

International Commission against the Death Penalty
ROUNDTABLE ON THE ABOLITION OF THE DEATH PENALTY



Madrid, 8 October 2012

Foreword

For many years progress towards abolition of the death penalty was slow and with few champions. By the late 1970s, only 16 countries had abolished the death penalty for all crimes. Today, abolitionist nations are the overwhelming majority and according to the United Nations more 150 countries have rejected the death penalty or do not carry out executions.

Opposition to the death penalty is not exclusive to any particular region, political system, world religion, culture or tradition. It is now a global concern supported by States from all regions. UN General Assembly resolutions calling for a moratorium on the use of the death penalty cut across traditional political and geographical alliances. The European Union joins with Algeria, Brazil, Cambodia, Israel, Mongolia, Russia and South Africa in the call for a global moratorium on executions. The USA votes with China, Iran, India, North Korea, Syria and Zimbabwe in opposing the resolution.

More than sixty years after the adoption of the Universal Declaration of Human Rights the trend towards abolition is very clear. The call for repeal of capital punishment is no longer the preoccupation of the few. There is now a global movement calling for its abolition.

Despite the enormous progress that has been made it is important to take stock and review where we are in our global campaign to abolish the death penalty. The International Commission against the Death Penalty therefore invited academics together with representatives from intergovernmental organizations, non governmental organizations, lawyers and governments to a Roundtable in Madrid to review the progress made and identify strategic priorities. It was also a good opportunity to explore the complementary roles played by the different actors in the cause of abolition.

Despite the positive international trend towards abolition there is no room for complacency as long as some States continue to use the death penalty. But this decreasing number of retentionist States become even more isolated as more countries question the use of capital punishment as an effective tool of criminal justice. A human rights orientated justice system must protect the public from crime but without the inherent risks of executing the innocent, and the barbarity and cruelty of executions. Moreover, studies have shown that the death penalty is no more effective at deterring serious crimes than lengthy terms of imprisonment.

I hope that other countries will also join soon the community of states that have abolished the death penalty.

A handwritten signature in blue ink, appearing to read 'Federico Mayor', is positioned below the text.

Federico Mayor
President of the International Commission against the Death Penalty

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Summary report of discussion

1. Introduction¹

The purpose of the Round Table was to review developments on the death penalty and to identify legal and political challenges and opportunities for the coming five years. The meeting covered country, regional and thematic questions. Particular attention was given to identifying strategic priorities and to exploring the complementary roles of non-governmental organisations (NGOs), intergovernmental organisations (IGOs), and governments in achieving progress towards worldwide abolition.

The meeting was opened and presided over by Madame Ruth Dreifuss, a member of the International Commission against the Death Penalty (ICDP), and was attended by some 40 individuals. They included eight Commissioners and representatives of the Support Group of ICDP from the Norwegian, Spanish and Swiss governments, with the Norwegian government holding the current presidency.² The other participants included NGOs with active programs on death penalty issues, academics, experts, lawyers and representatives from European IGOs. Mr. Gonzalo de Benito Secades, Secretary of State for the Ministry of Foreign Affairs, Spain, welcomed the participants and made a brief statement on Spain's commitment to abolishing the death penalty worldwide.

To initiate the discussions Professor Roger Hood presented an analytical overview of developments relating to the death penalty and progress towards its worldwide abolition. On the positive side more than half the world's nation states are now abolitionist in law or in practice.³ Of the 91 states which retain the death penalty (excluding Benin and Mongolia), 47 have not executed anyone within the past 10 years or have recently announced a moratorium. Support for abolition has gathered momentum across the globe – including in countries and regions with diverse social and cultural structures, thus weakening culturally relativist positions and claims that abolition is an imperialist imposition or an assault on national sovereignty. Capital punishment is in decline in the USA. Only 12 of the 51 US state jurisdictions actually executed anyone in 2011, and only seven of them more than one person. Abolitionists have grounds for hoping therefore that – as in the case of *Atkins* and *Roper* – the US Supreme Court will soon find that “emerging standards of decency” will no longer tolerate the use of the death penalty in any part of the USA.

Despite progress, serious obstacles remain. It is clear that a moratorium is not in itself sufficient to prevent executions if clemency is not immediately granted, as the recent experience in the Gambia has shown.⁴ Furthermore, seven of the states which voted against the UN General Assembly resolution for a worldwide moratorium in 2010 were regarded as abolitionist in practice. A number of others abstained or signed the *Note verbale* objecting to the attempt to impose a moratorium. Sustained pressure is therefore essential to increase the number of “yes” votes and to build normative pressure for retentionist states to abolish the death penalty. Likewise, pressure should be exerted to encourage retentionist states to ratify the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol aiming at the abolition of the death penalty, binding these countries to *de iure* abolition. The signs are encouraging in this regard. Abolition of capital punishment is becoming a litmus test for countries purporting to respect international norms; and retentionist states risk being further isolated and stigmatised

¹ This report was prepared by consultant Victoria Forbes Adam based on notes taken at the meeting and papers and publications made available by participants.

² The Norwegian government holds the current annual presidency of the ICDP's Support Group (comprising 16 pro-abolition governments). Spain held the first presidency (2010-11) followed by Switzerland (2011-2012) and Norway from October 2012.

³ The paper is attached as Appendix 2.

⁴ Nine prisoners were executed in the Gambia in August 2012 on one day. The executions followed 27 execution-free years.

if they continue to practice it. The scales are tipping in favour of an emerging international norm which defines the death penalty as an outmoded, cruel and inhuman punishment. Professor Hood considers that there is a strong case for arguing that all states parties to the ICCPR (including those that are abolitionist in practice) are morally bound by Article 6(6) of the treaty to progress without delay to complete abolition of capital punishment.

2. Summary of outcomes

The meeting proceeded via reports from all the participants on current programs and activities, alongside discussions on challenges and priorities for development. To a significant degree the meeting endorsed the value of existing approaches – whether national, regional or international – and the need to persist in these areas.

- Lobbying for a **global moratorium on executions** and greater transparency on the use of the death penalty; and increasing the number of state ratifications of the Second Optional Protocol to the ICCPR, remain core international objectives.
- At the national level, efforts should continue to **restrict the scope and application of the death penalty** through the provision of effective legal representation, and strategic litigation to ensure adherence to international standards, end/restrict mandatory death sentences and strengthen fair trial guarantees. These efforts importantly serve the parallel objective of saving lives and protecting the immediate rights and welfare of death row prisoners.
- One new initiative in this area will seek to mobilise **European Union** Member States to provide **consular legal assistance to foreign nationals** facing the death penalty.

Thinking forward, participants agreed that the main challenges crystallised around the need to find new arguments and strategic angles to “persuade the unconvinced”. Tangible forward progress will depend on extending the boundaries, building new constituencies and mobilising them to speak out or act in support of abolition. Several themes and issues were discussed in this connection:

- The impact of the death penalty on a broader community beyond death row inmates was an emerging theme. At a minimum “**secondary victims**” could include the children of executed prisoners and the families of murder victims where the perpetrator was sentenced to death or executed. The abolition movement has focused primarily on offenders sentenced to death. However, there is a powerful case for arguing that under international law **states have responsibilities to address and mitigate the consequences of judicial executions on those left behind**. Such an approach would seek to uphold secondary victims’ rights to justice and reparation and promote justice systems based on healing and reconciliation rather than retribution.
- The possibility of creating a panel at the **UN Human Rights Council** to address questions relating to the rights and welfare of children of death row/executed parents was noted. Bringing a child rights perspective to the abolition movement could potentially incorporate a new group of influential stakeholders and contribute to the development of new areas of pro-abolition argumentation.
- **Secondary victims** can also play a powerful and authoritative role as **advocates for abolition**, contributing to a political climate where policy makers can be pro-victim and anti-death penalty. Participants welcomed this development and agreed that this group could be extended to include others, including those working within capital justice systems (prison wardens, guards, clergy, and medical practitioners and so on).

- **State responsibilities in relation to drugs enforcement assistance** could be more fully defined. New evidence strongly indicates substantial donor complicity in the use of the death penalty, often via funds channelled through the UN Office on Drugs and Crime (UNODC). While there has been some progress internationally to establish international standards in this area, the process needs accelerating, along with concerted efforts to advocate their implementation by UN and other international bodies, and by individual governments involved in drugs enforcement aid.
- **Expanding advocacy arenas and building new constituencies** was an agreed priority. There was some debate on the pros and cons of lobbying elites and decision makers, as opposed to efforts to shift public opinion and address its – often erroneous – views on the death penalty. There was consensus on the critical need to galvanise the support of parliamentarians, politicians, lawyers, relevant civil society organisations, mental health professionals and others with direct influence on death penalty laws, policies and practices. On the question of public opinion, it was noted that governments use public opinion frequently to justify its retentionist position. Surveys to establish how the population sees the death penalty, compared to alternative punishments, can be useful to underpin political arguments and to identify what would shift public opinion.
- **Building support for abolition in the Middle East and North Africa (MENA)**, and other countries with Muslim populations was identified as a critical challenge. Initiatives will need to address Islamic perspectives and Sharia law, since many governments use this to justify retention of the death penalty.
- Participants agreed on the value of establishing a **working group of Islamic scholars** to explore interpretations of Sharia law which could **support abolition**. Other efforts will continue to build networks of scholars to work on this issue. A meeting with the Arab League should also be considered.
- The creation and appointment of a **UN Special Envoy on the Death Penalty** was noted as a potentially valuable future development, although further evaluation is needed to establish how useful this would be, as well as how he or she would operate and relate to other mechanisms.

This report details the principle topics and themes discussed. It is organised thematically, although country-specific references are included where relevant throughout. Following “Chatham House Rules”, participants’ comments and observations are not attributed. However, information on NGOs current programs and activities are included along with the name of the NGO so that others can seek further information or materials if desired.

3. Restricting the scope and application of the death penalty

Universal abolition of the death penalty represents the final goal but there was strong consensus on the importance of strategies to achieve cumulative change or “milestones” representing progress towards realisation of this goal. Participants discussed a wide array of additional and ongoing strategies and programs which aim to progressively restrict the scope and application of the death penalty, a tactic described by one participant as “abolition by stealth”. These include effective legal representation and litigation, as well as legal and policy reform on the number of offences for which the death penalty can be imposed, and restrictions on/abolition of mandatory death sentences. The strategies also serve the important parallel objective of saving the lives of prisoners at risk of execution, as well as promoting humane treatment, protecting the immediate rights and welfare of death row prisoners, and ensuring due process in relation to individual cases. Participants were reminded that while the number of executions is falling there are still many thousands of prisoners on death rows around the world. Given this situation it is important to continue the call for death sentences to be commuted to terms of imprisonment.

Effective legal representation

The provision of effective legal representation prior to and during trials has proved to be a hugely important factor in saving lives and reducing the number of executions. Effective training for defence lawyers is therefore essential to ensure this assistance is available to death row prisoners. Participants referred to the Mexican Capital Legal Assistance Program, where free trial assistance to Mexicans facing the death penalty in the US has had significant success in avoiding and averting the death penalty. Results indicate that with early intervention defendants were much less likely to be sentenced to death. It was also mentioned that Indonesia has established a Migrant Workers Protection Task Force which looks at the situation of Indonesian nations facing the death penalty in other countries.

In a new development **Reprieve** is exploring ways to strengthen **consular assistance to foreign nationals from EU states**. Research on this topic has shown that the preference is for diplomatic and political approaches to predominate in such cases. While embassies have provided some legal assistance through *amicus curiae* briefs and funds for defence representation, these tend to be the exception and states have been reticent to get involved in legal proceedings. Further work will be carried out with the aim of mobilising EU Member States to substantially strengthen legal assistance to foreign nationals facing a death sentence or on death row. Such assistance could greatly increase the prospects for averting the use of the death penalty, as well as impacting profoundly on the political debate on abolition in these countries.

Building on this experience, the **World Coalition against the Death Penalty** provided information on a global project to produce a **manual to guide lawyers** working on death penalty cases. It will include information on best practice in defending capital cases, based on accumulated experience and human rights standards. The manual will deal with the legal process from the moment of arrest through to final clemency, guiding lawyers through the various stages of pre-trial detention, investigations, pre-trial motions, trial, sentences and appeals.⁵ The Coalition is currently trying to access national jurisprudence on death penalty trial and appeal processes and would welcome suggestions on which countries should be prioritised.

Strategic litigation

Participants commented that in many de facto abolitionist states, litigation represents **the critical obstacle to executions** being carried out. The **Death Penalty Project** has worked on the Caribbean, East Africa, and East Asia pursuing a strategy of litigation and harmonisation of international and national human rights standards, aimed at achieving more dynamic and contemporary justice systems, as well as reducing the number of death sentences and executions. **Reprieve** has been looking at cases where strategic litigation will challenge the number of offences for which the death penalty can be imposed, as well as fair trial issues. The first three years will focus on the USA, and they are planning to extend the program to Southeast Asia and the Middle East and North Africa.

Ending mandatory death sentences

Litigation can also aim to reduce the number of offences for which the death sentence is mandatory and/or to establish restrictive criteria for its application. The Death Penalty Project has used litigation to urge the introduction of discretion into courts where the death penalty is mandatory for some offences. It noted that in some countries the judiciary have developed important sentencing principles that restrict the applicability of mandatory death penalty statutes.

⁵ The manual will be launched at the 5th International Congress against the Death Penalty in June 2013.

The principles include reserving it to the most exceptional cases. Other principles state that all mitigation is relevant, with psychological and social reports playing an increasingly important role; and that procedurally the presumption is in favour of life, with the onus on the prosecution to show why a death sentence is needed. The guidelines have led to a restrictive position on the number of death sentences imposed and a substantial reduction in some countries. In Jamaica there are fewer than 10 prisoners on death row compared to hundreds a decade ago.

Important progress on mandatory death sentences was noted. The **Anti-Death Penalty Asia Network** (ADPAN) reported that the Deputy Prime Minister of Singapore announced in July 2012 that legislation would be introduced to give more discretion to the courts on imposing the death penalty for drugs offences. Mitigating circumstances could include that the defendant was a courier and cooperated with drugs enforcement agents, or that he or she had a mental disability. Under the new law death row prisoners will be able to apply for re-sentencing. Similar progress was reported from Malaysia. It was separately noted that the mandatory death penalty has now been abolished in 10 Caribbean countries, largely a result of litigation-induced pressure. Kenya, Malawi and Uganda have done the same.

Constitutional challenges

Participants reported some positive developments. In June 2012 the government of Ghana accepted the recommendation of the Constitution Review Commission to abolish the death penalty in its new constitution. In July 2012 the new Zimbabwe draft constitution contained restrictions on the application of the death penalty, including the prohibition of the mandatory death penalty. Nevertheless, in many countries death penalty provisions remain embedded in the constitution and cannot be abolished without a constitutional amendment (the Caribbean was cited as a region where this holds for several countries). Broader and multi-faceted strategies are therefore needed to build political momentum for constitutional change.

4. The broader impact of the death penalty – secondary victims

Discussions were held on the impact of the death penalty on a broader community of people than those sentenced to death and on death row. Participants agreed on the need to more fully explore the repercussions of the death penalty on this community of secondary victims and to identify and elaborate states' legal responsibilities in relation to them.

While there are no established definitions, secondary victims could include at a minimum family members of those sentenced to death and the families of the victims of their crimes. The abolition debate has historically focused primarily on those sentenced to death, but there are multiple reasons for a broader more holistic vision which encompasses those who suffer the immediate negative consequences of judicial executions. While largely undeveloped to date, there is a powerful case for arguing that under international law, states may have a responsibility to address and mitigate the consequences of such executions on those left behind. Such an approach, with its orientation towards the rights of victims, could ensure their rights to justice and reparation were adequately upheld, as well as promoting criminal justice systems based on healing and reconciliation rather than retribution.

For the medium to longer term, participants agreed on the value of extending the concept of secondary victims to encompass others, including those directly involved in the capital justice system, such as prison guards and wardens, medical practitioners, clergy, executioners and others. As one commissioner noted, involvement in executions tarnishes the dignity of those involved.

Children of parents sentenced to death

Very little research has been carried out on the impact of a parent's death sentence on their children. However, the limited existing evidence suggests that the children of an executed parent experience a uniquely traumatic, complex and isolated loss, often followed by an unsupported grieving process. This is particularly true in cases where the death penalty is imposed for domestic violence – in which some children can lose both parents. The Quaker UN Office Geneva (QUNO) has recently published a short survey of the scant existing evidence and is now initiating an awareness-raising project and further research to draw greater attention to the problem nationally and internationally, and to develop recommendations for government actions.⁶

The aim of the project is encourage and enable states to take responsibility for the full repercussions of the capital justice system. Research to date has involved contacting UN Permanent Missions in Geneva to request information on existing support for these children – practical, material and psychosocial. QUNO is in contact with psychologists and others involved in working with these children in the Caribbean, Uganda and the USA among others to further develop this area of work. Moving forward, it will be important to look at the longer term impact of the capital justice system on children and its consequences in terms of attitudes to the use of violence and conflict resolution.

The issue of the rights of children of incarcerated parents has recently emerged onto the international agenda, and in September 2011 a Day of Discussion on the Rights of the Child was devoted to this topic. In March 2012 the annual Human Rights Council resolution on the rights of the child included a specific paragraph on children of death row prisoners. It called on states to provide advance adequate information on a pending execution, to allow a last communication, and to make arrangements for the return of the body for burial, or at a minimum provide information on the location of the body.⁷

While the core focus remains the rights and welfare of affected children, this approach brings a child rights dimension to the abolition debate, providing opportunities to develop argumentation, set new agendas and build support among influential stakeholders within the child rights community.

Family members of murder victims

Judicial executions also have a major impact on the families of murder victims. **Murder Victims' Families for Human Rights (MVFHR)** opposes the death penalty on human rights grounds. It considers the family members of murder victims as "secondary victims" of the capital justice system and argues that states have a responsibility to adopt a more victim-centred state response to the crime of murder, embracing the needs of the families of murder victims, and upholding their rights to justice and reparation. Both are necessary elements for healing and bringing "closure" to a deeply traumatic event. A justice system which genuinely addresses the needs of victims should ensure that killers are effectively held to account via a system which incorporates a process for atoning for the crime committed and providing restitution to its victims.

MVHR argues for an international "**Declaration of principles of justice for the victims of crime**". It believes that the death penalty should be defined in law as an abuse of state power with specific state obligations to provide redress to its victims.

⁶ Helen F. Kearney, *Children of parents sentenced to death*, Quaker United Nations Office Geneva, February 2012, <http://www.quno.ch>.

⁷ The full text of the resolution is available at <http://www.crin.org/Law>.

There is a widely-held myth that survivors uniformly embrace and demand the death penalty. Political leaders may feel they have a moral obligation to provide an execution solution. Members of MVHR provide living refutation of this claim. It organises victim survivors to organise and speak out in political arenas and legislative battles. Such groups challenge fundamental assumptions and can play a powerful and authoritative role as advocates, contributing to a political climate where policy makers can be pro-victim and anti-death penalty. Ongoing projects focus on executions of the mentally ill and the problem of wrongful convictions.

Internationally MVHR has worked in Mongolia and created an association of victims which has great moral authority and was the first to speak out against the death penalty. The association is able to work with other abolitionists and to sit down with judges, lawyers, parliamentarians and opposition members to establish the case for abolition. Their work had a direct impact on Mongolia's decision to scrap the death penalty in 2012. Experience has shown that the voices of secondary victims resonate powerfully with the governments, policy makers and the general public, and these lessons learned can be applied in other country situations.

5. Donor state complicity through drugs enforcement assistance

Throughout the day it was noted that many of those sentenced to death have been convicted of drug-related crimes, and in some countries the majority of those executed were convicted of drugs offences. For example by early October, the Iranian authorities were believed to have executed at least 344 people since the beginning of 2012, including 135 executions which were not formally announced. The majority of those executed were convicted of drug trafficking. In Asia, of the nine countries with the mandatory death penalty, it is mandatory for drugs offences in seven.⁸ In Singapore 28 of the 34 prisoners on death row were convicted for drugs-related crimes.

Donor state complicity in facilitating the use of the death penalty for drugs offences was discussed, as one contributing factor, with a view to identifying effective strategies to address the problem. In a recent publication **Harm Reduction International**, which works to reduce death and harm associated with drug use, presented evidence to show that high levels of financial and technical assistance for drugs control enforcement programs, may have contributed to, and even facilitated, the use of the death penalty. For example the Australian Federal Police worked with the Indonesian police force to arrest the "Bali 9" who were subsequently sentenced to death. In practice little attention is given to human rights principles within the realms of anti-crime funding and assistance programs.

Substantial funds and other forms of assistance are channelled through the UNODC, often destined for countries with a record of human rights violations, including the death penalty.⁹ Iran provides one example. It has executed more than 10,000 individuals for drugs offences since 1979, including 1,000 people hanged between early 2010 and the end of 2011. Despite its stated commitment to upholding respect for human rights the UNODC has emphasised Iran's "success", including one case where a "joint planning cell" led to the arrest of 61 people. Requests to UNODC for information on the fate of the 61 have remained unanswered.

There has been some effort to clarify the legal responsibilities of IGOs under international law. The International Law Commission (ILC) has issued draft articles offering some guidance. Based on similar articles relating to states responsibilities for wrongful acts (approved by the UN General Assembly in 2001), they state inter alia that IGOs are "internationally responsible" for assisting a state in the

⁸ The nine are Afghanistan, **Brunei, China, India, Laos, Malaysia, Myanmar**, Pakistan and **Singapore** (bold indicates mandatory death penalty for drugs offences).

⁹ These issues are fully documented and analysed in the report *Partners in Crime, International funding for drug control and gross violations of human rights*, Harm Reduction International, <http://www.ihra.net>.

commission of an “intentionally wrongful act”. Likewise the European Parliament has called for the Commission “to develop guidelines governing international funding for country-level and regional drug enforcement activities to ensure such programmes do not result in human rights violations, including the application of the death penalty; stresses that the abolition of the death penalty for drug-related offences should be made a precondition for financial assistance, technical assistance, capacity-building and other support for drug enforcement”.¹⁰

6. Building constituencies – obstacles and opportunities

There was strong consensus throughout the meeting on the need to broaden the debate and build multiple new constituencies to speak out in favour of abolition and support national and international strategies to achieve goals and objectives. Identifying new arguments and reaching new audiences yet to be persuaded are among the main challenges facing the global campaign.

Parliamentarians – who may ultimately enact the laws needed for abolition or a moratorium – comprise one key constituency. The **United Kingdom (UK) All-Party Parliamentary Group on the Death Penalty** seeks to help the UK government to be more effective in its abolition policy. It raises questions and supports public debate in retentionist countries, or on individual cases. The Group has a program to travel to retentionist countries to meet parliamentarians and discuss abolition from a political perspective. It has also created a database of supportive parliamentarians internationally and hopes to develop information-sharing mechanisms and support members of parliament to speak out publicly. Lawyers are another important group. The **World Coalition against the Death Penalty** reported on a project working with its own member organisations and a network of criminal defence lawyers globally.

Participants recognised that a key impetus must additionally come from **civil society** – a potentially enlightened and independent voice for abolition. As one participant commented, while governments and parliaments take the decision, if anti-death penalty arguments find an echo in civil society, they can serve as a powerful lobbying force. The World Day against the Death Penalty (10 October) has successfully served this objective globally and nationally. It began as a campaign to mobilise public opinion and now encompasses a multitudinous array of activities at the international and national levels. Forthcoming events mentioned by participants included events at the UN Sub-Commission on Human Rights and the European Parliament, and a campaign to be launched by the French government, as well as numerous events involving national governments and NGOs across the world.

Penal Reform International (PRI) reported that work with the media and civil society represents a key focus in three regions – East Africa, Central Asia and MENA. The programs aim to strengthen capacity to work at grass roots level in building public awareness, and to bring civil society at all levels into dialogue including with government officials. A multi-regional conference, held in London in September 2011 on “Progress towards Abolition of the Death Penalty and Alternative Sanctions that Respect International Human Rights Standards”, facilitated an open and free dialogue between parliamentarians and representatives of civil society.

In a similar vein, ADPAN has published two reports demonstrating that across the Asia-Pacific region death penalty trials fall far short of minimum international fair trial standards. ADPAN’s campaign aims to mobilise civil society and build public awareness of these critical issues. The campaign reports present a wealth of evidence, documenting flaws at all stages of the process, including the use of “evidence” obtained through torture, denial of or inadequate legal representation during trials and appeals, mandatory death sentences which violate the presumption of innocence, denial of opportunities to appeal and so on.

¹⁰ See *Partners in Crime*, note 8 above.

The reports, along with eight individual appeal cases, have been translated into 11 languages and widely distributed among activists working across the region.¹¹

The death penalty and Sharia law

Participants repeatedly emphasised the need to develop the abolition campaign across the MENA region, as well as in Muslim countries in Asia (Indonesia and Pakistan were mentioned, Afghanistan is another). The endeavour poses considerable challenges. Progress will depend upon addressing Islamic perspectives on the death penalty since governments frequently use Sharia law to justify its use. In volatile political climates governments and parliamentarians are fearful of challenging a practice which – according to some interpretations – is inscribed in religious law. The topic thus becomes taboo, restricting the scope for civil society and media discussion.

PRI has ongoing programs in Jordan, Morocco and Tunisia and sees providing a platform for progressive Islamic scholars as a priority, with the potential for eventually lobbying the government on more liberal interpretations of Sharia law. One area of research and analysis focuses on evidentiary requirements for the death penalty to be applied under Sharia law. Offences for which the death penalty can be imposed include adultery, apostasy, hiraba (armed/highway robbery and various forms of banditry) and murder, along with drugs offences, homosexuality and sorcery. There are indications that if the stringent evidentiary requirements are applied, executions would become almost impossible to carry out. PRI is also considering the possibility of a publication which establishes more precisely what is stipulated by Sharia law, since claims about its provisions are often misleading or not in fact upheld by the Koran.

The **Ensemble contre la peine de mort** (ECPM) reported on a forthcoming conference in Rabat (12 to 14 October 2012). The meeting will bring together five justice ministers and representatives from 12 countries in the MENA region.¹² It will provide opportunities to discuss abolition from different angles and perspectives, including the religious dimension. ECPM is also seeking to identify religious leaders prepared to publicly oppose the death penalty, and is supporting the development of a network of members of parliament who could support abolition. Engagement with and by the Arab League is potentially useful, although it is difficult to access and engage with this body. One suggestion was for **International Commissioners to seek a meeting with members of the Arab League** to initiate a discussion on death penalty issues.

There was broad consensus that the impetus should come from within the region, rather than be imposed from outside. The process should respect cultural and religious sensitivities while upholding universal human rights principles. It was noted that the purpose of the Rabat meeting is not to issue a rallying cry or a call to end to the death penalty; rather it will serve as a forum for exploring the issues and initiating a cross-regional dialogue. In this connection it was suggested that a **working group on the death penalty under Sharia law** comprising Islamic scholars be created to explore interpretations which could support abolition.

One participant noted that it may be possible to achieve a constructive political dialogue with Islamic countries, citing the example of Saddam Hussein's execution, which coincided with a hunger strike in Italy to press for a moratorium on the use of the death penalty. This non-violent initiative had an impact in the media across the Arab world, where many had reacted emotionally to the execution, thus provoking discussion on the arguments in favour of and against the death penalty. One participant urged treating cultural relativism with caution and the importance of trusting the democratic process. Abolition is achieved by politics and legislative change and the government in power may not be the one that finally

¹¹ *When Justice Fails: Thousands Executed in Asia after Unfair Trials* is available at <http://www.amnesty.org>.

¹² The justice ministers will come from Egypt, Jordan, Morocco, Occupied Palestinian Territory and Tunisia.

abolishes the death penalty. Civil society organisations can also lobby the government via opposition parties.

Public opinion

Public opinion and public support for the death penalty were mentioned as a major challenge across the world, with East Africa, Asia and the Caribbean given special mention. It was, however, generally agreed that in any country common assumptions about the public's views are frequently used as a political justification for restricting public debate or maintaining a retentionist position. Despite some dissent, public opinion polls to establish the population's actual views (or indeed the lack thereof) were agreed to provide useful evidence to underpin political argumentation.

As one participant noted, such evidence can substantiate the message that "people will still vote for you even if you support abolition". In a democracy it may also be important to understand what particular arguments hold sway with the public. In the USA for example, in some states arguments related to the excessive cost of the death penalty were found to have more leverage than those on racial bias in sentencing and executions. Arguments also need to be tailored to specific political and cultural contexts. In Trinidad and Tobago, evidence on the execution of innocent victims did not sway the population. Experts have suggested that in Trinidad and Tobago religious leaders would be the key actors needed to influence public opinion.

Some interesting data were cited. For example in Trinidad and Tobago the government believes that the population sees the death penalty as an essential deterrent but a public opinion poll found that deterrence had minimum salience. In fact, the poll revealed that while the vast majority are in favour of the death penalty, only 25 per cent are in favour of mandatory death sentences. Similarly, a large survey in China found a low salience of interest and – unsurprisingly – low levels of knowledge of the death penalty among the population. Only 54 per cent of those surveyed said they were against moving towards abolition, suggesting they were in advance of politicians and the state. Data from such polls can be used to confront governments with evidence across a range of issues – innocence, unfairness, lack of evidence and so on, all of which may be germane to changing the positions of decision makers.

A more detailed example was provided by **Death Penalty Focus** and its work on the 6 November 2012 vote on ending the use of the death penalty in California (Proposition 34). Backed by detailed research and analysis of what would impact on public opinion, the campaign focused on four key arguments against the death penalty: excessive cost and poor use of funds which could be spent on law enforcement; its failure as an effective deterrent or law enforcement measure; wrongful executions of innocent defendants; and replacement of the death penalty with life imprisonment without parole. The 6 November vote was subsequently defeated by 52 to 48 per cent – a result which was intensely disappointing for campaigners. It did, however, confirm that the number of those opposing the death penalty is growing at a rate that no one could have foreseen a decade ago.

There was some discussion over the moral and humanitarian dimensions of the California campaign which sought de facto abolition – "neither abolition nor execution", and the implications of unending life imprisonment – itself arguably a form of cruel, inhuman or degrading treatment or punishment.¹³ The goal of abolition is a moral absolute. Nevertheless one participant commented that they had never met a death row prisoner who would choose death over life without parole. From a pragmatic point of view the US evidence indicates that life without parole is needed to win the vote to end the use of the death penalty in

¹³ This position is set out in some detail in the *Interim Report of the Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*, 9 August 2012, UN Doc. A/67/279, <http://www.un.org/en/ga/third/67/documentslist.shtml>.

California. One participant suggested that a win would be a victory for evolving standards of decency, speeding up the process, changing the balance of public opinion and providing political cover for other American states to move in the same direction.

7. International strategies and the UN's role

Various UN mechanisms and processes were discussed throughout the meeting, some of which are ongoing and established. Newer suggestions and proposals requiring fuller consideration included the possibility of advocating the appointment of a Special Envoy on the Death Penalty, and greater engagement with the Human Rights Council. Suggestions were also put forward for the ICDP and NGOs to engage with retentionist states who have ratified the Rome Statute of the International Criminal Court (ICC), which precludes the death penalty for crimes under the jurisdiction of the Court. The following provides a brief resume of key strategic priorities and critical themes.

Global moratorium on executions – the UN General Assembly (UNGA) Resolution

In December 2012 the UNGA will vote for the fourth time on a resolution calling on states that still maintain capital punishment to establish a moratorium on the death penalty with a view to abolishing it. The resolution will additionally call on states to: restrict the number of offences for which the death penalty is applicable; make available information on the use of the death penalty; and to respect international standards protecting the rights of those facing the death penalty. The resolution is not binding but it is a powerful moral and political instrument that may also contribute to progress towards establishing abolition as a principle of international customary law.

With respect to the voting it was noted that progress in recent years is in large part owed to increased cross-regional support. For 2012 therefore it will be important for countries from Asia and Latin America to steer the dialogue, with EU countries being less visible; and for African states such as Gabon and Rwanda to be active in the negotiating task force. In terms of voting, it was noted that Russia and South Africa are crucial and that it would be helpful if both sign up as co-sponsors early in the process so that countries looking for regional guidance have time to follow suit. Others noted the need to focus lobbying efforts on the Organization of the Islamic Conference – as many in this group of countries vote against the resolution.

Hands Off Cain reported on its strategies to increase the number of countries who will vote in favour of, sponsor, or at a minimum, abstain at the next vote. It has developed a detailed lobbying plan, identifying target countries, with a focus on Africa, and is also working on strengthening the content of the resolution, particularly on the question of transparency.

Strengthening the call for greater transparency, ideally an end to state secrecy on all aspects of the use the death penalty was generally agreed to be a priority for the resolution. It was noted that 99 per cent of executions are carried out by authoritarian governments. Small positive changes in this regard were noted. For example in 2011 and 2012 Singapore changed its policy and published data on its use of the death penalty, including executions during previous years, having accepted UN Universal Periodic Review recommendations to make available statistics and other factual information on the death penalty. Singapore appears to be concerned about its international reputation – and has responded accordingly – suggesting this could serve as a point of pressure in relation to other states.

The Second Optional Protocol to the ICCPR

States' ratification of the Second Optional Protocol to the ICCPR, along with relevant implementing legislation, was agreed to be a critical element in the abolition process, "locking the door" against states'

later reneging on legal or policy commitments to end the use of the death penalty. The **World Coalition against the Death Penalty** reported on its global advocacy efforts to increase the number of states who have ratified Protocol and to promote its implementation in national law. Priority states include Angola, Armenia, Benin, Bolivia, Burundi, Dominican Republic, El Salvador, Latvia and Poland.¹⁴ And as Professor Hood stated, efforts must continue for China, Comoros, Cuba and St Lucia to move from signature to ratification of the ICCP, and for Malaysia, Myanmar, Oman, Qatar, St Lucia and Singapore to sign and ratify the treaty.

Special Rapporteurs and the death penalty

The thematic focus of the 2012 annual report of the **Special Rapporteur on extrajudicial, summary or arbitrary executions** is the death penalty – current and future issues.¹⁵ The report presents the scope of its engagement with the death penalty, including on how judicial executions can fall within the purview of the summary and arbitrary executions mandate. Among the issues considered are the requirements of transparency and accountability, laying out the international legal bases for transparency obligations. Among others, the report addresses the need for transparency of process and information in respect of each individual case, as well as transparency of publicity in respect of a state's overall policies and practices. The report also addresses the questions of complicity and donor state assistance as legal issues of which the mandate is seized, including the provision of incriminating evidence or investigation aid. The Special Rapporteur was unable to attend but circulated in advance of the Roundtable a note on his work.

The August 2012 interim report of the **Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment** devotes a section to the death penalty.¹⁶ It states that the prevailing view in doctrine and jurisprudences is that under Article 6 of the ICCPR the death penalty cannot be considered per se a violation of the prohibition on torture, or cruel inhuman or degrading treatment, but that such interpretations may change over time. Likewise, the report argues that while Article 1, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been used to justify the claim that pain or suffering arising from lawful sanctions categorically cannot be torture, this reading is belied by extensive treaty body authority findings on the prohibition relating to various forms of lawful corporal punishment. Moreover, it argues that even if considered lawful under international law, the actual practice of the death penalty is not left to the unfettered discretion of the state but must itself comply with other elements of the ICCPR, notably the prohibition of cruel, inhuman or degrading treatment under Article 7. In practice executions today often violate this absolute prohibition. Taking into consideration these issues, the Special Rapporteur urges serious reconsideration of whether the actual practice of the death penalty amounts to cruel, inhuman or degrading treatment or even torture.

8. The role of inter-governmental organisations

The following provides a brief summary of the ongoing aims, objectives and activities presented by the European IGOs attending the Roundtable, along with information on current initiatives, processes and resources of potential value to NGOs and other civil society organisations working on death penalty issues.

Council of Europe (CoE)

¹⁴ Latvia became abolitionist for all crimes in January 2012.

¹⁵ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, 9 August 2012, UN Doc. A/67/275, available at <http://www.un.org/en/ga/third/67/documentslist.shtml>.

¹⁶ *Interim Report of the Special Rapporteur on Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment*, 9 August 2012, UN Doc. A/67/279, available at <http://www.un.org/en/ga/third/67/documentslist.shtml>.

Abolition has been a key objective and core value of the CoE for more than three decades and no executions have been carried out in the CoE area for the last 15 years. The only European state to carry out executions is Belarus. When that country ceases to execute Europe will be a death penalty-free zone. The European Convention on Human Rights (ECHR), and its Additional Protocols 6 and 13 provide the legal framework for CoE initiatives and actions in this arena. All CoE bodies and institutions are actively involved on death penalty issues, including the European Court of Human Rights (the Court), the Parliamentary Assembly, the Committee of Ministers and the Secretary-General, with the latter regularly intervening on individual cases and successfully obtaining pardons or commutations to life imprisonment. The Court ruled in 2010 (*Al-Saadoon and Mufdhi vs the UK*) that the death penalty could be considered inhuman and degrading and contrary to Article 3 of the ECHR. The CoE will continue to press for Russia to abolish the death penalty in law, and for Belarus (a non-member) to move towards ending the use of the death penalty. The CoE has made abolition of the death penalty a prerequisite for membership.

The CoE sees awareness-raising activities as an important aspect of its work, particularly efforts to persuade European citizens that capital punishment is wrong, and that there is no contradiction between effective law enforcement and criminal justice systems based on respect for human rights. The CoE has developed legal standards in these fields, and monitors and assists member states to implement them.

Other work has involved exploring alternatives to the death penalty which uphold human rights and humanitarian principles – “prison is the punishment, offenders are not sent there to receive punishment”. One interesting area is the development of best practice and standard setting for the long-term treatment of offenders considered dangerous and where there is seen to be little prospect for reform and rehabilitation.

European Union

The EU holds a strong and principled position against the death penalty; its abolition is a key objective for the Union’s human rights policy. Abolition is also a pre-condition for entry into the Union. The elements and objectives of the EU’s policy are set forth in the EU guidelines on the death penalty adopted by the Council of Ministers in 2003 and updated in 2008.¹⁷ The Guidelines state that the EU seeks universal abolition of the death penalty, with the immediate establishment of a moratorium on its use if necessary; and, where the death penalty does exist, to call for a reduction in its use and to insist it is carried out in line with certain minimum standards, as well as aiming to obtain accurate data on sentenced and executed persons.

The issue of the death penalty is raised in multilateral and bilateral engagements with non-EU countries, including by raising concerns on individual cases where minimum standards have been violated, and by promoting ratification of the Second Optional Protocol to the ICCPR.

Organisation for Security and Cooperation in Europe (OSCE)

The OSCE has 56 Member States spanning Asia, Europe and North America. It comprises a number of independent institutions of which the Office for Human Rights and Democratic Institutions (ODIHR) is one. With respect to the death penalty and other human rights issues, the legal framework is provided by a set of principles which overlap with international law. Member States commit to upholding OSCE principles which are considered binding.

¹⁷ The *EU Guidelines on the death penalty* are available at http://europa.eu/legislation_summaries/human_rights. The Guidelines are expected to be updated again by 2013. It is hoped they will include specific references to drugs offences and to juvenile offenders.

The OSCE aims to increase transparency in the application of the death penalty and to promote compliance with international standards, as well as facilitating the exchange of information on abolition. It raises concerns on cases using quiet diplomacy, including the execution of mentally ill prisoners, and torture.

Death penalty work is to some extent limited by the commitments which do not require abolition. Rather, they take note of Article 6 of the ICCPR and its Second Optional Protocol. Since the commitments are by consensus the OSCE is constrained by Belarus and the USA which are both retentionist states. However, they do require Member States to keep abolition under consideration (thus implying it is desirable). They require that where capital punishment is retained, it must only be imposed for certain crimes, be regulated by law and must not interfere with other human rights commitments. OSCE standards include prohibition of torture and cruel, inhuman and degrading treatment or punishment, which impact on the use of the death penalty.

One potentially useful resource is the OSCE's annual report, *The Death Penalty in the OSCE Area*. This publication provides a comparative overview of the death penalty in the OSCE region. The information is garnered from participating states as well as other sources such as media, and civil society. The process is intended to encourage states (both abolitionist and retentionist) to engage in a peer review and to promote debate. NGOs can register and actively engage with the process, providing information and analysis which could greatly enrich debate across a range of topics – including the linkages between the death penalty and torture, fair trial standards and safeguards and so on.

Inter-American Commission on Human Rights (IACHR)

The IACHR could not attend the meeting but participants may wish to consult their 2011 report *The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition*.¹⁸

9. Conclusion

The meeting was closed by the Chair, Madame Ruth Dreifuss, who applauded an impressive array of programs and activities. She thanked the participants for their interventions and for the rich and constructive discussions throughout the day. She noted that these inputs would inform the ICDP's reflections and forthcoming plans. The Chair endorsed the meeting's view that multi-faceted strategies are needed to achieve the common goal of worldwide abolition of the death penalty. Each organization will have its own identity, messages and approaches and all are valid. The path to abolition involves many steps – campaigns, legal reform, constitutional change, political decisions and treaty ratifications among others. She reaffirmed the ICDP's commitment to supporting and complementing all these endeavours to the best of its abilities.

¹⁸ IACHR, *The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition*, 31 December 2011, OEA/Ser.L/V/II, Doc. 68, <http://www.cidh.org>.

APPENDIX 1

Opening remarks

H.E. Gonzalo De Benito
Secretary of State for Foreign Affairs, Spain

Sra. Presidenta,

Permítame en primer lugar darles la bienvenida a todos, miembros de la Comisión, representantes de la secretaría, componentes de la troika, así como delegados de diversas organizaciones internacionales y de ONGs, a una nueva reunión en Madrid de la Comisión Internacional contra la Pena de Muerte.

España, que estuvo muy presente en el nacimiento y los primeros pasos de esta Comisión, se ha sentido siempre muy comprometida con los esfuerzos de la comunidad internacional por erradicar la pena de muerte, por su carácter extremadamente cruel e inhumano, por poner en juego nada menos que la vida humana cuando a menudo la condena que precede a la ejecución se asienta sobre una base inestable e insegura, lo que ha provocado no pocas muertes de inocentes sin vuelta atrás, así como por la falsedad, de acuerdo con probadas estadísticas, de su pretendido carácter disuasor.

Por ello venimos, junto con el resto de los socios de la Unión Europea, esforzándonos por liderar esta lucha internacional, la de poder lograr una abolición universal de la pena capital, y entre tanto conseguir al menos consolidar una moratoria efectiva, siendo éste uno de los objetivos prioritarios de nuestro afán en preservar y proteger los derechos humanos, en nuestro país y en el mundo.

Pero no es una lucha que deban y puedan dar en solitario los gobiernos, cada vez más numerosos, solidarios con este objetivo, pues el impulso último, y el verdadero motor, provienen en última instancia, y en cualquiera de nuestros países, de la sociedad civil en su conjunto.

Por ello tienen tanto valor colectivos como éste, compuesto de expertos ilustres e independientes a título individual, testigos y baluartes de ese compromiso irrenunciable, y por eso también es significativo y alentador que la Comisión haya decidido reunirse hoy en Madrid con representantes precisamente de la sociedad civil, para así poder contrastar mejor los retos y las oportunidades que presenta el momento actual.

Sé que una de las inquietudes de esta Comisión es cooperar en la preparación y asegurar el éxito del V Congreso Mundial contra la Pena de Muerte, que, también a instancias de la sociedad civil, está previsto se celebre el año próximo en Madrid, precedido por el encuentro regional de Rabat dentro de unos días. Para nuestras autoridades también esa celebración es motivo de orgullo y reflejo de ese compromiso al que intentaremos responder con entusiasmo, fieles a la ya tradicional hospitalidad de Madrid.

No es casual, estoy seguro, que precisamente dentro de dos días vayamos a celebrar una vez más el Día Internacional contra la Pena de Muerte. Ojalá las deliberaciones de esta Comisión, Sra. Presidenta, constituyan una valiosa pieza adicional en el engranaje de ese mecanismo de voluntades y esfuerzo que entre todos debemos alimentar y construir para poder un día coronar con éxito el edificio de la abolición universal de la pena capital.

Mucha suerte y muchas gracias.

APPENDIX 2

Introductory review of the current situation as regards progress towards the abolition of the death penalty and possible next stages

Roger Hood
Professor Emeritus of Criminology University of Oxford

I have been asked to make a few preliminary remarks about the progress of the abolitionist movement as a background to your discussions – although I would be surprised if I am able to say anything that is new to you.

At present, 106 – that is over half – of 198 independent countries in the world - have abolished the death penalty, 99 of them have rejected it completely in all circumstances – an enormous increase from the 12 countries that had done so by 1966. A new pattern has been set. The majority of countries since the end of the 1980s have moved swiftly from executions to complete abolition: for example, Mongolia has, in effect, just abolished capital punishment by ratifying Protocol No 2 to the ICCPR only four years after the country had ceased executions. Furthermore, the majority (85 per cent) of countries which abolished the death penalty for the first time since 1989 did so completely in ‘one go’, so to speak, unlike earlier abolitionist countries, such as the Netherlands, Italy and the UK, that first abolished it for ordinary crimes before extending it to crimes against the state and military offences often many years later.

Should efforts therefore now concentrate solely on complete abolition as the only acceptable objective? Desirable as it is that the death penalty is swept away completely, there may be a pragmatic case in relation to countries suffering political violence and terrorism for first persuading them to abolish it for all ordinary crimes even if they claim that there are overwhelming political barriers to enabling them to abolish it for terrorist killings at the present time. India may be a case in point. The death penalty for murder is rarely imposed (in 2010 in just 0.5 per cent of convictions) and there have been no executions since 2004. Nevertheless there is strong political pressure to retain and use capital punishment for attacks on the state, as in the case of the Mumbai massacre, where the death sentence imposed on the sole surviving gunman (Mohammed Kasab), was recently confirmed by the Indian Supreme Court.

Among the 91 countries that retain the death penalty in law (excluding Benin and Mongolia), 47 have not executed anyone within the past 10 years or more recently have announced a moratorium. These are classified by the United Nations and the *deathpenaltyworldwide* website as abolitionist de facto. Amnesty International regards 33 of them as truly ‘abolitionist in practice’. Should these be routinely added to those who have abolished the death penalty de jure as is commonly done when presenting the total number of abolitionist countries? The recent experience of Gambia proves that a moratorium is not enough if people continue to be sentenced to death and not immediately granted clemency and given a substitute sentence of imprisonment.

Furthermore, lengthy periods free of executions do not necessarily signal that the case for universal abolition has been accepted. It should be recalled that only 109 countries cast their vote in favour of the resolution for a world-wide moratorium at the UN in 2010, and that while only 42 (22 per cent) voted against, they including seven regarded as abolitionist in practice. Thirty-five countries abstained. Of 32 listed by Amnesty as abolitionist in practice who took part, only 10 voted in favour of the resolution seven voted against and 15 abstained: altogether, 11 signed the *Note verbale* objecting to the attempt to impose a

moratorium.¹⁹ Surely these countries should be targeted, for it is the weight of the favourable vote, and the real total of those who have abandoned capital punishment in their laws, that will be decisive in demonstrating to retentionist countries that they are becoming more and more marginalized.

Another target should be the four retentionist countries that have signed but not yet ratified the ICCPR (China, Comoros, Cuba and St Lucia), and the eight that have yet even to sign the Treaty. In addition to these 12 active executing states there are four others that retain the death penalty but are abolitionist in practice. Given the importance of the ICCPR and especially the Second Optional Protocol in cementing abolition once achieved, it seems to me very important not to overlook the value of pressing these 16 countries to ratify the ICCPR – in particular to press China and Cuba to move from signature to ratification and for Burma, Malaysia, Oman, Qatar, Singapore and St Kitts to sign and ratify the treaty.

I need hardly say that this is because although Article 6 (2) of the treaty requires retentionist states to restrict the scope of capital crimes, Article 6 (6) does not permit them to invoke the fact that they have done so as a reason for delaying or preventing the abolition of capital punishment. Furthermore Article 7 proscribes ‘any cruel, inhuman or degrading treatment or punishment’ in all states party to the Covenant.

There can be no doubt that the emphasis on universal ‘human rights’ has added greatly to the normative, moral force propelling the abolitionist movement. But so have two other related developments that have greatly weakened the defensive posture of the remaining retentionist nations.

The first has been referred to, namely the speed of increase – like a tidal wave – of the number of abolitionist countries within a mere quarter of a century. This has created a normative pressure on those who have lagged behind, raising concerns in those countries for their national reputation in the human rights field, as is being evidenced, for example, by debates in China and Japan. As one prominent and influential Chinese senior scholar, Professor Zhao Bingzhi of Beijing Normal University put it recently at an international meeting: ‘Abolition is an inevitable international tide and trend as well as a signal showing the broad-mindedness of civilized countries... [abolition] is now an international obligation’.

Second, the spread of abolition throughout the world to include countries of varying cultures and social and political structures has severely undermined the argument of those who have taken a cultural relativist’s position on this issue. Although abolition is largely-European led, it has been embraced in South America, in many parts of Africa, among secular Muslim states, and is beginning to make headway in Asia, as seen by declining rates of execution in China, Malaysia, Singapore and Thailand.

In the United States too capital punishment is in decline. Five states have recently abolished it and the Governor of Oregon has announced a moratorium. California will hold a plebiscite in November. Only 12 of the 51 US state jurisdictions actually executed anyone in 2011 and only seven of them more than one person. The impression often given, that in America there is enthusiasm everywhere for executions, is now wide of the mark. Public support has fallen from 80 per cent in 1994 to 61 per cent in 2011. Those who campaign for abolition worldwide can hope that it will not be many years before the US Supreme Court will be able to find that the majority of States, in line with a majority of countries worldwide, do not support the death penalty for anyone, and therefore, following its jurisprudential precedents established in *Atkins* and *Roper*, rule that ‘emerging standards of decency’ will no longer tolerate the use of this cruel and unusual punishment for any crime in any part of the USA.

Only 44 countries (22 per cent) have executed anyone within the past 10 years and not yet announced a moratorium. Last year only 20 nations carried out a judicial execution and only nine countries regularly

¹⁹ Brunei, Central African Republic, Eritrea, Grenada, Laos, Burma, Niger, Papua New Guinea, Sierra Leone, Swaziland, Tonga.

execute more than 10 persons a year: China, Iran, Iraq, North Korea, Saudi Arabia, Somalia, Vietnam, Yemen and the USA. The set-back in Gambia this autumn when nine persons were executed on one day after 27 execution-free years came as a shock, but it was heartening when the threat to execute all 37 other prisoners on death row was quickly suspended after strong international condemnation, especially from the African Union.

All this has made the claim that the abolitionist movement is an imperialist invention, that it is an assault on sovereignty and can be justified as a cultural expression, or by appeal to public opinion, ever harder to sustain. In particular, the argument that capital punishment is a 'domestic criminal justice issue' not a 'human rights issue', as if it is either one or the other, is based on a false antithesis. Whatever system of criminal justice a country may chose there must be limits to the power that the state can be permitted to exercise over persons accused of and convicted of crimes, however serious: limits defined by universal human rights principles which apply to all citizens of the world.

Abolition of capital punishment is clearly becoming the litmus test for all countries that purport to respect international human rights norms. The scales have tipped decisively against retentionist states. Those that remain will become more and more isolated and stigmatized. They will come under increasing pressure to protect the human rights of all their citizens, even the worst behaved among them, and to accept as an international human rights norm that the death penalty is an outmoded, cruel and dehumanizing punishment. In my view it should be made clear to all states party to the ICCPR who retain the death penalty in their law (including those that are 'abolitionist in practice') that they are morally bound by the universalistic goal of that Treaty to fulfil their obligation under Article 6 (6) to do nothing to delay or prevent the final abolition of capital punishment.

APPENDIX 3

List of participants

| Surname | Name | Organization |
|---------------------|-------------|---|
| | | Participants |
| Alexandridis | Antonis | EU European External Action Service (EEAS) |
| Arroyo Zapatero | Luis | Academics for Abolition |
| Brett | Rachel | Quaker UN Office, Geneva (QUNO) |
| Chenuil | Raphael | Ensemble contre la peine de mort (ECPM) |
| Cushing | Renny | Murder Victims Families for Human Rights (MVFHR) |
| Donatelli | Maria | World Coalition against the Death Penalty (WCDP) |
| Fisher | Omer | Organization for Security and Co-operation in Europe (OSCE) |
| Foa | Maya | Reprieve |
| Gunawa | Ricky | Harm Reduction International |
| H.E. Baroness Stern | Vivian | UK All-Party Parliamentary Group on the Death Penalty |
| Hood | Roger | University of Oxford |
| Jabbar | Parvais | The Death Penalty Project |
| Kearney | Helen | QUNO, Geneva |
| Lehrfreund | Saul | The Death Penalty Project |
| Macalesher | Jacqueline | Penal Reform International (PRI) |
| Marazziti | Mario | Comunità di Sant'Egidio |
| Maunion | Antonio | Academics for Abolition |
| Polakiewicz | Jorg | Council of Europe |
| Radelet | Michael L | University of Colorado, Boulder , USA |

| | | |
|------------|------------|---|
| Vischer | Louise | Anti-Death Penalty Asia Network (ADPAN) |
| Zamparutti | Elisabetta | Hand off Cain |
| Zitrin | Elizabeth | Death Penalty Focus |
| Wetzel | Jan Erik | Amnesty International |

Members of the ICDP

| | |
|-----------------------|----------|
| Badinter | Robert |
| Bedjaoui | Mohammed |
| Dreifuss | Ruth |
| Duvivier Pierre-Louis | Michèle |
| Kuçuradi | Ioanna |
| Mattarollo | Rodolfo |
| Najjar | Ibrahim |
| Richardson | Bill |

Representatives of the Support Group

| | |
|---------|-------------|
| Cabrera | Juan Manuel |
| Chuard | Nathalie |
| Fraile | Cristina |
| Koller | Paul |
| Rives | Carmen |
| Strand | Lene |
| Willie | Petter |

Secretariat of ICDP

| | |
|---------------|--------|
| Kuçuqi | Eriona |
| Macpherson | Martin |
| Vivó Cavaller | Asunta |

APPENDIX 4

Factsheet on the International Commission against the Death Penalty



Factsheet on the International Commission against the Death Penalty

The International Commission against the Death Penalty (ICDP) was established on 7 October 2010 in Madrid, as a result of the Spanish Initiative to reinforce the global trend towards the abolition of the death penalty.

ICDP was established in order to contribute with its work to promote, complement or support any action which aims at **obtaining the universal abolition of the death penalty**.

The International Commission

ICDP is composed of several personalities of international prestige in matters of human rights. Due to the prestige of its members and its regionally balanced composition, the International Commission has a high visibility on the international level. It acts with full independence and strives for the highest attainable level of neutrality.

Its members are:

Federico Mayor (Spain). President of ICDP. Former Director General of the UNESCO and Former Minister of Education and Science of Spain

Jose Luis Rodriguez Zapatero (Spain), Former Prime Minister of Spain

Giuliano Amato (Italy). Former Prime Minister of Italy

Louise Arbour (Canada). Former UN High Commissioner for Human Rights and Former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

Robert Badinter (France). Former Minister of Justice of France

Mohammed Bedjaoui (Algeria). Former Foreign Minister of Algeria, Former Judge in the International Court of Justice

Ruth Dreifuss (Switzerland). Former President and Minister of Home Affairs of the Swiss Confederation

Michèle Duvivier Pierre-Louis (Haiti). Former Prime Minister of Haiti

Asma Jilani Jahangir (Pakistan). President of the Human Rights Commission of Pakistan

Ioanna Kuçuradi (Turkey). UNESCO Chairperson of the Philosophy and Human Rights Department and Director of the Center of Research and Implementation of Human Rights in Maltepe University (Turkey)

Gloria Macapagal-Arroyo (Philippines). Former President of the Philippines

Rodolfo Mattarollo (Argentina). Former Deputy Secretary for Human Rights in Argentina

Ibrahim Najjar (Lebanon). Former Minister of Justice

Bill Richardson (USA). Former Governor of New Mexico

Objectives and Activities

The objectives of the ICDP are:

- **Promote the abolition *de jure* of the death penalty.** ICDP promotes the abolition of the death penalty in the legislation of countries carefully considered. This is especially the case for countries that apply a *de facto* moratorium on the use of the death penalty.
- **Promote the establishment of a global moratorium.** ICDP aims at achieving a most widespread and effective implementation of a moratorium on the application of the death penalty, with a view to its total abolition.
- **Call for suspension of executions contrary to International Law.** ICDP solicits the suspension of executions in cases where International Law restricts its application, in particular, when it affects the most vulnerable groups of society (child offenders, pregnant women, persons with mental disorders or illness).

ICDP pursues these objectives in a strategic and selective manner and engages particularly in the following activities in order to achieve them:

- Collaborate and intervene before high representatives and personalities of specific countries, along with International and Regional Organizations and civil society representatives.
- Make appeals and statements on matters of concern relating to the abolition of the death penalty.
- Participate in conferences and seminars, as well as in campaigns to mobilize public opinion.
- Dissemination of information and presentation of papers at international forums.
- Promote intellectual and artistic works in favour of the abolition of the death penalty.

The Support Group

The work of the ICDP is backed and financed by a geographically diverse group of countries that are committed to the abolitionist cause on a global and regional scale.

The Support Group is composed by the following countries: Algeria, Argentine, Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Norway, Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey.

The Support Group carries out its functions under the coordination of a rotating yearly Presidency which begins in October. Norway is holding the current Presidency.

The Secretariat

The Secretariat is responsible for organizing the work of the Commission and gives continuity to it. It further coordinates the activities of the Support Group and receives information relative to the question of the death penalty.

Contact Information

For more information on the ICDP please visit our official website www.icomdp.org or contact the Secretariat.

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