

THE DEATH PENALTY

Questions and Answers

Why does Amnesty International oppose the death penalty?

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

There can never be any justification for torture or for cruel treatment. Like torture, an execution constitutes an extreme physical and mental assault on an individual. The physical pain caused by the action of killing a human being cannot be quantified, nor can the psychological suffering caused by foreknowledge of death at the hands of the state.

The death penalty is discriminatory and is often used disproportionately against the poor, minorities and members of racial, ethnic and religious communities. It is imposed and carried out arbitrarily.

The state's attempts to select the "worst of the worst" crimes and offenders out of the thousands of murders committed each year inevitably leads to inconsistencies and errors, inescapable flaws which are exacerbated by discrimination, prosecutorial misconduct and inadequate legal representation. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. Amnesty International continues to demand unconditionally the worldwide abolition of the death penalty.

To end the death penalty is to recognize that it is a destructive and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly to the public purse, as well as in social and psychological terms. It has not been shown to have a special deterrent effect. It denies the possibility of rehabilitation and reconciliation. It promotes simplistic responses to complex human problems, rather than pursuing explanations that could inform positive strategies. It prolongs the suffering of the murder victim's family, and

extends that suffering to the loved ones of the condemned prisoner. It diverts resources and energy that could be better used to work against violent crime and assist those affected by it. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

In opposing the death penalty, isn't Amnesty International showing disrespect for victims of violent crime and their relatives?

In opposing the death penalty, Amnesty International in no way seeks to minimize or condone the crimes for which those sentenced to death were convicted. If it were, then a majority of countries are currently apologists for violent crime, clearly a nonsensical suggestion. As an organization deeply concerned with the victims of human rights abuses, Amnesty International does not seek to belittle the suffering of the families of murder victims, for whom it has the greatest sympathy. However, the finality and cruelty inherent in the death penalty render it incompatible with norms of modern-day, civilized behaviour. It is an inappropriate and unacceptable response to violent crime.

Is the death penalty used by governments to suppress dissenting voices?

The death penalty has been and continues to be used as a tool of political repression, as a means to silence forever political opponents or to eliminate politically "troublesome" individuals. In most such cases the victims are sentenced to death after unfair trials.

It is the irrevocable nature of the death penalty that makes it so tempting as a tool of repression. Thousands have been put to death under one government only to be recognized as innocent victims when a new government comes to power. As long as the death penalty is accepted as a legitimate form of punishment, the possibility of political misuse will remain. Only abolition can ensure that such political abuse of the death penalty will never occur.

What does international law say about the use of the death penalty?

The Universal Declaration of Human Rights -- adopted by the United Nations (UN) General Assembly in December 1948 in response to the staggering extent of state brutality and terror witnessed during World War II -- recognizes each person's right to life (Article 3) and categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). In Amnesty International's view, the death penalty violates these rights.

Further support is also evidenced by the adoption of international and regional treaties providing for the abolition of the death penalty:

- ***The Second Optional Protocol to the International Covenant on Civil and Political Rights***, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.
- ***Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*** ["European Convention on Human Rights"] concerning the abolition of the death penalty, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war".
- ***The Protocol to the American Convention on Human Rights to Abolish the Death Penalty***, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.
- ***Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*** (European Convention on Human Rights) adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the Protocol.

[An up-to-date list of states that have ratified the above treaties on the death penalty is available on the death penalty page of the AI website www.amnesty.org.]

Furthermore, under the ***Statute of the International Criminal Court*** adopted in 1998, the death penalty is excluded from the punishments which this court is authorized to impose, even though it has jurisdiction over extremely grave crimes such as crimes against humanity, including genocide, and violations of the laws of armed conflict.

Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty as a punishment for these crimes. The death penalty was also excluded for such crimes by the Special

Court of Sierra Leone, the Special Panels in Dili, East Timor and the legislation establishing the Extraordinary Chambers for Cambodia.

But surely there are times when the state has no choice but to take someone's life?

Self-defence may be used to justify in some cases the taking of life by state officials, for example when a country is at war (international or civil) or when law enforcement officials must act immediately to save their own lives or those of others. Even in such situations the use of lethal force is surrounded by internationally accepted legal safeguards to inhibit abuse. This use of force is aimed at countering the immediate damage resulting from force used by others.

However the death penalty is not an act of self-defence against an immediate threat to life. It is the premeditated killing of a prisoner who could therefore be dealt with equally well by less harsh means.

What do you say to the argument that the death penalty is an important tool for a state to fight crime?

Too many governments believe that they can solve urgent social or political problems by executing a few or even hundreds of their prisoners. Too many citizens in too many countries are still unaware that the death penalty offers society not further protection but further brutalization.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996 and 2002, concluded: "...research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".

Recent crime figures from abolitionist countries fail to show that abolition has harmful effects. In Canada, for example, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then it has declined further. In 2003, 27 years after abolition, the homicide rate was 1.73 per 100,000 population, 44 per cent lower than in 1975 and the lowest rate in three decades. Although this increased to 2.0 in 2005, it remains over one-third lower than when the death penalty was abolished.

It is incorrect to assume that people who commit such serious crimes as murder do so after rationally calculating the consequences. Often murders are committed in moments when emotion overcomes reason or under the influence of drugs or alcohol. Some people who commit violent crime are highly unstable or mentally ill. Amnesty International has found that at least one in 10 of the prisoners put to death in the USA since 1977 had suffered from serious mental disorders rendering them unable to rationally comprehend their death sentence, its reasons or its implications. In none of these cases can the fear of the death penalty be expected to deter. Moreover, those who do commit premeditated serious crimes may decide to proceed despite the risks in the belief that they will not be caught. The key to deterrence in such cases is to increase the likelihood of detection, arrest and conviction.

The fact that no clear evidence exists to show that the death penalty has a unique deterrent effect points to the futility and danger of relying on the deterrence hypothesis as a basis for public policy on the death penalty. The death penalty is a harsh punishment, but it is not harsh on crime.

Isn't it necessary to execute certain prisoners in order to prevent them from repeating their crimes?

The death penalty as a method of preventing prisoners from re-offending is a blunt tool. By its very nature, the death penalty can only be carried out against a prisoner who is already imprisoned and therefore removed from society. Since that prisoner can no longer commit acts of violence against society, the death penalty is not needed as a method of protection.

Unlike imprisonment, the death penalty entails the risk of judicial errors which can never be corrected. There will always be a risk that some prisoners who are innocent will be executed. The death penalty will not prevent them from repeating a crime which they did not commit in the first place.

It is also impossible to determine whether those executed would actually have repeated the crimes of which they were convicted. Execution entails taking the lives of prisoners to prevent hypothetical future crimes many of which would never have been committed anyway. It negates the principle of rehabilitation of offenders.

There are those who argue that imprisonment alone has not prevented individuals who have been imprisoned from offending again once set free. The answer is to review the parole procedures in place with a view to preventing relapses into crime. The answer is certainly not to increase the number of executions.

Surely a person who commits an horrendous crime or who kills another individual deserves to die?

An execution cannot be used to condemn killing. Such an act by the state is the mirror image of the criminal's willingness to use physical violence against a victim. Additionally, all criminal justice systems are vulnerable to discrimination and error. No system is or could conceivably be capable of deciding fairly, consistently and infallibly who should live and who should die. Expediency, discretionary decisions and prevailing public opinion may influence the proceedings from the initial arrest to the last-minute decision on clemency.

Central to human rights is that they are inalienable -- they are accorded equally to every individual regardless of their status, ethnicity, religion or origin. They may not be taken away from anyone regardless of the crimes a person has committed. Human rights apply to the worst of us as well as to the best of us, which is why they are there to protect all of us. They save us from ourselves.

In addition experience demonstrates that whenever the death penalty is used some people will be killed while others who have committed similar or even worse crimes may be spared. The prisoners executed are not necessarily only those who committed the worst crimes, but also those who were too poor to hire skilled lawyers to defend them or those who faced harsher prosecutors or judges.

Isn't the death penalty needed to stop acts of terrorism and political violence?

Officials responsible for fighting terrorism and political crimes have repeatedly pointed out that executions are as likely to increase such acts as they are to stop them. Executions can create martyrs whose memory becomes a rallying point for their organizations. For men and women prepared to sacrifice their lives for their beliefs -- for example suicide bombers -- the prospect of execution is unlikely to deter and may even act as an incentive.

State use of the death penalty has also been used by armed opposition groups as a justification for reprisals, thereby continuing the cycle of violence.

Isn't it more cruel to lock up a prisoner for long periods or for life rather than to execute the individual?

As long as a prisoner remains alive he or she can hope for rehabilitation or for exoneration in the case of a prisoner who is subsequently found to be innocent. Execution removes the possibility of compensation for judicial error or rehabilitation of the offender.

The death penalty is a unique form of punishment entailing conditions not present in imprisonment: the cruelty of the execution itself, and the cruelty of being forced to wait on death row -- often for many years -- contemplating one's intended execution.

What do you say to those countries which claim that calling for a worldwide moratorium on capital punishment is in effect another attempt by the West to "impose their cultural values on us"?

Amnesty International welcomes the multiplicity of discourses on human rights grounded in different cultures and religions and believes that different visions contribute to our understanding of human rights. At the same time, the organization believes that human rights are universal, indivisible and interdependent. Although they may have been often developed in a Western context, they are not Western in content but derive from many different traditions and are acknowledged by all the members of the United Nations as the standards by which they have agreed to abide.

It should be noted that the numerous nations who have abandoned the use of capital punishment come from differing regions and cultures. It therefore cannot be claimed that abolition of the death penalty is solely advocated by one section of world society.

By opposing the death penalty is Amnesty International implicitly criticizing the major world religions which sanction its use?

Major world religions emphasize mercy, compassion and forgiveness in their teachings. Amnesty International's call for the cessation of all executions is consistent with these teachings.

All major religious denominations are to be found in states which continue to use the death penalty in different regions of the world. Likewise states that have abolished the death penalty either in law or in practice are also found throughout the world, cross-cutting religious lines. The death penalty is not exclusive to any particular religion; thus it would be wrong to interpret Amnesty International's campaign for the abolition of the death penalty as an attack on any particular religion. Amnesty International is an ethnically and culturally diverse, non-political organization which bases its work

on international human rights. Its worldwide membership is drawn from across the globe and from a plethora of religions.

How can states abolish the death penalty when the majority of public opinion is in favour of it?

The reasons for a seemingly strong public support for the death penalty can be complex and lacking in factual foundation. If the public were fully informed of the reality of the death penalty and how it is applied, many people might be more willing to accept abolition.

Opinion polls which often seem to indicate overwhelming support for the death penalty tend to simplify the complexities of public opinion and the extent to which it is based on an accurate understanding of the crime situation in the country, its causes and the means available for combating it.

Public support for the death penalty is most often based on the erroneous belief that it is an effective measure against crime. What the public overwhelmingly want is truly effective measures to reduce criminality. If politicians advocate the death penalty as an anti crime measure, the public will request it in the belief that it will address the problem. It is the responsibility of governments to address criminality effectively and without resorting to abusing human rights via the death penalty.

An informed public opinion is shaped by education and moral leadership. Governments should lead public opinion in matters of human rights and criminal policy. The decision to abolish the death penalty has to be taken by the government and legislators. The decision can be taken even though the majority of the public favour the death penalty which indeed has historically almost always been the case. Yet when the death penalty is abolished there is usually no great public outcry and it almost always remains abolished.

A government would not be justified in torturing a notorious prisoner or persecuting an unpopular ethnic minority simply because the majority of the public demanded it. Slavery was once legal and widely accepted. Its abolition came about through years of efforts by those who opposed it on moral grounds.

What signs are there that the battle to abolish the death penalty is being won?

At the turn of the last century only three countries had permanently abolished the death penalty for all crimes. Today, at the beginning of the 21st century, two thirds of

the countries in the world have abolished the death penalty in law or practice. Indeed, over the past decade more than three countries a year on average have abolished the death penalty in law or having abolished it for ordinary crimes have gone on to abolish it for all crimes. Moreover, once abolished, the death penalty is seldom reintroduced.

[An up-to-date list of abolitionist and retentionist countries is available on the death penalty page of the AI website www.amnesty.org.]

Other signs are:

The emergence of Europe as a virtually death penalty-free area, followed by the development of its role in promoting worldwide abolition.

The continent of Africa is largely execution free with only six of the region's 53 countries known to have carried out state killings in 2006.

The United States of America is slowly turning against capital punishment. Executions in a number of states were effectively on hold in 2006 because of legal challenges and concerns relating to the lethal injection process. There is strong public support for a moratorium on executions in the state of North Carolina where almost 40 local governments and more than 40,000 people have signed a moratorium petition. In New York, the state's highest court in 2004 found the state's death penalty statute unconstitutional. By early 2007, this law had not been replaced. In New Jersey in 2006, the legislature imposed a moratorium and established a commission to study all aspects of the death penalty in that state. In its final report in January 2007, the commission recommended abolition of the death penalty.

Increasing communication and collaboration among abolitionist organizations, as shown by the holding of three World Congresses against the Death Penalty, the creation of the World Coalition against the Death Penalty and the formation of national coalitions in several countries including the Anti-Death Penalty Action Network (ADPAN) in Asia.

A proliferation of international standards (including the adoption of binding abolitionist treaties and their ratification by increasing numbers of states), action by UN mechanisms, and decisions and recommendations by international courts and treaty-monitoring bodies.

This trend reflects the growing awareness that there are alternative punishments to the death penalty that are effective and which do not involve the premeditated and cold-blooded killing of a human being by the state in the name of justice.

Is lethal injection the most painless and humane way to kill an individual?

Problems have arisen in the use of lethal injection. In the first lethal injection execution in Guatemala on 10 February 1998, those charged with carrying out the lethal injection against Manuel Martínez Coronado were apparently so nervous (reportedly due in part to the distressing sounds of the prisoner's wife and children weeping) that it took them a long time to attach the line that was to deliver the poison. Then a power cut during the execution stopped the flow of poison and it took the prisoner 18 minutes to die. The entire ordeal was broadcast live on state television. In the USA, a number of lethal injection executions have been botched, with problems arising when the prisoner's veins are in poor condition due to intravenous drug use.

Angel Nieves Diaz, a native of Puerto Rico who was sentenced to death for a murder committed in 1979, took 34 minutes to die by lethal injection on 13 December 2006. A second dose was required before a doctor, wearing a hood over his face to conceal his identity, signaled that Angel Diaz was dead.

The execution went ahead despite the fact that a key prosecution witness had recanted his trial testimony against Angel Diaz who proclaimed his innocence to the end. Only an hour or so before the execution took place, the Supreme Court rejected Angel Diaz's final appeal which had raised this issue, as well as challenging the constitutionality of Florida's lethal injection procedures.

On 15 December 2006, the governor of Florida, Jeb Bush, halted executions and appointed a panel to evaluate whether death by lethal injection breaches Florida's ban on cruel and unusual punishment. No more death warrants will be signed until the panel reports its findings in March 2007. Other US states are similarly examining their lethal injection protocols, adding fuel to the argument that this ostensibly "humane" method of administering capital punishment is no less cruel or torturous than any other.

The USA introduced execution by lethal injection almost 30 years ago, applying it for the first time in 1982. Since then, nearly 900 prisoners have been killed by this method in the USA, and it has all but replaced the alternative methods- electric chair, hanging, gassing and shooting. Nearly 20 years after its introduction into USA law,

lethal injection was adopted by China, Guatemala, the Philippines (although the Philippines abolished the death penalty in June 2006), Taiwan and Thailand.

Lethal injection avoids many of the unpleasant effects of other forms of execution: bodily mutilation and bleeding due to decapitation, smell of burning flesh in electrocution, disturbing sights and/or sounds in lethal gassing and hanging, the problem of involuntary defecation and urination. For this reason it may be less unpleasant for those involved in carrying out the execution. However, lethal injection increases the risk that medical personnel will be involved in killing for the state, in breach of long-standing principles of medical ethics.

Any form of execution is inhumane. All known methods can be painful and have their own unpleasant characteristics. Moreover, it must be remembered the death penalty is not only about the minutes during which the prisoner is brought from the cell and killed; a prisoner lives with the penalty of death hanging over their head from the moment he or she is sentenced to the moment of unconsciousness and death.

The search for a "humane" way of killing people should be seen for what it is -- a search to make executions more palatable to those carrying out the killing, to the governments which wish to appear humane, and to the public in whose name the killing is to be carried out.

An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org>.