

Moving Away from  
the **Death Penalty**  
Lessons from National Experiences



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



AN EXECUTION CHAMBER WITH BULLET HOLES SHOWING FOLLOWING  
THE EXECUTION OF A DEATH CONVICT BY FIRING SQUAD

PHOTO: EPA/TRENT NELSON

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## FOREWORD



The large majority of Member States of the United Nations — about 150 out of 193 States — have already abolished the death penalty or observe a legal or de facto moratorium on its use. Since 2007, the General Assembly has also been calling for a global moratorium on the death penalty. Yet, the remaining retentionist states are reported to have carried out more than 600 executions over the course of 2011 alone. The actual number is probably several times higher since some countries do not provide figures.

The United Nations opposes the death penalty because it negates the right to life and its application raises serious human rights concerns. It is striking that even well-functioning legal systems have sentenced to death persons who were ultimately proved innocent. In sentencing practice, the decision whether to sentence the convict to death or life imprisonment is often arbitrary and devoid of predictable rational criteria. In this “judicial lottery”, the odds are often stacked against those who belong to racial, religious, national, ethnic or sexual minorities.

The application of the death penalty almost invariably entails cruel, inhuman and degrading treatment in violation of international law. Its cruelty starts long before the actual execution, when the condemned person is caught in a terrifying limbo between the fear of imminent violent death and the faint hope that appeals for due process or clemency could spare his or her life after all. Almost 20,000 human beings are currently living on death row.

All this begs the question: Why do states retain the death penalty? Any suggestions that the death penalty has a meaningful deterrent effect have been overstated, with little research supporting such an assertion.

My Office is organising a series of global panel discussions on the abolition of the death penalty. This publication is based on the first of these discussions, held at the United Nations in New York on 3 July 2012. I am grateful for the outstanding contributions made by the panelists, who represent diverse regions, cultures and legal traditions. The discussion was further enriched by an engaged audience of state delegates, legal practitioners and civil society representatives.

Political decision-makers, religious and other civil society leaders and the media, supported by regional and international organizations, have to keep the light shining on the fact that the application of the death penalty is unjust and incompatible with fundamental human rights values. It is an affront to the right to life and the right to dignity. It is my sincere hope that this will convince the few remaining retentionist states to change course and bring an end to the death penalty.

**Navi Pillay**

*High Commissioner for Human Rights*

## ABBREVIATIONS AND ACRONYMS

CELAC	Community of Latin American and Caribbean States (Comunidad de Estados Latinoamericanos y Caribeños)
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
MENA	The Middle East and North Africa
NGO	Non-Governmental Organisation
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations

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SYMPATHISERS IN MANILA, PHILIPPINES, LIGHT CANDLES FOR THREE FILIPINOS FACING THE DEATH PENALTY IN RELATION TO DRUG TRAFFICKING OFFENCES IN CHINA, 2011.

PHOTO: EPA/ROLEX DELA PENA

***“THE TAKING OF LIFE is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process.”***

— United Nations Secretary-General  
Ban Ki-moon



# 1. BACKGROUND

Today more than two thirds of the Member States of the United Nations have either abolished the death penalty or do not implement it. They represent diverse legal systems, traditions, cultures and religious backgrounds. While Article 6 of the International Covenant on Civil and Political Rights (ICCPR) permits the use of the death penalty in limited circumstances, it also provides that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” (Article 6, para. 6, ICCPR).

In 2007 the General Assembly adopted a resolution on a moratorium on the use of the death penalty (A/62/149). The resolution was passed by a vote of 104 in favour to 54 against, with 29 abstentions. The resolution called on all States that still allowed capital punishment to “progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed.” Those countries were also called on to provide the Secretary-General with information on their use of capital punishment and to respect international standards that safeguard the rights of condemned inmates. A subsequent resolution (A/63/168) on this matter was adopted in 2008, with increased support for the resolution with 106 States voting in favour, 46 against and 34 abstaining.

At its 65<sup>th</sup> session in 2010, the General Assembly considered the Second Report of the Secretary-General on a moratorium on the use of the death penalty (A/65/280), drafted by the Office of the High Commissioner for Human Rights (OHCHR). On 21 December 2010, it adopted a third resolution on a moratorium (A/65/206). This new resolution, which was approved by a broader margin of support at 109 votes in favour and 41 against, with 35 abstentions, renews the call to “States that still maintain the death penalty to progressively restrict its use, to reduce the number of offences for which it may be imposed, and to establish a moratorium on execution with a view to abolishing the death penalty. States which have abolished the death penalty are called upon not to reintroduce it.”

With this background in mind, and the forthcoming debate at the 67<sup>th</sup> Session, OHCHR considered further, sustained advocacy at the global level on a moratorium would be useful so as to better inform the debates on this year’s resolution. Though the resolution has seen increased support with each vote, the prospects for further support could be improved through a series of global panel discussions on key elements of the death penalty debate.

The primary objectives of the panel discussions are to build and maintain the momentum on the resolution on a moratorium of the use of the death penalty; to share the experiences of countries where there have recently been positive initiatives in respect of the abolition of the death penalty (i.e., total abolition, consideration of abolition or implementation of a moratorium or restriction of the scope of capital offences and those eligible for the death penalty); and to examine the human rights dimensions of the application of the death penalty.



THE GENERAL ASSEMBLY MEETING THAT ADOPTED THE LANDMARK RESOLUTION CALLING FOR A MORATORIUM ON THE DEATH PENALTY, 18 DECEMBER 2007.

PHOTO: UNITED NATIONS/PAULO FILGUEIRAS

## 2. MEMBER STATE DEVELOPMENTS SINCE THE 2007 RESOLUTION

There have been a number of developments in the use of the death penalty since the adoption of resolution 62/149 by the General Assembly on 18 December 2007. The Secretary General submitted three reports (A/63/293, A/765/280 and A/67/226) to the General Assembly on the implementation of its resolutions on moratorium on the use of the death penalty.<sup>1</sup> These reports confirmed the global trend towards abolition of the death penalty, the important role played by moratoriums in those States that seek to abolish it and possibilities for further work on the issue.

Currently around 150 of the 193 Member States of the United Nations have abolished the death penalty or introduced a moratorium, either in law or in practice. Since General Assembly resolution 62/149 in December 2007, Argentina, Burundi, Gabon, Latvia, Uzbekistan and Togo have abolished the death penalty for all crimes. In the United States of America, the States of New Jersey,

***“OPPOSITION TO THE DEATH PENALTY is not exclusive to any particular region, political system, world religion, culture or tradition.”*** — Federico Mayor, President of the International Commission against the Death Penalty

New Mexico, Illinois and Connecticut have abolished the death penalty and the State of Oregon has introduced a moratorium.

The Dominican Republic, which prohibited the death penalty in 1924, adopted a new constitution in January 2010 which guarantees the right to life and reconfirms the prohibition of the death penalty.

Similarly, Djibouti had already abolished the death penalty in 1995, but codified this in its Constitution in 2010. In Australia, the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition)

Act 2010 entered into effect on 14 April 2010. It amends the Death Penalty Abolition Act 1973 and extends the application of the current prohibition on the death penalty to state laws. In July 2011, Suriname informed that the recently revised Penal Code contained no reference to capital punishment.

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<sup>1</sup> Please also see reports of the Secretary General on the question of the death penalty submitted to the Human Rights Council since 2007 (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19 and A/HRC/18/20), and the most recent quinquennial report of the Secretary-General (E/2010/10 and Corr.1 and 2) submitted to Economic and Social Council in 2009. Attention is also drawn to the reports on the use of the death penalty submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the General Assembly at its sixty-seventh session.

A number of States are also in the process of abolishing or considering abolishing the death penalty. Legislative amendments to abolish the death penalty are currently pending in parliament in Burkina Faso, Bosnia and Herzegovina, Guatemala, Lebanon, Mali and the Russian Federation. Abolition of the death penalty was also discussed as part of constitutional review processes in some States, including Ghana, Sierra Leone, Zambia, Zimbabwe, Tanzania, Trinidad and Tobago and Tunisia.

Since December 2007, Argentina, Benin, Brazil, Chile, Honduras, Kyrgyzstan, Mongolia<sup>2</sup>, Nicaragua and Rwanda have completed the ratification (or accession) of the Second Optional Protocol to the International Covenant on Civil and Political Rights. Currently, there are 75 State parties to the Second Optional Protocol.

***“A DEATH SENTENCE IS OFTEN IMPOSED ON LESS PRIVILEGED INDIVIDUALS who do not have sufficient access to effective legal representation.”***

— High Commissioner for Human Rights  
Navi Pillay

Some States stopped applying the death penalty for certain crimes. For instance, in July 2009, Kazakhstan adopted a new law reducing the number of provisions that imposed the death penalty. In April 2011, the Parliament of Gambia abolished the death penalty for drug offences. In February 2011, China passed a law removing the death penalty

for thirteen non-violent economic crimes. Furthermore, in March 2012, China amended its Criminal Procedure Law to include new procedures enhancing access to legal aid, requiring the recording of interrogations, introducing mandatory appellate hearings and a more rigorous review process in capital cases.

At regional level, on August 3, 2012 the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), which includes the United States, called for a moratorium on executions in the region and released a report reviewing key areas of concern about the death penalty.<sup>3</sup> The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area.

The African Commission on Human and Peoples' Rights adopted a resolution in November 2008 which urged States parties that retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty.<sup>4</sup> A study on “the Question of the Death Penalty in Africa,” prepared by the Working Group on the Death Penalty of the Commission, was officially launched in April 2012.<sup>5</sup>

<sup>2</sup> Mongolia established an official moratorium on executions in January 2010.

<sup>3</sup> IACHR Calls on a Moratorium in the *Application of the Death Penalty*, Press Release, 3 August 2012.

<sup>4</sup> ACHPR/Res 136 (XXXXIII)

<sup>5</sup> <http://www.achpr.org/news/2012/04/d46>



HIGH COMMISSIONER FOR HUMAN RIGHTS NAVI PILLAY SPEAKS WITH PANELISTS KIRK BLOODSWORTH (MIDDLE), A VICTIM OF A WRONGFUL CONVICTION AND DEATH SENTENCE AND DOUGLAS MENDES, JUSTICE OF THE BELIZE COURT OF APPEAL AT THE OHCHR PANEL EVENT ON ABOLISHING THE DEATH PENALTY ON 3 JULY 2012 AT THE UNITED NATIONS IN NEW YORK. ON THE LEFT IS ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS, IVAN ŠIMONVIĆ.

PHOTO: UNITED NATIONS/NENAD VASIC



HUMAN RIGHTS ACTIVISTS LIGHT CANDLES IN MULTAN, PAKISTAN ON 10 OCTOBER 2010  
IN OBSERVANCE OF THE WORLD DAY AGAINST THE DEATH PENALTY.

PHOTO: EPA/MK CHAUDHRY

### **3. OHCHR ACTIVITIES TOWARDS THE UNIVERSAL ABOLITION OF THE DEATH PENALTY**

The High Commissioner for Human Rights consistently advocates for the universal abolition of the death penalty, under her mandate to promote and protect the enjoyment and full realization of all human rights. In a statement issued in 2009, the High Commissioner recalled the reasons for her opposition to the death penalty in all circumstances, including the fundamental nature of the right to life, the unacceptable risk of executing innocent people by mistake, the absence of proof that the death penalty serves as a deterrent, and the inappropriately vengeful character of the sentence (A/HRC/15/19, paragraph 7).

OHCHR reaffirms that, pursuant to General Assembly resolutions on the moratorium on the use of the death penalty, it will continue to advocate and provide support to Member States, civil society and other stakeholders with regard to the establishment of a moratorium by States on the use of the death penalty, with a view to abolishing it. OHCHR sends official communications to the relevant authorities and issues public press releases addressing the question of the death penalty, and provides technical support to Member States, civil society organisation and other relevant interlocutors on the abolition of the death penalty. During her recent country missions, the High Commissioner had encouraging discussions with senior officials in Barbados, Guatemala, Pakistan, South Sudan and Zimbabwe about abolishing the death penalty or at least imposing a moratorium on it.

OHCHR also continues to advocate ratification of the Second Optional Protocol to the ICCPR. In 2011, OHCHR supported Belgium and the World Coalition against the Death Penalty to organise a side event at the eighteenth session of the Human Right Council on “Sharing best practices on ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty”. In 2012, a workshop on the ratification of the Second Optional was organised in Cambodia.

OHCHR also contributed to and participated at various regional conferences towards abolition of the death penalty organised with the support of the governments of the United Kingdom, Chile, Belgium, Spain and Austria. The events considered the progress towards abolition of the death penalty in the Middle East and North Africa (MENA), Africa, Central Asia, the Caribbean and Europe regions. The objective was to gain more support at the General Assembly's forthcoming debates on the moratorium resolution aiming for the total abolition of the death penalty.

***“THERE ARE SEVERAL WAYS TO APPROACH THE ABOLITION OF THE DEATH PENALTY IN THE WORLD. There is the human rights-based approach, the social approach and the security approach. Leaders should see the benefit in at least one of these, if not all.”***

— Representative of Morocco

## **4. HIGHLIGHTS OF THE PANEL EVENT ON THE DEATH PENALTY**

The first OHCHR global panel event, *“Moving away from the death penalty — Lessons from national experiences,”* opened by the Secretary-General and addressed by the High Commissioner for Human Rights, focused on two major themes:

- a. The experiences of Member States that have taken action to abolish the death penalty, establish a moratorium on its application or limit the scope of its application
- b. The impact of the application of the death penalty from a human rights perspective in States retaining it, against a background of persons wrongfully convicted.

The chairs for the two panels were Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights, and Mr. Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions. The panelists represented geographically diverse and rich legal traditions and practices, covering Africa, the Americas, Asia and Europe. The panelists for Session One were Mr. Valentin Bagorikunda, Prosecutor-General of the Republic of Burundi, Ms. Blanca Aída Stalling Dávila, Director-General of *El Instituto de la Defensa Pública Penal of Guatemala*, Mr. Federico Mayor, President, International Commission against the Death Penalty, and Mr. Barry C. Scheck, Co-Director, The Innocence Project in New York. Session Two panelists were Mr. Kirk Bloodsworth, victim of a wrongful conviction and death sentence, Mr. Douglas Mendes, Justice, Belize Court of Appeal and the President of the Caribbean Centre for Human Rights, Ms. Maiko Tagusari, Secretary-General, Centre for Prisoners' Rights, Japan and Mr. Cousin Zilala, Executive Director of Amnesty International, Zimbabwe.





UNITED NATIONS SECRETARY-GENERAL BAN KI-MOON SPEAKS AT THE OHCHR PANEL EVENT ON ABOLISHING THE DEATH PENALTY ON 3 JULY 2012. LEFT IS ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS, IVAN ŠIMONOVIĆ.  
PHOTO: UNITED NATIONS/NENAD VASIC

The panelists drew on the experiences of senior officials from various regions which, in recent years, have made progress through either outright abolition or the imposition of a moratorium, *de facto* or *de jure*, or through narrowing the basis for imposition of the death penalty (restricting the category of offences or offenders). The diverse range of speakers identified how these advances were made, and how societal and attitudinal obstacles at the national level were overcome.

Four major themes emerged from the prepared statements and subsequent discussion among the panelists and those participating in the audience: whether the death penalty deters crime; wrongful convictions and the irreparable harm caused by executing the innocent; the moral and political leadership required to change public opinion; and the important role of international and regional organizations in shifting public and political opinion.



## 4.1 Deterrence

Though deterrence is often presented as a major reason for retaining the death penalty, a number of panelists and participants discussed the lack of any evidence in this regard, stating that the death penalty's perceived deterrence effect has been overstated and manipulated for decades. Professor Barry Scheck of the United States pointed to the recent study of the National Academy of Sciences entitled *Deterrence and the Death Penalty*, which analyzed if there is a scientific basis for the assertion that the death penalty lowers homicide rates.<sup>6</sup> The report concluded that “research to date on the effect of capital punishment on homicide rates is not useful in determining whether the death penalty increases, decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of non-capital punishments on homicide rates.”

These findings are consistent with research undertaken in 1988, and updated in 2002 by one of the leading authorities on the death penalty.<sup>7</sup> A survey of research findings on the death penalty and homicide rates concluded that “it is not prudent to accept the hypothesis that capital punishment...deters murder to

<sup>6</sup> *Deterrence and the Death Penalty*, National Research Council of the National Academies, The National Academies Press (2012). The United States National Academy of Sciences provides independent advice to the government on matters related to science and technology.

<sup>7</sup> R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, 4th edition 2008.



SESSION II PANELISTS AT THE OHCHR EVENT ON ABOLISHING THE DEATH PENALTY, 3 JULY 2012

(LEFT TO RIGHT): (1) MAIKO TAGUSARI, SECRETARY-GENERAL OF THE CENTRE FOR PRISONERS' RIGHTS, JAPAN; (2) COUSIN ZILALA, EXECUTIVE DIRECTOR OF AMNESTY INTERNATIONAL, ZIMBABWE; (3) IVAN ŠIMONVIĆ, ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS; (4) CHRISTOF HEYNS, SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS; (5) KIRK BLOODSWORTH, VICTIM OF A WRONGFUL CONVICTION AND DEATH SENTENCE, USA; (6) DOUGLAS MENDES, JUSTICE, BELIZE COURT OF APPEAL.

PHOTO: UNITED NATIONS/NENAD VASIC

a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.”<sup>8</sup>

As highlighted by one of the panelists, Mr. Cousin Zilala, even in situations of past mass atrocities in Africa, such as those committed in Rwanda, national leaders have publicly stated that the death penalty is not an effective deterrent, and that those countries wanted to break with the violence of the past when they abolished the death penalty. The Prosecutor-General of Burundi, Mr. Valentin Bagorikunda, made a similar point. Though the legislative assembly had originally believed the death penalty did act as a deterrent, “in actual fact...its deterrent effect was not obvious” and failed to deter the mass violence in 1993 when civil war broke out. According to the Prosecutor-General, following the abolition of the death penalty in 2009, there has been no increase in the rates of crime.

Panelists also discussed the fact that some categories of offenders would not be deterred by the threat of being executed. Mr. Federico Mayor stated that many of those sentenced to death have mental health issues or were under the influence of alcohol or drugs at the time of the offence, both of which suggest the defendant may not have thought through the consequences of their actions or the possibility they may be executed. Moreover, Mr. Mayor stated, organized crime groups make “calculated decisions and believe that detection and convictions are unlikely” while “those who commit terrorists acts for political ends...are often prepared to die for that cause...[and] unlikely to be deterred by the death penalty.”

<sup>8</sup> Ibid at pg. 230

## 4.2 *Wrongful Convictions and Innocence*

The panel discussed the constitutional, institutional, and structural obstacles to the fair and accurate administration of the death penalty. What struck many was the growing evidence in the United States of miscarriages of justice in murder cases, including death penalty cases. While the United States was seen as a highly developed legal system, with multiple judicial safeguards, at both the state and federal level, these safeguards in some instances failed to provide adequate oversight of death penalty convictions. It was unclear to what extent some of the structural problems in the administration of capital punishment could be remedied at all.

Public confidence in the death penalty, particularly in the United States, has been shaken in recent years by the number of people who have been released from death row with evidence of their factual innocence. Professor Scheck provided statistics indicating that since the introduction of DNA testing in 1989, there were 250 post-conviction exonerations of factually innocent persons through DNA evidence, seventeen of those facing capital punishment.<sup>9</sup> A review of these convictions also indicated that the average time spent in prison was thirteen years; that many were denied parole because they refused to accept responsibility for crimes they did not commit; 76 per cent were convicted based at least in part on eyewitness misidentification; and nineteen of the 250 actually pleaded guilty to crimes they did not commit.

“The significance of these post-conviction DNA exonerations is that the public has come to realize that the state does not always get it right” and that the DNA exonerations have generated “learning moments” about the root causes of wrongful convictions — poor eyewitness identification, false confessions, unreliable forensic science (fingerprints, bullets and bloodstains analysis), prosecutorial and police misconduct, inadequate defense counsel, jailhouse informers, witness perjury and racial bias.

However, according to Professor Scheck, “well under 10 per cent” of all criminal cases actually have biological evidence. Given the large numbers of convictions that were overturned just in cases involving DNA evidence, there is a possibility, according to Professor Scheck, that the total number of wrongful convictions using problematic evidence is much larger. He gave an example of a United States-based lawyer who was wrongfully accused of the terrorist bombing of a

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<sup>9</sup> *250 Exonerated, Too Many Wrongfully Convicted*. The Innocence Project ([www.innocenceproject.org](http://www.innocenceproject.org)) (2012). Of the 250, 84 per cent were convicted of sexual assault, 29 per cent were convicted of murder and 16 per cent were convicted of both sexual assault and murder. For more on exonerations, see *Exonerations in the United States, 1989-2012*, Report by the National Registry of Exonerations (May 2012), a joint project of the University of Michigan Law School and the Centre for Wrongful Convictions at Northwestern University School of Law ([www.exonerationregistry.org](http://www.exonerationregistry.org)).

railway station in Madrid based upon a partial fingerprint and another case in Texas, in which Cameron T. Willingham was executed on the basis of unreliable arson science.<sup>10</sup> Having in mind that state police and forensics are at fairly advanced levels of expertise and yet still produce many cases of wrongful convictions, Professor Scheck said “one can wonder, what is the situation elsewhere in the world?”

Mr. Kirk Bloodsworth, a United States victim of wrongful conviction and death sentence, recounted his extraordinary story. He was convicted of murder based on mistaken identification by five witnesses and spent almost nine years in prison, two of those on death row awaiting execution in a gas chamber. On a re-trial, his

***“I AM NOT HERE BECAUSE THE SYSTEM WORKED. I am here because a series of miracles led to my exoneration. Not every person wrongfully convicted of a capital crime is as blessed. If a country can not ensure that they will not kill an innocent citizen, they should not kill at all.”***

— Mr. Kirk Bloodsworth

death sentence was vacated and he was sentenced to life imprisonment. He recounted how he spent all of his time in prison fighting to prove his innocence, signing letters, “Kirk Bloodsworth A.I.M — an innocent man”.

While undertaking his own research to prove his innocence he came across a book that chronicled DNA testing that was used to solve a series of killings in England. Of DNA, he stated, “if it can convict you, it can set you free”. When his lawyer requested crime scene material containing biological material,

the prosecutor responded that it had been destroyed. It was eventually found in the chambers of the judge from the second trial.

Following DNA testing he was finally exonerated and released. The DNA testing identified the actual perpetrator, someone who was housed in the same prison as Mr. Bloodsworth. “It is important to remember that had evidence for DNA testing not been available, I would still be in prison today.” And he ended his comments powerfully, by stating, “make no mistake about it. I am not here because the system worked. I am here because a series of miracles led to my exoneration.”

Reference was also made to the recent publication by Columbia University on the conviction and execution of *Carlos DaLuna* in Texas in 1989.<sup>11</sup> The detailed study suggests another man, Carlos Hernandez, was the actual killer, and that a

<sup>10</sup> *Trial by Fire, Did Texas Execute an Innocent Man?* by David Grann, The New Yorker, September 7, 2009.

<sup>11</sup> *Los Tocayos Carlos*, Columbia Human Rights Law Review, Vol. 43, Number 3, Summer 2012.

collection of errors — witness misidentification, ineffective assistance of counsel, prosecutorial misconduct and a poor forensic investigation — resulted in an innocent man being executed.

Mr. Federico Mayor stated it was inevitable that injustices would happen since criminal justice systems are “designed, and run, by people.” He stated some constituencies would assert that the likelihood of the innocent being executed is small. Nevertheless, as the cases in the United States have shown, “even highly developed legal systems” can convict the innocent despite a number of safeguards. Europe had recognized this when it abolished capital punishment. Miscarriages of justice “risk undermining public confidence and respect for the judicial system.”

Ms. Blanca Aida Stalling Davila, Director-General of *El Instituto de la Defensa Publica Penal of Guatemala*, explained that the irregular trial procedures and the lack of any meaningful process for a petition for a pardon for two persons who would be executed led to an outcry about the unfairness of the death penalty. The cases were eventually taken up in 2005 by the Inter-American Court of Human Rights, which held that Guatemala could not carry out executions without a clemency procedure in place and established criteria for such a procedure. This decision resulted in the commutation of all death sentences in the country and a de facto moratorium has been in place since the 2005 decision.

In Burundi, according to the Prosecutor-General Bagorikunda, much of the support for the abolitionist movement arose following the planned execution of three defendants in order to “strengthen national unity.” The proposed move had the opposite effect, resulting in public outrage as some of the defendants were potentially innocent.

In the Caribbean, according to Mr. Douglas Mendes, President of the Caribbean Centre for Human Rights, though among the public there is broad support for the death penalty, such support diminished significantly when the possibility of wrongful conviction was raised.

Finally, Professor Scheck recommended an international human right to challenge a conviction and death sentence when new evidence emerges after the case has concluded. He stated that even in the United States, state and federal law is unclear as to whether post-conviction evidence of innocence is a viable constitutional claim.<sup>12</sup>

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<sup>12</sup> *Herrera v. Collins*, 506 U.S. 390 (1993), is a case in which the United States Supreme Court (in a 6-3 decision) held that a claim that the United States Constitution’s ban on cruel and unusual punishment prohibits the execution of one who is actually innocent is not ground for federal habeas corpus relief. The majority voiced the concern that a new trial may be less reliable than the original trial, responding in the negative to the question as to “whether a fairly convicted and therefore legally guilty person is constitutionally entitled to yet another judicial proceeding in which to adjudicate his guilt anew...notwithstanding his failure to demonstrate that constitutional error infected his trial?”



MEMBERS AND SUPPORTERS OF THE ASSOCIATION FOR JUSTICE AND MERCY DEMONSTRATE IN FRONT OF THE LEBANESE PARLIAMENT AS THEY MARK THE WORLD DAY AGAINST THE DEATH PENALTY, BEIRUT, LEBANON, 10 OCTOBER 2011.

PHOTO: EPA/WAEL HAMZEH

### **4.3 Leadership and Public Opinion**

The global panel event heard about how crucial moral and political leadership was to making the case for abolition or moratorium. Experience shows how leadership from politicians, religious leaders, leaders of civil society and individuals could be utilized to shift opinion.

In Zimbabwe, where a consultation process for a new constitution is under way, a coalition of media and civil society, such as the Zimbabwe Lawyers for Human Rights, the Zimbabwe Human Rights Association, the Zimbabwe Human Rights NGO Forum and others, have formed an “Anti-death Penalty Coalition.” The Coalition has launched a public awareness campaign and engaged theatre groups, who are carrying out public education on the death penalty through street theatre.

In addition, as part of the constitutional review process, the current Minister of Defense in Zimbabwe has publicly stated how he traced his opposition to the death penalty to his own experience as an inmate on death row before Zimbabwe’s independence.

***“ABOLITION IS NECESSARY TO PROTECT HUMAN RIGHTS but human rights are independent of public opinion.”***

— Mr. Cousin Zilala, Amnesty International, Zimbabwe

Some participants noted States where public opinion was strongly in favor of the death penalty and asked what the response should be. Mr. Cousin Zilala stated “public opinion is based on emotion rather than rationale, but criminal justice should serve public safety and rehabilitation of the offender, not feelings of vengeance.” More importantly, public opinion should be “shaped by leadership.”

The Prosecutor-General of Burundi discussed the show of leadership exhibited by President Pierre Nkurunziza, as well as the pivotal role played by the Catholic Church, media and NGOs in making the case for abolition. In Burundi, the public had come to believe that the death penalty was primarily imposed on “vulnerable populations, which is itself an injustice.” In addition, public sentiment was of the view that an alternative of life imprisonment offered the possibility of conditional release or judicial review if new evidence emerged.

As Mr. Federico Mayor stated, “the death penalty can be abolished even when public opinion seems to favor such punishment” as evidenced in Canada, France, Germany and the United Kingdom. He emphasized the importance of the media, social networks and local actors in influencing public views.

In South Africa, Mr. Cousin Zilala stated that although there was public support for the death penalty, it was the Constitutional Court which took the step to abolish the death penalty in 1995, declaring it was incompatible with the human rights culture in South Africa. The court stated that judges and politicians could serve as “role models,” crystallizing “what is right, not what is popular.”

In the Caribbean, according to Mr. Douglas Mendes, it was legal challenges to the administration of the death penalty that resulted in most of the region imposing a moratorium. Those challenges primarily related to the lengthy delays in carrying out executions and the mandatory element of imposing a sentence of death without regard for the personal circumstances of the offender and the offence.

In the United States, Professor Scheck talked about the role played by a coalition of religious groups, minorities and progressives in informing the public about the major errors in the administration of the death penalty and real alternatives, including life sentences without parole. Moreover, the media is an important





AN ACTIVIST CALLS UP PEOPLE TO SIGN A PETITION AGAINST THE DEATH PENALTY IN FRONT OF THE SUPREME COURT ON CAPITOL HILL, WASHINGTON, USA, JULY 2008.

PHOTO: EPA/SHAWN THEW

messenger on “miscarriages of justice” cases. In addition, in some States such as New Jersey, New York, Illinois and Connecticut, “crucial support” came from state bar associations, state assemblies and governor-appointed special commissions.

In Guatemala Ms. Blanca Alda Stalling Davila talked about the “strategic alliances” among NGOs, civil, legal and religious groups (i.e., the Human Rights Legal Action Center, the Institute of Public Criminal Defense, Guatemalan Institute of Comparative Studies in Criminal Sciences, the Office of Human Rights of the Archbishop of Guatemala) that provided the public with information on the “human and judicial mistakes in capital punishment.” She thought education on the errors in the administration of the death penalty was the key to changing opinion. Judges, legal associations and universities have also raised the challenges to the administration of the death penalty, supported by the United Nations field presence and international NGOs in providing funding, human rights training and information on international human rights developments relating to the death penalty.

Ms. Blanca Alda Stalling Davila also referenced the attempts played by the Executive Branch, including government leaders, to push for outright abolition

and processes to better regulate pardons and clemencies. In 2010, Congress passed a law which could have led to the resumption of the use of the death penalty. However, the President vetoed it and in December of that year, Guatemala voted in favour of the UN General Assembly resolution calling for a moratorium on the use of the death penalty.

A number of panelists raised concerns with the lack of transparency in some countries regarding the application of the death penalty, saying only more openness would allow the public to form more meaningful views of its application. In Japan, Ms. Maiko Tagusari, Secretary-General of the Center for Prisoners' Rights, noting that Japan has one of the lowest homicide rates in the world, stated that executions are conducted in secret, often with no prior notice to the defendant or victims' family. According to Ms. Tagusari, there is no clarity on which defendant is next in line for execution since the State has not publicly articulated how it selects death row inmates for execution. Nor is there any information regarding conditions of detention other than that death row inmates are placed in solitary confinement, many for decades.

#### ***4.4 Role of International and Regional Organizations***

Panelists discussed the important role of international organizations and regional bodies on the debate around the death penalty.

In Africa, abolition of the death penalty is a goal promoted by the African Commission on Human and Peoples' Rights, a body tasked with the protection and promotion of human rights and peoples' rights in Africa, as well as interpretation of the African Charter for Human and Peoples' Rights. In 2011, the African Union Commission Chairperson, Mr. Jean Ping of Gabon, and the Chairperson of the African Commission's Working Group on the Death Penalty in Africa, Ms. Zainabou Sylvie Kayatesi of Rwanda, publicly stated that the death penalty violated the African Charter.

In Latin America, the Inter-American Court of Human Rights has played a major role in bringing about the moratorium in Guatemala. In 2005, it issued its decision in two cases, one of which was the review of a death sentence in a non-homicide case. The Court was critical of the limited due process to those persons facing a death sentence, including the failure of the government to regulate for effective clemency petitions. It was also highly critical of the application of a death sentence in a non-homicide case. The decision had a powerful impact in Guatemala, with the decisions being widely discussed among many sectors of society. The decision was followed by workshops, conferences, university forums and trainings for legal and non-legal actors.

Mr. Federico Major emphasized the importance of regional organizations promoting abolition efforts, highlighting the Council of Europe, the African Union and the Community of Latin American and Caribbean States (CELAC). The important role played by the United Nations Human Rights Committee and the special procedures mechanism of the United Nations Human Rights Council were also explored.

Many panelists talked about the fact that none of the international tribunals apply the death penalty, not even in cases of genocide. This includes the ad hoc international tribunals for the former Yugoslavia (ICTY), and Rwanda (ICTR), the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon, the Special Court for Sierra Leone and the International Criminal Court. Mr. Federico Major thought this “sends a powerful abolitionist message to all judiciaries around the world.”

## **Next steps for OHCHR**

The global panel event is the first of a series of activities OHCHR will undertake on the issue of the death penalty. In addition to some of the activities described above, including advocacy regarding ratification of the Second Optional Protocol to the ICCPR, preparation of the Secretary-General's death penalty report to the General Assembly and participation in various regional conferences towards abolition of the death penalty, OHCHR will follow up the Panel event with three events on issues relating to discrimination, wrongful conviction and deterrence.



THE AUDIENCE LISTENS TO SECRETARY-GENERAL BAN KI-MOON SPEAKING AT THE OHCHR PANEL DISCUSSION ON ABOLISHING THE DEATH PENALTY, 3 JULY 2012.

PHOTO: UNITED NATIONS/NENAD VASIC

## 5. SPEECHES AND STATEMENTS

### 5.1 Secretary-General Ban Ki-moon

*Delivered on 3 July 2012 at the OHCHR panel on abolition of the death penalty, United Nations, New York*

I thank the Office of the High Commissioner for Human Rights for organizing this important event.

And I welcome the participation of Mr. Federico Mayor, President of the International Commission Against the Death Penalty.

Civil society organizations have shown commendable leadership in working to end the death penalty.

In 2007, the UN General Assembly took a significant step toward the abolition of capital punishment — and the protection of human rights — when it endorsed a call for a worldwide moratorium on the death penalty.

Since that landmark vote, the trend against capital punishment has become ever stronger.

The sentiment towards abolition finds echoes in every region and across legal systems, traditions, customs and religious backgrounds.

There are now 74 Parties to the Optional Protocol of the International Covenant on Civil and Political Rights aimed at ending capital punishment.

More than 150 States have either abolished the death penalty or do not practice it.

In 2011, only 20 Member States conducted executions.

Since the 2007 General Assembly resolution, Argentina, Burundi, Gabon, Latvia, Togo and Uzbekistan have abolished the death penalty.

In the United States, Illinois and Connecticut became the 16th and 17th states to reject death as a punishment.

I welcome this trend and encourage Member States who practice the death penalty or retain it in law to follow suit.

The right to life is the most fundamental of all human rights. It lies at the heart of international human rights law.

The taking of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process.

Where the death penalty persists, conditions for those awaiting execution are often horrifying, leading to aggravated suffering.

Information concerning the application of the death penalty, including secret trials and executions, is often cloaked in secrecy.

And it is beyond dispute that innocent people are still put to death.

The United Nations system has long advocated abolition of the death penalty or — at a minimum and in the interim — moratoriums and restrictions on its use to only “the most serious crimes”.

Yet the death penalty is still used for a wide range of crimes that do not meet that threshold.

My forthcoming report on the death penalty expresses particular concern that 32 States retain the death penalty for drug-related offences.

I am also very concerned that some countries still allow juvenile offenders under the age of 18 at the time of the alleged offence to be sentenced to death and executed.

My Guidance Note of 2008 on the UN Approach to Rule of Law Assistance states that “the UN will neither establish nor directly participate in any tribunal that allows for capital punishment.”

International and hybrid criminal tribunals for Cambodia, the former Yugoslavia, Lebanon, Rwanda and Sierra Leone do not provide for capital punishment.

Nor does the International Criminal Court.

The call by the General Assembly for a global moratorium is a crucial stepping stone in the natural progression towards a full worldwide abolition of the death penalty.

Let us now do our utmost to put a final end to this practice.

I wish you a productive discussion.

Thank you.

## **5.2 High Commissioner for Human Rights, Navi Pillay**

*Delivered on 3 July 2012 at the OHCHR panel on abolition of the death penalty, United Nations, New York*

I would like to extend a warm welcome to all of you, and thank you for participating in this event organized by my Office on “Moving away from the death penalty — Lessons from national experiences.”

The global trend and position on the death penalty have evolved over the years. An increasingly large number of Member States from all regions have acknowledged that the death penalty undermines human dignity, and that its abolition, or at least a moratorium on its use, contributes to the enhancement and progressive development of human rights.

There is no right more sacred than the right to life. Since the beginning of my mandate, I have engaged in a dialogue with many States on this issue. During my recent country missions, I had encouraging discussions with senior officials about abolishing the death penalty or imposing at least a moratorium on it. In addition, my Office works at the national level to stimulate the debate, including through seminars which provide a forum for a core group of scholars and practitioners that come forward with convincing arguments in favour of the abolition of the death penalty.

With regard to retentionist States, international law requires as a minimum full compliance with the clear restrictions prescribed in particular in article 6 of the International Covenant on Civil and Political Rights (ICCPR). According to this provision, its application shall be limited to the “most serious crimes.” It should be recalled that this term has been interpreted to mean that the death penalty should only be applied to the crime of murder. Therefore, in those States that have not yet abolished the death penalty, the use of capital punishment for drug offences or for offences carried out in connection with transnational organized crime is prohibited if the offences in question do not involve a taking of life. Furthermore, the death penalty cannot be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

States that have maintained the death penalty must ensure scrupulous respect of due process guarantees. The imposition of a death sentence upon conclusion of a trial in which the provisions of article 14 of the ICCPR have not been respected constitutes a violation of the right to life. Those accused of capital offences must be effectively assisted by a lawyer at all stages of the proceedings. Furthermore, executions should not take place when an appeal or other recourse is pending,

and there must be the possibility for the individual concerned to seek pardon or commutation of the sentence.

Non-compliance with the principle of non-discrimination is also a major concern when considering the application of the death penalty. A death sentence is often imposed on less privileged individuals who do not have sufficient access to effective legal representation. Membership of a minority has often been identified as a significant factor in the decision that led to the sentence of death and execution. In addition, due regard is often lacking for the UN Safeguards Guaranteeing Protection of those Facing the Death Penalty, approved by ECOSOC in 1984, which prohibit the carrying out of the death penalty on persons “who have become insane.”

Methods of execution should meet the standards of “least possible physical and mental suffering.” Otherwise, the execution will constitute a violation of freedom from torture, inhuman or to cruel, inhuman or degrading treatment or punishment. It is difficult to think of a humane method of executions that can meet these criteria. Also troubling are the length and conditions imposed on individuals on death row.

Judges often complain that executive stipulations of mandatory sentences of death for specific crimes, is interference with judicial discretion to determine the appropriate sentence. The sentence of death is so grave that it should not be mandatory. Nor can it be carried out in secret, which would make it amount to inhuman treatment of the executed person’s family.

A key obligation to bear in mind for any State that has itself abolished the death penalty is not to expel, extradite or otherwise remove from its jurisdiction individuals who face a real risk of a death sentence and execution in the country to which they are removed, without ensuring that the death penalty would not be carried out. Extradition or other transfer to such a country accordingly requires the procurement of effective guarantees or assurances to the effect that, at a minimum, the death penalty, if imposed, will not be carried out.

Finally, it should be recalled that the lack of data with regard to the number of executions or the number of individuals on death row is a serious impediment to any national debate that may lead to a move towards abolition of capital punishment in a given State. It will also be important for the effectiveness and transparency of such a debate to ensure that the public is provided with all sides of the arguments and with information and accurate statistics on criminality and the various effective ways to combat it, short of the death sentence.





HIGH COMMISSIONER FOR HUMAN RIGHTS NAVI PILLAY ADDRESSES THE OHCHR PANEL EVENT ON ABOLISHING THE DEATH PENALTY AT THE UNITED NATIONS IN NEW YORK, 3 JULY 2012.

PHOTO: UNITED NATIONS/NENAD VASIC

It is interesting to note that in the early 1960s, when drafting the Covenant, its authors were already paving the way for the move in international law 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, which materialized in 1989 through the adoption of the Second Optional Protocol to the International Covenant on the Civil and Political Rights, to-date ratified by 74 States, is also reflected in a number of regional instruments supporting the abolition of the death penalty. I call upon States that have not yet done so to ratify the Second Optional Protocol, or as a strict minimum to place a formal moratorium on the use of the death penalty until they are ready to work towards its abolition.

I am grateful to panelists that have come from all parts of the world to share their experience with us today, in particular regarding the process of transition from capital punishment to abolition, or their experience, at times close or personal, of injustice related to the imposition of the death penalty.





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