

# **REPORT**

Third World Congress  
Against the Death Penalty

# REPORT

## Third World Congress Against the Death Penalty

1-3 February 2007  
Cité internationale universitaire, Paris

*Ensemble  
contre  
la peine  
de mort*

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# Foreword

Since the Third World Congress Against the Death Penalty organized by Together Against the Death Penalty and the World Coalition against the Death Penalty, the Bulgarian nurses and the Palestinian doctor who were sentenced to death in Libya under the false accusation of having administered the AIDS virus to children in the hospital where they practiced have been freed. Their sentence for having administered the AIDS virus was commuted and they were able to regain Bulgaria after having been imprisoned for 8 years.

The World Coalition against the Death Penalty and Together Against the Death Penalty have continually defended them and mobilized both European governments and international public opinion. They are delighted by this release following so many years of unjust suffering.

Rwanda has abolished the death penalty.

France has at last ratified Protocol 13 of the European Convention on Human Rights and will shortly ratify the UN Second Optional Protocol to the International Covenant on Civil and Political Rights. As I write these words, the UN General Assembly has adopted the resolution proposed by the Third Committee calling for a moratorium on the death penalty by 104 votes to 54!

New Jersey, too, has just abolished the death penalty.

By now almost 130 nations are abolitionist in practice or by law so that some areas of the world are almost free of nations that kill.

The Third Congress and the final march through Paris have enabled us to appraise the situation in the world. Together Against the Death Penalty and the World Coalition against the Death

## Preface

Penalty should be proud to be part of this worldwide decline in the death penalty.

During these 3 days in Paris, participants from all over the world have energetically agreed that abolition of the death penalty is our only path.

Six nations draw particular attention as they account for 91 % of known executions in 2006. They are China, the USA, Iran, Iraq, Pakistan and Sudan.

3 861 new capital sentences have been pronounced by 55 nations and altogether more than 20 000 persons are on death row.

China occupies the first place. The Chinese execute thousands of convicts each year. It is impossible to be more precise. Organ trafficking and secret executions in prisons are issues that are now debated. China has often claimed its entitlement to its own definition of human rights. However no nation can claim to respect human rights while conducting executions.

We must indeed remember that the first human right is the right to life. Nobody can legitimately deprive a man or a woman of what makes him a human being, his life.

The combat for abolition knows no borders and must continue until the last nation has abandoned capital punishment.

Utopia perhaps? But who could have imagined the progress made during the last 30 years?

Despite crime, genocides and deportations, humanity progresses. We should refuse that death in robes of Justice, be our law and rule our city.

The fight against the death penalty will not be over until abolition is universal. This is the combat of "Together Against the Death Penalty."

**Robert Badinter**

Participants in the Third World Congress Against the Death Penalty in Paris have repeated again and again that the universal abolition of the death penalty is underway. The work carried out in Paris 2007 has clearly shown it: an irreversible downward trend in the number of death sentences and executions is visible worldwide. Above all an increasing number of nations have abandoned this useless and cruel practice. Note that Rwanda, despite being the scene of one of the worst genocides in history, abolished the death penalty in 2007.

Participants from the 5 continents, of all religions and professions, met for this third Congress in Paris in greater numbers than in Montreal in 2004 or Strasbourg in 2001. Activists were joined at the eprevious congressis by politicians, experts, diplomats, and witnesses such as the families of crime victims or men formerly sentenced to death.

It is heartening to see a real world movement gradually developing in rhythm with these World Congresses. The World Coalition against the Death Penalty, resulting from the conclusions of the First World Congress held in Strasbourg in June 2001<sup>1</sup>, is the most promising federating organization of this movement.

In Paris, more strategic and also more symbolic ventures have influenced the numerous debates resumed in these proceedings: the perspectives for abolition in Islamic lands and in the Arab world, notably during the first international public debate on this delicate subject; the presence for the first time of Chinese abolitionists, and appraisal of hopes that the Beijing Olympics will enable China to progress in the same direction as the general international community.

Organizations with often different points of view agreed during the Congress to coordinate their efforts to bring the United Nations' General Assembly to finally adopt a resolution calling for a universal moratorium on executions in view of universal abolition. This effort, maintained during 2007, was crowned with success in New York by the vote on the 18th of last December. The Third World Congress was held in France, country of contradictions which executed its king and soon after adopted the Declaration of the Rights of Man and of Citizens. The Paris Congress, and its organizers, contributed to the amendment of the Constitution of the 5th French Republic during the Congress of the Republic in Versailles on the 16th of February 2007 to include the abolition of the death penalty and the ratification of the European and International instruments by which France renounces for good the possibility of re-establishing capital punishment. The Paris Congress thus inaugurated the year 2007 as the year that definitively ended the long and slow process begun, from the legal viewpoint, in 1981 which has enabled France, as Robert Badinter, father of abolition in this country, puts it, to have done with a justice which kills. May every country on the planet take the same road.

**Michel Taube**

## A new phenomenon in the history of abolition

The World Congresses are a new phenomenon in the history of efforts to abolish capital punishment. Bringing together activists, decision-makers and experts from around the world, they contribute to strengthening the notion that abolition is a global cause. The Third World Congress came at an especially opportune moment. The execution of former Iraqi President Saddam Hussein in December 2006 had transformed a tyrant into a martyr, and the subsequent decision of the Italian government to renew its call for a UN-sponsored moratorium on executions, gave hope that 2007 might finally see a groundbreaking resolution to that effect adopted by the UN General Assembly. The Congress enabled activists to examine the world state of affairs in light of these developments and work out strategies accordingly.

It enabled participants to confront new strategies, region by region, and new themes, such as military justice and special jurisdictions. The World Congress has also been decisive in encouraging nations to continue their own reforms concerning the abolition of the death penalty. One example was France whose Constitution was amended shortly after the Congress to include the principle stating that no one can be sentenced to death thus enabling France to ratify the UN Second Optional Protocol to the International Covenant on Civil and Political Rights.



We owe a great debt of gratitude to the former President of Together Against the Death Penalty, Michel Taube, for his initiative and imagination in bringing the World Congresses to fruition.

**Eric Prokosch**

former coordinator for the death penalty  
at Amnesty International

**Emmanuel Decaux**

Professor at the University of Paris 2  
CNCDH member

Introduction

# Report Third World Congress Against the Death Penalty

After Strasbourg in 2001 and Montreal in 2004, it was Paris, which welcomed, from the 1<sup>st</sup> to the 3<sup>rd</sup> of February 2007, the Third World Congress Against the Death Penalty sponsored by the German chancellor, Angela Merkel and the French President, Jacques Chirac. The association “Together Against the Death Penalty” (ECPM), with the support of the “World Coalition against the Death Penalty,” brought together more than 500 participants and 130 contributors at the “Cité internationale universitaire” in Paris, for 3 days of exchange of views and discussions on the strategies to pursue for universal abolition. Though remarkable advances have been made during these last decades- more than 50 states have abolished capital punishment for all types of crimes since 1990 – 69 states continue to pronounce death sentences. Work during the Paris Congress specially focussed on two particularly significant contexts of capital punishment: China, since with the Olympic Games 18 months away, the People’s Republic has been and remains world champion for executions, executing between 2 and 3 times as much as the rest of the world combined; the Arab world, since with the exception of Djibouti, no North African or Middle Eastern country has abolished the death penalty despite the increasing debate on the subject in

countries such as Morocco or Lebanon. Paris 2007 welcomed Chinese abolitionists for the first time and a sizable Moroccan delegation including the late lamented Driss Benzékri, President of the Human Rights Advisory Council and ex-President of the Moroccan Equity and Reconciliation Commission, to whom ECPM pays tribute for his firm support and his involvement with the international abolitionist community. The organizers of the Paris Congress hope that these events will help the promotion and the development of abolitionist coalitions: the “World Coalition against the Death Penalty,” the regional and national coalitions. Members representing networks in Asia, Africa, the Great Lakes, Puerto-Rico, the Arab world, and the USA... were present in large numbers and, beyond meeting each other, enriched the work of this Third Congress with their on hands experience. These “Proceedings against the death penalty” seek to highlight the 3 main themes which were present in all the debates, round tables and focus groups – criminal law’s position with regard to the death penalty, strategies to implement for its abolition and how coalitions should communicate – and also to draw-conclusions, orientations and strategies from the most interesting exchanges.

The rich programme of the Paris Congress is due to the work of the “World Coalition against the Death Penalty” steering committee who helped draw it up and gave very strong support to the organizing team as well as to the advice and orientation of the Congress Scientific Committee (Eric Prokosch and Emmanuel Decaux). “Together Against the Death Penalty” takes this opportunity to warmly thank them.

As well as the debates, the “Cité internationale universitaire” in Paris was for the first time in the history of World Congresses, the stage for participants to share experiences, actions and publications. An afternoon and an area were entirely allotted to these activities. As in Montreal in 2004, “death penalty victims” – persons once sentenced to death and their relatives, families of murder victims, persons involved in the abolition combat as a result of the murder of a loved one – had their say during an evening with an attendance of more than 300. Their accounts were accompanied by the Quebec singer Thomas Hellman and his guitar. Moreover, a retrospective of documentaries and short

films concerning the death penalty and an exhibition produced by students from the Paris School of Fine Arts were available to the public, but unfortunately these proceedings cannot give an account of them.

Many government ministers, diplomats, members of parliament and personalities made an appearance on the Paris Congress platform, the head of the French state represented by his Foreign Affairs Minister Philippe Douste-Blazy, the German Chancellor, Angela Merkel, the European Council and its parliamentary Assembly, Pope Benedict XVI, the Dalai Lama, the President of the Swiss Confederation, all sent their support and encouragement to the international movement for universal abolition. Robert Badinter, father of abolition in France, closed the proceedings by stressing, before the assembly formally convened at the Bastille Opera, how for him, as the number of states abolishing capital punishment has grown almost exponentially during the last three decades, we can now believe that universal abolition is imminent. The fact that the United Nations adopted a resolution calling for a universal moratorium on executions 10 months after the Paris Congress<sup>2</sup>, as urged in the final declaration of the Congress, supports his belief, which is also ours. Though it isn’t legally binding, the UN resolution provides an extra argument for abolitionists throughout the world. We hope that these proceeding will contribute to the struggle.

**Shirley Pouget**

Scientific director

**Emmanuel Maistre**

Former director of ECPM

From the Arab world  
to China:  
how can the abolition  
of the death penalty  
be furthered?

# The paths to abolition in North Africa and in the Middle East

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Morocco to Egypt, Yemen to Saudi Arabia, Iran to Lebanon is an area where abolition has stalled. No North African or Middle Eastern nation (with the exception of Djibouti), has, as yet, abandoned capital punishment. However, each situation is rather different. While executions follow one another: the widely publicized hanging of Saddam Hussein in Iraq, stonings in Iran, beheadings in Saudi Arabia; elsewhere, a downward trend in death sentences and executions is now visible: Tunisia, Morocco and even Mauritania, have respected a moratorium on executions for the last ten years. Though unthinkable ten years ago, government officials now take a stand for abolition.

This region is complex because of the nature of its political systems and the variety of sources of its laws – subordinate to, inspired by, or freed from the Sharia – and also by the degree of maturity of each civil society. So what are the paths leading to abolition in North Africa and in the Middle East? During the first major debate at the Paris Congress, militants for Human Rights, Members of Parliament, experts on Islam discussed the issue from two view points: a legal and political one and then a theological one. Any discussion about capital punishment in these states where there is no or only partial separation between state and religion must include a debate with reference to Islam. Thus, an initial discussion, moderated by Driss El Yazami, vice-president of the FIDH, investigated the legal and political perspectives in the region, before examining the paths to the abolition of capital punishment from an Islamic angle. Philippe Yacine Demaison, vice-president of the French Scouting Federation, chaired the session.

## LEGAL AND POLITICAL PERSPECTIVES FOR ABOLITION IN NORTH AFRICA AND IN THE MIDDLE EAST

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North Africa and the Middle East are far from being monolithic or homogeneous and form a region where the application of capital punishment is very contrasted. While the ultimate punishment is a sanction which can be used in all these states, a wave of legal and political reforms is now underway: the Lebanese, Moroccan and Jordanian experiences are there to prove it. What are the factors involved in this process? How can the impact of these reforms be evaluated? Perspectives on this trend towards a reform of laws on capital punishment.

Towards a reform of the laws  
involving capital punishment...

Will the imperative of universal Human Rights make any inroads in North Africa and the Middle East? A significant evolution can be noted in this region of the world where no nation has abolished capital punishment (with the exception of Djibouti). There are nevertheless many challenges especially since the abolition of capital punishment needs a politico-legal and theological debate. "It seems at present that the principles of Islamic Sharia have brought some Arab states to question the international treaties which they have signed and ratified" suggests Youssef Madad, Moroccan Member of the "World Coalition Against the Death Penalty."

According to him, an analysis of the different legislations leads to three distinct cases: "one where legislation is subordinate to the Sharia (Saudi Arabia, Sudan), another where legislation is inspired by the Sharia (Egypt, Yemen, Oman, Qatar, Kuwait and Bahrain), and finally legislation independent of the Sharia (Algeria, Lebanon, Djibouti, Iraq, Tunisia, Mauritania, Jordan, Morocco, Syria)." The legislations of Lebanon, Morocco and Jordan are legally free of any religious references.

### *The march towards abolition in Lebanon and Morocco*

At the end of the Lebanese war in 1990, President Hraoui passed a law strictly imposing capital punishment in the case of premeditated crime (Law 302/94), recalls Marie Ganthous, President

of ADDL (Association pour la défense des droits et des libertés). Ten years later, during 2000, the increase of public hangings incited the Lebanese Association for Civil Rights, presided by Walid Slaybi, to campaign for the repeal of this law. Following a demonstration in front of the Cabinet building in which the President of the Parliamentary Committee on Human Rights and a large number of citizens took part, the Prime Minister Salim El-Hoss refused to sign the execution decrees for two convicts. At the same time, the Minister of Justice proposed a law enabling the repeal of the 302/94 law. There were a number of petitions, studies and conferences on the capital punishment theme during 2001, with a wide coverage by the media. By April 2001, there were more than 60 associations of Lebanese abolitionists. "For the negotiators, the campaign was no longer one of isolated groups but had the support of a large part of Lebanese civil society," empathized Marie Ganthous. The law was finally repealed thanks to an open letter signed by the newly formed group and addressed to the government. The very active role played by the European Union and its member states in the Lebanese abolitionist movement must be mentioned. We must recall that the agreement for an association EU/Lebanon<sup>3</sup>, adopted in 2002, stipulates (article 1) that "the respect of democratic principles and Human Rights is an essential item of the agreement." The EU/Lebanon plan of action of 19<sup>th</sup> January 2007 built a privileged relation based on a mutual commitment to common values (democracy and Human Rights, the rule of law, sound governance, market economy principles and sustainable development).

Since the repeal of the law, abolitionists have continued to solicit the government for a moratorium on executions. Despite the resumption of executions in 2003, the abolitionist movement organised an International Congress on the abolition of capital punishment in Beirut, which led to the proposal of a new law, which was then introduced by several Members of Parliament. A disagreement about alternative sentences led to its rejection. A new proposal was prepared in 2006. It abolishes the death penalty in a single article, replacing it by life imprisonment. "It has already been signed by several Members of Parliament but will not be introduced until conditions are favourable. Moreover, the present turbulent period in Lebanon is not at all favourable."

The demand for the abolition of capital punishment by the public encouraged by a powerful and organized abolitionist movement is specific to Lebanon.

In Morocco, the political parties and the media along with a very determined public are engaged in the debate on the death penalty. The progress achieved in enforcing Human Rights must be applauded. The Cherifian kingdom is heading towards abolition... Retrospective on this progress: Youssef Madad reminds us of the importance of the first conference on capital punishment in 2003 which launched the Moroccan Coalition Against the Death Penalty with an initial objective of federating potential Moroccan abolitionists and putting their combat against the death penalty in a global context. The Coalition launched an awareness campaign aimed at all levels of Moroccan society. As well as starting a debate on capital punishment, the campaign led Moroccan leaders to take a stance on the question.

For Nouzha Skalli, Member of Parliament for the Party for Progress and Socialism<sup>4</sup>, "Morocco can become the 100<sup>th</sup> abolitionist state in the world<sup>5</sup>." Her optimism comes from a series of legal reforms and from the reconciliation process undertaken by the state, notably by the Equity and Reconciliation Authority. She recalls the significant progress made in reforming family law and the recognition of the principle of equality and co-responsibility of the sexes. "This reform has clearly shown that the principles of human rights and equality are entirely compatible with Islam as Islam like other religions is founded on humanist values and respect of human dignity, liberty and equality." Despite this progress, the death penalty remains a punishment in Cherifian criminal law. Admittedly, there has been no execution in the last 10 years, but 151 persons (including 8 women) remain on death row. Mouzha Skalli, who is deeply opposed to capital punishment, orally questioned the Minister of Justice Mohamed Bouzoubâ in Parliament on the 11<sup>th</sup> May 2005 about the abolition of capital punishment urging the government to ratify the UN Second Optional Protocol to the International Covenant on Civil and Political Rights. She also demanded an amnesty for all those condemned to death. The Minister of Justice's reply was encouraging: a bill aimed at abolishing the death penalty has just been filed by a parliamentary group. "It is just a question of time..."

It is for the King to decide. The royal palace seems receptive to this possibility and the question is discussed within the Consultative Council on Human Rights established by King Hassan II.

Will the latter abolish the death penalty in 2008? Yes, if we can believe the lamented Driss Benzékri's<sup>6</sup> speech made during the official ceremony of the Paris Congress "Our wish is that the work be finalized and ratified by Parliament before the end of the present legislature and that it will be possible, with the support of the sovereign, to go further by engraving the banning of the death penalty in the fundamental law of our country."

#### *First steps towards abolition in Jordan...*

King Abdallah II announced, in the Italian daily *Corriere della Sera* in December 2005: "Jordan could soon be the first abolitionist country in the Middle East." This declaration followed a scandal about a serious legal error revealed several months earlier: two men were executed in an interval of five years for the same murder. By summer 2006, the Jordanian government decided to limit the number of crimes punishable by the death penalty. Even though the effects are limited<sup>7</sup>, the decision is an important symbol. In a country with strong tribal and religious traditions, the majority of Jordanians are still in favour of capital punishment. Since the new King's coronation, the country seems amenable to reforms leaning towards abolition, explains Mohamed Arslan. For the Jordanian MP, the country's legal system already guards against excessive use of capital punishment by protecting minors, pregnant women, and any person whose criminal responsibility is not firmly established. The Jordanian Parliament has frequently examined the details of abolition. "Everything which involves the death penalty has a very significant impact on society. To begin with, we have to start on those sentences which are not particularly sensitive for society and Islamic law. I am convinced that society will accept this change as long as it is gradual," the Jordanian MP stresses. According to him an evolution of the political situation will permit a significant reduction in the list of offences and crimes punishable by death. Mohamed Arslan insists on the importance of requalifying offences incurring the death penalty in order to substitute prison sentences.

Making the specific universal: general proposals of the 2007 Paris Congress

“Besides Morocco, Lebanon and Jordan, a downward trend in the number of death sentences and executions can be discerned in the Arab world,” says Youssef Madad. Tunisia, Mauritania and Algeria abandoned executions 10 years ago. They are abolitionist states in practice. At the same time, well known personalities have given their opinion on abolition, heads of state regularly pardon convicts sentenced to death (as in Qatar in 2005). The impact of such reforms is accompanied by another question concerning the necessary and/or progressive secularization of law. This trend for reforming legislative texts involving capital punishment widens the gap between law and religion in regions where Islam is the state religion.

Making the specific universal or, more precisely, raising the imperative to abolish capital punishment to a universal level ... that is the greatest challenge for the abolitionists at the Paris Congress. To achieve this, one must learn how to convince. For arguments to be heard, politico-cultural particularities, regional and especially national, must necessarily be taken into account. The priorities for abolitionist action in North Africa and in the Middle East vary from country to country. The strategies adopted or envisioned differ from one state to another. Though the contributors agree that abolitionists are not as isolated as before, their actions definitely depend on national contexts.

*The panel, chaired by Driss El Yazami, encourages the abolitionist community of this diversified Arab scene:*

- To concentrate on involving political players in the abolition combat in order that action take precedence over talk.
- To situate the combat against capital punishment in relation to other Human Rights actions.
- To envisage building regional mechanisms to help legislations evolve towards a greater compatibility with international criteria and charters guaranteeing Human Rights. For greater effectiveness this action could be conducted within the framework of European or other international cooperation, in particular the Euro-Mediterranean programme.

## THE DEATH PENALTY AND ISLAM

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In the North African and Middle Eastern context, where states and societies are linked indissociably to religion, the question of capital punishment must take into account the common religious reference: Islam. The Koran and the Sunnah, like the Bible, envisage the use of capital punishment in accordance with the law of retaliation or the law of land<sup>8</sup>. The Islamic Sharia, however, while setting down the conditions for the application of the criminal sanctions known as hudud, those encourage the settlement of disputes without bloodshed by invoking the principles of blood rights, pardon and repentance. According to scholars, the death penalty as defined by Islam's sacred scriptures could almost never be used in the present epoch... The core problem is not so much the reference to capital punishment in the Islamic Sharia... but rather the orchestration of the people's attachment to supposed Islamic principles by the different political regimes of the region.

The death penalty in the Sharia, a sentence impossible to use today  
Mercy is the foundation of the Muslim religion, stresses Philippe Yacine Demaison, vice-president of the French Federation of Scouting and ex-president of the Muslim Scouts of France, moderator of the debate. The purpose of law is to try, according to the context of the epoch, to facilitate and organize communal life; but it must do this, in content and form, by being faithful to common sense and the universal principle of compassion. Neglect of this essential aspects of Islam has created a gap in Muslim societies between the various applications of the law and the aspirations of the people.

### *Capital punishment in the Koran*

Contrary to the Western idea of Islam, Muslim criminal law is characterized by a strong current of clemency and compassion for the oppressed, noted William Schabas<sup>9</sup>, director of the Irish Human Rights Centre. The fact that statements such as “Islam is in favour of capital punishment” are heard in international debates is rather upsetting, as though this vision had the unan-

imous and uncontested support of the Arabo-Muslim world and as though the social and political reality of all the states of this region were identical.

“Muslim law is based on the principle that laws are decided by God and transmitted by messengers to guide humanity”<sup>10</sup> explained Sami Aldeeb, researcher specialised in Arab and Muslim law at the Swiss Institute of Comparative Law<sup>11</sup>. The Koran and the Sunnah together compose the Sharia, principal source of Muslim law. While the Koran, word of Allah, tells how the prophet had a revelation in Mecca, and then in Medina, the Sunnah, the ways and sayings of the prophet, are related in short articles, the hadith. Muslims consult the Sunnah when the Koran can’t help to clarify fine points of law. “The biblical norms for capital punishment are reused in the Koran, the Sunnah of Mohammed and by classical Muslim jurists,” repeated Sami Aldeeb. The Bible stipulates capital punishment either to respect the law of retaliation (“an eye for an eye”) or to punish idolatry, work on the Sabbath, robbery or adultery. While the Koran insists on respecting life, as the possibility to resort to dissimulation when in danger illustrates<sup>12</sup>. The Holy Scriptures of Islam of course allow the death penalty, especially when there is a legitimate reason. War, for example, justifies killing another. The Koran indicates however that possessions should be attacked before human beings. If the death penalty is indicated for murder according to the law of retaliation, the texts nevertheless recommend pardon and compensation. Capital punishment is also prescribed for banditry, armed revolution and adultery. Muslims consider the hudud, Sharia standard sentences, to be just retribution for the loss of loved ones. They cannot be questioned as God has prescribed them.

*Scholars think that the death penalty can “almost never be applied”*

“As for every religion, there is a large diversity of schools of thought in Islam and the disagreements are often deep and repetitive,” recalled Tariq Ramadan<sup>13</sup>.

As to the application of the penal provisions of the Sharia, some demand a literal and immediate application of the hudud. The Egyptian professor Al-Sayyid Ahmad Taha wrote concerning this point that “[The death penalty] is the norm established by God.

Human thought can in no way attain the level of Heavenly thought. The Koranic scriptures are authentic and clear and are an eternal philosophy: “And there is life for you in (the law of) retaliation, O men of understanding. (2:179)<sup>14</sup>.” “The death penalty is a necessary weapon allowing society to confront the dangers which threaten it from time to time and will remain forever in our Egyptian legislation since Muslim law is the main source of law and since the death penalty is provided for in Muslim law<sup>15</sup>.” Others consider that the application of the hudud should depend on the state of society, which must be equitable. Finally, a minority claims that these sentences are not at all relevant to contemporary Muslim society.

Differences between “ulamâ” or scholars, are not so much about the mention of such sentences in the Koran, but due rather to the interpretation of the texts, to the rules governing their application as stipulated by the Sharia or even their applicability in the contemporary context. According to Tariq Ramadan, the majority of scholars consider nevertheless that the conditions stipulated in the Sharia cannot apply today. The Islamic Sharia stipulates for example that 4 male eyewitnesses of good standing are necessary in order to prove adultery. The purpose of the hudud was to dissuade the believer, to increase his consciousness of the gravity of certain behaviour.

On one hand the ulamâ are reluctant to voice their opinions in public, afraid of losing their credibility. “We note a psychological pressure public opinion on the judicial proposals of the ulamâ, who should normally be independent and educate the public...” writes Tariq Ramadan. On the other hand reference to the Islamic Sharia is used to justify capital punishment by certain political regimes. In this way religion becomes a dogmatic prescription serving worldly powers.

Islam, a dogmatic prescription used by politicians  
The majority of death sentences delivered by jurisdictions in essentially Islamic states do not respect the criteria of the Islamic Sharia. With a people whose subconscious is steeped in religious teaching, these condemnations are justified by a religious ideal though pronounced by civil authorities administering positive law. Religion thus becomes a dogmatic prescription serv-



ing political powers. The Egyptian example confirms this point. Capital punishment was written into texts in the thirties under colonial occupation. For Hossam Bahgat<sup>16</sup>, founder of the Egyptian Initiative for Human Rights, the Egyptian government justifies the use of capital punishment by invoking the Islamic Sharia. However, this justification is clearly hypocritical since Egyptian criminal law does not apply the conditions required by the Islamic Sharia, in particular for robbery, apostasy and adultery. In this way, Egypt<sup>17</sup> is one of the states in the region where a large number of sentences are passed each year above all in criminal courts and special tribunals. During the state of emergency, in effect since 1981, the death penalty is used in an arbitrary way. No appeal is possible against death sentences pronounced by the state security courts. Only the President of the Republic can nullify, commute or limit these sentences. "Abolition is far from being a realistic objective," explained Hossam Bahgat. We have first of all to introduce abolitionist ideas in the public forum, where they can never be heard today. "It is not realistic to call for abolition, or even a moratorium on executions, as long as there is no coordinated abolitionist movement" Hossam Bahgat insisted. "Moreover the death sentences inspire very few negative reactions in our country. They are reported in a routine way in the media without anyone protesting. The death penalty is for the general public a normal punishment since God has prescribed it!"

The popularity of Islam and its teaching should not be underestimated. Public opinion is not in favour of abolition. On the contrary, many Muslims demand a literal and immediate application of the sentences prescribed by the Sharia. "This attachment is almost passionate, without any deep knowledge or understanding of the texts, and little or no critical distance with regard to the scholars' different interpretations, the need of contextualisation or the nature of required conditions" explained Tariq Ramadan. For the public, the strict application of the hudu guarantees the recognition of the Islamic character of society in a context of fierce opposition to Western laws considered to be permissive and morally decadent. However, governments use the attachment of their people to supposed Islamic principles in order to justify capital punishment. The references to Islamic

Sharia become an instrument for power, even though the conditions required for a capital sentence as described in the Holy texts are almost impossible to obtain ...

In this context, what can we do when confronted with governments orchestrating religion for power? Where academics whose legitimacy is threatened are little inclined to a vindictive public, express their opinions for fear of itself a blindly impassioned in its quest for an Islamic identity.

Sami Aldeeb thinks that only the abolition of circumcision will eventually enable us to envisage the abolition of the death penalty. According to him, circumcision represents the first factor of abuse, enabling a victim to become an executioner. He bases his analysis especially on the writings of psychologists such as Joseph Lewis<sup>18</sup> or Alice Miller<sup>19</sup> directly linking circumcision and violence in societies.

#### *In the name of the texts against the use of the texts*

It is essential, for Tariq Ramadan, to set the terms of the debate from the inside. More precisely, to be heard, one must speak in the name of the texts against the use of the texts.

There must be a call for an immediate moratorium on corporal punishment, stoning and the death penalty in the name of Islamic principles, in order to open a breach in the debate and to enable all the Islamic religious authorities to take position on the death penalty as prescribed by the Sharia in the contemporary epoch.

This call must reply to three fundamental questions:

What do the texts say? What are the possible interpretations? One should draw from Muslim tradition, characterized by differential interpretations of the texts, in order to question the dominant interpretation.

What are the conditions stipulated for each sentence? One must show the public the injustice of these sentences given principally to women and the poor and their orchestration by political regimes.

Can these texts be applied in the today's context?

The environment is one of the elements conditioning the application of the texts. A text can only be applied in the light of

the context. Thus in 635 AD, the Caliph Omar ibn al Khattab refused to inflict capital punishment on a thief since there was a famine at the time.

We can be modestly optimistic since change seems to be underway on the Muslim front. We begin to hear voices of Islam raised against the death penalty; even though they are very few they bring hope that the dominant interpretation, which links Islam to capital punishment, will one day be open to question. The Egyptian Grand Mufti Sheikh Ali Jumaa stated himself: "Islamic law provides the conditions required for sentences, it also describes in what situations these sentences can be deferred. If some of the conditions are not met, the Sharia orders not to apply the sentences." "The Koran and the Sunna have incited Man to follow the way shown by God: the way of right, of pardon." The Koran occupies the middle way (2,143): "We have made you part of a community far from the extremes (...)." I call today for the creation of an association of Muslims respecting human rights, opposed to the use of the death penalty and torture in the name of Islam," concluded Philippe Yacine Demaison, moderator of the session.

## China, the death penalty and the Olympic Games

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The death penalty situation in China is preoccupying, an instrument of political and social repression. 100 000 people have been executed in the Middle Kingdom in the last 10 years. 18 months before the Beijing Olympics, the organizers of the Paris Congress wished to again highlight the alarming situation of capital punishment in the country and mobilize public opinion and those involved in order to progress towards abolition. For the first time, Chinese abolitionists have managed to leave the country in order to testify about the secrecy policy surrounding the death penalty, with confessions obtained under torture, biased trials and marketing of the organs of the condemned handled by the state itself. Organized by Together Against the Death Penalty and chaired by John Kamm, executive manager of the Dui Hua Foundation, the second major debate in Paris 2007 "China, the death penalty and the Olympic Games," enabled participants to take stock of recent progress and reforms launched by the People's Republic and to imagine the strategies to bring into play, by the entire international community, to put pressure on the Chinese authorities on the brink of the 2008 Beijing Olympics.

### INSTRUMENT OF POLITICAL AND SOCIAL REPRESSION IN THE HANDS OF THE PEOPLE'S REPUBLIC OF CHINA

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#### Secret executions

As mentioned, the number of executions in China is a state secret. "The policy of secrecy is general in China," remarked Isabella Nitschke, European liaison officer for the Human Rights in China organization. "It doesn't apply to the death penalty only but to all matters linked to Human Rights. The media and

the legal system are under the government's yoke. Secrecy is endemic at all levels." So in this context, no official statistics show the full extent of the Chinese execution process. John Kamm, working for the release of prisoners of conscience in China, notes great difficulty in obtaining information about the death penalty. "Only information collected in the different provinces of the country gives an approximate measurement. For example, in the Guandong province which accounts for 1/17<sup>th</sup> of the Chinese population, we estimate that there are not less than 1000 executions a year" explained the former businessman. According to him, the Chinese authorities have executed 100 000 people over 10 years<sup>20</sup>, that is 95% of executions in the world. The number of people put to death depends on the time and on sociological and geographical factors. We note an increase in the number of executions during anti-crime campaigns or during the Chinese New Year period. The rate of executions is highest in the border regions, mainly because of drug or human traffic and economic crimes carried on there. "On the other hand, the widespread use of the death penalty conflicts with traditional Chinese thought which has always recommended a moderate use of the ultimate punishment," stresses Mo Shaoping, lawyer, fervent defender of Human Rights. Under the Han dynasty, a person condemned to death could appeal to the Emperor for his "mercy and compassion" and plead mitigating circumstances<sup>21</sup>. Some sentences were thus commuted to hard labour.

#### Finding a culprit within a deadline

Corroborating the policy of secrecy around the use of the death penalty, the Chinese legal apparatus is just an anti-chamber of the government; courts and judges work hand in hand with the anti-crime administrative system in the same way as the police. Secrecy cultivated by censorship of the press which cannot say much about the death penalty, and even less about judicial corruption. Trials according to the lawyer Teng Biao, defender of persons condemned to death, are held in the utmost secrecy. Families and lawyers have no knowledge of them most of the time. "When a crime punishable by the death penalty is committed in China, a deadline is fixed for the sentencing. The mat-

ter must be finished by this imposed date. The judges are pressured to find a culprit quickly in order to respect the timetable. Under these conditions, it is no surprise that confessions may be extorted under torture by police authorities. Whether the evidence presented in court is convincing or not is of little importance to the judges. In 60% of trials the defendant has no defence counsel" the lawyer declared.

#### Executions: a source of organ supply

In China, the death penalty, both during the trial and afterwards, is underpinned by important financial stakes. This is due to the corruption of Chinese civil servants but above all because the organs of the executed are traded. "The organs of persons condemned to death are a source of supply for the transplant market which is essential in a country whose culture considers the donation of organs to be unnatural" the sinologist Marie Holzman explained. By tradition the body is sacred and funeral rites are fundamental to Chinese civilization. Statistics show that each year only 20,000 Chinese patients out of two million awaiting a transplant have one. In a situation where the demand exceeds the offer, organs are collected in military hospitals, which have become occasional "execution fields," medical units and courts having previously worked out the deals<sup>22</sup>. The testimony of Dr Wang, asylum-seeker in the USA, is enlightening on this point: the "donor" has a blood test followed by an injection of heparin just before the execution... "His body is then transported by van in which the kidneys and liver are removed" Marie Holzman said.

China appears to have been doing this since the beginning of the nineties. In 1994, Human Rights Watch published a report highlighting the existence of a "provisional regulation concerning the use of the organs of executed criminals" authorizing, with consent of their family, the removal of organs from the bodies of executed persons, under the *sine qua non* condition of discretion. Moreover, this transplant business benefits patients throughout the world (especially South East Asia, Ukraine, Israel, and Pakistan). Is China close to beating a double world record the number of executions and now the number of organ transplants (3741 livers, 8103 kidneys and 80 hearts in 2005)?

In reply to the mobilization of the international community, Chinese authorities have adopted a law, in effect since the 1<sup>st</sup> of July 2006, to regulate organ transplant practices. Though an important step towards improving medical practices, neither the question of removing organs from the bodies of executed persons nor that of the donor's (free and enlightened) consent is dealt with.

A debate about maintaining capital punishment seems to have been taking place in China over the last few years. Chinese intellectuals and lawyers express their opposition to the death penalty publicly. Awareness of dysfunctions in the system, pressure and mobilization of the international community and the approach of the Olympic Games are factors which explain the reforms recently adopted by the Chinese authorities.

#### MEDIA COVERAGE OF LEGAL ERRORS AND THE BEIJING OLYMPICS: A WAVE OF REFORMS IN THE PEOPLE'S REPUBLIC OF CHINA

Media coverage of legal errors and public awareness  
"Most of the general public is still in favour of capital punishment and its abolition is far from being a realistic perspective," Mo Shaoping noted. "However the Chinese public remains deeply attached to the values of equity and each time an innocent is executed the doubts about the system increase." For Mark Allison, researcher in Amnesty International's Asia-Pacific branch, the media's recent coverage of legal errors created public awareness of the dysfunction of criminal justice and the reforms needed for Chinese criminal law. For example, three years ago the case of Nie Shubing was the talk of the town. This farmer from North China was executed in 1995 for rape and murder when he was 20 years old after having admitted his guilt under torture. In 2005, another suspect admitted that he was guilty of the same crime. This obliged the legal authorities to admit their mistake. However no compensation was awarded to Nie Shubing's family. The wide media coverage of this affair stirred the population and incited the authorities to engage in reforming the system, in particular the recon-

sideration of death sentences by the Supreme Court. Welcomed by the international community, these reforms led us to expect an automatic reduction in executions and an improved administration of criminal justice. Amnesty International is doubtful, nevertheless, about the reconsideration of death sentence decisions by the Supreme Court. Reconsideration in the light of the facts or just the procedure? Will these reforms lead to an improved administration of the death penalty without being a first step towards abolition? Is this apparent opening just a subtle way of mollifying the international community as the Olympic Games approach?

Pressure from the international community as the Beijing Olympics approach... findings and proposals Chinese authorities are committed to improving the Human Rights situation and, at the same time, the capital punishment system in the prospect of the 2008 Beijing Olympics. We recall that the Olympic Charter expressly stipulates that "the aim of the Olympic Games is for sport to be of service for a harmonious development of Man, to promote a peaceful society where human dignity is preserved."

The role of the international community in the improvement of Human Rights in China is far from negligible. The media coverage of the Olympic Games will put China - and at the same time its violations of Human Rights - in the limelight. All members of the international community must be aware of the extent of Human Rights exactions in China, of the death penalty situation and of the number of executions and use the Olympic Games to put pressure on the Chinese authorities.

*Taking into account the efforts undertaken by the authorities and the source of pride that holding the 2008 Olympic Games is for the Chinese, session chairman John Kamm proposes:*

- To heighten journalists' awareness, especially by circulating information on the death penalty and executions, and to have them cover legal errors.
- To send international observers to trials involving capital punishment.
- To establish a debate on capital punishment between the USA and China.

All the panellists in the debate on “China, the death penalty and the Olympic Games” call on summon the Chinese authorities to be more transparent and to lift the policy of secrecy surrounding the death penalty. Together Against the Death Penalty calls for an immediate truce on executions<sup>23</sup> while waiting for abolition.

# Death penalty: reconciling national criminal law with the international protection of Human Rights

The death penalty is a sentence passed by the legal system, which consists of legally taking the life of someone. In other words, it is a legal crime, since the legal system, aiming to punish another crime or offence, prescribes it via a court of judges. We must examine the weaknesses and failures of criminal justice in order to treat the question of its abolition. Capital punishment is more than just the execution of a condemned person. The administration of the death penalty proceeds from the day the accused is charged to the trial (very often held with little respect for the rules of justice) and continues through the years spent on death row waiting to die and finally the execution itself. From a legal point of view, criminal law and penal policy are traditionally state prerogatives. The international enforcement of Human Rights, the development of an international criminal justice with the mission of judging instigators of crimes against humanity, war crimes or genocide, have brought the debate on abolition of capital punishment to bear on the violation of the right to life, on inhuman cruel or degrading treatment, and on the violation of the principle of non discrimination. Abolition has become an international issue. In 2007, capital punishment is no longer a domestic affair of state; it has lost international legitimacy and troubles world order.

## Death penalty and media coverage: a new international relations issue

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### FROM THE NUREMBERG TRIALS TO THE EXECUTION OF SADDAM HUSSEIN: HOW SHOULD THE PERPETRATORS OF THE MOST SERIOUS CRIMES BE JUDGED?

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Saddam Hussein was executed on 31<sup>st</sup> of December 2006, in the limelight. Perverse consequence of this execution: one of the most murderous dictators of the 20<sup>th</sup> century immediately became a martyr whose portrait was on the front page of many newspapers. That day, Saddam Hussein won, and humanity lost, losing an opportunity to pay homage to the Iraqi people by giving them a justice worthy of the name. The facts are distressing: a new winner's justice of vengeance and hate disregarded international criminal justice. A biased and unfair trial, was held by a temporary Iraqi government (called "puppets"<sup>24</sup> by some) and the whole show was orchestrated by the American occupying forces. Such was the situation described by those participating in the round table "From the Nuremberg Trials to the execution of Saddam Hussein: how should the perpetrators of the most serious crimes be judged? ." This debate, organized by ECPM, examined the reasons why the combat against impunity cannot condone capital punishment. Chaired by Jean-François Akandji-Kombé, Professor of European Law at the University of Caen, the discussion led to an historical and legal analysis of the judgement of perpetrators of crimes against humanity from Nuremberg to Baghdad.

Return to winner's justice: from the execution of Nazi leaders to that of Saddam Hussein  
The International Nuremberg military tribunal was established immediately after the end of the Second World War on the 8<sup>th</sup> August 1945 by a tripartite agreement in London. It was composed of magistrates from the 4 victorious powers: the USA, the UK, the USSR and France.

*The Nuremberg Trials: winner's justice meets the death penalty*  
Winner's justice, for the first time in history, was applied to those responsible for planning and pursuing a war of occupation, war crimes and crimes against humanity. Whatever their legitimacy from a legal viewpoint<sup>25</sup>, the Nuremberg Trials were the embryo of international protection of Human Rights and, above all, of international criminal justice<sup>26</sup>. While 12 of the 24 political leaders, senior officials and generals of the National-Socialist party<sup>27</sup> were condemned and executed as a result of the Nuremberg Trials, 486 executions were carried out by American military tribunals. Before answering whether use of the death penalty during the Nuremberg Trials was legitimate, one must take into consideration the historical context and judiciary attitudes towards capital punishment at the end of the Second World War. Despite the rejection of the death penalty in the approach to criminology developed by the Enlightenment thinkers, especially by Cesare Beccaria in his work: *On Crimes and Punishments*, the death penalty was still widely accepted after the Second World War. The victorious powers used it at home. So its use was not even questioned and the sentences passed by the judges at Nuremberg were simply the toughest available at the time. Though the Nuremberg Trials may be considered an expression of victors' justice, they were nevertheless the first milestone on the road to an international criminal justice, which, as practiced 50 years later, refuses capital punishment in all circumstances. In this sense, the execution of Saddam Hussein in December 2006 runs against the current of an international criminal justice without the death penalty.

*The execution of Saddam Hussein: victors' justice at a time when international criminal justice rejects the death penalty*  
One of the most harmful dictators of the 20<sup>th</sup> century was executed for crimes against humanity on the 31<sup>st</sup> of December 2006 following a judgement by an Iraqi Special High Criminal Court, successor of the Iraqi Special Court. The execution of Saddam Hussein constitutes a disturbing regression to winner's justice, at a time when a balance between the fight against impunity and respect for the rights of the accused is an international priority.  
Apart from the distressing live hanging of the Master of Baghdad, judgement was passed by an obviously illegal court which, the participants said, disregarded the rules for a fair trial. For Emmanuel Daoud and Patrick Baudouin, lawyers at the Paris Bar, both the Iraqi Special Court and the Iraqi Special High Criminal Court were established in violation of Humanitarian Law and especially of the Law of Occupation. The Iraqi government council created the Iraqi Special Court in 2003 by order of the occupying forces<sup>28</sup>, namely the USA and the UK. Whereas, the powers granted to occupying forces are limited, in accordance with the Geneva Convention IV<sup>29</sup>, especially with regard to their right to modify the institutions and criminal legislation of the occupied state, Emmanuel Daoud explained. Thus, that an occupying force, namely the USA, commands an occupied state to establish a Special Court to investigate the crimes committed by Saddam Hussein violates articles 47 and 64 of the Geneva Convention IV. The establishment of the Iraqi Special Court was obviously illegal, the lawyer concluded. A year later, on the 30<sup>th</sup> of June 2004, the Security Council declared the end of occupation, from that point the temporary Iraqi government was legitimate. But for the Law of Occupation to cease, it is necessary that the temporary government really exercise its power and not be simply a puppet manipulated by the occupying forces! For Emmanuel Daoud, the simple fact that President George Bush sent an extra 20 000 men to Iraq leaves a serious doubt about the reality of the Iraqi government's power. So that the law applicable at the time of the establishment of the Iraqi Special High Criminal Court was the Law of Occupation. Once again, the institution, which judged and condemned Saddam Hussein,

was clearly illegal. Besides, Saddam Hussein, as President and head of the armed forces and despite being handed over to Iraqi authorities, should have had the statute of political prisoner of the Geneva Convention III, and should have been judged by a military tribunal of the holding forces thus guaranteeing impartiality and independence. As to the use of capital punishment, the guarantees given to persons condemned to death prescribed by the article 101<sup>30</sup> of the Geneva Convention were not at all respected, especially the obligation to postpone the execution for 6 months.

Though the statute of the Iraqi Special High Criminal Court was compliant with article 14 of the International Covenant on Civil and Political Rights<sup>31</sup>, Saddam Hussein clearly did not have a trial which obeyed the rules guaranteeing impartiality, and even less the rights of defence, especially by reference of the Iraqi criminal procedure to article 16 of the said statute. Dysfunctions were numerous: absence of adequate work conditions and security for the defence lawyers, violation of the principle of equality of arms<sup>32</sup>, belated information concerning the charges against the defendants, impossibility of interrogating the witnesses for the prosecution, lack of requirement of indisputable evidence of guilt, violation of the right to solicit mercy or a commuted sentence.

Judging perpetrators of the most serious crimes:  
no impunity, no death penalty!

As well as political, ethical and technical considerations, it is essential at present to explain to the general public (young and less young) the reasons for which the death penalty for anyone, including the perpetrators of the most serious crimes, is completely counter-productive.

#### *Pleading against the death penalty*

For Hugo Bedau, Professor Emeritus of Philosophy at Tufts University (Massachusetts, USA), “public executions set off an enthusiastic frenzy among the crowds, spectators or actors, which has to be checked. Some will not feel the same excitement, the same exaltation, while hearing a life sentence given. Besides, when war criminals, instigators of crimes against humanity or

of genocide, are condemned to death and then executed, they seem to become heroes, or martyrs.” The death penalty is, then even more counter-productive.

A government who knows how to inflict a fair sentence, the least severe possible, to ensure security for all is a government that earns the respect of its citizens. Deterrence crime prevention and fair punishment have legitimate social aims. “Vengeance, cruelty and brutality are treatments which don’t have these aims” Hugo Bedau concluded.

#### *Coercion versus reconciliation...*

##### *the example of transitional justice*

International criminal justice no longer condemns to death. While considerable efforts are made to bring the worst criminals to the international courts and judge them by fair procedures, vengeance and hate still also lie in wait, as shown by the execution of Saddam Hussein. Though it was widely condemned by the international community, the Iraqi public nevertheless applauded the execution. One of the central questions yet to be considered concerns how victims should be taken into account and their position in the legal process. In this respect, we welcome the trend of so-called transitional justice and the initiative of Truth and Reconciliation Commissions.

Transitional justice is a form of process aimed at rebuilding societies in the aftermath of conflict. It aims above all to expose the truth by an acknowledgment of the facts by the perpetrators of human rights abuse. “While some confess, the others pardon,” notes Jean-Baptiste Gnonhoue of Amnesty International’s branch in Benin. Reconciliatory and non-coercive justice, clemency commensurate with confession, pardon with national reconciliation. The Truth and Reconciliation Commissions work either as a complement or as a substitute for justice. Numerous transitional legal systems exist throughout the world. South Africa is the first state on the African continent to have experimented such an approach thanks to Nelson Mandela’s charisma. There has been much criticism of the fact that the commission can become a substitute for justice, setting up a system with automatic amnesty for defendants who confess. Sierra Leone, Uganda and recently Liberia<sup>33</sup> have put sim-



ilar commissions in place, frequently alongside competent ad hoc international courts (especially in Sierra Leone). Thus, the Truth and Reconciliation Commissions help to pacify societies during the aftermath of internal conflicts alongside the international courts in charge of judging the instigators of “international” crimes.

As to the use of capital punishment for the worst criminals, must we repeat that violence breeds violence. Far from repressing crime, a state resorting to capital punishment maintains and legitimizes it. In post-conflict situations, putting instigators of crimes against humanity to death is of no help in building reconciled and pacified societies. Saddam Hussein’s execution is a convincing example.

#### TERRORISM: THE DEATH PENALTY, A COUNTER PRODUCTIVE RESPONSE

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Confessions obtained under torture, ignored rights of defence and rushed trials, are some of the characteristics of the war on terror. Since the 11 September 2001, terrorism has become public enemy n°1. Through the war on terror, the range of offences liable to the death penalty has greatly increased despite the fact that terrorism has no internationally accepted definition. Algeria, Bangladesh, China, Egypt, India, Indonesia, Iran, Kyrgyzstan, Iraq, Pakistan and Jordan use the death penalty in the context of anti-terrorism laws<sup>34</sup>. The focus group “Judging terrorists: the death penalty, a counter-productive response” organized by the French Human Rights League and chaired by its Honorary President Michel Tubiana, worked on proving that using the death penalty against terrorists comes down to imitating them: killing for political motives.

Crime with religious or political roots for Kamran Arif, vice-president of the Pakistani Committee for Human Rights, indiscriminate attacks on civilians according to Michel Tubiana, as of 2007 there is no international legal definition for terrorism. Using the death penalty against perpetrators of acts of terrorism is to enter a vicious circle which leads to “playing the ter-

rorist game,” Michel Tubiana remarked. Capital punishment corresponds, according to Bud Welch, President of Murder Victims’ Families for Human Rights, to an “act of vengeance and of hate.” “In the state’s domain, horror cannot be the response to horror” said Françoise Rudetzki, general delegate of “SOS Attentats” stressed. She insisted that “the death penalty is in this sense a counter-productive response, for the terrorists and for the victims. Besides, the abolition issue cannot differentiate the treatment of innocents and culprits, common law criminals and terrorists.” For Michel Tubiana capital punishment is even more absurd when used in the penal repression of terrorist movements. “Effectively in the vast majority of cases the kamikazes and other ‘terrorists’ are ready to die for their cause and aspire to become martyrs.” Indeed the death penalty is frequently seen as the release of a martyr in the context of terrorist charges. This argument can even persuade juries not to impose capital punishment, as the lawyer François Roux who defended Zaccarias Moussaoui testified<sup>35</sup>: “In the USA one cannot openly criticize the death penalty in court since it is prescribed by law. Lawyers are obliged to explain to the jurors that life imprisonment would be worse for the defendant and that it would be better to sentence him to death.”

Kamran Arif recalled that terrorists are frequently young people who, by the “brainwashing” they undergo, are the first victims of terrorism. In the same way, from the viewpoint of the personal reconstruction of the murder victims’ families it is evident that the death sentence always entails more discussion and longer trials. The process of reconstruction and mourning is thus more extensive and difficult.

For Françoise Rudetzki and Michel Tubiana, it is essential to develop international legal cooperation in order to combat impunity for all terrorist acts, especially by extending the competence of the International Criminal Court to terrorist acts when the state involved fails to take legal action.

*The contributors call for:*

- Rapid adoption of an international definition of terrorist acts.
- Judgement of these acts by ordinary jurisdictions rather than by special courts.

- Encouragement for the combat against impunity of private or state sponsors:
- Internally: by bringing pressure to bear on the states involved.
- Internationally: possibly extending the competence of the ICC.
- Encouragement for murder victims' families who are opposed to the death penalty to attend capital trials.

## IS THE DEATH PENALTY AN INTERNATIONAL RELATIONS ISSUE?

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Is capital punishment becoming an international relations issue, even though the range of possible sentences is the prerogative of each state?<sup>36</sup> Going beyond the traditional strategic questions, are we not at the dawn of a geopolitics for the death penalty? Such were the questions asked by participants in the debate organized by the "Institut de relations internationales et stratégiques" (IRIS), chaired by Pascal Boniface, its director and a convinced abolitionist. With the multiplication of international conventions and the acknowledgement of the pre-eminence of the right to life, the death penalty has progressively become a problem of international law. Even more than a legal debate, the discussion showed to what degree the death penalty was an issue for the public image of states, crossing the traditional geopolitical North-South/East-West borders.

A recent international issue

Capital punishment is no longer the prerogative of individual states; it is considered illegitimate for international law and order. Yet states are traditionally competent to define their criminal law and criminal policy, signs of national sovereignty, free to fix legally applicable sentences for offences committed by their citizens<sup>37</sup>. A recent consequence of international protection of fundamental rights, especially the primacy of the right to life, is that the use of capital punishment is now considerably restricted by international law<sup>38</sup>.

### *Russia and the European Council*

Europe is at the moment the only zone in the world where the death penalty is almost outlawed. The 47 member states of the European Council have abolished capital punishment or, at least adopted a moratorium on executions. At present, only Russia has not formally abolished it. Kirill Koroteev, research assistant at the University of Paris I, stresses that "the evolution of capital punishment in Russia is significant because of its importance for international relations." First state to have installed a moratorium on executions (1741-1825), Russia executed only 81 convicts during the 19<sup>th</sup> century. Abolished during the 1917 Revolution, capital punishment was immediately re-established in September 1917. During the preliminary work for the 1948 Universal Declaration of Human Rights, the Soviet block was totally committed to abolition in peacetime. This stand followed official abolition in 1947 in the URSS. The amendment proposed was never accepted, since capital punishment wasn't a priority at that time. Abolition in the URSS however only lasted from 1947 to 1950. There were many executions during the Soviet period. Following the collapse of communism, the number of executions regressed considerably. A debate on the advisability of maintaining capital punishment began during the Presidency of Boris Yeltsin. The arguments in favour of keeping it stressed the high rate of crime (not higher than in Germany according to official statistics) or the high costs for society of keeping criminals in prison. The new Constitution of the 12<sup>th</sup> December 1993<sup>39</sup> admitted the legality of the death penalty "until its abolition" as an exceptional punishment for particularly serious crimes against life. Kirill Koroteev ironically comments "Nothing lasts longer than the temporary." Russia since joining the European Council, is obliged to ratify Protocol 6 of the European Convention on Human Rights. This has induced the Russian authorities to publish a presidential decree (16<sup>th</sup> of May 1996) concerning the gradual suppression of the death penalty. The new Criminal Law which took effect in 1997 limited its use to murder and attempted murder<sup>40</sup>. The decision taken by the Federal Constitutional Court on the 2<sup>nd</sup> February 1999 imposing a temporary moratorium on death sentences was a further step towards abolition. This moratorium will apply until the estab-

lishment of courts of assizes throughout the Federation, including Chechnya. In fact, the courts of assizes won't be established in Chechnya before 1<sup>st</sup> of January 2010.

Since there is no real political intention to abolish the death penalty, the European Council continues to take diplomatic steps to persuade the Russian authorities to ratify Protocol 6 of the Convention. A sword of Damocles hangs over Russia: its exclusion from the European Council. The authorities are aware of this, as shown by their enforcement, in substance, of the judgments passed by the European Court of Human Rights. Finally, no person sentenced to death has been executed since 1997. Is abolition of the death penalty in Russia a likely possibility in the near future? Will the European Council's efforts have their effect on the Russian authorities? According to Kirill Koroteev, these questions are far from being on the agenda. The Parliamentary Assembly of the European Council is the only place where the problem of capital punishment is discussed. The Constitutional Court could play an important part, but it is extremely weakened since Vladimir Putin became President.

#### *Extradition or how nations can fight against the death penalty in the USA*

Sandra Babcock, lawyer and Professor of Law at Northwestern University Law School in Chicago explains that "the death penalty in the USA is above all a federal preoccupation, since each US state can decide whether or not to allow capital punishment." According to Pascal Boniface, "it is easy to hide behind federalism on one side and respect for democratic principles on the other"<sup>41</sup>. However, signs of change seem to be emerging, especially due to the protests of other nations against the execution of their citizens in the USA, which help to increase public awareness of the international aspect of the death penalty.

Extradition is the delivery by a nation (requisitioned nation) of a person present on its territory to another nation (applicant) which is pursuing this person in order to judge him for an offence, or in order to carry out the sentence which its courts have already passed against him<sup>42</sup>. Extradition law is based on 8 fundamental principles, among which the refusal to extradite in the case of capital punishment<sup>43</sup>. As such, the number of extraditions of

American nationals to the USA is diminishing, as the requisitioned nations are opposed to the use of the death penalty. At the same time, the International Court of Justice has had to give a ruling on three affairs concerning death penalty practice in the USA<sup>44</sup>. Though the International Court of Justice has no competence to rule on the internal legislations of nations, and so on the use of the death penalty, it has, by enacting protective measures, charged the USA to delay the execution of foreign nationals until the Court has pronounced a final ruling. The applicant states (successively Paraguay, Germany and Mexico) invoked the violation by the USA of the obligation to inform foreign nationals condemned to death of their right to have consular assistance, in accordance with the 1963 Vienna Convention<sup>45</sup>. In the Lagrand affair, 2 German citizens were sentenced to death in 1982 by the state of Arizona. Karl Lagrand was executed in 1999. Germany referred to the International Court of Justice on the basis of article 36 of the Convention of Vienna, affirming not having known about the affair until 1992, by which time there were no more possibilities of appeal. At the same time, Germany requested the already mentioned protective measures in order to suspend the execution. Despite the court order to suspend the execution of Walter Lagrand, he was executed in March 1999, thus showing the disregard of the USA for the decisions of the International Court of Justice, the obligatory nature of the protective measures and international justice in general. Nevertheless, the USA took into account the "Lagrand" decision pronounced by the International Court of Justice in the Avena affair (International Court of Justice, 31<sup>st</sup> of March 2004) where 54 Mexican citizens were on death row unknown to Mexican authorities. The respect of the protective measures by the USA, namely a stay of execution for foreign nationals sentenced to death, shows considerable progress in the awareness of the fact that the death penalty is no longer a national affair, but a truly international issue. However, the American government, because of this affair, announced the withdrawal of the USA from the optional Protocol of the 1963 Convention of Vienna, which provides for the intervention of the International Court of Justice in the case of foreign prisoners on American soil.

The death penalty, a question of public image on the international scene

As capital punishment has become an issue, states, whether democratic or totalitarian, seek a position on the international scene using their public image rather than their respect of human rights. What public image can a state which executes its citizens have?

#### *A new geopolitical schism*

Respect for democratic values, maturity of societies or their modernity, are irrelevant criteria when it comes to the use of the death penalty. Major Western democracies such as the USA, India or Japan, continue to use capital punishment while the African continent is moving towards abolition – from Liberia to Rwanda. Strategic and ideological differences disappear when the capital punishment issue is tackled. China, Iran and the USA are in harmony here. “Can one claim to be democratic while using the death penalty?” asks Pascal Boniface. “We must take moral values into account in discussion of the death penalty issue.” The execution of Saddam Hussein renewed the debate by putting capital punishment in the very centre of international relations. “The fact that the death penalty has become an international issue is beginning to have its effect in Asia,” noted Olivier Guillard, Director of Asian Research at the IRIS. “We can see a significant shift in this area of the world which is characterized by a diversity of situations, from China – World Champion of Executions – to the great Indian and Japanese democracies using the death penalty, and to the Burmese junta dictatorship.” The situation in China is the most preoccupying.<sup>46</sup> Criminal Law provides for 68 offences, from panda trafficking to terrorism, liable for the ultimate punishment. It is interesting to examine the attitude of the West as perceived by Asian states. From their viewpoint, the West takes capital punishment into account according to their own standards and/or situations.

However, beyond such observations, some recent examples can illustrate an apparent shift in Asia. A Tibetan monk sentenced to death in 2005 had his sentence commuted to life imprisonment thanks to the wide media coverage of his affair by the Dalai Lama. The Chinese authorities, certainly because of international pressure with the Olympic Games in mind, reformed

their Criminal Law in January 2007, establishing a systematic re-examination of death sentences by the Supreme Court.

#### *Regression in Peru: the role of the World Congress against the death penalty*

While the world trend is for a reduction, or indeed, abolition of death sentences, Francisco Soberon, Director of the APRODEH, Human Rights activist, took the opportunity of the World Congress to denounce President Alan Garcia’s initiative to enlarge the scope of capital punishment.

Peru is a state marked by 20 years of political violence and numerous extralegal executions by the army. Thanks to an important movement in favour of abolition, capital punishment was abolished in 1979 for ordinary crimes. President Alan Garcia, in power since July 2006, wishes to reinstate capital punishment for terrorist acts and murder or rape of minors. Despite the rejection, by the Congress of the Republic, of this bill, Alan Garcia announced the organization of a referendum (unconstitutional according to article 32 of the Constitution which states that the suppression or the reduction of fundamental rights cannot be put to popular vote). Francisco Soberon hopes that the wide media coverage of the World Congress will influence President Alan Garcia.

*In this respect, the participants in the debate call on all actors of the international community to work together in order to give the death penalty the important place it deserves among international issues.*

# The death penalty: a violation of basic human rights

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## DEATH PENALTY: AN INHUMAN, CRUEL AND DEGRADING TREATMENT

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International law forbids the use of torture. What about the tens of years that the condemned spend on death row awaiting execution? Isn't the death penalty itself a cruel, inhuman and degrading sentence? The law refuses to affirm this. Capital punishment is not intrinsically thought of as torture. Everything here hangs on a label. The debate organized by the ACAT and the FIACAT and chaired by Marc Zarrouati, showed now pertinent it might be to qualify the death penalty as cruel, inhuman and degrading treatment, how then this qualification might be used as a strategic legal argument in favour of abolition.

The death penalty is in fact an inhuman, cruel and degrading sanction: are out of step law and reality. The paradox is that torture is formally recognized as being illegal by international texts, while the death penalty is not itself considered to be a cruel, inhuman and degrading sentence. Indeed, capital punishment is not forbidden by states that haven't ratified the UN Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) or Protocols 6 and 13 of the European Convention on Human Rights (ECHR). Neither regional courts nor UN Committees recognize the ultimate punishment as being a cruel, inhuman and degrading sentence, which, as Sylvie Bukhari de Pontual, President of the FIACAT, tells us, contradicts article 7 of the ICCPR, article 5 of the inter-American Convention on Human Rights (IACHR) and article 3 of the ECHR.

For the European Council Commissioner for Human Rights, Thomas Hammarberg, the contradiction between article 2 para. 2 of the ECHR, which accepts the death penalty as a legal exception to the right to life and article 3 which absolutely forbids cruel, inhuman and degrading treatments must be pointed out. When the Convention was signed in 1950, the death penalty was not perceived in Europe as being an inhuman and degrading sanction. European states applied capital punishment at that time. So if the Law refuses to recognize the death penalty as being a cruel, inhuman and degrading sentence, in the sense of the articles cited previously, reality is however very different.

### *In Uganda the prisoners on death row are at the mercy of their warders*

Mr. Edmari Mpagi spent more than 18 years on death row in the Lizura high security prison in Uganda following a conviction for murder built on false charges: the man he was supposed to have killed was alive and kicking. Edmari Mpagi recalls that: "during my incarceration, 50 prisoners were executed and more than a hundred were decimated by tuberculosis, malaria or dysentery. In one week, 66 persons died of dysentery. The warders frequently tortured. Executioners at times, they told us about executions. The prisoners themselves repaired the gallows. So that once the gallows were repaired, the prisoners expected an execution the next day. We didn't know who drew up the lists of prisoners to be executed, which perturbed us mentally. The conditions of detention were so bad that they amounted to torture. The prisoners were at the warders' mercy since, because we were sentenced to death, they knew that we would never get out and be able to testify."

"In Uganda, the death penalty is mandatory for murder, aggravated theft and treason" explained Livingstone Sewanyana, President of the Foundation for Human Rights Initiative in Uganda. Capital punishment is not itself considered as being a cruel, inhuman and degrading treatment, while torture is forbidden by the article 24 of the Constitution. Nearly 500 prisoners have been awaiting their execution for years in unbearable conditions. Files are lost, some prisoners have been waiting to be hanged for almost 20 years. In response to this situation, the Ugandan Coalition against the

Death Penalty<sup>47</sup> appealed to the Ugandan Constitutional Court in 2005 using the “Susan Kigula and 416 others” petition<sup>48</sup>. Following this appeal, the death sentences of 417 prisoners, the mandatory character of the death penalty and long waits on death row were judged unconstitutional. The Supreme Court has not yet upheld the judgement. Whatever the result, capital punishment will remain legal and will still not be considered to be a cruel, inhuman and degrading treatment. The question now is how this fundamental decision will be implemented. “Effectively, if the death sentences pronounced are unconstitutional, will the prisoners be released? Or will the sentences be commuted to life imprisonment? Will the decision be retroactive or will it only affect future sentences?” asks Livingstone Sewanyana.

#### *Convicted prisoners crammed into 6m2 cells in Pakistan*

In Pakistan, there are at present 7400 prisoners on death row, stressed Kamran Arif, Vice-President of the Pakistani Committee for Human Rights. The rate of executions is very much less than that of convictions. In 2005, nearly 60 prisoners were executed while between 600 and 1000 persons were sentenced to death. The conditions of detention are very poor, especially because of overpopulation: 6 or even 7 prisoners are crammed into 6 m<sup>2</sup> cells creating problems of hygiene and violence. The temperature can reach 45°C in summer, and in winter the cells aren’t heated. There is neither medical assistance nor psychiatric care. Visits are limited to one a week. Moreover since the convicts are imprisoned far from their homes, their families have difficulty in visiting them. “To complete this dismal picture, torture in prison is frequent and aimed at demoralizing the convicts,” concluded Kamran Arif.

Taking into account the cruel, inhuman and degrading character of the death penalty: death row syndrome and methods of execution

The jurisprudence of Regional Courts and the UN Committees has progressively taken into account both the so-called “death row” syndrome<sup>49</sup> and the methods of execution. The next question is to what extent the cruel, inhuman and degrading character of the death penalty will be taken into account by the judges?

#### *The “death row” Syndrome*

In Europe, the European Court of Human Rights affirmed, in the Soering ruling<sup>50</sup>, that the extradition of a person from the UK to the state of Virginia (USA) would be contrary to article 3 of the ECHR<sup>51</sup>. Unless Virginia agreed to waive the death penalty, as they finally did. Not only a possible execution, but also condition and duration of detention on death row were considered by the European court. In the same way, the Court judged the extradition of a woman to Iran, where she risked stoning<sup>52</sup>, contrary to article 3 of the Convention.

In a ruling given on 12 May 2005 by the Grand Chamber in the Öcalan vs. Turkey affair, the European Court recognized that the death sentence passed in an unfair trial contradicts article 3 of the Convention. For Commissioner Hammarberg, “it is regrettable that the Court limited its ruling to the violation of article 3 which insists on a fair trial and that the majority of judges have not heeded Judge Garlicki who considers that the death penalty is in itself a cruel, inhuman and degrading treatment.” “The judges have considered that the death penalty is an unacceptable punishment in peacetime, so rendering article 2 para.2 of the Convention inapplicable,” notes Sylvie Bukhari de Pontual. The Inter-American Court of Human Rights (IACHR) also has ruled, in several judgments<sup>53</sup>, that “to leave a person condemned to death awaiting his execution, in incommunicado detention, isolated in a tiny cell without ventilation or daylight and with a restricted number of visits, is obviously an inhuman and degrading treatment.”

The UN Human Rights Committee has regularly called on retentionist states to finish with cruel, inhuman and degrading methods of execution. As for the Human Rights Council (which has replaced the Committee) the abolition of the death penalty is as essential as the banning of torture.

Nevertheless, for the UN Human Rights Committee, only detention in imperious circumstances<sup>54</sup> can be considered as constituting an inhuman and degrading treatment. So, the Committee refused to recognize that a lengthy delay on death row was in contravention of article 7 of the International Covenant on Civil and Political Rights<sup>55</sup>.

In the light of this evolution of the jurisprudence, conditions of detention and, especially, the treatment of prisoners may

amount to cruel, inhuman and degrading treatment. What about the different methods of execution?

#### *Banning of torture versus legal execution*

For James Welsh, Health and Human Rights Coordinator for Amnesty International, there is a contradiction between banning torture and the legality of execution, which is deeply significant of the absurdity and hypocrisy of international texts on this topic: “A sham execution is a torture, it is thus reprehensible; if the shot is fired it is an execution, therefore it is legal. Giving a prisoner an electric shock of 50 volts to extort a confession is torture. Electrocuting a prisoner by a discharge of 3000 volts with the intention of killing him isn’t. Smothering someone by putting his head in a plastic bag or keeping his head underwater is torture, hanging is an execution.”

Though the texts still do not recognize execution as an act of torture, the cruelty of the methods used for putting prisoners to death has diminished since the 18<sup>th</sup> century. The times when the body was drawn and quartered or plunged into boiling oil have gone. Today society seems to be more sensitive to physical suffering. From the gory guillotine to the gallows, from electrocution to poisoning, an execution must be quick, efficient and painless. In this respect, at present 5 countries use lethal injections with this leitmotiv<sup>56</sup>: execute humanely. “Humanely for whom?” questioned James Welsh. “It is also done to spare those who witness the execution, the executioners, the families for whom the execution is also a type of torture, the journalist...”

In this respect, Piers Bannister, Death Penalty Coordinator for Amnesty International London, who has frequently visited death rows in several countries (USA, Jamaica, Trinidad and Tobago...), draws attention to the essential lever of public opinion on issues related to the different methods of execution. “The opinion about such or such a method of execution be rapidly and radically changed by an efficient media campaign. It seems that the general public has a very abstract idea about methods of execution. The words ‘lethal injection’ evoke *a priori* medical jargon and thus an impression of something painless and aseptic. They don’t convey the reality of the suffering undergone, the repeated errors or the anguish of pain to come. When

public opinion is aware of what an execution by lethal injection really is, it will realize the cruelty involved and will, in general, be disgusted by this practice.” Public opinion’s perception of the “humane rating” of the different methods of execution is therefore an essential issue in the struggle between abolitionists and non-abolitionists, to obstruct or facilitate an execution. Thus, the Constitution of Barbados has just been amended in order to make any attempt at appeal based on the “cruelty” of the current method impossible. The aim of abolitionist associations is to show public opinion that in practice there is no “humane” method of putting a prisoner to death.

“As in the case of the different conditions of detention, a study of each execution method permits the identification of those which can be considered cruel, inhuman and degrading,” explained Sylvie Bukhari de Pontual. Execution by lethal injection has been ruled in accordance with article 7 of the International Covenant on Civil and Political Rights whereas execution by poison gas is, for the UN Human Rights Committee, a “particularly horrible” method of execution. As to what criteria define a “particularly horrible” execution method, the Committee says that the “sentence must be carried out in a way that causes the least physical and mental suffering possible.” In the light of these developments, is there not a risk of not considering the death penalty as a cruel, inhuman and degrading treatment? Effectively, capital punishment could be justified once it is carried out in a humane way, answers Sylvie Bukhari De Pontual.

*Consequently, the death penalty should be declared illegal in International Law since:*

- The death penalty violates the right to life,
- The death penalty is an arbitrary punishment,
- The death penalty is discriminatory,
- The death penalty is irreversible,
- The death penalty is used against persons otherwise protected by international norms (minors and the mentally handicapped),
- The death penalty inflicts severe suffering on the prisoner, his family and the executioner, Suffering is continuous, from the sentencing to the execution.

## DEATH PENALTY FOLLOWING UNFAIR TRIALS AND DISREGARD FOR THE RIGHTS OF DEFENCE

Resorting to the death penalty through special courts  
The international trend is for abolition in peacetime. What about abolition during wars, states of emergency or exceptional circumstances?

Though it is forbidden by International Law in peace time, international regulations for the protection of Human Rights leave an opening for reinstating the death penalty in wartime, remarked Emmanuel Decaux, President of the Scientific Committee of the Congress and Professor of International Law at the University of Panthéon-Assas (Paris, France). UN Second Optional Protocol of the International Covenant on Civil and Political Rights, in its article 2, formulates a reservation allowing states to reinstate capital punishment “following a conviction for a crime of a military nature or more generally of treason or crimes against one’s country.” Only Protocol 13 to the European Convention on Human Rights maintains abolition under all circumstances. In fact, the death penalty indicated in Military Law and its administration by Special Courts goes much further than in common law: enlarged list of charges, rushed trials, violation of the rights of defence, authorisation to try civilians. The UN Sub-Committee for Human Rights has recently examined the issue and adopted a certain number of principles dealing with the administration of justice by military tribunals<sup>57</sup>. The focus group organized by ECPM and chaired by Emmanuel Decaux shows the universality of the problems related to the use of the death penalty by military tribunals.

### *A parody of justice under cover of the War on Terror: the Military Commission of Guantanamo*

Following the 11<sup>th</sup> September 2001, special courts mandated to prosecute those guilty of violating the Law of War for complicity in terrorist acts against the USA were established. On the 13<sup>th</sup> of November 2001, President George Bush signed the military decree relating to “the detention, the treatment and the judgement of certain non-American citizens in the war against terror,” establishing the Military Commissions of Guantanamo. “The establishment of these Commissions was part of a general policy and

practice of the war on terror,” stressed Francis Perrin, member of the executive board of Amnesty International France. Their aim: judgement of foreign nationals exclusively. How? By bypassing not only the guarantees provided by International Law for Human Rights, International Humanitarian Law, the American Constitution, Federal Laws as well as those provided by the normal system of military justice in the US. The latter were, according to President Bush, too protective for trying “unlawful enemy combatants.” Amnesty International France denounces the use of the death penalty by these Commissions, as they give no guarantee of a fair trial<sup>58</sup>: violation of the principles of independence and of impartiality with regard to the executive, absence of guarantees concerning the procedures and, especially, the choice of defence counsel, complete freedom as to the eligibility of evidence, allowing *in fine* confessions obtained under torture, and the impossibility of appealing against the judgements given by these Commissions. In reply to the question of the competence of the President of the USA to install such Commissions, the US Supreme Court ruled, the 29<sup>th</sup> of June 2006, the Military Commissions illegal in the Hamdan affair<sup>59</sup>, considering that article 3<sup>60</sup> present in the 4 Conventions of Geneva of 1949 should apply. In response to this ruling of the Supreme Court, President Bush promulgated a law on the 17<sup>th</sup> of October 2006 legalising the system of Commissions and authorising all the cited violations. According to this law, the accused “unlawful enemy combatants” could not seek writs of *habeas corpus*<sup>61</sup>. Worse still, this law was retroactive and nullified about 200 requests already lodged.

### *Use of the death penalty under cover of state of emergency in Egypt*

In order to enforce the state of emergency in effect in Egypt since the assassination of President Sadate in 1981, the Special Courts, the State Emergency Security Courts as well as the State Supreme Security Court were established to try all those, civilian or military, who were seen by the President of the Republic as a menace for public security whether in respect or not to crimes of common law.

The survey conducted by FIDH in 2004 concluded that “such courts render justice in name only and that the sentences pro-



nounced by these puppet jurisdictions serve only to mask the arbitrary reigning powers,” said Étienne Jaudel, lawyer and former Secretary-General of the FIDH. Military security conducts the investigations for these affairs and systematically uses torture to obtain confessions from both the suspects and their close relatives. The legal time limits of custody are never respected, administrative detentions frequent. It is necessary to stress once again that certain principles are systematically violated: independence and impartiality of the judges with regard to the executive insofar as the judges – military – are appointed by the President of the Republic. As to the rights of defence, lawyers frequently have no access to the brief before the day of the hearing and are only authorised to visit their clients for very short periods. Lastly, court judgements cannot be appealed except by lodging an individual complaint in the sentencing jurisdiction.

Étienne Jaudel concluded that: “The continuing existence of these special jurisdictions in Egypt for more than 20 years illustrates the excesses brought about by the so-called necessity of fighting terrorism, excesses continually denounced by Human Rights organizations throughout the world.”

*Military justice in Democratic Republic of the Congo (DRC):  
a political weapon, a weapon of warfare*

The death penalty in the DRC has always depended on the political situation. In this state ravaged by a succession of wars with dramatic consequences, leaving more than 4 million dead, 4 million refugees and 4 million internally displaced, the death penalty is at times a tool of power, terror and intimidation, and at other times a weapon of war. Eulethere Molisho Ndarabu gives us his analysis. The texts relating to military justice date from the period before independence of the DRC<sup>62</sup>, which kept practically all the provisions of Belgian Congo’s Criminal Law. In a state of emergency, we can see that the repressive action of the Common Law Courts is replaced by that of military jurisdictions<sup>63</sup>. In accordance with the Law 024-2002 of the 18<sup>th</sup> of November 2002 concerning Military Criminal Law, 62 charges are eligible for the death penalty while ordinary Criminal Law provides for 15. Lastly, the Law 023-2002 of the 18<sup>th</sup> of November 2002 deprives those sentenced to death of the possibility of a

two-step jurisdiction, insofar as the judgements of military tribunals are not eligible for appeal. There have been 5 important periods of use of the death penalty by military jurisdictions in DRC. Political weapon from 1965 to 1980: General Mobutu uses the death penalty to destroy his political opponents. Military justice serves Mobutu’s dictatorial regime as a tool for terror and intimidation. From 1980 to 1996, the country is *de facto* abolitionist. Despite sentences of capital punishment passed by the military jurisdictions, almost none of these sentences are carried out during this period. In 1996, Laurent Désiré Kabila, leader of the rebellion at the head of the Alliance of Democratic Forces for the liberation of the Congo overthrows Mobutu. The death penalty becomes a weapon of war, especially by the establishment of the Military order court (MOC), “which was a court for the circumstances created following the war to permit the consolidation of the positions conquered by the new army,” indicated Eulethere Molisho. The new regime used the MOC to stop all military resistance. At the time of the MOC, the DRC becomes the second country in the world, after China, for the number of executions<sup>64</sup>. A survey conducted by ECPM in 2005, in collaboration with the Congolese Coalition against the death penalty and the association “Culture for peace and justice,” counted 226 prisoners on death row among whom only one had been judged by a civilian jurisdiction.

The MOC was suppressed in March 2003, when President Joseph Kabila came to power, leaving nevertheless hundreds on death row without any recourse other than presidential pardon and an appeal to the Supreme Court of Justice in the interest of the law. The memorandum addressed by the Congolese Coalition to the General Prosecutor of the Republic lodging an appeal received no reply. Meanwhile, the moratorium decreed in December 1999 was suspended on the 17<sup>th</sup> of September 2002 during the trial of several people suspected of murdering President Laurent- Désiré Kabila, leaving the Congolese abolitionists extremely disturbed.

An encouraging evolution seems nevertheless to be appearing thanks to the synergy of efforts by the Congolese civil society and the international community. Effectively, the RDC ratified the Rome Statute of the International Criminal Court on the 30<sup>th</sup> of

March 2002, statute which does not provide for capital punishment even for the most serious crimes. What is more, thanks to the mobilisation of Congolese civil society, the new Constitution, promulgated on the 18<sup>th</sup> of February 2006, no longer makes any reference to the death penalty, thus abolishing it implicitly. A noteworthy progress, although the death penalty is still on the books of military jurisdictions, inciting Congolese militants for Human Rights to intensify their efforts for the adoption of laws leading to the abolition of the death penalty for good in the RDC. By the end of the workshop on the use of the death penalty by military tribunals, it clearly appears that, under the cover of states of emergency or of special circumstances, states systematically bypass the guarantees offered by the right to a fair trial in an impartial and independent court which respects the rights of the defence. The hasty nature of trials, especially when there is no possibility of appeal before military jurisdictions, or even the competence of the military to judge civilians, are some of the disquieting aspects of these courts.

In this respect, we highly recommend that militants carefully read the report of the UN Sub-Committee for Human Rights, concerning the administration of justice by military tribunals<sup>65</sup> and recall recommendation n°13 concerning the exclusion of the death penalty, especially for minors: “The evolution that we have noted in favour of a progressive abolition of capital punishment, including for international crimes, should be extended to military justice, which offers fewer guarantees than ordinary justice, and where a legal error is irreversible. In particular, banning the death penalty for vulnerable persons, and especially minors, must be respected in all circumstances.”

The lawyer: an essential actor  
in the combat for abolition

“The combat against the death penalty is above all a combat for lawyers!” For the President of the Paris Bar, Yves Repiquet, whose Bar along with ECPM organized a round table on the role of lawyers in the abolitionist struggle, the lawyer is the essential actor in the combat for the abolition of capital punishment since he is the last rampart before the death sentence. Hope for a punishment other than the ultimate, for a death sen-

tence quashed and/or commuted, are on his shoulders. Often in the public eye, even threatened, the defenders of those incurring a death sentence have a difficult task. Lack of means, faulty justice, unfair trials, and rights of defence refused... Those sentenced to death are far from having the same quality of defence. The debate permitted these committed law actors to talk about the difficulties that they confront in their countries. The professional organizations of lawyers and the Bars present, all of which are engaged in the combat for abolition, came to describe their actions in support of their colleagues in the North and South in order to encourage as many as possible to get involved. Richard Sédillot, lawyer, Administrator of Together Against the Death Penalty, lead the debate. President Repiquet chaired.

#### *Testimonies from lawyers defending persons incurring the death penalty*

“Japan has witnessed a considerable increase in death sentences over the last 10 years. The number of convicts on death rows has doubled during the decade” worried Maiko Tagusari. For this Japanese lawyer, member of the Forum 90 organization, this upsurge can be explained by the fact that the media shows Japanese society as being dangerous by their coverage of violent crimes and by excessively dramatizing victims’ accounts. The use of the death penalty is then justified as a means of cutting down crime. Since 2000, following an amendment of Criminal Law, victims and their families are authorized to appear in Court, independently of the Public Prosecutor. While these appearances have no evidential value, they can influence the decisions of the judges. In 2005, the minimum recommendations went up from 20 to 30 years, making it considerably more difficult to obtain release on parole. Even worse, the lawyer remarked, by 2011, a new trial system is likely to be introduced. In this system, 5 professional judges and 6 citizens will have to make a decision, no longer exclusively on the guilt, but also on the sentence. The decision will be by majority and not by unanimity. For Maiko Tagusari, it is essential to provide training aimed at improving the competence of lawyers in charge of defending persons eligible for the death penalty. It is primordial as well to launch a campaign of Human Rights information directed at

the general public and at the Japanese Bar, insufficiently aware of the issues involved. As in the rest of the world, the severity of the sanctions does not bring down the crime rate. Maiko Tagusari insisted on the importance of putting social rather than penal measures in place to curb criminal activity. At the same time, a thorough reform of Japanese penal procedure is necessary, especially respect to the possibilities of recourse against death sentences and lifting the secrecy surrounding executions. For Robert Bryan, American lawyer for Mumia Abu-Jamal, "lawyers of those sentenced to death must be determined." Difficult for them to fight against the death penalty without support. Effectively, capital punishment affairs are never purely legal, but very often eminently political. Such is the case he said, in the USA, especially in the Mumia Abu-Jamal affair. This militant Afro-American journalist, formerly a Black Panther, was sentenced to death and has been imprisoned for 20 years in Pennsylvania. Such was the case as well in Mauritania during the dictatorship. "During this period, the President of the Mauritanian Bar was replaced by someone imposed by the government," explained Brahim Ould Ebety. The independence of Mauritanian justice was therefore no longer guaranteed. In 2005, more than 200 persons were tried for an attempt to overturn the government. However no death sentence was delivered. The new government in place since 2005 is for change. The Mauritanian Bar, abolitionist, hopes to use its influence to convince the government that abolition is necessary. The Chinese lawyer Cheng Mao Zhang remarked that "the social and economic conditions of a country, as well as the political environment, must be taken into account." According to him, the abolition of the death penalty in his country will not be conceivable until China has attained the Western standard of living. "For example, a country where the imprisonment of convicts is a heavy financial burden for the state is a country which will be less willing to abolish the death penalty and this for economic reasons," he explained.

#### *Nigeria and the USA, the professional organizations of lawyers in the field*

In Nigeria, the most populated country in Africa where death sentences are an everyday occurrence, Lawyers Without

Borders (LWB) NGO brings help and assistance to lawyers defending persons sentenced to death. In 2003, LWB helped the Nigerian lawyer Hauwa Ibrahim, in the defence of Amina Lawal, a young woman sentenced to stoning for adultery. The lawyer had been threatened simply because she was defending a woman sentenced in accordance with the Sharia. LWB launched a media campaign which led to Amina Lawal's acquittal. At present, LWB continues its actions for the most disinherited: women and children. The majority of these prisoners had no lawyer and were sentenced following rushed trials. LWB has built up a team of Nigerian lawyers to help these prisoners appeal against their death sentences. "Far from all the lawyers in Nigeria are convinced that the death penalty must be abolished. Besides, officials use torture to obtain confessions. It is necessary to work with lawyers and the police force, to train them in criminal law, and then convince them that abolition is imperative. It is primordial to prove to Nigerian states using the death penalty that if International criminal jurisdictions have abolished the death penalty even though they try the most serious crimes, such as crimes against Humanity, then they should not use it for common law crimes" pleaded Catherine Mabilie of the French LWB. At present, between 500 and 1000 prisoners are awaiting execution. President Obasanjo, ardent abolitionist, has been opposed to executions for years but President Yar'Adua in power since 2007 leaves some doubt as to the fate of the prisoners. In the USA, the American Bar Association (ABA) has, for the last 20 years, run a programme for assisting the defence of Americans facing death sentences. Effectively, defence lawyers competent and trained in death penalty work are rare. The ABA also makes the public aware of this issue and seeks to mobilize new lawyers for capital cases. At state level, the ABA campaigns to encourage executive and legislative decision-makers to amend their system and improve the conditions of the defence for those incurring death. "The system of defence provided by the states cannot give good results because of the imbalance between the defence lawyer and the prosecutor. Thus, trials are not equitable" said Robin Maher, lawyer, Director of the death penalty project of the ABA. "The crucial problem is that of insufficient funds for the defence. Funds for the prosecution are 3

times greater than those of the defence. The officially appointed lawyers are poorly paid, have little funding at their disposal to prepare the defence, not to mention the fact that they are not always trained in capital litigation. On the other side, the prosecution can rely on qualified personnel who have adequate financial resources for carrying out their functions” she concluded. Thus, it is clearly essential that the American states start reforming: the defence should receive the same payment as the prosecution and should have sufficient funds for carrying out their mission; defence lawyers should receive specific training for the defence of affairs involving the death penalty.

Finally, the independence of American judges, elected by the public, is still a problem. Their election may depend on their decision to enforce the death penalty or not, and to allocate more or less funds to the defence, since they are elected by a public favourable, in majority, to capital punishment. The judges are therefore under great pressure from public opinion. The USA, Nigeria, Japan, China, Mauritania... throughout the world, lawyers fight for the survival of men and women. Like a doctor at his patient’s bedside, the lawyer is the last resort for saving the life of a person condemned to death. “More than ever we should be motivated to aid each individual threatened by his country’s justice. More than ever, it is today essential to federate our forces and together, lawyers and organizations, create a network in support of the defenders of those condemned to death, in order to pass on knowledge and expertise and in so doing, reduce, plea after plea, the number of death sentences in the world” concluded Richard Sédillot, moderator of the debate.

ZOOM:

#### LETHAL INJECTION ON TRIAL

Lethal injection has imposed itself in the world above all else as a modern method of execution: vaunted as being “clean” and “painless,” a lethal injection would at last allow executioners to put to death with dignity and humanity... The conditional is necessary. In reality, the fatal injection is an ultimate torture like the blade, the rope, or gunfire. The execution of Joseph Clark in May 2006 in Ohio lasted 90 minutes, revealing what an ordeal death by injection can be. A year earlier, the English medical weekly *The Lancet* had published a study that indicated that certain convicts might be conscious during the injection. The focus group “The lethal injection on trial” organized by ECPM and chaired by Piet De Klerk, Ambassador for Dutch Human Rights, described the practice of this method of execution which could, sooner or later, be considered a cruel, inhuman and degrading treatment.

#### *Lethal injection: executing more humanely?*

“Lethal injection is the official method of execution in 6 countries in the world<sup>66</sup>,” recalled Dr James Welsh, Health and Human Rights Coordinator for Amnesty International. Thought of as the most civilized way of putting to death, the lethal injection is still a brutal punishment, stressed Vinay Naidoo, of the Legal Intelligence Empowerment organization. The hesitations and stumbling in its deployment and adoption show its limits.

Lethal injection was introduced in the USA in May 1977 by the state of Oklahoma, followed by the state of Texas. It is now used in the majority of the US states authorizing the death penalty. However the method of execution has not always been a major preoccupation in the states, stressed James Welsh, recalling the stand of President Reagan for whom a sick animal should be shot directly, and without a vet, there was no need of any other method for a person sentenced to death! In China, the use of lethal injection is constantly rising ever since its introduction in 1997. “Since 2003, 18 mobile execution units were provided to the intermediate courts and to a High Court of Yunnan Province to enable executions to be carried out on the spot” recalls the researcher. The Philippines, now abolitionist by Law, used lethal injection from 1996 to 2000.

In Guatemala, the Congress decided to resort to lethal injection in

1999 following the “televised” slaughter of a double execution in 1996. It was necessary to execute in a surer way. But, noted James Welsh, “these executions had such a traumatic effect on the prison personnel and the victims, that after 3 executions no other was carried out.” In the same way in Thailand, where the injection was introduced in 2003 to replace the firing squad, 4 men were then executed. One of them agonized for more than an hour. Since then, no execution has taken place. In Taiwan, despite its introduction in 1992, executions are still performed by firing squad. The issue of resorting to the lethal injection has been discussed in India. The judges have considered that executions should be as humane as possible. In this respect Vinay Naidoo recalls the 4 conditions set by the *Deena v. Union of India (1983)* judgement: 1° The act of execution must be quick, simple and must not provoke the apprehension of the convict; 2° The act of execution must immediately induce unconsciousness which must quickly turn into death; 3° The act of execution must be decent; 4° The act of execution must not cause any mutilation. Hanging remains the most common way of executing.

#### ***Botched executions and attempts to medicalize the lethal injection***

Since the 2<sup>nd</sup> World Congress against the death penalty (Montreal, 2004), 125 of the 126 executions performed in the USA were by lethal injection. For Jonathan Groner, Associate Professor of Clinical Surgery at the University of Ohio, the mortal cocktail administered to condemned persons can be the source of intense suffering. Essentially composed of 3 products, designed to successively anaesthetize, paralyse the muscles and stop the heart<sup>67</sup>, the researcher explains that the administration of pancuronium bromide, followed by potassium chloride without a correctly administered anaesthetic adapted to the state of health of the condemned person, can provoke considerable pain, which can be assimilated to cruel punishment, and as such forbidden by the 8<sup>th</sup> amendment of the US Constitution. In the face of the number of botched executions leading to the agony of the convict, American judges have begun to realize what a “medical farce” the lethal injection is and that this is due to a lack of training of the prison personnel, and the absence of protocols, operational procedures and observation of the prisoner during execution. In fact, certain judges

have required an increased medicalization of the use of the lethal injection, especially by the presence of doctors during executions. In North Carolina, the only doctor who accepted to participate in an execution was banned from his hospital once his identity was revealed. In California, Judge Fogel ordered that two anaesthetists be present during an execution by lethal injection. They refused. Since then, this state has adopted a *de facto* moratorium. Despite the different medical artefacts available to correctly perform executions, Clarence Ray Allen, aged 76, took more than 30 minutes to die, following the injection of the 3 products. The cases of Joseph Clark in Ohio, a former drug addict, whose execution lasted more than 40 minutes after 2 injections, or Angel Diaz in Florida deserve to be underlined. Angel Diaz died after 34 minutes of agony. The autopsy revealed burns of the liver of more than 10” due to an incorrect administration of the drugs. A moratorium was declared in Florida with an amendment of the operational procedures for lethal injections in mind.

#### ***Lethal injection and the Hippocratic Oath: the medical profession's opposition***

For Professor Groner, “there is a veritable paradox in the administration of lethal injections: firstly, the use of unqualified personnel for this method of execution is unethical; secondly, it is ethically forbidden for medical personnel to participate in lethal injections. The dilemma is thus inherent to the lethal injection and therefore cannot be resolved.” The American Medical Association (AMA) has called on doctors not to take part in these executions contravening the Hippocratic Oath. “In the name of the American medical profession, the AMA recommends that doctors respect their ethical obligations, forbidding their implication in capital punishment” indicated Priscilla Ray, MD, President of the AMA's Council on Ethics and Judicial Affairs. At the same time, the American Federation of Physicians and Dentists rose up against the substances used. In Kentucky, some doctors have been prosecuted for having administered these substances. James Welsh notes nevertheless the legality of the said products. According to him, it would be useful to sound the opinion of medical companies on the use of these products in the case of lethal injection.

In reply to a question about the replacement of these lethal prod-

ucts, Jonathan Groner indicates that are used the 3 drugs so that witnesses see a “serene” death. The medicalization of the lethal injection could lead to its decline. Effectively, if all the medical profession refuses to take part in this type of execution, they will *de facto* cease to exist.

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## The death penalty is differential and discriminatory

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### “NO GAYS ON THE SCAFFOLD” CAMPAIGN!

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“The death penalty always kills innocents whose only crime is to love”<sup>68</sup>. Despite a general trend towards decriminalization of freely consented sexual relations between adults of the same sex, homosexuality is punishable by Law in almost 80 states. The legislation of 9 of these provides for capital punishment as an applicable sanction. The focus group organized by the International Lesbian and Gay Association ILGA and Together Against the Death Penalty, chaired by Antti Timonen, Administrator of ECPM, gave an inventory of state homophobia at its most extreme, reviewed advances made and identified the means for change.

#### *A true “state homophobia”*

In 2007, homosexuality is a crime punished by law in 80 member states of the United Nations, of which 9 have made provision for capital punishment: Saudi Arabia, Afghanistan, the United Arab Emirates, Iran, Mauritania, Nigeria, Pakistan, and Sudan. Even though most of these countries no longer sentence to death for homosexual motives, the simple fact of criminalizing homosexuality legitimizes a culture of prejudice and hate, a homophobic culture. Imported by colonialist empires, or inspired by the interpretation of religious texts, these homophobic laws punish homosexuality to different degrees, from prison sentences through corporal punishment to capital punishment.

“In Afghanistan, since the fall of the Taliban, homosexuality remains, in accordance with the Criminal Law of 1976, pun-

ishable by imprisonment but for Islamic Law the death penalty remains nevertheless technically possible,” said Daniel Ottosson of the ILGA. In Saudi Arabia, Islamic law is strictly applied, since Criminal Law has not been formalized. Sodomy is a crime punished by stoning for a married man. An unmarried man is flogged and exiled for a year. Sodomy is proved either by the defendant’s confession or by the testimony of 4 trustworthy Muslims. In Iran, the Islamic Criminal Law of 1991 has formally criminalized homosexuality. According to article 101, the sentence for sodomy is execution. The method of execution is decided by the judge of the Sharia. Based on article 117, sodomy is proved by the testimony of 4 trustworthy men who witnessed the act. However article 125 holds that, if the person who commits a homosexual act repents before the witnesses give their testimony, his sentence will be quashed. As for lesbianism the sentence is 100 whiplashes. However, if the lesbian act is repeated 4 times, the death sentence will be pronounced. In Mauritania, homosexuality is punished by public stoning<sup>69</sup> since the Criminal Law of 1984 came into effect. However, according to Amnesty International, there have been no executions since 1997.

#### *Religious fundamentalism, Islamic law and the death penalty*

“The problem comes from the specificity of the homosexual cause,” explained Stephen Barris, in charge of projects and communication at the ILGA. “Since a culture of hate and prejudice is kept alive by applicable homophobic laws which are often based on a rigid interpretation of Islamic law, it is necessary, as well as fighting for the decriminalization of sexual relations between freely consenting adults, to militate for secular laws in Islamic states and against religious fundamentalism. It is also a fact that, discrimination based on sexual preferences has only recently been acknowledged by states and various international authorities.” Effectively, the homosexual problematic has for a long time been ignored, both by general NGOs<sup>70</sup> and UN authorities. It wasn’t until the eighties that homosexuality was decriminalized by the member states of the European Council, and the UN Committee for Human Rights acknowledged discrimination based on sexual orientations only in 1984. Little by little states broke their silence, NGOs and international authorities

started to speak up. In 2003, Brazil proposed the adoption of a UN resolution addressing the elimination of discrimination based on sexual preferences and gender identity. The text nevertheless was never discussed because of the opposition of the Islamist states. Since then, 54 states appear to be favourable to the adoption of such a resolution. The number of associations specialized in the defence of gay and lesbian rights allowed to participate in the UN have increased. “However, the same states systematically block the resolution’s adoption, homosexuality being perceived as a Western import, whereas the penalization of sexual relations between consenting adults dates from colonial times,” said Stephen Barris. Like the resolution for the protection of gays and lesbians, a resolution for the depenalization of homosexuality would have more chances of passing. Europe has the task of unifying migration policies in relation to asylum. A resolution could be passed giving the right of asylum to persons persecuted for their sexual preferences. “It is, in this respect, important to note the combat waged by the European Parliament. In a resolution dated 9<sup>th</sup> of November 2005 concerning Iran, the Parliament condemns all sentences based on sexual preferences,” said Piia-Noora Kauppi, Member of the European Parliament. She noted, however, the difficulty in obtaining statistics on the executions of homosexuals, since they are often disguised as death sentences for rape. At present the European Parliament is concentrating its efforts on Iran as the biggest political challenge, and as one of the last countries in the world to hang for homosexuality each year.

#### *The participants in the debate recommend:*

- Media coverage of discrimination for sexual orientation throughout the world, in order to win hearts before the texts.
- Strengthening the network of associations and development of awareness within general Human Rights associations.
- Unification of policies concerning asylum in the European Union

## THE MUMIA ABU-JAMAL AFFAIR OR THE AMERICAN SYMPTOM

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The case of Mumia Abu-Jamal, Afro-American journalist condemned to death in Pennsylvania in 1982, is representative of capital punishment in the USA: cursory trial, disrespect for the rights of defence, racial and social discrimination induced by the jurisprudence specific to *Common Law* and the choice of the judge. The focus group Mumia organized by the “Collectif unitaire national de soutien à Mumia Abu-Jamal,” was chaired by his lawyer, Robert Bryan.

Imprisoned for the last 25 years on death row in Pennsylvania for the murder of a white police officer, which he has always denied, this Afro-American journalist was the subject of an Amnesty International publication “A Life in the Balance” 2000, establishing that “many aspects of this affair show that his trial did not guarantee the fundamental constitutional rights which should benefit every defendant... and that justice would best be served if Mumia Abu-Jamal were granted a new trial.” For French Senator Nicole Borvo the Mumia affair is effectively a blatant violation and negation of article 2 of the Universal Declaration of Human Rights of 1948 which stipulates that: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

### Legal Racism

Discrimination, not to say racism, is the key word in the Mumia affair. In the memorandum deposited by Robert Bryan at the US Court of Appeals for the Third Circuit in October 2006, the judges admitted three issues and accepted, in May 2007, to hear the arguments of the defence and the prosecution. Two clauses explicitly denounced discriminatory flaws in the trial: first of all, racism in the choice of the jury (the jury in 1982 was composed of 11 whites and a single black in a city with a population 40% black); and secondly, the partial behaviour of Judge Sabo, nicknamed “the hanging king” because of the 32 death sentences he has pronounced during his career (of which 29

concerned Afro-Americans) and whom the court stenographer herself heard say “I’m going to help them fry the nigger” in a conversation with the prosecution.

Apart from the particular case of Mumia, the American penal system is revealed as being discriminatory towards ethnic minorities and, in particular, towards Afro-Americans (40% of those condemned to death are black - 60% in Pennsylvania - while they make up only 11 to 13% of the total national population). The same bad practices of justice incited the Governor of Illinois, George Ryan, to suspend the death penalty in his state in 2000. For Linn Washington, journalist and Professor at Temple University, “Jamal’s story is that, recurrent, of the young and poor Afro-Americans who grow up in the inner city ghettos (there are more young Afro-Americans in prison than black students in university). In the case of Mumia, the injustice of the trial is obvious both at the investigation level (13 police officers who participated in the inquiry were, subsequently, condemned for corruption, production of false evidence and false testimonies) and at prosecution level, two essential tentacles of the octopus which our legal organization has become.” The journalist also spoke of the lack of professionalism of the media who were content to report what the police told them “which is contrary to the proud tradition of American investigative journalism (especially the: ‘*check what he does, not what he says*’ ethic). Only one newspaper mentioned the Amnesty International report published in 2000. The Mumia affair has a much larger media coverage in France and in Europe than in my own country.” For all these reasons Legal Action for Women and Global Women’s Strike petitioned journalists around the world “to protest against the persecution undergone by Mumia, who, as an independent journalist, denounced police brutality to ethnic minorities and the injustice of criminal convictions,” said Niki Adams, Law coordinator.

### A political affair

“Jamal is a symbol for those who suffer injustice, imprisonment and isolation as a result of their ethnic origin and also of their political opinions as did Nelson Mandela or Vaclav Havel” insisted Nicole Borvo.



This viewpoint is supported by recent political events concerning the affair. Jacky Hortaut recalls that when the Federal Court admitted a memorandum concerning the disrespect of Jamal's constitutional rights, some elected councillors of Philadelphia proposed, through their French lawyer Gilbert Collard, an agreement with Paris and Saint-Denis (France) who, respectively, granted honorary citizenship to and named a street after the condemned man: if Jamal loses this citizenship, the elected members of Philadelphia will lodge a request for the death sentence to be commuted to life imprisonment with the concerned authorities. Considering the indignation and refusal of the French authorities of such blackmail, the councillors Philadelphia gave up this approach but asked for a vote of support from Congress, which they obtained. For Robert Bryan, it is a matter of "evident collusion between the legal system and politicians against this client whose only guilt is to be black, poor and politically incorrect." Mumia's lawyer, capital punishment specialist has defended more than a hundred condemned persons during his career and has never lost a trial. However, he admits to have never been confronted by a case accumulating in the same way violations of constitutional rights, racism, false evidence and obvious injustice. Given the complexity of the case, the length of the procedures already more than 25 years, and the enormous costs, (expenses run at several thousands of euros a month), without financial support from international movements, the process would come to a halt. "It is a case which is very difficult, very political... and we must win for the 3000 other persons condemned to death who are waiting in prison," added Robert R. Bryan. "We know that the outcome of Mumia's trial will have repercussions for us all. As long as the death penalty lives on in the USA, universal abolition cannot be attained. The implicit support of British government for the execution of Saddam Hussein, in a country where the United Kingdom is politically active (despite some belated and timid protestations), shows us that, if the occasion turned up, the legal murder known as the death penalty could be restored in the UK" concluded Niki Adams.

## THE BULGARIAN NURSES AND THE PALESTINIAN DOCTOR SENTENCED TO DEATH IN LIBYA

The 9<sup>th</sup> of February 1999, just as they were starting their duty at the Benghazi Hospital in Libya, 5 Bulgarian nurses and a Palestinian doctor were arrested by Libyan authorities, detained in secret for a month, tortured and forced to confess to a crime which they hadn't committed. On the 6<sup>th</sup> of May 2004, they were sentenced to death and declared guilty by Libyan justice for having voluntarily inoculated hundreds of children hospitalised in Benghazi with the AIDS virus at the CIA's instigation and with the aim of destabilizing the regime. The 25<sup>th</sup> of December 2005, two days after an agreement was made with the West providing for a compensation fund for the Libyan families whose children had been contaminated, the Libyan Supreme Court quashed the death sentences and referred the case to the Criminal Court. The 19<sup>th</sup> of December 2006, they were again, after 7 years of procedure, sentenced to death. In an extremely complex economic and geostrategic context, the nurses and the doctor had become the *de facto* political hostages of the Libyan regime. From then on, what room had their defence lawyers for manoeuvring? What type of action could be used to facilitate their release? These were the principal questions for the contributors to the focus group dedicated to the case of the Bulgarian nurses and the Palestinian doctor, chaired by Commissioner Hammarberg of the European Council and organized by Together Against the Death Penalty. As we publish these proceedings, the mobilization of diplomatic services and civilian society has at last borne fruit: the 16<sup>th</sup> of July 2007, the death penalty of the accused was commuted to life imprisonment; the 24<sup>th</sup> of July the six were extradited to Bulgaria. It was our wish to relate these facts during the Congress and also show how they were projected into the present, and to testify on the mobilization and strategic thinking which nine months later led to the release of the nurses and the doctor.

An eminently political case  
For Emmanuel Altit, lawyer for the nurses, it was first of all a matter where a great deal of money was at stake and a matter

of international relations. Libya bargained the nurses' fate against 10 million dollars for each family involved (about 450 persons) and free treatment *ad vitam* to be provided in European hospitals. "It is interesting to note that the amount of 10 million dollars corresponds exactly to the amount Libya was obliged to pay the family each victim in the case of the attack on the UTA DC10 in Lockerbie" remarked Emmanuel Altit. Similarly, Libyan authorities also demanded the release of a Libyan imprisoned in Scotland for his role in the Lockerbie attack. Behind scenes, the firm stand of the Guide of the Revolution is relayed by his son, who has taken over the negotiations. Since in the background, Colonel Gaddafi's succession is being prepared.

#### *The intervention of the international community*

"That is why the European Union took action at the highest level and closely followed developments, with the utmost confidentiality in order to increase the chances of success" recalled Commissioner Hammarberg of the European Council who also undertakes diplomatic missions. The European Union also put in place a programme to aid the sick Libyans: the 400 children involved are treated in French and Italian hospitals. The 23<sup>rd</sup> of December 2005, a compensation fund for Libyan victims of the epidemic was set up under the aegis of the United Kingdom, the USA and the European Union. In theory the European countries finance it. However it is important, for the Europeans, that the existence of this fund should not conceal the responsibility of the Libyan authorities for not dealing with this epidemic and for blaming it on the 6 defendants.

#### Lawyers' strategy

Immediately after the first verdict sentencing them to death by firing squad the defendants sought the intervention of international lawyers in May 2004. This was not possible until the beginning of 2005. To surmount the obstacles of all sorts put in their way, the international lawyers elaborated a global strategy, not only legal but also making international public opinion aware of the case, explained Emmanuel Altit. The global strategy aimed at: changing the balance of power in order to lower the political "price" of the nurses and doctor and so bring the negoti-

ations on to legal ground, where it would be easier to find a quicker and politically cheaper solution.

#### *Bringing the debate on to legal ground*

The lawyers considered that the compensation issue concerned only the Libyan authorities, who had the obligation to treat (and possibly compensate) Libyan citizens. They refused to link the destiny of the nurses to the payment of some amount of money. They wished to stay in their field: the field of written law, of Human Rights, a solid field of principles and moral standards. At the side of the Bulgarian lawyers and the Libyan lawyer present from the beginning of the case, they participated in the Supreme Court procedure, which ended on the 25<sup>th</sup> of December 2005, and instigated another procedure against Libyan police officers who had admitted to torturing the nurses. They incessantly called on the Court, during the appeal procedure initiated in May 2006, to undertake the investigations necessary to reveal the truth and to enable a genuine debate on the numerous violations of the rights of the defendants to take place.

#### *Rights not respected and unfair trial: insist on scientific evidence*

In the present appeal procedure it appears, not only that it was not possible to discuss the violations of the rights of the defendants, but that the requests of the defendants in view of revealing the truth were rejected. First of all, the Court refused the international expertise sought by the lawyers. Yet, only internationally recognized experts with uncontested competence could have explained the causes of the epidemic and how it develops to the judges. Instead of which, the Court relied on the expertise undertaken by Libyan experts who had, according to the best specialists, neither the experience, nor the required knowledge. According to Declan Butler, reporter for the scientific magazine *Nature*, scientific evidence confirming the innocence of the nurses and the doctor exists. Contrary to the Libyan report on contaminations at the disposal of the court, scientific tests carried out by the world's best specialists show that there is no scientific evidence against the defendants and showed that this report was empty and dishonest. Effectively, the sci-

entists were able to establish that 50% of the children were already infected by hepatitis B and C; analysis of the variant of the virus proved that the children had been infected several years before the any contact with the nurses. Experts from the Arab world must now come and testify in order to calm the North/South confrontation and to depolitize the question, insists Declan Butler. Scientific publications have an important role to play in avoiding the risk of drift and scientific counter-offensive by the Libyan experts through the media, which lack rigour and scientific basis. Finally, other issues were not debated. Such as the violation of the Libyan procedural dispositions and the dispositions of the International Conventions signed and ratified by Libya. In the same way, the issues of torture (blows, electrical discharges, moral and psychological harassment, etc.) undergone by the nurses and the doctor, of their secret imprisonment for months and of the failure to respect the rights of defence, despite the considerable evidence available, were not debated. For proof, the prosecution and the plaintiffs didn't plead till after the defence pleas. A fair and equitable trial would have benefited not only the defendants but also the Libyan victims of the epidemic since it would have enabled the causes of contamination to be elucidated and avoided repeating the same mistakes. It would have permitted study the dramatic consequences of the affair to be examined and better care to be taken of the victims.

Perspectives: the necessity  
of an international mobilization

Finally, the case for the prosecution is void, except for confessions obtained under torture – the reality of which has been admitted by Libyan police officers and by Colonel Gaddafi's son. The real problem is that of the deplorable state of the Libyan health service, which is so despite foreign aid and the country's oil wealth.

In addition, "the timidity of Western politicians and officials of international organizations in this affair must be deplored" denounced Michel Taube. "The NGO and lawyers have many difficulties in mobilizing the international community. Support is not sufficient, even from the Bulgarians and certain diplomats, otherwise very committed in the combat against the death

penalty. In fact, international mobilization helps the work of diplomatic services" insisted the co-founder of ECPM. The Arab media relayed calls for the release of the nurses during the Congress in Morocco. In the Arab world, many citizens and leaders want their release.

"Certainly the balance of power is improving but we must continue to act. The objective is to save lives. States, the European Union, the European Council, have done much to change the situation. Palestine must join the fray so that an Arab voice may be heard speaking in defence of the nurses and the doctor, since the Libyans consider the affair in terms of the war of cultures. Justice must be rendered in the context of an honest and rapid procedure leading to an equitable judgement based on the norms of Human Rights and common sense" concluded Michel Taube.

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ZOOM

THE EXECUTIONS

OF MIGRANT WORKERS IN BAHRAIN

Apart from the fact that capital punishment is a blatant violation of the right to life, it is a differential and discriminatory sanction which concerns first of all the most vulnerable: the poor, women, migrant workers, minorities... The situation of migrant workers in Bahrain is a perfect example of this.

The legal system in Bahrain is based on both *Common Law* and the Islamic Sharia, especially for family law. At present, 14 articles of Criminal Law define the use of capital punishment. In June 2006, the members of parliament passed an anti-terrorist law adding any attack jeopardizing the security of the state or its representatives to the list of offences liable to the death penalty. In December 2006, "we witnessed a resumption of executions in Bahrain (whereas the last execution dated from March 1996). Four migrant workers, including two Bangladeshis and a Pakistani, were executed. In this country, the death penalty is more readily applied to foreign workers than to nationals," explained Abdulla Alderazi, Vice Secretary-General of the Bahrain Human Rights Society, affiliated member of the FIDH.

For a Bahraini, a sentence of death can be commuted to life imprisonment. In the same way, condemned citizens have the possibility of asking and obtaining the pardon of the victim's family and thereby avoiding execution. However this possibility is not available to a foreign national, the sentence is strictly applied. Campaigns supporting the abolition of the death penalty are therefore very difficult to conduct and above all to explain to the public, which is in favour of its preservation especially because of its reference to Islamic law. For the general public, to be abolitionist is to be unfaithful to the Islamic message.

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Acting together:  
what strategies  
exist for the  
universal abolition of  
the death penalty?

In 1764, Cesare Beccaria wrote in his treatise *On Crimes and Punishments*: “The death penalty is not a right (...) but a war of a nation against a citizen whose destruction it judges necessary or useful. If I prove however that this penalty is neither useful nor necessary, I will have achieved a victory for humanity.”

In February 2007, although 130 states are abolitionist *de jure* and/or *de facto*, 69 continue to use capital punishment. Faced with this failure of penal justice, what levers exist for universal abolition at the time of the World Congress against the Death Penalty? Although the fight for abolition involves a single-minded and well coordinated approach by the abolitionist movement and a groundswell of local initiatives, it also requires increased pressure by the international community on the retentionist states. Strategies therefore fall into two categories: diplomatic and judicial. On the international level, NGOs and inter-governmental organizations are increasingly working together. While the former launch vast campaigns for the adoption of a universal moratorium for example, the latter use multilateral or bilateral diplomatic channels. Adoption of resolutions, public declarations, individual initiatives and economic pressures are a few of the tools which can be used to advance the cause. Although the death penalty has become an international challenge, it nevertheless remains an internal penal policy issue, and the importance of the judicial lever must be fully recognized. Constitutional and/or Supreme courts play a fundamental role in that they rule on how this penalty complies with the overriding standard – the Constitution. Representatives of NGOs and inter-governmental organizations, magistrates, lawyers and legal practitioners have therefore worked together on current strategies, debating and balancing them. These discussions have been decisive in defining future priorities in terms of strategy.

## What diplomatic levers should be used for abolition?

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### CALL FOR THE ADOPTION OF A UNIVERSAL MORATORIUM ON EXECUTIONS OR CALL FOR THE ABOLITION OF THE DEATH PENALTY?

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Is it preferable to call for a universal moratorium on executions or the abolition of the death penalty? Two strategies coexist within the abolitionist world. Some favour the moratorium strategy, that is to say the suspension of executions and death sentences. This would be a necessary step in the states which are strongly in favour of maintaining capital punishment. Others call for a global strategy focusing on abolishing the death penalty, considering a moratorium to be an effective but inadequate tool, and highlighting other ways and means, such as ratification of the Second Protocol to the International Covenant on Civil and Political Rights. In the last few years the Italian government, supported by the organization Hands off Cain, has worked tirelessly to increase pressure on European Union member states to submit a resolution before the United Nations General Assembly calling for a universal moratorium on executions. The vote for a similar resolution by the European Parliament, in support of an Italian initiative, on the day the World Congress opened, revived the debate on the moratorium strategy, both on its own merits and in strategic terms. Was it judicious in the current context to present a resolution to the United Nations General Assembly calling for a universal moratorium on executions rather than abolition of the death penalty?<sup>71</sup> That was the topic of the debate “From moratorium to abolition: what is the right diplomatic strategy?” organized jointly by ECPM and the FIDH. Florence Bellivier, secretary general of the FIDH, chaired the session.

Temporary suspension of executions:  
just one of many strategies?

Some abolitionist organizations, including ECPM, believe that a moratorium remains fragile, since it is temporary and legally vague. "In the true meaning of the term, a moratorium is a legally authorized period of delay in the performance of a legal obligation or the payment of a debt<sup>72</sup>. Applied to capital punishment, the term covers various realities," stresses Florence Bellivier. The question then hinges upon the legal nature of moratoria<sup>73</sup>. And also on their field of application. Moratoria on sentences or on executions? The distinction is not insignificant. To decree a moratorium on executions is no obstacle to those prosecuting for the death penalty. Previous developments<sup>74</sup> have demonstrated how simply being held on death row is sufficient to constitute cruel, inhumane and degrading treatment. In the absence of an internationally agreed definition, the moratorium depends on national goodwill, as does the resumption of executions and the lifting of the moratorium. Lebanon and Bahrain<sup>75</sup> are good examples of this. There is therefore a need to invite the international community to address the question, and to define minimum standards in relation to the adoption of moratoria (definition, legal nature, duration, renewal, etc.). (editor's note.)

Furthermore, suspending executions temporarily may constitute a lever for supporters of the death penalty. The following example demonstrates this: in 1972, the U.S. Supreme Court declared that the laws on the death penalty were contrary to the eighth amendment of the American Constitution. Rather than proceeding with the abolition of capital punishment, the federal states took the opportunity to correct failures in the system of execution in order that they should comply with constitutional requirements. Executions resumed in 1977.

More recently, recalls Florence Bellivier, "the example of Illinois is the most illustrative. The moratorium decreed by Governor Ryan certainly represented a significant result, especially as his successor didn't revoke it. Nevertheless, four years after the decision, the debate is still focused on how to improve the death penalty, not how to replace it, despite the position of a section of the commission of inquiry which has argued that administration of the death penalty would remain flawed."

### *Moratoria: an end or a means?*

Moratoria are by their nature temporary measures which do not automatically call for the permanent abolition of the death penalty. Yet calls for the adoption of a universal moratorium on executions raises the question of whether this strategy constitutes an end or a means.

For ECPM's Michel Taube, "the moratorium strategy must not make us lose sight of the fact that the final goal is abolition. And there is a real risk of becoming satisfied with the imposition of moratoria! Suspension of executions is a necessary and effective tool in states highly in favour of maintaining capital punishment, as it makes it possible to spark debate in the community. Having said this, we note that other states seem ready to permanently abolish capital punishment without first resorting to a moratorium. It would be sensible for the European Union, the vanguard of abolition, to call for adoption of a universal moratorium on executions with a view to abolition!" Other strategies therefore deserve particular attention, especially ratification of the Second Protocol to the International Covenant on Civil and Political Rights which aims to abolish the death penalty. Simply signing up to this Protocol, while awaiting its ratification, results in a legally restrictive moratorium. In other words, the fact that a state signs the additional Protocol calling for abolition of capital punishment means the immediate cessation of executions. And its ratification means permanent abolition of capital punishment. "It would therefore be a mistake to concentrate abolitionist efforts only on the moratorium strategy, as the work of Supreme courts, calls for ratification of the Second Protocol and the diplomatic channel of inter-governmental organizations are also levers for abolition," argues Michel Taube.

A resolution calling for adoption of a universal moratorium on executions with a view to abolition  
As fragile as moratoria are, they do allow immediate cessation of executions, and indeed sentencing. For a certain time at least. But for the Italian organization Hands off Cain, a leading light in the struggle, moratoria not only make it possible to save lives but also have the merit of opening debate on abolition.

### *Immediate cessation of executions and room for dialogue*

The tone as well as the atmosphere change. It is time to launch an international debate on abolition, emphasizes Hands off Cain's Marco Perduca. An intermediary solution, "the suspension of the death penalty for a given time would make it possible to show how senseless and unnecessary it is, as well as its political and financial cost"<sup>76</sup>, notes Florence Bellivier. More than 40 states have amended their national legislation on the death penalty in less than 10 years. Around 100 have ratified the statutes of international criminal courts, including those of the international criminal court which does not practice the death penalty for even the most serious crimes. Dialogue may well prove extremely useful for abolition, particularly in Islamic states. But while waiting for the ultimate objective of abolition, moratoria are a necessity, insists Hands off Cain's representative.

"The Council of Europe's experience has shown that a moratorium is an excellent way of bringing about the transition gradually," says Renate Wohlwend, Rapporteur for the Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly. "We make no mistake, public opinion is often in favour of maintaining capital punishment. Awareness-raising initiatives are therefore much needed to convince people of the uselessness of the death penalty. Moratoria would appear to be one way of building awareness among the masses!" If citizens become aware of the fact that suspending capital punishment does not lead to an increase in criminality, permanent abolition is then easier to obtain. This is particularly true when a moratorium is introduced following a highly publicized miscarriage of justice which has resulted in an innocent person being sentenced. "Many abolitions have been obtained in this way following the adoption of a moratorium, the United Kingdom and Canada being good examples," adds Florence Bellivier.

### *Moratorium or abolition – how best to get Christians involved?*

"Religious groups play a determining role in the abolitionist cause. And yet their ideas when it comes to moratoria or the death penalty remain marked by a certain ambiguity, the subtleties of which require some effort to appreciate," emphasizes Marc Zarrouati, president of ACAT (Action by Christians for the Abolition

of Torture) France. The example discussed here relates to the Catholic Church, but the same ambiguities can be found, to varying degrees, within other Christian churches.

The position of the Catholic Church is expressed through two types of declarations:

- The first emanate from the state of the Holy See, which has reiterated very clearly in the last few years that the death penalty is contrary to the Catholic Church's pro-life doctrine. The death penalty, like war, is against Christian values and, in the same way that the Holy See calls for peace between nations, it calls for the abolition of the death penalty.
- The second, which call for a moratorium on capital executions, are based on the argument set out in the *Evangelium Vitae* encyclical by Pope John-Paul II and reiterated verbatim in the latest version of the Catechism for the Universal Church: the late Pope insists on the fact that today conditions are such that any aggressor can be effectively distanced from the society to which he poses a threat, rendering capital punishment pointless. But the ultimate punishment is not considered prohibited in the same way as abortion. The death penalty is forbidden "except when there is no other means of protecting society from the unjust aggressor."

This distinction between the two types of declarations makes it possible to understand why Cardinal Martino, Vatican representative to the United Nations declared to the UN in 2001 that "the Holy See delegation warmly welcomes the initiative of a resolution [...] on the reduction and, if possible, the abolition of the death penalty," and how, at the same time, the then Cardinal Ratzinger, head of the Congregation for the Doctrine of the Faith, could write in 2004 that "the death penalty is a matter of opinion, and although the Pope [referring at the time to John-Paul II] is against it, it is quite possible to disagree with him on this point. Unlike abortion, for example, which it is every Catholic's duty to firmly condemn." The Catholic Church therefore does not hold a categorical abolitionist position. "For it to declare the death penalty as always prohibited, there is undoubtedly substantial theological work to be undertaken," comments Marc Zarrouati.

The two strategies – moratorium and abolition – do not therefore have the same impact among Catholics. Although the call

for a moratorium is difficult to argue against, without challenging the moral authority of the Church, the call for permanent abolition may nonetheless be contested. From the Catholic viewpoint, it is therefore rash to assume that once a moratorium has been achieved, the categorical and definitive renunciation of the death penalty will automatically follow.

Marc Zarrouati believes that in the end it is up to NGOs to address the ideas of religious groups in general and in particular those of the various Muslim authorities. The doctrinal beliefs underlying these ideas must be taken very seriously for awareness-building initiatives among Muslim communities carried out by abolitionist NGOs to be effective and sustainable.

In conclusion, those involved in the debate have agreed on the necessity of a moratorium as the next step towards abolition and on the relevance of presenting a resolution calling for a universal moratorium on executions. Following a vast campaign undertaken by the World Coalition as part of the 5<sup>th</sup> International Day against the Death Penalty, the United Nations General Assembly voted, on December 18<sup>th</sup>, 2007, an historic resolution calling for a universal moratorium on executions with a view to universal abolition. This was a big step forward. One hundred and four states came out in favour of abolition. All attempts up until then had failed.

The next step? To demand a moratorium on sentencing to death as well as the commutation of all death penalties already passed, to redouble efforts to achieve ratification of the Second Protocol to the International Covenant on Civil and Political Rights aiming to abolish capital punishment.

#### THE WORLD COALITION'S CAMPAIGN FOR RATIFICATION OF THE SECOND PROTOCOL TO THE UN'S INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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The launch of a campaign for ratification of the Second Protocol<sup>17</sup> to the International Covenant on Civil and Political Rights is among the fundamental strategies for universal abolition. Adopted

by the United Nations General Assembly on December 15<sup>th</sup>, 1989, and implemented on July 11<sup>th</sup>, 1991, this is the quintessential universal instrument for abolition of the death penalty. Its ratification is irrevocable, since the treaty contains no exit clauses. The result is permanent abolition of capital punishment for states which sign up to the Protocol. The paradox lies in the fact that it has not been sufficiently ratified by states which are *de jure* abolitionist, only 60 of these 100 states having ratified it. The subject of the debate organized by Amnesty International France and chaired by its former president, the lawyer Denys Robiliard, was therefore two-fold: to clarify firstly why the Protocol is special, and secondly to highlight, using case studies, some of the obstacles to its ratification.

The ultimate obstacle to re-establishment of capital punishment

In the early 1980s, Marc Bossuyt, father of the Protocol and former Special Rapporteur for the Sub-Commission on Human Rights, was authorized by the sub-commission to produce a report on the relevance of drafting an additional Protocol to the Covenant calling for the abolition of capital punishment. Following a detailed examination of the preparatory work of various international instruments in relation to the abolition of the death penalty, and particularly that of Protocol 6 of the European Convention on Human Rights, the draft Protocol was presented to the United Nations General Assembly. Article 1, paragraph 1 of the text conferred a personal right of direct applicability to the individual by declaring: "No person subject to the jurisdiction of a state which is party to the present optional Protocol shall be executed," and in paragraph 2 required parties to make the legislative amendments necessary for abolition of capital punishment: "Each party shall take all due measures to abolish the death penalty within its jurisdiction." The Special Rapporteur left states with the option, however, of formulating a saving clause for crimes of extreme seriousness committed in wartime at the stage of ratification or joining of the Protocol. In international law, a saving clause is a unilateral declaration by a signatory state which aims to exclude or limit the legal effect of certain terms of the treaty in respect of that state. It was there-



fore crucial to subject the saving clause to very strict conditions, so as not to leave a loop-hole for re-establishment of capital punishment.

“This saving clause was subject to two strict conditions: a) communication, at the time the saving clause was formulated, of the relevant legislative terms applicable in wartime; b) notification of the declarations of the state of war and resumption of peace,” emphasizes Marc Bossuyt. This exception was justified at the time by the number of states which had abolished the death penalty for ordinary crimes, but not for crimes covered by military law. The Protocol was adopted without any amendment by the General Assembly on December 15<sup>th</sup>, 1989, in resolution 44/128 by 59 votes for and 26 against.

#### *Particularity of the Second Protocol*

For Marc Bossuyt, Protocol 2 is useful for two reasons. Firstly, it represents “a legally binding international commitment in three parts: 1. to not apply the death penalty; 2. to remove capital punishment from penal law; 3. to not re-establish capital punishment.” Secondly, the Protocol acts as a beacon to states which have not yet abolished the death penalty, thereby encouraging them to become involved in the movement.

Its particularity lies in the fact that, like the International Covenant on Civil and Political Rights, there is no exit clause. Abolition of the death penalty following ratification is irreversible. Indeed, under the terms of article 60, paragraph 5 of the Vienna Convention relating to treaty law, international conventions covering human rights may not contain any implicit exit clause. Protocol 2 therefore represents an additional obstacle to governmental attempts to re-establish capital punishment. Only its restrictive power is such that too few abolitionist states have, *de jure* or *de facto*, so far ratified the Protocol. “Twenty-nine states, despite being legally abolitionist, have still not signed up to the Protocol. The importance of encouraging them to do so cannot be overstated<sup>78</sup>,” insists Denys Robiliard.

For ratification

The question therefore arises of how far abolitionists can go to encourage states to ratify Protocol 2. Faced with the challenge

posed by its ratification, the World Coalition against the Death Penalty, with its 63 members, decided to organize a vast campaign for ratification of the Protocol. An understanding of the obstacles to ratification was required to prepare for this initiative. The first stage was therefore to organize a workshop during the Congress based on specific case studies, particularly Cambodia, Chile, Senegal and the Ukraine.

#### *Prospects of ratification in Cambodia and Chile*

Cambodia is a legally abolitionist state. In fact, based on articles 67, paragraph 2 of the criminal and judicial law applicable during the transition period (APRONUC) and 32 of the 1993 Constitution, the death penalty has been abolished for all crimes. Abolition occurred as part of a break with the past. Immediately following the end of the Red Khmer regime, it was inconceivable, firstly, to risk applying capital punishment, considering the fragility of institutions. Secondly, capital punishment was not among the sanctions applicable by the Extraordinary Chambers in the Courts of Cambodia, formed to prosecute crimes of genocide, war crimes and crimes against humanity committed during the Red Khmer period.

And yet Cambodia is proving reticent to ratify Protocol 2. For Manfred Hornung, head of human rights for LICADHO (the Cambodian League for the Promotion and Protection of Human Rights), “ratification of international instruments is accompanied by a loss of control over the internal political or legal agenda, as a result of an international right to inspection.” So if the government decided to restore capital punishment, only a revision of the criminal law and of the Constitution would be necessary. If the Protocol is ratified, such a move would violate international obligations and lead to serious criticism. Due to Cambodia’s past, the authorities fear the expression of criticism in relation to respect for human rights and are reticent to ratify new treaties, which incur new obligations.

“Secondly, ratification of Protocol 2 assumes that the signatory state commits to the abolitionist movement and supports the cause beyond its borders, which by extension implies interference in the internal affairs of other states, something difficult to conceive of in Cambodia which has maintained the princi-

ple of non-interference towards itself for more than a decade,” adds Manfred Hornung. Within the ASEAN, only the Philippines, Cambodia and East Timor have abolished capital punishment. Yet neither the Philippines nor East Timor have ratified Protocol 2. Considering the very small number of abolitionist states within the ASEAN, Cambodia is certainly little disposed to ratify, as this would risk alienating large retentionist economic powers such as China, Japan and South Korea.

“In Chile, before the arrival of the Spanish, executing enemies was commonplace. The Mapuche people struggled for almost three centuries against invasion of its ancestral lands. The characteristics inherited from those who built the country explain Chile’s difficulties in terms of human rights,” explains Leonardo Aravena, coordinator of Amnesty International Chile’s international justice program. Thus, it was not until the early 1990s that civil society got behind abolition. In 1990, President Frei Fruz Tagle decided to commute all death penalties to life imprisonment. Since then, the country was, in practice, abolitionist. Pope John-Paul II’s declaration stating his opposition to capital punishment in 1999 was the determining factor for abolition in law. On May 24<sup>th</sup>, 2001, President Ricardo Lagos proclaimed law n°19.804 which replaced the death penalty with life imprisonment for ordinary crimes. Protocol 2 was signed on September 10<sup>th</sup>, 2001. “Today we are working towards ratification, which requires the same formalities as a law. In December (editor’s note: 2006), we spoke to President Bachelet about possible inclusion of ratification of the Second Protocol in ‘the human rights agenda’ drawn up for the bicentenary of the Republic in 2010,” says Leonardo Aravena. Four draft laws were presented to the Assembly on December 19<sup>th</sup>, 2006, including ratification of the Second Protocol, ratification of the Protocol to the American Convention on Human Rights, removal of the laws relating to capital punishment from the Chilean Military Code and inclusion of abolition under all circumstances in the Constitution. But ratification was made difficult by the fact that Chile maintains capital punishment in times of war. Karen Hooper, Protocol 2 research coordinator for the Coalition, stresses the importance of stepping up the amount of lobbying for adoption of the law approving ratification, particularly by forging close links with local partners.

### *The weight of the World Congress: ratification of Protocol 2 in France and the Ukraine*

As a member of the Council of Europe, The Ukraine has been abolitionist for all crimes since 2000 and ratified Protocols 6 and 13 to the ECHR. The fact that Protocol 2 has not been ratified was due to an oversight which the Third World Congress made it possible to rectify. Dmytro Groysman, president of the Vinnytsya Human Rights Group, tells how he contacted the Ministry for Foreign Affairs when preparing his participation in the round table, in order to enquire about the state of the ratification procedure. “They replied that they had simply forgotten!” Following this, the Verkhovna Rada – the Parliament – approved the draft law with a view to ratification of Protocol 2 in April 2007, a month after the Congress was held.

Although France has been abolitionist for all crimes since 1981, it has not taken any steps towards ratification of Protocol 13 to the ECHR, nor that of Protocol 2 of the Covenant. “France (...) found itself in a tricky position on the international stage (...),” explains Emmanuel Decaux, professor at the Université Panthéon-Assas and a member of the United Nations Sub-Commission on Human Rights. The paradox lay in the decision by the constitutional council on May 22<sup>nd</sup>, 1985, which, while allowing ratification of Protocol 6 to the European Convention, emphasized that it was not contrary to the Constitution as it was removable: “The agreement may be repudiated under the conditions set out in article 65 of the ECHR.” Through this decision, the constitutional council created uncertainty in relation to ratification of irrevocable treaties, such as Protocol 2. The situation was not without ambiguity. On the one hand, France not only voted for all resolutions which led towards adoption of the Protocol and worked tirelessly to increase pressure for global ratification of the instrument (fundamentally abolitionist, France is part of the vanguard establishing “guidelines adopted by the European Union”). On the other, the legal impasse prevented it from ratifying the only universal instrument aiming to abolish capital punishment. In a 2005 hearing “on the international commitments relating to abolition of the death penalty,” the constitutional council concluded that ratification of Protocol 2 could only occur after revision of the Constitution. The Council

felt that this ratification of “irrevocable participation in an international commitment which relates to a field integral to national sovereignty undermines the essential conditions of this sovereignty.”

In January 2006, President Chirac recommended a constitutional revision to enshrine the principle of abolition in it, through a new article 66-1: “No-one may be sentenced to death,” to be included under heading VIII “On judicial authority.” A few weeks after the World Congress, France was committed to ratification of the Second Protocol to the International Covenant on Civil and Political Rights, and that of Protocol 13 to the ECHR. Abolition of capital punishment is now a constitutional principle.

*Following the debate, it was recommended:*

- That international parties must remain vigilant in regard to saving clauses formulated when joining or ratifying, subject to very strict conditions.
- That national human rights institutions increase the number of initiatives to promote abolition and ratification of Protocol 2.

## Clarification of the work of intergovernmental organizations in relation to the death penalty

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In terms of calling for a universal moratorium on executions and launching a campaign for ratification of Protocol 2 to the Covenant, intergovernmental organizations play a fundamental role in abolition. At the end of the Second World War, the majority of European states used capital punishment. In 2007, Europe – with the exception of Belarus – is a death penalty-free zone. The Council of Europe, the European Union and the OSCE have emerged as the leading lights of this evolution. On the other side of the Atlantic, within the Organization of American states, most English-speaking states apply capital punishment. However, a change is beginning to take shape. Case law from bodies within the Inter-American system seems to be exerting its influence over the United States Supreme Court. Finally in Africa, the death penalty is gradually becoming a topic of debate for the African Commission on Human and Peoples’ Rights. Chaired by Speedy Rice, professor of international law and a member of Death Penalty Focus, the round table has made it possible to draw up an inventory of the work of the various intergovernmental organizations throughout the world.

## THE EUROPEAN EXAMPLE: A DEATH PENALTY-FREE ZONE

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Council of Europe – vanguard of abolition in Europe  
“Abolition of the death penalty in Europe has gone through three successive stages,” explains Jeroen Schokkenbroek, department head for intergovernmental human rights programs with the Council of Europe. From 1950 to 1982, the death penalty gradually became a question of protecting human rights. After the horrors committed during the Second World War and at the time the Council of Europe was established in 1950, the death penalty remained a legal exception to the right to life, as enshrined in article 2 of the ECHR: “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.” It was only towards the end of the 1960s that a dawning conscience would emerge in Europe, with the death penalty gradually appearing as contrary to the very principles of law and democracy in a civilized society. Under the influence of the Council of Europe’s Parliamentary Assembly, Protocol 6 to the Convention, forbidding capital punishment in peacetime, was adopted in 1982. From 1982 to 2000, the Parliamentary Assembly and the Council of Ministers continued to bring pressure to bear on member states, particularly through the production of reports and recommendations and the organization of awareness campaigns, with a view to ratification of Protocol 6 by member states. Since 1994, the adoption of a moratorium on executions, as well as the obligation of signing and then ratifying Protocol 6, have also become mandatory conditions for new states’ membership of the Council of Europe. The question of abolition in wartime was raised for the first time by the Parliamentary Assembly in recommendation 1246 (1994), in which the Council of Ministers was asked to draw up an additional new Protocol to the Convention calling for abolition of capital punishment under all circumstances. The decisive step was taken at the European Ministerial Conference on Human Rights in Rome in November 2000, during which the Council of Ministers was asked “to examine the feasibility of a new additional Protocol to the Convention excluding the possibility of maintaining the

death penalty for acts committed in wartime or imminent danger of war.” Protocol 13 was adopted on February 21<sup>st</sup>, 2002, and opened for signing in May 2002. Since 2000, the Council of Europe has worked tirelessly on initiatives aiming to get all member state to ratify Protocols 6 and 13, and to establish an international dialogue with states which have observer status, particularly Japan and the United States. In 2007, the 46 member states of the Council of Europe, with the exception of the Russian Federation, ratified Protocol 6, while 37 member states ratified Protocol 13.

In relation to strategies for abolition, Jeroen Schokkenbroek explains the distinct roles of national powers concerning the death penalty. The adoption of a moratorium falls under executive power while abolition *per se* is in the domain of legislative power and national parliaments. In this respect the significant contribution of national constitutional courts to abolition of the death penalty and the influence that the European Court of Human Rights can exert over national jurisdictions should not be underestimated.

Abolition: a mandatory condition for entry into the European Union and a foreign policy priority  
For Daniele Smadja, director of multilateral relations and human rights with the European Commission External Relations Directorate General, the role of international organizations in the abolition of capital punishment is crucial. Development of standards, diplomacy, negotiation, communication campaigns and even support for civil society are some of the forms of action available to international organizations to bring weight to bear on states in favour of capital punishment. The European experience is a good example of this. All member states of the European Union have now abolished the death penalty. How? Through “an internal process under influence,” explains Danièle Smadja. Abolition of capital punishment was in fact possible thanks to collaboration between different political classes and motivated pressure groups. The fundamental role played by the Council of Europe, particularly through the creation of standards such as Protocols 6 and 13 to the ECHR, then the enshrining of abolition in the European Charter of Fundamental Rights,

have led to abolition of the death penalty being raised to the level of a mandatory condition for entry by new member states. Danièle Smadja hopes that this experience may benefit other regional organizations, such as the Inter-American system of human rights or the African Commission on Human and Peoples' Rights. "I am convinced that a greater level of exchange of experiences and analyses of developments underway is to be encouraged between regional organizations as it is of mutual benefit." At an external policy level, the framework of the Union's activity is defined by the guidelines<sup>79</sup> adopted in 1998. These make it possible to bring a certain pressure to bear on retentionist states, particularly as part of bilateral discussions. "Personally, I tend to think that initiatives undertaken by the EU, as a regional organization of 27 countries and also a global player, obviously carry a weight which is more significant than that of any single country, or indeed several countries acting separately," adds Danièle Smadja. Since 1998, the European Union has worked tirelessly for abolition, particularly through resolutions<sup>80</sup> and declarations. It was also on its initiative that a declaration was adopted by the United Nations General Assembly, on December 19<sup>th</sup>, 2006, calling for universal abolition of the death penalty, signed by 85 states. Diplomatic efforts, both bilateral and multilateral, are undertaken in conjunction with financial support to civil society organizations. "Since 1994, we have financed more than 30 projects encompassing a budget of 15 million euros in countries as diverse as China, the United States and Jamaica." Finally, Danièle Smadja notes the need for global participation, involving not only all international organizations, but also civil society and states, if universal abolition of the death penalty is to be achieved.

Using pressure from the Organization for Security and Co-operation in Europe (OSCE)

With 56 member states, the OSCE is the largest regional organization in the world. A political organization, its decisions are taken by consensus. "The OSCE's commitments do not require abolition of the death penalty *per se*," emphasizes Lydia Grigoreva, human rights coordinator for the OSCE's Office for Democratic Institutions and Human Rights. However, member states are firstly committed to use the death penalty for only the most serious crimes

punishable by law and, secondly, to make public information relating to the death penalty. It should be noted that there is a general tendency towards abolition among OSCE members. In fact, at the time of the Helsinki Declaration in 1975, half the participating states were retentionist. Today, only nine OSCE member states still maintain the death penalty in their legal arsenal.

In Albania and Latvia, it remains applicable in wartime. In Kazakhstan, Kyrgyzstan, the Russian Federation and Tajikistan, capital punishment has been retained for crimes committed in peacetime. However, death sentences are not carried out. The Republic of Belarus, the United States and Uzbekistan are the only OSCE member states that still carry out executions. Compliance with commitments taken by the retentionist states may prove problematic, particularly since the death penalty very often remains a state secret. The role of the OSCE and the ODIHR (Office for Democratic Institutions and Human Rights) is to help participating states to meet their commitments. Serious violations of human rights, such as the death penalty, are debated within the weekly Permanent Council of the OSCE. Among other means of pressure employed, the organization's significant advantages include official visits from the incumbent president, the annual meeting on the human dimension and OSCE field teams. Its tangible work in Kazakhstan, for instance, was focused in three areas: a national televised debate, training for employees of the state and civil society and the publication and distribution of legislation relating to capital punishment. Cooperation with other international organizations is another way of promoting abolition.

#### THE INFLUENCE OF THE INTER-AMERICAN SYSTEM ON THE DEATH PENALTY IN THE UNITED STATES AND THE CARIBBEAN

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The successor of the Pan-American Union, the Organization of American States (OAS), created in 1948, is made up of 35 member states, among which the majority of Spanish-speaking countries have abolished capital punishment, and the majority of English-speaking countries retain it. And yet by joining the OAS,

states implicitly recognize the jurisdiction of the Inter-American Commission on Human Rights to hear allegations of violations of human rights attributable to member states. The Commission bases its decisions firstly on the Universal Declaration of Human Rights and secondly on the American Convention on Human Rights, in force since 1978. The latter, as well as providing the Inter-American system with a legally restrictive treaty, formed the Inter-American Court of Human Rights sitting in San José (Costa Rica). All the OAS's Spanish-speaking member states have ratified the American Convention and accepted the compulsory jurisdiction of the Court. "As a result of which, although the system has gained real credibility in Latin America, it has lost credibility among English-speaking member states," comments Christina Cerna, principal human rights advisor to the Commission. These English-speaking states, including the United States and Canada, are not party to the Convention, which represents a major obstacle to the universality of human rights within the system.

Neither the Declaration nor the Convention absolutely prohibit capital punishment. Although the Declaration does not refer to the death penalty at all, the Convention stipulates that its application must be limited to the most serious crimes, following a judgment by the competent court in accordance with the law in force at the time of the crime. The death penalty may not be reinstated after its abolition. Following the adoption of the additional Protocol to the International Covenant on Civil and Political Rights, the General Assembly of the Organization of American States adopted a similar document known as the Protocol to the American Convention on Human Rights with a view to abolition of the death penalty. Prohibition is not absolute however as a signatory state may formulate a saving clause through which it reserves itself the right to apply the death penalty "in time of war, in accordance with international law for military crimes of extreme seriousness." Eight states are currently signatories to the Protocol, which came into force in August 1991. Argentina signed up in 2006.

Since its beginnings, the Commission has developed the practice of enacting legally restrictive precautionary measures in cases where capital punishment is imposed. The aim is to stay the execution until a decision has been pronounced by the

Commission. Whereas on the one hand, the Commission holds that the states are obliged to consider such precautionary measures as legally restrictive, the states argue on the other hand that these measures are not binding on them insofar as they have not consented to them. The disregard for precautionary measures by the governments of English-speaking Caribbean states, members of the British Commonwealth, are powerful examples of this. Following the resurgence of executions in the Caribbean in the 1990s, British lawyers began to bring death penalty cases before both the Judicial Committee of the Privy Council, and the Inter-American system, contesting the legality of the mandatory use of capital punishment. From 1996 to 2001, the Commission received approximately 97 motions relating to cases of this type in the Caribbean, particularly concerning Trinidad-and-Tobago and Jamaica.

As a result, Trinidad-and-Tobago repudiated the Convention in 1998. In spite of this, the Commission has continued to hear outstanding cases and considers the mandatory character of capital punishment to be incompatible with the Convention. The Judicial Committee of the Privy Council confirmed this ruling in 2002 in the case of the *Queen vs. Hughes* by declaring that the mandatory character of capital punishment constituted inhuman treatment contrary to the Constitutions of Saint-Lucia, Saint-Christopher and Nevis and of Belize. However, despite case law progress in the Caribbean, the Commonwealth states continue to ignore the Commission's rulings.

In the United States meanwhile, the Commission seems to have some influence over the US Supreme Court<sup>81</sup>. In 1987, the Inter-American Commission on Human Rights recognized, in the case of *Roach and Pinkerton vs. the United States*, the existence of a *jus cogens* norm prohibiting use of the death penalty against juveniles. Although this was objected to by the US government, the US Supreme Court recognized a year later that use of the death penalty against juveniles aged under 16 violated the eighth amendment of the American Constitution. Fifteen years after the case of *Roach and Pinkerton*, the Commission was again faced with the issue of the juvenile death penalty in the case of *Michael Domingues*. Although the US government, again disagreed the US Supreme Court took note and in 2005, in the

case of *Roper vs. Simmons*, declared that use of capital punishment against offenders under 18 was unconstitutional. But, to be clear on this, the Supreme Court made no reference to the ruling by the Inter-American Commission. However, Christina Cerna sees a similarity between the two rulings and, in particular, in the words of Judge Kennedy who stated: "In summary, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty."

#### TOWARDS THE DRAFTING OF A PROTOCOL ON THE ABOLITION OF THE DEATH PENALTY IN AFRICA

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Although the death penalty has wide support on the African continent, a positive change seems to be taking shape. Since the abolition of capital punishment in 1990 in Cape Verde, 13 African states have abolished capital punishment *de jure* for all crimes, seven of which have ratified Protocol 2<sup>82</sup>. Twenty others are abolitionist *de facto*. Similarly, it should be noted that 28 African states have ratified the Rome Statute of the International Criminal Court. National consultations on abolition are being established, particularly in Kenya, Uganda, Rwanda and Nigeria. "In Nigeria, President Olusegun Obasanjo has declared several times his opposition to the death penalty and mobilized the National Study Group on the Death Penalty, a body tasked with leading a national debate on the question and making recommendations to the federal government," says Salamata Sawadogo, President of the African Commission on Human and Peoples' Rights.

From a regulatory viewpoint, although the African continent is the only one which has not yet adopted a protocol on the question of capital punishment, the African Charter of Human and Peoples' Rights excludes arbitrary deprivation of the right to life in articles 4 and 5. The African Commission on Human and Peoples' Rights recently addressed the question of abolition in Africa. At its 26<sup>th</sup> session, a resolution calling on states to adopt a moratorium on executions was adopted. The 35<sup>th</sup> session author-

ized the Commission's secretariat to prepare a document relating to the question of capital punishment. Following this, a working group<sup>83</sup> charged with formulating proposals as to ways and means to abolish the death penalty in Africa was established. "Once the document is adopted, the African Commission intends to organize a regional conference on the death penalty in Africa," comments Salamata Sawadogo. According to her, the outcome of the meeting should be the creation of a legal committee with a view to drafting a protocol on abolition of the death penalty in Africa.

The President of the African Commission on Human and Peoples' Rights insists on the importance of drawing up in parallel a simplified case argument for the use of various local organizations, in order to convince non-abolitionist communities.

*In conclusion, those involved in the debate have recommended*

- A higher level of exchange of experience and analysis of the practices of intergovernmental organizations for the abolition of capital punishment.
- Speedy Rice has meanwhile emphasized the fact that the European Union has a duty to mobilize the political classes in certain retentionist countries by using diplomatic means, in the name, not of European, but of universal values.

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#### ZOOM

#### ON THE WORK OF THE EUROPEAN UNION

*"[The European Union] is opposed to the death penalty under all circumstances and it systematically promotes this position in its relations with third-party countries. It considers that abolition of the death penalty contributes to reinforcing human dignity and to the progressive development of man."<sup>84</sup>*

The European Union is at the forefront of the struggle for universal abolition of capital punishment. Following guidelines adopted in 1998, the Union has worked continuously to win over third-party reten-

tionist states. Initiatives, public declarations, and support for civil society... these are just some of the instruments used by the Union to advance the cause. Since 1994, as a result of its policy of support for coalitions against the death penalty, European decision-making bodies have supported more than 30 projects around the world. The European Parliament has intervened on numerous occasions, for example through the adoption of resolutions inviting the United States to adopt a moratorium with a view to abolishing the death penalty and also to ratify Protocol 2 to the International Covenant on Civil and Political Rights. The Congress of Paris provided an opportunity to address the implementation, effectiveness and decisive nature of the guidelines adopted by the European Union in relation to abolition. H  l  ne Flautre, an MEP and President of the European Parliament's Sub-Commission on Human Rights, moderated discussions between representatives of European decision-making bodies and civil society.

#### ***EU candidate? Abolish capital punishment!***

"The fight against the death penalty is now part of the EU's ethical values," says Riina Kionka, personal representative of the Secretary General, high representative for human rights. Abolition has become a mandatory condition for European Union membership. In this respect, lawyer Fatih Selami Mahmutoglu, a member of the management committee of the Istanbul Bar explains that the policy for membership of the European Union had a great deal of influence on legislative changes in relation to the death penalty in Turkey. As a member of the Council of Europe, Turkey expressed its desire to join the European Union in 1987. From the start of discussions in 1985, the Union required that Turkey ratify additional Protocols 6 and 13 to the ECHR as well as Protocol 2 aiming to abolish the death penalty. Turkey did this, after carrying out the modifications necessary for these ratifications<sup>85</sup>.

#### ***The Union's work with third-party countries: general and individual initiatives, public declarations***

The European Union's ambition is firstly to convince the international community to pursue its efforts with a view to universal abolition and, secondly, to ensure that minimum standards are applied where the death penalty still exists. Riina Kionka recalls the existence of guidelines adopted in 1998<sup>86</sup> by the European Union in

relation to third-party countries concerning capital punishment. According to these guidelines, the death penalty may not be used for instance against people under 18, pregnant women or mothers of young children, the mentally retarded, and anyone who has not had a fair trial. Robert C. Whiteman, senior advisor with the European Commission Delegation in Washington, notes in respect of this that it would be advisable to further reduce the number of categories of persons liable to be sentenced to the death penalty, to include in particular those threatened with extradition.

In tandem with general or personal initiatives aimed at third-party states<sup>87</sup>, the Union constantly makes public declarations on the death penalty in the world, to deplore the use of capital punishment here or there<sup>88</sup>, or to welcome the complete abolition of the death penalty in a particular state<sup>89</sup>. In 2005 it immediately denounced the use of the death penalty in Iraq and again condemn the death sentences given to the Bulgarian nurses and Palestinian doctor in Libya.

#### ***Effectiveness and efficiency of the Union's policy under scrutiny***

The European Union works in collaboration with pressure groups, local partners and national NGOs. For Maria Luisa Bascur, from the International Helsinki Federation for Human Rights, "the Union should exercise more pressure on the authorities, possibly setting up a protocol to monitor judicial systems." The organization, which is very much involved in central Asia<sup>90</sup> invites European decision-making bodies not only to continue their support for pressure groups in the region in the pre-abolition fight but above all to maintain a close watch and aid once abolition is achieved. "As in any case, the end of capital punishment is actually only a first step towards more humane criminal justice. We must not forget the plight of those held on death row after abolition and their detention conditions which are often deplorable." In central Asia, one of the major problems remains the secrecy surrounding the death penalty. The condemned are executed in total anonymity. No information is given as to name, age or reason for sentencing. Luisa Bascur stresses the importance of identifying persons executed, establishing statistics and lifting the veil of secrecy. Recommendations supported by Saleh Nikbakht (representing Emadeddin Baghi, an Iranian journalist and human rights campaigner), for whom: "In Iran, people condemned and executed remain unknown,



society tends to be unaware of the facts." On behalf of Emadeddin Baghi, she calls on the European Union to increase pressure on Iran with a view to reducing the number of executions and to enable the emergence of a debate on abolition within the country.

"The support of the European Union in the abolitionist struggle in the United States is crucial particularly in terms of the transmission of information," says Richard Dieter, director of the Death Penalty Information Center. "It is in fact crucial in mobilizing the media to provide them with information (reports, figures, etc.) and to become one of their contacts, so that they understand the general context of the death penalty. It is also essential to organize information and awareness campaigns, especially in schools in order to spark debate!" "Morocco owes a great deal to the European Union for maintenance of the moratorium and the *de facto* abolition of the death penalty," says Youssef Madad, a member of the World Coalition. "It is an essential partner which Morocco is in dire need of today, when debate has been made possible and the potential for abolition of the death penalty is enormous! The EU must integrate civil society components into its dialogue with inter-state contacts and reduce the burden of communications with small structures (federations of political parties, unions, associations, etc.) which are part of the fabric of society." Furthermore, he feels that the intercultural dialogue may be very fruitful and that Morocco, under the influence of the European Union, may decide to make the legislative changes necessary for ratification of Protocol 2 to the International Covenant on Civil and Political Rights.

In conclusion, for the President of the European Parliament's Sub-Commission on Human Rights H el ene Flautre, although the Union's policy in terms of support for the abolitionist movement is clear and its effectiveness demonstrated, the Union must nonetheless in the future try to take more account of the particularities of each country.

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## The legal route to abolition: the work of Supreme Courts

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Unconstitutionality in South Africa, commutation in Uganda, limitation in the United States... All these recent events show how Supreme Courts can form a rampart against application of the death penalty, and even be a lever for its abolition. Guardian of individual liberties, judge of the constitutionality of laws, final court of appeal for rulings, the Supreme Court is the highest jurisdiction in most states in the world. The constitutional route therefore represents a key strategy for abolition of the death penalty as it constitutes the supreme legal standard which prevails over lesser standards. At the time of the constitutional revision which aimed to incorporate abolition of the death penalty into the French Constitution, clarification of the work of these Courts was required, a good opportunity arose for a debate on the influence of supranational bodies over Supreme Court judges. Christine Chanut, advisor to the French Cour de Cassation (final court of appeal) and member of the United Nations Committee on Human Rights, chaired the debate organized by ECPM.

### FUNDAMENTAL RIGHTS VS DEATH PENALTY: RECONCILE THE IRRECONCILABLE

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It is not possible to reconcile the irreconcilable. On the one hand, most Constitutions protect the right to life, recognizing the right to a fair trial and even forbidding torture. On the other, capital punishment remains a valid punishment in 69 states in the world. Faced with this inconsistency, Supreme Court judges, the guardians of individual freedoms, are regularly called upon to judge the legality of the death penalty and its consequences, in light of constitutional obligations.

Their role is particularly significant on the African continent. Launched in South Africa in 1995 following the *State vs. Makwanyane* ruling<sup>91</sup> which ruled that the death penalty was unconstitutional, the judges of the Supreme Court in Nigeria, then in Tanzania, in turn gave a ruling on the constitutionality of the death penalty. Recently, the Ugandan Supreme Court commuted the death sentences of 417 prisoners. The constitutionality test used by the judges is worth looking at. Livingstone Sewanyana, a lawyer and president of the Foundation for Human Rights Initiatives in Uganda, explains further.

Is the death penalty constitutional?

A response from the Ugandan Supreme Court  
As well as having deplorable detention conditions<sup>92</sup>, Uganda is among the states which execute prisoners at regular intervals. Although the right to life is protected by article 22 of the Ugandan Constitution, it is possible to depart from this rule if sentence is passed after a fair trial. On the basis of this clause and the backing of the Susan and Kigula petition, opponents of capital punishment filed a submission before the Ugandan Supreme Court to contest the legality of the death penalty in light of the prohibition of cruel, inhumane and degrading treatment<sup>93</sup> on the one hand, and the right to a fair trial<sup>94</sup> on the other. In an historic ruling, the death sentences of 417 prisoners, the mandatory use of the death penalty and extended waiting on death row were judged to be unconstitutional by the Ugandan Supreme Court. Could this ruling mark a first step towards abolition? Time will tell, but for Christine Chanet, combining articles 22, 24 and 44 of the Ugandan Constitution to contest the death penalty was a very wise choice, bearing in mind that the mandatory use of the death penalty was recognized as being contrary to the right to a fair trial by the United Nations Commission on Human Rights.

Resistance from judges

in the Congolese Supreme Court of Justice

In the Democratic Republic of the Congo, the right to life is enshrined in article 16 of the Constitution. Although not expressly mentioned in the new Constitution, the death penalty remains a valid punishment set out in article 5 of the Penal Code. However,

for Katuala Kaba Kashala, Prosecuting Attorney General at the Supreme Court of Justice, the DRC is on route to abolition in civil law. This precision is not without significance. Here we are talking about the death penalty in civil law, as opposed to military law. It has to be said that, sadly the DRC has held the record for executions carried out by military courts. For Katuala Kaba Kashala, the meaning of the penalty is of fundamental importance. As in most democratic countries, the penalty in DRC aims to strike a balance between maximum social protection and minimum individual suffering. This is how it is understood by the Supreme Court of Justice, which has not passed any death sentences since 1968. "Without claiming to be abolitionist, it has always resisted applying the death penalty," stresses the Attorney General.

The explanation, according to him, lies in attachment to and understanding of the right to life in Bantu society: "The Supreme Court of Justice comes from a profoundly Bantu society, from a society which believes in life and considers it as a precious gift from the ancestors." In the DRC, human life is protected from conception and abortion is repressed. Although the death penalty is not practiced in civil law, the question of its application in the DRC is proving to be closely linked to instability, internal political struggles and successive wars. Katuala Kaba Kashala denounces its shocking application by military courts and emphasizes the importance of unifying civil and military law.

#### RESTRICTIONS ON APPLICATION OF THE DEATH PENALTY IN THE UNITED STATES: JUVENILES AND THE MENTALLY RETARDED

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Over the last three decades, the United States Supreme Court has been making constant improvements in the system of capital punishment in accordance with constitutional standards. However, for the past few years, it seems to have been assessing the scale of internationalization of the death penalty issue. Georges Kendall, senior counsel with Holland and Knight, explains further.

Developments in the attitude of the United States Supreme Court towards application of the death penalty. In the 1970s, the death penalty in the United States was challenged before the Supreme Court. A moratorium was adopted from 1972 to 1976 following the *Furman vs. Georgia* ruling. At that time jurors were expected to pronounce on both guilt and the penalty to be applied at the same hearing. Some states imposed the mandatory use of the death penalty in the event guilt was established. The *Furman* ruling invalidated laws on the death penalty, which were found to be discriminatory, arbitrary and contrary to the eighth amendment of the American Constitution forbidding cruel and unusual punishments. The Supreme Court's ruling marked the end of executions in the United States. The period would be short-lived. The different states adopted new procedures, with the aim of improving the system. In 1976, the Court approved, in the case of *Gregg vs. Georgia*, Penal Codes limiting capital punishment to certain crimes following a double hearing, first on guilt, then on the penalty.

The 1980s saw an ultra-conservative Court vote for confirmation of the death penalty in the majority of cases submitted for review. Following the Court's stance, Congress adopted new laws which aimed to strictly limit means of appealing verdicts before the Supreme Court. This period saw a considerable increase in executions.

Since 2000, the Court appears to have been deeply divided over the issue of capital punishment. On the one hand, it has confirmed the limitations imposed by Congress. On the other, (case of *Atkins vs. Virginia* in 2002 and *Roper vs. Simmons* in 2005) the use of capital punishment against the mentally retarded and juveniles has been declared unconstitutional. Furthermore, recent challenges to lethal injection have led to a significant reduction in executions over the past two years.

By limiting the field of application of the death penalty, the US Supreme Court seems to be following the positions adopted by supranational bodies and, in particular, the Inter-American Commission on Human Rights. The *Atkins vs. Virginia* and *Roper vs. Simmons* rulings deserve to be analysed in relation to this case law. Analysis by Christina Cerna, principal human rights specialist at the Inter-American Commission on Human Rights.

The question of the impact of the Inter-American Commission on Human Rights's case law on the United States Supreme Court

In 1987, the Inter-American Commission on Human Rights recognized, in the case of *Roach and Pinkerton vs. the United States*<sup>95</sup>, the existence of a *jus cogens* norm<sup>96</sup> prohibiting use of the death penalty against juveniles. In the absence of international consensus, it did not rule on the age of majority. In spite of rejection by the American government, the Supreme Court recognized a year later that use of the death penalty against juveniles aged under 16 was contrary to the eighth amendment of the American Constitution. At this time, no age limit had been set in 19 of the 36 states using the death penalty. By concluding that execution of juveniles aged under 16 was against the standards of a civilized society, the Court *de facto* recognized the existence of a higher norm and set the age of majority at 16 years.

Fifteen years after the case of *Roach and Pinkerton*, in 2002 the Commission was once again faced with the question of the death penalty against juveniles, but this time under 18 at the time of their crime. Michael Domingues, aged 16, was sentenced to capital punishment for a double murder in the state of Nevada. The Inter-American Commission considered that by continuing to execute juveniles, the United States was alone among civilized nations making up the Inter-American system, and was isolating itself from the international community.

Recalling the *Roach and Pinkerton* ruling and the existence of a superior *jus cogens* norm, the Commission recognized that considering the universal tendency towards abolition of capital punishment, a *jus cogens* norm forbidding use of capital punishment against offenders under 18 had been established. The American government once again rejected the ruling citing the fact that neither the practice of states, nor legal norms were sufficient to establish an imperative customary norm and that consequently it was not bound by this norm.

On March 1<sup>st</sup>, 2005, the US Supreme Court declared, in the case of *Roper vs. Simmons*, that the execution of juveniles under 18 was contrary to the eighth amendment of the American Constitution, prohibiting cruel and unusual punishments. It is,

however, interesting to note the absence of explicit reference to the Roach and Pinkerton ruling. Nonetheless, for Christina Cerna the two rulings are related, which appear to confirm for her the words of Judge Kennedy who justified the ruling in particular by saying: “In summary, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty.”

## Debate concerning “substitutes” for capital punishment

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On the issue of substitutes for capital punishment: “There is no alternative to a putting someone to death,” responds Robert Badinter. Once the imperative of abolition has been achieved, the question arises of reform of penal policies and more particularly that of the scale of punishments and the meaning of punishment. It can be observed that if the time for removing laws relating to capital punishment has come, the tendency then is to establish so-called “replacement” punishments, often expressed in life prison sentences without the possibility of parole. Those involved in the debate on substitutes for capital punishment organized by ECPM and chaired by lawyer Éric Bernard agreed on denouncing the dead-end of life imprisonment and working to find alternatives.

### LIFE PRISON SENTENCES WITHOUT THE POSSIBILITY OF PAROLE: A SUBSTITUTE FOR CAPITAL PUNISHMENT OR POLITICAL COMPROMISE?

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There is no alternative to capital punishment  
The question of alternatives to capital punishment is by its nature meaningless. Can there be any question of replacing an inhumane, cruel and degrading treatment with another torment? For Pierre Tournier, criminologist and CNRS research director, abolitionists the world over should refuse to enter into the debate on substitution for capital punishment. “The fight against capital punishment must find its justification simply in the of this legal crime,” he emphasizes. Though international instruments

for protecting human rights, such as Protocols 6 and 13 to the European Convention of Human Rights or additional Protocol 2 to the International Covenant on Civil and Political Rights, abolish or restrict capital punishment, the issue of punishment for the most serious crimes is not addressed<sup>97</sup>. Yet it must be observed that during a post-abolition period, the tendency is to establish life prison sentences without the possibility of parole. In other words, life imprisonment is often the rule in place of the death penalty. As the 10 prisoners of Clairvaux prison in France exclaimed indignantly in an open letter dated January 24<sup>th</sup>, 2006: “Enough hypocrisy! If we are really to serve life, without any effective prospect of freedom after our mandatory minimum sentence, we would prefer to be finished off for good than be left to rot, without the hope of seeing another day after well over 20 years of absolute hell.”

Political advisability and acceptability to public opinion  
Abolition of the death penalty is very often an unpopular measure, so much so that the only way of achieving it in the majority of cases is to substitute a life prison sentence without the possibility of parole. “It is very rare for questions relating to penal philosophy and practice to be addressed straight away and, when this is the case, they are very quickly put to one side due to requirements of political advisability, acceptability by public opinion and cost,” says Peter Hodgkinson, criminologist and founder of the Centre for Capital Punishment Studies at the University of Westminster in London.

#### *Life imprisonment achieves what?*

The American example is the most striking. Most abolitionist American states have replaced capital punishment with prison sentences of life without parole (LWOP). Why? So as not to upset public opinion. “The temptation to replace the death penalty with Draconian prison sentences or LWOP in the belief that it is necessary to buy the support of generally hostile public opinion may be understandable from a political perspective, but it must be avoided,” insists Peter Hodgkinson. “Replacing capital punishment with the most severe penalty, placing the perpetrators of the most serious crimes where they can do no harm,

makes it possible not only to get the approval of the political classes but also to reduce the number of proponents of capital punishment,” explains Catherine Appleton<sup>98</sup> from the Oxford University’s Centre for Criminology.

In practice, supporters of life without parole emphasize a state’s protective duty towards its citizens. “Placing individuals judged to be dangerous permanently where they can do no harm is, for them, the best guarantee that you can offer society, without risking wrongful executions,” notes Catherine Appleton. Besides the duty to protect society there is also a dissatisfaction with parole boards, which often prove incapable of assessing an individual’s future risk of re-offending based on a past crime.

As well as protecting society, life imprisonment makes it possible to respond adequately and proportionately to the seriousness of crimes committed. For its supporters, the only response to these crimes would be the most severe punishment, making it possible to appeal simultaneously to politicians and prosecutors and to convince opponents of capital punishment. “Some American abolitionists believe that LWOP is the only way of convincing a public which is largely in favour of capital punishment,” says Catherine Appleton. For Peter Hodgkinson, “It is a compromise which goes too far.” Finally it is argued that sentences to life imprisonment without the possibility of parole would have a dissuasive effect, precisely because they cannot be revised. However, the dissuasive nature of such sentences has not been proven any more than for other types of sentences.

#### *The reality of life imprisonment*

“Apart from reasons of political advisability, the notion of life imprisonment remains to be defined,” notes Pierre Tournier. Although Europe has rid itself of the death penalty, practice as to punishment of the most serious crimes differs from one state to the next. “In the countries where it exists, life imprisonment does not necessarily imply detention for the prisoner’s natural life, as procedures make it possible to review the sentence and grant early release. It is generally stipulated that a compulsory number of years be served before parole is possible,” explains the criminologist<sup>99</sup>. Out of the 46 states involved, most have a maximum sentence of life imprisonment. Four states use maxi-

imum sentences of 30 or 40 years, namely Croatia and Spain (40 years), Slovenia and Portugal (30 years). Norway meanwhile applies a reduced maximum sentence of 21 years.

“In France, the average term of imprisonment is 20 years, life imprisonment being the maximum,” says H el ene Franco, secretary general of the October 2001 Collective<sup>100</sup>. The 1994 Penal Code established minimum sentences of up to 30 years for the most serious crimes, during which no review of the sentence is possible. In the last three decades, the number of prisoners sentenced to life has increased three-fold; 84% of them serve a minimum of 30 years. According to her, the current procedures indicate a short-term view, eliminating the individual. Being unable to seek release before serving two-thirds of the sentence, in a case of serious re-offending, a prisoner will have difficulty in reintegration. The lengthening of sentences and life imprisonment are negative both for the prisoner and for society. They close both doors: that of the prison and that of reintegration. Peter Hodgkinson backs this up, emphasizing the cost of life imprisonment in the United Kingdom: “Now, to understand the enormity of the economic loss to our society, let me tell you that the average annual cost for this number of ordinary prisoners is 253 million pounds sterling.”

#### FOR A PROGRESSIVE AND HUMANIST PENAL POLICY

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For respect of human dignity: distinguishing between the punishment incurred and its application “While practice differs from one state to the next, particularly in Europe, the international community has gradually addressed the question by limiting the use of life sentences without the possibility of parole, particularly in relation to juveniles aged under 18,”<sup>101</sup> says Catherine Appleton. Similarly, under the Rome Statute of the International Criminal Court<sup>102</sup>, life sentences must be reviewed after 25 years. Article 10, paragraph 1 of the International Covenant on Civil and Political Rights also stipulates that “any person deprived of their liberty shall be treated

with humanity and with respect for the inherent dignity of the human person.”

Similarly, whereas the German Constitutional Federal Court recognized in 1977 the loss of human dignity caused by life sentences and denial of the right to reintegration into society, other Supreme Courts have considered prisoners under life sentences to have “a fundamental right to some prospect of liberation” (France, Namibia, Italy<sup>103</sup>). The Namibian Judge Levy explains in relation to this: “[Life imprisonment] takes away from a prisoner all hope of liberation. When a number of years is imposed, the prisoner waits for this term to expire, when he will leave jail as a free person who has paid his debt to society. A life sentence without the possibility of parole deprives the prisoner of hope. Remove this hope and you remove his dignity and all he has to continue living for.”<sup>104</sup> The essential question then arises of reconciling protection of society, punishment of the most serious crimes and respect for human dignity.

For Pierre Tournier, a distinction must be made between the punishment incurred and its application. This results from a global reflection on the punishment: from judicial review to provisional detention, minimum terms and parole. In relation to the latter, the criminologist recalls the recommendation of the Council of Europe in September 2003<sup>105</sup> at the International Penitentiary Congress on “the social function of penitentiary policy”<sup>106</sup>: “Parole is one of the most effective and constructive measures to prevent re-offending and encourage social reinsertion, through a programmed, assisted and controlled process.” Parole would therefore not only be the most effective measure but, according to the Council of Europe, it would benefit all prisoners.

#### Encouraging a conciliatory justice system

Apart from the question of the sentence incurred and its method of application in a European context, what does the penalty signify in a post-conflict situation? In the aftermath of internal struggles and wars, many states have to judge those who have participated in war crimes and to appease thousands of victims. Alongside traditional justice, based on the need for coercion and retribution, what alternatives are available to promote

pacification of attitudes and reconciliation between peoples? The creation of truth and reconciliation commissions is an interesting example of a system complementary to the traditional system of justice. Liberia is one of these West African states, ravaged by 25 years of civil war, with dramatic human consequences. It is however one of the African states which has abolished capital punishment. How? By ratifying the Second Protocol to the International Covenant on Civil and Political Rights. Although the death penalty is no longer applicable in Liberia, the issue of judging the instigators and perpetrators of human rights abuses is eminently topical. Emmanuel Altit, lawyer and expert with the European Union, gives us his analysis of the recent Liberian truth and reconciliation commission, established by the Accra peace agreement in 2003 and adopted by the transitional parliament in June 2005. For him, "The central problem still facing the TRC is how to implement a judicial process in a context where there are thousands of victims and aggressors, who are often difficult to tell apart. Are child soldiers aggressors or victims?" The Truth and Reconciliation Commission was based on the model of the Sierra Leone TRC which takes into account both the ethnic and geographical diversity of the country. "This commission's task is to document all abuses, establish and validate the accounts of victims and perpetrators of crimes (...) and at the end of its mandate to provide clear and operable recommendations on how the country can collectively restore the past and move forward, united, to face the future," explained Liberian President Ellen Johnson-Sirleaf at the inauguration of the country's Commission. For Emmanuel Altit, it is essential that these organizations have their own identity, clearly setting themselves apart from courts competent to make rulings, so as not to jeopardize the balance needed for the investigations and hearings phase. For, although TRCs constitute a temporary palliative in the absence of a judicial system, they should in no way be used to replace this system. The legitimacy of such commissions lies in the need to reconstruct the social bond, whereby they also answer the need for a parallel and quasi-judicial collective process, while the judiciary, in the true sense of the term, answers to an individual process.

#### *The speakers agreed*

- On the importance of alternatives to life imprisonment and of reviewing sentences being served (particularly dispositions for parole and day parole), in light of the prisoner's record, psychological and psychiatric assessments. Éric Bernard, who chaired the debate, suggested that sentences awarded should be automatically given a maximum duration for their application.

# Action: the role of the citizen

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For the first time since it was established in 2001, the World Congress Against the Death Penalty, with ACAT (Action by Christians Against Torture) and Amnesty International, offered a forum to abolitionist grassroots activists who are daily making the public aware of the issue and/or corresponding with prisoners sentenced to death, so that they could exchange ideas and methods of action and help overcome the difficulties encountered.

## SIGN FOR ABOLITION

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For Bernadette Forhan, head of ACAT's death penalty commission, petitions are still the best way to heighten public awareness. They make it possible, anywhere, through any medium, to reach out to citizens and draw them into an educative debate and then turn to the relevant authorities with the legitimacy of the signatures collected. However, she has learned from her 30 years' experience, that targeted circulation of petitions is essential: "The proof of this is the success of a recent campaign of petitions carried out in collaboration with Amnesty International France, which solicited the Christian community, priests and ministers."

## BUILD AWARENESS FOR ABOLITION

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In Italy, the Community of Sant'Egidio has been carrying out an international campaign since 2002, inviting cities the world over to illuminate one of their buildings every November 30<sup>th</sup> (the anniversary of abolition in Tuscany, the first state in the world to abolish the death penalty). "Five years after it was

launched, 'Cities for Life – Cities against the death penalty' was uniting cities around the world in the fight against the death penalty, including Rome, Brussels, Abidjan and Madrid," says Stefania Tallei, head of the Community's death penalty campaign. This chain of cities is constantly expanding. The number of towns taking part in the operation has increased over five years from 70 to 600, 40 of which are capital cities. This is the work of city halls but also of ordinary citizens. A kit explaining how to suggest your mayor should take part is available to everyone.

In Taiwan, the death penalty is a taboo subject. But films are very popular there. "These two facts encouraged Taiwan Alliance to End the Death Penalty to organize a film festival on the death penalty issue," explains organization member Hsinyi Lin. At the 2<sup>nd</sup> World Congress against the Death Penalty the association met foreign directors who helped them. This year, the festival presented 10 films and attracted hundreds of spectators. This made it possible to spark genuine debate around the death penalty. In 2006, no executions took place in Taiwan – and the association is convinced that the festival was partly responsible.

## INFORM AND WRITE FOR ABOLITION

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In Uganda, awareness is built through the media: debates and talk shows on the issue of the death penalty are broadcast on television and radio. Petitions against executions are published in newspapers. Although these do not prevent executions, they enable citizens to understand the issues and engage in the debate. In the United States, the Journey of Hope association brings together family members of murder victims and of those sentenced to death, as well as former condemned prisoners. Its campaigners travel around the United States and give presentations in high schools, universities and before religious leaders. "We always work in groups of three: someone from a family affected by a murder, another related to someone sentenced to death and an activist, in order to give the most accurate and complete account possible," says Bill Pelke, the organization's president and co-founder.



In Benin, the emphasis is on sending mail to political leaders. "Urgent actions are organized inviting citizens to send letters and explaining how to draft them. Thus many people who do not belong to any NGO nevertheless write to the political and religious authorities. Their letters have a strong impact on leaders, who become aware of the existence of a real movement among ordinary citizens against the death penalty," explains Jean Baptiste Gnonhoué of Amnesty International Benin.

In France, it was also through letters that an Amnesty International group was able to bring about the release of Antoinette Chahine, sentenced to death in Lebanon in January 1997. The two-year campaign included sending many letters to the prisoner herself as well as to the President of the Beirut court and French President Jacques Chirac at the time of one of his official visits to Lebanon. The aim was to exert pressure on the political and judicial authorities to obtain a review of the trial. Antoinette Chahine was freed on June 24<sup>th</sup>, 1999.

#### UNITE FOR ABOLITION

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In Puerto Rico, more than 40 associations from all backgrounds (students, workers, politicians, religious groups, etc.) united with other citizens to form the Puerto Rican Coalition against the Death Penalty. "Made up of several committees (media relations, relations with political decision-making bodies and a support committee for condemned prisoners), the Coalition organized press conferences and got a significant proportion of the population involved," says Carmelo Campos Cruz.

In Iran, censorship concerning the death penalty led groups of human rights activists to form a network. Their work involves requesting reports from the authorities and conducting studies to identify the scope of application of the death penalty in the country. On an international level, this informal network helps NGOs such as Amnesty International know what is going on in Iran. These groups use the power of NGOs outside the country to spread and/or correct information concerning the death penalty in Iran and thereby denounce it.

#### EXCHANGE LETTERS FOR ABOLITION

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The number of prisoners awaiting execution of their death sentences around the world is estimated at more than 20,000. Exchanging letters with a condemned prisoner helps to alleviate the suffering inflicted by this intolerable wait and the loneliness of death row. Although it is relatively easy to exchange letters with someone condemned in America (even though only a minority of the 3,350 on death row have a correspondent), it is more difficult or even impossible to make contact with the Chinese, Japanese, Moroccan, Congolese etc, certainly for language reasons, but mainly because of the conditions of their incarceration (in solitary confinement or secret prisons). Having said this, many members of ACAT, Amnesty International, the FIDH and the Struggle for Justice (LPJ) exchange letters with condemned prisoners. And many requests for correspondents from the condemned themselves are displayed on the French-speaking abolition website, Abolition.fr, published by ECPM. All the associations involved emphasize the commitment with which correspondents must approach this initiative. When one enters into correspondence one has to be honest with one's self and question one's motivations. "It is not about fulfilling one's own need for love but that of the condemned person," explains a workshop participant. One must not look for the sort of relationship that excludes any other contacts the prisoner might have.

In order to maintain a certain distance from one's correspondent, it is advisable to correspond as part of a group and not on an individual basis. The execution of a condemned person with whom one has been corresponding can be very hard to endure alone. Today, the Human Rights League insists on the need to correspond with women in particular. They are subject to two-fold suffering: death-row syndrome and sexual harassment. Furthermore, they are more likely than men to close in on themselves.

# From Montreal to Paris: abolitionist forces

While the Congress of Strasbourg, the first of its kind, laid the foundations for the World Coalition against the Death Penalty in 2001, that of Montreal three years later confirmed the importance for activists to unite at a global level and to develop strategies together for universal abolition. Led in 2007 by a strong World Coalition of 63 organizations from every continent, the Congress of Paris included the development of national, regional and global coalitions against the death penalty among its primary objectives. It provided the opportunity for abolitionists from central and south-east Asia, the Great Lakes region of Africa and the Arab world, and even Puerto Rico and the United States, to swap their experiences and to forge links for the years to come. All of the participants who gathered at the *Cité internationale universitaire* in Paris shared the conviction that only networking would win the fight for abolition and voted overwhelmingly in favour of creating coalitions. Following the Congress, which dedicated a round table to it, the Great Lakes Region created its own regional coalition on October 10<sup>th</sup>, 2007, on the occasion of the 5th World Day against the Death Penalty.

## Supporting abolitionists in Asia

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The Asian continent is the most deeply affected by death sentences and executions. Yet capital punishment is not an issue of particular concern to populations and governments. In South-East Asia, as in Central Asia, abolitionists call for the creation of networks and coalitions and seek actively to bring an international dimension to their movement.

### ANTI-DEATH PENALTY ASIA NETWORK (ADPAN)

In south-east Asia, abolition of the death penalty is not on the current agenda. Only the Philippines, East Timor and Cambodia have taken the step. Populations remain largely in favour of keeping it, and some regimes find it useful as an instrument of power and repression. Abolitionists are often isolated and their actions insufficiently coordinated. In this context, Amnesty International created the Anti-Death Penalty Asia Network (ADPAN) in 2006. The first regional coalition against the death penalty, ADPAN draws together abolitionist lawyers, parliamentarians and activists from several countries (Australia, South Korea, Hong Kong, India, Indonesia, Japan, Malaysia, Mongolia, Pakistan, Papua-New-Guinea, Singapore, Taiwan and Thailand, among others) and offers to share experiences in order to develop strategies. The Congress provided its members with a platform and the opportunity to dispel some of the secrecy surrounding executions, the mandatory use of the death penalty and the importance of the fight against drug trafficking as part of its increasing use. Purna Sen, the Director of Amnesty International Asia, chaired the session.

In Japan, executions have increased massively since December 2006: on Christmas Day, a two-year moratorium ended when

four men were executed. Intense secrecy shrouds the death penalty there. "The number and identity of prisoners, their place of detention, their daily lives or even the dates of executions are not communicated to the public. Following executions, families receive a call from the authorities: 'Today we said goodbye to your son. We will cremate his body if you wish.' Families agree in the majority of cases and so the bodies are cremated in the greatest secrecy," explains Maiko Tagusari from Forum 90. She also deplores appalling detention conditions. In 2005, two lawyers of the Japanese Federation of Bar associations lodged a complaint against the Government demanding an end to the secrecy surrounding executions. The Government maintains that going public would wreck the private lives of the families of the executed and that execution chambers might be damaged by opponents of capital punishment. This secrecy prevents any debate on the capital punishment system from taking place among the population, whereas such debate is necessary if we are to leave the door open to doubt and better understanding. Maiko Tagusari insists on how important it is for Human Rights organizations, lawyers, magistrates and unions to work together and federate so that the death penalty may be recognized as a violation of Human Rights.

In India, capital punishment is likewise carried out in the utmost secrecy, partly because of the large number of laws in the federal states and partly because of the caste system. For Bikram Jeet Batra, lawyer, researcher and member of the ADPAN, "Abolitionists are so isolated that the creation of a Regional Coalition against the Death Penalty is crucial!"

The Singapore lawyer, Magasani Ravi, tells of the immense difficulty faced by lawyers defending someone condemned to death in his country for drug-related crimes. The laws are extremely strict and use of the death penalty is mandatory – so much so that executions are carried out as soon as sentences are pronounced. The rate of executions in Singapore is at record levels. For William Schabas, professor in international law, it is urgent that the international legal community clearly define the notion of serious crime, which would firstly reduce the number of executions in Asia and secondly lead to a call for a moratorium.

## TOWARDS THE CREATION OF A REGIONAL COALITION IN CENTRAL ASIA...

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Positive developments can be observed in central Asia. Moratoria, particularly on sentencing, are in place across the entire region with the exception of Uzbekistan<sup>107</sup>. On the eve of the world Congress, Kyrgyzstan made a breakthrough by including abolition in its constitution. However, although remarkable progress has been made, the conditions in which those sentenced to death are kept remain deplorable. The workshop organized by the International Helsinki Federation and chaired by Tolekan Ismailova from Citizens against Corruption, allowed local participants in the project "Coordinated civil society campaign for the abolition of the death penalty in Central Asia"<sup>108</sup> to highlight positive steps towards abolition and also to denounce detention conditions.

"In the Republic of Kazakhstan, the initiative for a gradual removal of the death penalty has come from the President of the Republic and not from Parliament," explains Nikolai Belorukov, a member of the Constitutional Council. The objective was not abolition in itself, but a humanization of the penitentiary system. The 1998 Penal Code established life imprisonment as an alternative to the death penalty, the scope of which was greatly restricted. On December 17<sup>th</sup>, 2003, an unlimited moratorium was signed which established *de facto* abolition. Seventy percent of the population is said to favour the death penalty. The 30% opposed to capital punishment come from the better educated, which is why a vast awareness campaign has been necessary. Not having the death penalty in the legal system has not led to an increase in criminality and has not come up against major resistance. "The example from Kazakhstan teaches us," says Nikolai Belorukov, "that abolition requires a great deal of preparatory work – legislative, educational and organizational." "In Tajikistan, though a moratorium on the death penalty was introduced in 1998 when the new Penal Code came into force, there are no official statistics regarding the numbers of executed or condemned prisoners on death row before the moratorium," explains Bunafsha Gulakova from the NGO Republican Bureau on Human Rights and Rule of Law. In 2004, to general

surprise, the President declared an unlimited moratorium even though there had been no lobbying by NGOs. “The moratorium appears to have been a snap decision by the President. The danger of capital punishment being restored is a real one, in the sense that abolition is not stipulated or announced in the country’s Constitution,” stresses Bunafsha Gulakova.

In Kyrgyzstan, Askar Akaev, the country’s first President, introduced a moratorium on the death penalty in 1998. Eight years later, abolition was to be enshrined in the Constitution. During the moratorium, although their number progressively declined, death sentences continued to be handed down. One hundred and sixty condemned prisoners are today on death row, less 70 who have died as a result of illness or violence. In 2005, under pressure from the NGOs, the President extended unlimited validity to the moratorium. A major victory for civil society, the decision was a point of no return on the path towards complete abolition of the death penalty in the country. In 2006, Kyrgyzstan went all the way by including abolition in its Constitution. Zulfia Marat from the Kyrgyz-American Bureau of Human Rights and Rule of Law, a member of the consultative constitutional council, calls for vigilance however, given the country’s political instability.

Uzbekistan is the only country in Central Asia where a moratorium has not been put in place. Executions continue to be carried out. The President announced that the death penalty would be abolished on January 1<sup>st</sup>, 2008 (this has been done – editor’s note). Tamara Chikunova, President of Mothers against the Death Penalty and Torture, denounces particularly inhumane conditions in Uzbeki prisons in general and on death row in particular. The condemned die before they can be executed, from illness, infection and torture. Lots of prisons are located on former chemical and biological weapon test sites, notably Dzhaslyk camp in the Autonomous Republic of Karakal Pakistan. Tamara Chikunova insists on the importance of reflecting on alternatives to capital punishment. Substituting life imprisonment in her country comes down to using another form of death penalty. This opinion is supported by Gulnara Kaliakbarova of Penal Reform International (PRI), for whom “the only alternative is fixed term imprisonment.”

In conclusion, Tolekan Ismailova recalls that Central Asia needs the support of the international community, insofar as the next few years will be decisive for abolition in a large number of states in the region.

#### *The participants adopted*

- A resolution<sup>109</sup> calling on the region’s countries to adhere to the optional Second Protocol to the International Covenant on Civil and Political Rights, and affirming the need to improve the judicial system and prison conditions.

# Outlook for abolition in the Great Lakes Region of Africa

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Although putting an end to capital punishment in the Great Lakes Region of Africa was still unthinkable a few years ago, abolitionist ideas have since gained ground and are, today, defended by many members of civil society. In the 1990s, the death penalty was, in this part of Africa, an instrument of war, terror and repression that was widely used in an environment of extreme violence. The context of transition and national reconciliation in which the region finds itself today is favourable to significant progress in this field: abolition in Rwanda<sup>110</sup>, legislative reform in Burundi and, on a lesser scale, creation of a Congolese Coalition against the Death Penalty. The challenge today remains the position of death row inmates, often sentenced in the 1990s and awaiting possible execution in particularly atrocious conditions. In many cases, these detainees have just been forgotten. The workshop organized by Culture for Peace and Justice (CPJ) and chaired by its President, the lawyer Lieven N’Gondji provided the opportunity for civil society representatives to exchange information on the specific situation of each state in the region and to blaze the trail for the future regional coalition.

## THE EXPERIENCE OF THE CONGOLESE COALITION AGAINST THE DEATH PENALTY

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Although in 1999 the Democratic Republic of the Congo was well ahead in numbers of executions, 10 years later the term ‘death penalty’ was erased from its Constitution. For Marcel Wetschokonda, lawyer and member of the CPJ, in terms of the spirit of the Constitution, the death penalty has been well and

truly abolished for violent crimes. “The time when nearly the entire population was in favour of its application is no more... the vital work of the Congolese Coalition against the Death Penalty acted as an accelerator for the abolitionist cause.”

The Coalition was created on the eve of the Second World Congress against the Death Penalty in Montreal. Up until then, the fight against capital punishment had been limited to the dispersed actions of a few celebrities, among whom were Bayona Bameya, former Chief Justice of the Supreme Court, former transitional senator Nyabirungu Mwene Songa, Professor Akele Adu, etc. And of course Lievin N’Gondji. “At the outset, it was the case of Askari Mulume Oderwa which had a profound effect on the Coalition’s founders. Oderwa was condemned in 1998 at the age of 14 by the former Military Order Court (COM) and his lawyers decided to bring legal action for annulment. BBC coverage of the affair and international pressure persuaded the President to pardon the child. At the same time, a Human Rights Ministry was formed.

In 2003, the DRC announced the lifting of the moratorium on executions that had been in place since 1999. Around 100 people accused of the attempted assassination of President Kabila were awaiting judgment at that time. Seventy were condemned to death. Several associations then came together to write a joint memorandum asking the President of the Republic for clemency. Lievin N’Gondji campaigned against capital punishment, exposing the irregularities of the trial in television interviews and calling for Presidential clemency.

This was the eve of the creation of the Congolese Coalition against the Death Penalty.”

## TOWARDS ABOLITION IN BURUNDI

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In Burundian culture, the death penalty has always been a reality, notably for cases of adultery. Following independence in 1962, capital punishment became an instrument of power in the service of violent social strife. Its use for eliminating political dissidents marked the history of the Burundian conflict.

“At the end of the period of crisis marked by extreme violence and a culture of death, it was all the more difficult to envisage fighting for abolition, because impunity for those having participated in genocide was in the air. For the Burundian people, campaigning for abolition was tantamount to promoting criminals and people guilty of genocide. However, abolitionist ideas gradually worked their way into the thinking of Human Rights organizations,” notes Pia Ntakarutimana of the ITEKA League and Vice President of the FIDH. Gradually the movement led to the adoption of a moratorium on executions. At the same time, a legislative reform program was started in order to remove capital punishment from the Penal Code. The Code will soon be reviewed by Parliament. Abolition in Burundi is underway

## ABOLITION IN RWANDA

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In Rwanda, the death penalty has been part of the traditional justice system for centuries. It used to be applied according to a logic based on the community rather than the individual. “If, in a given family, an individual was guilty of murder, he wasn’t necessarily held responsible as an individual. The group to which he belonged could sacrifice another member according to the social importance of the guilty person and their position within the group,” explains Sinyigaya Silas, executive secretary of CLADHO. The notion of individual responsibility appeared at the beginning of the 20<sup>th</sup> century and since then the guilty must answer for their crimes. From the post-colonial era until very recently, all successive Constitutions have maintained capital punishment. Following the public execution of 22 condemned prisoners in 1998, people began to talk of abolition. In 2004, important political figures announced the launch of a debate on abolition, though the debate did not take off until the end of 2006. Human rights organizations such as CLADHO, in collaboration with ECPM and PRI, then started officially to oppose capital punishment. Meanwhile, in 2006 an inquiry into the reality of death row was conducted in partnership with ECPM, ending with a published report demonstrating the absolute need for

abolition in Rwanda. In November-December of the same year, CLADHO undertook a survey which showed that a majority of the population were in favour of abolition. On January 17<sup>th</sup>, 2007, the government council approved draft legislation abolishing capital punishment. The death penalty was abolished in law on July 25<sup>th</sup>, 2007.

However the challenge faced by Maela Begot, sociologist and director of the ECPM research team in Rwanda<sup>111</sup>, remains the position of prisoners held on death row. During her various missions in DRC and Rwanda, she was able to carry out interviews in the main prisons. The detainees all told of the tremendous fear of execution, appalling humanitarian conditions and especially the way in which the often unfair trials were held. In July 2006, 814 condemned prisoners were on death row in Rwanda, nearly 500 in Burundi according to Amnesty International at the end of 2005, and more than 160 in the Congo (DRC). Maela Begot believes that, “Death row probably detains many ‘wrongly convicted’. In DRC, a large percentage of sentences were passed by the Military Order Court which was abolished in 2003. Rwanda and Burundi are characterized by justice in the process of construction, having to deal with a severe lack of resources in a tense political and social context.”

*At the end of the workshop, it was recommended:*

- to consider a regional coalition which would federate the various national coalitions,
- to take steps to train magistrates in international human rights law,
- to run awareness campaigns among the local communities.

# The new American abolitionists: “unusual suspects” given a voice

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In the United States, the numbers of executions, and of death sentences, are declining. In view of the numerous miscarriages of justice brought to light in the past few years, public opinion itself is starting to question the use of the death penalty. The round table dedicated to the new American abolitionists was organised by ECPM-US and chaired by its General Secretary, Marc Jacquand. It endeavoured to identify those “unusual suspects,” decision makers, politicians, magistrates, religious leaders... who, although not activists, could further the cause of abolition in systems, minds and hearts.

## *Capital punishment in question*

Recent evidence reveals promising events in the fight against capital punishment. Since 2000, death sentences (the best indicator of capital trends) have dropped 60%. There were roughly 300 death sentences per year in the 1990s, whereas today there are about 115. Since the USA reinstated capital punishment, 65-70% of death sentences have been overturned. In the 2002 case *Atkins vs Virginia*, the US Supreme Court issued a clear ruling against executing the mentally retarded. Similarly, in 2005, the Court prohibited, in *Simmons vs Roper*, the use of capital punishment for juvenile offenders, mentioning international precedence among the reasons given. Importantly, politicians are no longer ostracized for voicing opposition to the death penalty. Although most of the states are retentionist, the vast majority of executions are carried out by a handful of Southern states.

“Several explanations for these changes were offered: evidence of the probable execution of innocents, generalization of life without parole as a possible sentence, and a shift in the debate

from morality to efficacy” explained Marc Jacquand. DNA testing has shown that many people on death row are, in fact, innocent. This shifted the innocence argument from theoretical to factual, giving innocence a face. The existence of Life Without Parole (LWOP) gave citizens who wanted a severe, permanent sentence a non-violent solution. And 2006 was the first year that Americans favoured LWOP over the death penalty. The moral question is a tough sell for abolitionists, as most opinions boil down to whether one prefers the Old Testament’s “eye for an eye” or the New Testament’s “turn the other cheek.” Thus, as abolitionists shifted the debate from morality to efficacy, a positive transformation occurred. In addition to the LWOP alternative and the fear of having executed innocents, other aspects of capital punishment are scrutinized. The claim that lethal injection is painless has come under serious doubt. Newspapers are important vehicles in the efficacy debate, with a significant shift in their reporting on capital punishment. Nationwide, from the *NY Times* to the *Houston Chronicle*, newspapers pinpoint cases of innocence, identify defendants, and report botched lethal injections.

## *Texas: American death penalty champion*

But abolitionists continue to face challenges. Federal death sentences are on the rise, clemency is hardly ever used, and Texas remains...well...Texas. In 2007, Texas executed its 400<sup>th</sup> inmate, continuing its dubious distinction of killing “more people than anywhere in the free world,” says Rick Halperin. LWOP is never applied in Texas cases where the death penalty is available. Despite the Supreme Court ruling against death sentences for the mentally retarded, such individuals continue to be executed because mental retardation is undefined in Texas. And those awaiting their death are subjected to abysmal conditions, so appalling that some inmates (like Christopher Swift) drop their appeals, preferring to be killed than subjected to the physical and psychological abuses of Texas death row.

Given these difficulties, a number of strategies were considered, including economic sanctions against Texas, changing a sentence to LWOP if execution has not been carried out within five years, and increased spending on crime prevention measures.



But only one strategy received a consensus: abolish capital punishment on a state-by-state basis. Each state is unique, and abolitionist efforts in one state won't necessarily transfer over to another. Therefore, multiple strategies must be employed, starting with the low-hanging fruit (places like New Jersey) to build national momentum. If enough states abolish capital punishment, pressure can be exerted on the US Supreme Court which can decide unequivocally on the fate of capital punishment throughout all states. Abolitionists cannot hope to change Texas, they must change the minds of enough states that a federal law will force Texas to eliminate capital punishment.

*Media and prosecutors: new levers for change.*

Unusual suspects who can help with this strategy include journalists and prosecutors. Chicago journalists in the 1990s determined that 9 or 10 death row inmates were absolutely innocent. "Their work helped change minds like District Attorney Sam Millsap's. The power of journalists and media should not be underestimated." explained Richard Diter, DPIC Director. Their research can change mentalities and their articles shape public perception. "Further, prosecutors need be reminded what their responsibility is (to see that justice is done) and what it is not (to get the toughest conviction they can)." said Sam Millsap former prosecutor. y appealing to their sense of judicial responsibility, abolitionists can sometimes open up new roads.

As to the role of the international community, the panel reached a clear consensus that change had to come from within. "Any efforts to push a message of moral imperative would be met with harsh opposition, with states likely doing the opposite of what they're urged to do." judged Franck Baumgartner, academic professor. The international community can best help with financial contributions to local, US-based NGOs.

## For an Inter-Arab Coalition against the Death Penalty

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Although the region's political and social reality is multiple, varied and not therefore susceptible to a single approach, societies in the Arab world remain, for the most part, hermetically closed to the question of abolishing the death penalty. Today, it appears essential to introduce the debate among the citizenry. To do this, it is fundamental to provide a space for reflection and dialogue where the region's abolitionists can unite and join forces. Chaired by Amina Bouayach, President of the Moroccan human rights organization (OMDH), the debate "Towards an Inter-Arab Coalition against the Death Penalty" made it possible to draft a report on the social and political realities of the Arab world and to define the priorities to be considered in order to start an inter-Arab abolitionist movement under the best possible conditions.

### THE ARAB WORLD: DIFFERENT POLITICAL AND SOCIAL REALITIES

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Varying degrees of involvement in the issue of the death penalty in the region

The main requirement when tackling the question of abolition of the death penalty in the Arab world is not to consider the region as a monolithic entity or a homogenous block. Indeed, the Arab world is far from constituting a single and unique social and political reality. The degree of information and mobilization around the question of capital punishment is not the same from one Arab country to another. From a political and legal standpoint, the situation is just as diverse. In Morocco, Tunisia and Algeria, the reformist trend is becoming increasingly visible. Egypt, on the contrary, is very considerably influenced by Islamist groups.

In Tunisia, President Ben Ali has let it be understood that he is not a proponent of the death penalty, while at the same time a group close to power has re-launched the debate on capital punishment. Unlike politicians, who are mobilized on the question of capital punishment, society at large does not appear ready to join in the debate. Tunisian public opinion is focusing its attention on aspects which are considered more vital, urgent and contemporary, explains Souhair Belhassen, Vice-President of the FIDH. In Tunisian society, the present difficulty lies in getting capital punishment on to the topical agenda. Nonetheless, the recent creation of a Tunisian Coalition Against the Death Penalty<sup>112</sup>, on June 14<sup>th</sup>, 2007, in response to the appeal launched at the World Congress, leaves room for hope that abolitionist arguments will take a greater hold on public opinion (editor's note).

In Morocco<sup>113</sup>, although the 2003 anti-terrorist law lengthened the list of capital offences, civil society, supported by some 10 members of parliament, has already started down the abolitionist road. The Moroccan Coalition Against the Death Penalty wants to make Morocco the keystone of the Arab federation of abolitionists. "One of the strategies of this Coalition, which should be replicated by other abolitionists, is to stimulate reflection on the meaning and finality of penal sanctions, in order to lay foundations for a more just penal policy," explains Youssef Madad, from the World Coalition.

In Egypt<sup>114</sup>, the priority also seems to lie at the level of debate in a country where studies show that a majority of citizens are in favour of the death penalty. For Hossam Bahgat, founder of the Egyptian initiative for human rights, abolition is far from being a realistic prospect. The present challenge is how to introduce a discussion on abolition, completely non-existent at the moment, into the public sphere. The debate should essentially be steered by influential people who have already expressed an opinion on the subject, such as leading journalist Mohamed Hassanein Haykal or Judge Hisham Bastawi.

Culture of death and the politization of religion  
The region seems to depart from the normal rules of functioning of contemporary international law, with domestic law generally taking precedence over international law. Regional charters

such as the Declaration of the Islamic Conference or the Arab Charter for Human Rights break with and contradict the pyramid of generally adopted norms.

The non-conformity of domestic law with international norms can notably be explained by the politization of what is religious and its orchestration by politicians<sup>115</sup>. Whereas Souhayr Belhassen emphasizes the fact that constitutions and penal laws are largely influenced by Sharia law, Hossam Baghat believes the reference to Islamic Sharia law to be hypocritical insofar as the conditions stipulated by Sharia law are not reproduced in the Egyptian penal code. The main problem stems from the continuing use of special courts which treat the most basic civil rights with contempt.

At the same time, for the speakers, the region is largely immersed in a culture of death which haunts its societies. The trivialization of extrajudicial executions and targeted assassinations is responsible for the lack of importance given to human life in these countries. However, the execution of Saddam Hussein, which had massive coverage in the Arab media, constituted a political reality which allowed citizenry to renew debate in the region.

#### TOWARDS AN INTER-ARAB COALITION AGAINST THE DEATH PENALTY: COURSES OF ACTION

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The main challenge is to apply the universal to the specific. More precisely, it involves imposing the principle of a universal standard, the abolition of capital punishment, whilst taking geo-political-cultural peculiarities into consideration. Arguments against the death penalty must, consequently, be adapted to the context so that as many people as possible can buy into them. How? By mobilizing public opinion and by educating people about human rights and, particularly, about the primacy of the right to life. At the same time as informing the public at large, efforts must be renewed, again and again, to mobilize intellectuals and raise the debate to the level of the *Jihad*, i.e. reflection.

National abolitionist movements and lawyers should also share their experience of penal justice, especially through the perspective of a regional coalition. The aim? To create a defence base for those sentenced to death by monitoring the actions of the courts and helping lawyers during appeal procedures. This strategy should promote awareness among legal practitioners. In order to be more effective, action for abolition should be part of a wider movement of democratization in these societies. The absence of democratic institutions and, consequently, of real alternation of power prevents the development of a democratic culture as well as the comprehension of problems relating to human rights. The work of activists must take place in this perspective.

#### *Participants at the Third World Congress Against the Death*

##### *Penalty recommended:*

- Encouraging the creation of national coalitions and the laying of foundations for a regional coalition to unite abolitionists in Arab countries.
- Developing political, legal, religious and sociological pro-abolition arguments.
- Developing strategies for lobbying politicians and the media.
- Establishing strategies and actions to influence Arab public opinion and develop reflection in society.

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#### ZOOM: AMERICAN FEDERAL LAW AND THE PUERTO-RICAN ABOLITIONIST MOVEMENT

*In Puerto Rico, the abolitionist struggle is part of the movement resisting United States sovereignty over the country. Judges, academics, journalists and activists are mobilizing to prevent the American "big brother" from re-imposing capital punishment, abolished in 1929. The Puerto-Rican coalition against the death penalty, which groups over 40 local organizations, was strongly represented at the Paris meetings.*

The American domination over Puerto-Rican institutions has a long history going back more than a century. It was after the Spanish-American war of 1898 that the Spanish crown ceded the territory to the United States. Since then, the American government has exercised sovereignty over this "free associate state." In 1917, Puerto-Ricans became American citizens without, however, the right to participate in Presidential or Congressional elections. Thus American federal laws are applicable in Puerto Rico and Puerto Rico's laws and Constitution are subordinate to them! However, in 1929 Puerto Rico abolished the death penalty in its Penal Code and included this abolition in its Constitution in 1952. Though no executions have taken place since 1927, Puerto Rico is still threatened by a death sentence under US federal jurisdiction.

In law, the country could see the death penalty applied in its territory by virtue of two United States laws: the Federal Death Penalty Act and the Federal Extradition Act. This threat is all the more resented since the very nature of the American federal procedure contains discrimination against Spanish speakers. Indeed, in the federal district courts of Puerto Rico, English is the official language although Puerto-Ricans are a Spanish-speaking people with a strong culture and identity. A Puerto-Rican who does not speak English fluently is automatically ineligible for jury service. So no federal jury can be truly representative of the community.

Supported by a large part of the historically abolitionist population, the Puerto-Rican Coalition Against the Death Penalty demands "international support for abolition and for Puerto-Ricans being able to live according to their own laws and aspirations." Beyond its borders, it has become galvanized around the case of Angel Nieves Diaz, a Puerto-Rican who was sentenced to death and executed in December 2006 in Florida (USA), after a summary trial, with no meaningful defence since he could not speak English. Today, it is calling for action for Juan Martinez Cruz, whose extradition to the state of Pennsylvania (USA) was finally approved on May 5<sup>th</sup>, 2006, by the Puerto-Rican Supreme Court, despite the possible risk of a death sentence being incurred.

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# Overall Conclusion

Is it possible yet to judge the third World Abolitionist Congress, held in Paris in the attractive international halls of residence of the *Cité Universitaire* from February 1<sup>st</sup> to 3<sup>rd</sup>, 2007, in a difficult context marked by the execution in December 2006 of Saddam Hussein, before the eyes of divided international opinion? As usual, it is for the defense to have the last word. Participants will remember a Congress of great intellectual weight, with exciting and impassioned debate on Islam and the death penalty, on the terrible but contrasting situation in China, the account of Pascal Clément, then French Minister for Justice, who was spokesman for the members of parliament against abolition in 1981, and who came back 25 years later to explain the reasons for and the firmness of his conversion. How can one forget, from among a thousand examples, the workshop on military justice and the death penalty, where a dialogue on capital punishment was begun between a senior judge from Kinshasa and Congolese lawyers, or the account of Edmary Mpagi, who was formerly condemned to death in Uganda and then found to be innocent? But a congress is judged above all on its legacy. One year on and it has already reaped a rich harvest, which had begun even before work started. Invited to participate in a workshop on the campaign to ratify Protocol 2 to the Covenant on Civil and Political Rights, a Ukrainian activist questioned his Foreign Minister about the reasons for its non-ratification: it was simply an oversight, since resolved! The fact that the Congress was held in Paris certainly helped to accelerate the process of France's ratification of the Protocol on October 10<sup>th</sup>, 2007. Future historians of abolition will also undoubtedly find that it was in the pre-

## Final declaration

parations for the Congress – in its workshop discussions about moratoria and in the informal committee which produced its final declaration, which included Hands off Cain and all the major abolitionist organizations – that the decisive moment came in the 2007 campaign to obtain a resolution from the United Nations General Assembly calling for a moratorium on executions with a view to abolition. The move was audacious, but paid off when, on December 18<sup>th</sup>, the resolution was passed by 104 votes for, with 54 against and 29 abstentions. This resolution has given the abolitionist movement a new lever to amplify the effects of the international impetus towards abolition demonstrated by abolition in Rwanda (July 2007) and in Uzbekistan (January 2008).

It is this international impetus which must continue to be strengthened. The World Coalition contributes, thanks to financial support from the European Union, the Netherlands, and of course, France, by bringing its efforts to bear to develop regional and national coalitions which constitute so many promises of future abolition.

**Florence Bellivier,**  
International Federation  
of Human Rights Leagues  
**Denys Robiliard,**  
Amnesty International

Paris, 1-3 February 2007

Assembled in Paris from 1 to 3 February 2007, on the initiative of Ensemble contre la peine de mort (Together against the Death Penalty), supported by the World Coalition against the Death Penalty.

We, citizens and representatives of civil society and public authorities, meeting in even greater number than at the first two World Congresses against the Death Penalty in Strasbourg in 2001 and Montreal in 2004, adopt this Declaration at the conclusion of discussions involving some 30 debates as well as testimonies, analyses and exchanges of experiences and strategies.

We welcome the fact that the death penalty is receding in the world and that since the Montreal Congress Greece, Kyrgyzstan, Liberia, Mexico, the Philippines and Senegal have abolished capital punishment, while no country has re-introduced it. We regret that, during the same period, some countries have resumed executions after prolonged moratoria, such as Bahrain in 2006, and that the death penalty is still applied on a large scale in a number of countries including China, Iran, Saudi Arabia, the United States and Vietnam. We strongly condemn the initiatives in some abolitionist countries to reintroduce the death penalty and demand in particular that the Peruvian authorities renounce this effort.

We recognize that the process of abolition must be accompanied by a better consideration of the needs of victims and by an in-depth reflection on penal policy and prison systems, in the framework of an equitable and restorative justice.

We demand with one voice the end throughout the world of justice that kills. No authority has the right to strike out a person's life. We recall that the death penalty is a cruel, inhuman and degrading treatment, that it is contrary to human rights, that it has no utility in the fight against crime, and that it always represents a failure of justice.

The Third World Congress against the Death Penalty adopts the following recommendations:

1. We call on all countries to abolish the death penalty and to ratify international and regional abolitionist treaties, especially the Second Optional Protocol to the UN International Covenant on Civil and Political Rights.

2. Following on from the statement at the UN General Assembly in December 2006, which was supported by an unprecedented number of countries from around the world, we solemnly appeal to all states of the world to stop all executions immediately.

Recognizing the great value that a successful resolution adopted by the UN General Assembly would have for the abolition of the death penalty worldwide, we invite the member states of the United Nations to take all necessary steps to ensure the adoption by the General Assembly of a resolution

- calling for an immediate and universal moratorium on death sentences and executions and the commutation of existing death sentences, with a view to the universal abolition of the death penalty;
- recalling that the death penalty violates human rights and fundamental freedoms; and
- encouraging the UN, its member states, and other relevant international, regional and sub-regional organisations to support the implementation of this moratorium, including through mobilizing resources and expertise.

We call on the citizens of the world to sign the petition, launched by the Sant'Egidio Community and supported by the World

Coalition against Death Penalty, which has already attracted over five million signatures, in favour of a worldwide moratorium on executions.

3. We welcome the presence in Paris of many abolitionists from North Africa and the Middle East and their efforts to create national, sub-regional and regional coalitions. We hail the initiatives taken in Morocco, Lebanon and Jordan towards abolition and call on the countries of the region to abolish the death penalty.

4. Welcoming the presence in Paris of Chinese abolitionists, we call on the Chinese government, in the prospect of the Beijing Olympic Games in 2008 and the Shanghai Universal Exposition in 2010, to establish an immediate moratorium on executions with the objective of progressively abolishing the death penalty, and in particular to remove non-violent offences, including economic and drug offences, from the scope of capital punishment.

As, moreover, the Chinese Supreme Court from 1 January 2007 is to review all death sentences imposed by courts of first instance, we call on the Chinese authorities to remove the secrecy surrounding the administration of the death penalty.

5. We welcome the fact that, since the Strasbourg Congress in 2001, the world abolitionist movement has structured itself, with full respect for the diversity of its members, around the World Coalition against the Death Penalty, which was created in 2002 and now includes over 50 organisations.

We call on organisations and institutions that share the objective of abolition – non-governmental organisations, bar associations, trade unions and local governments – to join the World Coalition.

We call on abolitionists of the whole world to take part each year in the World Day against the Death Penalty, which will focus in 2007 on China in the Prospect of the Olympic Games and in 2008 on Teaching Abolition. We call on all regional and international organisations, and the European Union in particular, to adopt 10 October as an official day in favour of universal abolition.

We call on the cities of the world to take part in Cities for Life on 30 November each year.

Finally, we call on members of parliament of the whole world, whose powers include that of voting for abolition, to sign this Declaration.

Appendix 1

# Program of the Third World Congress Against the Death Penalty

## MAJOR DEBATE

### THE PATHS TO ABOLISH DEATH PENALTY IN NORTH AFRICA AND THE MIDDLE EAST

- Which reforms for political and legal progress?

ORGANIZER **World Coalition Against the Death Penalty (WCADP)**

CHAIR **Mr Michel Taube**, spokesperson of ECPM, France

#### SPEAKERS

- **Message from Mr Beneddine Baghi**, Chair of Iranian organization for the Right to life, Iran
- **Mr Mohammed Arslan**, Member of Parliament, Jordan
- **Mrs Marie Ghantous**, Lawyer and Chair of the organisation for the Defense of Rights and Freedoms, Lebanon
- **Mr Youssef Madad**, member of the steering committee of the World Coalition Against the Death Penalty, Morocco
- **Mrs Nouzha Skally**, Member of Parliament, Morocco
- **Mr Raji Sourani**, Director of the Palestinian Centre for Human Rights in Gaza and vice-chair of the FIDH, Palestine

- Islam: a debate on the death penalty

ORGANIZER **ECPM**

CHAIR **Mr Philippe Yacine Demaison**, Vice-chair of vice chair of the French federation of scout, former chair of Muslims scouts of France and founder of “Assises du dialogue,” France

#### SPEAKERS

- **Mr Sami Aldeeb**, the Swiss Institute of comparative law, Lausanne, researcher, expert and specialist of Arabic and Islamic law, Switzerland
- **Mr Hossam Bahgat**, director of the Egyptian Initiative for Personal Rights, director, Egypt
- **Pr. William Schabas**, Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, Ireland
- **Mr Tarik Ramadan**, Professor of islamology, Oxford, UK VIDEO MESSAGE OF **Mr Khalil Meroun**, Mosque of Evry Courcouronnes, France

### CHINA, THE DEATH PENALTY AND THE BEIJING OLYMPICS

ORGANIZER **ECPM**

CHAIR **Mr John Kamm**, Executive director of Dui Hua Foundation president, USA

#### SPEAKER

- **Mr Mark Allison**, Amnesty International Asia Pacific regional office, researcher, Hong Kong
- **Ms Marie Holzman**, “Solidarités Chine,” sinologist and expert on contemporary China, France
- **Mr Shaoping Mo**, lawyer specialised in the defence of human rights, China
- **Ms. Isabella Nitschke**, European Liaison Officer of Human Rights in China
- **Mr Zhang**, lawyer specialised in the defense of human rights, China
- **Mr Michel Taube**, General Delegate and Spokeperson of ECPM, France

## ROUND TABLE AND FOCUS

### FROM THE TRIAL OF NUREMBERG TO THE TRIAL OF SADDAM HUSSEIN: HOW TO JUDGE THE AUTHORS OF CRIMES AGAINST HUMANITY?

ORGANIZER **ECPM**

CHAIR **Pr Horst Möller**, Director of the “institute für Zeithgeschichte,” Germany

#### SPEAKER

- **Mr Jean-François Akandji-Kombé**, Professor of European Law, University of Caen – Basse-Normandie, France
- **Mr Patrick Baudouin**, honorary president of the FIDH. Lawyer at the Paris Bar, France
- **Mr Hugo Bedau**, Tufts University, emeritus professor of philosophy, USA
- **Mr Emmanuel Daoud**, Lawyer at the Paris Bar, France
- **Mr Jean-Baptiste Gnonhou**, Amnesty International, Benin
- **Mr Michel Taube**, spokesperson of ECPM, France

### JUDGING TERRORISTS: THE DEATH PENALTY, A COUNTER PRODUCTIVE RESPONSE

ORGANIZER **French Human Rights League (LDH) & FIDH**

CHAIR **Mr Michel Tubiana**, Honorary President of French Human Rights League, France

#### SPEAKERS

- **Mr Kamran Arif**, Pakistanese human rights commission, vice chair, Pakistan
- **Mr François Roux**, Lawyer of Zacarias Moussaoui, France
- **Ms Françoise Rudetzki**, General Delegate of SOS Attentats, France
- **Mr Bud Welch** President of Murder Victims' Families for Human Rights and a member of the Board of Directors of the National Coalition to Abolish the Death Penalty, USA.

### IS THE DEATH PENALTY AN INTERNATIONAL RELATIONS ISSUE?

ORGANIZER **Institut des Relations Internationales et Stratégiques (IRIS)**

CHAIR **Mr Pascal Boniface**, Director of the Institute of International and Strategic Relations, France

#### SPEAKERS

- **Ms Sandra Babcock**, Clinical Director, Center for International Human Rights, Northwestern University Law School, Chicago, USA
- **Mr Kirill Koroteev**, Jurist, expert at the European Court of Human Rights, Russia
- **Mr Olivier Guillard**, Research Director Desk Asia IRIS, France
- **Mr Francisco Soberon G.**, Director Asociacion Pro Derechos Humanos, Peru



## DEATH PENALTY: AN INHUMAN, CRUEL AND DEGRADING TREATMENT

ORGANIZER Christian Action Against Torture (ACAT) and Fédération Internationale des acat (FIACAT)

CHAIR Mr Marc Zarrouati, associate professor of philosophy of science, President of ACAT, France

GUEST SPEAKER Mr Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, Sweden

### SPEAKERS

- Mr Kamran Arif, Vice-Chair, Human Rights Commission, Pakistan
- Mr Piers Bannister, Amnesty International Secretariat international, death penalty team coordinator, UK
- Ms Sylvie Bukhari de Pontual, President of FIACAT. Lawyer at the Paris Bar, France
- Mr Edmary Mpagi, Ugandan ex-death row inmate, Uganda
- Mr Livingstone Ssewanyana, Foundation for Human Rights Initiative, Uganda
- Mr James Welsh, Amnesty International, International Secretariat, Coordinator of the medical Programme and Human Rights of Amnesty International, UK

## THE DEATH PENALTY AND MILITARY JUSTICE: ASSESSMENT OF THE CURRENT SITUATION

ORGANIZER ECPM

CHAIR Mr Emmanuel Decaux, President of the Scientific Committee of the Congress and Professor of International Law at the Panthéon-Assas University, France

### SPEAKERS

- Ms Toleskan Ismailova, Citizens against corruption, Kyrgyzstan
- Mr Molisho Eulethere, Culture pour la Paix Justice, lawyer, DRC
- Mr Etienne Jaudel, former Secretary General of the FIDH. Lawyer at the Paris Bar, France
- : Mr Francis Perrin, member of the Executive Committee of Amnesty International, France

## LAWYERS FACING THE DEATH PENALTY

ORGANIZER The Paris Bar, ECP

CHAIR Mr Yves Repiquet, President of the Paris Bar, France

MODERATOR Mr Richard Sédillot, Lawyer, ECPM administrator, France

### SPEAKERS

- Mr Robert Bryan, Mumia Abu-Jamal's Attorney, USA
- Mr Saul Lehrfreund, human rights lawyer and executive director of The Death Penalty Project, UK
- Ms Catherine Mabilbe, Lawyers without borders, France
- Ms Robin Maher, Director of the death penalty project, the American Bar Association, USA

- Mr Mohamed Ould Ichidou, lawyer, Mauritania
- Ms Maiko Tagusari, Lawyer, member of Forum 90, Japan
- Mr Dr Biao Teng, Chinese Lawyer specialised in Human Rights defence, China

## THE LETHAL INJECTION ON TRIAL

ORGANIZER ECPM

CHAIR Mr Piet de Klerk, Ambassador for human rights, Ministry for Foreign Affairs, the Netherlands

### SPEAKERS

- M<sup>me</sup> Magali Jandaud, India specialist, France
- Dr Jonathan Groner, University of Ohio State, Associate Professor of Clinical Surgery, USA
- Mr Pierre Sané, UNESCO, assistant director-general for social and human sciences. Former General Secretary of Amnesty International International Secretariat, France
- Mr James Welsh, Coordinator of the medical Programme and Human Rights of Amnesty International, UK

## "NO GAYS ON THE SCAFFOLD": AN ECPM CAMPAIGN

ORGANIZER ECPM and ILGA

CHAIR Mr Antti Timonen, European parliamentary assistant, ECPM, Finland

### SPEAKER

- Mr Stephen Barris, Communication and Project Officer, ILGA, Belgium
- Mr Daniel Ottosson, Law Student, Södertörn University College, Stockholm, Sweden
- Mrs Piia-Noora Kauppi, European Parliament, Finland

## MUMIA ABU-JAMAL:

A SYMBOL OF THE FIGHT AGAINST THE DEATH PENALTY

ORGANIZER Collectif Unitaire National de Soutien Mumia Abu-Jamal

CHAIR Mr Jacky Hortaut, Co-presenter of the National Unit Collective, save Mumia, France and Mr Robert R. Bryan, Bar of San Francisco; former Chair, National Coalition To Abolish the Death Penalty; lead counsel for Mumia Abu-Jamal, USA

### SPEAKERS OF HONOR

- Mrs Nicole Borvo Cohen-Seat, Senator, France et Mr Patrick Braouezec Parliamentarian, France
- Ms Niki Adams, legal action for women (LAW), coordinator, UK
- Mr Thomas Giefer, Berlin, Germany. Documentary filmmaker and director, Germany
- Mr Linn Washington, Associate Professor in the Department of Journalism, Temple University, Journalist, USA

THE CASE OF THE BULGARIAN NURSES AND  
THE PALESTINIAN DOCTOR IMPRISONED IN LIBYA

ORGANIZER **ECPM**

CHAIR **Mr Thomas Hammarberg**, Commissioner for Human Rights, Council of Europe, Sweden

SPEAKERS

- **Mr Emmanuel Altit**, lawyer at the Paris Bar, member of lawyers without borders, France
- **Mr Declan Butler**, Nature, senior reporter, France
- **Mr Michel Taube**, General Delegate and spokesperson of ECPM, France

IN PRESENCE OF **Mr Guinio Ganev**, Ombudsman of the Republic of Bulgaria

FROM MORATORIUM TO ABOLITION:

WHAT IS THE RIGHT DIPLOMATIC STRATEGY?

ORGANIZER **International Federation for Human Rights (FIDH) – Together Against the Death Penalty (ECPM)**

CHAIR **Ms Florence Bellivier**, International Federation for Human Rights (FIDH), associate general secretary. Professor of law, France

SPEAKERS

- **Mr Marco Perduca**, board of Hands off Cain, Italy
- **Mr Michel Taube**, co-founder and spokesperson of ECPM, France
- **Ms Renate Wohlvend**, Rapporteur, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe, Liechtenstein
- **Mr Marc Zarrouati**, Associate Professor of Philosophy of Science, President of ACAT, France

THE WORLD COALITION CAMPAIGN FOR THE RATIFICATION  
OF THE PROTOCOL 2 OF THE INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS

ORGANIZER **French Section of Amnesty International in the name of the World Coalition Against the Death penalty**

CHAIR **Mr Denys Robiliard**, lawyer, former president of Amnesty International, France and **Mrs Susanne Fries-Gaier**, desk officer for death penalty, Foreign Office of the Federal Republic of Germany, European Union Presidency

SPEAKERS

- **Mr Leonardo Aravena**, Amnesty International Chile, international criminal justice programs coordinator, Chile
- **Mr Marc Bossuyt**, Former Special Rapporteur of the United Nations, president of the sub commission of the United Nations on the promotion and protection of human rights, member of the permanent court arbitration (The Hague), Netherlands
- **Mr Emmanuel Decaux**, President of the Scientific Committee of the Third World Congress Against the Death Penalty. University of law Pantheon Assas, professor of international law, France

- **Mr Dmytro Groysman**, Vinnytsya Human Rights Group, Ukraine
- **Mr Manfred Hornung**, Human Rights Monitor, Legal Advisor of the Cambodian League for the promotion and defense of human rights (LICADHO), Cambodia

THE ROLE OF THE INTERNATIONAL  
AND REGIONAL ORGANISATIONS

ORGANIZER **ECPM**

CHAIR **Mr Speedy Rice**, Professor of International Law, Death Penalty Focus, World Coalition against the death penalty

SPEAKERS

- **Mrs Christina Cerna**, Professor of international law and principal human rights specialist at the Inter-American Commission on Human Right of the Organisation of American States, USA
- **Mrs Christine Chanet**, Member of the International Commission of Jurists, Magistrate specialised in criminal law, former Counsellor to the Court of Cassation (Supreme Court) of the Criminal Chamber of France, Personal representative for the HC for Human Rights in Cuba, France
- **Mrs Lydia Grigoreva**, Human Rights officer, Organisation for Security and Cooperation in Europe (OSCE), Uzbekistan
- **Mrs Salamata Sawadogo**, President of the African Commission on Peoples' and Human Rights, Burkina Faso Ambassador in Senegal, Burkina Faso
- **Mr Jeroen Schokkenbroek**, Head of the Human Rights Intergovernmental Programs Department, Council of Europe
- **Mrs Danièle Smadja**, Director for Multilateral relations and Human Rights of External Relations of the European Commission (DG Relex).

THE EUROPEAN UNION EFFORTS TO OVERTURN THE DEATH  
PENALTY WORLDWIDE

ORGANIZER **ECPM**

CHAIR **Ms Hélène Flautre**, Member of the European Parliament, president of the Sub Commission for Human Rights, France

SPEAKERS

- **Ms Maria Luisa Bascur**, International Helsinki Federation for human rights (IHF), Chile
- **Mr Richard Dieter**, Director of Death Penalty Information Centre, director, USA
- **Dr Fatih Selami Mahmutoglu**, Member of board of directors, Istanbul Bar Association, Turkey
- **Mrs Riina Kionka**, Personal Representative for human rights of the Secretary General/High Representative of the Council of the European Union, Denmark
- **Mr Robert C. Whiteman**, senior advisor, congressional and parliamentary liaison the Delegation of the European Commission in Washington, USA

## SUPREME COURTS FACING THE USE OF DEATH PENALTY

ORGANIZER **ECPM**

CHAIR **Mrs Christine Chanet**, Member of the International Commission of Jurists, Magistrate specialised in criminal law, former Counsellor to the Court of Cassation (Supreme Court) of the Criminal Chamber of France, Personal representative for the HC for Human Rights in Cuba

SPEAKERS

- **Ms Christina Cerna**, Principal Human Rights specialist at the Inter-American Commission on Human Rights of the Organisation of American States, USA
- **Mr Parvais Jabbar**, human rights lawyer and Executive Director of the Death Penalty Project, UK
- **Mr Katuala Kaba Kashala**, Prosecuting Attorney at the Supreme Court of DRC, Democratic Republic of Congo
- **Mr Georges Kendall**, special counsel with the law firm of Holland & Knight, LLP, USA
- **Mr Livingstone Ssewanyana**, foundation for human right initiative, executive director, Uganda

## THE SCALE OF SENTENCES AND ALTERNATIVE SENTENCES

ORGANIZER **ECPM**

CHAIR **Mr Eric Bernard**, Lawyer, secretary general of ECPM, France

SPEAKERS

- **Mr Emmanuel Altit**, Lawyer at the Paris Bar. EU expert at the truth and reconciliation commission in Liberia, France
- **Ms Catherine Appleton**, research officer at the Centre for Criminology, University of Oxford, UK
- **Mr Peter Hodgkinson**, director of the centre of studies on capital punishment of the University of Westminster, UK
- **Mrs Emmanuelle Perreux**, Chair of the French union of magistrates, member of the French Collective "October 2001", France
- **Mr Pierre Victor Tournier**, research director, CNRS. Professor at the University of Paris Pantheon Sorbonne. Council of Europe, formal scientific expert, France

## THE SPACE TO ACT "ESPACE AGIR", TOOLS FOR CITIZENS

### • **Awareness Campaigns**

### • **Correspondence with those condemned to death**

ORGANIZER **Amnesty International France & ACAT France**

MODERATOR **Mrs Françoise Dieryck**, Amnesty International, Belgium & **Mrs Eleonore Morel**, ACAT, France

## "ANTI-DEATH PENALTY ASIA NETWORK" A NETWORK FOR THE ABOLITION OF THE DEATH PENALTY IN ASIA

ORGANIZER **Amnesty International SI**

CHAIR **Mrs Purna Sen**, Amnesty International, Asian Pacific Programme, director

SPEAKERS

- **Mr Mark Allison**, Amnesty International Asia Pacific regional office, researcher, Hong Kong
- **Mr Bikram Jeet Batra**, Lawyer and Researcher, member of the ADPAN network, India
- **Mr. Ravi**, Singaporean Lawyer, member of the ADPAN network, Singapore
- **Pr. William Schabas**, Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, Ireland
- **Mrs Maiko Tagusari**, Lawyer, Forum 90 Japan, member of the ADPAN network, Japan
- **Mr Oyunbaatar Tserendash**, Amnesty International, Mongolia

## TOWARDS THE ESTABLISHMENT OF A DEATH PENALTY FREE ZONE IN CENTRAL ASIA

ORGANIZER **International Helsinki Federation for human rights**

CHAIR **Mrs Tolekan Ismailova**, Citizens against corruption, Kyrgyzstan

SPEAKERS

- **Mr Nikolay Belorukov**, Member of the Constitutional Council, Kazakhstan
- **Ms Tamara Chikunova**, Mothers Against the Death Penalty and Torture, Uzbekistan
- **Ms Bunafsha Gulakova**, Bureau for Human Rights and Rule of Law, Tajikistan
- **Ms Gulnara Kaliakbarova**, Penal Reform International
- **Ms Zulfia Marat**, American Bureau of Human Rights and Rule of Law, Kyrgyzstan

## PERSPECTIVES ON ABOLITION IN THE GREAT LAKES REGION OF AFRICA

ORGANIZER **Culture pour la paix et la justice/Culture for Peace and Justice (CPJ)**

CHAIR **Mr Lievin N'Gondji**, Culture for Peace and Justice, DRC

SPEAKERS

- **Ms Maela Begot**, Sociologist, ECPM, France
- **Mr Pie Ntakarutimana**, honorary President of the league ITEKA and vice president of the FIDH, Burundi
- **Mr Sinyigaya Silas**, CLADHO, Rwanda
- **Mr Marcel Wetshokonda**, Lawyer, Culture paix et justice, DRC

## THE NEW AMERICAN ABOLITIONISTS: AN APPEAL TO THE "UNUSUAL SUSPECTS"

ORGANIZER **ECPM USA**

CHAIR **Mr Marc Jacquand**, General Secretary, ECPM USA

SPEAKERS

- **Mr Frank Baumgartner**, Professor of Political Science at Pennsylvania State University, USA
- **Mr Richard Dieter**, Director of the Death Penalty Information Center, USA
- **Mr Rick Halperin**, Professor at the Southern Methodist University, professor. Head of the Texas Coalition to Abolish the Death Penalty. Chair of Amnesty International, USA
- **Mr Sam Millsap**, former Prosecutor on death penalty cases, turned abolitionist, USA

## TOWARDS AN INTER-ARAB COALITION AGAINST THE DEATH PENALTY

ORGANIZER **ECPM**

CHAIR **Mrs Amina Bouayach**, Chair OMDH, representative of the Moroccan Coalition to abolish the death penalty, Morocco

SPEAKERS

- **Mr Hossam Baghat**, Director of the Egyptian initiative for human rights, Egypt
- **Ms Souhayr Belhassen**, Vice president of the FIDH and Journalist, Tunisia
- **Mr Raji Sourani**, Director of the Palestinian Centre for human rights in Gaza and Vice-president of the FIDH, Palestine

## FOCUS ON KEY COUNTRIES AND CAMPAIGNS FOR ABOLITION

ORGANIZER **ECPM**

CHAIR **Mrs Silvia ESCOBAR**, Ambassador for human rights, Ministry for foreign affairs, Spain

- 1 • Calling for a UNGA Resolution for a moratorium on executions – **Mr Marco Pannella et Marco Cappato**, Member of the European Parliament, Italy
- 2 • No to the Execution of Seriously Mentally Ill!, presentation of the US current campaign – **David I. Bruck** Federal Death Penalty Resource Counsel/o Virginia Capital Case Clearinghouse Washington & Lee School of Law, USA
- 3 • The voice of family members of executed prisoners. Presentation of the report, "Creating More Victims' How execution hurt the families left behind" – **Mr Renny Cushing**, executive director of Victims' Families for Human Rights, USA
- 4 • Return behind: resumption of the executions in Bahrain – **Mr Abdulla Alderazi**, Assistant General Secretary for Bahrain Human Rights Society, an affiliated member in FIDH, Bahrain

## EVENTS

### TESTIMONIES EVENING

ORGANISERS **Acat-France, Amnesty France, SOS Attentats, ECPM**  
EVENING CO-CHAired BY **Mrs Françoise Rudetzki**, Delegate General of SOS Attentats, France and **Mr Renny Cushing**, Executive Director of Murder Victims' Families for Human Rights, USA

EVENING HOSTED BY

- **Mr Marc Zarrouati**, Associate Professor of Philosophy of Science, President of ACAT, France
- **Mr Alain Boulay**
- **Ms. Jeanne Bishop**, lawyer and member of Murders Victims' Families for Human Rights, USA
- **Mr Jean-Claude et Mrs Annick Brocheriou**, SOS Attentats, France
- **Ms Antoinette Chahine**, Lebanon
- **Ms Tamara Chikunova**, Mothers Against the Death Penalty, Uzbekistan
- **Mr Edmary Mpagi**, former condemned to death, Uganda
- **Mr Joacquin Jose Martinez**, former condemned to death in the United States of America, Spain
- **Mr Philippe Maurice**, Historian, former condemned to death, France
- **Mr Sakae Menda**, former condemned to death, Japan
- **Mr Bud Welch** President of Murder Victims' Families for Human Rights and a member of the Board of Directors of the National Coalition to Abolish the Death Penalty, USA

### EVENING AT THE MAISON DU BARREAU DE PARIS

EVENING AT THE INVITATION of **Mr Yves Repiquet**, Chair of the Paris Bar.  
WITH **Mrs Marta Ocampo de Vasquez**, president of Mothers of the Place of May (Argentina), and **Mrs Bianca Jagger**, Ambassador of good will for the Council of Europe. Lecture of a text of **Nancy Huston**. Message of **Mrs Marie-Christine Barrault**

### Lawyers and bars engaged against the death penalty

WITH **Me Dominique Tricaud**, Institut for abolition, Paris Bar, France

- **Robin Maher**, American Bar, USA
- **Mohamed Ziane**, (Rabat), Morocco
- **Katherine Sales**, Inter american Bar, USA

WITH THE PRESENCE OF the Bars of Athens, Vaudois, Istanbul, Côte-d'Ivoire, Poland, Irland, Belgium, Brussels

## PUBLIC QUESTIONS AND ANSWERS SESSION

ORGANIZER **The World Coalition Against the Death Penalty**

CHAIR **Mr Jan Nordlander**, Ambassador for human rights, Ministry for Foreign Affairs, Sweden

### SPEAKERS

- **Mr Piers Bannister**, Amnesty International-international secretariat-coordinator death penalty team, UK
- **Pr Hugo Bedau**, University of Tufts, Massachusetts, emeritus professor of philosophy, USA
- **Mr Eric Bernard**, Secretary General of ECPM, France. Lawyer at the Paris Bar, France
- **Mr Peter Hodgkinson**, Director of the Centre for Capital Punishment Studies, University of Westminster, UK
- **Mr Mario Marazziti**, Sant' Egidio, Italy
- **Mr Joaquin Jose Martinez** former condemned to death in the United States of America, Spain
- **Mr Sam Millsap** former Prosecutor on death penalty cases, turned abolitionist, USA

## SPEECH OF MONSIEUR PASCAL CLÉMENT

Minister of Justice of the French Republic

## OFFICIALLY SESSIONS

Welcoming

PRESENTED BY **Mrs Louise GAUVREAU**

## OPENING SESSION

Tribute to **Mr Ahmed OTHMANI**,  
former **President of Penal Reform International (PRI)**

## SPEECHES OF THE HOST AND PARTNERS

- Official message of **Mr Jacques CHIRAC**, President of the French Republic, read by **Mr Philippe DOUSTE-BLAZY**, Foreign Affairs Minister, France
- Official message of **Madam Angela MERKEL**, Chancellor of the Federal Republic of Germany, read by the Ambassador, **D<sup>r</sup> Peter WITTIG**, Director General for the United Nations and Global Issues in the Foreign Office of the Federal Republic of Germany
- **Mrs Sylviane TARSOT-GILLERY**, Chief Representative of the **Cité Internationale Universitaire – the International Campus of Paris, France**
- **Mr René VAN DER LINDEN**, President of the Parliamentary Assembly of the Council of Europe (PACE)
- **Mr Thomas HAMMARBERG**, Commissioner for Human Rights of the Council of Europe

Speeches of:

- **Mr Mario MARAZZITI**, Community of Sant'Egidio, Cities for Life, Italy
- **Mrs Catherine PEYGE**, Mayor of Bobigny, France
- **Mr Graziano DELRIO**, Mayor of Reggio Emilia, Italy
- **Mr Riccardo NENCINI**, President of the local authority of Tuscany, Italy
- **Mr Alain TOURRET**, Vice-President of the local authority of Basse-Normandie, France
- Official message of **Mr Christian FAVIER**, President of the local authority of Val-de-Marne, read by **Mrs Chantal BOURVIC**, International Relations Adviser, France
- Vidéo message of **Mr Walter VELTRONI**, Mayor of Roma, Italy

“Strasbourg, Montreal, Paris: A global movement towards universal abolition”

- **Mr Michel TAUBE**, Chief Representative and Spokesman of Together Against the Death Penalty (ECPM), France

INTERNATIONAL PERSPECTIVES FOR THE  
ABOLITION OF THE DEATH PENALTY WORLDWIDE AND THE  
ROLE OF THE WORLD COALITION AGAINST THE DEATH  
PENALTY (WCADP)

Penal Reform International, Ligue des droits de l'Homme, Sant' Egidio  
Introduction by Mr Michel TAUBE, Chief Representative and Spokesman of  
ECPM, France

- Mr Marc ZARROUATI, President of the ACAT, France
- Mrs Geneviève SEVRIN, President of Amnesty, France
- Mr Dominique TRICAUD, Paris Bar, France
- Mrs Florence BELLIVIER, Deputy Secretary General of the FIDH, France

OVERVIEW OF THE SITUATION OF THE DEATH PENALTY  
WORLDWIDE AND ITS ABOLITION

- Mr Sidiki KABA, President of the International Federation for Human  
Rights (FIDH): Synthesis of the 15 investigation reports, France
- Mr Piers BANNISTER, death penalty team Coordinator, Amnesty  
International International Secretariat, UK

Speeches of

- Mr Graziano DELRIO, Mayor of Reggio Emilia, Italy
- Mr Riccardo NENCINI, President of the local authority of Tuscany, Italy
- Mr Alain TOURET, Vice-President of the local authority of Basse-  
Normandie, France
- Success story: the abolition of the death penalty in the Philippines,  
by Dr QUISUMBING, Executive Director of Purification

Message from Mumia ABU-JAMAL,  
American condemned to death

- Speech of Mrs Danielle MITTERRAND, President of France Libertés,  
France

Declaration by the European Union on the Occasion  
of the Third World Congress Against the Death Penalty  
Held By Mr Peter ROTHEN, Head of German Foreign Office

Paris Congress: instructions and stakes  
by Mr Emmanuel MAISTRE, Director of ECPM, France

SOLEMN CEREMONY AT THE BASTILLE OPÉRA  
PRESENTED BY Mr Olivier de Lagarde, *France Info*

Cultural programme  
Under the direction of Mrs Emiko San

Official message of Mr Dominique de VILLEPIN, Prime Minister  
of the Republic of France, read by Mr Michel DOUCIN, Ambassador  
for Human Rights of France

Synthesis of the debates by Mr Piers BANNISTER, death penalty  
team Coordinator, Amnesty International International Secretariat, UK

Danse Extract of *Arepo* from Mr. Maurice Béjart, presented  
by Mr Alessio Carbone, Prime Ballet Dancer of the Opera  
of Paris – music by Mr Hugues Le Bars

- Mr Jean ASSELBORN, Vice-Prime Minister, Minister for Foreign Affairs of  
the grand Duchy of Luxembourg
- Mr Nestor DAKO, Minister of justice of Benin
- Mr Gianni VERNETTI, Minister of State for Foreign Affairs of Italy

Official message of His Holiness POPE BENEDICT XVI, read  
by Priest Jacques de LONGEAUX, Professor at the Faculty of Notre-Dame de  
l'École cathédrale of Paris

- Mr Terry DAVIS, Secretary General of the Council of Europe
- Mr Tursunbay BAKIR UULU, Ombudsman of the Republic of Kyrgyzstan
- Mr Guy CANIVET, First President of the French Supreme Court
- Mr Driss BENZEKRI, President of the Moroccan Consultative Council on  
Human Rights, Morocco

Song Extract of *Beatrice di Tenda* "Ah !, se un urna"  
from Mr Vincenzo Bellini, presented by Mr Dominique Corbiau, accompa-  
nied with the piano by Mr Jean-Nicolas Diatkine

For the Bulgarian nurses and the Palestinian doctor con-  
demned to death in Libya

- Message of Mr Gueorgui PARVANOV, President of the Republic  
of Bulgaria, read by Mr Gulnio GANEV, Ombudsman of the Republic of  
Bulgaria
- Video message of Mrs Sylvie VARTAN
- Mr Michel DUMONT, President of the Belgium National Federation for  
Nurses, member of the International Council for Nurses
- With the presence of a Delegation of Parliamentarians from Bulgaria led by  
Mrs. Iliana IOTOVA, health workers,
- And Me Antoine ALEXIEV, Lawyer of the nurses

Music *Polonaise* in major A flat, Op. 53 of Frédéric Chopin, presented with the piano by Mr Jean-Nicolas Diatkine

– Mr Tom KITT, Minister of State at the Department of the Taoiseach, with the special responsibility as Government Chief Whip, Ireland

Official message of Mrs Laurette ONKELINX, Minister of justice of Belgium, read by Mr Claude DEBRULLE, Director General of the Belgium Federal Public Service of Justice, in charge of Human Rights and Criminal Law

Official message of His Holiness the DALAI LAMA, read by Mr. Jampal CHOSANG, Official Representative of His Holiness in Paris

- Mrs Hélène FLAUTRE, President of the Sub-commission on Human Rights of the European Parliament, leading the ad-hoc Delegation of the European Parliament, France
- Mrs Danièle SMADJA, Director for Multilateral Relations and Human Rights, Directory General of External Relation (DG RELEX), European Commission
- Mr Yves REPIQUET, President of the Paris Bar, France

Announcement of the creation of the Permanent Secretariat of the World Human Rights Forum of Nantes by Mr Franck BARRAU, France

Appeal to the President of China and to the Chinese population for a truce of executions in China

Joint speeches from Mr Sakae MENDA, former Japanese condemned to death, Japan, and Mrs Françoise RUDETZKI, President of the NGO SOS Attentat, France

– Mrs Bianca JAGGER, Good Will Ambassador of the Council of Europe, UK

– Mr Robert BADINTER, French Senator, former Minister of Justice and President of the French Constitutional Council: “Towards the universal abolition”

Reading of the Final Declaration by Mr Michel TAUBE, Chief Representative and Spokesperson of ECPM in the presence of all the abolitionists on stage

The solemn ceremony is held with the presence of:

(By alphabetical order)

- The Human Rights Ambassadors of France, Mr Michel DOUCIN; of Spain Mrs Silvia ESCOBAR; of The Netherlands, Mr Piet de KLERK; of Sweden, Mr Jan NORDLANDER; and of the European Union, Mr Michael MATTHIESSEN
- The Directors of the Human Rights departments of the Foreign Affairs Ministries of numerous member states of the European Union and of the European Commission
- A Delegation of the Senate of Belgium
- Mrs Nicole BORVO COHEN-SEAT, Senator of Paris, President of the Communist Group of the French Senate
- Mrs Anna BOSSMAN, Commissioner, Commission on Human Rights and Administrative Justice of Ghana
- Mr Giedrius CEKUOLIS, Ambassador of Lithuania in France
- Mrs Vicki Ann CREMONA, Ambassador of Malta in France
- Mr Stefan DEACONU, Legal Adviser to the President of the Republic of Romania
- Mrs Nicole GUEDJ, former Minister, Human Rights adviser of the political group UMP, France
- Mrs Adeline HAZAN, Human Rights adviser of the political group UMP, France
- Mr Lazare KI-ZERBO, Peace Delegation of the Democracy and Human Rights department, International Organisation of the Francophonie
- Mrs Corinne LEPAGE, President of Cap 21, Lawyer
- Mr Antonio Victor MARTINS MONTEIRO, Ambassador of Portugal in France
- Mr Jarvis MATIYA, Human Rights Unit, Commonwealth Secretariat
- Mr Mohamed M'JID, President of the Royal Federation of Morocco
- Mrs Luisa MORGANTINI, Vice-President of the European Parliament
- Mrs Pasqualina NAPOLETANO, Vice-President of the Socialist Group of the European Parliament
- Mr François NORDMANN, Ambassador of Switzerland, France
- Mrs Marta OCAMPO DEVASQUEZ, President of the mothers of the May square, Argentina
- Mrs Kristin ÓLAFSDOTTIR, Secretariat of the President of the Nordic Council
- Mr Dimitrios PARASKEVOPOULOS, Ambassadeur of Greece in France
- Mr Jean-Pierre RAZAFY-ANDRIAMIHAINGO, Ambassador of Madagascar in France
- Mr Piotr SENDECKI, Vice-President of the Polish Bar Council
- Mr Alain TOURET, Vice-president of the local authority of Basse-Normandie
- M Harald WIESNER, Ambassador, Permanent Delegation of Austria at UNESCO
- Mrs Zeljana ZOVKO, Ambassador of Bosnia-Herzegovina in France

# Address from Robert Badinter

After so many speakers and such moving and powerful comments, and because it's getting late and because eloquence shouldn't end up as some sort of cruel and otherwise useless punishment, I wanted simply to tell you to what extent my belief is absolute, not simply in abolition – that goes without saying, since our cause is just – but also in the fact that universal abolition is, let me say, imminent.

One might think me naïve or excessively optimistic. I would just like to relate my experience and recall events from a very short time ago in history, 30 years! Thirty years ago abolitionists joined Amnesty International in Stockholm. There we were, celebrating the Nobel Prize for Peace that the great organization had just received, and the struggle for abolition was on the agenda. They were great days. Even though it was very cold and the days were short in Stockholm, they were great days and I left convinced that things were looking brighter and brighter for us. It was 1977 and the first President (editor's note: of the "Cour de Cassation") Canivet noted, returning to France, to Paris, that the guillotine still operated beneath a black canopy in French prisons.

I take this reference point, 30 years on, deliberately. I leave to one side what has happened in our country, as President Repiquet (editor's note: of the Paris Bar) reminded us earlier, we are going to make abolition constitutional. What matters, what I would like to bring to mind, for us to realize, is the enormity of the progress that has been made. Look back over 30 years: when we were in Stockholm there were only 20 or so abolitionist states in the world. When, in 1981, I climbed the steps of the National Assembly to the tribune, we became the 35<sup>th</sup> state in



the world to abolish the death penalty. Today, a quarter of a century later, more than 120, nearly 130 states in the world out of the 200 which make up the United Nations are abolitionist *de jure* or *de facto*. And so, in a short period of time, things have happily speeded up, and today abolition applies to the majority of the United Nations. Who on earth would have believed it, 30 years ago in Stockholm?

But it is not just the movement in these states, there is the realization that has come about, beyond each state, across all regions of the world, that nowhere can a justice which kills be acceptable.

The continent of Europe has rightly been mentioned, and it's true that today, thanks to the work of the European Council, the home of European liberties, there are no more – with the telling exception of Belarus, the last Stalinist state in Europe – there are no more executions, there are no more death sentences, in Europe. And when one considers the tragic, bloody, atrocious and criminal history of Europe over the centuries, and especially in the first half of the 20<sup>th</sup> century, everyone can assess from that the tremendous progress that has been made. Made, reinforced, consolidated and written down in agreements: the two European Council Protocols that we are familiar with, forbidding use of the death penalty, and case law from the European Court of Human Rights, reminding us that the death penalty itself is, today, incompatible with human rights. And the European Union, which no state can now join whilst retaining the death penalty in its laws. And the Charter of Fundamental Rights which is the moral and soon to be legal cornerstone for the whole of Europe, which states in article 2 that “nobody may be sentenced to death or executed.” That is the new law, the great law of Europe's conscience, proclaimed at last.

Beyond our continent, we can also see immense progress, as set out in the Second Optional Protocol to the UN's Covenant on Civil and Political Rights. There is that fundamental text, too often forgotten, of the 1998 Treaty of Rome, under the auspices of the United Nations, when 120 nations, in anticipation of the others, came together to create the International Criminal Court, to take away from the worst of the worst, those criminals com-

mitting crimes against humanity, the impunity that they have so often enjoyed, at the same time rejecting use of the death penalty. That is perhaps the strongest signal that the international conscience has given in recent decades.

So, let us look further. In Africa, we salute the abolitionist states; we salute the Senegalese, our friends, who successfully abolished the death penalty not long ago; we salute so many efforts and so many activists across the continent; we note that there are only four states in Africa which still use the death penalty. And we salute our Moroccan friends whose eminent spokesperson we heard earlier and whom I thank for what he said, who told us that abolition was finally dawning in Morocco, rising towards its zenith. All thanks to our Moroccan friends, for they have set an example. I hope that we will be able to salute abolition in Morocco before the year is out. (Applause).

And elsewhere again, there is often a lot said, and a lot to be said, about what is happening in the United States. And how can we ignore that on the entire American continent, there remains, to our dismay, and, I may say, to the shame of such a great country to which freedom and Human Rights owe so much, there remains only the United States still using the death penalty? So, let's carry on with the struggle of course! By what immediate courses of action? Everyone here is an activist. Everyone knows the paths of action, on both national and international levels, in the context of NGOs which are the spearhead for abolition, thanks to those who struggle every day in organizations which are the salt of the earth, and also through more general and concerted work, greatly helped by this assembly of bodies, this meeting, the World Congress organized by ECPM and the World Coalition Against the Death Penalty. And I would like to thank again and always, our friend Taube, for all that he has done in this mighty battle over so many years (applause).

So we evoke, we evoke and we demand, – and the European Parliament formally demanded, two days ago during our congress, – a universal moratorium. It is necessary of course, this universal moratorium. We expect the UN General Assembly to take a stand on the matter and we have to contribute to that. But a universal moratorium would not be enough if it were only for executions. A universal moratorium for death sentences is

needed as well, and will be included in an appeal to be launched during the Olympic Games. The Olympic truce has been invoked. This also concerns the organizer, which happens to be the state in which there is the greatest number of death sentences and where a moratorium is most urgently needed. It also concerns the 60 states which still use the death penalty, particularly in Asia.

I say yes to a moratorium, a necessary moratorium, a necessary truce: not only on executions but on death sentences as well. Because, if there is a moratorium only on executions, death sentencing will continue and in people's minds the death penalty will still be an option, still alive. And above all, as more sentences are passed, and executions are not carried out for a certain time, the death rows will fill up, and these death rows around the world, with the human beings who each morning await their scheduled death, or those who are under camera surveillance, or those who are crammed into ignominious penitentiaries, this in itself, the European Court of Human Rights has reminded us, constitutes a futile, inhumane and degrading punishment. These death quarters should fill up no more. They should be emptied and shut down. Because what I would like to recall, in closing, is that the question of sentencing to death, the problem of the death penalty, is not only a philosophical, moral, ethical and legal one. It involves human beings whom we take, condemn and doom to the torments described in these houses of death. And whom we finally execute in debateable conditions. But that is never the problem.

We must fight each death sentence. We must be at the side of every human being on the surface of this earth who is threatened with a death sentence. We must surround all those threatened with execution with a worldwide chain of solidarity. Let there be nowhere a condemned person we have forgotten. Let there be nowhere a woman or man threatened with stoning, hanging, electrocution or beheading. Whatever the form of execution, we must rise up for all of them. That is the meaning of the fight for abolition: it is above all else to save human beings under threat and to stop others from being threatened, that we must succeed in achieving universal abolition. Never let there be a moment's weariness in this fight.

I would simply say that when you look for the meaning, you may find it bizarrely mirrored in the words of a fascist general in Toledo, during the Spanish Civil War, who exclaimed in a sort of sacrilegious delirium: "y viva la muerte!", "long live death!" Well then, the entire meaning of our fight is precisely to say, to repeat and to proclaim over and over again: "long live life!" It is life that abolition promotes. Long live life, it is for that that I am convinced that we will soon see the day when Victor Hugo's wish will be fulfilled.

Abolish the death penalty, yes. Abolish the death penalty, simply, permanently. I would only add: universally. (Applause).

# Speech of Driss Benzekri, President of the Moroccan Consultative Council on Human Rights (CCDH)

Ladies and gentlemen,

I am happy and honored to speak at this third and important World Congress Against the Death Penalty and I would use this opportunity to thank the organizers for having associated, albeit symbolically, my country of Morocco with this fight, by holding the press conference announcing this Congress at the headquarters of the Consultative Council on Human Rights in Rabat. They chose well. Because Morocco continues to develop and broaden the scope of democratic reform and to gradually harmonize its entire legal and institutional human rights protection system with the standards of international law for human rights and international humanitarian law.

By giving his complete consent to the recommendations for constitutional, legislative and institutional reform and to the final report of the fairness and reconciliation authority, His Majesty Mohamed VI set in motion a new process for consolidating democratic reform. And in the area which concerns us here, studies and procedures necessary for the abolition of the death penalty, as well as for adapting internal penal law to the stipulations of the statute of the international penal court, have been effectively put in place and the reform of penal legislation is underway.

As a national institution, the CCDH ensures the compatibility of the changes underway with the principles and rules of human rights. Our wish is that the work be finalized and approved by parliament before the end of the current legislature and that we can, with the support of the King, go further by including the abolition of the death penalty in the basic laws of our country.

Thank you

# Appeal for a truce on executions in China

President Hu Jintao,

With the Peking Olympic Games approaching, and in the Olympic spirit, we, citizens, public figures and sportspeople from all over the world, formally ask you to declare a truce on executions in China with a view to the permanent abolition of the death penalty.

China is opening itself up to the world and the world is preparing for the Peking Olympic Games in 2008 which will crown its economic and cultural presentation.

Meanwhile, more than 95% of the world's executions occur in China. Secrecy, torture, summary trials, defense rights scorned, not to mention the international traffic in organs from those executed, are unacceptable there as they are elsewhere in the world.

However, recent reforms in the penal system should reduce the number of executions and we salute the courageous voices of a growing number of Chinese abolitionists.

Since antiquity, the Olympic Games have been the occasion to launch appeals for truces in conflicts between peoples to promote peace, combined with respect for human rights. That is why we are launching this appeal:

**“FOR THE PEKING OLYMPIC GAMES! FOR A TRUCE ON EXECUTIONS IN CHINA!”**

# Resolution: for a death penalty-free zone in Central Asia

## **Central Asia, Closer to Becoming a Death Penalty-Free Region?**

**Endorse** the progressive steps taken by the different Central Asian countries towards the introduction of moratoria and abolition of the death penalty;

**Commend**, in particular, the authorities of Kyrgyzstan for recently having consecrated – at a constitutional level – the abolition of the death penalty;

**Regret** that Uzbekistan continues to carry out executions, making it the only country in Central Asia not to have put in place a moratorium or to have abolished the death penalty;

**Express our concern** regarding the punitive character that still permeates the activities of law-enforcement organisms, the judiciary, and state prosecutors;

**Condemn** the lack of public control over the investigation system, the partiality of state prosecutors and the continuing practice of torture and ill-treatment during trials;

**Regret** the discriminatory application of the death penalty throughout the region, whereby devout Muslims, those who express dissenting opinions and the economically disadvantaged, have higher probabilities of being sentenced to death

**Express concern** over the continuing lack of information that surrounds all matters related to the death penalty and death sentences, as well as the lack of transparency in the judicial

system. These failures facilitate corruption and interfere with the right to a just and fair trial;

**Considering** that the death penalty has been proven not to have a deterring influence, but is rather a punitive tool unable to achieve the rehabilitation of a person in society;

**Recalling** that the execution of death sentences has a dehumanising effect on society and questions a fundamental human right – the right to life, and that the execution of death sentences makes the state accept, in fact, legal murder;

**Convinced** that executions are not a dispensation of justice;

**Support** the ambition of a regional process for complete abolition of the death penalty in Central Asia;

**For this, we address the authorities of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan and urge them to:**

1. Ratify as a matter of urgency the UN Second Optional Protocol of the International Covenant on Civil and Political Rights which consecrates the abolition of the death penalty;
2. Take immediate action towards the introduction of a moratorium on the death penalty, replacing existing death sentences by fixed-term prison sentences. National legislation should be amended and prison conditions ameliorated so that both fulfil international standards;
3. Reform the relevant state structures dealing with death sentences so as to make them independent and transparent and humanize state organisms. These bodies should also be open to civil society and the media;
4. Create independent commissions mandated to investigate allegations of torture and ill-treatment as well as to review cases of persons sentenced to death.
5. Disclose all normative and judicial acts regulating the detention of prisoners on death row; as well as their names, number, detention conditions, medical treatment and state of health, places of burial and dates of execution;

6. Adopt a law on public control of detention facilities and introduce systematic independent monitoring of the penitentiary system;

7. Include the reform of penal institutions in the priority programmes of international aid to development through total abolition of the death penalty, and the humanization of penal legislation and of detention facilities as an alternative to the existing system;

8. Carry out an independent study as to the existing practice of extradition of detained individuals to countries where they risk being executed and bring the legislation and practice in this regard into compliance with obligations vis-à-vis the UN Convention on Torture.

**We call upon the abolitionists of Central Asia to:**

9. Unite their efforts towards the establishment of a death penalty-free zone in Central Asia through the creation of a Regional Network for a Central Asia without the death penalty and torture;

10. Support local and international efforts aimed at abolishing the death penalty worldwide and participate in the International Day Against the Death Penalty on 10 October;

**We invite the cities of Central Asia to:**

11. Participate in the movement “Cities against the Death Penalty,” organised each year by Sant’Egidio, through illumination of symbolic places on 30 November.

12. Finally, the participants in the Round Table support the initiative of the Italian government aiming at the adoption of a resolution by the UN General Assembly, calling for a worldwide moratorium on the death penalty and a subsequent complete abolition of the death penalty worldwide.

# Resolution of the United Nations General Assembly calling for a global moratorium on the use of death penalty adopted on December 18, 2007

The General Assembly,  
*Guided* by the purposes and principles contained in the Charter of the United Nations,  
*Recalling* the Universal Declaration of Human Rights,<sup>a</sup> the International Covenant on Civil and Political Rights<sup>b</sup> and the Convention on the Rights of the Child,<sup>c</sup>  
*Recalling also* the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being its resolution 2005/59,<sup>d</sup> in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,  
*Recalling further* the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,  
*Considering* that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive devel-

opment of human rights, that there is no conclusive evidence of the death penalty's deterrent value and that any miscarriage or failure of justice in the death penalty's implementation is irreversible and irreparable,

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

1. **Expresses its deep** concern about the continued application of the deathpenalty;
2. **Calls upon** all States that still maintain the death penalty to:
  - Respect international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
  - Provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
  - Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
  - Establish a moratorium on executions with a view to abolishing the death penalty;
3. **Calls upon** States which have abolished the death penalty not to reintroduce it;
4. **Requests** the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
5. **Decides** to continue consideration of the matter at its sixty-third session under the same agenda item.

a. Resolution 217 A (III).

b. See resolution 2200 A (XXI), annex.

c. United Nations, Treaty Series, vol. 1577, No. 27531.

d. See Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

## Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989

### **The States Parties to the present Protocol,**

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,



Desirous to undertake hereby an international commitment to abolish the death penalty,  
Have agreed as follows:

#### **Article 1**

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

#### **Article 2**

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

#### **Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

#### **Article 4**

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### **Article 5**

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

#### **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

#### **Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three

months after the date of the deposit of its own instrument of ratification or accession.

#### **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

#### **Article 11**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

# Partners of the Third World Congress Against the Death Penalty

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  - Agir pour les droits de l'Homme
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  - Amnesty International France

- Collectif Mumia
  - Culture pour la paix et la Justice
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- 1 We pay homage to Raymond Forni, who died on the 5<sup>th</sup> of January 2007, and who co-presided, as President of the French Parliament, the 1<sup>st</sup> World Congress in Strasbourg formally convened on the 22<sup>nd</sup> of June 2001 in the European Parliament, in the presence of 22 Presidents of Parliaments of the world.
- 2 Cf Appendices.
- 3 Signature on the 17<sup>th</sup> of June 2002 of the agreement for an association with the European Union, which came into effect the 1<sup>st</sup> of April 2006.
- 4 Nouzha Skalli was appointed Minister of Social Development, Family and Solidarity by HM the King Mohamed VI on the 15<sup>th</sup> of October 2007.
- 5 In fact, Morocco was overtaken, particularly by Rwanda, which took the title of 100<sup>th</sup> state in the world to abolish capital punishment.
- 6 Cf. infra Appendices: The main speeches given in the Congress.
- 7 The 41 persons executed in Jordan since 2000, were executed for terrorist and sexual crimes, for which the death penalty is still in effect.
- 8 = The law of retaliation or *lex talionis* consists in providing equivalent counter-punishment for an offence, according to a principle of exact reciprocity often symbolised by the adage “ An Eye for an Eye” (Tit for Tat).
- 9 <http://pewforum.org/deathpenalty/resources/reader/15.php>
- 10 References to the Koran: 10:47; 10:74; 16:36.
- 11 Cf. Sami Aldeeb, The death penalty in Arab projects <http://www.sami-aldeeb.com/articles/view.php?id=237>
- 12 According to Al-Ansari, “the *taqiyyah* consists of a person saying something contrary to reality, or undertaking an action forbidden by the norms of Islamic law in order to save his life, honour or belongings.” Al-taqiyyah, p.45.  
[http://www.samialdeeb.com/files/article/81/French\\_Dissimulation\\_taqiyyah\\_chez\\_les\\_chi\\_ites\\_et\\_les\\_druzes\\_2004.doc](http://www.samialdeeb.com/files/article/81/French_Dissimulation_taqiyyah_chez_les_chi_ites_et_les_druzes_2004.doc)
- 13 Cf. Intervention of Tariq Ramadan : [http://www.tariqramadan.com/article.php?id\\_article=1071&var\\_recherche=peine+de+mort](http://www.tariqramadan.com/article.php?id_article=1071&var_recherche=peine+de+mort)
- 14 Taha, al-Sayyid Ahmad: ‘Alaniyyat tanfidh hukm al-i’dam, [Le Caire], 1993, p. 25.
- 15 Ibid, p. 75.
- 16 Cf. Interview of Hossam Baghat  
<http://www.abolition.fr/ecpm/french/article.php?art=494>
- 17 Cf. Resorting to the death penalty under cover of the Special Courts.
- 18 Lewis, Joseph: In the name of humanity, Eugenics publishing company, New York, 1949, p109.

19 Miller, Alice: Banished knowledge, facing childhood injuries, Doubleday, NY,1999,p.135.

20 Estimates of executions number in china per year by Dui Hia Fondation. 1997: 12.000 to 15.000; 1998: 12.000 to 15.000; 1999: 12.000 to 15.000; 2000: 12.000 to 15.000; 2001: 13.500; 2002: 13.500; 2003: 12.000; 2004: 10.000; 2005: 8.000; 2006: 7.500.

21 Dependent parents for example.

22 The case of Fu Xinrong, executed in May 2000. "This was the subject of a negotiation between the Court and a provincial hospital. This affair revealed the la practice of executions on request, since justice and health services made an agreement about the use of the body before the person was executed." (*Daily Telegraph*, 4 August 2001).

23 Cf Appendix, Text of the appeal launched the 3 February 2007 : "For the Beijing Olympics! For a truce on death sentences and executions throughout the world!"

24 Intervention of Emmanuel Daoud, lawyer, Member of the CIB.

25 Prof Horst Möller "It follows that, because of the violation of the juridical maxim '*nulla poena sine lege*', the legitimacy of the Nuremberg Trials was challenged, not from an ethical and political viewpoint, but from a legal one."

26 Which would develop formally in the nineties by the establishment of the International Criminal Court , the ad hoc Courts of ex-Yugoslavia and Rwanda. So many Courts which excluded capital punishment from their range of sentences.

27 Among whom Göring, Firck, Ribbentrop, Generals Keitel and Jodl. Göring escaped execution by committing suicide.

28 Provisional Authority of the Coalition.

29 Articles 47 and 64 of the Geneva Convention IV.

30 Article 101 of the Geneva Convention: "If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107."

31 Guarantee of a fair trial by a competent court.

32 Particularly the right to dispose of the time and facilities necessary for preparing the defence, and of access to the file.

33 The Liberian Truth and Reconciliation Committee was established by the Accra Peace Agreement in 2005, and appointed by the Transitional Parliament in June 2006.

34 Judging terrorists: the death penalty, a counter-productive response. Marie-Agnès Combesque, Human Rights League - France. *Congress booklet*.

35 Zaccarias Moussaoui, only defendant for the 9/11 attacks, was condemned the 3<sup>rd</sup> of May 2006 to life imprisonment without the possibility of parole.

36 **Protocole 6 et 13 à la Convention européenne des Droits de l'homme, Protocole 2 relatif aux droits civils et politiques visant à abolir la peine de mort.**

37 Cf. Emmanuel Decaux, The death penalty, a new issue in international relations. <http://www.diplomatie.gouv.fr/fr/IMG/pdf/FD001429.pdf>

38 Protocols 6 and 13 of the European Convention on Human Rights, Protocol 2 of the International Convention on Civil and Political Rights aimed at abolishing the death penalty.

39 Article 20. "1. Everyone shall have the right to life. 2. Capital punishment may, until its abolition, be instituted by the federal law as exceptional punishment for especially grave crimes against life, with the accused having the right to trial by jury in a court of law"

40 Murder with aggravating circumstances, crime against the life of a State dignitary or public official, crime against the life of a member of the judiciary, crime against the life of a member of the police and genocide.

41 The idea being that the majority of the population would be in favour of capital punishment and that the State would respect this majority opinion.

42 Interpol's definition.

43 If the requisitioned state does not provide for capital punishment for its own nationals or if it does not apply in the requiring state, unless the latter gives sufficient guarantees that a death sentence will not be sought.

44 ICJ, Order "Case concerning the Vienna Convention on Consular Relations (Paraguay vs. United States of America), 10.11.1998"; ICJ "Case concerning Lagrand (Germany v . United States of America), 27.11.2001," and decision "Case of Avena and other Mexican Nationals (Mexico v. United States of America), 31.04.2004."

45 Article 36 of the Vienna Convention of 24.04.1963.

46 Cf. supra Main debate : China, the death penalty and the Beijing Olympics.

47 The Uganda Coalition against death penalty was created in 2003. The Foundation for Human Rights Initiative is one of its founding members.

48 This petition was a first in history, in that it was signed by all inmates on Ugandan death rows. Susan Kigula is the first condemned person to have signed the petition.

49 Traumatic stress resulting from a prisoner's prolonged wait on death row.

50 ECHR, Soering vs. United Kingdom, 7 July 1989.

51 Article 3 – Banning torture. "No one shall be subjected to torture or to inhumane or degrading treatment or punishment."

52 ECHR Jabari vs. Turkey, 11 July 2000.

53 ICHR, Cantoral Benavides 18 August 2000, ICHR Hilaire, Constantine, Benjamin and others vs. Trinidad and Tobago, 21 June 2002.

54 UN HR Committee Taylor vs. Jamaica 2 April 1996, 705/1996 ; Morgan and Williams vs. Jamaica, 3 November 1998, 720/1996.

55 Article 7 : "No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. In particular, no one shall be

subjected without his free consent to medical or scientific experimentation.”

56 Cf. Supra Lethal injection on trial.  
57 UN Sub-Committee for Human Rights Report (E/CN.4/2006/58), drawn up by Emmanuel Decaux.  
58 [http://www.amnesty.fr/index.php?/amnesty/agir/campagnes/terrorisme/guantanamo/les\\_commissions\\_militaires](http://www.amnesty.fr/index.php?/amnesty/agir/campagnes/terrorisme/guantanamo/les_commissions_militaires)  
59 <http://web.amnesty.org/library/index/FRAAMR510492006>  
60 <http://www.icrc.org/Web/fre/sitefre0.nsf/html/article-commun-conventions-120849>  
61 Extraordinary writ which requires that a person who detains another justify this detention before a higher court. It is generally used in criminal cases to request the court to order the release of a person illegally detained. In Latin, this expression literally means “that you have the body.” (Habeas corpus)  
62 Decree 24.11.1964 providing for the organization of the repressive action of military jurisdictions. Law 023-2002 providing for Military Law. Law 024-2002 of 18.11.2002 providing for Military Criminal Law.  
63 Article 1 of the Decree of 24 November 1964.  
64 From August 1997 to September 1999, the COM pronounced 143 condemnations, and executed 69 convicts, several of whom were minors.  
65 See note 58.  
66 USA, People’s Republic of China, Taiwan, Guatemala, Thailand.  
67 Use of pancuronium bromide and potassium chloride.  
68 Michael Cashman, President of the “rights for gays and lesbians” intergroup of the European Parliament.  
69 Art 108 (French original version): Every Muslim adult who will have committed an immodest or unnatural act with another person of the same sex shall be sentenced to death by public stoning.  
70 Until the Queen boat affair, (arrest of 52 Egyptians in a discotheque in May 2001 for homosexual debauchery) which caused an important mobilization of international NGOs, Human Rights organizations were scarcely committed to the cause of persecuted homosexuals.  
71 The past tense must be used as the Resolution was presented and adopted by the United Nations General Assembly on December 18<sup>th</sup>, 2007.  
72 “Merriam-Webster” dictionary.  
73 Fact or law? Law or Presidential decree?  
74 2.2-1 above: “Death penalty, cruel, inhumane and degrading treatment.”  
75 Resumption of executions in Lebanon on January 19<sup>th</sup>, 2004, following a moratorium. Resumption of executions in Bahrain in June 2006.  
76 Florence Bellivier, *Livret du congressiste*, Éclairage “Du moratoire à l’abolition: quelle stratégie diplomatique.”  
77 See Appendices.  
78 See “La campagne pour la ratification du Protocole 2.” by Denys Robiliard, Éclairages in *Livret du congressiste*.  
79 <http://europa.eu/scadplus/leg/fr/lvb/r10106.htm>

80 Since 1999, each year the EU has presented a resolution calling for abolition of capital punishment to the UN Human Rights Commission.  
81 See below, The work of Supreme Courts in abolition of the death penalty.  
82 Cape Verde, Djibouti, Mozambique, Namibia, the Seychelles, South Africa and Liberia.  
83 37<sup>th</sup> session in Banjul in the Gambia, 38<sup>th</sup> and 40<sup>th</sup> session.  
84 European Union’s annual report on human rights, 2006.  
85 Turkey abolished capital punishment in peacetime on August 3<sup>rd</sup>, 2002, and ratified the Sixth Protocol to the European Convention on Human Rights relating to abolition of the death penalty on June 30<sup>th</sup>, 2003. Protocol 13 was ratified on February 20<sup>th</sup>, 2006.  
86 [http://ec.europa.eu/external\\_relations/human\\_rights/adp/guide\\_fr.htm](http://ec.europa.eu/external_relations/human_rights/adp/guide_fr.htm)  
87 General initiatives target situations where capital punishment is about to undergo change, the lifting of a moratorium for example. Initiatives of this kind can be mentioned in 2006 in Belarus, China, South Korea, Indonesia and Iran. Individual initiatives are undertaken on a case by case basis, when for example a minimum norm has been violated (execution of a juvenile offender aged under 18 for example). Individual initiatives can be mentioned in Afghanistan, Saudi Arabia, the Palestinian Authority, North Korea and the United States.  
88 Public declaration dated September 5<sup>th</sup>, 2005, to deplore the use of capital punishment in Iraq. Public declaration dated December 2<sup>nd</sup>, 2005, to deplore the thousandth execution carried out in the United States since its resumption in 1976.  
89 Mexico and the Philippines.  
90 Kyrgyzstan adopted a moratorium in 1998. Its 2006 Constitution, by referring to the right to life, indirectly abolishes the death penalty. Kazakhstan meanwhile adopted a moratorium in 2004. Tajikistan and Uzbekistan respectively abolished the death penalty in 2005 and 2008.  
91 The South African Supreme Court, in the famous *S. vs. Makwanyane* ruling, declared the death penalty unconstitutional, due to the non-necessary nature of such a punishment in a democratic society.  
92 See above note on Cruel, inhumane and degrading treatment.  
93 Article 24 of the Ugandan Constitution.  
94 Article 44 of the Ugandan Constitution.  
95 *Roach and Pinkerton v. United States* (Case N°. 9647), Resolution N°. 3/87, reported in: OAS Doc. OEA/Ser.L/V/II.71 doc. 9 rev. 1, p.147 (1987).  
96 Under the terms of article 53 of the Vienna Convention, a *jus cogens* norm is: a norm from which no derogation is permitted; a norm of general international law; a norm accepted and recognized by the international community of States as a whole; a norm which invalidates the contrary norm.  
97 “Échelle des peines et peines alternatives”, Pierre Victor Tournier.  
98 Appleton C, The pros and cons of life without parole, British Journal of Criminology.  
99 Pierre Victor Tournier, “Échelles des peines et peines alternatives”, *Livret*

*du congressiste.*

100 <http://www.collectif2001.org/>  
101 Article 37 of the United Nations Convention on the Rights of the Child.  
102 Article 110(3) of the International Criminal Court's Rome Statute.  
103 Judgment no.93-334 DC 20.01.1984 of the Constitutional Council, Corte  
cost. Sentenza 1987, S v Tcoeib 1996.  
104 Extract from Appleton C, The pros and cons of life without parole,  
British Journal of Criminology. Quoted by Van. Zyl Smit 2005.  
105 Council of Europe, 2003b, "Parole", recommendation REC (2003), adopted  
by the Council of Europe's committee of ministers on September 24<sup>th</sup>,  
2003.  
106 Pierre V. Tournier, "Lutter contre le crime en Europe, l'arme des droits  
fondamentaux", International Criminal Law Congress on the "social  
function of criminal policy", Barcelona, March 30<sup>th</sup>/31<sup>st</sup> and April 1<sup>st</sup>,  
2006.  
107 Since then, Uzbekistan abolished the death penalty on 1 January 2008.  
108 The project of the International Helsinki Federation "A Coordinated  
Civil Society Campaign to Abolish the Death Penalty in Central Asian  
States" aims at mobilise all political and social actors in order to obtain  
a total abolition of the death penalty in the region.  
109 See Appendices.  
110 The death penalty was abolished in Rwanda on July 25<sup>th</sup>, 2007.  
111 "In Rwandan death rows" – September 2007 – ECPM.  
112 <http://www.worldcoalition.org/modules/smartsection/item.php?itemid=12>  
113 See above Judicial and political perspectives in North Africa and the  
Middle East  
114 See above The death penalty in Islam and the death penalty under  
the guise of military justice.  
115 See above The death penalty in Islam.



