



Submission on the Effects of terrorism on the enjoyment of all human rights in preparation of the forthcoming report for the 34th session of the UN Human Rights Council

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Secretariat:

World Coalition Against the Death Penalty
69, rue Michelet - 93100 Montreuil
FRANCE
Tel: + 33 1 80 87 70 43
Fax: + 33 1 48 70 22 25
contact@worldcoalition.org

World Coalition Against the Death Penalty

The World Coalition Against the Death Penalty is an alliance of more than 130 NGOs, bar associations, local authorities and unions.

The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is the universal abolition of the death penalty.

The World Coalition gives a global dimension to the local, national and regional actions taken by its members on the ground. It complements their initiatives, while constantly respecting their independence.

This submission has been prepared in the framework of the 14th World Day against the Death Penalty which focused on the death penalty for terrorism-related offenses.

1) **Enjoyment of the right to life: no one can be arbitrarily deprived of life**

Terrorism violates the right to life, but when answering to such a violation, states should ensure that they fully respect it.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right to life of every human being. While the ICCPR does not prohibit the death penalty, it does provide some legal safeguard. In particular, Article 6(2) provides that it can only be applied for the “most serious crimes”. According to the Special Rapporteurs on Torture and on Extrajudicial, summary or arbitrary executions, the wording “most serious crimes” can only refer to intentional killing.

In its “Human Rights, Terrorism and Counter-Terrorism Factsheet”, the United Nations Office of the High Commissioner for Human Rights (OHCHR) stressed that “under international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation”.ⁱ

Terrorism-related offences are too loosely-defined to satisfy international standards regarding criminal law: therefore applying the death penalty is highly arbitrary

International law does not provide one unified definition of what falls under terrorism-related offences. As a result, States use various definitions of terrorist acts and the definitions used are often very broad, vague and include non-violent acts or those that do not constitute the “most serious crimes”. Among those acts, the participation in criminal gangs and/or terrorist groups is often considered a terrorist act, and is punishable by death in several countries.ⁱⁱ

International standards dictate that criminal law shall be precise, in order to prevent arbitrary arrests, detentions and punishments. The fact that terrorist offences are drafted loosely and can be applied to a wide range of acts is in itself a violation of international standards, and thus should not carry the death sentence – an irreversible punishment.

The definition of terrorism-related offences can be used as a tool of repression

The very loose definition of terrorism-related offences can also serve political purposes and be intentionally-used to encompass acts that do not fall under the more generally-accepted definition of terrorism. In some countries, speaking out or engaging in non-violent actions can be characterized as terrorist acts punishable by death.

Regardless of the criminal offence considered, the death penalty is very often used in a discriminatory way which impacts primarily people from less wealthy backgrounds and from racial, ethnic, or religious minorities. This risk is even more acute in cases of terrorism-related offences, as they can be used to repress non-violent political movements or ethnic groups.ⁱⁱⁱ

Legal safeguards: trials of alleged terrorists rarely meet fair trial standards

Articles 14 and 15 of the ICCPR expressly protect the right to a fair trial and define several of the necessary guarantees. They do not offer any exception: the right to a fair trial must be respected in all circumstances, including for terrorism-related offences. Similar safeguards are included in Article 6 of the European convention on Human Rights. Fair trial standards and the right to life are closely linked where capital punishment is concerned: the Human Rights Committee has consistently found that imposing a death sentence upon a trial that fails to meet the legal standards of fairness breaches not only Article 14 of the ICCPR but also Article 6, which protects the right to life.^{iv}

The ACHPR also adopted Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, which clearly provide that African States must comply with the right to a fair trial even in the context of counter-terrorism.^v

In practice, terrorism-related offences are often prosecuted and tried by military or special courts, during unfair and speedy trials. Confessions obtained under duress or torture may be used and the convicted individual is often prevented from using his right to appeal, if an appeal is at all provided for by the judicial system concerned.

In its report “Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism”, the UN Office of the High Commissioner for Human Rights underlined the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in relation to fair trial standards in prosecutions of terrorist acts.^{vi}

2) Respect and protection of all human rights while countering terrorism

Terrorism-related cases are often dealt with in violation of the prohibition of torture and death row detention and executions often violate the prohibition of torture, inhuman cruel and degrading treatments and punishments

The prohibition of torture, and inhuman, cruel or degrading treatments and punishments is one of the most well-established international human rights norm. It is prohibited under Articles 7, 10 and 14 of the ICCPR, as well as in the Convention against Torture (CAT), and all regional human rights systems. This prohibition does not suffer any exception or derogation and the International Criminal Tribunal for the former Yugoslavia (ICTY) found that it was in fact a jus cogens norm.^{vii}

The prohibition of torture is absolute and non-derogable, as Article 2.2 of the CAT states that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. Individuals suspected of terrorist acts cannot be subjected to acts of torture or inhuman, cruel and degrading treatments or punishments. Confessions or evidence obtained under torture or duress must be excluded and no sentence, especially a death sentence, can legally be passed solely on a confession or evidence obtained under torture.

In practice however, torture is often used to extract confessions from suspected terrorists, which is a violation of their human rights. A tougher stance on terrorism-related offences leads to a stronger incentive to obtain confessions, including through torture.

Moreover, the prolonged detention of death row inmates in itself is a source of great psychological suffering, and can cause what is known as “death row syndrome”. Various courts around the world have recognized that the length of incarceration suffered by those sentenced to capital punishment can amount to an inhuman and cruel punishment.^{viii}

3) Protecting the rights of victims of terrorism and their families

Contrary to what is often claimed, not all victims of terrorism and their relatives call for the death penalty to compensate for the pain caused by a terrorist act. Some believe that the killing of a terrorist will not bring any form of just or fair retribution or closure and that the cycle of violence needs to be broken rather than perpetuated.^{ix}

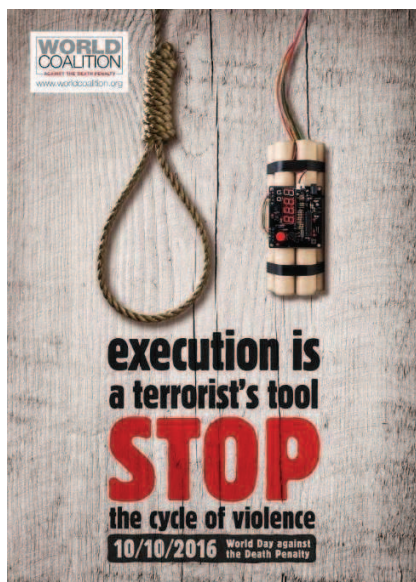
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NOTES AND APPENDIX

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- ⁱ OHCHR, [Human Rights, Terrorism and Counter-terrorism](#), Fact Sheet No 32, July 2008.
- ⁱⁱ Afghanistan, Bahrain, Congo, Egypt, Iraq (Kurdistan), Mali, Mauritania, Qatar, Sudan, UAE, Vietnam.
- ⁱⁱⁱ U. RAMANATHAN, The Death Penalty in India: Down a Slippery Slope, in “[Moving Away from the Death Penalty: Arguments, Trends and Perspectives](#)” (2014), *op. cit.*.
- ^{iv} Human Rights Committee, *Carlton Reid v. Jamaica*, Communication No 250/1987, 20 July 1990, CCPR/C/39/D/250/1987.
- ^v ACHPR, [Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism](#), 7 May 2015.
- ^{vi} Counter-Terrorism Implementation Task Force (CTITF), [Basic Human Rights Reference Guide, Right to a Fair Trial and Due Process in the Context of Countering Terrorism](#), October 2014.
- ^{vii} ICTY, Trial Chamber I, *The Prosecutor v. Anto Furundzija*, Judgment, 10 December 1998, IT-95-17/1-T.
- ^{viii} Death Penalty Worldwide, [Death Row Phenomenon](#).
- ^{ix} For more information, see:
Appendix 1: “Why the Death Penalty for Terrorism-related Offences is Ineffective, Counter-productive and Violates Human Rights – Factsheet for Parliamentarians”,
Appendix 2: “Detailed Fact Sheet on the death penalty for terrorism”
Appendix 3: “Why some victims of terrorism are against the death penalty”



Parliamentarians for Global Action
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي



THE DEATH PENALTY FOR TERRORISM

Factsheet for Parliamentarians

14th World Day Against the Death Penalty

INTRODUCTION

The past few years, including 2016, have been marked by terrorist attacks across the world, which in turn has led to renewed support for the death penalty and other “tough” actions to fight terrorism.

Since the 1980s, there has been a global trend towards the abolition of the death penalty, which continues to this day. 16 countries had abolished the death penalty in law for all crimes in 1977; today, there are 140 *de jure* or *de facto* abolitionist countries. However, this global trend is suffering setbacks, as governments resort to capital punishment in order to fight against terrorist groups, in the name of protecting their countries and citizens.

Why the Death Penalty for Terrorism-related Offences is Ineffective, Counter-productive and Violates Human Rights

This runs counter to major signs of a global shift towards abolition, with the United Nations General Assembly (UNGA), representing equally all Member States of the world, adopting since 2007 five resolutions¹ calling on retentionist States to establish a moratorium on the use of capital punishment and work towards abolition. While those resolutions are not legally binding, they are a strong indication of a global shift on the path to abolition of the death penalty. Reintroducing, extending or applying the death penalty to terrorism-related offences goes against the conclusion the International Community is slowly coming to: the death penalty is not only ineffective at deterring crime and a huge risk in cases of miscarriages of justice, it is also cruel and a violation of human rights.

On 10 October 2016, the World Coalition against the Death Penalty (WCADP), Parliamentarians for Global Action (PGA) and other abolitionists worldwide will mark the 14th World Day Against the Death Penalty and draw attention to the particular issue of capital punishment for terrorist offences. Often regarded as ‘heinous’ crimes, the terrorist nature of certain criminal acts is easily used to justify restrictions or violations of human rights, including the right to life.

¹ UNGA, [Moratorium on the use of the death penalty, Resolution 62/149](#), 18 December 2007, A/RES/62/149; [Moratorium on the use of the death penalty, Resolution 63/168](#), 18 December 2008, A/RES/63/169; [Moratorium on the use of the death penalty, Resolution 65/206](#), 21 December 2010, A/RES/65/206; [Moratorium on the use of the death penalty, Resolution 67/176](#), 20 December 2012, A/RES/67/176 and [Moratorium on the use of the death penalty, Resolution 69/186](#), December 2014, A/RES/69/186.

Execution is a terrorist's tool: stop the cycle of violence.

Despite the 19 international legal instruments relating to terrorism produced by the United Nations since 1960, no single and comprehensive definition of “terrorism” has emerged. The International Community has yet to reach a consensus on a universal, legal definition of terrorism, despite many attempts to do so. This, in turn, leaves a large margin of discretion to States when defining what constitutes a terrorist offence, making it easier to criminalize as terrorist some acts that might not constitute terrorism.

Terrorist offences are often defined by two cumulative components:

- the criminal act itself, such as causing death or injury to a person, taking hostages, using explosives, destroying infrastructure, or damaging the environment;
- and the criminal intent, i.e. the terrorist motivation for the act, which is often ill-defined but may be the intent to disturb public order, endanger the safety of the community or spread terror among the population.

The Death Penalty for Terrorism-Related Offences: the Role of Parliamentarians

In 2016, 65 countries retain the death penalty in law for terrorism-related offences. Of these, 15 carried out executions for terrorism and 12 others sentenced terrorist suspects to death at least once over the past ten years. In the last ten years, countries like Bangladesh, India, Nigeria, Tunisia and others have modified their legal framework to expand the scope of capital punishment to include terrorism-related offences. More recently, Pakistan and Chad resumed executions in the name of the fight against terrorism, putting an end to moratoriums that had lasted for years.



Against this background, parliamentarians are essential in furthering the process of abolition and also fighting setbacks such as the reintroduction of the death penalty, the increase of capital offenses, or renewed executions. They are central to law-making in their own countries and within regional and global government entities, as well as to awareness-raising with their constituents.

Parliamentarians can lead and influence policy and public opinion. They can expose flaws in their national criminal justice systems and highlight the dangerous and irreversible nature of the death penalty. They can also identify and promote better ways to protect victims and improve security. In the long term, they can play a role in campaigning and influencing parties and individuals who may form future governments.

For members of parliaments in retentionist countries, working on abolition can prove difficult when public opinion remains hostile. In these cases, parliamentarians can promote a step-by-step process towards abolition which may be more acceptable to their constituents. For example, they can raise public awareness of the growing international movement against executions, work to introduce legislation to reduce the number of offenses that carry the death penalty, and carry out parliamentary inquiries to ensure that all trials for capital offenses follow the highest standards.

How Can Parliamentarians Take Action?

Parliamentary work

- Raise the issue of the death penalty in Parliament;
- Organise a public debate, for example in the Legal Affairs Committee;
- Table parliamentary questions to the Government on the use of the death penalty for terrorism-related offences;
- Review draft legislation to assess its conformity with international standards;
- Table a bill reforming the applicable legal provisions to abolish the death penalty or at least improve legal safeguards for individuals accused of terrorist acts;
- Introduce a resolution stating your Parliament's opposition to the death penalty in any circumstance, including for terrorism-related offences;
- Advocate for the establishment of a parliamentary committee on human rights and the death penalty, and ensure that it is linked to counter-terrorism as well;
- Advocate for the creation of a parliamentary inquiry on the use of the death penalty in relation to terrorist acts;
- Join an inter-parliamentary network, such as Parliamentarians for Global Action (PGA),² to share best practices with your peers in other Parliaments.

Awareness-raising

- Liaise with civil society groups;
- Attend events related to the abolition of the death penalty and show support as a member of parliament, especially on World Day Against the Death Penalty (10 October);
- Raise awareness with your constituents on the issue of the death penalty, for example by discussing the international standards and arguments against the death penalty for terrorism-related offences when visiting your constituency;
- Follow the social media campaign on Facebook and Twitter (#nodeathpenalty);
- Write op-eds or take part in radio and televised interviews to raise awareness.

Arguments against the Death Penalty for Terrorism-Related Offences

The Death Penalty for Terrorism-Related Offences is Not Effective

The death penalty does not deter terrorism

No study so far has been able to show that the death penalty deters crimes more effectively than other punishments.³ On the contrary, some studies have shown that crime rates might actually decline when the death penalty is abolished and the rule of law is strengthened.⁴

Moreover, the correlation between crime rates and the death penalty seems to be even less relevant in the case of terrorism, where the act is politically-motivated and planned without any cost-benefit calculation. People committing terrorist acts are dedicated to their cause, and often ready to die for it, which counteracts and neutralizes whatever

²² You can apply to join Parliamentarians for Global Action (PGA) [online](#).

³ C. HOYLE & R. HOOD, Deterrence and Public Opinion, in "Moving Away from the Death Penalty: Arguments, Trends and Perspectives", United Nations Office of the High Commissioner for Human Rights (OHCHR), 2015.

⁴ C. HOYLE & R. HOOD, Deterrence and Public Opinion, idem; P. J. BHATTI, Towards a Moratorium on the Death Penalty, in "Moving Away from the Death Penalty: Arguments, Trends and Perspectives", United Nations Office of the High Commissioner for Human Rights (OHCHR), 2014.

legal threat is meant to deter them and actually transforms it into a “perverse incentive”.⁵ When the death penalty is applied against individuals inspired by a violent extremism ideology, who commit terrorism and mass-atrocity crimes (including crimes against humanity and genocide), death-sentences may become an incentive for what is purported to be a supreme form of “martyrdom” or sacrifice in their misleading and wrongful fundamentalist beliefs. The culture of death for death, and the false idea of dying to reach paradise as a reward, makes the death penalty imposed to operatives of groups like Daesh/ISIS highly counter-productive, whereas a term of imprisonment would represent the maximum form of retribution and punishment. The resolution adopted by the Human Rights Council on the High-Level Panel Discussion on the question of the death penalty, held during the Human Rights Council’s 30th Session, noted that the deterrent effect of the death penalty in combatting terrorism was not proved.⁶

Extending the death penalty to terrorism-related offences is often a mere political stance

In retentionist countries, murder is most likely already a capital offence, which means that many terrorist acts can already be prosecuted as murder and result in the death penalty: the argument that there needs to be a tougher answer to those crimes is not based on facts, as the extension of the death penalty does not, in fact, increase the applicable punishment.

However, this legal reform often has political motives: faced with an existing or perceived terrorist threat, governments want to appear to be taking strong actions. The measure of adding terrorist offences to capital offences has a strong symbolic value, which benefits politicians supporting it. As such, the death penalty is used as a way to show that government authorities are strong and will seek revenge – which is not justice.

Jordan

In 2014, Jordan introduced a new anti-terrorism law, which increases penalties and requires the death penalty for any act that causes death, destroys or damages a building if someone is inside, uses poisonous or dangerous materials, or constitutes a life-threatening attack against the king, queen or crown prince.⁷

On 3 February 2015, IS released a video depicting the brutal killing of Muadh al-Kasasbeh, a Jordanian fighter pilot. The Jordanian government vowed “punishment and revenge” and a day later, on 4 February 2015, Jordan executed two people⁸ for alleged acts of terrorism.⁹

Carrying out the death penalty often goes against the victims’ families’ wishes and rights

It is often argued that executing the perpetrator of a crime, and in particular of a terrorist act, is necessary and called for by the families of those who were killed and the affected communities. However, this is not always the case, and many victims believe that the act of killing the terrorist will not bring any form of just and fair retribution or closure. Indeed, some will even argue that this only perpetuates the cycle of violence that cost them their loved ones. For some, it might also violate their ethical and religious beliefs, which may include the duty of the perpetrator to be obliged to pay some form of reparation to the victims, her/his family and/or community.

Moreover, the high-risk of miscarriage of justice that death penalty cases carry actually runs against the rights of the victims to seek justice, since it might impede the authorities’ efforts to uncover the truth.

⁵ J. FAGAN, Deterrence and the Death Penalty in International Perspective, in [“Moving Away from the Death Penalty: Arguments, Trends and Perspectives”](#), *ibid.*

⁶ UNGA, Human Rights Council, [Report of the United Nations Commissioner for Human Rights, High-level panel discussion on the question of the death penalty](#), 16 July 2015, A/HRC/30/21.

⁷ Human Rights Watch, [Jordan: Terrorism Amendments Threaten Human Rights](#), 17 May 2014.

⁸ One of the accused also reported being tortured and submitted a communication to the UN Special Rapporteur on Torture. See: Amnesty International, [Annual Report 2015/16](#), 2016.

⁹ I24 News, [Amman announce avoir exécuté les djihadistes Sajida el-Rishawi et Ziyad el-Karbouli](#), 4 February 2015.

The death penalty denies any possibility of rehabilitation of the criminal

In its very nature, capital punishment denies the accused the possibility of repenting and rehabilitating himself or herself. In the specific case of anti-terrorism policies, this is overlooked whereas some experiences show that repenting terrorist militants are more likely to be able to reach out to people susceptible of being radicalized. Their experience as former terrorist sympathizers is helpful in countering and preventing terrorism and violent extremism at the source. Additionally, rehabilitation of the perpetrators that manifests itself through effective or symbolic forms of reparations for the benefit of victims, their families and/or their communities, may bring about a situation of closure in a given society, including in post-conflict situations, which may deter retaliation and the repetition of violence and crime.

The Death Penalty for Terrorism-Related Offences Causes Human Rights Violations

The right to life: no one can be arbitrarily deprived of life

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right to life of every human being. While the ICCPR does not prohibit the death penalty, it does provide some legal safeguard. In particular, Article 6(2) provides that it can only be applied for the “*most serious crimes*”. According to the Special Rapporteurs on Torture and on Extrajudicial, summary or arbitrary executions, the wording “*most serious crimes*” can only refer to intentional killing.

This standard is also supported by the Inter-American Commission of Human Rights (IACHR),¹⁰ as well as the African Commission on Human and Peoples’ Rights (ACHPR).¹¹

In its “Human Rights, Terrorism and Counter-Terrorism Factsheet”, the United Nations Office of the High Commissioner for Human Rights (OHCHR) stressed that “*under international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation*”.¹²

Terrorism-related offences are too loosely-defined to satisfy international standards regarding criminal law: therefore applying the death penalty is highly arbitrary

International law does not provide one unified definition of what falls under terrorism-related offences. As a result, States use various definitions of terrorist acts and the definitions used are often very broad, vague and include non-violent acts or those that do not constitute the “most serious crimes”. Among those acts, the participation in criminal gangs and/or terrorist groups is often considered a terrorist act, and is punishable by death in several countries.¹³

International standards dictate that criminal law shall be precise, in order to prevent arbitrary arrests, detentions and punishments. The fact that terrorist offences are drafted loosely and can be applied to a wide range of acts is in itself a violation of international standards, and thus should not carry the death sentence – an irreversible punishment.

¹⁰ IACHR, [Report on Terrorism and Human Rights](#), 22 October 2002, OEA/Ser.L/V/II/116.

¹¹ ACHPR, [General Comment No 3 on the African Charter on Human and Peoples’ Rights: the right to life \(article 4\)](#), 18 November 2015.

¹² OHCHR, [Human Rights, Terrorism and Counter-terrorism](#), Fact Sheet No 32, July 2008.

¹³ Afghanistan, Bahrain, Congo, Egypt, Iraq (Kurdistan), Mali, Mauritania, Qatar, Sudan, UAE, Vietnam.

Libya

Libyan law punishes by death acts aimed at “*vandalizing, looting or killing people*” and terrorism-related offences not resulting in death can receive the death penalty if they were committed against the security of the state.¹⁴

Indonesia

The Law No 15 of 2003 on combatting terrorism provides that the act of creating, planning or inciting others to create a “*widespread atmosphere of terror*” by taking liberty, property or damaging public resources is punishable by death.¹⁵

The definition of terrorism-related offences can be used as a tool of repression

The very loose definition of terrorism-related offences can also serve political purposes and be intentionally-used to encompass acts that do not fall under the more generally-accepted definition of terrorism. In some countries, speaking out or engaging in non-violent actions can be characterized as terrorist acts punishable by death.

Regardless of the criminal offence considered, the death penalty is very often used in a discriminatory way which impacts primarily people from less wealthy backgrounds and from racial, ethnic, or religious minorities. This risk is even more acute in cases of terrorism-related offences, as they can be used to repress non-violent political movements or ethnic groups.¹⁶

Iran

In the Islamic Republic of Iran, the 1991 Islamic Penal Code, as amended in 2013, provides for the death penalty for *moharebeh* or “enmity against God”, which corresponds to an armed insurrection aiming to sow panic among the population.¹⁷

However, people who have not carried out violent acts and who come from ethnic and/or religious minorities have been executed for *moharebeh*. For example, in 2015, executions were reportedly carried out for this crime against Sunnis and a Kurd, because of alleged collaboration with the Party for a Free Life in Kurdistan (PJAK), a political organization rendered illegal in Iran.¹⁸

Saudi Arabia

On 2 January 2016, 47 men were simultaneously executed in 12 Saudi cities, in the name of a *hadd* (i.e. a crime considered to be committed against God and where the sentence is invariably death).¹⁹ While 43 of them were sentenced for their involvement with various Al-Qaeda attacks, the remaining four, all Shiites, were sentenced for demanding political reform by demonstrating in the majority Shiite Eastern Province in 2011.²⁰ The demonstrations had indirectly caused the death of police officers.²¹

Ethiopia

In 2012, journalists and members of the opposition were convicted under the 2009 Anti-Terrorism Proclamation for “*criticizing the Government, demanding reforms and discussing demonstrations and arrests*”.²²

¹⁴ Criminal Code, Articles 197, 202, and 211, 1953.s

¹⁵ Dr. Simon Butt, ARC Federation Fellowship, Islam, Syari'ah and Governance, [Background Paper Series: Anti-Terrorism Law and Criminal Process in Indonesia](#), p. 9, The University of Melbourne, August 2008.

¹⁶ U. RAMANATHAN, The Death Penalty in India: Down a Slippery Slope, in “[Moving Away from the Death Penalty: Arguments, Trends and Perspectives](#)” (2014), *op. cit.*.

¹⁷ Death Penalty Worldwide, Death Penalty Database, [Iran, Crimes and Offenders Punishable By Death](#).

¹⁸ Amnesty International, [Global Report, Death Sentences and Executions – 2015](#), 2016.

¹⁹ Human Rights Watch, [Saudi Arabia: Mass Execution Largest Since 1980](#), 4 January 2016.

²⁰ Amnesty International, [Shia cleric among 47 executed by Saudi Arabia in a single day](#), 2 January 2016.

²¹ Reuters, [Shi'ite cleric among 47 executed in Saudi Arabia, stirring anger in region](#), 2 January 2016.

²² Amnesty International, [Global Report, Death Sentences and Executions – 2012](#), 2013.

Legal safeguards: trials of alleged terrorists rarely meet fair trial standards

Articles 14 and 15 of the ICCPR expressly protect the right to a fair trial and define several of the necessary guarantees. They do not offer any exception: the right to a fair trial must be respected in all circumstances, including for terrorism-related offences. Similar safeguards are included in Article 6 of the European convention on Human Rights. Fair trial standards and the right to life are closely linked where capital punishment is concerned: the Human Rights Committee has consistently found that imposing a death sentence upon a trial that fails to meet the legal standards of fairness breaches not only Article 14 of the ICCPR but also Article 6, which protects the right to life.²³

The ACHPR also adopted Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, which clearly provide that African States must comply with the right to a fair trial even in the context of counter-terrorism.²⁴

In practice, terrorism-related offences are often prosecuted and tried by military or special courts, during unfair and speedy trials. Confessions obtained under duress or torture may be used and the convicted individual is often prevented from using his right to appeal, if an appeal is at all provided for by the judicial system concerned.

In its report "Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism", the UN Office of the High Commissioner for Human Rights underlined the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in relation to fair trial standards in prosecutions of terrorist acts.²⁵

Chad

On 29 August 2015, ten people suspected of belonging to Boko Haram and accused of carrying out twin attacks that had killed 38 people in N'Djaména in June 2015 were executed merely three days after their trial²⁶ and less than a month after the adoption of the new Anti-Terrorism Act of 31 July 2015.

No reliable information as to their right to appeal and to file a mercy petition was available as the hearings had been moved to a secret location. The speed with which the executions were carried out effectively prevented the individuals from exercising any right they might have had under Chadian law.

Algeria

In 2016, Algeria handed down 62 death sentences for terrorist acts, in many cases after a trial *in absentia*.²⁷

Terrorism-related cases are often dealt with in violation of the prohibition of torture and death row detention and executions often violate the prohibition of torture, inhuman cruel and degrading treatments and punishments

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²³ Human Rights Committee, *Carlton Reid v. Jamaica*, Communication No 250/1987, 20 July 1990, CCPR/C/39/D/250/1987.

²⁴ ACHPR, [Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism](#), 7 May 2015.

²⁵ Counter-Terrorism Implementation Task Force (CTITF), [Basic Human Rights Reference Guide, Right to a Fair Trial and Due Process in the Context of Countering Terrorism](#), October 2014.

²⁶ Jeune Afrique, [Tchad : exécution des 10 membres présumés de Boko Haram condamnés à mort](#), 29 August 2015.

²⁷ Amnesty International, [Global Report, Death Sentences and Executions – 2015](#), 2016.

²⁸ ICTY, Trial Chamber I, *The Prosecutor v. Anto Furundzija*, Judgment, 10 December 1998, IT-95-17/1-T.

The prohibition of torture is absolute and non-derogable, as Article 2.2 of the CAT states that “*no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture*”. Individuals suspected of terrorist acts cannot be subjected to acts of torture or inhuman, cruel and degrading treatments or punishments. Confessions or evidence obtained under torture or duress must be excluded and no sentence, especially a death sentence, can legally be passed solely on a confession or evidence obtained under torture.

In practice however, torture is often used to extract confessions from suspected terrorists, which is a violation of their human rights. A tougher stance on terrorism-related offences leads to a stronger incentive to obtain confessions, including through torture.

Moreover, the prolonged detention of death row inmates in itself is a source of great psychological suffering, and can cause what is known as “death row syndrome”. Various courts around the world have recognized that the length of incarceration suffered by those sentenced to capital punishment can amount to an inhuman and cruel punishment.²⁹

Pakistan

Pakistan has one of the largest death row populations in the world with more than 8000 prisoners³⁰ and “over 800 [...] were tried as ‘terrorists’ though in many cases (as many as 86%) there was no link to anything reasonably defined as terrorism”.³¹ 6 or more death row inmates are often detained in cells built for 1 or 2 people, and they are confined for up to 23 hours a day. General sanitary conditions are extremely bad and nutrition is poor.³²

While execution is by definition an attack on the physical integrity of the victim, various national courts have considered some methods of execution as cruel or inhuman punishments. In one decision, the Human Rights Committee found that “*by definition, every execution of a sentence of death may be considered to constitute cruel and inhuman treatment*” and that, if the capital sentence does have to be carried out, it must be done “*in such a way as to cause the least possible physical and mental suffering*”.³³ In this decision, the Human Rights Committee considered that execution by gas asphyxiation, where the gas may take over 10 minutes to take effect, amounted to cruel and inhuman treatment.

²⁹ Death Penalty Worldwide, [Death Row Phenomenon](#).

³⁰ See Justice Project Pakistan’s [website](#).

³¹ Justice Project Pakistan, [Terror on Death Row](#), 15 October 2015

³² See Justice Project Pakistan’s [website](#).

³³ Human Rights Committee, [Charles Chitat Ng v. Canada, Communication No. 469/1991](#), 5 November 1993, CCPR/C/49/D/469/1991, para. 16.2.

About the Global Parliamentary Platform for the Abolition of the Death Penalty

Parliamentarians for Global Action (PGA) is a network of 1300 parliamentarians from 143 Parliaments across the world who support international justice, the Rule of law, democracy and human rights. In 2013, PGA launched the first-ever *Global Parliamentary Platform for the Abolition of the Death Penalty* with the goal of a stronger, shared culture of legality and human rights where death penalty has no place and justice is not revenge. PGA utilizes a peer-to-peer advocacy methodology (parliamentarian to parliamentarian), to allow for a multi-partisan involvement of the concerned stakeholders to strengthen their understanding of misconceptions about the death penalty and its ineffectiveness in crime prevention and justice. PGA also provides technical assistance and coordinates actions to strengthen the political will for parliamentary initiatives and legislative reforms to overcome the obstacles stalling the process of abolition. PGA's platform works for the ratification of international legal norms prohibiting the death penalty, including the Second Optional Protocol to the International Covenant on Civil and Political Rights and the United Nations General Assembly Resolutions on the moratorium on the use of the death penalty.

For more information on the Platform, please contact Parliamentarians for Global Action:

Ms. Marion Chahuneau, Programme Officer (The Hague)

E: marion.chahuneau@pgaction.org | T: +31 70 360 4433

Ms. Holly Sarkissian, Senior Development Officer (New York)

E: holly.sarkissian@pgaction.org | T: +1 646 762-7313

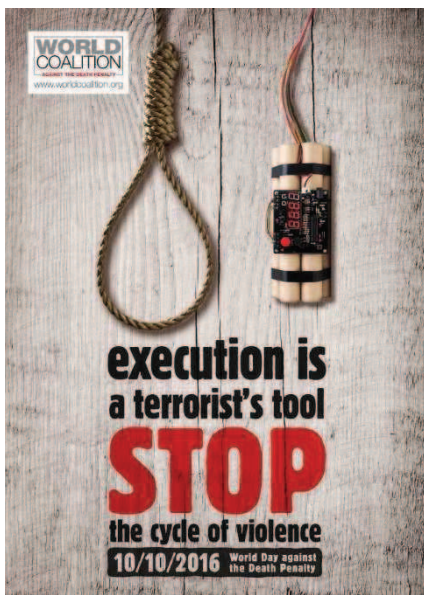
Website: www.pgaction.org

About the World Day Against the Death Penalty

World Day against the Death Penalty was created in 2003 by the World Coalition Against the Death Penalty to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition. The World Coalition Against the Death Penalty is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition gives a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. Parliamentarians for Global Action is a member of the World Coalition.

For more information about World Day:

www.worldcoalition.org/worldday



THE DEATH PENALTY FOR TERRORISM

Detailed Fact Sheet

14th World Day Against the Death Penalty

INTRODUCTION AND METHODOLOGY

This Fact Sheet is divided into two sections. First, it presents a country by country review of executions and death sentences for terrorism, and the corresponding legislation. The second part shows how the international standards of human rights are violated by those laws, sentences and executions. This note was prepared by the World Coalition Against the Death Penalty thanks to data provided by the law firms Fredrikson & Byron, P.A. and Faegre Baker Daniels at the request of the Advocates for Human Rights. The Death Penalty Worldwide database and Amnesty International's reports have provided additional information.

Definition: Death penalty for terrorism

Offences relating to terrorism punishable by death under a country's legislation. Such offences are often defined by two components: *the act itself*, which covers a wide range of crimes (varying from state to state), such as causing death or injury to a person, taking hostages, using explosives, destroying infrastructure, or damaging the environment; and *the "terrorist" intent*, which also varies widely depending on each country's laws and is often ill-defined. It may for instance include the intent to disturb public order, endanger the safety of the community, or spread terror among the population.

Country by country review

65 countries retain the death penalty in law for terrorism-related offenses. Of these, 15 countries carried out executions for terrorism and 12 others sentenced terrorist suspects to death.

In 15 retentionist countries at least one person has been executed for crimes related to terrorism over the last 10 years (2006 – 2016):

Afghanistan

The death penalty for terrorism is part of Afghanistan's 1976 Penal Code.¹ Numerous state executions for terrorism have taken place in response to the perceived increase in the terrorist threat. In 2012, six members of the Taliban were sentenced to death and then executed for "terror," "carrying out bomb attacks" and "organising suicide attacks": three of these individuals were accused of committing suicide attacks causing the death of eight people in Kabul; two were accused of killing two Afghan UN employees; and the last was accused of killing three provincial education managers and eight members of the border police.² More recently, in May 2016, five members of the Taliban and one member of the Haqqani network, another branch of the militant Islamist group, were executed for various attacks conducted between 2009 and 2012 across the country, and for participating in the assassination in 2009 of Abdullah Laghmani, Head of the National Directorate of Security, and the assassination of the former Afghan President, Burhanuddin Rabbani, in 2011³.

Belarus

The death penalty for terrorism can be imposed under authority of the Criminal Code of the Republic of Belarus which dates from 2009.⁴ Subsequently, Vladislav Kovalyov and Dmitri Konovalov were sentenced to death for terrorism in November 2011 for the bomb attack in the metro in Minsk in April 2011, leading to the death of 15 people and injuring hundreds of others, and were executed in March 2012.⁵

Chad

After suspending executions for 12 years⁶ and voting in favour of the moratorium resolutions proposed by the UN in 2012 and 2014,⁷ Chad executed 10 people suspected of belonging to Boko Haram on 29 August 2015.⁸

China

In China, the death penalty for terrorism can be imposed under authority of the 1979 Penal Code (as amended in 2011)⁹ and under the anti-terrorist law passed in 2015.¹⁰ Recently, the country has applied the death penalty on a large scale for terrorism within the framework of the campaign to “get tough” on “terrorism and violent religious extremism” in reaction to acts perpetrated in the Uyghur region of Xinjiang and labelled as “terrorist” by the Chinese authorities. In 2014, 21 individuals were executed in this region for acts related to terrorism. These included 13 for “organising terrorist groups and participating in their activities as members, homicide, arson and theft, and the illegal manufacture, storage and transport of explosives”, and eight who were of Uyghur origin, for distinct terrorist attacks in Xinjiang and Beijing in the summer of 2013¹¹. At least three people were sentenced to death at a group public trial where 55 individuals were declared to be guilty of terrorism.¹² In 2015, three members of the Uyghur community were also executed in the region of Yunnan after being sentenced for their association with five people involved in the attack on Kunming station, which caused 31 deaths in 2014.¹³

Egypt

The death penalty for terrorism can be imposed in Egypt under authority of the 1937 Penal Code, amended in 2010¹⁴. In January 2016, it was also included in an anti-terrorist law.¹⁵ Egyptian courts recently imposed death sentences for terrorism and other charges, in connection with the outburst of political violence which followed the *coup d'état* against Mohamed Morsi in July 2013. At least seven men were executed for crimes related to political violence in 2015. One, who was an open supporter of the Muslim Brotherhood, was executed on 7 March 2015 for causing someone's death during a riot in 2013.¹⁶ Subsequently, six members of the jihadist group Ansar Beit al-Maqdis, connected to Daesh, were executed on 17 May 2015 following confessions obtained under duress, and after sentencing during secret trials which are known to be unfair, and where the individual responsibility of each person is often not fully established.¹⁷

Equatorial Guinea

The death penalty for terrorism can be imposed under authority of the 1963 Spanish Penal Code.¹⁸ The last known execution for terrorism took place in 2010: two former soldiers (José Abeso Nsue and Manuel Ndong Anseme), a customs officer (Jacinto Michà Obiang) and a civilian (Alipio Ndong Asumu) were sentenced to death by a military court and then executed on 21 August 2010, for organising an attack against the Head of State and the Government, as well as for treason and terrorism, in connection with a presumed attack against the Presidential Palace in February 2009.¹⁹

India

The death penalty for terrorism can be imposed under authority of the Terrorist and Disruptive Activities (Prevention) Act passed in 1987 (amended in 1993), and in the Prevention of Terrorism Act passed in 2002.²⁰ India has executed people for crimes related to terrorism on several occasions: the only survivor among those responsible for the attacks in Mumbai in 2008 was executed in 2012²¹ and the man sentenced for planning the attack in December 2001 against the Indian Parliament, causing nine deaths, was executed in 2013.²² In July 2015, India carried out the execution of Yakub Abdul Razak Memon, who was sentenced for participating in implementing several bomb attacks which caused 257 casualties in Mumbai in March 1993.²³ This man had been sentenced to death in 2007 under the Terrorist and Disruptive Activities (Prevention) Act which does not conform to the principles of international law relating to fair trials, particularly in terms of arbitrary detention, torture and obtaining evidence, and all legal avenues have been rejected since then.²⁴ In August 2015, the Law Commission of India, the executive body charged with reforming the law, recommended abolition of the death penalty, except for offences related to terrorism and any offences which attack the State.²⁵

Indonesia

The death penalty for terrorism can be imposed under authority of various legal texts, including the 1982 Penal Code, the 2003 Law on Terrorism and the 2008 Law on Chemical Weapons.²⁶ The last execution for terrorism took place in November 2008 when Imam Samudra, Amrozi Nurhasyim and Ali Ghufron²⁷, the three men known as the Bali Bombers, were put to death for their role in the bomb attack in October 2002 on the island of Bali (which killed 202 people and injured 209).²⁸

Iran

The death penalty for terrorism is applied in the Islamic Republic of Iran under authority of the 1991 Islamic Penal Code, amended in 2013.²⁹ It is described as “enmity against God” (*moharebeh*). It corresponds in principle to an armed insurrection aiming to sow panic among the population. However, people who have not carried out violent acts and who come from ethnic or religious minorities have also been executed for this offence. In 2015, reported executions for *moharebeh* involved Sunnis and a Kurd because of his supposed collaboration with the Party for a Free Life in Kurdistan (PJAK), one of the political organisations outlawed in Iran.³⁰

Iraq

Beset by war, political instability and terrorist threats for a number of years, Iraq regularly executes people for terrorism, the most common offence to result in death sentences. In October 2015, there were 160 people convicted of terrorism on death row, and 20 people executed for terrorism offences between January and October 2015.³¹ In January and February 2016, 92 people were sentenced to death for acts of terrorism, including 40 sentenced in a group trial for participating in the killing of 1,700 military recruits in Speicher by Daesh in June 2014.³² According to the current Iraqi Minister of Justice, 22 individuals have been executed in Iraq since the start of 2016, including some for terrorism.³³ Among them were Abdullah Mahmoud Sydat, executed on 6 March 2016,³⁴ and Abdullah Azzam Al-Qahtani, executed on 7 February 2016, for leaving a bomb in a shopping centre.³⁵ Al-Qahtani’s death sentence had been strongly contested by his family, who stated that he was already being detained by Iraqi security forces in the Anbar region at the time of the events, but the Iraqi authorities refused to quash the verdict or open a new investigation.³⁶

Jordan

The death penalty for terrorism can be imposed in Jordan under authority of the 1960 Penal Code³⁷ and the anti-terrorist law passed in 2014. The 2014 law hardened the sanctions and required the death penalty for any act causing death, destroying or damaging a building if someone was inside, using toxic or dangerous materials, or fatally attacking the King, the Queen or the Crown Prince.³⁸ However, Jordan has toughened its position on the death penalty since 2006, when a moratorium on executions began.³⁹ Jordan has abstained during the UNGA votes on a resolution for a moratorium since 2008, while they had previously voted against moratorium. Jordan resumed executions for murder in December 2014, and then for terrorism in February 2015. After the publication on 3 February 2015 by Daesh of a video showing the brutal killing of Muath al-Kasasbeh, a Jordanian fighter pilot, the Jordanian Government promised “punishment and vengeance” and, in retaliation, executed two Iraqis on 4 February 2015 for acts of terrorism. They were Sajida al-Rishawi, sentenced to death for her role in a suicide attack in 2005 which killed 60 people, and Ziyad al-Karbouli, suspected of being an Al-Qaeda operative and sentenced in 2008 for killing a Jordanian.⁴⁰ The conditions of their arrest and detention did not seem to correspond to international standards: notably, in 2006 Sajida al-Rishawi told the UN Special Rapporteur on Torture that she had been tortured during pre-trial detention.⁴¹

Pakistan

The death penalty for terrorism can be imposed in Pakistan under authority of the 1997 Anti-Terrorist Law.⁴² Shortly after the bloody terrorist attacks on a school in Peshawar on 16 December 2014, Pakistan partially lifted the 6-year moratorium on executions and began executing those convicted of terrorism. In December 2014, seven people sentenced to death for terrorist crimes were executed after President Hussain rejected their appeal⁴³: Aqeel and Arshad Meherban were executed on 19 December; Ikhlaq Ahmed, Ghulam Sarwar, Rashid Mehmood and Zubair Ahmed on 21 December; and Nias Mohammad on 31 December.⁴⁴ Although the re-established death penalty was initially only applied to terrorist offences, it was expanded in February

2015 to all murders. Since February 2015, Muhammad Riaz and Muhammad Fiaz, perhaps among others, have been executed for a murder not related to terrorism.⁴⁵ According to figures provided by the Pakistani authorities, 332 executions took place between December 2014 and January 2016⁴⁶. Only a minority of those involved crimes related to terrorism.⁴⁷ Of the 246 individuals executed in Pakistan between December 2014 and October 2015, only 62 had been sentenced to death for terrorism; 184 executions were for other offences.⁴⁸ In May 2016, new death sentences were imposed on 11 individuals for committing various attacks as members of the Islamic group Tehrik-e-Taliban Pakistan.⁴⁹ In March 2016, Mehmood s/o Khawaza and Rab Nawaz s/o Shahi Room, also members of the Pakistani Taliban, were executed for their involvement in attacks against security agents and civilians after being convicted by a military court.⁵⁰

Saudi Arabia

Saudi Arabia's legislation adheres to the precepts of Islamic law as interpreted by the Hanbali school. This leads jurists who specialize in Islamic law to pass *fatwas*, including one in 1988 which condemned terrorism.⁵¹ On 2 January 2016, the country provoked significant international outcry by executing 47 men (45 Saudis, an Egyptian and a Chad national⁵²) accused of terrorism, simultaneously in 12 different cities.⁵³ In reality, 43 of them, all Sunnis, including Faris al-Zahrani, an Al-Qaeda leader⁵⁴, were sentenced for their involvement in various terrorist acts carried out by Al-Qaeda at the beginning of the 2000s in Saudi Arabia. These attacks included one in May 2003 in Riyadh, one in May 2004 in Khobar, one in April 2004 in Riyadh, one in December 2004 in Riyadh and one in December 2004 in Jeddah.⁵⁵ But the four other individuals executed on the same day, all Shiites, including Sheikh Nimr al-Nimr, were sentenced for demanding political reform specifically for participating in demonstrations in 2011 in the majority Shiite Eastern province.⁵⁶ These demonstrations indirectly provoked the death of police officers.⁵⁷

Somalia

The death penalty for terrorism can be imposed under authority of the Somali Penal Code of 1962. It also exists in Xeer Law and the Shafi'i interpretation of Islamic law which prevails in Somalia.⁵⁸

Somalia, which has been beset by civil war, includes a number of territories which have unilaterally declared their independence, but whose independence is not recognised by the international community). such as Somaliland, Jubaland and Puntland. Legal executions recorded in these territories are therefore counted as taking place in Somalia. According to the UN, military courts based in Puntland and Somaliland continue to impose the death penalty "against people accused of a vast range of crimes provided for within the framework of the anti-terrorist laws".⁵⁹ Thus, in April 2013 the military authority of Puntland executed 13 individuals suspected of maintaining links with a terrorist organisation,⁶⁰ and in March 2015 the same territory put to death three individuals for crimes connected to terrorism committed as members of Al-Shabaab.⁶¹ More recently, in April 2016 Abdirisak Mohamed Barow and Hassan Nur Ali, also members of the militant Islamist group Al-Shabaab, were executed for assassinating a national television journalist at the end of 2015 with a bomb placed under a targeted car.⁶² The same month, Hassan Hanafi, a Somali journalist and supporter of Al-Shabaab, was also executed for assisting in the assassination of five of his colleagues between 2007 and 2010.⁶³

United Arab Emirates

In the United Arab Emirates the death penalty for terrorism is included in the 2004 Decree on Combating Terrorism Offences⁶⁴ and the anti-terrorist law promulgated in 2014.⁶⁵ On 29 June 2015, the State Security Chamber of the Federal Supreme Court sentenced Alaa al-Hashemi to death for a crime related to terrorism: she had stabbed a foreign primary school teacher, made a bomb that was placed outside the dwelling of an American/Egyptian doctor and had proven ties to a terrorist organisation, Al-Qaeda in Yemen, which she was funding.⁶⁶ She was executed on 13 July 2015 without having had an appeal.⁶⁷

In 12 countries, at least one person has been sentenced to death for crimes related to terrorism over the last 10 years (2006 – 2016) but no executions for terrorism have been recorded:

This list differs from the one in the World Day Leaflet. As a result of further research, three countries were added to the list: Bahrain, Kuwait and Tunisia.

Algeria

The death penalty for crimes related to terrorism can be imposed under authority of the Algeria's 1966 Penal Code, as amended in 2009.⁶⁸ In 2015, 62 death sentences, many imposed *in absentia*, were handed down for acts of terrorism.⁶⁹

Bahrain

The death penalty for crimes related to terrorism can be imposed under authority of the 2006 Anti-Terrorism Law.⁷⁰ Eight death sentences for acts of terrorism were handed down in 2015.⁷¹ Further, in December 2015 the 4th High Criminal Court of Bahrain sentenced Hussein Abdullah Khalil Ebrahim to death, *in absentia*, for forming a terrorist organisation, recruiting agents, participating in riots and installing bombs to disrupt the peace, and targeting police officers, one of whom died in 2014. On the day Hussein Ebrahim was sentenced, the Supreme Court of Appeal used the opportunity to reject an appeal from Salman Isa Ali who was sentenced to death by the Criminal Court in April 2015, for a bomb attack.⁷²

Cameroon

Crimes related to terrorism are punished under the Law on the Repression of Terrorism passed in 2014.⁷³ In 2015, 89 presumed members of Boko Haram were sentenced to death under this law by a military tribunal.⁷⁴

Ethiopia

The death penalty can be imposed under authority of the 2009 Anti-Terrorism Proclamation of the Federal Democratic Republic of Ethiopia.⁷⁵ In 2012, journalists and members of opposition political parties were convicted under this law for "criticising the Government, demanding reforms and discussing demonstrations and arrests".⁷⁶ Among them was the journalist Eskinder Nega who was convicted of crimes subject to the death penalty, but on 13 July 2012 he was sentenced to 18 years imprisonment for high treason and offences related to terrorism.⁷⁷

Kuwait

The death penalty for terrorism can be imposed under authority of the Kuwait's 1960 Penal Code and in the 1985 Law on Crimes Connected to Explosives.⁷⁸ The last death sentence for terrorism was passed in September 2015 against Abdulrahman Sabah Saud, who had driven the man carrying an explosive belt to a Shiite mosque in Kuwait City where the latter then blew himself up, causing the death of 26 people and injuring 226 others in June 2015.⁷⁹ Initially, Abdulrahman Sabah Saud had admitted most of the facts held against him but he then denied everything in appeal and before the Supreme Court; however, the Supreme Court confirmed the verdict in May 2016.⁸⁰

Lebanon

Offences related to terrorism are punished by death under Lebanon's Penal Code dating from 1975.⁸¹ In February 2015, death sentences for acts of terrorism were handed down by the High Judicial Council of Lebanon for 23 people⁸² for the attacks perpetrated by Fatah al-Islam in 2007 against the Lebanese army, which caused the death of 170 soldiers and 64 civilians.⁸³ In May 2016, the Military Judge Najat Abou Chakra imposed 106 death sentences against 73 Syrians, 32 Lebanese and one Palestinian suspected of belonging to terrorist organisations and attacking and attempting to kill and kidnap members of the Lebanese army and police in the town of Arsal in August 2014. Among them was Abu Malek al-Talli, leader of the al-Nusra Front in this region bordering Syria.⁸⁴

Mali

The death penalty for terrorism can be imposed under authority of the Mali's 2001 Penal Code.⁸⁵ The last death sentence for terrorism was handed down in November 2011 against a Tunisian national, Bachir Simoun, accused of carrying out an attack, probably on behalf of Al Qaeda in the Islamic Maghreb (AQIM), against the French embassy in January 2011, which caused the death of a Malian citizen. Following the intervention of the Tunisian President, however, Bachir Simoun was pardoned in December 2011.⁸⁶

Mauritania

The death penalty can be imposed under authority of the 2010 Anti-Terrorist Law.⁸⁷ The last death sentences for terrorism were handed down in 2012 against three people. On 15 May 2012, the Court of Appeal confirmed the death sentence imposed on a presumed member of AQIM, Mohamed Abdellahi Ould Ahmednah, in March 2011, for assassinating an American national in Nouakchott in 2009.⁸⁸

Morocco

The death penalty for terrorism can be imposed under authority of the Morocco's 1962 Penal Code, amended in 2007.⁸⁹ In March 2012, an appeals court confirmed the death sentence of Adil Al Atmani, originally imposed in October 2011, for organising a bomb attack in Marrakech in April 2011, and changed the sentence of life imprisonment for Hakim Daha, accused of complicity in the same attack, to a death sentence.⁹⁰

Sudan

The death penalty for terrorism can be imposed under authority of the 2001 Law on Terrorism⁹¹ as well as by the 2005 Anti-Terrorism Law. In 2008, at least 60 people were sentenced to death by the anti-terrorist "exceptional courts" created to judge those responsible for the attack in Khartoum by an armed opposition group based in Darfur. Between April 2009 and January 2010, 56 more people were sentenced to death as members of the armed group Justice and Equality Movement (JEM). In total, therefore, the number of people sentenced to death for their involvement in the Khartoum attacks, essentially judged to have "waged war against the State", was 106 at the beginning of 2010.⁹² In February 2010, thanks to an agreement between the JEM and the Sudanese Government, 50 of the 106 men were unconditionally released. But 55 men, including eight presumed juveniles, were still detained and a 56th person died in detention in October 2009. On 21 October 2010, an exceptional court based in Darfur sentenced 10 men to death for their involvement in an attack against a government convoy. Four of these were probably juveniles at the time of the events.⁹³ On 29 November 2011, seven of the 10 prisoners had their sentences confirmed by the Northern Darfur Special Court after a new trial required by the Supreme Court due to the presence of juveniles among the accused.⁹⁴

Tunisia

The death penalty for terrorism can be imposed under authority of the Counter-Terrorism and Money Laundering Law passed in July 2015.⁹⁵ In November 2015, three men belonging to a terrorist group were sentenced to death, including two *in absentia*, for the murder of a police officer in May 2013.⁹⁶ In December 2015, three men considered to be members of a terrorist group were also sentenced to death for "voluntary homicide with premeditation" and "belonging to a terrorist group and inciting terrorist crimes" after assassinating a police officer in January 2014.⁹⁷ According to the authorities, on 28 December the courts had handed down sentences in terrorism cases, including three capital sentences.⁹⁸ In March 2016, three death sentences for terrorism were made by the criminal division specializing in terrorism cases in the Tribunal of First Instance of Tunis against Khaled Chaïeb Mourad Gharsalli and Abu Baker Al Hakim, for the murder of national security officer Anis Jelassi in 2011 when fighting occurred in the mountain Bouchebka Kasserine between security forces and jihadi groups⁹⁹. On 15 June 2016, the main suspect in the case of arson at the mausoleum of Sidid Abdelkader Menzel Bouzelfa by a Salafist group in 2013, where the guard of the mausoleum was killed, was sentenced to death by the criminal division of the Tribunal of First Instance of Tunis, which specialised in terrorism cases¹⁰⁰.

United States of America

The death penalty for terrorism can be imposed under authority of the Antiterrorism and Effective Death Penalty Act (AEDPA) passed in 1996.¹⁰¹ The last federal death sentence for terrorism was rendered in 2015 against

one of those responsible for the Boston Marathon attack in April 2013: Dzhokhar Tsarnaev was sentenced to death by a jury on 15 May 2015 for participating in the attack, which caused the death of three people and injured hundreds of others.¹⁰²

38 countries have the death penalty for crimes related to terrorism in their legislation but have not imposed any sentences or carried out any executions for terrorism over the last 10 years:

This list differs from the one in the World Day Leaflet. As a result of further research, three countries were removed from the list: Bahrain, Kuwait and Tunisia.

Bahamas (2004 Bahamas Anti-Terrorism Law, amended in 2009¹⁰³)
Bangladesh (2009 Anti-Terrorism Law, amended in 2012 and 2013¹⁰⁴)
Barbados (2002 Barbados Anti-Terrorism Law¹⁰⁵)
Brunei (Law on the Internal Security of Brunei - 2008¹⁰⁶)
Burkina Faso (Penal Code of Burkina Faso - 1996¹⁰⁷)
Central African Republic (Penal Code of the Central African Republic - 2010¹⁰⁸)
Cuba (Cuba Penal Code - 1988¹⁰⁹)
Democratic Republic of Congo (DRC 2002 Military Code/Congolese Penal Code of 1940, amended in 2004¹¹⁰)
Eritrea (1957 Transitional Penal Code of Eritrea, amended in 1991¹¹¹)
Gambia (2003 Gambia Anti-Terrorism Law, amended in 2008¹¹²)
Guatemala (1973 Guatemala Penal Code, amended in 2010)¹¹³
Guinea (Penal Code of Guinea - 1998)¹¹⁴
Guyana (Law on Anti-Terrorism and Activities Linked to Terrorism - 2015)¹¹⁵
Japan (1907 Japanese Penal Code, amended in 2007)¹¹⁶
Kazakhstan (1997 Criminal Code of Kazakhstan, amended in 2014)¹¹⁷
Laos (Penal Law of the Lao People's Democratic Republic - 2005)¹¹⁸
Liberia (1976 Penal Law of Liberia, amended in 2008)¹¹⁹
Libya (Anti-Terrorist Law - 2014)¹²⁰
Malaysia (1960 Law on Internal Security, amended in 1972)¹²¹
Maldives (Prevention Law of the Maldives - 1990)¹²²
Niger (Law of Niger amending the Penal Code - 2008)¹²³
Nigeria (Anti-Terrorism (Prevention) Law - 2011)¹²⁴
North Korea (1950 North Korea Criminal Code, amended in 2009)¹²⁵
Oman (1974 Omani Penal Code, amended in 2000)¹²⁶
Palestine (Revolutionary Penal Code of the PLO - 1979)¹²⁷
Qatar (Qatar Anti-Terrorism Law and Penal Code - 2004)¹²⁸
Saint Lucia (Criminal Code of Saint Lucia - 2003)¹²⁹
Singapore (Law on Terrorism and the Penal Code of Singapore - 2008)¹³⁰
South Korea (1953 Criminal Law of South Korea, amended in 2013/Anti-Terrorism Law - 2016)¹³¹
South Sudan (Penal Code of South Sudan - 2008)¹³²
Syria (Syrian Penal Code - 1949)¹³³
Tajikistan (Criminal Code of the Republic of Tajikistan - 1998)¹³⁴
Thailand (1956 Thai Criminal Code, amended in 2003)¹³⁵
Trinidad and Tobago (2005 Anti-Terrorism Law of Trinidad-and-Tobago, amended in 2011)¹³⁶
Uganda (Anti-Terrorism Law of the Republic of Uganda - 2002)¹³⁷
Vietnam (1999 Penal Code of Vietnam, amended in 2009)¹³⁸
Yemen (Republican Decree of Yemen concerning Crimes and Punishments - 1994)¹³⁹
Zimbabwe (Criminal Law of Zimbabwe - 2004)¹⁴⁰

International standards for the death penalty and terrorism

Since the 1960s, the United Nations has produced 19 international legal instruments in the fight against terrorism. However, these do not provide any definition of terrorism itself. The international community has yet to reach a consensus on a global, legal definition of terrorism, despite attempts to do so. Terrorism is therefore an undefined term in international law.

Due to this lack of clarity, many states have defined 'terrorism' in a way that allows violations of established norms of international human rights, including those related to the imposition of the death penalty.

Is anti-terrorism legislation in line with international human rights law and standards?

International Covenant on Civil and Political Rights

Under international human rights law, as prescribed in the International Covenant on Civil and Political Rights, the use of capital punishment is not absolutely prohibited. Its legal application, however, is restricted significantly. This limitation is found under article 6(2), which states that the death penalty may only be legally applied for what the treaty terms "most serious crimes"¹⁴¹. The UN Secretary General and Special Rapporteurs on Torture and on Extrajudicial Executions have stated that "most serious crimes" refers only to intentional killing.

UN Economic and Social Council (ECOSOC)

United Nations political bodies further endorsed the "most serious crimes" threshold in a 1984 resolution of the ECOSOC, which upheld nine safeguards on the application of the death penalty, affirming that capital punishment should be used "only for the most serious crimes".

This resolution, which held that such offences were limited to those "with lethal or other extremely grave consequences", was later endorsed by the UN General Assembly.

In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions further narrowed the interpretation of "most serious crimes" by defining them as "cases where it can be shown that there was an **intention to kill**, which resulted in the **loss of life**"¹⁴². This has been reiterated by the UN Special Rapporteur on torture and by the UN Secretary-General.

Inter-American Commission of Human Rights (IACHR)

The IACHR, in its "**Report on terrorism and human rights**"¹⁴³, comments on the protection of the right to life in the context of the "Norms and principles of International Human Rights and Humanitarian Law applicable in terrorist situations". It recalls Article 4 of the American Convention of Human Rights (ACHR), which states: "[i]n countries that have not abolished the death penalty, it may be imposed only for the **most serious crimes** and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime"¹⁴⁴ and that "[i]n no case shall capital punishment be inflicted for political offences or related common crimes"¹⁴⁵.

African Commission on Human and Peoples' Rights (ACHPR)

In its General Comment No. 3 to the African Charter on Human and Peoples' Rights on the right to life, adopted in November 2015, the African Commission stated that "in those States which have not yet abolished the death penalty it is vital that it is used for only the most serious crimes – understood to be crimes involving intentional killing."¹⁴⁶

List of crimes that do not amount to 'most serious crimes' related to terrorism and punishable with death under national legislations¹⁴⁷

Committing vaguely defined terrorist acts in general

Bahrein¹⁴⁸, Benin¹⁴⁹, Cameroon¹⁵⁰, Chad¹⁵¹, Egypt¹⁵², Gambia¹⁵³, Iraq¹⁵⁴, Libya¹⁵⁵, Morocco¹⁵⁶, Qatar¹⁵⁷, Sudan¹⁵⁸, Syria¹⁵⁹, Uganda¹⁶⁰.

In **Qatar**, bearing arms for a “terrorist purpose”, broadly defined as acts ranging from interference with the legal or public order to acts aimed at causing terror or disunity to acts of eco-terrorism or causing other serious harm, carries the death penalty¹⁶¹.

In **Libya**, acts aimed at “vandalizing, looting or killing people” are punishable by death, as are other violent offences and membership in organizations formed to commit such offences. Notably, terrorism-related offences not resulting in death may be death eligible mainly when they are aimed at the security of the state¹⁶².

Leadership or organisation of and participation in criminal gangs and terrorist groups

Afghanistan¹⁶³, Bahrain¹⁶⁴, Congo¹⁶⁵, Egypt¹⁶⁶, Iraq (Kurdistan)¹⁶⁷, Mali¹⁶⁸, Mauritania¹⁶⁹, Qatar¹⁷⁰, Sudan¹⁷¹, UAE¹⁷², Viet Nam¹⁷³.

In **Bahrain**, forming or leading an armed gang which uses force to occupy or destroy a public or Government building, which has attacked the local population, which uses arms to resist public authority, or which aims to expropriate property or land, is punishable by death¹⁷⁴.

In **Egypt**, the death penalty may be imposed for founding an organization that opposes the state through use of violence aimed at causing harm, terror, ecological disaster or other social disruption; gang attacks on the people, armed resistance to authorities or seizure of government or public facilities, or leadership of a gang that would perform such activities; usurping military authority or leading armed gangs for criminal purposes (such as plundering) or other violent actions¹⁷⁵.

In **Sudan**, forming or attempting to form a criminal organization, or participating in such an organization or facilitating its activities, to stage attacks that may jeopardize life or property or tranquility, are punishable by death¹⁷⁶.

Interfering in the work or attempting at the life of public officials

In **Bahrain**, acts that “disrupt the provisions of the Constitution or laws, or prevent state enterprises or public authorities from exercising their duties” are punishable by death¹⁷⁷.

In **Viet Nam**, a person who intends to oppose the people’s administration and infringe upon the life of officials, public employees or citizens can be punished by death¹⁷⁸.

Treason and activities aimed at overthrowing the regime

Afghanistan¹⁷⁹, Barbados¹⁸⁰, Eritrea¹⁸¹, Guinea¹⁸², Iraq¹⁸³.

In **Eritrea**, offences against the constitutional order, national defense, internal or external security, or the territorial or political integrity of the State are death-eligible if they are accompanied by the use of bombs or other terrorist methods endangering the public¹⁸⁴.

In **Guinea**, disrupting the security of the State by inciting to civil war or by leading an armed group to cause devastation, massacres or looting is punishable by death¹⁸⁵.

Harm to buildings

Afghanistan¹⁸⁶, Guinea¹⁸⁷, Jordan¹⁸⁸, Kuwait¹⁸⁹, Lao People’s Democratic Republic¹⁹⁰, Lebanon¹⁹¹, Oman¹⁹².

In **Jordan** and **Lebanon** destroying or partially destroying a building in which one or more people are present is punishable by death¹⁹³.

Sabotage of transport, communication facilities, public services or special equipment

Central African Republic¹⁹⁴, China,¹⁹⁵ Congo¹⁹⁶, Ethiopia¹⁹⁷, Iran¹⁹⁸, Iraq¹⁹⁹, Mauritania²⁰⁰, Niger²⁰¹, Viet Nam²⁰².

In **Ethiopia**: preventing, disturbing, or interfering with the working of a public service or services intended for postal, telegraph, telephone communications, light, gas, power, or heat; paralyzing, sabotaging, or endangering lines of communication or public transport²⁰³.

In **Iran**, persons may be death-eligible for terrorism-related activities under the Law for Punishment of Disruptors of the Oil Industry; the Law for Punishment of Disruptors of Water, Electricity and Telecommunication Facilities; the Law for Punishment of Disruptors of Flight Security; the Law for Punishment of Offences Concerning Railways; and the Law for Increase of Punishment for Arms Smuggling²⁰⁴.

Taking of hostages and kidnappings

Cameroon²⁰⁵, Chad²⁰⁶, China²⁰⁷, Ethiopia²⁰⁸, Guatemala²⁰⁹, Morocco²¹⁰, DPRK²¹¹, Singapore²¹².

In **Morocco**, hostage-taking in furtherance of another crime and kidnapping a minor for a ransom are punishable by death²¹³.

In **Singapore**, hostage-taking, if harm is threatened, may be punishable by death²¹⁴.

Harm to the national economy or the state resources

Cuba²¹⁵, Ethiopia²¹⁶, Indonesia²¹⁷, Laos²¹⁸.

In **Cuba**, acts to sabotage or impair social, economic or military resources, when using dangerous methods or agents; causing serious injury to health or property or threatening public security are punishable by death. Aiding such acts or possessing the means of aiding such acts, when aimed at threatening the security of the state, is punishable by death as well.²¹⁹

In **Indonesia**, under Articles 6, 9 and 14 of Law No. 15 of 2003 on combating terrorism, creating (or planning or inciting others to create) a “widespread atmosphere of terror” by taking liberty or property or damaging state, environmental or public resources, or facilitating or attempting to facilitate terrorism, is punishable by death (Article 9, addressing facilitation, is “virtually a reproduction of Indonesia’s Emergency Law No. 12 of 1951 on the Possession of Firearms and Explosives.”)²²⁰.

Possession and/or use of chemical, biological and nuclear weapons

Cameroon²²¹, Chad²²², China²²³, Ethiopia²²⁴, Indonesia²²⁵, Jordan²²⁶, Mauritania²²⁷, Niger²²⁸, Tajikistan²²⁹, UAE²³⁰.

In **Niger**, exploding a bomb or releasing toxic substances and possessing, producing or using radioactive or nuclear equipment with the intent to cause substantial harm, are punishable by death when they cause “considerable economic losses”²³¹.

In the **UAE**, threatening to use nuclear, chemical or biological weapons, using explosives or nuclear, chemical or biological weapons in a hijacking or assault upon security forces is punishable by death²³².

Intention to kill without the actual loss of life or causing serious injury to a person

Bahamas²³³, Chad²³⁴, Ethiopia²³⁵, Mauritania²³⁶.

In **Bahamas**, a terrorist act resulting in “serious bodily harm” carries the death penalty if the act could be prosecuted as murder or treason²³⁷.

In **Mauritania**, endangering the lives, bodily integrity, or freedom of persons is punishable by death²³⁸.

Arson and possession and/or use of explosives and firearms and other arms

Afghanistan²³⁹, Brunei²⁴⁰, Central African Republic²⁴¹, China²⁴², Congo²⁴³, Guinea²⁴⁴, India²⁴⁵, Japan²⁴⁶, Jordan²⁴⁷, Kuwait²⁴⁸, Malaysia²⁴⁹, Mauritania²⁵⁰, Morocco²⁵¹, South Korea²⁵², Thailand²⁵³.

In **Japan**, destruction by explosives and the illegal use of explosives are punishable by death²⁵⁴.

In **South Korea**, a person who injures a person or damages property or disturbs the public peace by using explosives is punishable by death²⁵⁵.

Hijacking of and endangering aircrafts, ships or fixed platforms

Bahrain²⁵⁶, China²⁵⁷, Ethiopia²⁵⁸, Laos²⁵⁹, Mauritania²⁶⁰, Oman²⁶¹, Sudan²⁶², Syria²⁶³, US²⁶⁴

In **Ethiopia**, unlawfully seizing or controlling a fixed platform on a continental shelf, an aircraft or a ship, endangering a fixed platform on a continental shelf, an aircraft, or a ship, destroying or damaging a fixed platform on a continental shelf, an aircraft, or a ship, maliciously misusing a signal or an alarm to endanger the safety of an aircraft or a ship is punishable by death²⁶⁵.

Other

- Cyber-criminality²⁶⁶;
- Receiving stolen goods²⁶⁷;
- Providing or receiving training to commit a terrorist act²⁶⁸;
- Inciting to terrorism,²⁶⁹ failing to inform authorities of any information relating to the preparation of a terrorist act²⁷⁰;
- Armed robbery²⁷¹;
- Inciting a person to commit a death-eligible terrorism offence²⁷²;
- Receiving paramilitary training to commit a terrorist act (against Qatar)²⁷³;
- Terrorism by a dangerous recidivist²⁷⁴;
- “Corruption on earth”²⁷⁵
- Working with a foreign state or foreign or international terror group to commit terrorism, if the act is committed²⁷⁶;
- Money-laundering²⁷⁷;
- Counterfeiting money or public bonds²⁷⁸;
- Endangering the security of the state²⁷⁹;
- The financing of terrorism²⁸⁰.

Reintroduction of the death penalty for terrorism

UN Office of the High Commissioner for Human Rights (OHCHR)

Various documents issued by the High Commissioner for Human Rights have pointed out the incompatibility between International Human Rights Law and the use of the death penalty while countering terrorism.

In the “**Basic Human Rights Reference Guide: Conformity of National Counter-Terrorism Legislation with International Human Rights Law**” produced in October 2014 by the Counter-Terrorism Implementation Task Force (CTITF) of the OHCHR, it is clearly stated that

“the reintroduction of death penalty for crimes of terrorism would be considered as contrary to the spirit of the ICCPR and to the repeated calls by the General Assembly for all States that still maintain the death penalty to progressively restrict the use of the death penalty; to reduce the number of offences for which it may be imposed; to establish a moratorium on executions with a view to abolishing the death penalty; and, for those States which have abolished the death penalty, not to reintroduce it”²⁸¹.

Moreover, in the “**Human Rights, Terrorism and Counter-terrorism Factsheet**” of the OHCHR, it is stressed how “[u]nder international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation” and thus even in the context of countering terrorism²⁸².

Furthermore, in the resolution adopted by the Human Rights Council on the **High-level panel discussion on the question of the death penalty** held at the Human Rights Council 30th session, it is mentioned that

“several delegates observed that capital punishment did not serve any deterrent purpose in combating terrorism, and deplored that some States expanded the use of the death penalty for crimes relating to terrorism. Expressing deep concern about atrocities committed by the Islamic State in Iraq and the Levant or by other terrorist groups in different parts of the world, they emphasized that all efforts must be made to counter terrorism and hold perpetrators accountable, but any measures to counter those threats needed to be consistent with the common values of justice and human rights. Legislation that included a vague definition of

terrorism contravened human rights. They also said the death penalty clearly did not deter persons from committing terrorist acts as being executed transformed them into martyrs²⁸³.

Does the imposition of death penalty for terrorism occur in proceedings that meet fair trial standards?

The right to a fair trial is established through the main international and regional treaties about civil rights. The importance of taking it into account and respecting the conditions that guarantee its protection while countering terrorism, has been highlighted by the OHCHR in the report “**Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism**” produced in October 2014 by the Counter-Terrorism Implementation Task Force (CTITF) that points out twelve guiding principles and guidelines concerning the right to a fair trial while countering terrorism²⁸⁴.

“The protection and promotion of human rights while countering terrorism is both an obligation of States and a condition for an effective and sustainable counter-terrorism strategy. All counter-terrorism measures must comply fully with States’ international human rights obligations, including the right to a fair trial. Despite this, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has several times noted with concern that fair trial rights have not always been respected in the fight against terrorism.”²⁸⁵

International Covenant on civil and Political Rights (ICCPR)

The guarantees that must be respected in order not to violate the right to a fair trial are listed in Article 14 and Article 15 of the ICCPR.

Among these are the right to a fair and public hearing by a competent, independent and impartial court²⁸⁶, the right to be presumed innocent until proved guilty²⁸⁷, the right to be informed promptly of the charges²⁸⁸, the right to legal defence and to be tried without delay²⁸⁹ and the right to have one’s sentence reviewed²⁹⁰.

European Convention on Human Rights (ECHR)

Guarantees similar to those listed in the ICCPR are stated in Article 6 of the ECHR²⁹¹.

African Commission on Human and Peoples’ Rights (ACHPR)

The ACHPR recently adopted the “**Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa**” a document produced to clarify the human rights standards that the African states must comply with in the context of countering terrorism.

A group of eighteen UN independent experts²⁹² welcomed the document pointing out that “[i]t also remains a priority that the death penalty is not used for terrorism-related cases”²⁹³.

Violations to the right to a fair trial

Under articles 7, 10 and 14 (paragraph 3) of the **ICCPR** stating that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”, and “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (...) (g) not to be compelled to testify against himself or to confess guilt”, inflicting any act of torture to somebody in order to make that person confess to a crime is a gross violation of international human rights.

In **Belarus**, Vladislav Kovalyov and Dmitri Konovalov were sentenced to death in November 2011 for the bomb attack in the metro in Minsk in April 2011 (leading to the death of 15 people and injuring hundreds of others). The procedure leading to their arrest and their sentence were tarnished with suspicions of irregularities as the two men, who were arrested the day after the attack, immediately confessed. However, one of them, Vladislav Kovalyov, retracted his confession, arguing that it had been obtained under torture²⁹⁴ and submitted a petition to the UN Human Rights Committee, which then asked the Belarus not to proceed to carry out the execution

until it had reviewed these torture allegations. However, both men were executed in March 2012, before the Human Rights Committee was even able to issue a decision on that case²⁹⁵. Further, the extremely short time between the sentencing and execution of the two men was also strongly criticised by several NGOs, including Human Rights Watch which had called for a new trial to be opened before their execution.²⁹⁶

Article 14, paragraph 3 of the **ICCPR**, lists among the minimum guarantees for a fair trial the right “(a) to be informed *promptly* and in detail in a language which he understands of the nature and cause of the charge against him”.

On 2 January 2016, **Saudi Arabia** held a mass execution of 47 men convicted of terrorism charges²⁹⁷. Among them, four Shiites, including Sheikh Nimr al-Nimr, were sentenced for demanding political reform and, in particular, participating in demonstrations in the Eastern province, which is majority Shiite, in 2011²⁹⁸, demonstrations which indirectly provoked the death of police officers.²⁹⁹ These individuals represented the likely non-violent face of protest from a religious minority towards a manifestly authoritarian regime, which partly explains the international indignation caused by these executions. The trial of the emblematic Sheikh al-Nimr also raised some questions as to the few safeguards it offered: he was allegedly held without his lawyer being informed.³⁰⁰ Further, of the 47 sentences four were passed in the name of a *hadd* (i.e. a crime considered to be committed directly against God and where the sentence is invariably death) but the 43 others were passed at the discretion of the judges who did not give any further explanation for their decision³⁰¹, something which does not correspond to the safeguards required by international law to ensure a fair trial.

In **Egypt** mass trials that did not establish the individual responsibility of each presumed terrorist were held. Indeed, according to Amnesty International, in 2015, “At least 3,000 civilians stood trial before unfair military courts on “terrorism” and other charges alleging political violence. Many, including leaders of the Muslim Brotherhood, were tried in mass trials. Military trials of civilians are fundamentally unfair” and “courts handed down hundreds of death sentences on defendants convicted on ‘terrorism’”³⁰².

Moreover, and also regarding the right to defense, article 14 paragraph 3 of the **ICCPR** states that “in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (...) (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.

In **Bahrain**, Abbas Jamil al Samea and two other individuals who were found to be responsible for a bomb attack perpetrated in March 2014. These individuals were sentenced to death in February 2015. Their trial appeared unfair as they claimed that, on the one hand, they were victims of torture and other inhuman treatment during their interrogation by the Criminal Investigations Department (allegations the Court did not want to investigate) and, on the other hand, they had not been authorised to access the whole file or cross examine the witnesses cited in the accusation.³⁰³

In **Chad**, the trial of ten suspected Boko Haram members was expeditious and violated their right to effective representation. Three legal aid lawyers were assigned to them on the eve of the trial and they were not able to meet even once with their clients in order to prepare their defense.

Article 15 of the **ICCPR**, establishes that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”³⁰⁴.

Indonesia executed the so-called “Bali bombers” on 8 November 2008³⁰⁵. Amrozi bin H Nurhasyim, Ali Ghufron and Imam Samudera were sentenced to death following the conviction for their involvement in the 2002 Bali nightclub bombings under the *Law on Combating Criminal Acts of Terrorism*, providing for the death penalty, but which entered into force when the bombings had already been committed, earlier in 2002. Their sentences were therefore in clear violation of Article 15 of the **ICCPR** on the non-retroactivity of laws³⁰⁶. However, the three men’s appeals had been rejected in 2007 by the Indonesian Supreme Court.³⁰⁷

Were executions carried out after all remedies were exhausted?

Right to appeal

The right to appeal is an element of the right to a fair trial; as such it is included in the guarantees prescribed by Article 14 of the **ICCPR**, stating that “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”³⁰⁸.

In the **United Arab Emirates**, on 29 June 2016 Alaa al-Hashemi was sentenced to death on terrorism charges. Alaa was executed just two weeks later, on 13 July, without having been granted the right to appeal³⁰⁹.

Right to seek pardon or commutation

Regarding the right to seek pardon, the article 6 of the **ICCPR** 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.”

Chad did not abide by that principle, or by the standard provided by its own legislation on that specific matter³¹⁰, when it prevented ten suspected Boko Haram members to seek pardon, since they were executed three days after their death sentence³¹¹. No reliable information as to their right of final appeal is available because the hearings were moved to a secret location on the last day.

In **Iraq**, this type of international human rights law violation goes even further, as article 73.1 of the Iraqi Constitution clearly states the granting of clemency or pardon by the President of the Republic (on a recommendation of the Prime Minister) for terrorism crimes included in the Anti-Terrorism Law of 2005 is prohibited³¹². Additionally, Iraq is criticized by the OHCHR for its lack of compliance with the international fair trial standards while countering terrorism, regarding “alleged cases of corruption within the criminal justice system” or “allegations that (...) confessions had been extracted under torture or ill-treatment”³¹³. According to James Lynch, Deputy Director of Amnesty International’s Middle East and North Africa Programme, these trials were “in the large majority...flagrantly unfair, a large number of the accused having in particular stated that they had been tortured so that they would ‘confess’ to the crimes of which they were accused.”³¹⁴

END NOTES

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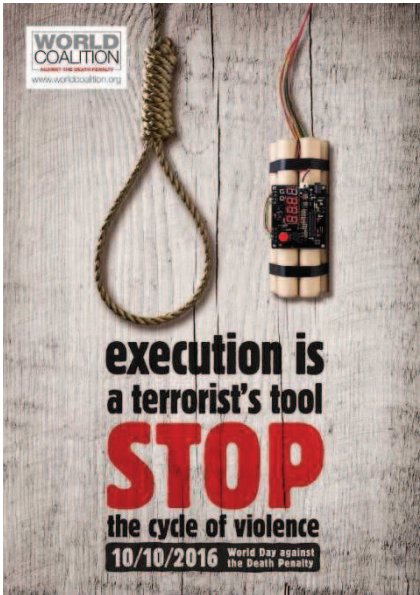
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DEATH PENALTY FOR TERRORISM

14th World Day Against the Death Penalty

INTRODUCTION AND METHODOLOGY

Contrary to popular belief, victims of terrorism and their loved ones do not all demand the death penalty to compensate for the pain caused by an act of terrorism. Some believe, on the contrary, that executing a terrorist will bring no fair retribution and that the cycle of violence must be broken. This note was prepared by the World Coalition Against the Death Penalty, with the help of the AfVT (French Association of Victims of Terrorism) and the International Federation of Associations of Victims of Terrorism.

Why some victims of terrorism are against the death penalty

► The refusal to join the cycle of violence by acting like the terrorists

“To kill terrorists is to fall into the vicious cycle of violence by acting as they do” **Elisa GUTOWSKI, victim of the hostage situation at the Hypercasher in France**

“Killing terrorists would create more hate than anything else. If they have children, it would create more orphans such as me.” **Anaëlle ABESCAT, victim of a terrorist attack in Saudi Arabia**

“Death is not the solution. Death cannot be an answer to death. There are solutions, but the death penalty is easier.” **Laura TREVISAN, victim of a terrorist attack in Nigeria**

► The necessity to serve justice first and foremost

“The thing that helped me the most is recognition, which was achieved by identifying the culprits, in particular, and which took over ten years” **Yohanna BRETTE, victim of the UTA DC10 terrorist attack**

“Even if the terrorists were found someday, I wouldn’t want them to be executed. The terrorists still haven’t been caught, so the main question for now is whether they will be caught. But I want the investigation and the trial to be carried out in compliance with international legal standards. Regarding justice, I’d like more support and counselling, which I got from organisations. However, there wasn’t enough follow-up regarding legal proceedings. I feel as if the French legal system is failing me, which is hard to take.”

Julien ALTOUNIAN, victim of a terrorist attack in Cairo

“The attack was never claimed by any group. I’d like to know who is responsible, but I can’t accept killing a terrorist.” **Khatchig GHOSN, victim of a terrorist attack in Lebanon**

► The death penalty is not revenge

“There is no revenge in executing the terrorist. If there were, the only way it could be achieved would be to execute him yourself. However, the execution is not carried out by the victims.” **Nethanel COHEN SOLAL, victim of a terrorist attack in Israel**

“I lost my uncle in the Hypercasher terrorist attack, so the terrorist is dead. However, I would have liked him to be alive to confront him.” **Elisa**

► **Death brings no comfort**

“I always thought I’d feel better once Kadhafi was dead. But when I found out, it gave me no solace. Deep down, nothing changed. The death penalty itself does not serve justice nor does it quench the desire for revenge.” **Yohanna**

“The terrorists who killed my father were sentenced to death in Saudi Arabia, but that brought me no comfort. The trial happened much later and my family wasn’t even made aware of it. We found out through the media... I just wanted to know how people could resort to doing such things” **Anaëlle**

► **Executing a terrorist is granting him the recognition he craves**

“The terrorist is given martyr status when he dies, and that is what he wants.” **Julien**

“As soon as the terrorist is subjected to torture, he becomes a victim, and the true victims are robbed of their status. This isn’t the case during a fair trial, where victims are put at the forefront.” **Nethanel**

« It’s important not to forget the victim. There is much talk about terrorism and terrorists, but not enough about the victims. There are many people affected beyond the victims.” **Khatchig**

► **The importance of values and preserving one’s humanity despite the pain**

“Being a victim of terrorism does not change who we are fundamentally, so if someone is already against the death penalty, that will not change.” **Nethanel**

“I’ve always been against the death penalty. I’ve never been tempted to say “they killed my father, they must die.” **Anaëlle**

What we, victims of terrorism, need first and foremost:

- Recognition and to reconnect with our humanity
- Truth and justice after fair investigation and trial
- Long-term legal and psychological support

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Member of the European Network of Victims of Terrorism
Member of RAN (Radicalisation Awareness Network) and
co-leader of RAN-VVT (Voice of Victims of Terrorism)
Member of the International Federation of Associations of
Victims of Terrorism – FIAVT

Through their words and their actions, victims of terrorist attacks fight for the abolition of terrorism, with respect for Human rights and international law.