

Moving Away from the

Death Penalty

Lessons in South-East Asia

“The death penalty has no place
in the 21st century.”

Ban Ki-moon, UN Secretary-General



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*Office of the High Commissioner for Human Rights
Regional Office for South-East Asia*

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Special thanks also for the support of Professor William Schabas who, prior to his participation in the seminar, conducted a technical mission to Bangkok in 2012 to assist the Regional Office in developing a strategy to support countries in the sub-region in their effort towards the abolition of the death penalty.

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Foreword

This publication of the OHCHR Regional Office for South-East Asia comes at a very important juncture where there is a sense that the entire region is ‘moving away’ from capital punishment. Some States are fully abolitionist (Cambodia, Timor-Leste, and the Philippines), others are abolitionist in practice (Brunei Darussalam, Lao PDR, Myanmar), while others have an unofficial moratorium in place (Thailand). Some are undertaking important reductions in numbers of executions and other reforms (Singapore, Malaysia), while in others, the direction seems more uncertain (Indonesia, Vietnam). Fundamentally, it is a positive picture of progress and one consistent with the worldwide trend. The continuation of this trajectory should be encouraged so this region may eventually be free of capital punishment.

In 2012, I was invited by the Regional Office to undertake a technical mission to assist it with the development of a strategy to support countries of the region in their efforts toward abolition. In October 2013, I also participated in the “Expert Seminar on Moving Away from the Death Penalty in South-East Asia”, convened with the Ministry of Justice of Thailand. It provided a good platform for stakeholders in this region to engage in discussion on this issue. As a professor of international law with particular expertise on the death penalty, I am pleased to be a part of this three-year initiative that has culminated in the production of this very insightful and constructive publication.

Important issues such as the question of threshold of the “most serious crimes”, the use of the death penalty for drug-related crimes, the right to fair trial, and the role of public opinion and political will and leadership are especially critical and have been well addressed in this document. More importantly, this study provides a very useful overview of the law and practice of the death penalty in the region and how South-East Asian countries have measured up to the standards prescribed by international law on the use of the death penalty.

In the last 10 years, there has been significant development in the legislation on the death penalty in South-East Asia, with abolition finally firmly established in the Philippines, a reduction of the scope of the applicability of the death penalty in Singapore and Viet Nam, and commutations of sentences in Malaysia, Myanmar, Singapore and Thailand. I am confident that more countries in South-East Asia will take significant steps towards the abolition of the death penalty in the coming years. Given that context, this publication will be a useful resource for abolition-oriented reform for stakeholders at various levels of this debate.

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Introduction

“The death penalty has no place in the 21st century”, United Nations Secretary-General Ban Ki-moon declared on 2 July 2014 at a special event to encourage States to implement a moratorium on the death penalty.¹

This declaration resonates globally as around 160 countries in the world have either abolished the death penalty, introduced a moratorium or do not practice it.² Recent legislative reforms in South-East Asia regarding the death penalty generally correspond with that trend. The range of offences for which the death penalty applies and other reforms in the region denote incremental but tangible progress.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for South-East Asia has engaged with stakeholders in advocating for the abolition of the death penalty in countries of the region. The Regional Office collaborated with the Ministry of Justice in Thailand to organize an Expert Seminar on “Moving Away from the Death Penalty in South-East Asia” in Bangkok on 22 - 23 October 2013.³ Participants laid the ground for establishing a forum for intraregional exchange between key stakeholders on international and regional law and practice regarding the death penalty.⁴

The present publication provides an extensive review of global trends in death penalty matters, a summary of the applicable international legal standards, and the current status of legislative reform related to the death penalty in South-East Asia. As a product of the OHCHR Regional Office for South-East Asia, this publication is intended to be a resource for further discussions in the region toward the abolition of the death penalty.

¹ Ban Ki-Moon, United Nations Secretary-General, in remarks at the panel on “Best practices and challenges in implementing a moratorium on the death penalty”, New York, 2 July 2014. Available from www.un.org/sg/statements/index.asp?nid=7840

² Navi Pillay, former United Nations High Commissioner for Human Rights, opening remarks at the “High-Level Panel Discussion on the Question of the Death Penalty, Human Rights Council 25th Session”, Geneva, 5 March 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14339&LangID=E. See also Report of the Secretary General of the United Nations on the Question of the Death Penalty to the Human Rights Council, A/HRC/27/26, paragraph 5.

³ OHCHR Regional Office for South-East Asia, “International Experts Welcome Efforts Toward the Abolition of Death Penalty in South East Asia”, Press Release, Bangkok, 23 October 2013. Available from http://bangkok.ohchr.org/files/PRESS%20RELEASE_Death%20Penalty%20Seminar.pdf

⁴ The Expert Seminar had participants from various Governments, the ASEAN Intergovernmental Commission on Human Rights, national human rights institutions, non-governmental organizations, as well as international experts, lawyers, and academia in the region.

1. Global Trends

1.1 *Global progress towards abolition*

Abolition of the death penalty in a state's legislation is a firm step in upholding the fundamental and inherent right to life that is enshrined in Article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and security of person."⁵ That principle is reinforced in Article 6 of the International Covenant on Civil and Political Rights: "Every human being has the inherent right to life. This right shall be protected law. No one shall be arbitrarily deprived of his life."⁶ The United Nations Human Rights Committee, the treaty body under the Covenant, has stated in its General Comment 6 on the right to life that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by [State] authorities" as means of protection against the arbitrary deprivation of life.⁷

An exception to this provision may be permissible: Paragraph 2 of Article 6 of the International Covenant states that the sentence of death may be imposed only for the "most serious crimes" in countries that have not abolished the death penalty.⁸ However, the drafters of the ICCPR were already paving the way for the move towards the abolition of the death penalty. The last paragraph of article 6 of the ICCPR provides that "nothing in this article shall be invoked to delay or prevent the abolition of capital punishment in any State party to the Covenant". This move materialized in 1989 through the adoption of the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, which states that "no one within the jurisdiction of a State Party to the present Protocol shall be executed".

The Special Rapporteur on extrajudicial, summary or arbitrary executions⁹ has also concluded that the International Covenant "allows a narrowly defined exception by which life may be taken by the State which has not yet abolished the death penalty and envisages its progressive restriction."¹⁰ The death penalty therefore is a permissible exception in a State that has not yet abolished it; but only when applied restrictively and not arbitrarily, and it should be considered in the perspective of its eventual abolition.

State legislation restricting the use of the death penalty is a definitive indicator on the State's compliance with international human rights law. The removal of death penalty from laws ensures that executions are not only halted but withdrawn from the criminal justice system, thus denying the State the ability to take life absolutely and irreversibly. The status of legislation on the applicability of the death penalty is thus a good measure of how committed a State may be on abolition. As of December 2014, a total of 101 Member States of the United Nations had abolished the death penalty for all crimes and 7 for ordinary crimes, while 81 had ratified the Second Optional Protocol to the International Covenant (see table B.1).

The death penalty has been abolished for all crimes in a steadily increasing number of States. Where it has been retained, it is in general used only occasionally. According to the most recent annual report on death sentences and executions by Amnesty International,

⁵ United Nations General Assembly, Resolution 217 A (III).

⁶ United Nations, *Treaty Series*, vol. 999, p. 171.

⁷ "General Comment No. 6: Article 6 (Right to life)", in "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies", Human Rights Instruments, vol. I. (HRI/GEN/1/Rev.9 (Vol. I)), p. 177, at para 3.

⁸ See section 3.1 for a discussion of "most serious crimes".

⁹ Contained in A/67/275, p. 23, at para 116.

¹⁰ While it follows from paragraph 2 of Article 6 of the International Covenant that States parties are not obliged to abolish the death penalty, General Comment 6 of the Human Rights Committee also states that the language in paragraph 6 of the same article strongly suggests that abolition is desirable. HRI/GEN/1/Rev.9 (Vol. I), loc. cit., at para 6.

nine countries carried out executions every year from 2009 to 2013: Bangladesh, China, Iran (Islamic Republic of), Iraq, the People's Democratic Republic of Korea, Saudi Arabia, the Sudan, the United States and Yemen. Five of these have been using the death penalty with high frequency: China, Iran (Islamic Republic of), Iraq, Saudi Arabia and the United States. Most other States that retain the death penalty do not apply it frequently.¹¹

Most States that have abolished the death penalty in practice but not in law do not return to its use. A minority of de facto abolitionist States have resumed executions or reintroduced it in national laws but have not carried out executions after suspending the practice for several years. Some of those States have then again suspended its use. Of the 35 de facto abolitionist States, two have conducted executions in the past 10 years (table B.2).

1.2 Global call for a moratorium

In 2007, in its Resolution 62/149, on “Moratorium on the use of the death penalty,” the General Assembly expressed its “deep concern about the continued application of the death penalty” and called on “all States that still maintain the death penalty”, inter alia, “to restrict progressively the use of the death penalty and reduce the number of offences for which it may be imposed; and to establish a moratorium on executions with a view to abolishing the death penalty.”¹² The vote on this resolution, consisting of 104 in favour and 54 against with 29 abstaining, fairly reflects the global outlook on the use of the death penalty.

The General Assembly subsequently adopted Resolution 63/168 in 2008, Resolution 65/206 in 2010 and Resolution 67/176 in 2012, with voting patterns that reveal growing support for a moratorium on capital punishment (see figure 1).¹³ The number of Member States voting in favour of the moratorium has increased, while the resistance against it has decreased: some that once opposed it now abstain from voting.¹⁴

In its 2012 Resolution 67/176 on “Moratorium on the use of the death penalty”, the General Assembly reiterated its “calls upon all States to establish a moratorium on executions with a view to abolishing the death penalty”. It also calls upon “States that have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard”.

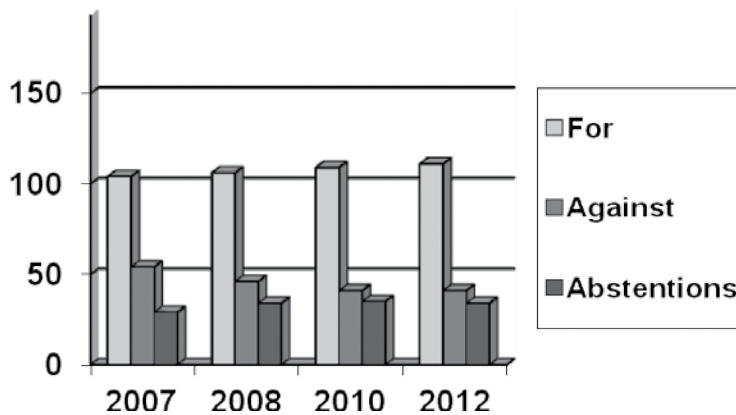
¹¹ Amnesty International, *Death sentences and executions 2013* (London, 2014), p. 34. Available from http://issuu.com/amnestypublishing/docs/death_sentences_and_executions_2013

¹² See *Official Records of the General Assembly, Sixty-second Session, Plenary Meetings*, 76th meeting (A/62/PV.76), p. 17.

¹³ See *Official Records of the General Assembly, Sixty-third Session, Plenary Meetings*, 70th meeting (A/63/PV.70), p. 17, *Official Records of the General Assembly, Sixty-fifth Session, Plenary Meetings*, 71st meeting (A/65/PV.71), p. 19, and *Official Records of the General Assembly, Sixty-seventh Session, Plenary Meetings*, 60th meeting (A/67/PV.60), p. 17, respectively.

¹⁴ Amnesty International, “United Nations General Assembly Resolutions Calling for a Moratorium on the Use of the Death Penalty”. Available from www.amnesty.org/en/death-penalty/united-nations-general-assembly-resolutions-calling-for-a-moratorium-on-the-use-of-the-death-penalty

Figure 1. Global aggregate voting on resolutions on “Moratorium on the use of the death penalty”



1.3 Application of the death penalty

While some 160 countries have either abolished the death penalty, observed a moratorium, or ceased practicing it,¹⁵ a minority of countries still practice it, often for drug-related offences. In some of these countries, the death penalty is mandatory for drug-related offences. The mandatory death penalty is problematic because it goes against the prohibition of the arbitrary deprivation of life and violates the right to fair trial.¹⁶ Among the Member States of the United Nations, 32 still apply the death penalty in cases of drug-related offences, although fewer actually carry out executions for such offences.¹⁷ Some, including Iran (Islamic Republic of), Saudi Arabia and China, use the death penalty very frequently, with a large proportion of the high rates of execution being applied for drug-related offences; particularly in Iran (Islamic Republic of).

The concern here is that efforts to combat drug crimes might work against the narrow interpretation that is prescribed for the application of the death penalty. There is no credible evidence that the death penalty deters drug crimes any more than lengthy imprisonment does. It is not the severity of punishment that deters wrongdoers, but its certainty. To curb crimes, the focus should therefore lie on reforming the justice system and rendering it more effective, while also ensuring that it is humane. Progress in tackling drug crimes could thus come at needless cost to human rights.

¹⁵ Pillay, *op. cit.*

¹⁶ Please see page 11 for further clarification.

¹⁷ United Nations News Centre, “Secretary-General calls on States to abolish death penalty”, 3 July 2012. Available from <http://www.un.org/apps/news/story.asp?NewsID=42382#.VBZdAi6SzaY>

2. International Legal Standards

“The application of the death penalty almost invariably entails cruel, inhuman and degrading treatment in violation of international law.” – Former United Nations High Commissioner for Human Rights, Navi Pillay.¹⁸

Section 2 examines the key human rights standards of the use of the death penalty.

The use of the death penalty is discouraged explicitly or implicitly in international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol aims at its abolition. Numerous resolutions and agreements of the General Assembly and the Human Rights Council also support a move away from the death penalty, as do statements and guidance from other international and regional bodies. Despite international trends and standards against the death penalty, a minority of States persist in retaining the controversial practice.

2.1 Most serious crimes

“The inherent right to life” is guaranteed in the first paragraph of Article 6 of the ICCPR, with only one exception stipulated in paragraph 2 of the same Article: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”

This provision spells out the limiting circumstances in which the right to life may be curtailed: only in countries that have not abolished the death penalty and under strict limitations, within a perspective of the eventual abolition of the death penalty.

The concept of “most serious crimes” is fundamental to understand how and when the death penalty may be lawful under international human rights law. The Human Rights Committee has stated clearly in its General Comment 6 on the right to life that:

“The Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant.”¹⁹

Given that the ICCPR has been widely ratified, the confusion here is not about agreement on the restricting standard, but rather on the interpretation of the limits set out in this provision of the Covenant. The term “most serious crimes” was not precisely defined in the Covenant and was only later clarified in General Comment 6 and has therefore lent itself to a range of interpretations. As a result, the limits of applicability for the death penalty have been stretched and extended to a wide range of offences in some States. While the universality of the fundamental right to life is uncontroversial, the interpretation of how to uphold this right in relation to the application of the death penalty has evolved. Subsequently the limits on the use of the death penalty as an exception to the right to life have become increasingly restrictive.

¹⁸ Navi Pillay, former United Nations High Commissioner for Human Rights, “Moving away from the Death Penalty: Lessons from National Experiences”, Foreword. Available from http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

¹⁹ HRI/GEN/1/Rev.9 (Vol. I), loc. cit., at para 7.

Pursuant to international human rights jurisprudence, Secretary-General Ban Ki-Moon stated in his 2013 report “Question of the death penalty”²⁰ that the term of “most serious crimes” should only be applied to the crime of murder or intentional killing.” The report denounced the use of the death penalty for drug-related offences, economic crimes, political crimes, adultery, and offences relating to consensual same-sex relationships. The most recent and narrow interpretation of the “most serious crimes,” by the Special Rapporteur on extrajudicial, summary or arbitrary executions concurs with that position. In his report submitted to the General Assembly in 2012, the Special Rapporteur concluded that “In countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases”.²¹

The international standard on interpreting “most serious crimes” means that the death penalty should be eliminated for crimes that do not meet the required limits of this provision, particularly drug-related offences, economic crimes, political crimes, adultery, and offences relating to consensual same-sex relationships . Imposing the death penalty for such crimes will therefore clearly constitute a violation of Article 6, paragraph 2, of the ICCPR. The interpretation of “most serious crimes” has built on growing jurisprudence, expert opinion, and existing objective safeguards that attest to the same principles. Constraints to prevent the arbitrary deprivation of life therefore limits the range of offences for which the death penalty is applicable, and other substantive restrictions, as well as procedural restrictions.

Even though the death penalty has long been defended as a tool for deterring serious crimes to maintain safety and security within a State, and while public support for the application of the death sentence may often favour punishing through the death penalty certain categories of offenders who have committed serious crimes, no conclusive evidence exists for its value as a deterrent.²² Recent research on the effect of capital punishment on homicide, for example, does not establish “whether capital punishment decreases, increases, or has no effect on homicide rates.”²³

Investing in measures to address issues of public security and crime, such as more effective policing, and a fair and functioning criminal justice system, could be a more valuable strategy for the management of serious crimes.²⁴ Abolishing the death penalty requires commitment to manage crime with other measures such as competent law enforcement personnel, as well as a strong and creative leadership to gain buy-in from the people for such a change in criminal justice system.²⁵ Time is required for committed political leadership to gain support and to build the institutional infrastructure conducive to such a transition.²⁶

²⁰ A/HRC/24/18, p. 7, at para 24.

²¹ A/67/275, op. cit., p. 14, at para. 67; quoting Roger Hood and Carolyn Hoyle, *The Death Penalty*, 4th ed. (Oxford, Oxford University Press, 2008), p. 132.

²² Preamble to Resolution 62/149 on the Moratorium on the use of the death penalty adopted by the General Assembly (A/RES/62/149), Preamble to Resolution 65/206 on the Moratorium on the use of the death penalty adopted by the General Assembly (A/RES/65/206), Preamble to Resolution 67/176 on the Moratorium on the use of the death penalty adopted by the General Assembly (A/RES/67/176), and Dr Jacqui Karn, *Policing and Crime Reduction: The evidence and its implications for practice* (London, The Police Foundation, 2013), p. 3. Available from <http://www.police-foundation.org.uk/uploads/catalogerfiles/policing-and-crime-reduction/police-foundation-police-effectiveness-report.pdf>

²³ Daniel S. Nagin and John V. Pepper, “Deterrence and the Death Penalty”, National Research Council, (Washington, DC, National Academy of Sciences, 2012), p. 2.

²⁴ Amnesty International, *Not making us safer: Crime, public safety and the death penalty*, (London, Amnesty International Publications, 2013), p. 4. Available from <http://www.amnesty.org/en/library/asset/ACT51/002/2013/en/a862c002-448f-4640-8192-7873cb5b8c42/act510022013en.pdf>

²⁵ International Commission against the Death Penalty, *How States abolish the death penalty*, (Oslo, 2013) p. 6. Available from http://issuu.com/icdp/docs/report_english

²⁶ That said, there are other elements that can be integral to the abolition of the death penalty; judicial decisions and political pressure from regional institutions (such as the Council of Europe) can be as critical as the political will and leadership to initiative legislative reform.

2.2 Mandatory death penalty

Mandatory death penalty is the removal of judicial discretion when imposing capital punishment, which prevents any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence, and disregards any related mitigating factors. International human rights law prohibits the mandatory imposition of the death penalty.

The Human Rights Committee has stated that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of Article 6, paragraph 1 of the ICCPR", and is fundamentally incompatible with the right to fair trial and due process guarantees established in Article 14.²⁷

Special Rapporteurs on extrajudicial, summary or arbitrary executions²⁸ have stated that under no circumstances should the death penalty be mandatory.²⁹ Mandatory death penalty undermines the application of human rights law, because sentencing must reflect assessment of the factors in each case to ensure that the defendant's human rights and the narrow limits on the use of the death penalty have been respected.

2.3 Fair trial and due process guarantees

"No judiciary, anywhere in the world, is so robust that it can guarantee that innocent life will not be taken, and there is an alarming body of evidence to indicate that even well-functioning legal systems have sentenced to death men and women who were subsequently proven innocent."-- Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights

The right to fair trial and due process is well established in international law. An unfair trial, failure to adhere to minimum guarantees for defence, or denial of the right to review, could result in the wrongful conviction of an innocent person. In cases that concern the death penalty, errors are clearly fatal and cause the arbitrary deprivation of a person's life.³⁰ The gravest mistake of any criminal justice system is to inflict the death penalty on an innocent person.³¹ The highest standards of fairness should be upheld because the taking of life is an absolute and irreversible action. The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that it is arbitrary to impose the death penalty where the proceedings do not adhere to the highest standards of fair trial.³²

The right to fair trial has been established in Article 14, paragraph 1, of the ICCPR:

*"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*³³

The fair trial guarantees are detailed in the subsequent paragraphs of Article 14 of the ICCPR. General Comment 6 on the right to life by the Human Rights Committee clarifies the procedural

²⁷ Rolando v. Philippines, Communication No. 1110/2002 (CCPR/C/82/D/1110/2002), at para 5.2.

²⁸ A/67/275, loc. cit.

²⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1999/39), p. 22, at para 63.

³⁰ These standards are important not only to prevent wrongful conviction of innocent persons, but are essential to guaranteeing that inherent human rights are upheld for all persons, because the innocence of a person does not change these fundamental human rights that every person is entitled to.

³¹ The Death Penalty Project, *The inevitability of error* (London, 2014), p. 5. Available from <http://www.deathpenaltyproject.org/wp-content/uploads/2014/07/The-inevitability-of-error-English.pdf>

³² A/67/275, op. cit., p. 7, at para 25.

³³ International Covenant, op. cit.

guarantees that must be observed when it comes to the death penalty, which includes the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal—“in addition to the particular right to seek pardon or commutation of the sentence”.³⁴

Recalling paragraph 2 of Article 6 of the ICCPR and the restrictions it imposes on the lawful use of the death penalty, a closer reading of the text shows that the “most serious crimes” is not the only limit imposed, but is one of the components of the limits for application of the death penalty.

“(1) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and (2) not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. (3) This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”³⁵

The language in that provision implies that all the constraining conditions must be met to ensure that the death penalty is used only in limited circumstances, since Article 6, paragraph 2, was conceived as an exception to the right to life guaranteed in Article 6, paragraph 1. Reading the second and third constraints together, the right to fair trial and due process guarantees are reaffirmed and made directly relevant to the imposition of the death penalty.³⁶

Additionally, in General Comment 6, the Human Rights Committee has emphasized that the imposition of the death penalty upon the conclusion of a trial in which the due process and fair trial guarantees in article 14 of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant on the right to life.³⁷

These standards are reiterated in the “Safeguards guaranteeing protection of the rights of those facing the death penalty” approved by the Economic and Social Council Resolution 1984/50. Safeguard No. 5 states that “Capital punishment may be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the [International Covenant]”.³⁸

Access to legal counsel is critical in ensuring that the right to fair trial has been upheld and that safeguards to protect the rights of those facing the death penalty have been adhered to. The Human Rights Committee has recommended that the “assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.”³⁹

2.3.1 Arbitrary use of the death penalty in mass trials

The phenomenon of sentencing large groups of individuals in mass trials is a major human rights concern. Such mass trials violate the international human rights standards of fair trial guarantees and other safeguards. Those trials are usually marred by procedural irregularities, including lack of

³⁴ HRI/GEN/1/Rev.9 (Vol. I), op. cit., p. 178, at para 7.

³⁵ International Covenant, op. cit. Numbers have been added for clarification and are not in the original text of the International Covenant.

³⁶ This section has focused on the procedural issues relating to the death penalty, but it is important to note that paragraph 2 of Article 6 of the International Covenant applies to substantive due process as well; i.e., the law in itself should not run contrary to the provisions in the Covenant.

³⁷ “General comment No. 32: Right to equality before courts and tribunals and to a fair trial”, in “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies”, Human Rights Instruments, vol. I. HRI/GEN/1/Rev.9 (Vol. I), p. 260, at para 59.

³⁸ ECOSOC, Resolution 1984/50.

³⁹ Concluding Observations of the Human Rights Committee on Trinidad and Tobago (CCPR/CO/70/TTO), p. 2, at para. 7(c).

adequate and timely access to lawyers, and instances of trials in absentia. In many cases, reports indicated that a number of suspects who were detained in custody died after they were tortured. Furthermore, the exact charges against each defendant were not clear, given that, in many cases, they were not individually read out in court. The courts also did not adhere to the presumption of innocence. Pursuant to general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial of the Human Rights Committee, the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with that principle.

2.3.2 Access to consular services for foreign nationals

Access to consular services is an important aspect of the protection of those foreign nationals facing the death penalty. All States should take every possible action to ensure reciprocal compliance with this safeguard, in line with the relevant provision on the right to seek consular service under the Vienna Convention on Consular Relations. Under international law, the denial of the right to consular notification leads to the violation of due process and the execution of a foreign national deprived of his or her right to consular services constitutes an arbitrary deprivation of life, in contravention of articles 6 and 14 of the International Covenant on Civil and Political Rights.⁴⁰

2.3.3 Clemency, pardon or commutation

Pardon and commutation of death sentences constitute positive steps in the process of the abolition of the death penalty. Article 6(4) of the International Covenant on Civil and Political Rights states that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

2.4 Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The harshness of the death penalty goes beyond the execution itself; physical and/or mental torture and other cruel, inhuman or degrading treatment or punishment may be inflicted on a convict awaiting execution at different stages of his or her time in detention. Since the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law, and should not be contravened by States parties regardless of their status of ratification.⁴¹

At times, the death penalty may be considered a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

2.4.1 Death penalty per se

It is important to first consider whether using the death penalty per se is a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The

⁴⁰ A/HRC/27/26, para 54

⁴¹ "General Comment 2: Implementation of Article 2 by States Parties", Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2), p. 1, at para 1, and Article 38(1)(b) of the Statute of the International Court of Justice defines customary international law.

definition of torture as per Article 1.1 of the CAT excludes “pain or suffering arising from, inherent in, or incidental to lawful sanctions.”⁴² The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has argued that “lawful sanctions” under the CAT refers to sanctions that are lawful under both national and international law. This means that practices lawful under domestic law may still be considered a violation of Article 1 of the Convention if they constitute violations of international human rights law. The Special Rapporteur has urged States to consider whether using the death penalty per se marks failure to respect the inherent dignity of the person, causes severe mental and physical pain or suffering, and amounts to torture or cruel, inhuman or degrading treatment.⁴³

2.4.2 Method of execution

The specific method of execution can also constitute a violation in this respect. For example, in 2003, death by stoning was condemned by the United Nations Commission on Human Rights.⁴⁴ The Human Rights Committee has further called for the abolition in law of the penalty of death by stoning.⁴⁵ The Committee has also held that execution by gas asphyxiation constitutes cruel, inhuman or degrading treatment or punishment.⁴⁶

The length of time of the method of execution and the availability of other less cruel methods should be considered in a State’s decision of how the death penalty may be carried out.

2.4.3 Treatment in detention

The treatment of detainees on death row can often be cruel and inhumane. Safeguards are therefore important, particularly for death row convicts who typically live for years in detention while awaiting punishment.

Detention conditions often fall short of international standards due to the lack of resources dedicated to providing minimum standards of care for prisoners, regardless of their sentence. The provision of essential necessities, proper sanitation, and medical care are fundamental rights that should be accorded to detainees to ensure a minimum quality of life, however, these are often inadequately provided if at all. Overcrowding is a common problem in many places of detention.

Death row convicts also often face additional stigma, and are susceptible to cruel and inhumane treatment while in detention that might include extreme isolation, dark rooms and shackling. Those in pre-trial detention might experience torture to extract confessions or as a form of punishment.

According to Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴⁷ “no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or

⁴² United Nations, Treaty Series, vol. 1465, No. 24841.

⁴³ Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “Death penalty increasingly viewed as torture, UN Special Rapporteur finds”, New York, 23 October 2012. Available from <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12685&LangID=E>

⁴⁴ UN Commission on Human Rights, Resolution 2003/67, p. 3, at para 4(j).

⁴⁵ “Concluding observations of the Human Rights Committee: Yemen” in “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant (CCPR/CO/84/YEM), p. 4, at para 15. This is of particular relevance to the context of Brunei, where the new Syariah Penal Code Order 2013 included provisions for death by stoning, and will be discussed further in the later section on the use of the death penalty in South-East Asia and recent developments in the region.

⁴⁶ “Communication No. 469/1991” in Selected Decisions of the Human Rights Committee under the Optional Protocol, vol. 5, Forty-seventh to fifty-fifth sessions (United Nations Sales publication, Sales No. 04.XIV.9), p. 105, at para 16.1.

⁴⁷ United Nations General Assembly, Resolution 43/173 (A/RES/43/173).

degrading treatment or punishment.” The widest possible protections against abuses, physical or mental, need to be in place. Consistent with Principle 3 of the Body of Principles, restriction of, or derogation from, human rights of persons under any form of detention or imprisonment is forbidden. International human rights norms such as the right to health, water, shelter and, more fundamentally; dignity of the person must be upheld.⁴⁸

2.4.4 “Death row phenomenon”

“Death row phenomenon” refers to a combination of circumstances that produce severe mental trauma and physical suffering for prisoners sentenced to death, including prolonged periods waiting for uncertain outcomes, solitary confinement, poor prison conditions, and lack of educational and recreational activities.⁴⁹

As documented by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, a convict who has been sentenced to death can be caught in a terrifying limbo and constant uncertainty between imminent death and the hope that his or her appeals for clemency could win him or her pardon. The mental trauma of a person on death row is compounded when left waiting for a long time for the execution, which can be decades, and it sometimes comes unannounced until moments before it happens. During that agonizing wait, additional punishments such as solitary confinement and deprivation of social interaction add to an already extremely harsh punishment.

Such practices may qualify as torture, cruel, inhuman or degrading treatment, stripping away the individual’s fundamental right to life and all other rights. Hence, safeguards are important to protect against unnecessary further punishment of the person who faces execution, and ensure that international human rights standards are adhered to. The point here is not to advocate expediting of executions, but rather to ensure that conditions of death row inmates are adequate and that they are fully informed of the processes through access to legal counsel and aware of channels of appeal.

2.5 Transparency

“States have an obligation not to practise the death penalty in secret.” – United Nations Secretary-General, Ban Ki-Moon⁵⁰

Transparency is crucial in ensuring that the use of the death penalty is compliant with international law and accords with provisions of the International Covenant, relevant resolutions, and expert opinion. Stemming from their obligation to the right to life, to fair trial, and to freedom of expression and information, States have to be transparent in their use of the death penalty.⁵¹

Since the death penalty is conceptualized as a narrow exception to the right to life, transparency firstly ensures that the extraordinary power of the State to take a life is held in check by public oversight and, secondly, facilitates accountability for violations of the right to life. The public has the right to freedom of information, consistent with Article 19 of the ICCPR.⁵² Transparency in the context of the death penalty is also essential to the fulfilment of State’s obligation to provide

⁴⁸ “There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.” Op. cit. Standard Minimum Rules for the Treatment of Prisoners, approved by the ECOSOC Resolutions 663 C (XXIV) and 2076 (LXII), is another relevant reference for the treatment of prisoners.

⁴⁹ Juan Mendez, “The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment”, Human Rights Brief, vol. 20, No. 1 (Fall 2012), p. 3.

⁵⁰ Report of the Secretary-General on Moratoriums on the use of the death penalty (A/65/280), p. 19, at para 72.

⁵¹ A/67/275, op. cit, p. 20, at para 104.

⁵² International Covenant, op. cit.

information to condemned persons, their families and their lawyers, as well as the public. In examining the legal obligation of transparency in the application of the death penalty, the Special Rapporteur on extrajudicial, summary or arbitrary executions has confirmed that condemned persons, their families and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions and executions to ensure that due process rights and the prohibition of inhuman and degrading treatment are not violated.⁵³ Resolution 2005/59 of the Commission on Human Rights on the Question of the death penalty called upon all states that still maintain the death penalty to make information available to the public with regard to the imposition of the death penalty and to any scheduled execution.

Transparency in the context of the death penalty also applies to the availability of data on the use of the death penalty. The lack of data on the number of executions or individuals on death row is a serious impediment to international and national debates and scrutiny on the abolition of capital punishment. The “Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty” in Resolution 1989/64 of the Economic and Social Council urged Member States

*“...to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.”*⁵⁴

Most recently, General Assembly Resolution 67/176 has called upon States

*“...to make available reliable information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty.”*⁵⁵

Taking the broader context of Article 19 into account, the right to freedom of information is mentioned as an element of the right to freedom of expression. The availability of information on the use of the death penalty is closely tied to the freedom of media in publishing information on individual cases or on data about the use of the death penalty. Ensuring transparency thus entails the assurance of an open environment for the public media.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has neatly summarized the need for transparency in the context of the death penalty: (a) sufficient and relevant information must be provided to individuals facing execution, their families and lawyers; (b) transparency is key to informed public debate and democratic accountability; and (c) the international community can provide additional scrutiny of the practice.⁵⁶

⁵³ International Covenant, op. cit., and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3), p. 2.

⁵⁴ See 1989/64 in Official Records of the Economic and Social Council 1989, Organizational Session for 1989, First Regular Session of 1989, Supplement No. 1 (E/1989/89), p. 51, at para 5.

⁵⁵ A/RES/67/176, op. cit., p. 2, at para 4(b).

⁵⁶ A/67/275, loc. cit., at para 104.

2.6 Minimum standards of protection for vulnerable groups

The international human rights framework provides special protections for vulnerable groups such as juveniles, pregnant women and new mothers, and persons with mental or intellectual disabilities. Following article 6 of the ICCPR, article 37(a) of CRC and paragraph 3 of resolution 1984/50 of the Economic and Social Council, those categories of persons can never be executed under international law, even if a State's national law permits the death penalty. Resolutions 2003/67 and 2005/59 of the Commission on Human Rights reiterated those strictures, General Assembly resolution 67/176 provides for protections for children and pregnant women, while resolution 1989/64 of the Economic and Social Council recommended the elimination of the death penalty for the mentally impaired.

2.6.1 Human rights of children of parents sentenced to the death penalty or executed

“The sentencing of a parent to the death penalty or execution compromised the enjoyment of a wide spectrum of children’s rights”- Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children.

In a resolution adopted in March 2013, the Human Rights Council acknowledges the negative impact of a parent’s death sentence and his or her execution on their children, and urges States to provide those children with the protection and assistance they may require. It also calls upon States to provide those children, or, where appropriate giving due consideration to the best interests of the child, another member of the family, with access to their parents and to all relevant information about the situation of their parents (A/HRC/RES/22/11).

Existing research suggested a number of negative short- and long-term effects on children whose parents were sentenced to death or executed, including infringement of the enjoyment of a range of rights and obligations set out in the Convention on the Rights of the Child. These included, in particular: the obligation to ensure that the best interests of the child are duly taken into account and protected (art. 3); the right to be free from violence, in particular mental violence (art. 19); the right to special protection and assistance by the State action when a child was deprived of his or her family environment (art. 20) and the right to a standard of living adequate for a child’s physical, mental, spiritual, moral and social development (art. 27, para. 1).⁵⁷

Execution of a parent could affect a child’s health in a number of ways, including emotional trauma leading to long-term damage to mental health. At the panel discussion on the human rights of children of parents sentenced to the death penalty or executed, held on 11 September 2013, at the twenty-fourth session of the Human Rights Council, the Deputy High Commissioner noted that children of parents who were sentenced to death might suffer discrimination, especially where the parent’s offence was publicly known, including through media exposure.

Evidence also showed that the death penalty disproportionately affected the poor and certain racial, ethnic and religious minorities. Thus, a child could feel discrimination on grounds of race, religion or economic condition, as well as owing to the stigma due to the death sentence faced by their parents.⁵⁸

⁵⁷ A/HRC/25/33, para 6

⁵⁸ A/HRC/25/33, para 7

3. The question of public opinion

“Human progress does not stand still. Popular support for the death penalty today does not mean that it will still be there tomorrow. There are undisputed historical precedents where laws, policies and practices that were inconsistent with human rights standards had the support of a majority of the people, but were proven wrong and eventually abolished or banned. Leaders must show the way how deeply incompatible the death penalty is with human dignity.” – Former United Nations High Commissioner for Human Rights, Navi Pillay⁵⁹

Public opinion is a complex and constantly evolving aggregation of a society’s views. Strong public support for the application of the death sentence to punish certain categories of offenders has often been cited as a reason for retaining it in domestic legislation. The layers of complexity in public sentiment, particularly on a complicated issue like the death penalty, may be responsive to political leadership. Abolition of the death penalty is generally the result of a long and deliberative process, requiring firm commitment and strong political will. The cases described at the end of this section illustrate the intricate link between public opinion and political leadership.

Firstly, results of opinion polls can be easily influenced by the way they are framed and how and when questions are posed. Media reports of a wrongful conviction and execution can just as easily sway opinion against the death penalty as can a report of a serial murderer sway opinion towards it.

Secondly, the various provisions in international human rights standards related to the death penalty are typically not fully appreciated by the general public. Since the legality of the death penalty rests on narrow limits and a restrictive interpretation of those constraints, public opinion must not be permitted to circumvent clear legal provisions and the government has a duty to explain these. A case in point is the difficulty of the general public to distinguish between the death penalty and a mandatory death penalty.

Thirdly, informed public debate depends on freedom of expression. Recalling the Special Rapporteur Philip Alston’s point on the legal obligation of transparency, meaningful public debate requires detailed disclosure by the State of information regarding the use of the death penalty. A free and informed media can also play an active and important role in invigorating debate and shaping public opinion. Challenges that the media may face in doing so add to the difficulty of understanding the real state of public sentiment on the death penalty.

Public knowledge is important in promoting an informed public debate about the issues surrounding the death penalty. Governments are responsible for human rights education, including promotion of respect for the right to life. Leadership in promoting various aspects of the debate, such as the proportionality of punishments, conformity with international human rights norms, and alternative measures, can have a significant bearing on public opinion.

Examples from the Philippines and Mongolia illustrate the importance of leadership for progress in abolishing the death penalty. Strong leadership to halt the practice of State execution and to initiate legislative reforms was critical in these success stories of abolition in Asia.

In the Philippines, the Constitution of 1987 led to de facto abolition of the death penalty, making the Philippines the first country in its region to do so. However, a surge in crime led to reinstatement of the death penalty in 1993,⁶⁰ as a measure to deter crime. Under the

⁵⁹ Pillay, “High-Level Panel Discussion on the Question of the Death Penalty, Human Rights Council 25th Session”, op. cit.

⁶⁰ The Philippines, Republic Act No. 7659 (1993).

administration of President Gloria Macapagal-Arroyo, the death penalty was prohibited once again in 2006,⁶¹ and all death sentences commuted to life imprisonment. The case of the Philippines shows how political leadership can be instrumental in maintaining or abolishing the death penalty.

In Mongolia, following the adoption of a new constitution in 1992, the use of the death penalty was limited to serious crimes. The breakthrough to abolition came in 2010, when President Tsakhia Elbegdorj announced a moratorium on the death penalty and submitted a bill to the Parliament to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. His determination led Mongolia to abolish the death penalty in law and to ratify the Second Optional Protocol. The Mongolian case illustrates how political leadership can mould public debate and mobilizing Parliament to change the law.

4. The Death Penalty: Gradual Reform in South-East Asia

The Global movement towards abolition of the death penalty has also been reflected in South-East Asia. As of May 2014, Cambodia, Timor-Leste and the Philippines had abolished the death penalty, and Brunei, Lao PDR and Myanmar are abolitionists in practice. None of the countries in South-East Asia were on the list of states identified by Amnesty International as having carried out executions regularly from 2009 to 2013.⁶² There has also been an encouraging decrease in opposition from within the region to the General Assembly resolution on a moratorium on the use of the death penalty. Legislative reforms to restrict the use of the death penalty in some countries also show encouraging progress in the gradual move towards abolition. In South-East Asia, it can be observed that Governments are moving away from the death penalty through a number of reforms. The pace of these reforms varies from one country to another. There are also some lessons to learn from the practice in the sub-region.

4. 1 South-East Asian Trends

South-East Asian progress in reforming legislation on the death penalty is best understood in the context of legal frameworks and trends in the rest of the world.

Table 1 provides an abbreviated view of the status of the death penalty in the eight countries of South-East Asia that have not abolished the death penalty (Brunei Darussalam, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Singapore, Thailand and Viet Nam), including both retentionist and abolitionist in practice states. More detailed information on those eight appears in annex A, "Country profiles".

Cambodia, Timor-Leste and the Philippines are not included in Table 1 or annex A because they have abolished the death penalty.

Annex B contains two tables of legislative indicators of the status of the death penalty in Member States of the United Nations.

⁶¹ The Philippines, Republic Act No. 9346 (2006).

⁶² Amnesty International, *Death sentences and executions 2013*, *op. cit.*

Table 1 Legislative status of the death penalty in eight South-East Asian countries that still retain it

	BRNw	IDN	LAO	MYS	MMR	SGP	THA	VNM
Status	Abolitionist in practice	Retentionist	Abolitionist in practice	Retentionist	Abolitionist in practice	Retentionist	Retentionist	Retentionist
Ratified ICCPR		√	√				√	√
Ratified OP2-ICCPR								
Ratified CAT		√	√				√	Signed
Vote on the 2012 Moratorium	Against	Abstain	Abstain	Against	Against	Against	Abstain	Abstain
Constitutional provisions on the right to life		√		√	√	√	√	√
Last known execution	1957	2013	1989	2013	1988	2014	2009	2014
Method of execution	Hanging Stoning	Shooting	Shooting	Hanging	Hanging	Hanging	Lethal injection	Lethal injection
Offences punishable by death	Where the death penalty is used, offences punishable by death are not restricted to intentional killing.							
Mandatory death penalty	√		√	√	√	√	√ ⁶³	
Protections for vulnerable groups	√	√	√	√	√	√	√	√
Recent reforms				√	√	√	√	√

Note:

ICCPR = International Covenant on Civil and Political Rights

OP2-ICCPR = Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

CAT = Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

4.1.1 Death penalty in national law

All countries in South-East Asia, except Cambodia, the Philippines, and Timor-Leste, retain the death penalty in their domestic laws. Brunei Darussalam, the Lao People’s Democratic Republic and Myanmar are abolitionists in practice; i.e. they have yet to formalize abolition but are not known to have carried out any execution for years. Myanmar commuted all death sentences in January 2014.⁶⁴

The region has shown uneven progress away from the death penalty. The Philippines has the strongest position. It has abolished the death penalty and ratified the Second Optional Protocol to the ICCPR, indicating its firm commitment to eliminating the death penalty from its laws. Cambodia and Timor-Leste have abolished the death penalty for all crimes, and Myanmar appears to be set to do the same, but they have yet to ratify the second optional protocol.⁶⁵ Although the death penalty is imposed in accordance with the law, Myanmar reported in its most recent Universal Periodic Review (UPR) in 2011 that it had not carried out any executions since 1988 and had been commuting death sentences to life imprisonment.⁶⁶ The Special Rapporteur on the situation of human rights in Myanmar, while commending the Government for its effective moratorium on the use of the death penalty, regretted that the lower courts continued to hand down death sentences.⁶⁷ At Myanmar’s Universal Periodic Review in January 2011, one recommendation was on abolishing the death penalty in law, to effectively deter lower courts in Myanmar from handing down sentences and stop the imposition of the death penalty.⁶⁸

⁶³ Even though the punishment prescribed for certain offences does not include other alternatives, the Criminal Code of Thailand provides for consideration of mitigating circumstances.

⁶⁴ UN News Centre, “UN rights office praises Myanmar for commuting all death sentences”, 10 January 2014. Available from <http://www.un.org/apps/news/story.asp?NewsID=46904#VBvVji6SzaY>. *op. cit.*

⁶⁵ *Op. cit.*

⁶⁶ National report by Myanmar, submitted to the Human Rights Council (A/HRC/WG.6/10/MMR/1), p. 6, at para 37, and *op. cit.*

⁶⁷ Compilation prepared by the Office of the High Commissioner for Human Rights, on Myanmar, submitted to the Human Rights Council (A/HRC/WG.6/10/MMR/2), p. 6, at para 25.

⁶⁸ Report of the Working Group on the Universal Periodic Review of Myanmar (A/HRC/17/9), p. 18, at para 106.9.

Another significant development is the legislative reform adopted by the Singapore Parliament in November 2012, which imposed restrictions on the application of the mandatory death penalty (See Annex A.6). Similar announcements of reform have been made by Malaysia, while Viet Nam has reduced the number of offences punishable by death.

Regressive moves in other countries within South-East Asia with regard to legislation on death penalty include the recently introduced Syariah Penal Code Order 2013 in Brunei Darussalam, which widens the range of offences for which the death penalty is applicable and introduces stoning as a method of execution, which arguably constitutes torture, cruel, inhuman or degrading treatment.

4.1.2 Ratification of international instruments

Of the 10 countries in South-East Asia, six countries, including Cambodia, Indonesia, Lao People’s Democratic Republic, the Philippines, Thailand, and Viet Nam, have ratified the ICCPR. However, only the Philippines has ratified the Second Optional Protocol to that Covenant that aims at the abolition of the death penalty.

Cambodia, Indonesia, Lao People’s Democratic Republic, the Philippines and Thailand have ratified the Convention against Torture, while Viet Nam has signed but has yet to ratify it. All countries in South-East Asia have ratified the Convention on the Rights of the Child, which prohibits the application of the death penalty to juveniles.

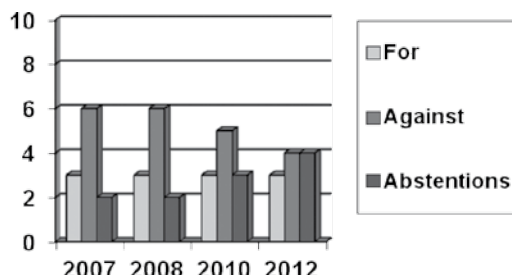
The ratification status of countries in South-East Asia shows a general conformity with their status on the use of the death penalty. The Philippines can be regarded as the most progressive in terms of ratification of international agreements that directly relate to the use of the death penalty.

4.1.3 Vote on “Moratorium on the use of the death penalty”

Of the 10 countries in South-East Asia, Cambodia, Timor-Leste and the Philippines have consistently voted for the General Assembly resolution on “Moratorium on the use of the death penalty”; two have consistently abstained from voting (Lao People’s Democratic Republic and Viet Nam), while four (Brunei Darussalam, Malaysia, Myanmar and Singapore) have consistently voted against the resolution.⁶⁹

Even though outright support for the moratorium on the use of the death penalty has remained unchanged in South-East Asia, opposition has decreased since Indonesia and Thailand have changed their stance from voting against the moratorium to abstaining from the vote. Thus, a minority of four states in the region opposes the Moratorium.

Figure 2 Aggregate voting on “Moratorium on use of the death penalty” of 11 South-East Asian countries



⁶⁹ A/62/PV.76, A/63/PV.70, A/65/PV.71, and A/67/PV.60, *op. cit.*

The 11 countries of South-East Asia reflected in the aggregate indicators in figure 2 are Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

This provides further evidence that South-East Asia generally is part of the global trend against practising the death penalty. Greater detail on the voting behaviour of the 11 countries on the Moratorium is provided in table 2

Table 2 Voting on “Moratorium on the use of the death penalty” of 11 South-East Asian countries

Country	2007	2008	2010	2012	Change
Brunei Darussalam	Against	Against	Against	Against	-
Cambodia	For	For	For	For	-
Indonesia	Against	Against	Against	Abstain	Against → Abstention
Lao People’s Democratic Republic	Abstain	Abstain	Abstain	Abstain	-
Malaysia	Against	Against	Against	Against	-
Myanmar	Against	Against	Against	Against	-
Philippines	For	For	For	For	-
Singapore	Against	Against	Against	Against	-
Thailand	Against	Against	Abstain	Abstain	Against → Abstention
Timor-Leste	For	For	For	For	-
Viet Nam	Abstain	Abstain	Abstain	Abstain	-

Source: The voting patterns of each country was extracted from the following documents, and compiled in this table. Official Records of the General Assembly, Sixty-second Session, Plenary Meetings, 76th meeting (A/62/PV.76), p. 17, Official Records of the General Assembly, Sixty-third Session, Plenary Meetings, 70th meeting (A/63/PV.70), p. 17, Official Records of the General Assembly, Sixty-fifth Session, Plenary Meetings, 71st meeting (A/65/PV.71), p. 19, and Official Records of the General Assembly, Sixty-seventh Session, Plenary Meetings, 60th meeting (A/67/PV.60), p. 17.

4.1.4 Recent application of the death penalty

In South East Asia, Indonesia, Malaysia, Singapore and Viet Nam are the countries that have most recently carried out executions.

Indonesia resumed executions in March 2013 after a four-year de facto moratorium. Two convicts were executed for drug trafficking and three for premeditated murder; but none of the executions was announced before being carried out.⁷⁰ The Human Rights Committee expressed regret that Indonesia has suspended its de facto moratorium and resumed executions, moreover for crimes that did not meet the threshold of the “most serious crimes” set out in Article 6 paragraph 2 of the International Covenant. The Committee recommended that Indonesia establish a moratorium on the death penalty.⁷¹

Malaysia carried out at least two executions in secrecy in 2013, one for murder and the other for drug-related offences. In March 2014, Malaysia granted a stay of execution for a death row convict

⁷⁰ Amnesty International, “Indonesia: Fifth execution confirms shocking new trend of secrecy”, 18 November 2013. Available from <http://www.amnesty.org/en/news/indonesia-fifth-execution-confirms-shocking-new-trend-secrecy-2013-11-18>. Amnesty International, “Indonesia: First execution in four years “shocking and regressive””, 15 March 2013. Available from <http://www.amnesty.org/en/for-media/press-releases/indonesia-first-execution-four-years-shocking-and-regressive-2013-03-15>

⁷¹ Concluding observations of the Human Rights Committee on Indonesia (CCPR/C/IDN/CO/1), p. 3, at para 10.

— a Nigerian national who was convicted of murder but allegedly suffered from mental health problems — a category of person for which international law prescribes special protections and prohibits the death penalty.⁷²

Singapore executed two people for drug-related offences on 18 July 2014, lifting its de facto moratorium of three years since the start of a legislative review in 2011, which was concluded in January 2013.⁷³

In Viet Nam, at least seven executions were carried out in 2013 and three in 2014 after a pause of more than 18 months.⁷⁴

4.2 Adherence to international law and human rights standards

4.2.1 Most serious crimes

Several countries in South-East Asia impose the death penalty for some offences that are not considered “most serious crimes” under international law.

The South-East Asian countries that still retain capital punishment (i.e., Brunei Darussalam, Indonesia, Lao People’s Democratic Republic, Malaysia, Singapore, Thailand and Viet Nam) do so for a range of offences, including drug-related, economic and arms-related, and for treason, rape and consensual same-sex relations.

Brunei Darussalam introduced its new Syariah Penal Code Order 2013, which has widened the types of crimes punishable by the death penalty, despite its de facto moratorium and halt on executions since 1957. Robbery, rape, adultery, sodomy, extramarital sexual relations for Muslims, insult of verses of the Quran and Hadith, blasphemy, declaring oneself a prophet or non-Muslim, and murder are offences for which the death penalty can be applied under the revised law. Phase One of the new Code was enforced on 1 May 2014.⁷⁵ The reintroduction of the death penalty in the Syariah Penal Code caused great concern in the international community⁷⁶ and was raised in the country’s most recent UPR.⁷⁷ During Brunei’s Universal Periodic Review, its Government was recommended to examine whether its Syariah Penal Code Order adhered to international human rights standards, refrain from extending application of the death penalty and ensure that the death penalty be limited to the “most serious crimes”.

In Indonesia, the issue of the death penalty was referred to the Constitutional Court for judicial review in 2007. The Court ruled that use of the death penalty did not contradict the Constitution, even though the latter provides that “each person has the right to live and the right to defend his life and existence”. It insisted that the death penalty was regarded as a last resort and imposed only selectively for serious crimes. Nonetheless, Indonesia still applies the death penalty for drug-related offences, which do not meet the threshold for “most serious crimes” as per international standards.⁷⁸ The Human Rights Committee recommended that Indonesia review its legislation to ensure that crimes involving narcotics were not subject to the death penalty.⁷⁹

⁷² The Malaysian Bar, “Press Release | The Malaysian Bar Commends Swift Action by the Government in Stay of Execution of Death Sentence on Osariakhi Ernest Obayangbon”, 14 March 2014. Available from http://www.malaysianbar.org.my/press_statements/press_release_%7C_the_malaysian_bar_commends_swift_action_by_the_government_in_stay_of_execution_of_death_sentence_on_osariakhi_ernest_obayangbon.html

⁷³ OHCHR Regional Office for South-East Asia, “United Nations Human Rights Office Very Concerned by the Resumption of Executions in Singapore”, Press Release, Bangkok, 22 July 2014. Available from <http://bangkok.ohchr.org/files/ROB%20Press%20Release%20220714.pdf>. International Commission against the Death Penalty, “Statement by the International Commission against the Death Penalty: Singapore executes two men and resumes executions after more than three years”, Geneva, 22 July 2014. Available from http://www.icomdp.org/cms/wp-content/uploads/2014/07/24-ICDP-Press-Statement_Singapore-resumes-executions-July2014.pdf

⁷⁴ UN News Centre, “Resumption of death penalty ‘major setback’ for human rights in Viet Nam – UN”, 9 August 2013. Available from <http://www.un.org/apps/news/story.asp?NewsID=45595#.U9CnpOOSxZg>

⁷⁵ The Brunei Times, “Phase One of Syariah Penal Code Order to be enforced tomorrow, May 1”, Bandar Seri Begawan, 30 April 2014. Available from <http://www.bt.com.bn/bookmarks-breaking/2014/04/30/just-phase-one-syariah-penal-code-order-be-enforced-tomorrow-may-1>

⁷⁶ UN News Centre, “UN concerned at broad application of death penalty in Brunei’s revised penal code”, 11 April 2014. Available from <http://www.un.org/apps/news/story.asp?NewsID=47552#.U-r8fOOSxZg>. International Commission of Jurists, “Brunei: new penal code a blueprint for human rights violations”, 27 January 2014. Available from <http://www.icj.org/brunei-new-penal-code-a-blueprint-for-human-rights-violations/>

⁷⁷ Report of the Working Group on the Universal Periodic Review of Brunei Darussalam (A/HRC/27/11), p. 8, at para 49, p. 10, at para 69, p. 11, at para 85, p. 12, at para 99, 103.

⁷⁸ CCPR/C/IDN/CO/1, *loc. cit.*

⁷⁹ *Loc. cit.*

The Lao People's Democratic Republic (Lao PDR) reported in its most recent UPR in May 2014 that it would consider revising the Penal Law, with a view to limiting the scope of crimes for which the death penalty would apply. During its UPR, LAO PDR was recommended to broaden its de facto moratorium and abolish the death penalty in all cases, including serious crimes, and to commute death sentences to prison terms. The Government committed to considering those recommendations.⁸⁰

The continuing practice of executions in Malaysia, despite the Government's commitment to review the mandatory application of the death penalty and its willingness to consider a moratorium, was raised at its UPR in 2013. It was recommended to bring its legislation in line with international minimum standards, in particular by abolishing the mandatory death penalty and the death penalty for drug-related offences.⁸¹ Malaysia reaffirmed its commitment to reviewing its legislation on the death penalty, and stated that it had "taken the initiative to undertake a study on comprehensive reform of administration of criminal justice in Malaysia, including on death penalty."⁸²

Singapore considers capital punishment as a criminal justice issue, rather than a human rights issue, and maintains that it remains legal under international law. The Government argues that it imposes capital punishment only for the most serious crimes.⁸³ However, its application of the death penalty for crimes not restricted to intentional killing, such as drug crimes, suggests otherwise, as indicated by the execution of two individuals charged with drug offences in July 2014.

The Government of Thailand, in its most recent review⁸⁴ by the Committee against Torture, stated that it will consider a moratorium on the death penalty. Abolition of the death penalty was included in the draft of its Third National Human Rights Action Plan (2014-2018),⁸⁵ but there has since been a lack of tangible advancement in abolishing the death penalty and a high number of death sentences were passed in 2013, almost half of them for drug-related offences.⁸⁶ It was recommended during the UPR, that Thailand impose a moratorium on the death penalty with a view to abolition, as outlined in its National Human Rights Action Plan.⁸⁷

Building on the amendments to Viet Nam's 2009 Penal Code, which abolished the death penalty for eight crimes and ended the application of the death penalty for juvenile offenders, the Government announced in 2014 its plans to further restrict the applicability of the death penalty.⁸⁸ Despite that announcement, the increase in the number of sentences imposed, including for crimes other than intentional killing, was raised at Vietnam's UPR in February 2014. Viet Nam was recommended to further reduce the list of crimes punishable by the death penalty, particularly economic crimes and drug-related offences.⁸⁹

4.2.2 Fair trial and due process guarantees

A major problem in the use of the death penalty in South-East Asia is its mandatory imposition for a wide range of offences, predominantly drug-related, notably in Malaysia, Singapore,

⁸⁰ Report of the Working Group on the Universal Periodic Review of Lao PDR (A/HRC/15/5), p. 4, at para 11. Report of the Working Group on the Universal Periodic Review of Lao PDR, Addendum (A/HRC/15/5/Add.1), p. 6, at para 18.

⁸¹ Report of the Working Group on the Universal Periodic Review of Malaysia (A/HRC/25/10), p. 19, 20.

⁸² National report submitted by Malaysia to the Human Rights Council (A/HRC/WG.6/17/MYS/1), p. 8, at para 47.

⁸³ National report submitted by Singapore to the Human Rights Council (A/HRC/WG.6/11/SGP/1), p. 16, at para 120.

⁸⁴ Also see summary records of the interactive dialogue CAT/C/SR.1214 paragraph 22, and CAT/C/SR.1217 paragraph 4.

⁸⁵ The Nation, "Ending Thailand's impunity for real", 2 July 2012. Available from <http://www.nationmultimedia.com/opinion/Ending-Thailand's-impunity-for-real-30185269.html>. Report of the Working Group on the Universal Periodic Review of Thailand (A/HRC/19/8), p.20, at para 89.29.

⁸⁶ Thailand, Ministry of Justice, Death Penalty Statistics (Bangkok, Department of Corrections, 2013). Available from <http://www.correct.go.th/correct2009/stat/Deathpenaltyprisoner/DeathpenaltyprisonerApr2014.pdf>

⁸⁷ A/HRC/19/8, *loc. cit.*

⁸⁸ National report submitted by Viet Nam to the Human Rights Council Working Group (A/HRC/WG.6/18/VNM/1), p.3, at para 10.

⁸⁹ Report of the Working Group on the Universal Periodic Review of Viet Nam (A/HRC/26/6), p. 19, at para 143.89, 143.90, 143.91, 143.92, 143.93, 143.94.

and Thailand.⁹⁰ The removal of judicial discretion violates the right to fair trial and due process guarantees, thereby undermining the integrity of the justice system and the credibility of the judicial process.

Malaysia reiterated in its National Report at its UPR in 2013 that the death penalty is only applied for the most serious crimes as provided for in law, and only after rights of appeal have been exhausted, arguing for stringent safeguards in line with Article 6 of the ICCPR.⁹¹ However, regardless of such safeguards, a number of States made recommendations concerning its continued use of mandatory imposition of the death penalty.⁹²

Legislative reforms were passed by the Singapore Parliament in November 2012 following a review of the mandatory death penalty regime. The following changes to the law came into force in January 2013: The mandatory death penalty applies in cases of murder only when the intention is to kill; and drug traffickers, who have served only as couriers and have cooperated with the Central Narcotics Bureau in a substantive way or have a mental disability, may benefit from court discretion to be sentenced to death or to life imprisonment with caning.⁹³ Various sentences were also commuted. During the legislative review process from July 2011 until the adoption of changes in January 2013, a moratorium on executions was observed. Those awaiting their executions under the Penal Code or the Misuse of Drugs Act when the new legislation came into force were permitted to apply for consideration for re-sentencing. This reform has resulted in the commutations of 9 death sentences.⁹⁴ Irrespective of the legislative reform, other aspects in the amended Penal Code, such as the applicability of the death penalty to drug-related offences and the mandatory imposition of the death penalty for certain offences remain of concern.

4.2.3 Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Death by stoning constitutes torture or cruel, inhuman or degrading treatment or punishment according to international law. The recently introduced Syariah Penal Code Order 2013 in Brunei Darussalam has specified stoning as the method of choice for crimes of a sexual nature.

Not only does the substance of the new legislation fall short of the threshold of the “most serious crimes”, but death by stoning also goes against the prohibition of torture or cruel, inhuman or degrading treatment or punishment.⁹⁵

Brunei Darussalam, Malaysia and Singapore currently carry out executions by hanging, Indonesia and Lao People’s Democratic Republic by shooting, and Thailand and Viet Nam by lethal injection.

Some progress has been made in Aceh in Indonesia, particularly in removing stoning as a method of execution for adulterers. In 2009, the legislative council passed a set of bylaws that replaced elements of the Criminal Code with Shariah provisions, which imposed harsh sentences such as stoning to death for adulterers. However, it was subsequently sent back to the legislative council for revision since it was met by much criticism and rejected by the provincial administration. The

⁹⁰ According to the Anti Death Penalty Asia Network (ADPAN) report “When Justice Fails”, unfair trials is a significant problem in the application of the death penalty in Asia. Case studies on Indonesia, Malaysia and Singapore have been conducted by ADPAN.

⁹¹ A/HRC/WG.6/17/MYS/1, op. cit., p. 8, at para 45.

⁹² A/HRC/25/10, op. cit., p. 19, at para 146.108, 146.110, p. 20, at para 146.112, 146.114, 146.117, 146.124.

⁹³ Mr K Shanmugam, Minister for Foreign Affairs and Law, “Ministerial Statement by the Minister for Foreign Affairs and Law, Mr K Shanmugam: Changes to the Application of the Mandatory Death Penalty to Homicide Offences”, Singapore, 9 July 2012. Available from <https://www.mlaw.gov.sg/content/dam/mlaw/corp/assets/documents/linkclick4dc3.pdf>. Mr Teo Chee Hean, Deputy Prime Minister, Coordinating Minister for National Security and Minister for Home Affairs, “Enhancing Our Drug Control Framework And Review of The Death Penalty - Ministerial Statement by Mr Teo Chee Hean, Deputy Prime Minister and Coordinating Minister for National Security and Minister for Home Affairs”, Singapore, 9 July 2012. Available from http://www.mha.gov.sg/news_details.aspx?nid=MjUzMg%3D%3D-N4I1YQwYBNE%3D

⁹⁴ Ministry of Home Affairs of Singapore, “Statement by MHA in response to media queries regarding capital punishment”, Singapore, 18 July 2014. Available from http://www.mha.gov.sg/news_details.aspx?nid=MzIxMg==JKr4CnFh6eQ=

⁹⁵ UN News Centre, “UN concerned at broad application of death penalty in Brunei’s revised penal code”, op. cit. International Commission of Jurists, “Brunei: new penal code a blueprint for human rights violations”, op. cit.

provision on stoning has since been removed from the revised draft bylaw.⁹⁶

In its concluding observations on Thailand, the Committee against Torture noted that Thailand had reviewed and reduced the use of shackles in detention facilities, but recommended specifically ending the use of permanent shackling for death-row prisoners.⁹⁷

4.2.4 Transparency and other safeguards

Information on the use of the death penalty remains elusive in many countries in South-East Asia, especially Lao People's Democratic Republic, Malaysia, Singapore, and Viet Nam, where figures are not published on the use of capital punishment. Death sentences are also carried out in secret in some countries, with no advance notice, particularly in Indonesia, Malaysia, and Viet Nam.⁹⁸

Pursuant to his visit to Indonesia in 2007, the Special Rapporteur on Torture urged the Government to end the secrecy surrounding its execution practices.⁹⁹

The lack of transparency on the application of death penalty was raised in Singapore's most recent UPR, in 2011. Among the recommendations was that the Government should "make available statistics and other factual information on the use of the death penalty".¹⁰⁰ The Singapore Prison Service has since published statistics of capital executions in its Annual Statistics Release (from 2012 onwards); But the lack of information to family members and relatives remains an issue of concern.¹⁰¹

During Vietnam's UPR, the Government was recommended to publish precise information on the identity and number of convicted persons on death row.¹⁰²

4.2.5 Minimum standards of protection for vulnerable groups

All the countries in South-East Asia have legislation that ensures exceptions to the death penalty for children, pregnant women, and persons with mental or intellectual disabilities.¹⁰³ However, the law in Myanmar does not provide explicit protection for juvenile offenders even though Myanmar is party to the Convention on the Rights of the Child and has withdrawn its reservations. Although Viet Nam has legislation that specifically excludes children and pregnant women from the death penalty, there is none for persons with mental or intellectual disabilities; the Penal Code does at least consider such impairments as extenuating circumstances that could be applied to death penalty cases.

4.3 Engagement with the public

Malaysia has committed to remaining open and to continue its "engagement and consultation with the public on [the issue of the death penalty] including on possible alternatives to the death penalty," in its national report submitted before its UPR in October 2013.¹⁰⁴

⁹⁶ The Jakarta Globe, "Aceh Government Removes Stoning Sentence From Draft Bylaw", Banda Aceh, 12 March 2013. Available from <http://www.thejakartaglobe.com/news/aceh-government-removes-stoning-sentence-from-draft-bylaw/>

⁹⁷ Concluding observations on the initial report of Thailand, by the Committee against Torture (CAT/C/THA/CO/1), p. 11, at para 23.

⁹⁸ Amnesty International, "Death Penalty 2013: Shroud of secrecy around executions in Asia Pacific", 27 March 2014. Available from <http://www.amnesty.org/en/for-media/press-releases/death-penalty-2013-shroud-secrecy-around-executions-asia-pacific-2014-03-27>

⁹⁹ Report of Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Indonesia (A/HRC/7/3/Add.7), p. 27, at para 89.

¹⁰⁰ Report of the Working Group on the Universal Periodic Review of Singapore (A/HRC/18/11).

¹⁰¹ Amnesty International, "Singapore – The Death Penalty: A Hidden Toll of Executions", which reported the lack of transparency about executions and statistics regarding death sentences or executions.

¹⁰² A/HRC/26/6, op. cit., p. 20, at para 143.113.

¹⁰³ Thailand withdrew its reservations under ICCPR in 2012.

¹⁰⁴ A/HRC/WG.6/17/MYS/1, loc. cit., at para 46.

In Thailand, the Rights and Liberties Protection Department within the Ministry of Justice announced in August 2013 that it will conduct a study and a public consultation on the possibility of abolishing the death penalty [in Thailand]. The Government has stated that it values a national consultation on the death penalty.

4.4 Regional Cooperation

Regional support and cooperation can be crucial in promoting and protecting human rights. The framework of the ASEAN Intergovernmental Commission on Human Rights (AICHR) could be useful in this regard. Article 11 of the ASEAN Human Rights Declaration reiterates that “Every person has an inherent right to life which shall be protected by law,” and that “no person shall be deprived of life save in accordance with law”.

The importance of regional cooperation was discussed at the expert seminar on the death penalty at Bangkok in 2013. The seminar chair, Vitit Muntarbhorn, stressed that States needed support in taking concrete steps to develop protection measures and instruments in moving away from mandatory death sentences, as they sought to implement the ASEAN Human Rights Declaration with its protection for the right to life. The Indonesian Representative for AICHR Rafendi Djamin stated that AICHR needed to table a discussion on the death penalty.¹⁰⁶

National experience can be shared as a means of building support for abolishing the death penalty. A case in point comes from the experience of the Philippines, as it moved between abolishing and retaining capital punishment in its laws. Bilateral engagement on commutations can be an alternative way to exert pressure regionally to reduce the use of the death penalty with a view towards its eventual abolition. Indonesia, for instance, has worked with Malaysia regarding Indonesian nationals who were sentenced to death in Malaysia.

5. Conclusions and Recommendations

International human rights law places stringent constraints on the conditions under which an exception to the right to life may be permissible. A majority of countries are moving away from the use of the death penalty, although progress in South-East Asia has been generally slower than the global pace towards abolishing this practice, both in law and in practice. Nevertheless, the countries of South-East Asia are moving away from using the death penalty, albeit at different speeds.

The United Nations Office of the High Commissioner recommends the following for all States:

- (1) In line with United Nations, international and regional human rights bodies, expedite efforts to impose an official moratorium on all executions and commute all sentences, with a view to formally abolishing the death penalty eventually;
- (2) Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, if they have not yet done so;
- (3) Provide opportunities for intergovernmental organizations, international and regional organizations, and non-governmental organizations to engage in discussions about the death penalty;

¹⁰⁵ National report submitted by Thailand to the Human Rights Council (A/HRC/WG.6/12/THA/1), p. 6, at para 33.

¹⁰⁶ OHCHR Regional Office for South-East Asia, “Internal notes on the Expert Seminar on Moving Away from the Death Penalty in South-East Asia”, Bangkok, 2013.

(4) Engage in regional cooperation and collaboration on platforms such as the ASEAN Intergovernmental Commission on Human Rights, with a view to formally abolishing the death penalty in their respective countries;

(5) Ensure that imposition of the death penalty is restricted only to those crimes that involve intentional killing and that the mandatory death penalty is removed from domestic law;

(6) Ensure that the highest standards of fair trial and due process guarantees are upheld, and international law and human rights norms are respected in all death-penalty cases;

(7) Ensure that safeguards and special protections for vulnerable groups are in place, so that the death penalty is not imposed on children, pregnant women, persons with mental or intellectual disabilities, and the elderly;

(8) Ensure transparency regarding individual cases of capital punishment. Specifically ensure access to information by prisoners, their family members and the public; and ensure that data on the use of the death penalty is publicly available, including the number of sentences handed down, executions carried out and individuals on death row;

(9) Amend domestic laws on extradition and deportation of persons to specifically prohibit involuntary transfer of persons to States where there is genuine risk that the death penalty may be imposed in violation of internationally recognized standards, unless adequate safeguards are established to ensure that the death penalty will not be carried out; and

(10) In abolitionist in practice states, in line with United Nations, international and regional human rights bodies, expedite efforts to impose an official moratorium on all executions, with a view to formalizing the abolition of the death penalty in due course.

Annex A. Country Profiles

A.1 Brunei Darussalam

Brunei is abolitionist in practice on the use of the death penalty. It has not ratified the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2012 it voted against the General Assembly resolution on a Moratorium on the use of the death penalty.

The number of individuals currently on death row is unknown and few death sentences have been reported in the past 10 years, with none in 2007, 2011, 2012, and 2013.¹⁰⁷ No executions have been carried out in the last 10 years; the last known execution was in 1957.¹⁰⁸

The method of execution is by hanging or stoning. Offences punishable by death are detailed in the Brunei Penal Code, Brunei Internal Security Act, Brunei Misuse of Drugs Act, and the recently implemented Syariah Penal Code Order of 2013. Offences include acts against royalty, murder, kidnapping, offences relating to firearms, drug-related offences, extramarital sexual offences, and sodomy, of which the majority carry a mandatory death penalty.

Individuals below 18 at the time of the crime, pregnant women, and mentally impaired or defective persons are exempted from the death penalty.

Clemency can be obtained from the Sultan, as provided in Section 9 of the Constitution, which states that “His Majesty the Sultan and Yang Di-Pertuan may exercise in his absolute discretion” the power to grant pardon, respite or substitute a less severe form of punishment. Section 244 of the Criminal Procedure Code describes the process of a royal pardon.¹⁰⁹

The introduction of the Syariah Penal Code Order of 2013 (with phased implementation from May 2014 through to May 2016) is a regression in Brunei’s current status on the death penalty. The Syariah Penal Code Order of 2013 broadens the range of offences where the death penalty is applicable, retaining the death penalty for acts that do not meet the threshold of “most serious crimes”. The method of punishment by stoning is also a contravention of international law.¹¹⁰

A.2 Indonesia

Indonesia retains the use of the death penalty. It has ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indonesia has not, however, ratified the Second Optional Protocol to the International Covenant. In 2012 it abstained from voting on the General Assembly resolution on a Moratorium on the use of the death penalty. Section 28 of the Constitution of the Republic

¹⁰⁷ Excerpts from Amnesty International, *Death sentences and executions in 2007* (London, 2008), Amnesty International, *Death sentences and executions in 2008* (London, 2009), Amnesty International, *Death sentences and executions in 2009* (London, 2010), Amnesty International, *Death sentences and executions in 2010* (London, 2011), Amnesty International, *Death sentences and executions in 2011* (London, 2012), Amnesty International, *Death sentences and executions in 2012* (London, 2013), Amnesty International, *Death sentences and executions in 2013*, op. cit.

¹⁰⁸ Amnesty International, “Death Penalty: Countries Abolitionist in Practice”. Available from <http://www.amnesty.org/en/death-penalty/countries-abolitionist-in-practice>

¹⁰⁹ Brunei, *Constitutional Matters of Brunei Darussalam, Constitutional Matters I (Constitution of Brunei Darussalam) (1984) and Constitutional Matters II (Succession and Regency Proclamation) (1959)...*, Criminal Procedure Code of Brunei Darussalam (1951).

¹¹⁰ UN News Centre, “UN concerned at broad application of death penalty in Brunei’s revised penal code”, op. cit. International Commission of Jurists, “Brunei: new penal code a blueprint for human rights violations”, op. cit.

of Indonesia has clear provisions on the right to life, the right to legal recognition and protection, fundamental human rights that shall not be curtailed, and the commitment of the State to the implementation of fundamental human rights.¹¹¹

As of 31 December 2013, 149 individuals were on death row, with new sentences having been passed every year since 2006.¹¹² Indonesia did not carry out any executions from 2009 to 2012, but resumed executions in 2013, executing 5 individuals for offences relating to murder and drug-trafficking.¹¹³ None of the executions held in 2013 were announced before being carried out.¹¹⁴ The Human Rights Committee regretted that Indonesia had resumed executions and that it had continued to impose the death penalty for drug crimes that did not meet the threshold of “most serious crimes.”¹¹⁵

The method of execution was by firing squad.

Offences punishable by death are detailed in the Penal Code of Indonesia, Indonesia Narcotics Law, and the Indonesia Law on Human Rights Courts. The offences include crimes against the security of the State, crimes against life, crimes relating to navigation (piracy), drugs-related offences, terrorism, and crimes against humanity. There is no mandatory death penalty in Indonesia.

Mentally defective and mentally disordered persons, individuals below the age of 16 at the time of the crime and pregnant women are exempted from the death penalty. Presidential clemency is set out in Section 14.1 of the Constitution of the Republic of Indonesia, which states that the “the President may grant clemency and rehabilitation taking into account the considerations of the Supreme Court.”

The question of the death penalty was referred to the Constitutional Court for judicial review in July 2012. The Court ruled that the death penalty did not contradict the Constitution. The Court insisted that the death penalty was regarded as a last resort and imposed only selectively for serious crimes. Indonesia rejected recommendations at its UPR in May 2012 to make official the moratorium on executions.¹¹⁶

In Aceh, the legislative council in 2009 passed a set of bylaws that would replace elements of the Criminal Code with Shariah provisions, which imposed harsh sentences such as stoning to death for adulterers.¹¹⁷ Following the refusal of the provincial administration to sign or implement the bylaw, the Aceh government eventually removed the provision for the stoning to death of adulterers.

A.3 Lao People’s Democratic Republic

The Lao People’s Democratic Republic has de facto abolished the use of the death penalty. It has ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has not, however, ratified the Second Optional Protocol to the International Covenant and has abstained from voting on all the

¹¹¹ Indonesia, The Constitution of the Republic of Indonesia (1945).

¹¹² Excerpts from Amnesty International, Death sentences and executions in 2007, Death sentences and executions in 2008, Death sentences and executions in 2009, Death sentences and executions in 2010, Death sentences and executions in 2011, Death sentences and executions in 2012, Death sentences and executions in 2013, op. cit.

¹¹³ Amnesty International Death sentences and executions in 2013, op. cit., p. 23. “Indonesia: Fifth execution confirms shocking new trend of secrecy”, op. cit. “Indonesia: First execution in four years “shocking and regressive”, op. cit.

¹¹⁴ Op. cit.

¹¹⁵ CCPR/C/IDN/CO/1, loc. cit.

¹¹⁶ Report of the Working Group on the Universal Periodic Review on Indonesia: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/21/7/Add.1), p. 3, at para 6.6.

¹¹⁷ Human Rights Watch, “Indonesia: New Aceh Law Imposes Torture”, New York, 11 October 2009. Available from <http://www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture>

General Assembly resolutions on the Moratorium on the use of the death penalty. There are no provisions in the Constitution for the right to life or fundamental liberties.

At least 92 individuals were on death row, as of 31 December 2013, with new sentences having been passed in 2008, 2010, 2012 and 2013.¹¹⁸ However, no executions have been conducted since 1989.¹¹⁹ The method of execution is by firing squad.

Offences punishable by death are detailed in the Lao People's Democratic Republic Penal Law and the Law on the Development and Protection of Women. The offences include treason, rebellion, harm against the interests of national security, murder and drug-related offences. There is a mandatory death penalty for the production, trade and consumption or possession of requisite amounts of narcotics.

Offenders who are less than 18 years old at the time of offence, mentally disturbed offenders, and pregnant women are exempted from the death penalty.

According to Section 107 of the Lao People's Democratic Republic Criminal Procedure Code on the implementation of the death penalty, "the person subject to death penalty has the right to request the President of the State for a pardon within thirty days from the date of such order or from the date when he was informed about such order."¹²⁰

There have been no recent reforms on death penalty in Lao People's Democratic Republic.

A. 4 Malaysia

Malaysia is a retentionist state in the use of the death penalty. It has ratified neither the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant, nor the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has voted against all the General Assembly resolutions on the Moratorium on the use of the death penalty. There are provisions in the Malaysia Federal Constitution for the liberty of the person, where Section 5 states that "no one shall be deprived of his life or personal liberty save in accordance with law."¹²¹

There were 992 individuals on death row, as at 31 December 2013, with more than 60 new sentences imposed every year for the previous 6 years (at least 68 in 2009, at least 114 in 2010, at least 108 in 2011, at least 60 in 2012, and at least 76 in 2013). There were at least two executions in 2013, but the secrecy surrounding executions makes it difficult to estimate the number of people executed.¹²² There were at least four known commutations and two acquittals in 2013.¹²³

The method of execution is by hanging.

Offences punishable by death are detailed in the Malaysia Penal Code, Malaysia Internal Security Act, Malaysia Kidnapping Act, Malaysia Firearms (Increased Penalties) Act, and the Malaysia Dangerous Drugs Act, with the mandatory death penalty imposed for offences relating to murder, firearms, trafficking in dangerous drugs and offences against the Head of State.

¹¹⁸ Excerpts from Amnesty International, *Death sentences and executions in 2007*, *Death sentences and executions in 2008*, *Death sentences and executions in 2009*, *Death sentences and executions in 2010*, *Death sentences and executions in 2011*, *Death sentences and executions in 2012*, *Death sentences and executions in 2013*, *op. cit.*

¹¹⁹ Amnesty International, "Death Penalty: Countries Abolitionist in Practice", *op. cit.*

¹²⁰ Lao PDR, Law on Criminal Procedure (2004).

¹²¹ Malaysia, Federal Constitution of Malaysia, amended 2007 (1957).

¹²² Amnesty International, *Death sentences and executions in 2013*, *op. cit.*, p. 24.

¹²³ *Op. cit.*

Pregnant women, children, and persons of unsound mind are exempted from the death penalty.

The power of pardon from the Yang di-Pertuan Agong is established in Section 42 of the Malaysia Federal Constitution, which states that he has “power to grant pardons, reprieves and respites in respect of all other offences committed in his State.” It is similarly outlined in Sections 300 and 301 of the Malaysia Criminal Procedure Code. Detailed provisions on the death penalty are stated in Sections 281 of the Malaysia Criminal Procedure Code, which sets out procedures for appeal and implementation of the execution.¹²⁴

In its national report submitted for its UPR in October 2013, the Government stated that it had conducted a comprehensive review of the administration of criminal justice in Malaysia, including the death penalty, and it agreed to examine the recommendations from the UPR, including the moratorium on the death penalty, with a view to abolition.¹²⁵

A.5 Myanmar

Myanmar is abolitionist in practice in the use of the death penalty. It has ratified neither the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant, nor the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has voted against all the General Assembly resolutions on the Moratorium on the use of the death penalty. There are provisions in the Constitution of the Republic of the Union of Myanmar on the right to life, where Section 353 states that “nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.”¹²⁶

The method of execution is by hanging.

The last known execution in Myanmar was in 1988. The authorities announced on 2 January 2014 that all remaining death sentences in the country had been commuted.¹²⁷ Despite the de facto moratorium imposed on the death penalty, there has been little progress to formally abolish it in law, and the lower courts have continued to pass death sentences.¹²⁸

Offences punishable by death are detailed in the Myanmar Penal Code, the Myanmar Narcotic Drugs and Psychotropic Substances Law, and the Myanmar Anti Trafficking in Persons Law, with the mandatory death penalty applicable for murder and drug-related offences.

Pregnant woman and persons who are mentally ill are exempted from the death penalty, but there is no specific provision for protection of children, even though Myanmar is party to the Convention on the Rights of the Child and has withdrawn its reservations. Section 54 of the Penal Code states that in every case in which the sentence of death has been passed, the President may, without consent of the offender, commute the punishment for any other punishment provided for in the Code.

In the national report submitted by Myanmar for its last UPR in January 2011, the Government stated that it had not carried out the death penalty since 1988, even though that had been imposed in accordance with the law, thus highlighting its commutations of the death sentences.¹²⁹

¹²⁴ Malaysia, Criminal Procedure Code, amended 2006 (1999).

¹²⁵ A/HRC/25/10, loc. cit.

¹²⁶ Myanmar, Constitution of the Republic of the Union of Myanmar (2008).

¹²⁷ UN News Centre, “UN rights office praises Myanmar for commuting all death sentences”, op. cit.

¹²⁸ A/HRC/17/9, loc. cit.

¹²⁹ A/HRC/WG.6/10/MMR/1, loc. cit.

A.6 Singapore

Singapore is a retentionist state on the use of the death penalty. It has ratified neither the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant, nor the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has voted against all the General Assembly resolutions on the Moratorium on the use of the death penalty. The Constitution of the Republic of Singapore establishes the liberty of the person, with Section 9 stating that “no person shall be deprived of his life or personal liberty save in accordance with law.”¹³⁰

As of 18 July 2014, there were 22 people on death row, with several death sentences handed down every year for the previous five years at least.¹³¹ During the legislative review of the death penalty in 2012, there was a halt to executions, but they resumed in July 2014, with the executions of two drug offenders. Commutations of various sentences were carried out in 2012.¹³²

The method of execution is by hanging.

Offences punishable by death are detailed in the Singapore Penal Code, Singapore Misuse of Drugs Act, Singapore Internal Security Act, Singapore Arms Offences Act, Singapore Armed Forces Act, Singapore Terrorism (Suppression of Bombing) Act, and the Singapore Kidnapping Act, with the mandatory death penalty for a range of offences relating to piracy, murder, traffic/manufacture/import or export of drugs of requisite amounts, firearms, and terrorist bombing.

Persons below 18 years of age, pregnant women and persons “of unsound mind” are exempted from the death penalty.

Section 22P of the Constitution gives the President the power to grant pardon, and the Attorney-General to give his opinion in such a case. Similarly, Section 333 of the Singapore Criminal Procedure Code gives the President the power to pardon, suspend or remit sentences.¹³³

Legislative reforms were adopted by the Singapore Parliament in November 2012, with the following changes to the law: (1) the mandatory death penalty now applies for cases of murder only when the intention is to kill, and (2) drug traffickers who have served only as a courier and have cooperated with the Central Narcotics Bureau in a substantive way or have a mental disability may benefit from the court’s discretion to be sentenced to death or to life imprisonment with caning.¹³⁴

A.7 Thailand

Thailand is a retentionist state on the use of the death penalty. It has ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has not ratified the Second Optional Protocol

¹³⁰ Singapore, Constitution of the Republic of Singapore (1965).

¹³¹ Ministry of Home Affairs of Singapore, “Statement by MHA in response to media queries regarding capital punishment”, *op. cit.* Singapore, Ministry of Home Affairs, 2012 Singapore Prison Service Annual Statistics Release (Singapore, Singapore Prison Service, 1 February 2012). Available from http://www.prisons.gov.sg/content/dam/sps/publication_latest/2012%20Prisons%20Annual%20Statistics%20Release%201%20Feb%202012.pdf. Singapore, Ministry of Home Affairs, 2013 Singapore Prison Service Annual Statistics Release (Singapore, Singapore Prison Service, 30 January 2013). Available from http://www.prisons.gov.sg/content/dam/sps/publication_latest/2013%20Singapore%20Prison%20Service%20Annual%20Statistics%20Release.pdf. Singapore, Ministry of Home Affairs, 2014 Singapore Prison Service Annual Statistics Release (Singapore, Singapore Prison Service, 11 February 2014). Available from http://www.prisons.gov.sg/content/dam/sps/publication_latest/PRIS%20Annual%20Statistics%20Press%20Release%202014_FINAL%20Approved%2010%20Feb.pdf

¹³² Ministry of Home Affairs of Singapore, “Statement by MHA in response to media queries regarding capital punishment”, *op. cit.*

¹³³ Singapore, Criminal Procedure Code, revised 2012 (2010).

¹³⁴ Mr K Shanmugam, “Ministerial Statement by the Minister for Foreign Affairs and Law, Mr K Shanmugam: Changes to the Application of the Mandatory Death Penalty to Homicide Offences”, *op. cit.* Mr Teo Chee Hean, “Enhancing Our Drug Control Framework And Review of The Death Penalty - Ministerial Statement by Mr Teo Chee Hean, Deputy Prime Minister and Coordinating Minister for National Security and Minister for Home Affairs”, *op. cit.*

to the International Covenant. In 2012 Thailand changed from voting against to abstaining from voting on the General Assembly resolution on a Moratorium on the use of the death penalty. The Constitution has provisions on personal rights and liberties, with Section 32 stating that “A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel and inhumane means shall not be permitted, however, that punishment in execution of a judgement of the Court or as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.”

At the time of writing, the 2007 Constitution had been suspended following the military coup on 22 May 2014. An interim Constitution adopted in July 2014 states that “Upon the provisions of this Constitution, human dignity, right, liberty and equality of the Thai people protected by the democratic tradition of Thailand with the King as Head of State and by the existing international commitments of Thailand shall be protected by this Constitution.”¹³⁵

At least 612 people were under sentence of death, as of 30 June 2014, and 294 people were sentenced to death in 2013 alone.¹³⁶ However, no execution has been carried out since 2009, when there were two executions.

The method of execution is by lethal injection.

Offences punishable by death are detailed in the Thailand Criminal Code, which include offences against royalty, internal and external security, and liberty, and offences relating to sexuality causing death. The mandatory death penalty applies for murder, offences against royalty, offences relating to sexuality causing death and against liberty.

Offenders less than 18 years of age, persons with mental defects, mental disease or mental infirmity, and pregnant women are exempted from the death penalty.

Sections 259 to 262 of the Criminal Procedure Code outline the process for pardon, commutation and reduction of punishments.¹³⁷

Abolition of the death penalty was included in the draft of the Third National Human Rights Plan for 2014-2018. The Rights and Liberties Protection Department of the Ministry of Justice is committed to conducting a study and public consultation on the possibility of abolishing the death penalty.

A.8 Viet Nam

Viet Nam is a retentionist state on the use of the death penalty. It has ratified the International Covenant on Civil and Political Rights and has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has not ratified the Second Optional Protocol to the International Covenant. Viet Nam abstained from voting on all the General Assembly resolutions on a Moratorium on the use of the death penalty. Chapter 5 of the Constitution of the Socialist Republic of Viet Nam cites the fundamental rights of citizens, including the right to life.¹³⁸

As of 8 November 2013, there were an estimated 678 convicts on death row. Death sentences are sometimes passed out in mass trials. At least 148 people were sentenced to death in 2013.¹³⁹

¹³⁵ Thailand, Interim Constitution of Thailand (2014).

¹³⁶ Thailand, Ministry of Justice, Death Penalty Statistics, *op. cit.* Thailand, Ministry of Justice, Annual Judicial Statistics, Thailand 2013 (Thailand, Department of Corrections, 2013), p. 13. Available from http://e-doc1300.m-society.go.th/article_attach/11971/16230.pdf

¹³⁷ Thailand, Criminal Procedure Code of Thailand (1934).

¹³⁸ Viet Nam, Constitution of the Socialist Republic of Viet Nam, amended 2001 (1992).

¹³⁹ Amnesty International *Death sentences and executions in 2013*, *op. cit.*, p. 28

The method of execution is by lethal injection.

Offences punishable by death are detailed in the Viet Nam Penal Code, including treason, spying, rebellion, terrorism, murder, rape, smuggling, embezzlement and drug-related offences; but there is no mandatory death penalty.

Juvenile offenders, pregnant women and women nursing children under 36 months old are exempted from the death penalty.

The procedures for consideration of death judgements before execution are laid out in Section 258 of the Viet Nam Criminal Procedure Code.¹⁴⁰

A change in European Union regulations on trade in equipment and substances that can be used for capital punishment caused a shortage of drugs for lethal injection and resulted in a hiatus of executions in 2012. Executions resumed in 2013.¹⁴¹ There have been suggestions to resume execution by firing squad.

Vietnam does not publish figures on the use of capital punishment.

¹⁴⁰ Viet Nam, Criminal Procedure Code of the Socialist Republic of Viet Nam (2003).

¹⁴¹ Amnesty International Death sentences and executions in 2013, loc. cit.

Annex B. Legislative Indicators among Member States

Table B.1 Member States that have ratified the Second Optional Protocol to the International Covenant and abolished the death penalty for all crimes

Member State	Second Optional Protocol to the International Covenant ¹⁴²		Abolition of the death penalty for all crimes ¹⁴³	Abolition of the death penalty for ordinary crimes ¹⁴⁴
	Signature	Ratification, Accession ^a , Succession ^d		
Afghanistan				
Albania		17 Oct 2007 ^a	2007	
Algeria				
Andorra	5 Aug 2002	22 Sep 2006	1990	
Angola	24 Sep 2013		1992	
Antigua and Barbuda				
Argentina	20 Dec 2006	2 Sep 2008	2008	
Armenia			2003	
Australia		2 Oct 1990 ^a	1985	
Austria	8 Apr 1991	2 Mar 1993	1968	
Azerbaijan		22 Jan 1999 ^a	1998	
Bahamas				
Bahrain				
Bangladesh				
Barbados				
Belarus				
Belgium	12 Jul 1990	8 Dec 1998	1996	
Belize				
Benin		5 Jul 2012 ^a		
Bhutan			2004	
Bolivia		12 Jul 2013 ^a	2009	
Bosnia and Herzegovina	7 Sep 2000	16 Mar 2001	2001	
Botswana				
Brazil		25 Sep 2009 ^a		1979
Brunei				
Darussalam				
Bulgaria	11 Mar 1999	10 Aug 1999	1998	

¹⁴² United Nations, "Status of ratification, reservations and declarations of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty." Available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en

¹⁴³ Amnesty International, "Death Penalty: Countries abolitionist for all crimes". Available from <http://www.amnesty.org/en/death-penalty/countries-abolitionist-for-all-crimes>

¹⁴⁴ Amnesty International, "Death Penalty: Countries abolitionist for ordinary crimes only". Available from <http://www.amnesty.org/en/death-penalty/countries-abolitionist-for-ordinary-crimes-only>

Burkina Faso				
Burundi			2009	
Cambodia			1989	
Cameroon				
Canada		25 Nov 2005 ^a	1998	
Cape Verde		19 May 2000 ^a	1981	
Central African Republic				
Chad				
Chile	15 Nov 2001	26 Sep 2008		2001
China				
Colombia		5 Aug 1997 ^a	1910	
Comoros				
Congo (Republic of the)				
Costa Rica	14 Feb 1990	5 Jun 1998	1877	
Côte d'Ivoire			2000	
Croatia		12 Oct 1995 ^a	1990	
Cuba				
Cyprus		10 Sep 1999 ^a	2002	
Czech Republic		15 Jun 2004 ^a	1990	
Democratic People's Republic of Korea				
Democratic Republic of the Congo				
Denmark	13 Feb 1990	24 Feb 1994	1978	
Djibouti		5 Nov 2002 ^a	1995	
Dominica				
Dominican Republic			1966	
Ecuador		23 Feb 1993 ^a	1906	
Egypt				
El Salvador		8 Apr 2014 ^a		1983
Equatorial Guinea				
Eritrea				
Estonia		30 Jan 2004 ^a	1998	
Ethiopia				
Fiji				1979
Finland	13 Feb 1990	4 Apr 1991	1972	
France		2 Oct 2007 ^a	1981	
Gabon		2 Apr 2014 ^a	2010	
Gambia				
Georgia		22 Mar 1999 ^a	1997	

Germany	13 Feb 1990	18 Aug 1992	1987	
Ghana				
Greece		5 May 1997 ^a	2004	
Grenada				
Guatemala				
Guinea				
Guinea-Bissau	12 Sep 2000	24 Sep 2013	1993	
Guyana				
Haiti			1987	
Honduras	10 May 1990	1 Apr 2008	1956	
Hungary		24 Feb 1994 ^a	1990	
Iceland	30 Jan 1991	2 Apr 1991	1928	
India				
Indonesia				
Iran				
Iraq				
Ireland		18 Jun 1993 ^a	1990	
Israel				1954
Italy	13 Feb 1990	14 Feb 1995	1994	
Jamaica				
Japan				
Jordan				
Kazakhstan				
Kenya				
Kiribati				
Kuwait				
Kyrgyzstan		6 Dec 2010 ^a	2007	
Lao People's Democratic Republic				
Latvia		19 Apr 2013 ^a	2012	
Lebanon				
Lesotho				
Liberia		16 Sep 2005 ^a		
Libya				
Liechtenstein		10 Dec 1998 ^a	1987	
Lithuania	8 Sep 2000	27 Mar 2002	1998	
Luxembourg	13 Feb 1990	12 Feb 1992	1979	
Madagascar	24 Sep 2012			
Malawi				
Malaysia				
Maldives				
Mali				

Malta		29 Dec 1994 ^a	2000	
Marshall Islands				
Mauritania				
Mauritius				
Mexico		26 Sep 2007 ^a	2005	
Micronesia (Federated States of)				
Monaco		28 Mar 2000 ^a	1962	
Mongolia		13 Mar 2012 ^a		
Montenegro		23 Oct 2006 ^d	2002	
Morocco				
Mozambique		21 Jul 1993 ^a	1990	
Myanmar				
Namibia		28 Nov 1994 ^a	1990	
Nauru				
Nepal		4 Mar 1998 ^a	1997	
Netherlands	9 Aug 1990	26 Mar 1991	1982	
New Zealand	22 Feb 1990	22 Feb 1990	1989	
Nicaragua	21 Feb 1990	25 Feb 2009	1979	
Niger				
Nigeria				
Norway	13 Feb 1990	5 Sep 1991	1979	
Oman				
Pakistan				
Palau				
Panama		21 Jan 1993 ^a	1922	
Papua New Guinea				
Paraguay		18 Aug 2003 ^a	1992	
Peru				1979
Philippines	20 Sep 2006	20 Nov 2007	2006	
Poland	21 Mar 2000	25 Apr 2014	1997	
Portugal	13 Feb 1990	17 Oct 1990	1976	
Qatar				
Republic of Korea				
Republic of Moldova		20 Sep 2006 ^a	1995	
Romania	15 Mar 1990	27 Feb 1991	1989	
Russian Federation				
Rwanda		15 Dec 2008 ^a	2007	
Saint Kitts and Nevis				
Saint Lucia				

Saint Vincent and the Grenadines				
Samoa			2004	
San Marino	26 Sep 2003	17 Aug 2004	1865	
Sao Tome and Principe	6 Sep 2000		1990	
Saudi Arabia				
Senegal			2004	
Serbia		6 Sep 2001 ^a	2002	
Seychelles		15 Dec 1994 ^a	1993	
Sierra Leone				
Singapore				
Slovakia	22 Sep 1998	22 Jun 1999	1990	
Slovenia	14 Sep 1993	10 Mar 1994	1989	
Solomon Islands				
Somalia				
South Africa		28 Aug 2002 ^a	1997	
South Sudan				
Spain	23 Feb 1990	11 Apr 1991	1995	
Sri Lanka				
Sudan				
Suriname				
Swaziland				
Switzerland		16 Jun 1994 ^a	1992	
Sweden	13 Feb 1990	11 May 1990	1972	
Syria				
Tajikistan				
Thailand				
The former Yugoslav Republic of Macedonia		26 Jan 1995 ^a	1991	
Timor Leste		18 Sep 2003 ^a	1999	
Togo			2009	
Tonga				
Trinidad and Tobago				
Tunisia				
Turkey	6 Apr 2004	2 Mar 2006	2004	
Turkmenistan		11 Jan 2000 ^a	1999	
Tuvalu				
Uganda				
Ukraine		25 Jul 2007 ^a	1999	
United Arab Emirates				

United of Republic of Tanzania				
United States				
Uruguay	13 Feb 1990	21 Jan 1993	1907	
Uzbekistan		23 Dec 2008 ^a	2008	
Vanuatu				
Venezuela	7 Jun 1990	22 Feb 1993	1863	
Viet Nam				
Yemen				
Zambia				
Zimbabwe				
Total figures				
193	37	81	88	7

Source: United Nations, "Status of ratification, reservations and declarations of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty." Available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-12&chapter=4&lang=en . Amnesty International, "Death Penalty: Countries abolitionist for all crimes". Available from <http://www.amnesty.org/en/death-penalty/countries-abolitionist-for-all-crimes> . Amnesty International, "Death Penalty: Countries abolitionist for ordinary crimes only". Available from <http://www.amnesty.org/en/death-penalty/countries-abolitionist-for-ordinary-crimes-only>

Table B.2 Member States that have abolished the death penalty in practice but not in law, with year of last known execution¹⁴⁵

Member State	Year of last known execution¹⁴⁶
Algeria	1993
Benin	1987
Brunei Darussalam	1957
Burkina Faso	1988
Cameroon	1997
Central African Republic	1981
Congo (Republic of the)	1982
Eritrea	1989
Ghana	1993
Grenada	1978
Kenya	1987
Lao People's Democratic Republic	1989
Liberia	2000
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1987
Morocco	1993
Myanmar	1988
Nauru	None since independence
Niger	1976
Papua New Guinea	1950
Republic of Korea	1997
Russian Federation	1999
Sierra Leone	1998
Sri Lanka	1976
Suriname	1982
Swaziland	1983
Tajikistan	2004
Tonga	1982
Tunisia	1991
United of Republic of Tanzania	1995
Zambia	1997

Source: Amnesty International, "Death Penalty: Countries abolitionist in practice", *op. cit.*

¹⁴⁵ Benin, Liberia, and Mongolia have acceded the Second Optional Protocol and Madagascar has signed it.

¹⁴⁶ Amnesty International, "Death Penalty: Countries abolitionist in practice", *op. cit.*



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