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Amnesty International India Submission to the Law Commission of India on the Abolition of the Death Penalty

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Amnesty International India is submitting information on the worldwide use of the death penalty and its abolition in the context of the research project on capital punishment initiated by the Law Commission of India in May 2014.

This submission outlines international law and standards regarding the use of the death penalty; describes the global trend towards abolition, and considers issues of deterrence, alternative punishments and public opinion.

Amnesty International India would welcome the opportunity to present further information, in writing or in person, to the Commission.

Amnesty International India opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime, the guilt, innocence or other characteristics of the offender or the method used by the state to carry out the execution. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

1. The death penalty: a violation of the right to life

“The right to life is the most fundamental of all human rights. The taking of life is too irreversible for one human being to inflict it on another.”

---UN Secretary-General Ban Ki-moon speaking at panel on "Moving away from the Death Penalty and Halting Discrimination against Marginalized Groups", UN Headquarters, 24 April 2014.¹

The death penalty violates the right to life. This right is recognized in the Universal Declaration of Human Rights as well as a number of international and regional human rights instruments, national constitutions and laws.

¹ UN News Centre, Remarks at panel on "Best Practices and Challenges in Implementing a Moratorium on the Death Penalty, 2 July 2014, available at: http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=2273#U8QJc_lW0M

The desirability of the abolition of the death penalty is enshrined in international law. While Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party, allows for the use of capital punishment under certain circumstances, paragraph 6 clearly states that the same Article should not be used to “prevent or delay the abolition of the death penalty.” In its General Comment No. 6 on Article 6 of the ICCPR, the Human Rights Committee – the body tasked with the interpretation of the ICCPR - has stated that the Article “refers generally to abolition [of the death penalty] in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life...”²

Four international and regional treaties provide for the abolition of the death penalty:

- a. the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989;
- b. Protocols No. 6 and No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), adopted by the Council of Europe in 1982 and 2002 respectively;
- c. and 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.

In addition, the African Commission on Human and Peoples’ Rights is currently drafting an Optional Protocol to the African Charter on Human and Peoples’ Rights on the abolition of the death penalty.

The UN system has worked to limit the use of the death penalty and urged UN Member States to remove it from national legislation. The UN Economic and Social Council, the UN Human Rights Committee, and the UN Human Rights Council and its predecessor, the UN Commission on Human Rights have all contributed to the progressive restriction of the use of the death penalty and urged UN member states to move towards its abolition.

In particular, the UN Economic and Social Council has adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (resolution 1984/50 of 25 May 1984), which set out the most basic guarantees to be observed in all death penalty cases; the safeguards were endorsed by the UN General Assembly in 1984 by consensus.

The UN General Assembly has adopted four resolutions since 2007 calling for the establishment of a “moratorium on executions *with a view to abolishing the death penalty*” (emphasis added).³

Progression towards abolition of the death penalty is also evident when considering the work of international criminal courts. The Nuremberg and Tokyo tribunals, which were established after the end of World War II at a time when only eight countries of the world had abolished the death penalty, did have powers to impose the death penalty. However, the constitutive instruments of every international criminal court established since then--from 1993 onwards--have excluded the death penalty from the punishments that these courts are authorized to

² Human Rights Committee, General Comment No. 6: The Right to Life, 27 July 1982, para. 6.

³ UN General Assembly resolution 62/149 of 18 December 2007; 63/168 of 18 December 2008; 65/206 of 20 December 2010; and 67/176 of 21 December 2012.

impose for crimes under international law, including genocide, crimes against humanity and war crimes.

These instruments include:

- a. the Rome Statute of the International Criminal Court (ICC), which has now been ratified by 139 States
- b. Statutes of the International Criminal Tribunal for the former Yugoslavia and for Rwanda
- c. the Statute of the Special Court for Sierra Leone
- d. the United Nations Transitional Administration in East Timor (UNTAET) Regulation establishing the Special Panels for Serious Crimes in Dili, Timor-Leste, and,
- e. the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia.

A selection of national court rulings abolishing the death penalty can be found in Annex I.

2. The death penalty in the world: trend towards its abolition

More than 65 years after the adoption of the Universal Declaration of Human Rights (Declaration), the trend towards worldwide abolition of the death penalty is unmistakable. As of today, 140 countries—more than two-thirds of the world’s countries—have abolished the death penalty in law or practice.

When the Declaration was adopted in 1948, eight countries had abolished the death penalty for all crimes: Colombia (1910), Costa Rica (1877), Ecuador (1906), Iceland (1928), Panama (1922), San Marino (1865), Uruguay (1907) and Venezuela (1863). In 1977, when Amnesty International began campaigning against the death penalty, only 16 countries were abolitionist for all crimes; today that number is 98. Twenty-three of these became fully abolitionist in the 21st century. Additionally, the US states of Connecticut, Illinois, Maryland, New Jersey, New Mexico and New York have all abolished the death penalty since the beginning of the millennium.

Annex II includes a list of countries which have abolished the death penalty since 1976.

Seven countries have abolished the death penalty for ordinary crimes only and retain the death penalty for exceptional crimes, such as crimes under military law or crimes committed in wartime:

- **Brazil**, which carried out its last execution in 1855 and first abolished the death penalty for all crimes in 1890. In the first republican Constitution of 1891 the death penalty was abolished for ordinary crimes but retained under military legislation for application in wartime; the same applies under the revised Constitution of 1988. Capital punishment was however reintroduced in the periods from 1937 to 1945 and from 1969 to 1979 for ‘politically motivated’ offences, but no death sentences were imposed during these periods.

- **Chile**, where the last execution was carried out in 1985. The death penalty was abolished for ordinary crimes in 2001 but has been retained for certain offences under the military code.
- **El Salvador**, where the last known execution was carried out in 1973. The death penalty was abolished for ordinary crimes under the 1983 Constitution, whose Article 27 allows for its imposition during an international war on those convicted of certain offences as defined in El Salvador's Military Code.
- **Fiji**, which carried out its last execution in 1964 and where no death sentences have been imposed since 1980. The death penalty was abolished for murder in 1979. Since then, the death penalty has been retained for treason, instigating foreigners to invade Fiji and genocide.
- **Israel**, where the last known execution was carried out in 1962. The death penalty was abolished for ordinary crimes in 1954 but is retained for treason; war crimes; terrorist murder, attempted terrorist murder, sabotage and the use and unauthorized bearing of weapons.
- **Kazakhstan**, whose last execution was carried out in 2003 after which an official moratorium on executions was established by the authorities. The last death sentences were imposed in 2005. Following the reform of the Constitution in 2007, the death penalty remains applicable only for terrorist acts that result in death and during wartime.
- **Peru**, where the last known execution was carried out in 1979. Under the 1979 Constitution, which came into force in July 1980, the death penalty is abolished for peacetime offences. A new military code was introduced in July 1980 retaining the death penalty in times of war as punishment for certain crimes against the state committed by military personnel.

A further 35 countries are abolitionist in practice, as they retain the death penalty for ordinary crimes such as murder but have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty:

Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Sierra Leone, South Korea, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia

In January 2012, Latvia became the 98th country in the world to abolish the death penalty in law. Fewer states than ever now carry out executions: in 2013, only 22 countries out of the 58 that retain the death penalty actually carried out executions, compared to 37 countries during 1994 and 25 in 2004. Only nine⁴ of the world's countries recorded executions in each year for the period 2009-2013 and 80 per cent of all known executions⁵ carried out in 2013 took place in three countries: Iran, Iraq and Saudi Arabia.⁶

⁴ Bangladesh, China, Iran, Iraq, North Korea, South Sudan, Sudan, United States of America and Yemen.

⁵ The total figure of known executions does not include the thousands of executions that are believed to have been carried out in China.

⁶ Amnesty International, "Death Sentences and Executions in 2013", ACT 50/001/2014, March 2014, available at <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>.

The latest report of the UN Secretary-General to the UN Human Rights Council on the question of the death penalty concludes that “Developments on the question of the death penalty during the reporting period suggest that the trend towards abolition is continuing”.⁷

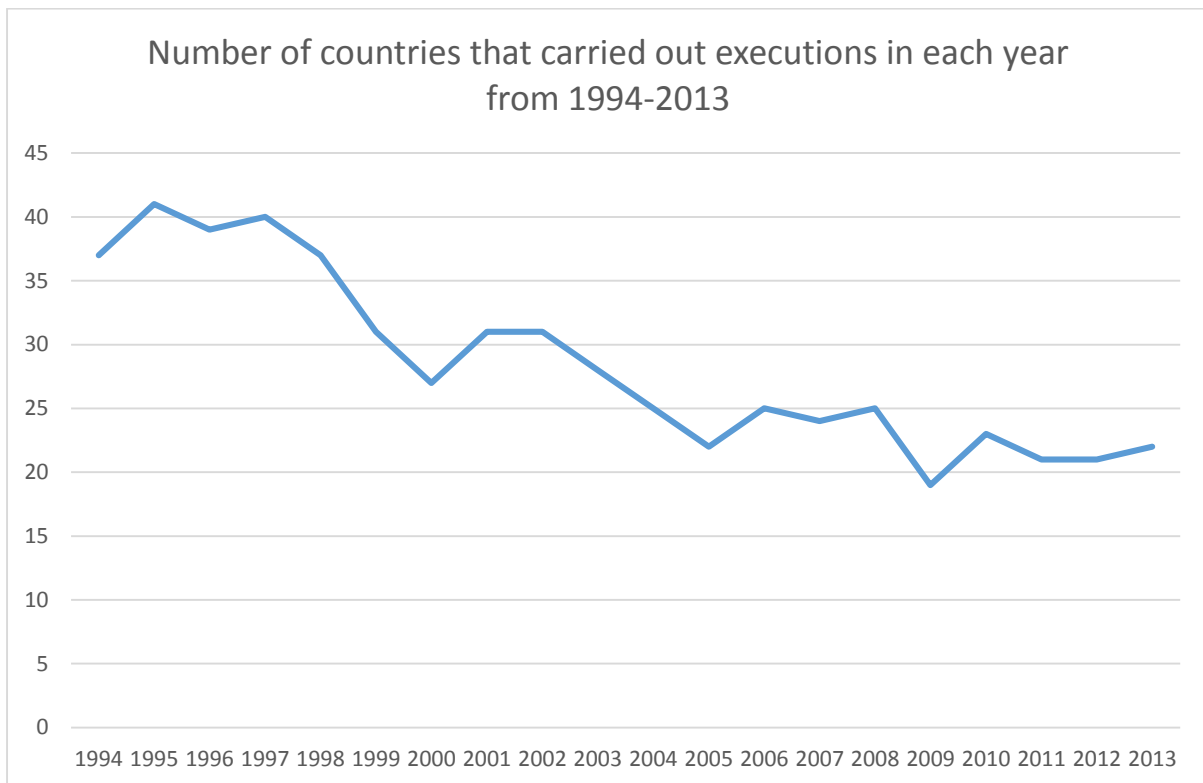


Figure 1- Number of countries that carried out executions in each year from 1994-2013.

Progress towards abolition continues to be recorded in all regions of the world. In 2013, Maryland became the 18th US state to abolish the death penalty. For the first time, no one was under sentence of death in Grenada, Guatemala or Saint Lucia at the end of 2013. Pakistan suspended once again its application of the death penalty. For the second consecutive year Singapore did not carry out executions and six people had their death sentences commuted following the review of the country’s mandatory laws in 2012. No executions were recorded in Bahrain and the United Arab Emirates in 2013. Several countries across Africa, including Benin, Ghana and Sierra Leone, took significant steps towards ending the death penalty, either through reviewing constitutions or proposing amendments to penal codes that would abolish capital punishment.

In line with the global trend towards abolition, various international and regional intergovernmental bodies have recommended establishing a moratorium on executions as a step towards abolition of the death penalty.

2.1 Developments within international and regional human rights organizations

⁷ Human Rights Council, “Question of the death penalty-Report of the Secretary-General”, A/HRC/24/18.

On 21 December 2012, the UN General Assembly adopted its fourth resolution on “moratorium on the use of the death penalty.”⁸ Resolution 67/176 builds on calls contained in the 2007 UN General Assembly resolution 62/149 which expressed concern at the application of the death penalty and called on states that still retain it to, *inter alia*, respect international safeguards guaranteeing the rights of those facing the death penalty, to reduce the number of offences for which the death penalty may be imposed and to establish a moratorium on executions with a view to abolishing the death penalty. The continual adoption of moratorium resolutions by the body composed of all UN member states is a powerful and timely reassertion of the UN’s commitment to work towards abolition of the death penalty.

99 states co-sponsored the 2012 resolution and there were 111 votes in favour, 41 against and 34 abstentions. It is also significant that the number of votes against the resolution dropped by 11 compared to 2007.⁹

At its 26th Ordinary Session held in November 1999, the African Commission on Human and Peoples’ Rights (African Commission) called on all states in Africa that still maintain the death penalty “to consider establishing a moratorium on executions of death penalty”.¹⁰ In November 2008, the African Commission adopted a resolution calling upon state parties to the African Charter on Human and Peoples’ Rights to observe a moratorium with a view to abolishing the death penalty. The resolution expresses concern at the failure of some African states to give effect to UN resolutions and the African Commission’s own resolution (1999) calling for a moratorium. The resolution also expresses concern at the application of the death penalty in conditions not respecting the right to a fair trial and other human rights.

The African Commission subsequently organized two regional conferences to discuss abolition in 2009 and in 2010, following which the Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa (Working Group) published a “Study on the question of the death penalty in Africa”, which analyses recent developments as well as views in favour of and against the use of this punishment.¹¹ In its study, the Working Group, concluded that the case for abolition is more compelling than that for retention, and recommended that the African Commission considers and implements the recommendations

THREE WAYS TO ABOLISH THE DEATH PENALTY

In the study it published in April 2012, the African Commission Working Group on the Death Penalty in Africa identifies three ways to abolish the death penalty:

- “by a clause in the national constitution guaranteeing the right to life in absolute terms (that is, with no qualification whatever);
- by legislation prohibiting the death penalty as a permissible sanction; or
- by subscribing to regional and international human rights instruments requiring the abolition of the death penalty and then aligning municipal law to those instruments.”

⁸ Resolution 67/176 (2012).

⁹ India voted against the resolution all four times.

¹⁰ See http://www.achpr.org/english/_doc_target/documentation.html?../resolutions/resolution47_en.html.

¹¹ African Commission on Human and Peoples’ Rights, “Study on the question of the death penalty in Africa”, adopted at the 50th Ordinary Session (24 October -07 November 2011) of the African Commission on Human and Peoples’ Rights, available at http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf

for the abolition of the death penalty. In 2012, the Working Group began consultations on the creation of an Optional Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty.

In August 2012, the Inter-American Commission on Human Rights published "The death penalty in the Inter-American human rights system - From restrictions to abolition".¹² In the report, the Commission analyses restrictions to the application of capital punishment in the Americas developed over the previous 15 years and calls on states to impose a moratorium on executions as a step towards ending the death penalty; and to ensure full compliance with decisions of the Inter-American Commission and Court, specifically with decisions concerning individual death penalty cases and precautionary and provisional measures.

Since then the Commission has held two thematic hearings on the death penalty in the Americas - in March 2013 and March 2014 - during which the States requesting the hearings asked the Commission to take a proactive role in encouraging a dialogue in the Americas so that countries can share best practices, work towards abolition of the death penalty, restrict its use, and ensure the highest standards of due process. The Commission expressed concern about the lack of respect of precautionary and provisional measures by Member States of the Organization of American States.

The Council of Europe, the European Parliament and the Organization for Security and Cooperation in Europe (OSCE) have reiterated Europe's commitment to abolition of the death penalty on numerous occasions. For instance, on 26 June 2007 the Parliamentary Assembly of the Council of Europe welcomed the current initiative for a global moratorium on executions at the UN General Assembly that year.¹³ It further stated that "a moratorium on executions is but one step in the right direction, the ultimate goal remaining the complete abolition of the death penalty in all circumstances."¹⁴

3. The death penalty: journeys towards abolition

As outlined in the previous section, international and regional bodies and mechanisms have made several recommendations as to how countries could move towards abolition of the death penalty. The calls in UN General Assembly resolutions on a moratorium on the use of the death penalty, for example, refer to specific steps that UN Member States should take including: respecting international standards on the use of the death penalty; restricting the scope of capital punishment; making information on the use of the death penalty publicly available; establishing a moratorium on executions; and ratifying the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

These recommendations have been translated into practice in different ways in different countries. The sequence of steps countries have taken to abolish the death penalty varies.

- a. Some, such as **Kyrgyzstan**, have first observed a moratorium on executions and then passed legislative amendments to abolish the death penalty;

¹² Inter-American Commission on Human Rights, "The death penalty in the Inter-American human rights system-From restrictions to abolition", 11 December 2011, available at <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

¹³ Parliamentary Assembly resolution 1560 (2007), 26 June 2007.

¹⁴ See above.

- b. Others have ratified the Second Optional Protocol to the ICCPR and then implemented the ratification in national legislation;
- c. Some have first abolished the death penalty for ordinary crimes only and later removed it for all crimes;
- d. Court rulings have been the catalyst in countries such as **South Africa**, where the Constitutional Court ruled that the death penalty was unconstitutional;
- e. In the United Kingdom, the death penalty was abolished following the execution of people subsequently shown to have been innocent.

The following are examples of how abolition was achieved in different countries:

AFRICA

- **Benin:** the last execution was carried out in 1987 but death sentences continued to be regularly imposed until 2011. On 5 July 2012 Benin became a State Party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. Provisions in the Criminal Procedure Code allowing for the imposition of capital punishment were removed by the National Assembly later in the year. At the time of writing, draft amendments to the Penal Code and provisions in the new Constitution to fully abolish the death penalty are awaiting consideration by the National Assembly.
- **Ghana:** the last execution was carried out in 1993 but death sentences continue to be imposed. Following a nationwide consultation, at the end of 2011 the Constitution Review Commission recommended that the government abolish the death penalty in the new Constitution and replace it with life imprisonment. This recommendation was accepted by the government in June 2012. In March 2014 the Constitutional Review Implementation Committee, established in 2012, submitted to the Attorney-General and Minister of Justice a draft Bill to amend the 1992 Constitution, including an amendment that would abolish the death penalty.
- **South Africa:** the Constitutional Court ruled on 6 June 1995 that capital punishment as provided for under the Criminal Procedure Act in force at the time was inconsistent with the country's new Constitution which came into force in April 1994.¹⁵ The ruling did not apply, however, to the crime of treason in wartime. The Court ordered that, with immediate effect, "The State and all its organs are forbidden to execute any person already sentenced to death under any provisions thus declared to be invalid". Until the use of the death penalty was suspended by the government in February 1990, South Africa had one of the highest rates of judicial executions in the world: some 1,217 people were executed between 1980 and 1989, including political prisoners.¹⁶ On 8 May 1996, the South African Constitutional Assembly adopted, by an overwhelming majority, a new Constitution which retains the wording of the country's interim constitution guaranteeing the right to life. The death penalty was fully abolished in 1997 with the adoption of the Criminal Law Amendment Act, which provided for the resentencing of the 453 prisoners whose death sentences had been declared

¹⁵ *The State v. Makwanyane and Mchunu*, Case No. CCT/3/94.

¹⁶ Amnesty International, "Annual Report 1998", p.308; Amnesty International, Death Penalty News June 1995, ACT 53/002/1995, 31 May 1995; Amnesty International, Death Penalty News June 1995, ACT 53/002/1995, 31 May 1995, available at <http://www.amnesty.org/en/library/info/ACT53/002/1995/en>; Amnesty International, "Death Penalty News June 1996", ACT 53/002/1996, 31 May 1996, available at <http://www.amnesty.org/en/library/info/ACT53/002/1996/en>

unconstitutional in 1995, and deleted provisions in other statutes which had allowed for capital punishment.

AMERICAS

- **Mexico:** the death penalty was allowed for several categories of murder under the 1917 Constitution, but was abolished by the Federal Penal Code in 1930 and eventually by all Mexican States. The last execution took place in 1937 in the state of Puebla. According to Roger Hood, Professor Emeritus of Criminology at the University of Oxford, the abolition of the death penalty for political offences only in the 1917 Constitution “represented a shift away from the practice of various previous governments who, in the first 30 years following independence from Spain, had used the death penalty to eradicate their political opponents”, while abolition for ordinary crimes such as murder remained “contingent on the construction of a national penitentiary regime.”¹⁷ Capital punishment was retained for specific offences under the Code of Military Justice for the following 75 years, but, whenever imposed, was commuted to life imprisonment. Amendments adopted in 2005 abolished the death penalty both in the military code and in the Constitution.

ASIA-PACIFIC

- **Australia:** the death penalty was first abolished for all crimes by the state of Queensland in 1922; New South Wales abolished it for murder in 1955 and for all crimes in 1985; the Federal government abolished capital punishment for all crimes in 1973 through the Death Penalty Abolition Act 1973, and abolition by other States followed. On 11 March 2010 the Commonwealth Parliament passed the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act. This Act amended the 1973 Act to extend the Commonwealth prohibition on the death penalty to all States and Territories and foreclosed the possibility of any individual State reintroducing the death penalty. Australia ratified the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, in 1990.¹⁸
- **Bhutan:** on 20 March 2004, the King of Bhutan issued a Royal Decree banning the death penalty. The death penalty was later prohibited in the revised 2008 Constitution. Capital punishment had existed in Bhutanese law since the codification of the Thrimzhung Chhenmo (supreme law) in 1953 for the offences of treason and premeditated murder, but the King had the power of commutation. The last death sentences recorded by Amnesty International were imposed in 1974 on six people who had been charged with treason for planning to assassinate the King. The King subsequently commuted the sentences.¹⁹

¹⁷ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p.63.

¹⁸ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p.49.

¹⁹ Amnesty International, Death Penalty News: June 2004, ACT 53/001/2004, 31 May 2004, available at <http://www.amnesty.org/en/library/info/ACT53/001/2004/en>

- **Mongolia:** following the adoption of the 2007 and 2008 UN General Assembly resolutions on a moratorium on the use of the death penalty, on 14 January 2010, the President of Mongolia announced the establishment of a moratorium on executions and commutation of all death sentences in the country. The President listed eight reasons behind his move, including:
 - the irreparable nature of judicial errors in capital cases and the risk of executing the innocent;
 - historical use of the death penalty as a means to effect political purges;
 - the international community's calls for universal abolition of the death penalty; and,
 - the failure of the deterrence hypothesis.

He stated: "Mongolia is a member of the one global family. The United Nations does not support the imposition of the death penalty. It has constantly been calling its member States for abolition of the death penalty. And it does make decisions. The United Nations regularly reports to the international community on developments and international trends in the use of the death penalty, on progress achieved and retreats observed."²⁰ The President's announcement of a moratorium on executions as a first step toward abolition of the death penalty was followed on 13 March 2012 by Mongolia's accession to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. At the time of writing, revisions of the Criminal Code to abolish the death penalty for all crimes and implement in national legislation the ratification of the Second Optional Protocol are pending before the Parliament.

- **Philippines:** the Philippines first abolished the death penalty in 1987. However, the death penalty was reintroduced in late 1993 for 46 offences. Executions resumed in 1999 until then President Estrada announced a moratorium in 2000. In April 2006, the President commuted over 1,200 death sentences to life imprisonment, and on 7 June the Philippine Congress repealed Republic Act 7659 of December 1993, which had amended the Penal Code to reintroduce the death penalty, and approved legislation abolishing the death penalty for all crimes.²¹ In November 2007, the Philippines ratified the Second Optional Protocol to the ICCPR, aiming at abolition of the death penalty.

EUROPE AND CENTRAL ASIA

- **Kyrgyzstan:** a moratorium on executions was first established in 1998 until 2006 and extended for another year by a Presidential decree on 30 December 2006. Following the adoption of a new Constitution in 2006, which did not provide for the death penalty, President Kurmanbek Bakiyev in June 2008 signed into law changes to the Criminal Code abolishing capital punishment and replacing it with life imprisonment with the possibility of release after 30 years. The amendments required that the 174 prisoners under sentence of death at the time had their sentences reviewed by the Supreme Court within six months.²² Kyrgyzstan ratified the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, in 2010.

²⁰ Speech by the President Tsakhia Elbegdorj on capital punishment at the State Great Khural, 14 January 2010.

²¹ Amnesty International, The Death Penalty Worldwide - Developments in 2006, ACT 50/005/2007, 1 May 2006, available at <http://www.amnesty.org/en/library/info/ACT50/005/2007/en>

²² Amnesty International, The Death Penalty Worldwide - Developments in 2006, ACT 50/005/2007, 1 May 2006, available at <http://www.amnesty.org/en/library/info/ACT50/005/2007/en>

- **Russian Federation:** the Constitutional Court established a moratorium on executions in 1999 to allow for the introduction of jury trials in all regions of the Russian Federation. That moratorium was due to expire on 1 January 2010, when jury trials were introduced in Chechnya. In November 2009, the Constitutional Court extended the moratorium and recommended abolishing the death penalty completely, stating: “The path towards the full abolition of the death penalty is irreversible.”²³
- **United Kingdom:** following several failed attempts, the process of abolition of the death penalty in the United Kingdom began in the second half of the 20th century, when two wrongful executions – Timothy Evans in 1950 and Derek Bentley in 1953, both of whom were posthumously exonerated- generated public outrage and the founding of the National Campaign for the Abolition of Capital Punishment.²⁴ The Homicide Act, which introduced a categorization of different degrees of murders and related punishments, was adopted in 1957. While attempting to rationalize the imposition of the death penalty, the Homicide Act 1957 led to situations in which, for example, “passion murders” were considered capital offences only if committed by shooting. As Professor Emeritus Roger Hood noted, the Homicide Act 1957 “produced so many absurdities and injustices that [the then Lord Chief Justice and the Queen’s Bench Judges] were ‘completely disgusted as a result’.”²⁵ Consequently, in 1965, the Murder (Abolition of Death Penalty) Act suspended the death penalty for murder in the United Kingdom for a period of five years. The temporary suspension became permanent in 1969, when the Parliament decided that the 1965 Murder (Abolition of Death Penalty) Act should not expire. The Crime and Disorder Act 1998, removing treason and piracy as capital crimes, was enacted in July 1998. During the same year, the Parliament voted to ratify the 6th Protocol to the European Convention on Human Rights prohibiting capital punishment except “in time of war or imminent threat of war.” The last remaining provisions allowing for the death penalty under military jurisdiction (including in wartime) were removed when section 21(5) of the Human Rights Act 1998 came into force on 9 November 1998. On 10 October 2003, the UK acceded to the 13th Protocol to the European Convention on Human Rights, which prohibits the death penalty under all circumstances. The United Kingdom became a State party to the Second Optional Protocol to the ICCPR, aiming at abolition of the death penalty, in 1999.

4. Categorization of murder and mandatory death sentences: not ending inconsistency and arbitrariness

Article 6(2) of the ICCPR states that death sentences may be imposed “only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not

²³ Amnesty International, Russia moves one step closer to death penalty abolition, 20 November 2009, available at <http://www.amnesty.org/en/news-and-updates/good-news/russia-moves-one-step-closer-death-penalty-abolition-20091120>

²⁴ For more information on their cases, see Roger Hood, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p 45; and Amnesty International, “Death Penalty News September 1998”, ACT 53/004/1998, 31 August 1998, available at: <http://www.amnesty.org/en/library/info/ACT53/004/1998/en>

²⁵ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p 46. Under the Homicide Act 1957, the death penalty was reserved for murder committed in the course or furtherance of theft; murder by shooting or causing explosions; murder in the course of or for the purpose of resisting, avoiding or preventing lawful arrest or effecting or assisting an escape from lawful custody; murder of a police officer in the execution of his duty or of a person assisting him; murder by a prisoner of a prison officer in the execution of his duty or of a person assisting him; and against a person who committed a second murder on a different occasion from the first.

contrary to the provisions of the present Covenant.” This restriction has been interpreted as referring to lethal crimes or crimes with extremely grave consequences. The UN Human Rights Committee has stated that “[T]he expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”²⁶

The UN Economic and Social Council Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty state that the death penalty “should not go beyond intentional crimes with lethal or other extremely grave consequences.”²⁷ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the term “most serious crimes” is restricted to cases of intentional killing.²⁸ The Special Rapporteur has also stated that the restrictions on the use of the death penalty “exclude the possibility of death sentences for so-called victimless offences – including acts of treason, espionage and other vaguely defined acts usually described as ‘crimes against the state’ or ‘disloyalty’.”²⁹

In **India**, the death penalty is retained under the Indian Penal Code and other laws for offences which fall short of intentional killing. These include treason, abetment of mutiny, perjury resulting in the conviction and death of an innocent person and kidnapping for ransom.

In some countries, the authorities have introduced or proposed the introduction of different categories of the crime of murder, with only certain types of murder attracting the death penalty, including as a mandatory punishment. In some cases this can be intended to reduce the use of the death penalty. However, as the example of the **UK** cited above shows, this approach can lead to considerable arbitrariness in the application of the death penalty.³⁰

In some countries, proposals have been made for the introduction of the mandatory death penalty for certain circumstances of murder; in some instances those supporting such a measure have argued that it helps to reduce the risk of arbitrariness at the sentencing phase.³¹ However, the UN Human Rights Committee has stated that “the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”.³² In addition, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “the death penalty should under no circumstances be mandatory by law”³³ and that “[the] mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment”.³⁴

²⁶ Human Rights Committee, General Comment No. 6: The Right to Life, 27 July 1982, para. 6.

²⁷ UN Economic and Social Council (ECOSOC), “Safeguards guaranteeing protection of the rights of those facing the death penalty”, Resolution 1984/50, 25 May 1984, para. 2.

²⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/67/275, 9 August 2012, para. 35.

²⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1999/39, 6 January 1999, para. 63.

³⁰ For instance, the murder of a member of the police force may be punished by death while other murders may not.

³¹ See for instance, Amnesty International, “Trinidad and Tobago: New bill would make the constitution inconsistent with human rights and pave the way to executions”, AMR 49/001/2011, 16 February 2011, available at: <http://www.amnesty.org/en/library/info/AMR49/001/2011/en>

³² *Pagdayawon Rolando v Philippines*, Views of the Human Rights Committee, Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

³³ Special Rapporteur on Extrajudicial, summary or arbitrary executions, “Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur”, UN document E/CN.4/1999/39, 6 January 1999, para.63.

³⁴ Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur..., UN document

The Supreme Court of **India** has ruled in separate cases that provisions in the Indian Penal Code, 1860 and the Arms Act, 1959 which prescribe mandatory death sentences for certain offences are unconstitutional. However, mandatory death sentences continue to be prescribed in other laws.

In **India**, the Supreme Court has restricted the use of the death penalty in *Bachan Singh v. State of Punjab* to the “rarest of the rare” cases in which other alternatives, including life imprisonment, are not an option.³⁵ However, Amnesty International and the People’s Union for Civil Liberties have highlighted how the fate of death row prisoners in India is a ‘lethal lottery’, as the administration of the death penalty in practice is affected by several factors, ranging from the competence of legal representation to the personal views of judges. The administration of the death penalty in India is arbitrary, inconsistent and abusive, and disproportionately affects people with little wealth or influence.³⁶ Concerns around the arbitrariness in the imposition of the death penalty have also been raised by the Supreme Court of India on several occasions, including in *Swamy Shraddananda (2) v. State of Karnataka*³⁷ and *Santosh Bariyar v State of Maharashtra*.³⁸

Amnesty International India urges the government of India to immediately abolish the death penalty for all crimes, pending which it should restrict the imposition of the death penalty to only the “most serious crimes”, and abolish all provisions which provide for mandatory death sentences.

5. The death penalty and crime: the myth of deterrence

*“It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain as it is. What is required here is that the security forces must do their work and we are busy to ensure that the security forces have the capacity to deliver services, safety to the community. That is the issue, not the death sentence.”*³⁹

--Nelson Mandela, President of South Africa in 1996

The authorities of countries that still retain the death penalty often justify its use as a crime-control measure, based on the belief or claim that executions deter violent crime. Crime trends and patterns in different countries and regions are related to a range of different – sometimes context-specific factors. Consequently, there is no one solution that could address public safety concerns in all countries. However, several studies conducted by the United Nations have identified poverty, inequality, and the capacity of States to enforce the rule of law as factors affecting the level of violence in most countries, in addition to individuals’ particular circumstances.⁴⁰

E/CN.4/2005/7, 22 December 2004, para. 80.

³⁵ 1980 (2) SCC 684.

³⁶ Amnesty International, “Lethal Lottery: The Death Penalty in India - A study of Supreme Court judgments in death penalty cases 1950-2006”, ASA 20/007/2008, available at: www.amnesty.org/en/library/info/ASA20/007/2008

³⁷ (2008) 13 SCC 767.

³⁸ (2009) 6 SCC 498.

³⁹ Voice of America, 9 September 1996.

⁴⁰ UN Office on Drugs and Crime, “Making them work –handbook on crime prevention guidelines”, August 2010.

The UN Office on Drugs and Crime (UNODC) identified in its 2011 “Global study on Homicide” a relationship between homicide and human and economic development.⁴¹ The study found that the largest proportion of murders occurred in countries with low levels of human development; and that countries with high levels of income inequality have homicide rates almost four times higher than more equal societies.⁴²

A 2012 UN Development Programme report on the Caribbean showed that gender inequalities are frequently recorded in contexts where women are most likely to be victims of violent crime, despite important advances in women’s education, labour force participation, political participation and equality before the law.⁴³

The incidence of violent crime is often greater in big cities. According to the UNODC study on Global Homicide, “while urban environments can offer protective elements such as better policing and faster access to medical facilities, in many countries, homicide rates in very populous cities are higher than in the rest of the country. This can be a consequence of a number of factors, both of a social (inequality, segregation, poverty) and criminological nature (more targets, drug markets, anonymity).” The study pointed out also that, for example, in some cities homicides tend to cluster in the most disadvantaged neighbourhoods.⁴⁴

Factors associated with the nature of the homicides themselves, such as availability of firearms, alcohol or geographical proximity to drug-trafficking routes, can also have an impact on homicide rates.⁴⁵

In the Caribbean, the 2012 UN Development Programme report noted that the increase in violent crimes in recent years has been accompanied by a decrease in crime clearance and conviction rates: “In some countries, the rapid rise in rates of violent crime has been accompanied by a similarly precipitous decline in arrest and conviction rates to low levels. Inequality and social exclusion are big contributors to the high rates of violence, the near immunity to arrest also partly accounts for the high rates of violent crime in some countries.”⁴⁶

An analysis carried out by the Commission on Crime Prevention and Criminal Justice of the Economic and Social Council (ECOSOC), of the interrelation between homicide rates and rule of law index⁴⁷ found that countries with weak processes with regard to promulgating laws, enforcing them equally or adjudicating them independently, also had higher murder rates.⁴⁸ The Commission on Crime Prevention and Criminal Justice of the ECOSOC noted, however, that the relationship between these factors is not necessarily direct, as the capacity of States to

⁴¹ UN Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011.

⁴² ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012.

⁴³ United Nations Development Programme, “Caribbean Human Development Report 2012”, 2012.

⁴⁴ Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011, p.12.

⁴⁵ Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011, p.10. Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2013, pp.65-75.

⁴⁶ United Nations Development Programme, “Caribbean Human Development Report 2012—Human development and the Shift to Better Citizen Security”, 2012, p.41

⁴⁷ The rule of law index is a system based on the measurement of a number of indicators which analyses how “individuals, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated...It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” See also United Nations, “Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies”, S/2004/616, para. 6.

⁴⁸ ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012, p.10.

enforce the rule of law can have an impact on ensuring social and economic development, which can, in turn, have an impact on crime rates.⁴⁹

With regard to the penalties imposed by the criminal justice system, there is no convincing evidence to support the argument that the death penalty prevents crime more effectively than other punishments. The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: “[R]esearch 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”.⁵⁰

Statistics from countries that have abolished the death penalty show that the absence of the death penalty has not resulted in an increase in the crimes previously subject to capital punishment.

In **Canada**, for example, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975, the year before the death penalty for murder was abolished, to 2.41 in 1980. The homicide rate in Canada remains significantly lower than it was prior to abolition.⁵¹

A study comparing the murder rates in **Hong Kong** and **Singapore**, both of which have a similar size of population, for a 35-year period beginning in 1973 found that the abolition of the death penalty in the former and the high execution rate in the latter in the mid-1990s had little impact on murder levels.⁵²

Similarly in the **Greater Caribbean**, there is no correlation between retention between the death penalty and low crime rates: six of the 10 countries with the highest homicide rates in the region retain the death penalty (the Bahamas, Belize, Guatemala, Jamaica, St Kitts and Nevis, and Trinidad and Tobago).⁵³ Indeed, in St Kitts and Nevis, the number of murders increased from 23 to 27 in the year following the execution of Charles Elroy Laplace in December 2008, the last man to be executed in the region outside the United States of America.

A recent study carried out in **Trinidad and Tobago** also found no correlation between executions, imprisonment and crime: “over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court’s determination limiting executions, the murder rate fell.”⁵⁴ In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those

⁴⁹ ECOSOC Commission on Crime Prevention and Criminal Justice, “World crime trends and emerging issues and responses in the field of crime prevention and criminal justice”, UN Document E/CN.15/2012/19, 17 February 2012.

⁵⁰ Roger Hood, “The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control”, UN document E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially as Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008.

⁵¹ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p. 325.

⁵² Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, “Executions, deterrence and homicide: a tale of two cities”, 31 August 2009.

⁵³ United Nations Office on Drugs and Crime, “Global Study on Homicides 2011”, page 93-94. According to the study, in 2010 the homicide rates per 100,000 inhabitants were: Jamaica (52.1, Belize (41.7), Guatemala (41.4), Saint Kitts and Nevis (38.2), Trinidad and Tobago (35.2) and the Bahamas (28).

⁵⁴ David F. Greenberg and Biko Agozino, “Executions, imprisonment and crime in Trinidad and Tobago”, British Journal of Criminology, 2011.

years. This drop in executions had no large, immediate impact on murder rates, which only began to rise sharply from 2003.⁵⁵

In 1995, when the Constitutional Court of **South Africa** declared that the death penalty was incompatible with the new Constitution, it stated that: “We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime. ... The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.”

The National Research Council of the National Academies in the **USA** confirmed in its April 2012 report that “research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations ... about the effect of the death penalty on homicide.”⁵⁶

While there has been no comprehensive study of the link between the death penalty and crime rates in **India**, the country’s murder rate declined by 23 percent for the period 1995-2011 – a period during which no executions were carried out after 2004.⁵⁷

6. Victims of crime: breaking the cycle of violence

“From experience, we know that revenge is not the answer. The answer lies in reducing violence, not causing more death. The answer lies in supporting those who grieve for their lost beloved ones, not creating more grieving families. It is time we break the cycle of violence”.

--Marie Deans, founder of the Murder Victims’ Families for Reconciliation, whose mother-in-law was murdered in 1972.⁵⁸

When a heinous crime occurs, public outcries for action and retribution are understandable responses. However, anger and grief – no matter how justified – should not be used to justify the resumption of executions or retention of the death penalty. Moreover, crime victims have often demanded an effective response that does not include the death penalty, which they see as perpetuating the cycle of violence.

Death penalty advocates who claim to be acting on behalf of victims often imply that all those affected by crime support the death penalty. However, many relatives of murder victims object to the death penalty being carried out in the name of their loved ones and have joined forces in challenging the common assumption that the death penalty offers closure.⁵⁹

- On 26 July 2013, a Japanese victims’ group called “Ocean” held its first annual conference in Tokyo. The group was founded in 2012 by Masaharu Harada, whose

⁵⁵ 7 David F. Greenberg and Biko Agozino, “Executions, imprisonment and crime in Trinidad and Tobago”, *British Journal of Criminology*, 2011.

⁵⁶ National Research Council, “Deterrence and the Death Penalty”, Daniel S. Nagin and John V. Pepper, eds., The National Academies Press, 2012, p.2.

⁵⁷ UN Office on Drugs and Crime, “Global Study on Homicide—Trends, Contexts, Data”, 2011.

⁵⁸ Roger Hood, “The Death Penalty: beyond abolition”, 2004, Council of Europe publications, p.48.

⁵⁹ Murder Victims’ Families for Human Rights, Annual Report 2008, available at <http://www.mvfr.org/sites/default/files/pdf/MVFHRannualreport08.pdf>

younger brother was brutally murdered in 1983. It was formed as a support group for people affected by crime but also for offenders and their families. In an interview with the newspaper *The Japan Times*, in June 2007, Masaharu Harada stated:

"Our life itself was completely destroyed because of [the man who murdered my brother] Hasegawa and I was consumed with hatred...Honestly speaking, there is no way I could ever forgive him, even now... But I wanted to know more about the crime and also felt that I had an account to settle with Hasegawa."

Harada met Hasegawa four times, trying to come to terms with the murder and find out why he committed the crime. But then Hasegawa was abruptly hanged in 2001.

"The government deprived me of my opportunity to interact [with Hasegawa]", Harada said. "Through the meetings, I was just beginning to understand who he was." Harada told the paper that he wanted Ocean to become "a sort of oasis" for crime victims as well as offenders, saying that "I believe it is necessary to create a place for crime victims and offenders to face each other and hold dialogue."⁶⁰

- Rais Bhuiyan was shot at point-blank range in Texas by Mark Stroman in one of a series of violent crimes committed following the attacks of 11 September 2001. Mark Stroman claimed responsibility for these attacks, in which two other men were killed, and stated he had committed such acts in retaliation for the 9/11 attacks, against people he considered of Middle Eastern descent. Blinded in one eye, Rais survived the shooting, and campaigned unsuccessfully against his attacker's execution, which took place in July 2011 in the US state of Texas.

"After it happened, I was just simply struggling to survive in this country," said Rais in a 2011 interview with *The New York Times*. "I decided that forgiveness was not enough. That what he did was out of ignorance. I decided I had to do something to save this person's life. That killing someone in Dallas is not an answer for what happened on September 11."⁶¹

7. The question of alternative punishments

The question of alternatives to the death penalty is a critical issue in reconciling the demands of victims of violent crime for justice with calls for the abolition of capital punishment. The need to establish meaningful accountability for crime has, in some countries, led to the introduction of life imprisonment without the possibility of parole.

Amnesty International India recognizes that, as part of their obligation to respect and protect the human rights of victims of violent crime, governments seek to ensure that perpetrators are held accountable and that those convicted after a fair judicial process receive penalties which reflect the gravity of their crimes. Nevertheless, whatever the crimes such individuals have committed, Amnesty International India opposes the imposition of the death penalty or any other cruel, inhuman or degrading punishment.

⁶⁰ Murder Victims' Families for Human Rights, "New Life and Hope", available at <http://mvfhr.blogspot.co.uk/2008/06/new-life-and-hope.html>

⁶¹ New York Times, "The Hated and the Hater, Both Touched by Crime", available at http://www.nytimes.com/2011/07/19/us/19questions.html?pagewanted=all&_r=0

Article 10 of the ICCPR, to which India is a State Party, states that the primary aim of penitentiary systems should be the reformation and social rehabilitation of prisoners. Bearing this principle in mind, and when considering the approaches used in different jurisdictions with regard to long custodial sentences, it may be helpful to note that the Rome Statute of the International Criminal Court, which has jurisdiction over the most serious crimes of concern to the international community--often involving crimes with multiple homicides--prescribes that all sentences imposed by the Court must be subject to review after a period. The Court has the power to impose a sentence of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person; otherwise the maximum term of imprisonment it can impose is 30 years.⁶² After serving two-thirds of a determinate sentence, or 25 years of a life sentence, the Court must review the sentence to determine whether it should be reduced, taking into account any factors establishing a change of circumstances sufficient to justify reduction of sentence; if at that time the Court determines it is not appropriate to reduce the sentence, it must review the question again regularly thereafter.⁶³

Similarly, the Indian Penal Code and Code of Criminal Procedure already contain provisions for review of life sentences which enable release if justified by a change of circumstances,⁶⁴ and the refusal of such release if the prisoner continues to pose a risk to society; or if the circumstances otherwise do not justify it. In the case of those serving life sentences for offences otherwise punishable by the death penalty, such review is precluded until they have served 14 years.⁶⁵

In many countries where the death penalty has been abolished, long custodial penalties have been introduced for crimes previously punishable by the death penalty. In **Togo**, where the death penalty was abolished in June 2009, all existing death sentences were commuted to life imprisonment, which became the maximum punishment available in the country. In **Ghana** and **Mongolia**, countries in which, as mentioned above, the abolition of the death penalty is currently being considered, it is proposed that capital punishment be replaced by life imprisonment. In **Suriname**, at the time of writing, a Bill reforming the Penal Code is pending before the National Assembly and is due to be considered in late 2014. If adopted, the Bill would abolish the death penalty and increase the sentences for severe crimes, like murder, from 15 to 20 years and the maximum time for life sentences from 20 to 30 years.⁶⁶

8. Public opinion and the death penalty

As a first step towards abolition, governments should support and facilitate meaningful and informed debate on the issue of the death penalty, including through human rights education programmes and initiatives that would provide information and promote a rights-respecting culture.

⁶² Rome Statute of the International Criminal Court, Article 77(1).

⁶³ *Ibid.*, Article 110.

⁶⁴ Section 55, Indian Penal Code; Sections 432 and 433, Code of Criminal Procedure; various state Prison Manuals.

⁶⁵ Section 433A, Code of Criminal Procedure.

Through its monitoring of death penalty developments globally, Amnesty International has however noted that, often, governments refer to the use of capital punishment to persuade the general public that they are taking tough measures to tackle high crime rates or particularly heinous crimes.⁶⁷ Governments, often simultaneously, refer to real or perceived public support for the death penalty as a reason to justify its retention and use, making little or no effort to challenge perceptions that the death penalty deters crime.

Opinion polls that appear to give evidence of public support for the death penalty tend to simplify the complexities of public opinion; moreover public opinion about the death penalty--so far as it is possible to generalise about it--is often not based on a full or accurate understanding of the crime situation of the country, its causes and the means available for combating it. The methodology used to survey public opinion invariably bears a direct correlation to the findings: in some countries, for instance, 'public opinion' is assessed through consultation with specific stakeholders, such as members of civil society or religious associations, while in others, such assessment is carried out through 'polls' of samples of the general population. In either case, attitudes towards the death penalty are complex and influenced by the time and circumstances in which the data is gathered. As summarized by Professor Roger Hood and Carolyn Hoyle, feelings in favour of the death penalty are more intense after a heinous murder has been carried out, and responses differ according to the precise question asked.⁶⁸ For instance, a nationwide survey carried out in India by the Centre for Study of Developing Societies in July 2013 indicated that 40% of those surveyed agreed with the proposition that "the death penalty should be abolished as life imprisonment was punishment enough"; 30% disagreed and 30% were unsure.⁶⁹

Furthermore, the public is often not fully aware of the reality of the death penalty and how it is applied. Information on important factors – such as the risk of wrongful execution, the unfairness of trials, the extent to which capital punishment disproportionately affects defendants living in poverty or people with mental disabilities – which could contribute towards the development of a fully informed view on capital punishment –is rarely provided.

- In a survey carried out in 2010 in **Trinidad and Tobago** by the University of the West Indies and the University of Oxford, interviewees were shown three scenarios describing a murder: one involving a robbery, another involving a domestic murder by a woman, and a third involving a drugs-related murder.⁷⁰ Each of these types of case had two examples, one in which it was possible to perceive a mitigating element and one without the mitigating factor. These six cases were randomly assigned to interviewees so that 500 decisions were made on each case. Interviewees were asked to say what penalty they thought the offender deserved. Thus, 1,000 people made a total of 3,000 individual decisions. When asked simply whether they were in favour of the death penalty, 92 per cent of respondents expressed their support for it. However, when

⁶⁷ See, for instance, NDTV, "Mumbai gang-rape: In Parliament, anger and demand for punishment", India, 26 August 2013, available at <http://www.ndtv.com/article/india/mumbai-gang-rape-in-parliament-anger-and-demand-for-punishment-410435> ; The News Day "Govt, Opposition move to resume hangings", Trinidad and Tobago, 24 August 2013, available at <http://www.newsday.co.tt/news/0,182656.html> ; Mena FM, "Hanging a lesson", Kuwait, 22 June 2013, available at [http://www.menafn.com/1093660250/Kuwait--Hanging-lesson-?src=RSS.\]\]](http://www.menafn.com/1093660250/Kuwait--Hanging-lesson-?src=RSS.]])

⁶⁸ Roger Hood and Carolyn Hoyle, "The Death Penalty: A Worldwide Perspective", Oxford, Clarendon Press, Fourth edition, 2008, pp. 350-382.

⁶⁹ The Hindu, Many against death penalty, 24 July 2013, available at <http://www.thehindu.com/news/national/many-against-death-penalty/article4949078.ece>

⁷⁰ Roger Hood and Florence Seemungal, "Public opinion on the mandatory death penalty in Trinidad", the Death Penalty Project and University of the West Indies Faculty of Law, 2012.

asked to say whether the death penalty was appropriate in the specific scenarios, they said they would have imposed the death penalty in just under half (49 per cent) of the 3,000 decisions they made. In addition, deterrence was cited in only 1.3 per cent of responses as one of the reasons for preferring the death penalty.

- The **Japanese** government has conducted a regular survey of public opinion toward the death penalty since 1956. The latest government survey carried out in 2009 found that 86% of respondents favoured the retention of the death penalty. In the report “The Death Penalty in Japan” published by The Death Penalty Project in 2014, data arising from other surveys that showed that evidence about attitudes of Japanese people towards capital punishment is seriously flawed.⁷¹ The government survey phrased questions only in relation to the retention of the death penalty, for instance, while the alternative surveys showed that, when abolition was an answering option, the overall support for the death penalty is limited to less than half (44%) of the respondents. A significant proportion of the population did not have a clear view on the matter. Furthermore, the study found a correlation between retentionist views and misconceptions about rising murder rates, with people who believed that the number of murders had been increasing in recent years being more likely to support the retention of the death penalty. It also found that 20% of the interviewees changed their responses after being provided information on capital punishment in Japan and around the world. Both aspects emphasize the importance of informing and educating public views on crime and punishment.

The issue of abolition of the death penalty and its influence on public opinion has been the subject of several studies, which have consistently shown that support for the retention of the death penalty progressively drops after its abolition. Surveys by the British Social Attitude Surveys showed, for instance, that support for the death penalty dropped from 74% in favour in 1986 to 65% in 1996 and 54% in 2004.⁷² In **Germany**, while a great majority of people supported capital punishment at the time it was abolished in 1949, only 24% were supported in 1992. The death penalty in **France** was abolished in 1981. At the time, opinion polls showed that 63% of the public was in favour of the death penalty. A survey conducted in 2006 found though that support for the death penalty had dropped to 42%.⁷³

Similarly, polls conducted in 2004 and in 2006 respectively in **New Zealand** and **Australia** indicated that, decades after the abolition of capital punishment, less than 30% of the populations supported it.⁷⁴

Transparency on the use of the death penalty and human rights education are important for a meaningful public debate on capital punishment and its relationship to crime prevention. The death penalty is a human rights issue and should be examined from a human rights perspective. In line with UN General Assembly resolution 67/176, governments should make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates on this issue.

⁷¹ Death Penalty Project, “The Death Penalty in Japan”, 2013, available at <http://www.deathpenaltyproject.org/legal-resources/research-publications/the-death-penalty-in-japan/>

⁷² Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p. 376.

⁷³ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p. 376.

⁷⁴ Roger Hood and Carolyn Hoyle, “The Death Penalty: A Worldwide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p. 376.

9. The ultimate cruel, inhuman and degrading punishment

Amnesty International takes the view that the death penalty is the ultimate cruel, inhuman and degrading punishment. Every execution is a brutal act that dehumanizes those that carry it out and devalues the worth that society places upon human life. As Amnesty International recalled in the Declaration of Stockholm in 1977, “Execution is an act of violence and violence tends to provoke violence...The imposition and infliction of the death penalty is brutalizing to all who are involved in the process.”

The death penalty is a unique form of cruel punishment: apart from the cruelty of the execution itself, it involves the cruelty of being forced to wait on death row -- often for many years -- contemplating the prospect of execution. The cruelty of the death penalty extends beyond the prisoner to the prisoner's family, to the prison guards and to the officials who carry out an execution. Information from various parts of the world shows that the role of an executioner can be deeply disturbing, even traumatic. Judges, prosecutors and other officials may also experience difficult moral dilemmas if the roles they are required to play in administering the death penalty conflict with their own ethical views and beliefs.

All criminal justice systems are vulnerable to discrimination and error. The death penalty is irrevocable and can be inflicted on the innocent.

As Amnesty International affirmed in the Declaration of Stockholm in 1977, “It is the duty of the state to protect the life of all persons within its jurisdiction, without exception.”⁷⁵

10. Conclusion and recommendations

In view of the fact that international law and standards are clear about the desirability of the abolition of the death penalty, and Amnesty International's own view that it violates the right to life and is the ultimate cruel, inhuman and degrading punishment, **Amnesty International India urges the Law Commission to recommend full abolition of the death penalty in India.**

Pending full abolition, Amnesty International India urges the Indian authorities:

-To establish an official moratorium on executions with a view to abolishing the death penalty, as provided by four UN General Assembly resolutions including 67/176 of 20 December 2012;

-To commute without delay all death sentences to terms of imprisonment;

-To immediately remove all provisions in national law which are in breach of international human rights law, in particular:

- by restricting the imposition of the death penalty to only the "most serious crimes";
- by abolishing all provisions which provide for mandatory death sentences;

⁷⁵ Amnesty International, “*Declaration of Stockholm. Conference on the Abolition of the Death Penalty*”, ACT 50/001/1977, 1 January 1977, available at <http://www.amnesty.org/en/library/info/ACT50/001/1977/en>

-To ensure rigorous compliance in all death penalty cases with international standards for fair trial, at least equal to those contained in Article 14 of the ICCPR, including the rights:

- to be tried before an independent, impartial and competent tribunal
- to competent defence counsel at every stage of the proceedings
- to adequate time and facilities to prepare one's defence
- to be presumed innocent until guilt has been proved beyond a reasonable doubt
- to appeal to a higher court, and
- to seek pardon and commutation of sentence

-To vote in favour of the resolution on a moratorium on the use of the death penalty that will be considered by the UN General Assembly in late 2014;

-To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

ANNEX I- Constitutional Courts and Abolition

National courts are increasingly determining that the death penalty is a violation of human rights protected by their own constitutions and by international law. Even law enforcement experts are increasingly questioning the value of this penalty.

On 24 October 1990, the **Hungarian** Constitutional Court declared that the death penalty violates the "inherent right to life and human dignity" as provided under Article 54 of the country's Constitution. The judgment had the effect of abolishing the death penalty for all crimes in Hungary.⁷⁶

On 6 June 1995, the **South African** Constitutional Court declared the death penalty to be incompatible with the prohibition of "cruel, inhuman or degrading treatment or punishment" under the country's interim constitution.⁷⁷ Eight of the 11 judges also found that the death penalty violates the right to life.

On 9 December 1998, the Constitutional Court of the **Republic of Lithuania** declared that the death penalty for murder as provided under the Lithuanian Criminal Code contradicts provisions of the country's Constitution, and in particular its Articles 18, 19 and 21.3 ensuring protection for the right to life and prohibiting "torture, injure a human being, degrade his dignity, subject him to cruel treatment, as well as to establish such punishments."⁷⁸

On 29 December 1999, the Constitutional Court of **Ukraine** declared the death penalty unconstitutional and the laws providing for it void. The Court stated that the death penalty is incompatible with articles of the Constitution of Ukraine which provide for the right to life and prohibit torture and cruel, inhuman or degrading treatment or punishment that violates a person's dignity. It noted that, unlike the International Covenant on Civil and Political Rights, the Ukrainian Constitution does not explicitly allow for the death penalty as an exception to the right to life.⁷⁹

On 11 November 1999, the Constitutional Court of the **Republic of Albania** abrogated the death penalty in peacetime as incompatible with the country's Constitution, Article 21, which states: "The life of a person is protected by law". The court stated that the death penalty is a denial of the right to life and constitutes an inhuman and cruel punishment. The court noted that unlike previous constitutional provisions, Article 21 of the Constitution of 1998 does not explicitly allow for the death penalty as an exception to the right to life.

⁷⁶ Constitutional Court Decision No.23/1990 (X.31) AB on the constitutionality of capital punishment.

⁷⁷ *The State v. Makwanyane and Mcebunu*, Case No. CCT/3/94.

⁷⁸ Constitutional Court of Lithuania Decision 2/98.

⁷⁹ In February 2000 the Ukrainian parliament removed the death penalty from the Criminal Code.

ANNEX II—Abolitionist and retentionist countries as of 29 July 2014

1. Abolitionist for all crimes

Countries whose laws do not provide for the death penalty for any crime

Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia, Bosnia-Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome And Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela

2. Abolitionist for ordinary crimes only

Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances

Brazil, Chile, El Salvador, Fiji, Israel, Kazakhstan, Peru

3. Abolitionist in practice

Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty

Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mongolia, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation,⁸⁰ Sierra Leone, South Korea, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia

4. Retentionist

Countries and territories that retain the death penalty for ordinary crimes

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria,

⁸⁰ The Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic.

Taiwan, Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States Of America, Viet Nam, Yemen, Zimbabwe

5. Countries that have abolished the death penalty since 1976

1976: Portugal abolished the death penalty for all crimes.

1978: Denmark abolished the death penalty for all crimes.

1979: Luxembourg, Nicaragua and Norway abolished the death penalty for all crimes. Brazil, Fiji and Peru abolished the death penalty for ordinary crimes.

1981: France and Cape Verde abolished the death penalty for all crimes.

1982: The Netherlands abolished the death penalty for all crimes.

1983: Cyprus and El Salvador abolished the death penalty for ordinary crimes.

1984: Argentina abolished the death penalty for ordinary crimes.

1985: Australia abolished the death penalty for all crimes.

1987: Haiti, Liechtenstein and the German Democratic Republic⁸¹ abolished the death penalty for all crimes.

1989: Cambodia, New Zealand, Romania and Slovenia⁸² abolished the death penalty for all crimes.

1990: Andorra, Croatia,⁸³ the Czech and Slovak Federal Republic,⁸⁴ Hungary, Ireland, Mozambique, Namibia and Sao Tomé and Príncipe abolished the death penalty for all crimes.

1992: Angola, Paraguay and Switzerland abolished the death penalty for all crimes.

1993: Guinea-Bissau, Hong Kong⁸⁵ and Seychelles abolished the death penalty for all crimes.

1994: Italy abolished the death penalty for all crimes.

1995: Djibouti, Mauritius, Moldova and Spain abolished the death penalty for all crimes.

1996: Belgium abolished the death penalty for all crimes.

1997: Georgia, Nepal, Poland and South Africa abolished the death penalty for all crimes. Bolivia abolished the death penalty for ordinary crimes.

1998: Azerbaijan, Bulgaria, Canada, Estonia, Lithuania and the United Kingdom abolished the death penalty for all crimes.

1999: East Timor, Turkmenistan and Ukraine abolished the death penalty for all crimes. Latvia⁸⁶ abolished the death penalty for ordinary crimes.

⁸¹ In 1990 the German Democratic Republic became unified with the Federal Republic of Germany, where the death penalty had been abolished in 1949.

⁸² Slovenia and Croatia abolished the death penalty while they were still republics of the Socialist Federal Republic of Yugoslavia. The two republics became independent in 1991.

⁸³ Slovenia and Croatia abolished the death penalty while they were still republics of the Socialist Federal Republic of Yugoslavia. The two republics became independent in 1991.

⁸⁴ In 1993 the Czech and Slovak Federal Republic divided into two states, the Czech Republic and Slovakia.

⁸⁵ In 1997 Hong Kong was returned to Chinese rule as a special administrative region of China. Since then Hong Kong has remained abolitionist.

⁸⁶ In 1999 the Latvian parliament voted to ratify Protocol No. 6 to the European Convention on Human Rights, abolishing the death penalty for peacetime offences.

2000: Cote D'Ivoire and Malta abolished the death penalty for all crimes. Albania⁸⁷ abolished the death penalty for ordinary crimes.

2001: Bosnia-Herzegovina⁸⁸ abolished the death penalty for all crimes. Chile abolished the death penalty for ordinary crimes.

2002: Cyprus and Yugoslavia (now two states Serbia and Montenegro⁸⁹) abolished the death penalty for all crimes.

2003: Armenia abolished the death penalty for all crimes.

2004: Bhutan, Greece, Samoa, Senegal and Turkey abolished the death penalty for all crimes.

2005: Liberia⁹⁰ and Mexico abolished the death penalty for all crimes.

2006: Philippines abolished the death penalty for all crimes.

2007: Albania, Cook Islands, Kyrgyzstan and Rwanda abolished the death penalty for all crimes. Kazakhstan abolished the death penalty for ordinary crimes.

2008: Uzbekistan and Argentina abolished the death penalty for all crimes.

2009: Bolivia, Burundi and Togo abolished the death penalty for all crimes.

2010: Gabon abolished the death penalty for all crimes.

2012: Latvia abolished the death penalty for all crimes.

⁸⁷ In 2007 Albania ratified Protocol No. 13 to the European Convention on Human Rights, abolishing the death penalty in all circumstances. In 2000 it had ratified Protocol No. 6 to the European Convention on Human Rights, abolishing the death penalty for peacetime offences.

⁸⁸ In 2001 Bosnia-Herzegovina ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, abolishing the death penalty for all crimes.

⁸⁹ Montenegro had already abolished the death penalty in 2002 when it was part of a state union with Serbia. It became an independent member state of the United Nations on 28 June 2006. Its ratification of Protocol No. 13 to the European Convention on Human Rights, abolishing the death penalty in all circumstances, came into effect on 6 June 2006.

⁹⁰ In 2005 Liberia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, abolishing the death penalty for all crimes.