

**10<sup>TH</sup> WORLD  
DAY AGAINST  
THE DEATH  
PENALTY**

TEN YEARS OF PROGRESS

**AMNESTY  
INTERNATIONAL**



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# 10<sup>TH</sup> WORLD DAY AGAINST THE DEATH PENALTY

“The right to life is the most fundamental of all human rights. It lies at the heart of international human rights law. The taking of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process.”

Ban Ki-Moon, United Nations Secretary-General, New York, 3 July 2012

The year 2012 saw, among other things, the resumption of executions in Botswana, Japan and the Gambia. In particular, the sudden executions in the Gambia at the end of August after a hiatus of three decades were a chilling reminder to countries in West Africa and the international community at large that, despite the continuous progress in development of legal standards and the significant reduction in the use of death penalty, individuals can still be unlawfully deprived of their lives at the hands of the state and in the name of justice. However, the national and international outcry that followed these executions clearly showed that the public perception around the death penalty has changed over the years—evolving from a perceived domestic criminal justice matter to a human rights issue that affects us all.

10 October 2012 marks the tenth anniversary of the creation of the World Day Against the Death Penalty, as an initiative of the World Coalition Against the Death Penalty of which Amnesty International is a founding member. As the United Nations General Assembly prepares to consider and vote upon the fourth resolution on a moratorium on the use of the death penalty – following resolutions in 2007, 2008 and 2010 – this year’s World Day is an important opportunity to reflect on achievements in the fight against the death penalty over the past decade as well as some of the challenges ahead.

# TEN YEARS OF PROGRESS – AN OVERVIEW

## DECLINE IN THE USE OF THE DEATH PENALTY

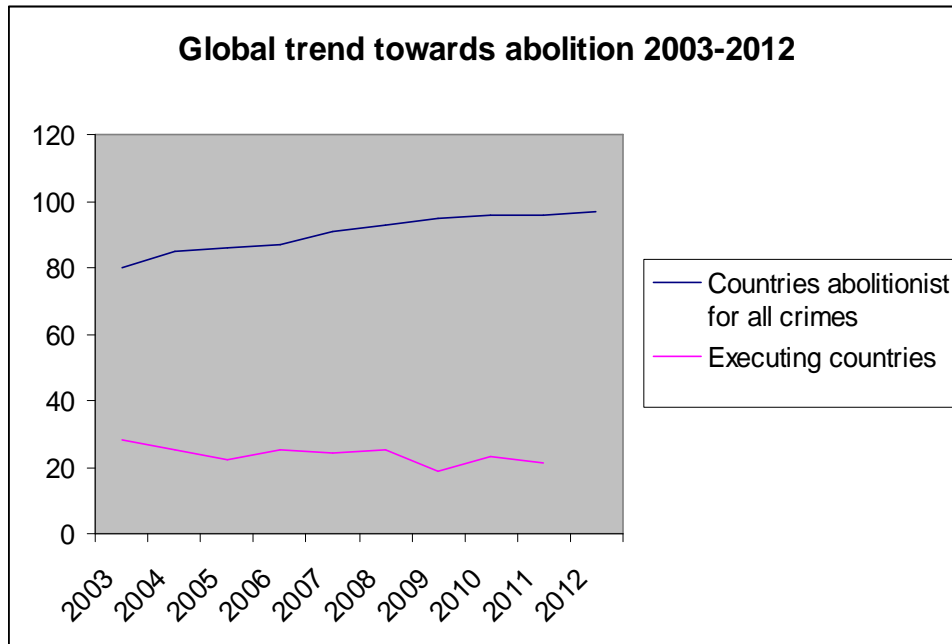
Since the abolitionist movement came together to celebrate the first World Day Against the Death Penalty on 10 October 2003, the world has changed considerably in relation to the death penalty.

At the end of 2003, 80 countries had abolished the death penalty for all crimes. Following abolitions in Albania, Argentina, Bhutan, Burundi, Cook Islands, Gabon, Greece, Kyrgyzstan, Latvia, Mexico, the Philippines, Rwanda, Samoa, Senegal, Togo, Turkey and Uzbekistan, the number of abolitionist countries now stands at 97. Kazakhstan joined the group of countries that are abolitionist for ordinary crimes. Mongolia, where the use of capital punishment is classified as a state secret, established a moratorium on executions in 2010. In March 2012, it ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), committing the country to abolish the death penalty in national legislation. Benin followed with its ratification in July 2012, while Madagascar signed the treaty in September 2012. Seventy-five States are now parties to the ICCPR-OP2, a third of which having joined in the last decade. Overall, more than two-thirds of the countries in the world are now abolitionist in law or practice.

The number of countries known to have carried out executions in 2011 (21) has decreased compared to ten years ago (28). During the past decade, several countries, including Chad, Cuba, Democratic Republic of Congo, India, Indonesia, Jordan, Kuwait, Lebanon, Nigeria, Pakistan, Qatar, Tajikistan, Thailand, Uganda and Zimbabwe have stopped carrying out executions. Furthermore, a marked decrease in the implementation of death sentences was recorded in countries with a previously high executions rate such as Egypt and Singapore. Most recently, Singapore announced a moratorium on executions in July 2012, to allow for consideration of legislative amendments on its mandatory use of the death penalty. The Malaysian authorities are also considering similar reviews.

A marked decline in the use of the death penalty was recorded also in the United States of America (USA), whose 78 new death sentences in 2011 represent a considerably lower figure compared with the average of 280 death sentences per year in the 1980s and 1990s and 151 in the early 2000s. Executions in the US dropped by a third, and death sentences almost by half, in the last decade alone. Five US states - Connecticut, Illinois, New Jersey, New Mexico, New York – have abolished the death penalty in the past ten years. Now 17 US states are abolitionist in law. Additionally, the governor of Oregon John Kitzhaber established

a moratorium on executions in November 2011 and California, the state with the largest number of people on death row in the USA, will be voting on replacing the death penalty on 6 November 2012.



Since Cuba stopped carrying out executions in 2003, and with the exception of one execution in Saint Kitts and Nevis in 2008, the USA remained the only executing state in the Americas. The number of countries imposing new death sentences in the English-speaking Caribbean appears to be in decline, with only three countries (Guyana, Saint Lucia and Trinidad and Tobago) imposing death sentences in 2011 compared to the yearly average of five.

Encouraging signs of progress have also been emerged from the Asia-Pacific and the Middle East and North Africa regions, which have the highest numbers of executions globally. Most notably, since the re-introduction of the review of all death sentences by the Supreme People's Court in 2007, the Chinese authorities have repeatedly claimed that the number of executions and death sentences in the country have been reduced, as on average 10 per cent of the cases are said to have been overturned after review by the court. It has however not been possible to verify these claims and to analyse actual trends in the country, as the use of the death penalty in China remains a state secret.

While very high numbers of executions are marking the use of the death penalty in Iran, Iraq and Saudi Arabia, the overall number of countries executing and passing death sentences in the Middle East and North Africa region has decreased in recent years, with the total number of death sentences recorded in the region in 2011 decreasing by approximately a third.

Belarus remains the only country in Europe and the former Soviet Union to carry out

executions. Africa has recorded the highest number of abolitions in the past decade, with an average of only five countries known to have executed prisoners in recent years. In June 2012, the government of Ghana accepted the recommendation of the Constitution Review Commission to abolish the death penalty in the new Constitution.

Mass commutations or pardons were registered in the last ten years in several countries. On 15 April 2006, for instance, the President of the Philippines commuted all 1,230 death sentences then in force to life imprisonment, in connection with the abolition capital punishment in the country that year. In January 2009 the President of Ghana commuted all remaining death sentences (105) to prison terms, while the President of Zambia commuted over 50 death sentences. On 1 October 2006, Nigeria's Federal Minister of Justice announced the commutation of 107 death sentences as part of Independence Day celebrations. In August 2006, the President of the Tanzania commuted all death sentences on the country's mainland, estimated to number about 400,<sup>1</sup> to life imprisonment.

In Morocco, the King regularly grants clemency to prisoners who had been sentenced to death. In December 2010 Cuba commuted the death sentences of the remaining three death row inmates in the country, leaving its death row empty for the first time in recent years. In 2011 and again in January 2012 the authorities of Myanmar commuted all existing death sentences. Last year the government of Sierra Leone pardoned at least four death row prisoners on the occasion of the 50th anniversary of independence, and has since commuted all remaining death sentences. Overall, commutations or pardons of death sentences were recorded in 33 countries in 2011.

## INCREASE IN LEGAL RESTRICTIONS ON THE USE OF THE DEATH PENALTY

While the reduction in the worldwide use of the death penalty over the past decade is more easily measurable by looking at number of abolitions, executions and death sentences, the work of courts and legislators around the world has also led to significant restrictions in the scope of capital punishment, both in relation to the individuals against whom and crimes for which the death penalty can be imposed.

- Among key developments, the US Supreme Court ruled by five votes to four that the use of the death penalty against people under the age of 18 at the time of the offence contravenes the US constitutional ban on "cruel and unusual punishments". The decision, delivered on 1 March 2005 in the case of *Roper v. Simmons*, meant that the lives of over 70 juvenile offenders on US death rows would be spared and no others would be sentenced to death. No juvenile offender has been executed in the USA since 2003.
- In the case of *Susan Kigula and 417 others vs. A.G.*,<sup>2</sup> the Supreme Court of Uganda confirmed an earlier Constitutional Court judgement according to which to hold a person beyond three years after confirmation of the sentence is unreasonable. The court found that prolonged periods on death row had an adverse effect on the condemned prisoners' physical and mental state as a result of the "death row syndrome": "Some key features seem to underline what is regarded as the death row syndrome. These are, first, the element of delay

between when the prisoner is sentenced to death and when the execution actually takes place. There is the natural fear of death that the prisoner has to live with constantly for a long time. [...] The second element that has been considered by courts in other jurisdictions, is that of prison conditions under which the prisoner is kept pending execution.”

- The mandatory imposition of the death penalty, which does not allow for the consideration of the individual defendant's personal circumstances or the circumstances of the particular offence was ruled unconstitutional in April 2007 by the High Court of Malawi and by the Supreme Court of Bangladesh on 20 March 2010. The Court of Appeal of Kenya ruled on 30 July 2010 that the mandatory death penalty for murder was “inconsistent with the spirit and letter of the constitution” and in October 2010 the Parliament of Guyana adopted a new law abolishing the mandatory imposition of the death penalty for murder. In India, in 2011 the High Court in Bombay, and on 1 February 2012, the Supreme Court of India declared the mandatory death penalty under specific statutes unconstitutional.

On 10 March 2010 the Human Rights Committee concluded that Zambia violated its international human rights obligations as a State Party to the International Covenant on Civil and Political Rights by mandatorily imposing a death sentence in *Munguwambuto Kabwe Peter Mwamba v. Zambia*.

The Inter-American Court of Human Rights ruled in November 2007 and again in September 2009 that mandatory death sentences imposed in murder cases in Barbados violated Articles 4(1) and 4(2) of the American Convention on Human Rights, which protect against the arbitrary deprivation of life and limit the application of the death penalty to the most serious crimes., respectively. As a consequence, the government of Barbados announced that the mandatory death sentence in cases of murder and treason would be abolished to comply with the judgments.<sup>3</sup>

The Judicial Committee of the Privy Council (JCPC)<sup>4</sup> declared the mandatory death penalty to be unconstitutional in 2006 with regard to the Bahamas<sup>5</sup>, in 2007 with regard to Grenada,<sup>6</sup> and most recently in June 2011 with regard to Trinidad and Tobago.<sup>7</sup>

- The JCPC established in its ruling on the case of *Daniel Dick Trimmingham v the Queen* (St Vincent and the Grenadines),<sup>8</sup> delivered on 22 June 2009, that the death penalty should be imposed only in cases which are “the worst of the worst”, or “the rarest of the rare” and where there is no prospect of reform and no other means of achieving the object of the punishment.

The JCPC ruling in the case of *Maxo Tido v the Queen* (the Bahamas)<sup>9</sup> confirmed and applied the “Trimmingham principles” and found that the case did not warrant the punishment of death and that the second condition on prospect of reform of the offender could not be determined as no psychiatric report had been commissioned by the judge. It concluded by affirming that a sentencing court, whenever contemplating the possible imposition of the death penalty, should require professional advice as to whether the possibility of reform exists.

In a July 2011 ruling in the Bahamas in the case of *Lockart vs the Queen*,<sup>10</sup> the JCPC stated that as no psychiatric assessment had been made during the sentencing phase of the trial in

the Supreme Court, it was not possible to determine whether there was no reasonable prospect of reform of the offender. "How is a sentencing court to face the task of deciding whether it is satisfied that there is no reasonable prospect of reform unless it has some professional assistance which provides an insight into the character and psyche of the individual whose execution is being contemplated?" As a consequence, the JCPC concluded that "in every case in which the death penalty is being considered, the report of a consultant psychiatrist is needed before the question whether the reasonable possibility of reform can be properly addressed."<sup>11</sup>

- In several countries legislators took steps to reduce the scope of the death penalty. Most recently, in April 2011 Gambia abolished the death penalty for drug-related offences, which had been extended only in 2010, and replaced it with life imprisonment. Amendments were also made to the Criminal Code Act and the Trafficking in Persons Act 2007, to make them compatible with Article 18 (2) of the Gambian Constitution, which prohibits the death penalty for offences not involving violence, or the administration of a toxic substance, resulting in the death of another person. During the same month the Legislative Yuan of Taiwan, the main legislative body, amended the Punishment Act for Violation to the Military Service System and removed the death penalty as an option for punishment under its Articles 16 and 17. According to the revised articles, those who carry weapons in a group and seriously harm people performing their military duties are now subject to the maximum penalty of life imprisonment.

## REGIONAL AND INTERNATIONAL BODIES INCREASINGLY PROMOTING ABOLITION

Over the past decade, international and regional bodies set important standards on the use of the death penalty. The former UN Commission on Human Rights adopted on 20 April 2005 resolution 2005/59 calling upon all states that still maintain the death penalty "to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions". It urges states that still maintain the death penalty to observe agreed UN safeguards and restrictions on the death penalty and "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person". The resolution also affirmed the right of everyone to life and stated - for the first time - that abolition of the death penalty is essential for the protection of this right and condemns the application of the death penalty on the basis of any discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities and calls on states not to impose mandatory death sentences. It calls on states that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend executions.

The UN General Assembly (UNGA) adopted three resolutions (62/149 of 18 December 2007; 63/168 of 18 December 2008; and 65/206 of 21 December 2010) calling for, among other things, the establishment of a moratorium on executions with a view to abolishing the death penalty. The adoption of these resolutions (see also last chapter of this document) generated a global momentum for campaigning against the death penalty and put its abolition once



again on the global agenda. The Universal Periodic Review (UPR), a mechanism of the UN Human Rights Council under which the human rights records of all UN member states are reviewed every four and a half years,<sup>12</sup> has featured the abolition of the death penalty as one of the most prominent human rights issues under analysis since the beginning of this process in 2008. The issues of the abolition of the death penalty and the circumstances of its use have been extensively considered by other UN bodies and mechanisms, including most recently in three UN reports that will be presented at the 67th session of the UNGA: the reports of the Special Rapporteurs on extrajudicial, summary and arbitrary executions and on Torture and other cruel, inhuman and degrading treatment or punishment, and the report of the Secretary-General on the implementation of UNGA resolution 65/206.<sup>13</sup>

In November 2008 the African Commission on Human and Peoples' Rights adopted a resolution calling upon state parties to the African Charter on Human and Peoples' Rights to observe a moratorium with a view to abolish 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 respectful of the right to a fair trial and other human rights. By adopting the resolution the African Commission aligned itself with the global trend towards abolishing the death penalty. In a study published on 19 April 2012, the Working Group on the Death Penalty of the African Commission reaffirmed the necessity to abolish capital punishment and suggested ways for its achievement.<sup>14</sup>

The Inter-American Commission on Human Rights, in its report on the death penalty in the Inter-American system released on 3 August 2012,<sup>15</sup> also recommended that States in the region "impose a moratorium as a step towards the gradual disappearance of this penalty."<sup>16</sup>

At the Council of Europe, both the Parliamentary Assembly and the Committee of Ministers have taken initiatives aimed at the abolition of capital punishment, including promotion of the ratification of Protocols Nos. 6 and 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights - ECHR) by the 47 Member States, and encouraging abolition in third states. On 29 July 2009, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a resolution "on a moratorium on the death penalty and towards its abolition".

# CHALLENGES AHEAD

Despite the unmistakable progress towards abolition, since 2003 the death penalty has been applied against international law and standards in countries where it is used.

Apart from continuing to call for an immediate end to all executions, challenges in the journey towards abolition include ensuring improved respect for the minimum safeguards guaranteeing the rights of those facing the death penalty and existing prohibitions, as well as challenging the misconceptions that surround capital punishment in countries where support is entrenched.

Between 2003 and 2012, Amnesty International has recorded 56 executions of juvenile offenders in seven countries: China, Iran, Pakistan, Saudi Arabia, Sudan, the USA and Yemen. If over the past decade China, Pakistan, Sudan and the USA ended executions of individuals for crimes committed when they were below 18 years of age, and although such executions are universally prohibited in law, the actual practice has not yet ended worldwide. Executions of juvenile offenders were still recorded in Iran, Saudi Arabia and Yemen in recent years. Legislative reforms adopted in January 2012 amending Iran's penal code established limitations on the sentencing to death of juveniles, yet still allowing for the mandatory imposition of the death penalty for those under 18 years of age for offences under the category of *hadud* or *qisas* (retribution in kind) if the court decides, through forensic reports or any other appropriate means, that the defendant did have adequate mental maturity and the ability to reason. In Yemen the risk of executing juveniles persists, as often birth certificates do not exist, and an offender's 'maturity' is judged simply by physical evidence of puberty.

The use of the death penalty against persons with mental or intellectual disabilities remains a concern in all regions of the world, including in the USA. On 15 November 2011 Reginald Brooks, a 66-year-old man diagnosed with paranoid schizophrenia, was executed in Ohio after nearly three decades on death row. He was sentenced to death in November 1983 for killing his three sons in March 1982. Eddie Duval Powell, a 41-year-old African American man, was executed on 16 June in the state of Alabama despite claims that he had a learning disability that would render his execution unconstitutional under the 2002 Supreme Court ruling in *Atkins v. Virginia*.

In the majority of countries where people are sentenced to death or executed, the death penalty is imposed after proceedings that did not meet international fair trial standards, often based on "confessions" that were allegedly extracted through torture or other duress. In 2011 this was particularly the case in Belarus, China, Iran, Iraq, North Korea, and Saudi Arabia. In Iran and Iraq, some of these "confessions" were then broadcast on television before the trial took place, further breaching the defendants' rights to presumption of innocence. The mandatory death penalty continues to be used in countries such as India, Iran, Malaysia, Pakistan, Singapore, Trinidad and Tobago and Zambia. Of concern during

2011 was the increased use and pursuit of the death penalty by military courts and tribunals, including against civilians, in countries such as Bahrain, Democratic Republic of Congo, Egypt, Lebanon, Palestinian Authority (in the West Bank and Gaza), Somalia and the USA.

Individuals continue to be sentenced to death or executed for crimes that did not involve intentional killings, therefore not meeting the threshold of “most serious crimes” as prescribed by Article 6 of the International Covenant on Civil and Political Rights. In 2011 the death penalty was known to have been used to punish drug-related offences in countries such as China, India, Indonesia, Iran, Malaysia, Pakistan, Saudi Arabia, Singapore, Thailand, United Arab Emirates and Yemen. The Thai authorities were reported in 2012 as seeking to expedite the execution of individuals convicted of drug-related offences.

Adultery and sodomy (Iran), religious offences such as apostasy (Iran) and blasphemy (Pakistan), “sorcery” (Saudi Arabia) and economic crimes (China), as well as rape (Saudi Arabia) and forms of “aggravated” robbery (Kenya, Zambia), were also punished with death sentences in 2011.

The death penalty continues to be used as a political tool against opponents. The Chinese authorities, for instance, while stating that their overall goal is to reduce the use of the death penalty, continues to use executions to demonstrate that activities deemed to be harmful to social stability will be treated harshly. For instance, two men were executed for their involvement in the unrest in the Tibet Autonomous Region (TAR) in 2008. In Iran the death penalty continues to be applied in political cases, in which individuals are commonly accused of “enmity against God”. Different forms of “treason”, “acts against national security” and other “crimes against the state”, whether or not they led to a loss of life, were punished with death sentences in 2011 (Gambia, Kuwait, Lebanon, North Korea, Palestinian Authority and Somalia). In North Korea death sentences are often imposed even though the alleged crime is not subject to a death sentence under domestic law.

Afghanistan, Equatorial Guinea, Taiwan, United Arab Emirates are among the countries that have resumed executions after a hiatus since 2003, in stark contrast with the global trend of abolition. In 2012 Botswana, the Gambia and Japan resumed executions after long pauses.

The scope of the death penalty was known to have been expanded, in contravention of international human rights standards, in Bangladesh, China, Egypt, India, Iran, Nigeria and Syria. Liberia introduced the death penalty for armed robbery, terrorism and hijacking if these result into death in July 2008, in violation of its obligations as a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which requests it to abolish the death penalty.

Under Article 36 of the Vienna Convention on Consular Relations (VCCR), all persons detained or in custody pending trial in a foreign country have the right to be notified without delay of the possibility to have their country’s consulate or embassy notified of the arrest. Confirming its earlier jurisprudence, in 2004 the International Court of Justice (ICJ) ruled that the United States of America had violated its international obligations under the VCCR in the case of 52 Mexican nationals on death row in Texas, as they had not been informed of their right to consular assistance. A challenge to the pending execution of José Medellín based upon the ICJ decision was dismissed by the US Supreme Court in 2008. According to

the Supreme Court, the judgment of the ICJ was not directly enforceable in Texas. Mexico then obtained provisional measures order from the ICJ directing the United States to take all necessary measures to prevent the execution of several Mexican nationals, including Medellín. However, Medellín was executed on 5 August 2008. In January 2009, the ICJ held that the execution of Medellín had breached the obligations of the United States under international law. The ICJ confirmed that its original ruling was “fully intact”, including that Humberto Leal, another Mexican national involved in the case, should not be executed pending review and reconsideration. The ICJ stressed that its judgement placed an obligation on the USA which “must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct.” Despite this and the fact that on 14 June 2011 Senator Patrick Leahy introduced a bill in the US Congress to implement the ICJ judgement, the courts refused to grant a stay of execution for Humberto Leal and the Texas Board of Pardons and Paroles voted against a reprieve to allow time for Congress to act.

Violations also concern the right to appeal for clemency or pardon. For example, in *Fermín Ramírez v. Guatemala*,<sup>17</sup> the Inter-American Court of Human Rights held that “the right to grace forms part of the international corpus juris”, and that Guatemala had violated international law because its internal legislation does not provide for measures of grace. The judgement has the result of stopping executions in the country.

Despite the progress, in certain countries the use of the death penalty continues to be surrounded by secrecy. If figures on its use are still classified as a state secret in Belarus, China, Mongolia and Viet Nam, in some countries executions are carried out without any prior notification to the prisoners, their lawyers and families. In 2012 this was the case in Belarus, where two people were executed in February, in Japan, with seven executions in total so far in March, August and September, and in the Gambia, where nine executions were carried out in secret in August. The Gambian authorities not only failed to notify the prisoners, their families and lawyers of the forthcoming executions; they also delayed the acknowledgement of the executions and wrongly stated that all executed prisoners had exhausted their appeals. To date, the Gambian authorities have still failed to return the bodies of the executed prisoners or to disclose the location of the graves to their families.

# NOT IN MY NAME – THE ABOLITIONIST MOVEMENT

Over the past decade, an increase in the number and strength and voices against the death penalty has been recorded all around the world. The abolitionist movement has grown and has become more strategic and organized, also because of the emergence of new social media.

The World Coalition Against the Death Penalty, which was founded in 2002, now counts more than 130 member organizations all around the world. National coalitions have emerged in countries such as Algeria, Malaysia, Morocco and Tunisia, countries where public support for the death penalty has been traditionally strong. Regional networks, such as the Anti-Death Penalty Asia Network, created in 2006, and the recently established Greater Caribbean for Life, add regional calls to the global perspective.

In several occasions, spontaneous opposition to the death penalty was voiced on the initiative of members of the public, in the lead up or immediately after executions of individuals whose cases emblematically showed the inherent cruelty and failure of the death penalty.

For instance, the public in China questioned and internationally protested the execution on 5 August 2009 of Du Yumin, a Chinese businesswoman convicted of “fraudulently raising funds” in March 2008. Public outcry surrounded the execution of Delara Darabi, a 22-year-old woman convicted of a crime she allegedly committed when aged 17, who was hanged in Iran on 1 May 2009 despite having been given a two-month stay of execution by the Head of the Judiciary on 19 April 2009. Abolitionist individuals and organization joined the general public in demanding a halt to the stoning to death in Iran of Sakineh Mohammadi Ashtiani, who remains in detention in Iran. Recent secret executions in the Gambia provoked a strong public reaction in West Africa, in the region and internationally.

Abolition activism and public debate on the issue of the death penalty were particularly marked in the lead-up to the execution of Troy Davis, carried out by the State of Georgia on 21 September 2011. Serious doubts surrounded his conviction for the 1991 murder of a police officer: the case against him primarily rested on witness testimony, and seven of the nine key witnesses had recanted or changed their testimony after the original trial. Some witnesses alleged they had been pressured or coerced by the police into testifying or signing statements implicating Troy Davis. Thousands of individuals and many organizations from around the world took part in a campaign developed by Amnesty International from 2007 against the execution of Troy Davis and called for the commutation of his death sentence. Approximately one million signatures were delivered in appeals for clemency and his case was extensively covered in media around the world.

A voice that has become stronger within the abolitionist movement is that of family members of the murder victims who actively oppose the execution of a death sentence. For example, the family of Chong Hoon Mah, a South Korean immigrant to the USA who was shot and killed by Johnnie Baston in 1994 in Ohio, opposed the use of the death penalty in his case because of their belief that it was incompatible with their respect for human life. In another case, Rais Bhuiyan, who survived being shot by Mark Stroman in 2001 in one of a series of violent crimes committed in reaction to the 9/11 attacks, campaigned against Stroman's execution, which was nevertheless carried out in Texas on 20 July 2011.

# MORATORIUM ON EXECUTIONS NOW

The resumption of executions in countries such as the Gambia and Japan in 2012 is a clear indication of the urgency of an immediate global moratorium on the use of the death penalty. In late 2012 the 67th session of the United Nations General Assembly (UNGA) will consider and vote upon a fourth resolution calling for, among other points, a moratorium on the use of the death penalty with a view to abolishing the death penalty.

## UNGA RESOLUTIONS: WHAT DO THEY SAY?

UNGA resolution 62/149 in 2007 confirmed the commitment of the UN to the abolition of the death penalty by calling upon states that still retain it to, among other things, respect international safeguards guaranteeing the rights of those facing the death penalty, reduce the number of offences for which this punishment may be imposed and establish a moratorium on executions with a view to abolishing the death penalty. It called upon States which have abolished this punishment not to reintroduce it.

Resolution 62/149 also requested the UN Secretary-General to report at the 2008 session of the UNGA (63rd session) on the implementation of the 2007 resolution. The report, which was presented at the Third Committee of the UNGA on 28 October 2008, outlined global statistics and trends on the application of the death penalty, summarized the views of member states on reasons for abolishing or retaining the death penalty and offered recommendations on the respect of the rights of those facing the death penalty.

A second UNGA resolution (63/168) on moratorium on the use of the death penalty was adopted in December 2008 with increased cross-regional support. The resolution reaffirmed the 2007 resolution and welcomed decisions taken by an increasing number of States to apply a moratorium on executions. It also requested the UN Secretary-General to provide a report on the implementation of the resolution for consideration at the 65th session of the UNGA (2010), which was published on 11 August 2010.

The text of UNGA resolution 65/206 (adopted on 21 December 2010) largely drew on the text of the 2007 resolution. New calls include the reference in the preamble to ongoing debates, regional initiatives and technical cooperation among Member States in relation to moratoriums on the death penalty; a new operational paragraph to welcome steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions to apply a moratorium. It also called on retentionist states to make available information on their use of the death penalty, and on abolitionist countries to share their experience of abolition.

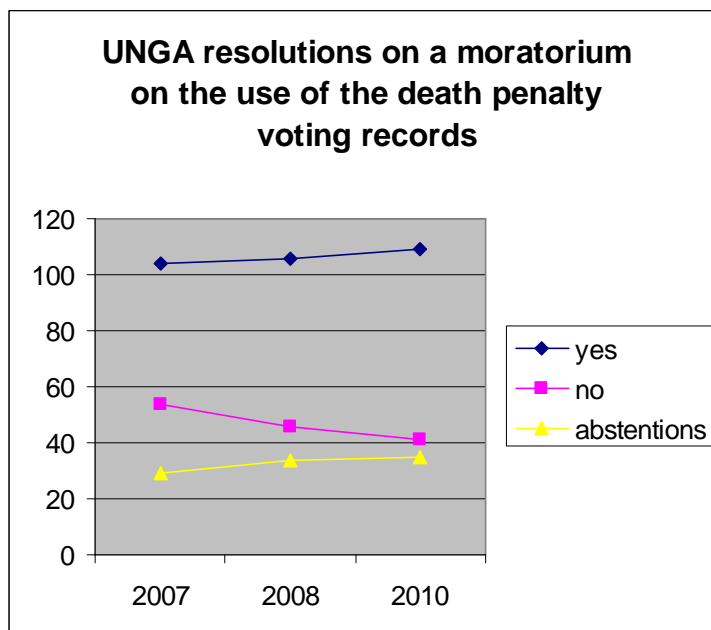
A new report from the Secretary-General on the implementation of previous resolutions is due to be presented at the 67th session of the UNGA in late 2012. The report was published in August 2012. For more information, visit: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/67/226>

Although not legally binding on the Member States, General Assembly resolutions carry considerable moral and political weight. The adoption of resolutions 62/149 (2007), 63/168

(2008) and 65/206 (2010), with increased cross regional support (see graph below), galvanized momentum among civil society and international governmental organizations, and reinvigorated their commitment to the abolition of capital punishment.

The death penalty and circumstances of its applications have been found to violate human rights, including the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment.

The death penalty is discriminatory and is often used disproportionately against people living in poverty, minorities and members of religious communities. It is frequently imposed and carried out arbitrarily. In some countries it is used as a means of repression, to silence



political opposition. In other countries, flaws in the judicial process are exacerbated by a lack of transparency, prosecutorial misconduct and inadequate legal representation. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.

The past three UNGA resolutions have strengthened international human

rights standards and their implementation, and opened vital space - at the UN and around the world - for meaningful consideration of the illegitimacy of capital punishment.

The adoption of a fourth resolution on moratorium on the use of the death penalty, again with increased cross-regional support, at the 67th session will provide the UNGA with another important opportunity to maintain momentum, reaffirm the call for a global moratorium, review implementation of the previous resolution, and identify further steps towards restricting the use of the death penalty. The adoption, by an increased majority of states, of a resolution in 2012 will move the community of states closer towards its stated goal of a death penalty-free world.

**AMNESTY INTERNATIONAL RECOMMENDATIONS ON THE DEATH PENALTY:**

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution.



Pending total abolition of the death penalty, Amnesty International calls upon retentionist countries to:

-immediately establish a moratorium on executions with a view to abolishing the death penalty as provided by UN General Assembly resolution 62/149, adopted on 18 December 2007, resolution 63/168 adopted on 18 December 2008, and resolution 65/206, adopted on 21 December 2010;

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

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

abolishing all provisions which provide for death penalty for persons under the age of 18 at the time of their alleged crime;

restricting the imposition of the death penalty to only the most serious crimes, understood as meaning intentional killings;

abolishing all provisions which provide for mandatory death sentences,

prohibiting the imposition of the death penalty on anyone suffering from a mental disability, and

prohibiting executions of pregnant women and new mothers;;

-ensure rigorous compliance in all death penalty cases with international standards for fair trial, 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;

to seek pardon and commutation of sentence.

-ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

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## ENDNOTES

1 UN Secretary-General report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, E/2010/10, 18 December 2009.

2 Constitutional Appeal no.3 of 2006, Uganda.

3 *Boyce et al v Barbados* (delivered on 20 November 2007). *Da Costa Cadogan v Barbados* (delivered on 24 September 2009). The Inter-American Court of Human Rights also found that Mr Cadogan's right to a fair trial had been violated as his mental health status at the time of the offence was never fully evaluated and stated that "the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty will be duly informed, at the initiation of the criminal proceedings against him, of their right to obtain the psychiatric evaluation carried out by a state-employed psychiatrist".

4 The Judicial Committee of the Privy Council is the final court of appeal for the UK overseas territories and Crown dependencies and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee.

5 Judicial Committee of the Privy Council, *Forrester Bowe Jr and Trono Davies v The Queen* (from the Court of Appeal from the Bahamas), decision of 8 March 2006, [2006] UKPC 10, [2006] 1 WLR 1623.

6 Judicial Committee of the Privy Council, *Coard v. The Attorney General* [2007] UKPC 7, P.C.

7 *Miguel v The State* [2011] UKPC 14, delivered on 15 June 2011.

8 Privy Council Appeal No 67 of 2007.

9 Privy Council Appeal No 0003 of 2010.

10 Privy Council Appeal No 0050 of 2010.

11 Privy Council Appeal No 0050 of 2010.

12 See A/HRC/18/12/Add.1, paras 73.33-73.38. The Universal Periodic Review (UPR) is a mechanism of the UN Human Rights Council under which it reviews, each four and a half years, the fulfilment by all 193 UN Member States of their human rights obligations and commitments. It is a co-operative mechanism, based on objective and reliable information, and equal treatment of all States. The reviews are carried out by the UPR Working Group of the Human Rights Council. It consists of an interactive dialogue between the State under review and other States. In their interventions, States can raise issues, ask questions and make recommendations for action by the State under review. All UN Member States, both Member States of the Human Rights Council and observer States, may participate in the inter-active dialogue; NGOs may attend the Working Group sessions, but may only contribute with written submissions; oral interventions can be made at the regular sessions of the full Council when the outcome report on a country is adopted. The issue of the death penalty is regularly raised during the review of retentionist states.

13 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/67/275, <http://www.un.org/Docs/journal/asp/ws.asp?m=a/67/275>. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279: <http://www.un.org/Docs/journal/asp/ws.asp?m=a/67/279>. Report of the Secretary-General on Moratorium on the use of the death penalty, A/67/226: <http://www.un.org/Docs/journal/asp/ws.asp?m=a/67/226>

14 African Commission on Human and Peoples' Rights, "Study on the question of the death penalty in Africa", 10 April 2012, adopted by the African Commission at its 50th Ordinary Session (24 October - 07 November 2011), online at [http://www.achpr.org/files/news/2012/04/d46/study\\_question\\_deathpenalty\\_africa\\_2012\\_eng.pdf](http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf), last visited on 13 September 2012.

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15 OEA/Ser.L/V/II. Doc 68 of 31 December 2011, online at <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>, last visited on 13 September 2012.

16 OEA/Ser.L/V/II. Doc 68 of 31 December 2011.

17 Inter-American Court of Human Rights, *Fermín Ramírez v. Guatemala*, Judgment of 20 June 2005, Series C, No. 126, paras. 109-110.