** • CEO and Artistic Director of Bozar, Kingdom of Belgium.  
**Didier Reynders** • Deputy Prime Minister and Minister of Foreign and European Affairs, Kingdom of Belgium.  
**Aleyya Gouda Baco** • Representative of Séverin Quénum, Minister of Justice and Legislation, Republic of Benin.  
**Christian Leffler** • Deputy Secretary General for Economic and Global Issues, European External Action Service.  
**Henriette Geiger** • Director for People and Peace, Directorate General for Development and Cooperation, European Commission.  
**Sebastiano Cardi** • Director General for Political and Security Affairs, Ministry of Foreign Affairs and International Cooperation, Italian Republic.  
**Sophie Thevenoux** • Ambassador, Principality of Monaco.  
**Ballaké Sissoko** • Artist, Mali  
**Michelle Bachelet** • United Nations High Commissioner for Human Rights, former President of Chile (video message).  
**Thorbjørn Jagland** • Secretary-General of the Council of Europe (video message).  
**Carleen Pickard** • Ethical Campaigner, Lush North America  
**Basile Ader** • Vice-President, Paris Bar  
**Nicole Van Crombrughe** • UIA Executive Committee, representing Bar Associations against the death penalty.  
**Kumi Naidoo** • Secretary General of Amnesty International (on video)  
**Joseph Jovin** • Presenter of the Fourth Draw me abolition prize, Tanzania.  
**Ensaf Haidar** • Wife of Saudi blogger Raif Badawi, sentenced to death.  
**Fatima Mbaye** • Attorney of Mohammed Mkhaitir, Mauritanian blogger sentenced to death.  
**Kevin Miguel Rivera-Medina** • President of the World Coalition Against the Death Penalty.  
**Hsin-Yi Lin** • Director, Taiwan Alliance to end the death penalty.  
**Florence Leroux** • Attorney, board member of ECPM  
**Alain Morvan** • Journalist, board member of ECPM  
**Raphaël Chenuil-Hazan** • Executive Director, ECPM

The closing ceremony, in the arts centre BOZAR, was opened by the centre's artistic director, Mr Paul Dujardin. Declaring that abolition is a most important fight for humanity because capital punishment symbolizes human cruelty, he hoped that Africa would soon be the second continent to achieve abolition.

Mr Didier Reynders, Deputy Prime Minister and Minister of Foreign and European Affairs of Belgium, praised the depth and range of the Congress, which had hosted more than fifty diverse debates and cultural events. He underscored the value of inviting delegations from countries that still have the death penalty and encouraging people of all opinions to engage in dialogue, and hoped that he would soon have the opportunity to attend a World Congress that celebrated universal abolition.

Several of the Movement's principal supporters then spoke. Ms Aleyya Gouda Baco, representing the Minister of Justice and Legislation of the Republic of Benin, described the steps that Benin had taken between 1987 and 2018 to abolish the death penalty, affirmed humanity's collective responsibility to respect life, and underlined that the claim that the death penalty is justified because it deters crime has been shown to be false. People do not cease to commit crimes because of it.

Mr Christian Leffler, Deputy Secretary General for Economic and Global Issues at the European External Action Service, welcomed the event's cultural and religious diversity, which confirmed the movement's universal character. He highlighted that it is always inappropriate to take a life for a death, first because all criminal systems are fallible and the conviction and execution of an innocent person is cruel beyond measure, and second because research has demonstrated that the death sentence is discriminatory: those who are poor and already face discrimination are particularly likely to be sentenced. He ended by expressing confidence that "universal abolition is no longer a matter of if, but of when".

*"We're told by some defenders of the death penalty that it's a religious imperative, that it's part of the culture, that people would not understand if it were done away with. But cultures and religions are not static. Doctrines evolve. Interpretations change and people's understanding changes too. What doesn't change is the cruel and irreversible nature of capital punishment. There is no humane way to execute another human being, and there's no way back if you get it wrong."*

**Christian Leffler**

Deputy Secretary General for Economic and Global Issues  
at the European External Action Service

Henriette Geiger, Director for People and Peace of the Directorate General for Development and Cooperation of the European Commission, declared that capital punishment, like slavery and torture, should be eliminated from our societies. It is unacceptable that thousands of people continue to remain on death row in the US and that China does not even report how many of its citizens it executes.

Mr Sebastiano Cardi, Director General for Political and Security Affairs of the Italian Ministry of Foreign Affairs and International Cooperation, reaffirmed that Italy strongly supports universal abolition.

Mrs. Sophie Thevenoux, Ambassador of the Principality of Monaco, stated that the death penalty is incompatible with the values and principles of the Universal Declaration of Human Rights and that it remains vital to continue to fight this "inefficient and barbarous practice".

A musical interlude followed. Ms Susan Kigula sang "You raise me up", a song that she sang as a member of the choir she formed with other prisoners on death row in Uganda. Then Ballaké Sissoko played two pieces on the kora.

Speaking on video, Mrs. Michelle Bachelet, UN High Commissioner for Human Rights, underlined that abolition is not a monocultural idea because countries from different cultures and religions support it. She also reminded the audience that capital punishment is discriminatory: it disproportionately affects people who are already vulnerable or suffer discrimination.

Mr Thorbjørn Jagland, Secretary-General of the Council of Europe, also spoke to the Congress on video. He affirmed that capital punishment is not justice and that it is necessary to build a shared understanding of the reasons why it is right to abolish it.

*"Nowhere is discrimination in society more evident than when one looks at who is on death row. My Office conducts prison visits around the globe and colleagues consistently report that death rows are disproportionately populated by the poor and economically vulnerable, members of ethnic minorities, people with psychosocial or intellectual disabilities, foreign nationals, indigenous persons, and other people from marginalized communities. When statistics are collected, they support this observation. This discrimination is illegal and it is indefensible."*

**Michelle Bachelet**

UN High Commissioner for Human Rights

Acknowledging that this Congress had engaged for the first time with the private sector, Ms Carleen Pickard, ethical campaigns specialist at Lush North

America, thanked the Congress for inviting her and underlined that companies like her own would be robust and loyal allies of the abolitionist movement. The campaign that Lush ran had raised awareness in the United States, converted staff and many customers to abolition, and raised money and other forms of support for abolition campaigns. She looked forward to seeing her own and other companies at the next Congress.

Parliamentarians Against the Death Penalty presented the statement that is reproduced below.

The National Human Rights Commission of Côte d'Ivoire presented the statement by eleven national human rights institutions that is reproduced below.

Mr Basile Ader and Ms Nicole Van Crombrugge presented the statement on behalf of Bar Associations that is presented below.

In a video message, Mr Kumi Naidoo, Secretary General of Amnesty International, said that the fight against capital punishment was one of the most successful human rights campaigns, inspirational for others. He urged activists not to be discouraged because, even if they experience setbacks, the objective of universal abolition is truly achievable.

Joseph Jovin, a student from Tanzania, then presented the winners of the fourth Draw Me Abolition prize. See the Highlight on page 28.

Two witnesses then spoke on behalf of detainees. Ms Ensaf Haidar, whose husband was sentenced to death in Saudi Arabia for writing a blog. She expressed her complete opposition to violations of freedom of thought and expression, not only because of the injustice suffered by her husband, but because these are fundamental rights of all human beings. She said that each of us, and society, faces a choice: to create a better world or continue to allow people to be denied freedom of expression and to suffer violations of other human rights.

*"We have an unavoidable choice before us. Are we ready to step into the future? Or are we resigned to bequeathing to our grandchildren a sad memory of failed courage, of lack of will to change the world for good? Young people across the world face this choice. A world ravaged by war and human rights violations. Or a dream which should become a moral and human duty for us all, to support and consolidate freedom of conscience and human rights."*

**Ensaf Haidar**

wife of Raif Badawi, sentenced to death then to imprisonment in Saudi Arabia for allegedly insulting Islam.



Ensaf Haidar, laureate of the 2015 Sakharov Prize, wife of Saudi blogger Raif Badawi.

Ms Fatimata Mbaye, a lawyer in Mauritania, explained the case of her client, Mohamed Cheikh Ould Mkhaitir, condemned to death for blasphemy because he spoke in his blog about slavery and discrimination, notably against the caste of blacksmiths to which he belongs. In 2017 his sentence was reduced on appeal to two years, a period he had already served. He nevertheless remains in prison and is deprived of contact with his family, lawyer and doctor.

Mr Kevin Miguel Rivera-Medina, President of the World Coalition Against the Death Penalty, and Ms Hsin-Yi Lin, Director of the Taiwan Alliance to end the death penalty, read out the Final Declaration of the World Congress, reproduced above. (See the Final Declaration on pages 29-32).

Closing the Congress, Ms Florence Leroux and Mr Alain Morvan, representing ECPM, recalled that activists are the heart of the abolition movement. Without their energy and action, ideas lack weight. They congratulated the Congress for integrating new perspectives and directions, on the issue of gender for example, and for engaging with the private sector. Mr Raphaël Chenuil-Hazan, Executive Director of ECPM, closed the ceremony calling on all abolitionists to unite for change and join the growing family of campaigners against the death penalty. The participants then assembled for the World March for the Abolition of the Death Penalty.

# XIII

## UN INDEPENDENT EXPERTS

### Joint statement by UN independent experts

For the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR) in 2018, the universality of fundamental human rights was celebrated all around the world. It was reaffirmed at the highest level by the UN Secretary-General, Mr. António Guterres;<sup>4</sup> the UN High Commissioner for Human Rights, Ms. Michelle Bachelet;<sup>5</sup> and several independent human rights experts.<sup>6</sup> Just as the right to life, as enshrined in the UDHR in its Article 3, is a universal human right, the death penalty is a universal issue and the fight for its abolition is a universal fight.

Today, some 170 UN States have either abolished capital punishment in law or have a de facto moratorium on executions. Despite this global trend towards abolition, the death penalty continues to be applied in several parts of the world, most often in violation of numerous fundamental human rights and core human rights treaties and standards. The death penalty most severely affects the inherent right to life of every individual and, in practice, tends to be used in a discriminatory manner, disproportionately against individuals from the most vulnerable groups, such as racial or ethnic groups and minorities, people from lower socio-economic backgrounds, LGBT people; that is, those less able to defend themselves. It can constitute a political tool, used to limit individual freedoms (such as freedoms of expression, thought and religion) and against political opponents and human rights defenders. People facing the death penalty are often subjected to torture or other cruel, inhumane or degrading treatment, and see their procedural rights frequently disregarded, leading to death sentences based on trials that violate the basic norms and standards of fair trial and due process. Moreover, the death penalty is frequently applied for offences other than the “most serious crimes” in clear contravention to international law.

4 “Message by the UN Secretary-General for the 2018 Human Rights Day”, [see: <http://www.un.org/en/events/humanrightsday/sgmessage.shtml>].

5 “70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights: Statement by UN High Commissioner for Human Rights Michelle Bachelet”, [see: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23983&LangID=E>]. 3 “Statement by Special Procedures on the occasion of Human Rights Day, 10 December 2018”, [see: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23991&LangID=E>].

6 Joint Statement of UN Independent Experts, 7<sup>th</sup> World Congress against the death penalty.

Although the death penalty is not explicitly prohibited under international law, it is almost impossible to practice it without violating some of the most fundamental human rights.

Conditions of detention in death rows around the world do not comply with international standards and can amount to torture or other cruel, inhumane or degrading treatment or punishment. Individuals that have been sentenced to death are often being detained in isolation, in insalubrious cells and quarters, without proper access to food, sanitation, or basic health care. They are frequently being denied their rights to visits from their families and their legal counsels, as well as their right to petition for pardon. Detention conditions such as these can have severe physical and psychological consequences, and are further exacerbated by the constant expectation of

execution or, in the alternative, the often indefinite prolongation of death row due to extended proceedings or de facto moratoria.

In light of those several issues, we, as independent experts of the Human Rights Council, recall that:

- The death penalty is not a reliable deterrent and does not make society safer. On the contrary, when a State judges that life is not sacred, it spreads that idea among its inhabitants. Thus, violence leads to violence; in the end, countries which use the death penalty have higher crime rates than abolitionist countries.
- The death penalty is not fair, it is about vengeance which perpetuates the cycle of violence and suffering, whereas, on the contrary, justice aims to repair the situation.

We also reaffirm that, although the death penalty is not explicitly prohibited under international law, it is almost impossible to practice it without violating some of the most fundamental human rights, such as, most notably, the freedom from torture and other cruel, inhumane, and degrading treatments or punishments. Moreover, all human rights treaties and documents addressing the human rights are to be understood not as openly condoning it, but as a framework to restrict its use in view of its ultimate abolition; as set out in paragraph 6 of the Article 6 of the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> and as recently restated in the General Comment no. 36 of the Human Rights Committee.<sup>8</sup>

On the occasion of the 7<sup>th</sup> World Congress Against the Death Penalty, we therefore call upon States, as a matter of policy aiming to ensure compliance

with both the letter and the spirit of the most fundamental norms of human rights law, to commit to the universal abolition of capital punishment by:

- Ensuring that all judicial decisions are being carried out in complete respect of international standards of fair trial and due process, including the specific provisions on the rights of those facing the death penalty<sup>6,9</sup>
- Adopting an official moratorium on death sentences and executions, pending the total abolition of the death penalty;
- Adhering to the Second Optional Protocol to the ICCPR and supporting the UN biennial resolutions, of the HRC, on the question of the death penalty; and of the UNGA, on a universal moratorium on the use of the death penalty.

The death penalty is not solely a matter of national criminal justice; it is also a fundamental issue of human rights and, indeed, of national and global governance based on fairness, justice and human dignity. We reassert our commitment to universal abolition of the death penalty and encourage all stakeholders, whether States, international and intergovernmental organisations, NHRIs or civil society, to support our call.

## Signatories

**Ms. Agnès Callamard** • Special Rapporteur on extrajudicial, summary or arbitrary executions.

**Ms. Fionnuala Ní Aoláin** • Special Rapporteur for the promotion and protection of human rights and fundamental freedoms in the fight against terrorism.

**Mr. Michel Forst** • Special Rapporteur on the situation of human rights defenders.

**Mr. Nils Melzer** • Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

**Ms. Anaïs Marin** • Special Rapporteur on the situation of human rights in Belarus.

**Mr. Philip Alston** • Special Rapporteur on extreme poverty and human rights.

**Ms. E. Tendayi Achiume** • Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

**Mr. Dainius Pūras** • Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**Mr. Ahmed Shaheed** • Special Rapporteur on freedom of religion or belief.

**Mr. Javáid Rehman** • Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

**Mr. Yuval Shany** • Chair of the United Nations Human Rights Committee.

<sup>7</sup> UN General Assembly, "International Covenant on Civil and Political Rights", UN Treaty Series, vol. 999, 1966, p. 171.

<sup>8</sup> Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, CCPR/C/GC/36, United Nations, 30 October 2018.

<sup>9</sup> UN Economic and Social Council (ECOSOC), Safeguards guaranteeing protection of the rights of those facing the death penalty, United Nations, 1984.



# XIV PARLIAMENTARIANS

## Concluding talking points on behalf of Parliamentarians and PGA, attending the 7<sup>th</sup> World Congress against the Death Penalty

Concluding talking points on behalf of Parliamentarians and PGA, attending the 7<sup>th</sup> World Congress against the Death Penalty

Honourable Colleagues, dear participants, It is our honour to address you on behalf of my colleagues here, as parliamentarians, human rights defenders and citizens of our respective countries. We belong to Parliamentarians for Global Action (PGA), a network of more than 1,300 individual parliamentarians from 130 parliaments around the globe. In our capacities as legislators, we promote human rights, the rule of law, gender equality, non-discrimination, and peace and security. We work together and support each other in our efforts to improve the lives of our people. As parliamentarians, not only can we play an important role in the abolitionist fight but we believe that it is also our responsibility to create a world where the human rights of everyone are respected. Together we stand here, and we make the commitment to pursue abolition in our respective countries and regions, with steps - big and small:

- Where executions are still being carried out, we call for a moratorium to ensure that no life be taken until a proper assessment of the criminal justice system's use of the death penalty can be made;
- Where the death penalty is being handed down by our judiciary, we commit to taking immediate steps to strengthen the judicial safeguards on capital cases and to improving the conditions of detention for death row inmates;
- We commit to taking every legislative measure towards abolishing the death penalty entirely, by removing mandatory capital punishment, reducing the number of capital crimes, and creating opportunities for rehabilitation instead of retribution;
- We commit to encourage our governments to support all regional and international initiatives that reiterate the value of life and promote abolition, including the United Nations General Assembly Resolution for a moratorium on the use of the death penalty and the Second Optional Protocol to the International Covenant on Civil and Political Rights;

- We commit to using our voices as representatives of our people to raise awareness about the death penalty in our constituencies and with our fellow citizens, and in doing so, to fight misconceptions and unfounded arguments;
- And overall, we commit to using all our parliamentary prerogatives and our privileged position to promote the human rights and abolition of the death penalty in our countries and throughout the world.

Today, we take this opportunity to call upon our fellow parliamentarians to join in this struggle. We invite our colleagues who are not already abolitionist to promote dialogue and to listen to survivors of the death penalty and their families, to victims of crimes, to judges, and to experts. We invite you to be open to re-examining your convictions and your beliefs to support the right of every human being to life and to dignity.

Every year, the use of death penalty decreases and it should reduce further. We invite all our fellow parliamentarians to stand up. As parliamentarians, we commit to using our influence to make sure this trend toward abolition continues and to fight against the resurgence of capital punishment. Thank you all for your attention.



Pete Ouko, lawyer and former death row prisoner in Kenya, walking in Brussels' streets at the Global March. The day before, Pete presented the emotional "Evening of Testimonies" at Bozar, giving the floor to the great witnesses to the death penalty.

# XV NATIONAL HUMAN RIGHTS INSTITUTIONS

## Call by national human rights institutions (NHRI) to strengthen and broaden the fight against the death penalty

The World Congress is a high point of mobilisation for the fight of the international abolitionist movement against the death penalty. This 7<sup>th</sup> 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 nongovernmental organisations, is an important step in the process leading to the universal abolition of the death penalty.

Considering that abolition is a global trend and that 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 7<sup>th</sup> World Congress held in Brussels from February 26 to March 1, 2109, 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 nongovernmental 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 for 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 (WFDH) held 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

# XVI

## DECLARATION OF BAR COUNCILS

### Resolution on the death penalty and conditions of detention and treatment of persons sentenced to death: mobilisation of Bars.

We, the Paris Bar, a founding member of the World Coalition Against the Death Penalty, and the International Association of Lawyers (UIA), on the occasion of the 7<sup>th</sup> World Congress Against the Death Penalty, to be held in Brussels from February 27 to March 1, 2019,

Noting that,

- The number of prisoners sentenced to death, according to the statistics available, remains high;
- The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules, revised in December 2015, despite the inherent general protection provided for persons deprived of their freedom, contain no specific protection regarding the conditions of detention and treatment of persons sentenced to death;
- The General Comment No. 36 of October 30, 2018 on Article 6 of the International Covenant on Civil and Political Rights (ICCPR) does not address specifically the issue of the conditions of detention and treatment of persons sentenced to death;
- The death penalty is a discriminatory and aggravating factor as it relates to respecting the dignity of prisoners and to the effectiveness of minimum judicial guarantees.

Recalling that,

- Bars and professional associations of lawyers have a vital role to play in advocating for the abolition of the death penalty and the establishment of a moratorium on it;
- Lawyers are one of the main safeguards for ensuring the effectiveness of the rule of law, and the proper administration of justice; and the role of lawyers,

as protectors of prisoners' human rights, is especially important in the case of death penalty prisoners.

Call upon Bars and professional lawyers' organisations from all countries, both abolitionist and retentionist, to:

- Uphold respect for the minimum judicial and due process guarantees, without discrimination, for all those facing the death penalty. Such guarantees must include, in particular, the categorical rejection of confessions obtained through torture; access to professional and good quality interpretation at all stages of judicial procedure; and the principle of free and competent legal aid services at all stages of judicial procedure.
- Defend respect for detention and treatment conditions for death row inmates that preserve human dignity and fundamental rights; including particularly by ensuring access to medical and health services from the outset of detention; access to the outside world; effective access to consular protection for foreign prisoners; and to address the use of solitary confinement, which should not be automatically and systematically imposed simply by virtue of the imposition of a death penalty.
- Participate in international advocacy for the drafting and adoption of additional and specific standards that can ensure better protection for death row prisoners across the world, and to obtain recognition, in their favour, of specific guarantees related to the specific particular vulnerabilities of death row inmates.

# XVII YOUNG PEOPLE

The Congress made a specific attempt to engage young people. In particular, a two hour session was organized to enable secondary students from Brussels to meet young abolitionists from a range of countries, and learn from their experiences, exchange ideas and develop action proposals. In addition, finalists for the fourth “Draw Me the Abolition” competition were hung for all the participants to see. The winners, selected by the public, were announced at the closing ceremony.

## Prize presentation

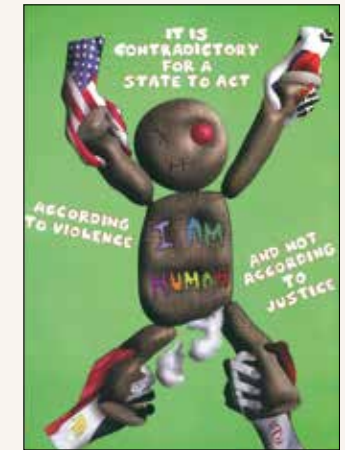
### Jury Award Winners



Kawayu L.;  
Institut de la Gombe,  
Kinshasa,  
Democratic Republic  
of Congo



Lola S.;  
Collège Saint-Spire,  
Corbeil-Essonnes,  
France

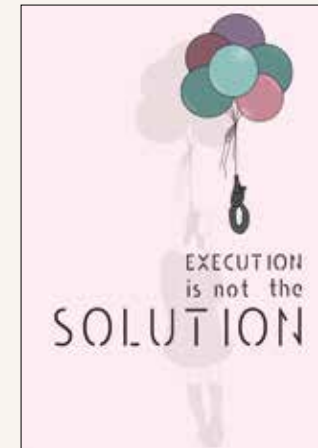


Valeria C.;  
Liceo Statale Galileo Galilei,  
Piedimonte, Matese,  
Italy

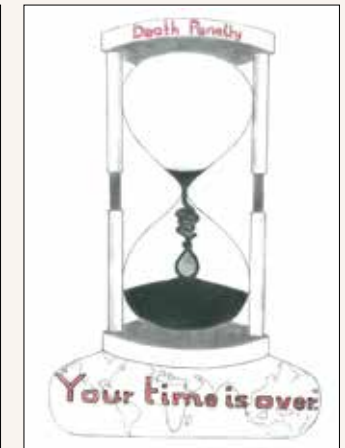
### Public Award Winners



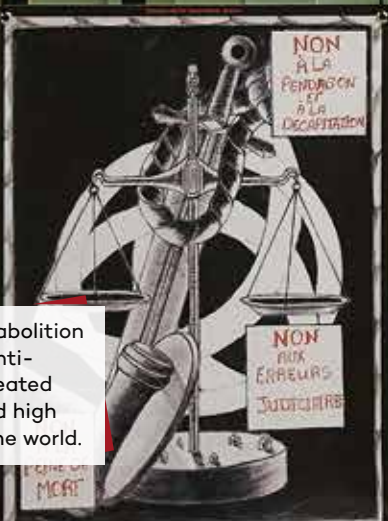
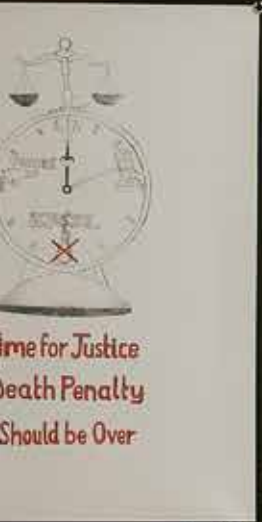
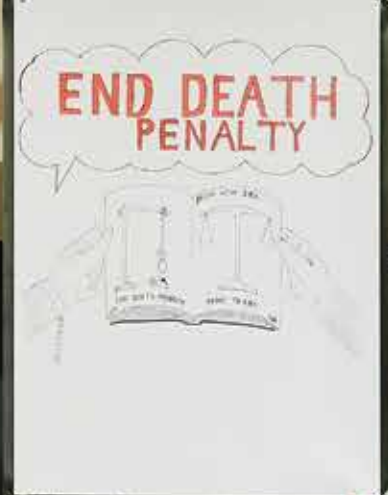
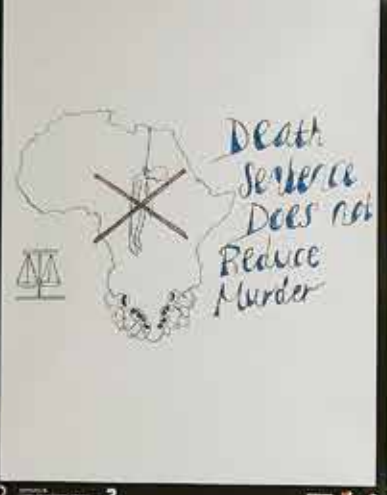
Lilli A. and Svenja K.;  
Internatsschule  
Schloss Hasenberg,  
Geisenheim,  
Germany



Cristina I. et Tania E.;  
Lycée classique  
G. Garibaldi,  
Castrovillari,  
Italy



Zefania B.;  
Cheso,  
Dar es Salaam,  
Tanzania



Exhibition "Draw me the abolition contest", top 50 of the anti-death penalty posters created by pupils from middle and high schools from all across the world.

# XVIII

## DEATH ROW PRISONERS AND THEIR FAMILIES: ASSISTANCE AND SUPPORT

### Moderator

**Sibel Agrali** • Director, the Primo Levi Healthcare Centre, France.

### Speakers

**Suzana Norlihan** • Advocate and Solicitor, Malaysia.

**Sohail Emmanuel** • Former prisoner and prison rights activist, Pakistan.

**Ensaf Haidar** • Director, Raif Badawi for Freedom Foundation, Canada.

**Herman Lindsey** • Board Chair, Witness To Innocence, United States.

*“Humiliation is like ... wherever I go I can see Malaysian people looking at me like I’m also a murderer or my family could not raise a child to be a good person. I’m sorry, I’m a bit emotional because every time I wake up I have to be strong even though I am not strong, I have to be strong for my brother, for my mother, for my clients, and every day I have to tell lies to them, to say that everything is OK, you have hope, you have hope, even though I don’t know whether they have hope or not, because in Malaysia once you are sentenced to death you are depending on the Sultan, on the King, to pardon you. Without their pardon, you won’t be able to get out.”*

**Suzana Norlihan**

a Malaysian lawyer whose brother is on death row.

The stigmatization of people who have been imprisoned and sentenced to death emerged as a major issue both for survivors and their families. It hampers their reintegration and prevents them from finding jobs, or obtaining accommodation. Discrimination, to which are often added insults and abuse, are humiliating, undermine their dignity, and may increase their social isolation. There is a tremendous psychological burden on prisoners, who must wait inactive in their cells on death row, sometimes for years; and on families, who are anguished by the situation of their son, or husband, or brother, who may not be permitted to visit, and can do so little to help – but must continue to work, and raise the children, and support the family.

*“When you talk about the death penalty in my country, people say ‘You took away a person’s life so one needs to take another life’. But on my side, as the offender’s family, I lost two members of my family (my father and grandmother) ... I became head of the family and had to pay all the liabilities that my father left and all the liabilities that my brother left. From the very first time he was arrested, friends, lawyers, mocked and insulted me. I was terminated from my job and had to open up my own firm... Finance was so difficult. I had to sell my father’s house, my bracelets and necklace, I even had to sell food at the roadside because I could not find a job...”*

**Suzana Norlihan**

a Malaysian lawyer whose brother is on death row.

When prisoners do come out, the challenges of adjusting, often after years of imprisonment, are made infinitely harder by discrimination, which does not spare those who have been exonerated and declared innocent of the crime they were accused of.

Sohail Emmanuel was on death row in Pakistan for ten years. His family was poor. One evening he was stopped by the police and detained. He did not know why he had been arrested, but was tortured for eight nights and seven days and then spent nine years in a correction centre infamous for its brutality. His problems did not end when he was released. For ten years, he was alone and had no-one to support him in his job search and reinsertion into society. A major difficulty was the ten-year gap in his career: once he was hired as a loader but fired after a month when his employers learned of his conviction. Today, Mr Emmanuel works with the Sunny Center, a support centre for people wrongly imprisoned, and is establishing a Sunny Center in Pakistan. About this work, he said: “First concentrate on the person involved, then on society and institutions”.



Suzana Norlihan, Malaysian lawyer whose brother is on death row, during the workshop "Death row prisoners and their families: assistance and support"



The stigmatization of people who have been imprisoned and sentenced to death emerged as a major issue both for survivors and their families.

*“The moment we walk out of that cell, of that prison ... we are released to start serving a life sentence in society. What I mean is that society has rules that [bear down on you], because you have been convicted of a crime regardless of whether you are innocent or not. [...] They could see that I was found innocent of that murder, but because I have been arrested for that murder they make it difficult for us to*

*find jobs, make it difficult for us to rent places, make it difficult for us to become productive members of society... I got married. I try to get a job, I can't get a job, I try to rent a place, it's most difficult... “*

**Herman Lindsey**

Chair, Witness to Innocence, former detainee on death row.

It is crucial to give survivors and their families a voice. They need to be able to say what has happened to them in order to overcome the humiliation, exclusion and denigration that they experience, and make life better for others. In the words of Ensaf Haidar, who fled Saudi Arabia with her children after her husband was arrested and condemned, the situation will not change as long as we are oppressed by pain and fear. “If we do not speak, our silence is a chain round our freedom.”

Above all, the families of detainees, and former death row prisoners, need practical support. All the speakers agreed on this critical point.

*Regardless of geographical and cultural differences, we fight the same battle... We have to be strong, all the time, day in day out, night in night out. And, you know, there's a point when you are so tired, so drained, and people still come and tap you on the shoulder and say 'You're strong, you'll be fine' – and you just want to scream from the top of your lungs 'I am not fine! My strength, I have to feed it, I have to build it, I can't do it alone!' But you have no choice.*

*The issue of support and assistance at this point for us, in this particular workshop, is more important than stories and testimonies. Because, how do you deal with it? You develop your own support network. In some countries, there*

*is nobody to turn to. Sometimes there are NGOs. You can count on one finger the number of NGOs who actually will help individual cases of families (or former death row prisoners for that matter). Even if you have a supportive family and friends, which is my case, they understand the words when I tell my experiences, but they are not in my shoes, they have not been through it. There are very few people with whom we can really share.*

*So I think the networking concept that was mentioned earlier is very important. A lot of families are in some countries totally isolated. No matter where we are, we all endure social, economic, professional discrimination because of our situation. Support networks need to be in place. NGOs must realize that we all deserve help, whether we are former death row prisoners or death row families. And it's not just a question of money. Of course, money will help you develop your communication system. But emotionally, psychologically, guys, it is hell – that is what I wanted to say.”*

**Sandrine Ageorges-Skinner**

married to a death row prisoner.

## INTERVIEW



**BILL PELKE**<sup>1</sup>

on how released prisoners cope

### **You work with people who are often released after many years in prison. How do they tend to get on? What happens to them?**

Well, over 160 have been exonerated in the United States alone and each one of them responds differently. One of the sad things is that many take to drinking. It's a problem with a number of the exonerees. Some adapt back to society very well, especially those who have family and friends. Some people are lost to their family and friends and when they get out they are alone. The organization Witness to Innocence do the best that they can to help those that need help. They have a gathering a number of times a year, and their spouses can come, so people can get to know each other.

Some have gone back to jail. Not necessarily for murder but for various crimes. A friend of mine has a good friend who got involved in drugs when he got out.

### **Does the State have programmes to support them?**

Each US state has different laws. Some US states give compensation for wrongful conviction. But many don't. They let a man out, give him 75 dollars and tell him 'Goodbye'. So they're on their own. It's very hard for a lot of them. But the majority of people have been very supportive of a person who gets off death row and try to do for the person what they can. Like I'm from Alaska, where we don't have the death penalty, but we've got a strong group of Alaskans, and each state basically has a coalition. So if somebody gets released from death row, they try to get in contact to see

what kind of help he or she needs. Oftentimes they need psychological help with adapting to whole new circumstances. A dear friend of mine used to live in a small cell, so everything was within arm's reach. When he got out and was in a house with three or four rooms, he would lose stuff because he would forget where he put it. He never lost anything when he was in his cell!

### **And meanwhile the world has changed...**

Yeah. This guy was handed a cell phone and told 'Someone wants to talk to you'. The guy said 'What's that?'

The girl that killed my grandmother was sentenced to death. She committed the crime when she was 15 years old. She was on death row for about four years and then her sentence was overturned but she still had to spend about 30 years in prison. While she was in prison, I was able to visit with her. About 14 times over a period of about 30 years. We exchanged hundreds of letters. When she got out of prison she was on, like, a probation for two years. And during that period she could not have contact with the victim's family. Even though I had visited with her and she wanted to join the Journey folk when she got out of prison. She wanted to talk to young people who were raised abusively and say to them 'This is what I did, this is the trouble I got into', to give young people an alternative way to respond. But we weren't able to have contact for two years. Three weeks before the two years were over, she committed suicide.

It was a very terrible day for a lot of people. Very tough for me. But she just felt that people were never going to forget what she did, especially her mother. She went to visit her mother on Mother's Day, with a boyfriend she had, and told her mother 'I would like to go to church on Sunday'. But her mother said she would not be welcome and she got very depressed. A week later was the anniversary of my grandmother's death, so there was a lot of stuff in the newspapers again. She just felt that she had served her time but people were never going to forget or forgive.

I think she had a hard time trying to forgive herself also. She was really good in prison, especially in the last years. She mentored young women coming into prison. She just wasn't prepared.

### **When you look at the support offered, do you think what is needed is more of the same? Or new, additional programmes?**

A lot of times punishment is all a prison is. They don't really try to rehabilitate you and prepare you for when you get out. For me, people should have counselling and to find out why exonerees still have a hard time dealing with things, and families as well. [...] And for people who did commit a crime, to ensure that when people get out they are not going to get in the same sort of situation again. It's tough.

<sup>1</sup> President of Journey of Hope... from Violence to Healing, an NGO based in the United States,

Oftentimes people who get off death row need psychological help with adapting to whole new circumstances.

**Would you make a distinction between the stress that's felt by anyone who comes out after a long prison sentence and someone who has been on death row?**

Each person is different. It's hard to say. I know a lot of people will get out and they'll be angry and mad, but the majority of people that I have met do not have that anger. They say 'I've spent all this time in prison. Now I'm out I'm not going

to spend my time wanting to get back at the people who put me there in the first place.' It's remarkable that most exonerates have a wonderful attitude. They're grateful to be out, to be alive. But many of them have trouble getting jobs, and when you're in prison for a long period of time you become institutionalized. I had this one friend, when he got out – when he came to a door, he would wait for someone to say to go. He'd been told everything to do and all of a sudden it was 'you can do whatever you want'. Or they will go into a store and there will be so many things to choose from, it will be mind-boggling to them.

When people have a chance to tell their story, it's good for them. Most of them, when they get out they've left friends on death row and so they want to help their friends, they're not going to abandon their friends. They know they have friends that were innocent and guilty. One of my friends, a man by the name of Dirk Jamieson, was on Ohio's death row. He watched 54 of his friends that he met in prison led off. A lot of them were young people. He knows some of them were innocent and some of them were guilty, but he knew each one – and since he got out he does whatever he can to work against the death penalty. Remarkable young man.

# LOOKING FORWARD



*“Your efforts and your activism [have] become one of the clearest examples of human rights impact that humanity has ever seen. The global campaign against the death penalty is a success story and there is no doubt that the death penalty is on its way out... The message of hope that your work sends to human rights activists who work in other areas is incredibly powerful and deserves recognition. We are now left with a few hardcore retentionist countries and we are seeing cracks in their walls... Do not let the occasional threat or setback discourage you or make you lose your fight or your collective strength.”*

**Kumi Naidoo**

Secretary General of Amnesty International

# XIX

## HOW CAN A RESURGENCE IN THE DEATH PENALTY BE PREVENTED?

### Moderator

**Nicolas Perron** • Director of Programmes, ECPM.

### Speakers

**Yuval Shany** • Chair, UN Human Rights Committee.

**Sandrine Dacqa** • Lawyer, member of the Cameroonian Network of Lawyers Against the Death Penalty.

**Karen Gomez-Dumpit** • Commissioner, Commission on Human Rights of the Philippines.

**Fatimata M'Baye** • President, Association Mauritanienne des Droits de l'Homme.

Although, overall, States are moving towards abolition, a number of governments have recently reintroduced the death penalty or widened its application, including Chad, Jordan, New Guinea, Pakistan, and the Philippines. They have justified doing so on a variety of grounds, but particularly to combat terrorism and the spread of drugs. Mr Yuval Shany began by describing the legal context, notably the UN Human Rights Committee's interpretation of the International Covenant on Civil and Political Rights (ICCPR), before speakers examined the situations in Cameroon, the Philippines, and Mauritania, three countries that have restored or are seeking to restore the death penalty for certain crimes.

### The UN Human Rights Committee's interpretation of the ICCPR

The Covenant on Civil and Political Rights (ICCPR, 1966) and its Second Optional Protocol (1989) contain several provisions on the death penalty. Article 6 of the ICCPR affirms the right to life; Paragraphs 2 to 6 of Article 6 limit that right. The ICCPR was drafted in a less abolitionist time: it nevertheless affirms the right to life, permits individuals to petition the Committee if that right is violated, and regulates use of the death penalty. Written later, the Second

# WORLD CONGRESS AGAINST THE DEATH PENALTY



Speakers during the roundtable  
"How can a resurgence in the  
death penalty be prevented?"

Optional Protocol recommends abolition of the death penalty by all States and, pending achievement of that objective, limits its use.

The UN Human Rights Committee has published General Comments that interpret the ICCPR, notably General Comments 6 (April 1982) and 36 (October 2018). Paragraphs 6 and 7 of General Comment 6 say that States Parties to the ICCPR are not obliged to abolish the death penalty (though abolition is desirable) but must confine its application to the 'most serious crimes'; States may not impose the death penalty for other crimes.

General Comment 36 adopted a contemporary and pro-abolition approach to the death penalty. Paragraph 34 affirmed that Article 6, Paragraph 2 of the ICCPR limits application of the death penalty to the most serious crimes committed in States that have not yet abolished capital punishment; and that States that have abolished the death penalty (and as a result can no longer apply it even for very serious crimes) may not re-introduce it. Abolition is irrevocable.

Paragraph 35 of General Comment 36 defined 'most serious crimes'. These are crimes of extreme gravity that involve intentional killings. This definition is pre-emptive, even if national legislation defines 'most serious crimes' more broadly. Paragraph 37 of General Comment 36 prohibited mandatory death sentences because they do not permit courts to take into account the personal circumstances of the offender or the circumstances of the offence.

Paragraph 40 of General Comment 36 established that the death penalty must respect Article 7 of the ICCPR, which sets limits on methods of execution. Paragraph 41 stated that trials must be fair and respect due process. Paragraph 43 asserted that, in cases involving the death penalty, guilt must be established 'beyond reasonable doubt'.

Paragraph 51 of General Comment 36 underlined the abolitionist spirit of the ICCPR. It stated that although "[...] Article 6, paragraph 2 [of the ICCPR] suggests that when drafting the Covenant the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, subsequent agreements by the States parties or subsequent practice establishing such agreements, may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances".

## Cameroon

Among French-speaking countries, Cameroon has sentenced most people to death, and the number of death sentences pronounced has risen. Capital punishment was introduced to Cameroon in the colonial period, but no executions occurred between 1999 and 2014, although the death penalty remained in the Penal Code. Since 2014, however, following changes in the country's anti-terrorism laws (after killings by Boko Haram), Cameroon courts have sentenced more than three hundred individuals to death. An additional legal reform in 2017 enlarged the power of military courts to impose death sentences.

Although the Government has justified these changes on security grounds, the new laws do not define terrorism and have been used for political objectives.

Ms Sandrine Dacga concluded that civil society and the international community need to bring pressure on Cameroon's government to reduce the imposition of death sentences and eventually abolish capital punishment.

## The Philippines

In the Philippines, capital punishment was authorized after independence and its use increased under President Marcos (president from 1965 to 1986). A moratorium lasted from 1987 to 1999 but executions resumed between 1999 and 2006. The Philippines ended capital punishment in 2006, after ratifying the Second Optional Protocol to the ICCPR. However, the law in question includes a provision that permits the Congress to reintroduce it.

Before and after his election in 2016, President Rodrigo Duterte promised to reintroduce the death penalty, notably for drug crimes. This promise attracted many voters and helped him win the election. Today, this issue remains high on the political agenda, alongside proposals to reduce the age of criminal responsibility.

The Human Rights Commission recently published a survey of political attitudes in the Philippines. Its results were interesting. It revealed first of all that the majority of Filipinos are not in favour of the death penalty. 70% of those polled believed there are better alternatives and only 30% actively supported capital punishment. Moreover, support for the death penalty fell after people received information about it. It showed further that many of those who support the death penalty are influenced by 'fake news'. The poll provided evidence that social dialogue and continued advocacy will influence attitudes and increase support for abolition.

The Government has made legal proposals for reintroducing the death penalty. These have been approved by the lower chamber but blocked in the Senate, on the grounds that they do not comply with the Philippines' international legal obligations.

## Mauritania

Mauritania applies a moratorium but, in practice, death sentences continue to be imposed. In addition, Mauritania reintroduced mandatory death sentences for certain crimes, including blasphemy.

Ms M'Baye described the case of a young blogger sentenced to death on grounds of blasphemy because he had condemned slavery and discrimination, especially against the blacksmith caste, to which he belongs.

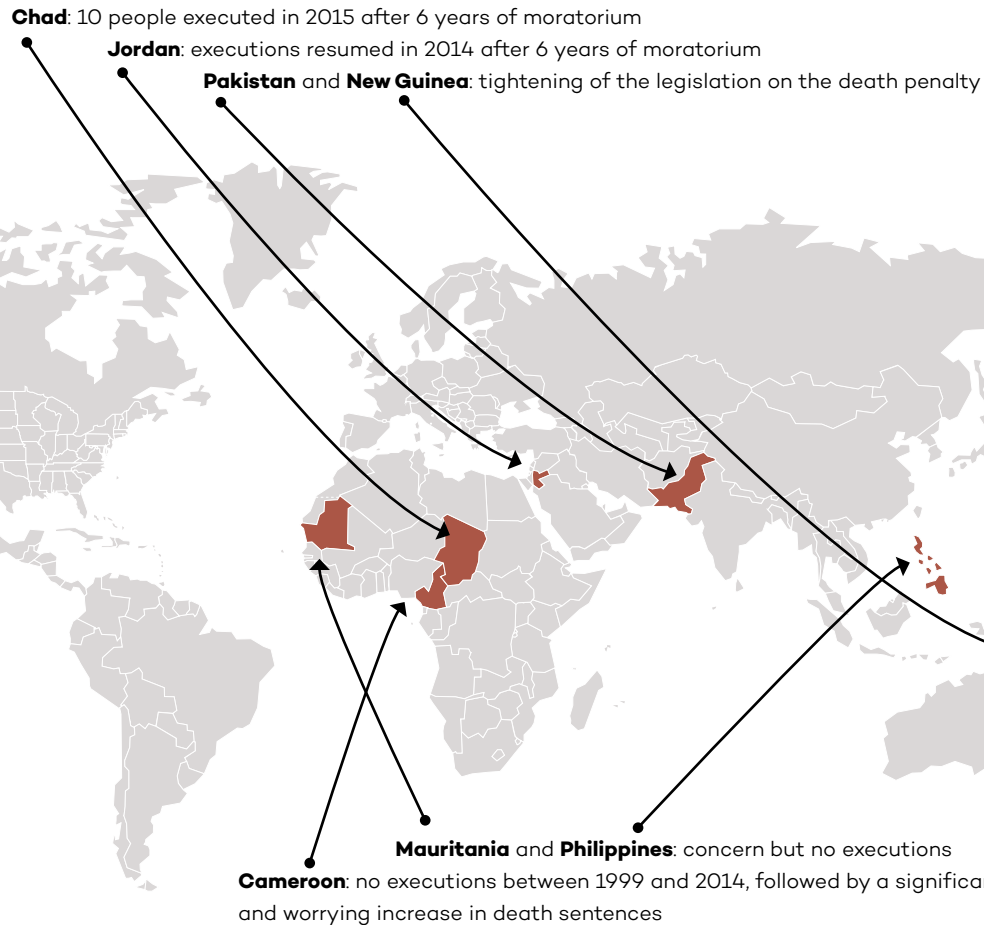
She concluded by saying that the main challenges in Mauritania are the absence of space in which to discuss the death penalty, lack of freedom of expression, and fear. She nevertheless expressed some hope of progress,

because Mauritania's newly elected President has made statements in support of human rights.

### Challenges and recommendations

All the speakers emphasized the importance of solidarity and networking, within countries and internationally, to prevent governments from reintroducing the death penalty or hardening and widening application of the death penalty.

#### Regressing countries



# XX

## REDUCING THE SCOPE OF THE DEATH PENALTY

### Moderator

**Aminata Niakate** • Lawyer and ECPM Board member, France.

### Speakers

**Neetika Vishwanath** • Associate, Project 39A.

**Naomi Lynton** • Lawyer, Barbados.

**Mahmood Amiry-Moghaddam** • Director, Iran Human Rights, Norway.

**Andrew Khoo** • Lawyer, Malaysia.

**Mohammad Musa Mahmodi** • Executive Director, the Independent Human Rights Commission, Afghanistan.

**Shreya Rastogi** • Founding member, Project 39A, National Law University Delhi, India.

This session reviewed the legal principles that condition the application and scope of the death penalty, as well as arguments from deterrence and arguments relating to Islamic law that are often advanced to widen the scope of the death penalty, before looking at the specific situations in India, Barbados, Iran, Malaysia and Afghanistan.

### Overview of international law

Neetika Vishwanath examined the notion of 'most serious crimes' in the context of international law. She noted that "the death penalty is the only exception to the right to life recognized under Article 6 of the International Covenant on Civil and Political Rights." International law has restricted the scope of the death penalty to 'the most serious crimes' and it is understood that abolition is now considered the ultimate goal. Agreement on what constitute 'most serious crimes' is more problematic. A number of international instruments have tried to define them and to restrict the number of eligible offences. The Human Rights Committee provided the most authoritative opinion in its

International law has restricted the scope of the death penalty to 'the most serious crimes' and it is understood that abolition is now considered the ultimate goal.

General Comment 36 on the right to life in 2018. This affirmed that crimes eligible for the death penalty are restricted to acts that directly result in loss of life and are committed with the intention to kill. Article 6(5) of the ICCPR also prohibits imposition of the death penalty on persons below the age of 18 and women who are pregnant, and in various other circumstances. With regard to procedures, a crime must be a capital crime when it was committed; death sentences cannot be reintroduced for crimes that are no longer capital crimes. Abolition must also have retroactive application for those on death row. Nor can the death penalty be imposed for crimes that are vaguely defined. With regard to conviction, guilt must be based on clear and convincing evidence. The death penalty cannot be imposed if the right to a fair trial has been

violated (if confessions have been obtained by force, relevant witnesses have not been examined, the time for trial has been inadequate, relevant documents were not made available, or presumption of innocence was not respected). Further, the death penalty cannot be mandatory, because this is inconsistent with individual sentencing. The rights of a person suspected or convicted of a capital offence must be met: for example, the accused must have access to adequate legal assistance at all stages, the option of appeal to a court, and the option to seek pardon. With respect to execution, safeguards include timely notification, no extreme delay, and a stay of execution pending judicial or executive proceedings.

### Deterrence

The panellists were asked to address the widely used argument that capital punishment deters crime. In response, they pointed out first of all that it is difficult to measure a negative. How does one ascertain that crimes would have occurred when they did not, or that the non-events in question were due to deterrence? The deterrence argument also assumes that those committing crimes are aware of the punishment they may receive.

Mr Khoo said that in Malaysia it has been useful to separate drug-related crimes from other types of crime that are eligible for the death penalty, because public opinion remains convinced that capital punishment deters most offences, whereas statistics have shown that drug-related crimes in Malaysia actually increased after mandatory death sentences were introduced. The authorities would find it relatively easy to remove the death penalty from drug sentences without creating a public outcry.

### The argument from public opinion

This raises a third argument often used: that capital punishment is justified by popular support. Public opinion is perceived in Malaysia to influence political attitudes and to favour capital punishment. In fact, as others have argued, public opinion is often swayed against capital punishment by information and argument. The issue is whether "politicians lead or follow".

### Islamic law

The panellists were asked to comment on Islamic law and its impact on public attitudes to the death penalty. Mr Mahmodi noted that in Afghanistan legal experts frequently debate with religious scholars about Sharia and civil law. It is understood that certain elements of Hudud crimes, defined by Sharia, cannot be touched; however, the death penalty is considered to fall under Ta'zir, and as a result, as Sharia law recognizes, decisions can be made at the discretion of judges. Mr Khoo said that Malaysia stubbornly claims a form of Malaysian exceptionalism which is inconsistent with the view of Islam as universal. Mr Amiry-Moghaddam doubted that Iran imposes the death penalty for purely religious reasons; rather, it uses religion to justify and win support for capital punishment.

### India

India has widened the scope of serious crimes by introducing the death penalty for the rape of children below the age of 18. After the issue of sexual violence became prominent, the Attorney General declared that rape is an offence even more serious than murder. In general, public opinion in India is in favour of retribution and the death penalty. India also has an extremely vague sentencing framework. Judges who wish to apply the death penalty can often find at least one precedent in case law to support their decisions.

### Barbados

In 2018, the Caribbean Court of Justice (CCJ) declared the mandatory death penalty unconstitutional in the case of Mr Jabari Nervais. Before this decision, a murder conviction automatically led to the death sentence.

To reach this decision, the CCJ had to reinterpret a saving clause in the Barbados Constitution which declared that mandatory death sentences were immune from challenge. It chose to consider this clause in the context of Barbados' colonial history and applied a modern interpretation in favour of the rights of the defendant. Barbados has yet to abolish the death penalty but supports abolition, and has exercised a de facto moratorium since 1984. No execution has taken place in Barbados since 1984.



To achieve long term impact, legislative reform is required. A problem here is that, when no-one is being executed, demands for abolition lose traction.

## Iran

According to a report published recently by Iran Human Rights (IHR), Iran has imposed the highest number of executions per capita, at least in the last 11 years, and, after China, is the country with the highest number of executions. Sentences and executions have fallen following a recent amendment to Iran's narcotics law, which restricted the scope of the death penalty. Mr Amiry-Moghaddam noted that "Iran has ratified the ICCPR [...] but the term 'most serious crimes' has been vague and there have been

many discussions around it".

Of those sentenced to death, 68,9% have been convicted of murder, 8,8% for drug-related cases, 8,4% for rape, and 13,9% for Moharebeh ('corruption on earth'). The latter category includes economic crimes and corruption. Three people were executed, and several more were sentenced to death, for Moharebeh crimes in 2018. The three men who were executed were arrested after the Government intensified a campaign against corruption in 2018 following demonstrations in protest at the country's economic crisis. Corruption cases are tried by revolutionary courts, often behind closed doors. The Iranian authorities consider economic crimes to be very serious because they affect many people.

## Malaysia

After it was elected in 2018, the new Government in Malaysia undertook to abolish mandatory death penalties. In October 2018, the minister in charge of law in the Prime Minister's Department announced that Malaysia would abolish the death penalty entirely. However, after pushback from opposition parties, threats of public demonstrations, and media reports calling for justice for the families of murder victims, the Government returned to talking of ending mandatory death sentencing. The government is attentive to the views of religious leaders, who tend to argue that attempts to reduce or abolish the death penalty are an affront and an insult to the dignity of Islam.

Malaysia is not a party to the ICCPR, or its Second Optional Protocol, or the Convention Against Torture, or its First Optional Protocol.

Drug-related offences have been a priority for the Government. It imposes severe penalties under the Dangerous Drugs Act (1952) and in 1983 made the death penalty mandatory for a range of drug-related offences. In 2018 the law was amended to give judges discretion in sentencing. There is discussion as to whether the death penalty should be imposed for drug-related offences, because it has not proved to have had a deterrent effect and the double presumption of possession and knowledge is inherently unfair.

## Afghanistan

Afghanistan's new criminal code (2014) limited the number of crimes subject to the death penalty. The death penalty is nevertheless frequently imposed, assisted by the fact that Afghanistan has suffered a vicious cycle of conflict for more than four decades. "The response to violence is more violence. But justice cannot be ensured by States killing their people." Relative to most countries in the region, Afghanistan has signed many human rights instruments, including the ICCPR. "The ICCPR does not give a license [to use] the death penalty, but rather sets conditions that countries that already have it must adjust to, according to certain principles."

Mr Mahmodi reported that the Independent Human Rights Commission has started to condemn the death penalty publicly. "We are working to obtain justice for people – not revenge." He drew attention to several recent incidents. In one case, public outrage after a woman was gang raped led to demands to execute the perpetrators. The government sided with the public, and the men were executed after a short trial process. After this incident, the Commission worked to raise awareness, by calling for a moratorium and organizing trainings. In another case, after a woman was killed by a street mob, the authorities followed the procedures required by the justice system, despite public demands for executions. These and other cases led the Government to draft a new penal code.

The death penalty now applies to only five categories of crime, reflecting the UN understanding of 'most serious crimes'. The Commission continues to work for complete abolition, but this remains a difficult issue for politicians. Nevertheless, mandatory death sentences have successfully been abolished, enabling judges to exercise discretion when they consider the individual circumstances of capital cases. In addition, two important new provisions in the legal code state that no persons below the age of 20 may be sentenced to death. Though no provision yet safeguards pregnant women and elderly persons from execution, historically women have not been executed, though exceptions occurred under the Taliban.

Afghanistan remains a retentionist State and does not yet support abolition; but there has been some positive improvement. The cases of 700 people on death row are currently under review; their sentences may be commuted to imprisonment. Public opinion remains a key issue but the Commission considers that public opinion will eventually follow the law, if the law brings justice.

## Challenges and recommendations

- To achieve long term impact, legislative reform is required. A problem here is that, when no-one is being executed, demands for abolition lose traction.
- Bring information before international rights bodies and local appeal courts.
- Progress step-by-step. Start by ending juvenile executions, for example.

- Focus on local research, because research describing the situation in other countries can easily be dismissed.
- Persuade journalists and the media to discuss abolition and the situation of prisoners, rather than focus exclusively on justice for victims.

*“Let us be clear. Pending the full abolition of the death penalty, all human rights guarantees must be rigorously applied in every case where a person faces the prospect of capital punishment.”*

**Michelle Bachelet**  
UN High Commissioner for Human Rights.

# XXI NEW TECHNOLOGIES AND THE DEATH PENALTY

## Moderator

**Berhan Taye** • Campaign coordinator, Access Now, USA.

## Speakers

**Sarah Belal** • Director, Justice Project Pakistan.

**Tom Waldron** • Senior Vice President, The Hatcher Group, USA.

**Lesedi Bewlay** • Light Touch Support Coordinator, The Engine Room, Botswana.

**Ludo van Staartstokken** • System administrator, Tails, Netherlands.

This session discussed good technological practices, before looking at three services that offer users practical support.

Communication technologies offer numerous opportunities, to connect people, disseminate information and strengthen campaigning and operational capacity. They also present risks, because they can be used to monitor activists, collect sensitive information, and spread falsehoods. Governments and other actors may suppress access to communication technologies to prevent information from circulating or to hamper the work of organizations that criticize their policies.

When making use of communication technologies, it is therefore important to be clear about what users want, what the risks are, and who the target audience is; and to take technical considerations into account. These include the infrastructure used (cloud or in-house), internal capacity (human resources, maintenance and management), and choice of programmes (open source or licensed). It is essential to keep technologies updated, plan for the long term, and prioritize maintenance.

The speakers emphasized that users should not underestimate how difficult it is to stay on top of technological trends that constantly evolve. They advised users to adopt technology that is appropriate for their local situation and can be supported by the resources that are available. Some tools are designed for use in environments that lack resources and connectivity. Some programmes work

## Technology must be secure; security requires continued attention.

better in areas with high connectivity. Users need to identify equipment and software that matches the resources they have and their needs.

Social media use varies from place to place, so it is important to use apps that are locally popular. At the moment, use of videos is increasing.

When using online tools, “it is a constant

challenge to get people to take action“. Online petitions can be effective; pre-drafted letters to decision makers may work. Always seek to make participation easy and efficient. Favour initiatives that require only a few clicks.

Technology must be secure; security requires continued attention.

Data must be protected: data collection should not be open-ended; data should only be collected for a specific purpose; and users should respect confidentiality (by securing prior informed consent before use).

## VPN versus TOR?

When users need anonymity, they can choose between VPN systems (virtual private networks) and TOR networks (an acronym derived from ‘The Onion Router’). VPN is provided by an entity that has one hub, whereas a TOR network uses many hubs. VPNs create the illusion that information originates in a different location, enabling a user to access a private network or a streaming page that is blocked in his or her region, for example. VPNs provide some anonymity, but it is not impossible to trace information back to the sender. TOR networks are more secure and provide greater anonymity because they employ onion routing and multiple layers of encryption to ensure that those who receive messages cannot trace their source. However, to counter the dark web, some countries have made it illegal to use TOR. In such cases it is recommended to use a VPN in order to avoid legal trouble.

## Connected Justice, Pakistan

In Pakistan 33 offences qualify for the death penalty. Around 320 people were executed last year and between 6,000 and 8,000 are held on death row, more than in any other country. To make matters worse, Pakistan’s justice system is opaque and inaccessible, and the country lacks lawyers with expertise in defending capital cases. “We were getting calls from all over the country to represent people who were facing execution.”

To address this issue, the Justice Project set up Connected Justice. The project uses an app to pair defendants with trained lawyers. Defendants complete a detailed questionnaire that covers their location and circumstances, the details of the case, the stage of the court process, etc.

Pakistan’s bar association has 30,000 members and is one of the largest in Asia. Many need work and training. Via the project, lawyers can build their

capacity and experience, acquire paying or pro bono clients, and build their portfolios; in addition, it encourages them in the direction of human rights work. There are step by step instructions on what the lawyer needs to do. If a case is time-sensitive, the project requires lawyers to commit themselves to the case promptly. The app also includes letter templates for various petitions.

The primary aim is to provide clients with better access to trained lawyers. A secondary benefit is that the data aggregated by the project will provide a more complete picture, both of the needs of those who are accused and of human rights violations in Pakistan. On the basis of this information, better proposals for long term reform of the system can be developed.

The Justice Project is very conscious of server security and does not store client information inside Pakistan. Clients can lay complaints against their lawyers.

Addressing the concern that lawyers without experience would be attracted by the app, Sarah Belal said that the project plans to provide additional training for lawyers that will take account of the complexity of cases. This could mean that, before they take cases, lawyers will need to show they have certain qualifications.

## Hatcher Group, USA

The Hatcher Group used social media to fight for abolition in Maryland, where “public opinion favoured the death penalty, but the issue of innocence has received an increasing focus... as it has in the US more generally”. Concerns about racial issues and unfair treatment have also grown.

The campaign was broad-based and a wide range of people contributed, including Kirk Bloodsworth, the first person in the US to be exonerated after receiving a death sentence. Maryland’s pro-repeal Governor, Martin O’Malley, was also supportive after he was elected in 2006. The 2010 elections created a majority for repeal in the General Assembly and by 2012 the campaign had all its arguments in line and was using social media extensively. At the time, it was novel to use social media to target the media and keep the governor and supporters focused. The campaign developed tweetathons, twitterbombs and tweetchats to create buzz and energy for the cause, and used Facebook to push out messages and increase turnout for events. It partnered with a range of organizations, including Amnesty International. In 2013 the campaign was successful: the bill was passed.

## The Engine Room

The Engine Room is an international organization that helps human rights activists and organizations to use data and technology. Resource constraints are never a trivial challenge, but technology does not need to be fancy to be effective. “We have learned that it is about people and being committed.”

The Engine Room has developed a tool called Alidade, which assists users to

choose the most appropriate tools. Alidade helps them to assess problems, select technology, identify what is out there, and find out who provides what. Organizations waste a lot of time unnecessarily building tools from scratch. Alidade helps users to take advantage of what is available and learn from past mistakes. It is designed for organizations that want a guide or planning document to show them how they can use technology to advance their work.

### TAILS (The Amnesic Incognito Live System)

TAILS is a secure system built to support activists, journalists and whistleblowers. It uses a USB stick to start a computer using TAILS instead of the computer's operating system. The USB runs the system, which is not stored or installed on the computer. TAILS is a digital security toolbox with secure defaults which is intended to protect the user's privacy, avoid surveillance and censorship, and leave no trace behind on the computer. Online interactions are often tracked, and many files and activities leave digital tracks on computers that can be detected. Using TAILS can be useful if users are using sensitive data, are at risk of surveillance, or merely want to be anonymous.

The system employs TOR networks to avoid surveillance and uses Debian as the base operating system. Debian is a free and open source software that includes a depository of software and is supported by an active security team.

### Challenges and recommendations

- Activists should constantly change tactics and try new things.
- Stay on top of technical changes.
- Match your technology to the local situation and available resources. Use apps that are locally popular.
- Pay attention to security.
- Respect principles of data protection.
- Use VPN to preserve anonymity if TOR networks are not legal in the country in which you are working.

# XXII

# NEW STRATEGIES FOR ABOLITION

### Moderator

**Emily Hutchinson** • Program manager, New Tactics for Human Rights, US.

### Speakers

**Chiara Sangiorgio** • Thematic Adviser, Amnesty International, United Kingdom.

**Hsin-Yi Lin** • Director, Taiwan Alliance to End the Death Penalty, Taiwan.

This session began by reviewing some of the rapid changes that are affecting advocacy on the death penalty, before hearing about work in Taiwan to reach out to the public. The participants then divided into four groups. Each group considered strategies that might be effective at local, national, regional, or international level. The groups were asked to identify the actors at each level, evaluate the context, and then develop a strategy. The groups reported back as follows below.

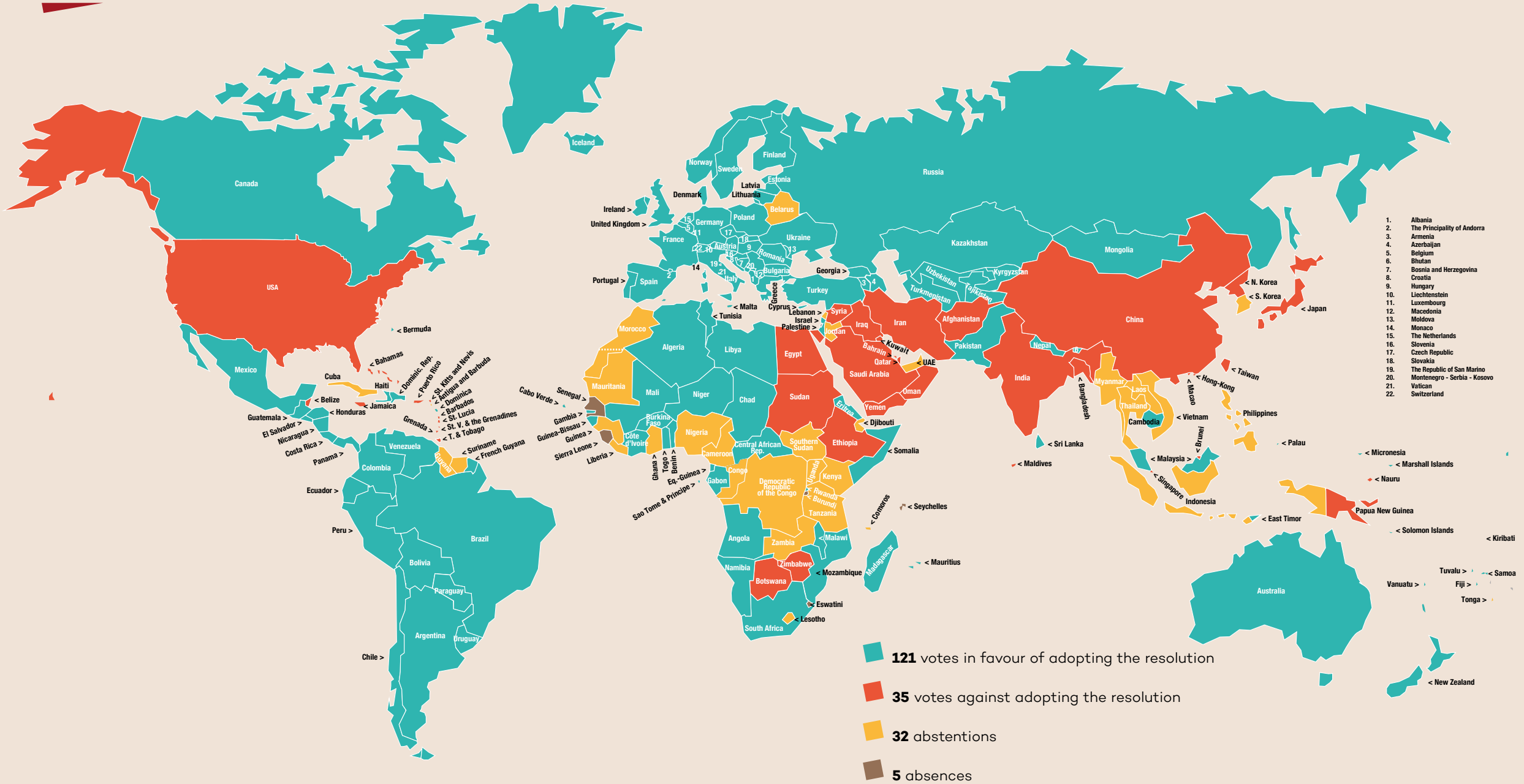
### Interesting times

Introducing the session, Chiara Sangiorgio emphasized how quickly the socio-political environment in which we work is changing. International law is under attack, undermining efforts to secure abolition. Political alliances are shifting, influencing both lobbying and support. We need to remember, for example, that abolitionists are not alone in campaigning on the death penalty: the United States has recently pressed various governments to support capital punishment. Europe is in political ferment over Brexit, migration, and populism. There is a global legal, security and political argument over terrorism and how to address it. New technologies are creating new opportunities for action but also new challenges and risks for abolitionists.

### Changing ideas in Taiwan

The Taiwan Alliance to End the Death Penalty described "Let's Discuss Alternatives to the Death Penalty". This campaign holds events in all of Taiwan's

# VOTES ON THE UN RESOLUTION FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY IN 2018



International law is under attack, undermining efforts to secure abolition. Political alliances are shifting, influencing both lobbying and support.

12 main cities at which it engages with people of all backgrounds on the death penalty and alternatives to it. It brings together people who are undecided (neither abolitionist nor strongly in favour of the death penalty), to inform them and listen carefully to their opinions. It then presents this information to politicians who say they cannot abolish the death penalty because the public supports it. The work is urgent because the Government promised to abolish the death penalty in 2000, but has not yet done so and has continued executions.

The working groups made the following points.

### Working group: local level

At local level, the main tasks proposed were to engage with and inform the public and to humanize the image of people on death row. Schools, universities and colleges were priorities. One approach would be to invite former prisoners on death row, or their families, or witnesses, to share their stories. If this was not possible (for example because it was unsafe, or travel was problematic), advocates could collect case studies and run exercises or role plays, allowing members of the public to understand and engage with the issues.

The main strategy was to interact and debate with the public. The group also wanted to use social media to communicate more widely. Advocates could create videos, for example, as Lush did, or host a moderated live Q&A session on social media websites such as Facebook or Instagram.

### Working group: national level

A range of actors are relevant at national level and a strategy needs to be tailored for each. Key actors include political parties and their representatives; here it would be important to take account of the political climate in the country. Thailand currently has a military-backed government, for instance: it might be appropriate here to link abolition to the struggle for democracy and human rights. Journalists and the media are a second key group. The strategy here might be to educate them about capital punishment and persuade them to stop sensationalizing the issue. A third key group is the legal profession. Here the strategy could be to engage and educate but also collaborate and promote advocacy. For example, the Malaysian Bar Council recently tabled a motion calling for abolition. Fourth, changing public opinion is a key objective. Here the first priority is to involve young people in a gender-neutral way. Families could be reached by focusing on the families of those on death row

as well as victims. Finally, leaders of specific groups should be approached, for example leaders of cultural, ethnic, native and disability groups.

The group emphasized the importance of understanding the context. It underlined that the abolition movement cannot take a 'one-size-fits-all' approach. Before deciding on a strategy, it is vital to consider the cultural environment, whether the country is in conflict, the quality of its democracy or political system, and other relevant factors.

### Working group: regional level

This group recognized that different regions may have numerous regional groupings (as in Africa) or a single regional body (as in South East Asia). It acknowledged that some regional groups may be particularly hard to influence (the League of Arab States, for example). The group also questioned whether certain regions were in fact homogeneous. The needs and human rights situations in North Africa and Sub-Saharan Africa are very diverse, for instance. Africa is not easily framed as a single region.

The group assumed that Governments lead public opinion. They agreed legal institutions are key actors. It is critical to reach out to Bar Councils, law schools and law students, who are tomorrow's leaders and influencers. They also agreed about the regional influence of the media. Radio France International reaches much of the francophone world, for example. Where internet access is good, podcasts and youtubers can be influential; where it is weak, WhatsApp is the key social media tool.

Outside the regional systems, the group recognized that certain countries have particular influence (the US in the Americas, Japan in Asia, etc.). A focus on these countries could have wider effects. Abolitionist States could also take a lead in their regions. Could Hong Kong drive discussions of crime and punishment in South East Asia, rather than Singapore, for example?

### Working group: international level

This group focused on States and considered how advocates could engage with them effectively. It emphasized that States need to understand and acknowledge their own histories and positions. One proposal was to link the arguments for abolition with the arguments of other movements, such as the nuclear disarmament movement. Based on their own experience, members of the group discussed how they might encourage global medical associations and doctors to focus on standards, death row conditions, and methods of execution. Religious leaders are another key group at global level: advocates should also engage with them.

**RECOMMENDATIONS  
FOR NEW STRATEGIES**

**LOCAL LEVEL**

To engage with and inform the public to humanise people on death row.



**NATIONAL LEVEL**

**Politics** Link abolition to the struggle for democracy & human rights.



**Medias** Engage & educate the media about, and persuade them to stop sensationalising the issue.



**Legal profession** Engage & educate but also collaborate and promote advocacy.



**Leaders of specific groups** Should be approached, for example leaders of cultural, ethnic, native or disability groups.



**INTERNATIONAL LEVEL**

Link the arguments for abolition with the arguments of other movements, like religious leaders.



**REGIONAL LEVEL**

Some countries have particular influence (the US in the Americas, Japan in Asia, etc.). A focus on those countries could have wider effects.



**XXIII  
CHALLENGES AHEAD**

**Participants identified many challenges during the Congress. We highlight a few here – not because we necessarily want them to become policy positions but to remind ourselves that, more than ever, it is important to keep our eyes and minds open.**

The political, social and economic environment is transforming around us. Legal, social, communications and security policies are changing in response. To stay effective, we have to change too. We need to check our assumptions and methods. They may be out of date.

- Who are our allies?
- Which people and institutions do we most need to influence?
- What methods of advocacy still work?

We campaign to stop Governments putting detainees on death row or executing them. If we are successful, however, many more prisoners may be sentenced to life imprisonment – which is itself cruel and causes enormous suffering for both detainees and their families. We are going to need to develop stronger positions on sentencing and on alternatives to the death penalty.

How can we involve more young people?

Where a long moratorium has been in place, how do we sustain advocacy for abolition?

We know how to increase audiences using social media. We know less well how to use e-tools to persuade people to act.

How do we keep e-safe? What more must we do to make sure that e-insecurity is not putting those who work with us at risk?

We have no effective strategy for influencing China.

The city centre of Brussels  
in the colors of the Global March  
for Abolition





# XIV AFTERWORD

The 7<sup>th</sup> World Congress was a success because we took account of the recommendations made at previous Congresses, notably the internal and external evaluation of the last Congress in Oslo. Meeting this year in the privileged location of Europe's capital was an additional advantage, because of Brussels' centrality and wide political representation. We now have to try to do still better in three years' time.

## The young are tomorrow's architects of abolition

The willingness of ECPM to prepare and run a participatory Congress stimulated involvement by all our partners. Asking witnesses and participants of school age to help plan and moderate sessions made a vital contribution. We were able to experiment with new formats, which undoubtedly invigorated many of the debates.

## Acting on recommendations

The efforts of the Core Group to mobilize political support bore fruit. Brussels achieved a wider diplomatic presence (a hundred countries or international organizations). Africa was particularly well-represented, due to the lobbying campaign carried out in Sub-Saharan Africa for the Abidjan Congress. A Minister of the Government of Morocco attended for the first time. It is now for ECPM and the World Coalition, and our members, to make sure that the recommendations made in the final Declaration of the Congress are implemented. ECPM undertakes to follow them up, and notably to follow up political commitments.

## Challenges ahead for the abolitionist movement

The decision to attract new allies in the private sector appears very promising. The entrepreneurs who spoke in Brussels encouraged us to continue to invite actors in the private sector to broaden and deepen their social responsibility objectives.

The Congress inaugurated a new and popular meeting format that ECPM plans to develop further for the benefit of partners. Training workshops offered advice and support on how local NGOs can prepare grant proposals, how to engage with UN mechanisms, and how to work with journalists to promote abolition locally, and attracted much partner interest.

In advance of the next Congress, we will reflect carefully on which new actors we should involve, and what campaigns we should launch. Ideas in mind include the worlds of sport, entertainment, and scholarship.

The participants and wider public in Brussels enjoyed a varied cultural programme inspired by the well-respected BOZAR, which made available to the Congress its expertise, some of its excellent facilities, and its communications resources.

Finally, the satisfaction survey distributed after the Congress clearly showed that this great triannual meeting strengthened the conviction of participants that they belong to a worldwide movement. This was particularly true for the civil society activists who work, often isolated, in countries that retain the death penalty. Many of them said that they left Brussels motivated to redouble their efforts, thanks to the advice and good practices they had gathered from other members of the abolitionist network.

Join us in 2022 for the next World Congress Against the Death Penalty!

**Raphaël Chenuil-Hazan**  
Executive Director, ECPM



Ballaké Sissoko, musician and master of kora from Mali, performing at the official closing Ceremony of the 7<sup>th</sup> World Congress.



**ORGANISER  
PARTNERS  
SPONSORS**



## WHAT WE DO

ECPM (Ensemble contre la peine de mort) is working for a specific cause: universal abolition of the death penalty under all circumstances.

### Advocating at the highest level

ECPM is the first anti-death penalty NGO to obtain Ecosoc status which guarantees it a presence at the UN and enables it to advocate at the very heart of the UN.

ECPM set about creating the World Coalition Against the Death Penalty in 2002, an organisation which today has more than 150 members – NGOs, bar associations, local authorities and unions – across the world.

ECPM runs advocacy and public mobilisation campaigns with political decision-makers (European Union, African Commission on Human and Peoples' Rights, governments, etc.).

### Uniting abolitionist across the world

ECPM founded and organises the World Congresses Against the Death Penalty. These events bring together more than 1,500 people representing the global abolitionist movement. Ministers, parliamentarians, diplomats, lawyers, activists, civil society organisations, researchers and journalists all come together every three years to strengthen their bonds and draw up strategies for the future.

### Educating and raising awareness about abolition

ECPM visits schools to encourage students to commit to the cause via drawing competitions, introductory courses to journalism and free class visits – with the participation of specialists, ex-death penalty prisoners and families of prisoners sentenced to death. More than 10,000 middle and high school students have been involved since October 2009.

ECPM raises public awareness of the situation of minorities and vulnerable groups by participating in Gay Pride, Fête de L'Humanité, Cities for Life, the World Day Against the Death Penalty, the world Human Rights Day, etc.

### Strengthening the capabilities of local actors and acting with them

ECPM seeks to combat the isolation of activists wherever the death penalty persists by supporting the creation of national and regional coalitions against the death penalty (Morocco, Tunisia, Central Africa, Asia, etc.), as well as the creation of networks of abolitionist parliamentarians and lawyers. ECPM encourages efficiency among its local partners by organising training sessions and advocates at all political levels to support their work.

### Being as close as possible to prisoners sentenced to death

ECPM carries out and publishes investigations into death row (Morocco, Tunisia, Lebanon and the United States). Our "Investigation into death row in the DRC" received France's leading human rights prize (*Grand Prix des droits de l'homme*).

ECPM supports victims of the death penalty, prisoners and their families, such as Serge Atlaoui and Hank Skinner.

ECPM encourages correspondence with prisoners sentenced to death.

## OUR HISTORY

**2000 Creation of the organisation** • ECPM was founded as part of the campaign "Together Against the Death Penalty in the United States" ("*Ensemble contre la peine de mort aux États-Unis*") which resulted in 500,000 signatures in France and which Catherine Deneuve handed to the American Embassy.

**2001 1<sup>st</sup> World Congress in Strasbourg** • In the presence of Robert Badinter and Jacques Derrida. This event would go on to be held every three years: in Montreal (2004), Paris (2007), Geneva (2010), Madrid (2013) and Oslo (2016). ECPM positions itself as the organisation which unites the world's abolitionist forces.

**2002 Creation of the World Coalition Against the Death Penalty** • After the 1<sup>st</sup> World Congress and initiated by ECPM, the World Coalition Against the Death Penalty was created in Rome on 13 May 2002. Today, it has more than 150 members.

**2005 Human rights prize for the investigation in the DRC** • Further investigations were then organised in Burundi, Rwanda, Tunisia, Morocco, the USA, Cameroon and Lebanon.

**2007 The case of the Bulgarian nurses** • ECPM mobilised the candidates for the French presidential election to save the 5 Bulgarian nurses and Palestinian doctor sentenced to death in Libya for supposedly infecting children with the Aids virus.

**2010 Campaign for Hank Skinner** • ECPM acted to prevent the execution of Hank Skinner, sentenced to death in Texas. After 15 years of legal battles, he obtained DNA analysis of the sealed evidence from the crime scene 19 years after the events.

**2013 Launch of the first Network of Parliamentarians Against the Death Penalty in Morocco** • It included more than 250 signatories. Other networks were created subsequently in Tunisia, Lebanon, the DRC and Malaysia.

**2015 Campaign for Serge Atlaoui and all prisoners sentenced to death in Indonesia** • In particular, ECPM acted to prevent the execution of Serge Atlaoui, a French citizen sentenced to death.

**2016 Consultative status at Ecosoc** • ECPM present in Geneva (the Human Rights Council), New York (UN headquarters and the Security Council) and Vienna (UNODC- UN Office on drugs and crime).

**2018 African Congress Against the Death Penalty in Abidjan** • Bringing together more than 500 people, this 3<sup>rd</sup> Regional Congress Against the Death Penalty was the biggest abolitionist event ever held on the African continent.

# XXVI OUR PARTNER THE WORLD COALITION AGAINST THE DEATH PENALTY

The World Coalition Against the Death Penalty, composed of more than 150 NGOs, bar associations, local authorities and unions, was created on 13 May 2002 in Rome. It was founded as a consequence of the commitment made by the signatories of the Final Declaration of the 1<sup>st</sup> World Congress Against the Death Penalty organised by the French organisation ECPM in June 2001 in Strasbourg. The World Coalition aims to strengthen the international dimension of the anti-death penalty movement. Its eventual aim is to obtain universal abolition of the death penalty. To achieve this, it supports the work of its member organisations and coordinates international advocacy in support of abolition. The Coalition has also made 10 October the World Day Against the Death Penalty. It is a partner of the World Congress Against the Death Penalty which is held every three years.



# XXVII SPONSORS

## BELGIUM



ROYAUME DE BELGIQUE  
Service public fédéral  
Affaires étrangères,  
Commerce extérieur et  
Coopération au Développement

Abolition of the death penalty has been a long-standing priority in Belgium. Co-hosting the 7<sup>th</sup> World Congress Against the Death Penalty with the EU is only the latest illustration of this commitment. Since

2011, Belgium has been a member of the Group of Friends of the Second Optional Protocol to the International Covenant on Civil and Political Rights. In 2013, Belgium became a member of the Support Group of the International Commission Against the Death Penalty, while it joined the Global Alliance to end trade in goods for torture and capital punishment in 2017. At multilateral level, Belgium is the driving force behind several resolutions on the death penalty at the Human Rights Council. Belgium also supports the efforts of civil society organisations working for abolition of the death penalty. Nationally, Belgium has not only ratified all the relevant European and international protocols, i.e. Protocols Nos. 6 and 13 of the European Convention on Human Rights and the Second Optional Protocol, but has also enshrined abolition of the death penalty in its Constitution.

## EUROPEAN PARLIAMENT



European Parliament

The EU's Member States have proudly abolished the death penalty and the European Parliament tirelessly advocates its repeal elsewhere as a cruel, inhuman and degrading punishment that does not deter crime more effectively than life imprisonment.

We believe that criminals must have the right to repent until their final days. This is about our civilization model. In line with our longstanding stance, we adopt recommendations concerning individual cases. In 2018, Parliament's resolutions addressed situations of great concern, including Noura Hussein Hammad in Sudan and capital punishment in Egypt, Iran, Bangladesh and China. We also adopted a landmark resolution on the "Eradication of torture

in the world", advocating a comprehensive legal study on the links between the death penalty and the prohibition of torture. To this end, the European Parliament strengthened the "torture goods" regulation that ensures that European companies are not complicit in the trade of goods used for torture and executions. Through its network of regional parliamentary assemblies and standing delegations for relations with partner countries, Members reach out to relevant stakeholders, conducting active diplomacy on human rights issues and the death penalty.

## THE EUROPEAN UNION



The European Union strongly and unequivocally opposes the death penalty at all times and in all circumstances and considers that it constitutes a serious violation of human rights. The abolition of capital punishment contributes to the progressive development of human rights. Capital punishment

is cruel, inhumane and unnecessary. No compelling evidence exists to show that the death penalty serves as a deterrent to crime. Justice systems may also be exposed to mistakes, aggravated by influences, social stigma and political pressures, particularly in countries with no real independent justice and no functional system of checks and balances. Where capital punishment is implemented, miscarriages of justice may lead to the killing of innocent people by state authorities.

The worldwide trend towards abolition of death penalty is unstoppable with over two thirds of the countries that have already abandoned it. Building on the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty.

## THE SWISS CONFEDERATION



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Département fédéral des affaires étrangères DFAE

Switzerland is opposed to the death penalty in all countries and under all circumstances. Capital punishment is not only contrary to the absolute right to life; it also critically violates human dig-

nity, resembling torture and inhuman and degrading treatment. Moreover, this punishment has no dissuasive effect and does not encourage reconciliation. Universal abolition of the death penalty is therefore a foreign policy priority for Switzerland. Our country has an action plan focusing on this issue specifically. Through political advocacy, international initiatives and local projects, Switzerland supports the global trend towards abolition and defends the progress accomplished. We are therefore delighted to sponsor the World Congress

Against the Death Penalty once again; it is the most significant international display of support for abolition of capital punishment. We wish the 7<sup>th</sup> Congress, which is such a crucial event for promoting and protecting human rights, every success.

## NORWAY



Norwegian Ministry  
of Foreign Affairs

In 2016 Norway proudly hosted the 6<sup>th</sup> World Congress Against the Death Penalty, which gathered more than 1000 participants in Oslo. Norway opposes all use of the death penalty, and is working actively to achieve the long-term goal of global abolition. In December 2018 the

UN resolution on a moratorium on the use of the death penalty was adopted by a record high number. This is a tangible sign of the global trend away from the use of the death penalty. Norway strongly believes in multi-stakeholder initiatives where states, the UN and regional organisations, civil society and committed individuals join forces. The World Congress is such an arena, where both retentionist and abolitionist states can meet and engage constructively. The 7<sup>th</sup> World Congress Against the Death Penalty in Brussels will be an important platform to build on the positive momentum created in Oslo and in New York, but not least in Abidjan during the first African Regional Congress. Abolition now.



The Congress' participants led the Global March from the summit of Mont des Arts to the Place de l'Agora in Brussels.

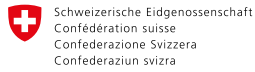
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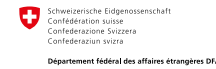
## With the financial support of



## In partnership with



## Core Group





The Global March for Abolition is a real highlight of the World Congresses against the Death Penalty; it traditionally completes this political and activist gathering.



## ROBERT BADINTER

Honorary Chair of ECPM, former Minister of Justice, France.

*“Undeniably, constant and in some States considerable progress has been made... We abolitionists have become a large majority within international bodies, and in State after State. The number of abolitionist nations has continued to grow... Yet we must not be swept by euphoria, and believe that things will move forward very quickly all by themselves... When one analyses the international situation with lucidity, it is clear that some major powers, among the most powerful in the world, still support the death penalty or retain it in their legislative arsenal... Our solidarity with activists in these States must be stronger than ever. We must support them absolutely, just as we must make our voices heard about every execution, each of which is a crime against humanity. ...The task is therefore both incomplete and difficult. Activists must work even more energetically. I thank them with all my heart, and especially those who are fighting the scourge of capital punishment where it is still practised... I am convinced that the movement will only grow and become stronger. But it depends on you – you who fight the abomination of the death penalty every day. Never forget: it remains the absolute negation of the first human right – the right to life.*”



*Find more at:*  
**[www.ecpm.org](http://www.ecpm.org)**

*Watch the film of the 7<sup>th</sup> World Congress against the Death Penalty  
and exclusive interviews on our YouTube channel:*  
**[www.youtube.com/ECPMAssociation](http://www.youtube.com/ECPMAssociation)**

*Stay connected with the abolitionist community:*

 **[www.ecpm.org](http://www.ecpm.org)**

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 **@AssoECPM**

7<sup>TH</sup>  
WORLD CONGRESS  
AGAINST THE DEATH PENALTY  
BRUSSELS 2019

**What are the Abolition Notebooks (Cahiers de l'Abolition)?**

ECPM's mission is to gather, unite and strengthen all those working in the field of human rights from civil society, members of parliaments, politicians, legal professionals, etc., and to work for political change in order to achieve abolition of the death penalty, both locally and globally. We believe that raising awareness and educating as many people as possible about abolition, in retentionist countries as well as abolitionist ones, lies at the heart of our work.

An academic publication was required to achieve this, the Cahiers de l'Abolition, a collection and review of research and independent thinking on abolition of the death penalty. These publications are intended to be a source of debate and knowledge about the death penalty. It is meant to encourage consideration of the multiple and complex issues of the reality of the death penalty throughout the world, and to help understand them. The thematic and geographical issues which lie at the heart of the abolitionist debate must be discussed seriously and rigorously.

Because the death penalty is the ultimate denial of human rights; because in working for the abolition of the death penalty, one's vision of human rights in society changes profoundly; because human life is a universal value and respect for its dignity transcends all cultural and religious specificities; because beyond the differences, it is necessary to work on what unites the arguments against the death penalty rather than on the particularities of any one country or society which might only consider the possibilities of abolition according to its own particular context; because by comparing different points of view, one always gets one step closer to the truth. The Cahiers de l'Abolition tackle the very essence of human rights: the right to life.



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