

AMICUS CURIAE SUBMISSION

TAIWAN: AMICUS CURIAE SUBMISSION BY AMNESTY INTERNATIONAL TAIWAN AND THE WORLD COALITION AGAINST THE DEATH PENALTY BEFORE THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CHINA

IN THE CASE OF WANG XINFU, PETITION NO. 904052 OF 2022, AND 37 OTHERS

8 April 2024 ACT 50/7969/2024

1. INTRODUCTION

1. Amnesty International Taiwan and the World Coalition Against the Death Penalty hereby respectfully submit this joint amicus curiae intervention before the Constitutional Court of the Republic of China in the above case, with the purpose of ensuring the protection of the rights of all those under sentence of death in the Republic of China.
2. Under Article 20 of the Rules of Procedure of the Constitutional Court of the Republic of China, “*any person, authority, or association, other than the parties, who considers herself or himself having an interest in a case pending before the Constitutional Court, may make a motion to the Court, subject to its permission by a ruling, for the submission of expert opinion or information to be considered within the period of time prescribed by the Constitutional Court.*”
3. Amnesty International is an international non-governmental organization dedicated to protecting and promoting the rights enshrined in the Universal Declaration of Human Rights and other international treaties throughout the world. Amnesty International is represented in the Republic of China through its Taiwan section (registration details above). The organization is a movement of over 10 million members, activists and supporters in more than 150 countries worldwide. It is independent of any government, political ideology, economic interest or religion.
4. Amnesty International is recognized as an accurate, unbiased and credible source of research and analysis of human rights conditions around the world, including on the death penalty. Amnesty International conducts research and leads efforts to advance international human rights at the international, regional and national levels. It has formal relations with several human rights actors internationally and regionally. For example, Amnesty International has consultative status with the United Nations (UN) Economic and Social Council (ECOSOC) and the UN Educational, Scientific and Cultural Organization (UNESCO). Amnesty International has observer status before the African Commission on Human and Peoples’ Rights and is registered with the Organization of American States as a civil society organization.
5. Amnesty International has extensive experience in submitting amicus curiae briefs and other third-party submissions to international, regional and national courts to assist them in resolving fundamental questions of international law including the International Criminal Court, the African Court of Justice and Human Rights, the European Court of Human Rights, the Economic Community of West African States Court of Justice and other domestic courts including in Canada, Mexico, Sierra Leone, South Africa, the United States of America, Thailand and the United Kingdom.

6. Amnesty International has intervened as Amicus Curiae in challenges to the constitutionality of the death penalty in various jurisdictions, including South Africa and the Republic of Korea.¹
7. Amnesty International opposes the death penalty unconditionally, for all cases and under any circumstances, as a violation of the right to life and as the ultimate cruel, inhuman and degrading punishment. The organization began its global campaigning to promote the abolition of the death penalty in December 1977, following the adoption of its programmatic statement in the Stockholm Declaration.²
8. Amnesty International is widely considered as an authoritative source of information on the global use of the death penalty. Every year, Amnesty International publishes figures on the global use of this punishment. These figures are used extensively by the media, governments, judiciaries and the United Nations (UN) when discussing the issue of capital punishment. Since 2007, the organization has also coordinated campaigning efforts in favour of the adoption by the UN General Assembly of repeated resolutions on a moratorium on the use of the death penalty, including the most recent resolution 77/222 of 15 December 2022.
9. The World Coalition Against the Death Penalty is an alliance of more than 160 NGOs, bar associations, local authorities and unions working together to campaign for the abolition of the death penalty globally. It was established in Rome on 13 May 2002. Amnesty International is a founding member.
10. The World Coalition Against the Death Penalty aims at strengthening the international dimension of the fight against the death penalty. Its objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition Against the Death Penalty advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The Secretariat of the World Coalition Against the Death Penalty coordinates advocacy by its members in favour of the ratification of the Second Optional Protocol on Civil and Political Rights, aiming at the abolition of the death penalty.
11. The World Coalition Against the Death Penalty has intervened as Amicus Curiae before the Supreme Court of the United States of America.³
12. Kao Yang-hui, a Board member of Amnesty International Taiwan, is representing five claimants. No input or legal assistance was sought from him by Amnesty International and the World Coalition Against the Death Penalty in the preparation of this amicus curiae submission.
13. Amnesty International campaigns through its national office in the Republic of China, as well as internationally, on behalf of two claimants – Wang Xin-fu, the lead claimant, and Chiou Ho-shun. The campaign began before the current litigation process.
14. Cooperation between the applicants, other amicus interveners and Amnesty International and the World Coalition Against the Death Penalty in relation to the preparation of this amicus curiae intervention has been limited to coordinating the topic of the submission to prevent duplication with other briefings.
15. No monetary remuneration has been sought from, or provided to, the petitioner, or their agents in relation to this amicus curiae submission.
16. Amnesty International Taiwan and the World Coalition Against the Death Penalty have not received, nor are providing to others, monetary remuneration or funding in relation to the preparation of this amicus curiae submission.
17. Amnesty International Taiwan and the World Coalition Against the Death Penalty bear their own costs for this amicus curiae intervention and submission.

¹ Constitutional Court of South Africa, *Minister of Home Affairs and Others v Emmanuel Tsebe and Others* 2012 (5) SA 467 (CC); Constitutional Court in the Republic of Korea, case file number 2019Hun-Ba59 (decision pending).

² Amnesty International, "Declaration of Stockholm. Conference on the Abolition of the Death Penalty" (ACT 50/001/1977), 11 December 1977, <https://www.amnesty.org/en/documents/act50/001/1977/en/>

³ Supreme Court of the United States of America, *James Erin McKinney v. Arizona*, Brief of the Advocates for Human Rights and the World Coalition Against the Death Penalty as Amicus Curiae in Support of the Petitioner, No. 18-1109.

2. SUPPORT OF A PARTY'S POSITION

18. In its announcement on 25 January 2024, the Constitutional Court of the Republic of China announced that as part of this case it would consider a number of issues.⁴ Amnesty International Taiwan and the World Coalition Against the Death Penalty submit this amicus curiae briefing to aid the Constitutional Court in deciding the first question, as follows:

18.1. Is the death penalty, as one of the statutory penalties, unconstitutional?

18.2. In addition to depriving the right to life, does the death penalty interfere with other constitutional rights, such as the right to freedom from torture, human dignity?

18.3. What are the purposes pursued by the death penalty system? Are they all constitutional?

18.4. Is the use of the death penalty as a means to achieve the above-mentioned purposes allowed by the Constitution of the country to deprive the people of their constitutional rights? If the death penalty is considered unconstitutional, what other criminal sanctions are sufficient to replace the death penalty? Or what supporting measures should be taken?

3. CLAIM

19. In response to the question raised by the Court, the amicus interveners submit that the use of the death penalty in the Republic of China constitutes a violation of human rights as guaranteed under the Constitution of the Republic of China (Articles 8 on personal freedom and procedural guarantees in case of arrest and conviction; and 15 on the right to existence), which are also guaranteed under international law.
20. The amicus interveners submit further that, while no executions have been recorded in the Republic of China since 2020, the retention of the death penalty in the Republic of China sets the country against the global trend, which remains overwhelmingly in favour of its abolition.
21. The amicus interveners further submit that international human rights law and standards set out aims and principles to be applied to alternative punishments, which are discussed in this briefing.

4. SUMMARY OF REASONS

22. The interveners submit that:

22.1 the death penalty violates the human rights to life and not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as reflected in the development of international and national law;

22.2 state practice shows that the global trend remains overwhelmingly in favour of the abolition of the death penalty, while the numbers of executing countries and executions recorded yearly have been declining;

22.3 international human rights law and standards set out aims and principles to be applied to alternative punishments.

5. SUBMISSION

23. Amnesty International Taiwan and the World Coalition Against the Death Penalty have sought admission as amicus curiae interveners to provide this Court with submissions on the relevant international and foreign law on the above questions.
24. It is the central submission of the interveners that the abolition of the death penalty is enshrined as goal under international law.
25. The Republic of China is not a member of the United Nations, but has voluntarily subscribed to some international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). The Republic of China has adopted in 2009 the "Enforcement Law for the Covenants on Human Rights" to domesticate these treaties into national law and mandate all levels of government and state institutions to implement the provisions contained in these treaties. The Republic of China, therefore, has also fully subscribed

⁴ Constitutional Court of the Republic of China, Constitutional Court Announcement of 25 January 2024, <https://cons.judicial.gov.tw/docdata.aspx?fid=77&id=351716>

to Article 6(6) of the ICCPR, which states that “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant” (emphasis added).

THE DEATH PENALTY VIOLATES THE HUMAN RIGHTS TO LIFE AND NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS REFLECTED IN THE DEVELOPMENT OF INTERNATIONAL AND NATIONAL LAW

The right to life

26. The right to life is recognized in the Universal Declaration on Human Rights (Universal Declaration) in its Article 3, as well as several international and regional human rights instruments, national constitutions and laws.⁵
27. The prohibition of arbitrary deprivation of life is recognized as a peremptory norm of customary international law and non-derogable.⁶ The imposition of the death penalty following trials and appeals that do not fully meet international standards for a fair trial violates the right to life.⁷
28. The Constitution of Taiwan protects the right to existence (Article 15) and sets out procedural guarantees to ensure the respect of the right to personal freedom (Article 8).
29. Amnesty International Taiwan observed in several cases that proceedings leading to the imposition of the death penalty in the Republic of China violated constitutional and international standards for a fair trial. Among other examples, Chiou Ho-Shun was sentenced to death in 1989 for kidnapping and murder. The most recent investigation report written by Kao Yung-Cheng, a member of Control Yuan, highlighted that police officers had subjected Chiou Ho-Shun to torture and other ill-treatment during the investigation process to obtain “confessions” of guilt.⁸ Cheng Hsing-tse was exposed to imminent risk of execution after the Prosecutor General rejected on 11 December 2012 his request to seek an extraordinary appeal.⁹ He had maintained that his conviction was based on a forced “confession” extracted through torture and other procedural flaws. The Taichung Branch of the Taiwan High Court acquitted him on 26 October 2017.¹⁰
30. While Article 6 of the International Covenant on Civil and Political Rights (ICCPR) allows for the use of capital punishment under certain circumstances, its paragraph 6 clearly states that the same Article should not be used to “prevent or delay the abolition of the death penalty”. In its most recent General Comment on Article 6 of the ICCPR, the Human Rights Committee – the UN body tasked with the interpretation of this treaty – has stated that:
*“Article 6, paragraph 6 reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights.”*¹¹
31. To date, four international and regional treaties provide for the abolition of the death penalty:

⁵Among others, Article 6 of the International Covenant on Civil and Political Rights; Articles 6 and 37 of the Convention on the Rights of the Child; Article 4 of the African Charter on Human and Peoples' Rights; Article 4 of the American Convention on Human Rights; Article 5 of the Arab Charter on Human Rights; Article 2 of the European Convention on Human Rights.

⁶ Article 4.2 of the International Covenant on Civil and Political Rights; Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, paras.67-68; and Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. A/67/275 (2012), para. 11.

⁷ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, paras.41.

⁸ '調查報告 109 司調 0044' (Investigation Report by Control Yuan in 2020 No.0044), Control Yuan, 2020, cybsbox.cy.gov.tw/CYBSBoxSSL/edoc/download/31605.p3-5, p. 62.

⁹ Amnesty International, “Taiwan: Execution of Taiwanese man is imminent: Cheng Hsing-tse” (Urgent Action, ASA 38/006/2012), 14 December 2012, www.amnesty.org/en/documents/asa38/006/2012/en/

¹⁰ Taipei Times, High Court acquits death row convict, 27 October 2017, <https://www.taipetimes.com/News/front/archives/2017/10/27/2003681122>

¹¹ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para.50

31.1 the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989;

31.2 Protocols No. 6 and No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1982 and 2002;¹²

31.3 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.

32. In addition, in 2015 the African Commission on Human and Peoples' Rights drafted and adopted an Additional Protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty, which is currently awaiting consideration and adoption by the African Union.¹³
33. The constitutive instruments of every international criminal court established in recent times (that is, from 1993 onwards) have excluded the death penalty from the punishments that these courts are authorized to impose for crimes under international law, including genocide, crimes against humanity and war crimes.¹⁴ These instruments include the Rome Statute of the International Criminal Court (ICC), which has now been ratified by 123 states.
34. The strengthening of the abolitionist vision under international law has been mirrored in the development of constitutions and constitutional jurisprudence of many countries. In its 1996 survey of the constitutions of all countries, Amnesty International noted that only 24 out of the then 57 abolitionist countries made reference to the abolition of the death penalty in their founding documents.¹⁵ Most recently, the organization has recorded that the constitutions of 61 of the 112 abolitionist countries explicitly prohibit the death penalty.¹⁶
35. National courts have been determining that the use of the death penalty is a violation of human rights as protected by national constitutions and international obligations undertaken by the country.

35.1 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 Constitution.¹⁷ Eight of the 11 judges also found that the death penalty violates the right to life. In its decision, the Court noted: "By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby. [...] Retribution cannot be accorded the same weight under our Constitution as the rights to life and dignity, which are the most important of all the rights...It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment would be. Taking these factors into account, as well as the elements of arbitrariness and the possibility of error in enforcing the death penalty, the clear and convincing case that is required to justify the death sentence as a penalty for murder, has not been made out."

35.2 On 4 August 2012, the Constitutional Court of Benin declared that, due to the country's ratification of the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, "no legal provision can now mention the death penalty" in the country.¹⁸ The decision led to the removal of death penalty provisions from the

¹² Azerbaijan is the only current member of the Council of Europe not to have ratified Protocol 13 (but it signed the treaty).

¹³ African Commission on Human and Peoples' Rights, "Final Communiqué of the 56th Ordinary Session of the African Commission on Human and Peoples Rights", 7 May 2015, para.33, www.achpr.org/sessions/info?id=218

¹⁴ These include the International Criminal Tribunal for the former Yugoslavia and for Rwanda; the Special Court for Sierra Leone; the United Nations Transitional Administration in East Timor (UNTAET) Regulation establishing the Special Panels for Serious Crimes in Dili, Timor-Leste; and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia.

¹⁵ Amnesty International, Constitutional provisions of the death penalty (Index: ACT 50/006/1996), 31 May 1996, <https://www.amnesty.org/en/documents/ACT50/006/1996/en/>

¹⁶ Andorra, Angola, Armenia, Austria, Belgium, Bhutan, Bolivia, Cabo Verde, Cambodia, Colombia, Congo (Republic of), Côte d'Ivoire, Croatia, Czech Republic, Djibouti, Dominican Republic, Ecuador, Finland, France, Georgia, Germany, Guinea, Guinea-Bissau, Haiti, Honduras, Iceland, Ireland, Italy, Kosovo, Kyrgyzstan, Liechtenstein, Luxembourg, Marshall Islands, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, North Macedonia, Norway, Panama, Paraguay, Portugal, Romania, Sao Tomé and Príncipe, Serbia, Seychelles, Slovakia, Slovenia, Sweden, Switzerland, Timor-Leste, Türkiye, Turkmenistan, Uruguay and Venezuela.

¹⁷ Constitutional Court of South Africa, *The State v. Makwanyane and Mchunu*, Case No. CCT/3/94.

¹⁸ Benin Constitutional Court Decision DCC 12-153.

Criminal Procedure Code by the National Assembly on 17 December 2012. In another landmark case, the Constitutional Court on 21 January 2016 determined unambiguously that the entry into force of the Second Optional Protocol to the ICCPR and its ratification by the Republic of Benin “now renders inoperative all legal provisions [including those of the Criminal Code] stipulating the death penalty as a punishment”.¹⁹ The Constitutional Court found: “[N]o legal provision contained in the internal legal order can any longer mention the death penalty; that, likewise, no criminal prosecution undertaken by any jurisdiction can have as its legal basis a provision stipulating capital punishment as the punishment for the offence committed, such that no one can now be sentenced to capital punishment in Benin.” This ruling effectively abolished the death penalty for all crimes in Benin and was followed by the commutation of the death sentences of the 14 remaining death row prisoners to life imprisonment on 21 February 2018.

35.3 In the USA, on 11 October 2018, the Supreme Court of the US state of Washington found the death penalty laws to be unconstitutional.²⁰ The Court found that the death penalty is “unequally applied – sometimes by where the crime took place, or the county of residence, or the available budgetary resources at any given point in time, or the race of the defendant”; “imposed in an arbitrary and racially biased manner” that “cannot withstand the ‘evolving standards of decency that mark the progress of a maturing society’”. As such, the Court found that “it logically follows that the death penalty fails to serve penological goals” of retribution and deterrence. The Court further noted the “local, national, and international trends that disfavor capital punishment more broadly. When the death penalty is imposed in an arbitrary and racially biased manner, society's standards of decency are even more offended. Our capital punishment law lacks ‘fundamental fairness’ and thus violates article I, section 14 [of the state constitution]”.

The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

36. Torture is a “direct and deliberate attack on the core of the human personality and dignity”.²¹ The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is recognized in the Universal Declaration on Human Rights (Universal Declaration) in its Article 5 as well as several international and regional human rights instruments, national constitutions and laws.²² Importantly, the prohibition of torture is a rule of customary international law, binding on all states whether or not they are parties to particular treaties which expressly contain the prohibition.²³ Having been recognised as a peremptory norm (*jus cogens*), the rule for the prohibition of torture has taken on a special status in the protection of human rights under international law and is to be given priority over any other conflicting legal obligations.²⁴ The prohibition of torture is “grounded in a widespread international practice and on the *opinio juris* of States.”²⁵
37. Although several aspects of the use of the death penalty – such as some methods of execution;²⁶ custodial conditions on death row;²⁷ and the failure to provide individuals on death row and their relatives with timely notification about the date of their execution²⁸ – have long been found as violating the prohibition under international law of torture and other ill-treatment, in recent years the question of whether the death penalty itself

¹⁹ Benin Constitutional Court Decision DCC 16-020.

²⁰ Washington Supreme Court, *State of Washington v. Allen Eugene Gregory* (No. 88086-7), (2018).

²¹ Manfred Nowak, Moritz Birk, and Giuliana Monina (eds.), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (OUP 2019), p.1.

²² Article 2 of the Convention against Torture; Article 7 of the International Covenant on Civil and Political Rights; Article 5 of the African Charter on Human and Peoples' Rights; Article 5 of the American Convention on Human Rights; Article 8 of the Arab Charter on Human Rights; and Article 3 of the European Convention on Human Rights.

²³ Committee Against Torture, General Comment No.2, UN Doc.CAT/C/GC/2, 24 January 2008, para.1; International Committee of the Red Cross/Red Crescent, Rule 90. Torture and Cruel, Inhuman or Degrading Treatment.

²⁴ Nigel Rodley and Matt Pollard, “The Treatment of Prisoners under International Law” (OUP 2009) pp.64-66.

²⁵ International Court of Justice, *Questions relating to the obligation to prosecute or extradite (Belgium v Senegal)*, Judgment, 20 July 2012, p.457, para 99.

²⁶ Human Rights Committee, *Kindler v Canada*, Communication No.470/1991, UN Doc. CCPR/C/48/D/470/1991, 11 November 1993, para.15.3.

²⁷ Judicial Committee of the Privy Council, *Pratt and Morgan v Attorney-General for Jamaica* [1993] UKPC 37; [1994] 2 AC 1; Human Rights Committee, *Christopher Brown v. Jamaica*, Communication No 775/1997, UN.Doc CCPR/C/65/D/775/1997, 11 May 1999, para. 6.13; and Human Rights Committee, Concluding observations on the sixth periodic report of Japan, UN Doc.CCPR/C/JPN/CO/6, 20 August 2014, para. 13.

²⁸ Human Rights Committee, *Vladislav Kovalev et al. v Belarus*, Communication No.2120/2011, UN Doc. CCPR/C/106/D/2120/2011, 27 November 2012, para. 11.10.

violates the prohibition of torture and other ill-treatment, independent of special practices, conditions or methods of executions, has been emerging.

38. In 2012, the then Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, considered whether a norm under international customary law against the death penalty is emerging or has emerged.²⁹ In a high-level panel discussion before the UN Human Rights Council, the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, remarked that “[w]hile customary international law had not yet evolved to prohibit the death penalty in all circumstances, which meant that it was theoretically possible to retain the death penalty in compliance with international law, in practice the increasingly rigorous conditions imposed by international human rights jurisprudence made it almost impossible to carry out the death penalty without violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”³⁰

39. In 2018, the Human Rights Committee reached a similar conclusion:

“Although the allusion to the conditions for application of the death penalty in article 6, paragraph 2 suggests that when drafting the Covenant the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, subsequent agreements by the States parties or subsequent practice establishing such agreements, may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances. The increasing number of States parties to the Second Optional Protocol, as well as by other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment. Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6, paragraph 6 and the Second Optional Protocol.”³¹

40. In 2022, Morris Tidball-Binz, the current Special Rapporteur on extrajudicial, summary or arbitrary executions, presented a report to the UN General Assembly to mark the 40th anniversary of the mandate, in which he “comes to the same conclusion that Méndez reached 10 years ago: the death penalty as currently practised renders it tantamount to torture.”³²

STATE PRACTICE SHOWS THAT THE GLOBAL TREND REMAINS OVERWHELMINGLY IN FAVOUR OF THE ABOLITION OF THE DEATH PENALTY, WHILE THE NUMBERS OF EXECUTING COUNTRIES AND EXECUTIONS RECORDED YEARLY HAVE BEEN DECLINING

41. Over the past decades, the UN system has worked to reduce the use of the death penalty and limit its use, shifting in more recent years to unequivocally encourage 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. If in 1984 the UN Economic and Social Council adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which set out the most basic guarantees to be observed in all death penalty cases,³³ more than three decades later the UN General Assembly adopted its first landmark resolution calling for the establishment of a “moratorium on executions *with a view to abolishing the death penalty* (emphasis added).³⁴

²⁹ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/67/279, 9 August 2012, paras.66-72.

³⁰ UN Human Rights Council, High-level panel discussion on the question of the death penalty, Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/36/27, para.16.

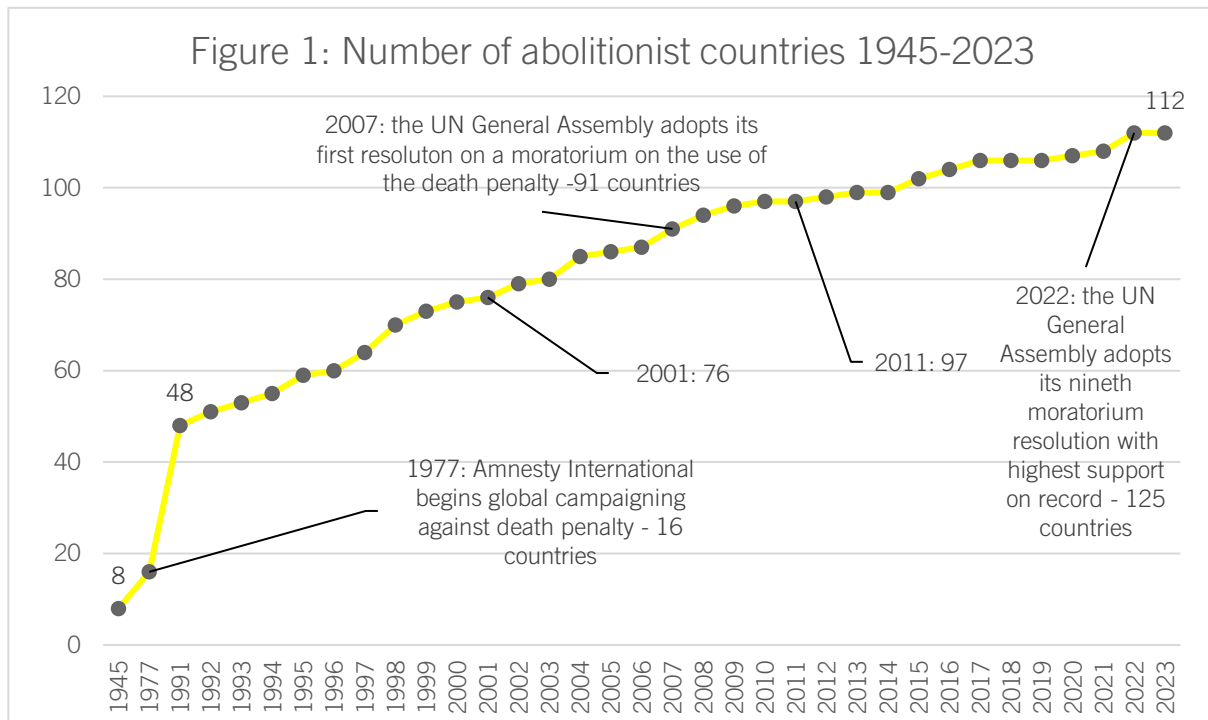
³¹ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para.50.

³² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/77/270, 5 August 2022, para.88.

³³ UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984. The safeguards were endorsed by the UN General Assembly in 1984 without a vote.

³⁴ UN General Assembly resolution 62/149 of 18 December 2007. The UN General Assembly adopted, with an increased cross-regional support, a further eight other resolutions on a moratorium on the use of the death penalty, resolutions 63/168 of 18 December 2008; 65/206 of 20 December 2010; 67/176 of 21 December 2012; 69/186 of 18 December 2014; 71/187 of 19 December 2016; 73/175 of 17 December 2018; 75/183 of 16 December 2020; and 77/222 of 15 December 2022. This most recent resolution enjoyed the support of 125 states.

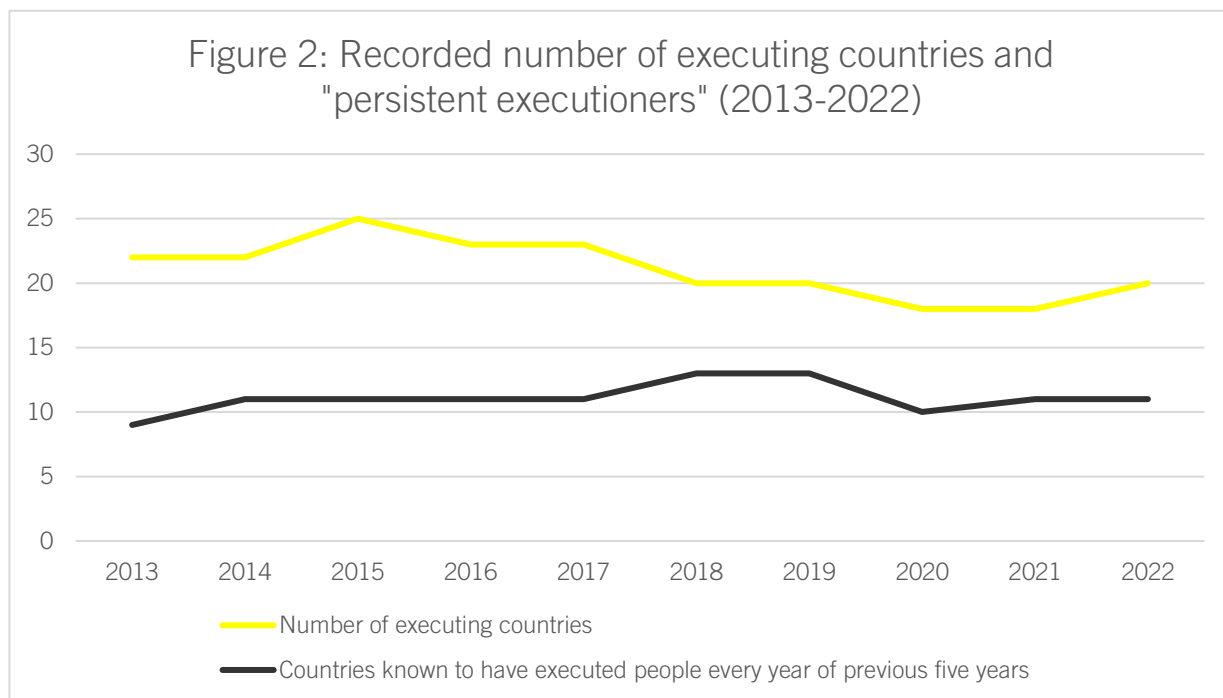
42. With regard to state practice, the global trend remains overwhelmingly in favour of the abolition of the death penalty. When the Universal Declaration was adopted in 1948, only eight countries had abolished the death penalty for all crimes: Colombia (1910), Costa Rica (1877), Ecuador (1906), Iceland (1928), Panama (1922), San Marino (1865), Uruguay (1907) and Venezuela (1863). In 1977, as Amnesty International began its global campaigning on this issue, 16 countries were abolitionist for all crimes. As of today, 112 countries have abolished the death penalty for all crimes and 144 in total are considered by Amnesty International to be abolitionist in law or practice. (see Figure 1). In the five-year period 2019-2023, six countries from all regions of the world, (The Central African Republic, Chad, Kazakhstan, Papua New Guinea, Sierra Leone and Suriname) abolished the death penalty for all crimes; Equatorial Guinea and Zambia abolished the death penalty for ordinary crimes only.³⁵ In the USA, abolition of the death penalty in Virginia in 2021 brought to 23 the number of US states that had abolished this punishment for all crimes, including 11 since the beginning of the millennium.³⁶



43. Ninety countries have voluntarily become state parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, choosing to be irreversibly bound under international law to the repeal of this cruel punishment. In the five-year period 2019-2023, four countries from all regions of the world, (Angola, Armenia, Kazakhstan and the State of Palestine) have ratified this Protocol.
44. State practice as assessed by Amnesty International further indicates that the use of the death penalty is confined to an isolated minority of countries. Amnesty International’s report on the global use of the death penalty in 2022 shows that executions were reported in 20 countries worldwide, 10% of the world total. Of these executing countries, 11, or 6%, were “persistent” executioners, meaning that they carried out executions every year in the previous five years (see Figure 2).

³⁵ Amnesty International, List of abolitionist and retentionist countries (Index Number: ACT 50/6591/2023), 15 May 2023, [.amnesty.org/en/documents/act50/6591/2023/en/](https://www.amnesty.org/en/documents/act50/6591/2023/en/)

³⁶ The states of Colorado, Connecticut, Delaware, Illinois, Maryland, New Hampshire, New Jersey, New Mexico, New York, Virginia and Washington. The District of Columbia has also abolished the death penalty.



45. The trend away from the use of the death penalty has also been reflected in the resort to executions in the Republic of China, which has remained largely executions-free in the five-year period 2019-2023 (one execution was recorded in 2020). This represents a significant decline compared to the previous five years (2014-2018), when 13 executions were recorded; and a stark contrast to the period 2009-2013, during which 21 people were executed.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS SET OUT AIMS AND PRINCIPLES TO BE APPLIED TO ALTERNATIVE PUNISHMENTS

46. In the context of the abolition of the death penalty, alternatives to the death penalty become a critical issue in reconciling the demands of victims of violent crime for justice with the need to define punishments that fully comply with international human rights law and standards. Penalties imposed following a conviction must be commensurate with the gravity of the crime and the circumstances of the offender;³⁷ and neither the punishment itself nor the way that a punishment is imposed may violate international standards.
47. Article 10(3) of the ICCPR sets out 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.³⁸ 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.³⁹

³⁷ See, for example, Article 4.2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc.CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para.6.

³⁸ Rome Statute of the International Criminal Court, Article 77(1).

³⁹ Rome Statute of the International Criminal Court, Article 110.

48. In several countries where the death penalty has been abolished, long custodial penalties have been introduced for crimes previously punishable by the death penalty. Among other examples:⁴⁰
- 48.1 in Sierra Leone the death penalty was replaced with terms of imprisonment of less of 30 years;⁴¹
- 48.2 in Mongolia, the death penalty was replaced in the new Criminal Code with life imprisonment effective from 2017;
- 48.3 in Suriname, the reformed Penal Code abolished the death penalty in 2015 and increased the sentences for severe crimes, including murder, from 15 to 20 years for temporary prison sentences and from 30 to 50 years as the maximum term for consecutive, increased and life sentences.⁴²
49. Furthermore, UN Safeguards guaranteeing the protection of the rights of those facing the death penalty state that a person sentenced to death must benefit when a change of law imposes a lighter penalty for the crime for which they had been convicted.⁴³

CONCLUSION

50. This submission shows that international law has long and unequivocally recognized the death penalty as a human rights issue. Its recent development has pointed to the emergence of a norm under international customary law prohibiting the use of this punishment under all circumstances. This recognition has also been demonstrated in the analysis of state practice, which shows that the global trend remains overwhelmingly in favour of the abolition of the death penalty, with a minority of countries that still resort to executions. The International Covenant on Civil and Political Rights, which the Republic of China has committed to, enshrines abolition of the death penalty as goal to be achieved in countries that still retain it. As highlighted by the Human Rights Committee, “the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights”.⁴⁴
51. For these reasons, Amnesty International Taiwan and the World Coalition Against the Death Penalty urge the Constitutional Court to declare that the death penalty constitutes a violation of human rights as guaranteed under the Constitution of the Republic of China (Articles 8 and 15).

⁴⁰ See also UN Economic and Social Council, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty – Report of the Secretary-General, UN Doc.E/2015/49, 13 April 2015, pp.60-62.

⁴¹ Sierra Leone Legal Information Institute, Sierra Leone Abolition of the Death Penalty Act, 2022, Act 6 of 2022, commenced on 21 April 2022, sierralii.gov.sl/akn/sl/act/2022/6/eng@2022-04-21

⁴² Amendments to the Criminal Code, Act of 30 March 2015 (SB 2015 no. 44), [dna.sr/wetgeving/surinaamse-wetten/wijzigingen-na-2005/wet-wijz-wetboek-van-strafrecht-\(30-maart-2015\)/](http://dna.sr/wetgeving/surinaamse-wetten/wijzigingen-na-2005/wet-wijz-wetboek-van-strafrecht-(30-maart-2015)/)

⁴³ Among other examples, Safeguard no. 2 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984; Article 15(1) of the International Covenant on Civil and Political Rights; Rome Statute of the International Criminal Court, Article 24(2); European Court of Human Rights, *Case of Scoppola v. Italy* No. 2 (Application no. 10249/03), Grand Chamber judgment of 17 September 2009, para. 108.

⁴⁴ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para. 50.