



# Efforts towards abolition of the death penalty: Challenges and prospects

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## Introduction

Capital punishment was entrenched around the world until the late eighteenth century, regarded as an effective measure to control the masses for minor to the most serious offences. In some jurisdictions, executions were considerably rarer than death sentences, as there were many commutations, but the threat of death hung over most criminals, including juveniles, following erratic and unfair justice processes. Methods of execution were gruesome and tended to include additional torture and mutilations, with executions often carried out in public.

Efforts towards reform came with the European Enlightenment. Montesquieu denounced extreme punishments, with an uncompromising call for proportionality in sentencing that resonates still.<sup>1</sup>

But it is Beccaria who transformed views on capital punishment. In 1764, his treatise, *On Crimes and Punishments*, disparaged the lack of consistency and fairness in the criminal process, dismissing the death penalty as inhumane, ineffective and disproportionate.<sup>2</sup> Reformers secured abolition in a few American states<sup>3</sup> in the mid nineteenth century, followed by a handful of countries in Europe and South America, but progress was slow.<sup>4</sup>

Following the atrocities of the Second World War, impetus for countries to consider the human rights of their citizens came from the establishment of the United Nations, particularly the 1948 Universal Declaration of Human Rights (ECHR),<sup>5</sup> and from the European Convention on Human Rights, adopted in 1950.<sup>6</sup> But by 1965, there were still only 25 abolitionist countries, just ten more than when these conventions were adopted. And these were

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mostly Western European, suggesting that the introduction of human rights agreements *alone* could not trigger a revolution in punishment regimes.

This paper reflects on the role of international human rights treaties in promoting universal abolition and progressive restriction of the death penalty. Building on my work with Roger Hood,<sup>7</sup> it suggests that over the past quarter of a century a 'new human rights dynamic' has aimed to generate universal acceptance that however it is administered, the death penalty violates the human rights of all citizens exposed to it. This is the normative framework of international human rights law.

Nevertheless, principles of national sovereignty are engrained in some parts of the world, particularly in Asia and the Middle East. This is the view that each nation has the unchallengeable sovereign right to determine its own criminal justice and penal policies according to its own cultural, social and political imperatives and that in so doing, they will not be swayed by obligations or expectations from beyond their borders. Within the framework of sovereignty, they then justify retention of the death penalty as a repressive penal tool, by drawing on either utilitarian rationales, such as its purported deterrent efficacy, or the cultural preferences and expectations of their citizens. And the human rights project struggles to make inroads into such jurisdictions where political will is opposed to abolition, and trenchant protection of sovereignty threatens the very universality of these rights. Treaties are only partly effective because they need to be promulgated to have an impact, and some countries will resist this. Yet it is also true that treaties have been somewhat equivocal on the question of the death penalty.

## 1. Interpreting an abstract right to life

The Universal Declaration of Human Rights proclaimed that "*Everyone* has the right to life"<sup>8</sup> and "*No one* shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment",<sup>9</sup> but it was not explicit that these provisions should include those convicted of offences subject to capital punishment in retentionist states. Similarly, the ECHR embodied these same principles<sup>10</sup> but provided an exception to the right to life as regards capital punishment.<sup>11</sup> This clearly left the question of whether or not to abolish the death penalty to national governments.

The 2004 Arab Charter on Human Rights<sup>12</sup> allows the imposition of the death penalty, demonstrating strong fidelity to the sovereignty of national laws. Conversely, the African Charter on Human and Peoples' Rights prohibits a state party from arbitrarily depriving someone of the right to life.<sup>13</sup> And the African Commission on Human and Peoples' Rights' 'Resolution on the Right to Life in Africa' (2017)<sup>14</sup> urged states parties that have established a moratorium on executions to take steps towards the abolition of the death penalty, and those states parties that have not abolished the death penalty to immediately establish a moratorium on executions.

Drafted in the late 1950s, when few countries had embraced abolition, the International Covenant on Civil and Political Rights (ICCPR) presented a clear compromise between the rather abstract right to life of the Universal Declaration of Human Rights and the reality of disparate criminal justice practices around the world.<sup>15</sup> Article 6(1), which declared that "Every human being has an inherent right to life", was qualified by the phrase "No one shall be *arbitrarily* deprived of his life". The UN Human Rights Committee has interpreted this to mean that no one shall be sentenced to death without a fair

trial, as guaranteed by Article 14 of the Covenant, not that no one shall be sentenced to death at all.<sup>16</sup>

Commitment to abolition as a universal goal has been invigorated by the ICCPR and other international and regional treaties promoting human rights. Almost all countries that still enforce the death penalty by executions, as well as those that have yet to abolish it in law but are abolitionist in practice, have ratified the ICCPR (Saudi Arabia and Singapore are among the few that have not). While they are not obliged to abolish the death penalty, they have made a commitment to abide by the standards it sets, a commitment that should contribute to the progressive restriction of the death penalty.

## 2. The role of human rights in the progressive restriction of capital punishment

While the right to life is not absolute, and retentionist states can continue to apply the death penalty, they can do so only in a non-arbitrary manner, and only for the most serious crimes, a point frequently reiterated by the UN Human Rights Committee.<sup>17</sup> Death sentences following legal proceedings that violated domestic laws of criminal procedure or evidence would generally be unlawful and arbitrary.<sup>18</sup> The ICCPR and the UN Economic and Social Council's *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*<sup>19</sup> prohibit the arbitrary deprivation of life where countries do not abide by the standards that guarantee a fair trial, the presumption of innocence and a fair opportunity for defendants to answer the charges brought against them before a duly constituted court.

Even without ratification of the ICCPR, countries are expected to abide by the *Safeguards* and are

subject to the Universal Periodic Review process, carried out through the UN Human Rights Council, to measure their compliance with human rights obligations; a process that invigorates the human rights dynamic. However, notwithstanding improvements in due process protections around the world, each UN Secretary-General's Annual and Quinquennial reports on the death penalty show that in many retentionist states these safeguards are often breached and, in consequence, innocent people, as well as those who – within the laws of the country – do not 'deserve' the death penalty, are sentenced to death and executed.<sup>20</sup>

Efforts at securing categorical exemptions have proven to be more effective. The *Safeguards* have progressively restricted the death penalty by excluding certain 'vulnerable' persons: those under the age of 18 at the time of the crime, pregnant women or new mothers, persons who have become insane and, since the *Safeguards* were revised in 1989, older persons and those suffering from limited mental competence. Few retentionist countries ignore these particular restrictions, though reports suggest that in the past decade, juveniles have been executed in Iran and Pakistan.<sup>21</sup>

### Abolition of the mandatory death penalty

Human rights treaties have assisted efforts at progressive restriction of the death penalty by framing challenges to the constitutionality of *mandatory* sentencing, first in the US,<sup>22</sup> then in India.<sup>23</sup> The mandatory death penalty has been determined by international law to be arbitrary in nature.<sup>24</sup> As Parvais Jabbar has noted:

*The compulsory imposition of sentence of death is seen as an arbitrary deprivation of life and an inhuman punishment; it violates an individual's right to a fair trial because offenders are deprived of the opportunity*

*to mitigate their sentences and the courts are prohibited from determining them. In short, constraining discretion in this way is inconsistent with notions of fairness and repugnant to the concepts of humanity.<sup>25</sup>*

The Death Penalty Project challenged mandatory death sentences in the Commonwealth Caribbean in the early years of the new millennium, establishing their incompatibility with fundamental human rights.<sup>26</sup> Their successful constitutional challenge to the mandatory death penalty in Uganda, in 2003, drew on this jurisprudence. Susan Kigula<sup>27</sup> was the lead applicant in that case, but it was filed on behalf of everybody on death row in Uganda at the time, some 417 prisoners. The Constitutional Court struck down the mandatory death penalty as in violation of fundamental human rights and gave the government two years to re-sentence everyone on death row. Most recently, Malaysia abolished the mandatory death penalty and politicians there see that as a step towards full abolition. Trinidad and Tobago remains one of approximately 25 jurisdictions, and the only one in the Commonwealth Caribbean, to retain a mandatory death penalty. In a recent (2022) challenge, the Judicial Committee of the Privy Council (JCPC) in London agreed that mandatory capital sentencing was a cruel and inhuman punishment but refused to abolish, arguing that such a decision should be left to politicians.<sup>28</sup>

### Delay and death row phenomenon

Importantly, the Court in *Kigula* also found that a delay of more than three years in carrying out a death sentence was unconstitutional due to the mental suffering inflicted on the condemned prisoner. This speaks to the additional suffering occasioned by a long period on death row awaiting execution. Again, this decision built on international

human rights norms that had developed on the question of ‘death row phenomenon’, or ‘syndrome’ since the landmark case of *Soering v UK*<sup>29</sup> was decided by the European Court of Human Rights in 1989.<sup>30</sup> That Court had held that it would be a breach of Article 3 of the ECHR for the UK to extradite the prisoner, who would face the death penalty in the US state of Virginia, because his inevitably long wait on death row would amount to inhuman and degrading treatment and punishment.

Since then, the JCPC has gone some way to try to define what length of stay on death row is compatible with the human rights of the offender. In 1993, in the case of *Pratt & Morgan v AG of Jamaica* (1995), the JCPC ruled that a period of more than five years’ delay in carrying out a death sentence constituted cruel and inhuman punishment, in violation of Jamaica’s constitution.<sup>31</sup> In reaching its conclusion the court referenced the historical context of the death penalty sentencing system inherited from the UK, where executions would be carried out quickly following sentence. It recognised that death row syndrome was a modern phenomenon which subjected the prisoner to an unintended and unacceptable extra punishment, particularly in countries that were abolitionist de facto, with, in some cases, executions not being carried out for decades. Other successful death row syndrome challenges came in the Commonwealth Caribbean and Africa, but while some US Supreme Court judges have voiced concerns about the impact of delays on the psychological health of death row prisoners, the Court itself has not ruled that this renders the American death penalty unconstitutional.<sup>32</sup>

Consequently, the average time between death sentencing and execution in the US has steadily climbed from about 6 years in the early 1980s to almost 23 years today.<sup>33</sup> While a murderer in

Jamaica will be removed from death row after five years, those convicted for murder in the US or for robbery or drug trafficking in Sri Lanka (an ‘abolitionist de facto’ state, with no executions since 1976) could linger on death row for decades.

#### Excluding all but the ‘most serious’ crimes

Article 6(2) of the ICCPR states that “[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for *the most serious crimes*.” This was not intended to justify the perpetuation of the death penalty, but to restrict its application, until abolition, as was made clear by Article 6(6) which stated that: “Nothing in this Article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant.” While the scope of ‘most serious crimes’ has been defined as nothing “beyond intentional crimes with lethal or other extremely grave consequences”,<sup>34</sup> seriousness remains a contentious issue, interpreted quite differently around the retentionist world.

Certain states across Asia and the Middle East continue to impose the death penalty for drug trafficking, corruption, political and religious offences and even sexual behaviours that elsewhere would not be criminalized. Retentionist states in sub-Saharan Africa also use the death penalty for crimes beyond intentional homicide, such as robbery, kidnapping or rape. These countries assert their sovereign right to determine which offences cause most serious harms within their communities, according to national fears or religious and political imperatives, contrary to a *universal* notion of human rights.

### 3. The role of human rights in the abolition of capital punishment

While human rights treaties can and have progressively restricted the death penalty—through constitutional challenges to retention for vulnerable people or to mandatory death sentences, for example—what impact have they had on abolition more widely? Reviewing progress since the ICCPR, it becomes clear that human rights can have an impact when civil society assists in propagation of key messages and when political will can be harnessed.

In 1976, when the ICCPR came into force, abolition was proceeding slowly, and progressive restriction was the key UN message.<sup>35</sup> Activism and some political expediency were needed for accelerating abolition. Amnesty International stepped up, expanding its campaign against torture to include abolition of the death penalty, and calling on the UN “to unambiguously declare the death penalty to be contrary to international law.”<sup>36</sup> Following this, the 1980s saw the gradual emergence of human rights discourse and death penalty activism across Europe and beyond. This was assisted by Protocol No 6 to the ECHR, which entered into force in 1985, providing for the abolition of the death penalty in peacetime.<sup>37</sup> Nonetheless, abolition remained something of an elite project, in particular among the educated and liberal classes within Western democratic states. Though the number of abolitionist countries increased to 52 by 1988, ‘European’ human rights rhetoric had primarily plucked the low-hanging fruit, those countries that were ripe for abolition. Yet political and economic incentives for change were just around the corner.

In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR.<sup>38</sup> Article 1 stated, “No one within the jurisdiction of a State

Party [...] shall be executed.” This was less equivocal than prior treaties, but the ensuing rising rate of abolition was the result of seismic shifts in the political landscape of Europe that encouraged the fledgling rights culture. Those changes began with the fall of the Berlin Wall. As the post-war Soviet project faltered, the political imperatives of the former ‘Eastern European’ states altered as both push and pull factors led to increasing alignment with the West.

The most important factor came in 1994, when the Council of Europe made movement towards abolition of the death penalty, including an immediate moratorium on executions, a precondition of membership. In 1998, the European Union followed suit. In consequence, abolition was embraced across the region, having a particular impact on states in the former Soviet bloc, and by the end of 2001, the number of abolitionist countries had more than doubled to 75 (only Belarus in Europe continues to execute people and only sporadically). Just a year later, in 2002, Protocol No. 13 to the ECHR banned the death penalty in all circumstances, including in times of war, allowing for no derogation or reservation.<sup>39</sup>

That decade, over the turn of the century, provides a good example of human rights treaties, political discourse and political action in accord across Europe. But if we consider abolition in the broader global landscape, over the past few decades, further forces can be revealed in countries where the abolitionist movement has taken hold.

Today, abolitionist countries have almost doubled since the turn of the century. In July 2023, Ghana was the 124<sup>th</sup> country to abolish, and the 29<sup>th</sup> in Africa.<sup>40</sup> Moreover, only 20 countries executed anyone last year, though some of these – such as China, Iran and Saudi Arabia – are responsible for a disproportionate share of the world’s executions.<sup>41</sup>

The death penalty is now all but abolished across Europe and Central Asia, hardly applied across sub-Saharan Africa (with only Botswana, Somalia, South Sudan and Sudan carrying out executions in the past few years), and though a handful of death sentences are imposed in the Caribbean (in Trinidad and Tobago), only the United States within the Americas executes death sentences. And even there the rate has declined dramatically over the past years – from a peak of 98 in 1999 to just 24 in 2023 – as more US states have embraced abolition.<sup>42</sup>

An international movement which began in Europe has now been embraced by many different political systems, religious faiths and cultures. Before considering resistance to this movement, it is helpful to reflect on different motivations for abolition.

#### 4. Motivations for abolition

While there is no universal theory to explain abolition across diverse regions, patterns suggest growing consensus that states have no right to take the life of a citizen who is already under the control of that state and can, instead, be incapacitated and punished through imprisonment. This stance has been shaped by penal philosophers’ recognition that death is unnecessary to meet the goal of retribution, by empirical research on deterrence that has failed to demonstrate that capital punishment deters serious crime more than a life sentence would,<sup>43</sup> and by a universal human rights dynamic.<sup>44</sup> This human rights dynamic presents limits to the power that states can be permitted to exercise over all persons accused of and convicted for crimes, however serious. States should not impose punishments that are inflicted arbitrarily and inhumanely such that they breach the human rights of the convicted. But while this dynamic has

played a part in states' journeys to abolition, it has done so within unique social, economic, political and historical contexts that deserve further consideration.

In some countries, abolition coincided with the end of a repressive regime (for example, South Africa, Haiti, Germany, Rwanda and Cambodia). Sometimes it occurred at the end of a period of martial law (such as in Argentina, Mexico and Turkey). It can be brought about by strong political leadership, where 'elites' push an abolitionist agenda using political avenues for legislative change (such as in France, Mongolia and certain US states, not least Virginia<sup>45</sup>). And even when political conditions are conducive, change may also be influenced by other cultural factors. For example, Chile abolished the death penalty for peace-time offences in 2001, just over a decade after the end of military dictatorship, when the country was transitioning to a democracy. Chilean Presidents through the 1990s spoke out against capital punishment but for some years Congress voted against abolition. Hence, while regime change was crucial, pressure was needed from the Catholic Church, a strong force in political and cultural life.<sup>46</sup>

As mentioned above, incentives for countries in Europe to abolish the death penalty were found in the precondition for entry to the Council of Europe and the European Union. But that was not the only factor, and of course abolition alone would not secure entry. Evidence suggests that joining the European Union was the main incentive for Turkey's decision on constitutional abolition in 2004. In 1999, a spokesman at the EU office dealing with Turkey's attempts to join had said: "We would like to remind Turkey as well as other candidate countries that we expect them to withdraw the death penalty if they want to become member states."<sup>47</sup> But despite abolishing in 2004, Turkey

remains outside of the EU. Indeed, in 2016, President Erdogan reflected that his country had abolished the death penalty before EU accession talks so that Turkey might be allowed to become a member. He added that he might now reintroduce the death penalty as he believed that there was strong support for it.<sup>48</sup>

The Hungarian Constitutional Court abolished the death penalty in 1990, immediately following regime change from an authoritarian state to a constitutional democracy. In 2002, the prime minister, Viktor Orban, reflected on the importance of abolition for joining the European Union and Hungary joined just two years later. However, despite political will in favour of abolition, the Constitutional Court is a legal, not a political institution and the Court's reasoning was based on the right to life and human dignity, as valued within the new democracy. That reasoning was referred to by the South African Constitutional Court in its decision to abolish the death penalty just five years later, in 1995.<sup>49</sup>

Of course, courts do not operate in a vacuum. The Court in South Africa was influenced by a rising regard for human rights following the release of Nelson Mandela in 1990 and the spirit of reconciliation, post-apartheid. Nonetheless, political leadership was crucial. President F.W. de Klerk had announced a moratorium on executions and the Attorney-General, in line with President Mandela's long-held belief that the death penalty was barbaric, brought the case to the Constitutional Court.<sup>50</sup> Similarly, Hungarian judges at the Constitutional Court had been influenced over the years by intellectual elites. Lawyers, social scientists, writers, journalists and representatives of several churches, after years of campaigning, had formed the League Against Capital Punishment in 1989 to petition Hungary's newly established

Constitutional Court to abolish capital punishment “on the ground that it was contrary to the right to life.”<sup>51</sup> Clearly, in Hungary, abolition was not primarily about political expediency but, rather, about the broader human rights dynamic. This example shows that pressure on politicians and courts can come from international bodies and treaties and from regional bodies and standards, but also from national bodies and coalitions including lawyers, religious organisations and intellectual elites.

Political leadership was central to Mongolia’s journey towards abolition. Starting in 2010, the President commuted the death sentences of all those on death row and called on Parliament to abolish the death penalty. In the ensuing years, he repeatedly expressed support for abolition, drawing on the language of rights in international treaties, but also citing evidence of wrongful convictions and the lack of a deterrent effect. Furthermore, he asserted that capital punishment harmed Mongolia’s international standing. In turn, the EU was visibly present at times of political pressure, making declarations of support. Importantly, though, he had local support: NGOs and academics were influential in delivering an abolitionist message to the public, raising awareness of the problems inherent in the administration of the death penalty through the media. In consequence, by the time a new Criminal Code was adopted in 2015, abolishing the death penalty for all crimes, the public was ready for change.<sup>52</sup>

Notwithstanding considerable abolitionist impetus across Europe, South America and Africa and numerous countries in Africa and the Caribbean retaining the death penalty in their statutes but choosing not to carry out executions, many countries in the Middle East, North Africa and Asia continue to practice the death penalty. Some

dismiss human rights treaties and resolutions as a form of Western cultural imperialism, explicitly asserting their sovereign rights to determine their criminal and penal policies according to their political, social and cultural circumstances and values.

## 5. Resistance to human rights

Sovereignty and resistance to human rights is reflected in countries’ responses to the biennial UNGA resolution calling for a moratorium on executions by all countries, with a view to universal abolition. The most recent (9<sup>th</sup>) resolution in December 2022 secured 125 votes in favour and while this is a significant rise from the first vote in 2007, when 104 states voted in favour, it leaves 37 states voting against the resolution and another 22 abstaining.<sup>53</sup> Those against the moratorium are unlikely to abolish in the near future. Some draw on religious authority, others on political imperatives.

### Religious authority

About two-thirds of countries that oppose the resolution are Muslim-majority nations – such as Egypt, Iran and Iraq – responsible for a high proportion of executions and death sentences each year. There are 33 offences warranting the death penalty in Pakistan, including blasphemy, sabotage of the railway system and drug smuggling. In Saudi Arabia, crimes such as sorcery and witchcraft are punishable by death. And in Iran, there are 24 reported capital crimes, which include espionage, economic crimes (if they amount to ‘corruption on earth’) and publishing pornography. There is ample evidence that the use of the death penalty disproportionately targets religious minorities in some Muslim countries and is often a tool to further political agendas, rather than to control crime.<sup>54</sup>



Some Muslim-majority states, including Saudi Arabia, assert that Sharia law *mandates* the death penalty, or at least makes it permissible, and is incompatible with human rights instruments. However, certain Islamic scholars argue that there is nothing in the *Qu'ran* or the *Sunna* that *requires* the death penalty, save perhaps for crimes against God and even then, it is argued, that it can be avoided if there is proof of repentance or any doubt about the safety of the evidence.<sup>55</sup> Indeed, there is no consistent application of Sharia law, with states applying the death penalty in disparate ways that often go beyond what is required by Islamic religious sources.<sup>56</sup>

Capital punishment could clearly be curtailed without explicitly rejecting Sharia law, but this is unlikely while traditionalists and fundamentalists are in the ascendency and while the political will of some governments favours harsh penal policy.

### Political authority

Despite some reduction in rates of executions across Asia, and restrictive strategies in Japan and India – where the death penalty is applied only in the ‘rarest of rare’ cases – abolition has made little progress in Asia, where there remain 19 retentionist countries, most with capital punishment for offences beyond the scope of intentional homicide.<sup>57</sup> The politics of authoritarian nations militate against reform, not least in China, Vietnam and North Korea. While both Vietnam and China have seen reductions in offences subject to capital punishment, many remain on the books, and they are unlikely to reform their penal policies in the near future or become accountable and transparent in their use of capital punishment. China defends its high numbers of death sentences and executions by reference to the public appetite for revenge, justice and equality before the law, drawing on netizens’

apparent demands for executions, especially of the powerful in cases of corruption.<sup>58</sup> But frequent executions are more likely aimed at enhancing political legitimacy, an effort to divert public agitation from the problems occasioned by rapid modernisation and social fragmentation.<sup>59</sup>

Official or ‘de facto’ moratoriums are in place elsewhere, with South Korea and Sri Lanka among the four Asian countries considered to be abolitionist in practice. But moratoriums can be fragile; at risk at times of emergency, particularly in the wake of terrorist attacks and at other times of conflict or crisis. For example, at the end of 2014, after an eight-year moratorium on executions, the Taliban massacre of schoolchildren in Pakistan led to a swift resumption of executions, with 334 taking place in 2015. A further 508 executions were carried out between 2015 and 2019, but none since January 2020.<sup>60</sup> Though justified by the fight against terrorism, most executions were for ‘ordinary’ murders, not terrorist acts. As has been seen in recent years in India, a penalty initially reserved for the most serious offences can be increasingly used in emphatic displays of state power in the face of internal political opposition or external threats, as well as more recently, concerns over sexual violence. Most recently, in 2022, a year after the military coup, the authorities executed four political opponents, the first executions in Myanmar since 1989.<sup>61</sup>

Within Asia, drug trafficking is claimed to be among the most serious offences and has justified retention and frequent executions in Iran, and sporadic executions across Southeast Asia. In such countries, political will can be justified by popular punitiveness and in Singapore in particular, by resort to the language of sovereignty. Across Asia and the Middle East, cultural values, whether the ‘collective conscience’ or ‘Asian values’ that

prioritise community safety and harmony over individual rights, or religious values founded in Islam, may be harnessed as *justifications* to suit the political interests of authoritarian rulers, rather than the foundations of retention.<sup>62</sup>

## Conclusion

The dynamo for the new wave of abolition was the development of international human rights law. Arising in the aftermath of the Second World War and linked to the emergence of countries from totalitarian imperialism and colonialism, international human rights principles created a climate and a set of universal instruments advocating the protection of citizens from the power of the state. But treaties cannot realize their full potential without political will. When states

assert their sovereign right to determine their own penal policies and reject attempts by international bodies to reframe domestic policy as a human rights matter, they set up a false premise. Choice of which behaviours to criminalise and how to punish them is, of course, a matter for sovereign nations to decide on. There is considerable agreement among states that the power to punish should be limited to conditions set out in the *Safeguards* and that they should not inflict punishments that are imposed arbitrarily and inhumanely such that they breach the human rights of the convicted. Nonetheless, the entrenchment of the death penalty within Asia and the Middle East and the lack of regard for due process suggests that the human rights project has some way to go.

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## References

- <sup>1</sup> Charles Louis de Secondat, Baron de Montesquieu, *De l'Esprit des Loix* (1748) cited in Leon Radzinowicz, *A History of English Criminal Law, Volume 1* (Stevens and Sons 1948) 269–76.
- <sup>2</sup> Cesare Beccaria, *On Crimes and Punishments* (Henry Paolucci trans, Bobbs-Merrill 1963).
- <sup>3</sup> Michigan, Rhode Island and Wisconsin.
- <sup>4</sup> Roger Hood and Carolyn Hoyle *The Death Penalty: A Worldwide Perspective* (OUP 2015), chapter 1.
- <sup>5</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) ('UDHR').
- <sup>6</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ('ECHR').
- <sup>7</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty* (n 4).
- <sup>8</sup> UDHR (n 5) art 3.
- <sup>9</sup> UDHR (n5) art 5.
- <sup>10</sup> ECHR (n 6) arts 2 and 3.
- <sup>11</sup> "Everyone's right to life shall be protected by law. 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.*" See ECHR (n 6) art 2(1).
- <sup>12</sup> A revised version of which was adopted by the League of Arab States in 2004 and entered into force in 2008. See: League of Arab States, 'Arab Charter on Human Rights' (adopted 22 May 2004, entered into force 15 March 2008) <<https://digitallibrary.un.org/record/551368?ln=en>> accessed 13 December 2023 ('Arab Charter').
- <sup>13</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 ('African Charter'), art 4.

- <sup>14</sup> African Commission on Human and Peoples' Rights, 'Resolution on the right to life in Africa' (2017) ACHPR/Res 375 (LX) <<https://www.acdhrs.org/wp-content/uploads/2017/07/Resolution-on-the-Right-to-Life-in-Africa.pdf>> accessed 13 December 2023.
- <sup>15</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').
- <sup>16</sup> UN Human Rights Committee, 'General Comment No. 6 on the right to life' (1982) UN Doc HRI/GEN/1, paras 6–7.
- <sup>17</sup> See new general comment (No. 36) on the Article 6 'right to life', published in 2019: UN Human Rights Committee, 'General Comment No. 36 on the right to life' (2019) UN Doc CCPR/C/GC/36, paras 6–7.
- <sup>18</sup> *ibid*, para 11; see further paras 32–51.
- <sup>19</sup> UN Economic and Social Council, 'Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty' (1984) UN Doc E/RES/1984/50, endorsed by the UN General Assembly in 'Resolution 39/118: Human rights in the administration of justice' (1984) UN Doc A/RES/39/118, adopted without a vote in December 1984 (updated in 1989).
- <sup>20</sup> Reports available at: United Nations, 'Reports: Death penalty' (2023) <<https://www.ohchr.org/en/death-penalty/reports-human-rights-council#>> accessed 13 December 2023.
- <sup>21</sup> Amnesty International, 'Executions of juveniles since 1990 as of January 2018' (2018) <<https://www.refworld.org/docid/5a69e5ae4.html>> accessed 11 December 2023; see also: United Nations, 'Iran: UN Experts say executions of child offenders must stop' (25 November 2021) <<https://www.ohchr.org/en/press-releases/2021/12/iran-un-experts-say-executions-child-offenders-must-stop>> accessed 11 December 2023.
- <sup>22</sup> *Woodson v. North Carolina* (1976) 428 U.S. 280 (U.S. Supreme Court).
- <sup>23</sup> *Mithu v State of Punjab* (1983) AIR 473 SC (Supreme Court of India).
- <sup>24</sup> See also: UN Human Rights Committee, 'General Comment No. 36' (n 17), para 37.
- <sup>25</sup> Parvais Jabbar, 'Imposing a mandatory death penalty: a practice out of sync with evolving standards' in Carol Steiker and Jordan Steiker (eds), *Comparative Capital Punishment* (Elgar 2019) 138–159.
- <sup>26</sup> Starting with the 2001 case of *Spence & Hughes v. R* that struck down the mandatory death penalty in St Vincent and The Grenadines and Saint Lucia on the basis that it amounted to inhuman and degrading punishment. For a thorough discussion of the cases and the rationales for abolishing the mandatory death penalty, see Parvais Jabbar, 'Imposing a mandatory death penalty' (n 25) 138–159.
- <sup>27</sup> *Kigula (Susan) & 416 Others v Attorney General Constitutional Court of Uganda* (Constitutional Petition No. 6 of 2003) [2005] UGCC 8 (Constitutional Court of Uganda); *Attorney General v Susan Kigula & 417 Ors* (Constitutional Appeal No. 3 of 2006) [2009] UGSC 6 (Supreme Court of Uganda).
- <sup>28</sup> *Chandler v The State* [2022] UKPC 19 (Judicial Committee of the Privy Council).
- <sup>29</sup> *Soering v United Kingdom and Germany* (1989) 11 EHRR 439.
- <sup>30</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty* (n 4) 212–218.
- <sup>31</sup> *Pratt & Morgan v Attorney General for Jamaica* [1993] 4 All ER 769 (PC); [1994] 2 AC 1 (Judicial Committee of the Privy Council).
- <sup>32</sup> Carol Steiker and Jordan Steiker, *Courting Death: The Supreme Court and Capital Punishment* (HUP 2016) 150–151.
- <sup>33</sup> More than half of the 24 prisoners executed in 2023 had been on death row for more than 20 years, with six having spent more than 30 years on death row: Death Penalty Information Center, 'The Death Penalty in 2023: Year End Report' (2023) <<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report#most-execution-warrants-not-carried-out>>.
- <sup>34</sup> Safeguard No. 1 of Safeguards guaranteeing protection of the rights of those facing the death penalty (n 19). Failure to comply with the Safeguards is reviewed by ECOSOC in quinquennial reports by the Secretary-General on developments and trends in the use of capital punishment (the most recent report – the 10<sup>th</sup> such review – covers the period January 2014 to December 2018).
- <sup>35</sup> In order to *fully guarantee the right to life*, provided for in Article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is to "progressively restrict the number of offences for which capital punishment might be imposed with a view to the desirability of abolishing this punishment in all countries" (UN General Assembly, 'Resolution 32/61: Capital punishment' (1977) UN Doc A/RES/32/61, adopted without a vote).
- <sup>36</sup> See 'Declaration of Stockholm, 11 December 1977' in Appendix II of: Amnesty International, *Amnesty International Report 1979* (1979) <<https://www.amnesty.org/en/documents/pol10/001/1979/en/>> accessed 11 December 2023, 202.
- <sup>37</sup> Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, as amended by Protocol 11 (1983) ETS 114 <[https://70.coe.int/pdf/library\\_collection\\_p6\\_ets114e\\_eng.pdf](https://70.coe.int/pdf/library_collection_p6_ets114e_eng.pdf)> accessed 13 December 2023 ('Protocol No 6').
- <sup>38</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (adopted 15 December 1989, entered into force 11 July 1991) 1642 UNTS 414 ('Second Optional Protocol').
- <sup>39</sup> Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in All Circumstances (2002) ETS 187 <[https://70.coe.int/pdf/library\\_collection\\_p13\\_ets187e\\_eng.pdf](https://70.coe.int/pdf/library_collection_p13_ets187e_eng.pdf)> accessed 13 December 2023.

- <sup>40</sup> Carolyn Hoyle and Saul Lehrfreund (2023) 'Closing death row: The road to abolition' (*Oxford DPRU Blog*, 27 July 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/07/closing-death-row-road-abolition-ghana>> accessed 13 December 2023.
- <sup>41</sup> Amnesty International, *Death Sentences and Executions 2022* (2023).
- <sup>42</sup> Death Penalty Information Center, 'The Death Penalty in 2023: Year End Report' (2023) <<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report>>.
- <sup>43</sup> The Death Penalty Project, *Deterrence and the Death Penalty* (August 2022) <[https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project\\_Policy-Deterrence.pdf](https://deathpenaltyproject.org/wp-content/uploads/2022/08/The-Death-Penalty-Project_Policy-Deterrence.pdf)> accessed 13 December 2023.
- <sup>44</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty* (n 4).
- <sup>45</sup> Aimee Clesi, 'Rallying lawmakers in the American South: An investigation of Virginia's path to abolition' (*Oxford DPRU Blog*, 24 October 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/10/rallying-lawmakers-american-south-investigation>> accessed 13 December 2023.
- <sup>46</sup> Gustavo González, 'Human Rights Chile: Parliament Abolishes Death Penalty' (*Inter Press Service*, 4 April 2001) <<http://www.ipsnews.net/2001/04/human-rights-chile-parliament-abolishes-death-penalty/>> accessed 11 December 2023; 'Chile senate votes to abolish death penalty' (*United Press International*, 1 November 2000) <<https://www.upi.com/Archives/2000/11/01/Chile-senate-votes-to-abolish-death-penalty/4977973054800/>> accessed 11 December 2023.
- <sup>47</sup> Cited in Chris Morris and Tony Paterson, 'EU warns Turkey to spare Ocalan' (*The Guardian*, 26 November 1999) <<https://www.theguardian.com/world/1999/nov/26/kurds>> accessed 13 December 2023.
- <sup>48</sup> European Stability Initiative, *"Hang them in Taksim" – Europe, Turkey and the future of the death penalty* (2017) <<https://www.esiweb.org/publications/hang-them-taksim-europe-turkey-and-future-death-penalty>> accessed 13 December 2023.
- <sup>49</sup> László Solyom and Georg Brunner (eds), *Constitutional Judiciary in a New Democracy: The Hungarian Constitutional Court* (University of Michigan Press 2000) 118.
- <sup>50</sup> *State v. Makwanyane and M Mchunu* (CCT/3/94) [1995, ZACC3 (Constitutional Court of South Africa)].
- <sup>51</sup> Zoltan J. Toth, 'The capital punishment controversy in Hungary: Fragments on the issues of deterrent effect and wrongful convictions' (2013) 21 *European Journal of Crime, Criminal Law and Criminal Justice* 37, 54.
- <sup>52</sup> Organization for Security and Co-Operation in Europe (OSCE), 'The Death Penalty in the OSCE Area: Background Paper 2021' (2021) <[https://www.osce.org/death\\_penalty\\_2021](https://www.osce.org/death_penalty_2021)> accessed 11 December 2023.
- <sup>53</sup> See: World Coalition Against the Death Penalty, '9<sup>th</sup> resolution for a moratorium on the death penalty: The trend is growing' (20 December 2022) <<https://worldcoalition.org/2022/12/20/9th-resolution-for-a-moratorium-on-the-death-penalty-the-trend-is-growing/>> accessed 13 December 2023.
- <sup>54</sup> Carolyn Hoyle, Jocelyn Hutton and Lucy Harry, 'A Disproportionate risk of being executed: Why Pakistani migrants are vulnerable to capital punishment in Saudi Arabia' (2023) 63 *British Journal of Criminology* 1423; Lucy Harry, Carolyn Hoyle and Jocelyn Hutton (2023) 'Migratory dependency and the death penalty: Foreign nationals facing capital punishment in the Gulf' 26 *Punishment and Society* 109; Carolyn Hoyle (2019) 'Capital punishment at the intersections of discrimination and disadvantage: the plight of foreign nationals' in Carol Steiker and Jordan Steiker (eds) *Comparative Capital Punishment* (Elgar 2019) ch 9.
- <sup>55</sup> M. Cherif Bassiouni, 'Death as a penalty in the Sharia' in Peter Hodgkinson and William Schabas (eds) *Capital Punishment: Strategies for Abolition* (CUP 2004) 169-85.
- <sup>56</sup> Naima Asif, 'An Introduction to Sharia Law and the Death Penalty' (*Oxford DPRU Blog*, 26 January 2021) <<https://blogs.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/01/introduction-sharia-law-and>> accessed 13 December 2021.
- <sup>57</sup> Afghanistan, Bangladesh, Brunei Darussalam, China, India, Indonesia, Japan, Laos, Malaysia, Maldives, Myanmar, North Korea, Pakistan, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, Vietnam.
- <sup>58</sup> Bin Liang and Jianhong Liu, *Chinese Netizens' Opinions on Death Sentences: An empirical examination* (University of Michigan Press 2021).
- <sup>59</sup> Michelle Miao, 'Capital punishment in China: A populist instrument of social governance' (2013) 17 *Theoretical Criminology* 233.
- <sup>60</sup> International Federation for Human Rights, 'Pakistan: Briefing note on the death penalty' (10 October 2022) <<https://www.fidh.org/en/region/asia/pakistan/World-Day-Against-Death-Penalty-capital-punishment-Pakistan>> accessed 13 December 2023.
- <sup>61</sup> 'Myanmar defends executions as "justice for the people" as condemnation grows' (*Reuters*, 26 July 2022) <<https://www.reuters.com/world/asia-pacific/asean-chair-calls-timing-myanmar-executions-highly-reprehensible-2022-07-26/>> accessed 13 December 2023.
- <sup>62</sup> Sangmin Bae, 'The Death Penalty as an Asian Value?' (2008) 39 *Asian Affairs* 47; see also Roger Hood and Carolyn Hoyle, *The Death Penalty* (n 4) 121-123.