The Death Penalty Debate

Edited by Justin Healey

ISSUES IN SOCIETY

THE SPINNEY PRESS
CHAPTER 1  GLOBAL ABOLITION OF CAPITAL PUNISHMENT
Capital punishment around the world  1
Alarming rise in death sentences  3
Death sentences and executions  5
Five brutal methods of execution  10
In less than 40 years, 124 countries have abolished the death penalty  11
– and here’s why the rest should end it too
Countries with and without the death penalty  12
United Nations and the abolition of the death penalty  13
What do they say about the death penalty?  13
Timeline: the United Nations and the death penalty  14
10 facts about the death penalty  15
International law and the death penalty  16
The death penalty in SE Asia: is there a trend towards abolition?  17

CHAPTER 2  ATTITUDES TOWARDS THE DEATH PENALTY
Death penalty and Australia  19
Australian attitudes towards the death penalty  20
What more can Australia do to end the death penalty worldwide?  21
On the abolition of the death penalty  23
Should we bring back the death penalty?  26
5 reasons some people think the world needs the death penalty  27
5 reasons to abolish the death penalty  29
Why the death penalty should be abolished  30
Death penalty: frequently asked questions  31
Death penalty – what you need to know!  33
Fact check: no proof the death penalty prevents crime  34
Do these death penalty justifications hold up?  37
The death penalty is morally unacceptable  39
The failings of capital punishment: Indonesia executes the traffickers  41
Indonesia’s retributive justice was deaf to pleas for reformed Bali duo  43
The Bali Nine, Indonesia and state-sanctioned violence  45
Indonesia does need the death penalty to deter drug traffickers  47
Posturing over the death penalty  49
Exploring issues – worksheets and activities  51
Fast facts  57
Glossary  58
Web links  59
Index  60
The Death Penalty Debate is Volume 399 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC
While the number of executions worldwide is decreasing, some countries are continuing to execute hundreds of prisoners every year – more than 19,000 people are currently estimated to be on death row worldwide. In less than 40 years, 124 countries have abolished the death penalty.

Although no one has been executed in Australia since 1967, Australians’ attitudes regarding the death penalty are still mixed. The recent execution of Australians in Indonesia has brought home the human impacts of state-sanctioned killing.

What are the arguments for and against capital punishment? Are there ever exceptions for the worst offenders? Does the death penalty prevent or deter crime? What is Australia doing diplomatically to encourage other states towards abolition?

This book looks at the death penalty and its legal abolition worldwide, and explores a range of arguments and attitudes towards capital punishment in Australia and abroad. Can the death penalty ever be applied fairly? Whose right is it, if anyone’s, to decide death over life?

SOURCES OF INFORMATION
Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:
- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION
As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES
The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH
This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.
CHAPTER 1

Global abolition of capital punishment

CAPITAL PUNISHMENT AROUND THE WORLD

While the number of executions worldwide is decreasing, some countries are continuing to execute hundreds of prisoners every year, reports ABC News.

Executions worldwide are down almost 22 per cent to 607, according to a recent Amnesty International report, but that figure excludes China which maintains strict secrecy on its death penalty figures. It is estimated more than 19,000 people are on death row worldwide.

The Australian Department of Foreign Affairs and Trade confirmed at least 17 Australians could face the death penalty for alleged crimes committed in other countries.

Twenty-two countries executed prisoners in 2014, though that’s just more than half the number that executed prisoners 20 years ago.

The five countries with the highest rates of executions are China, Iran, Saudi Arabia, Iraq and the United States.

ABC News takes a closer look at the top five and Indonesia, where Australians Andrew Chan and Myuran Sukumaran are on death row for drug smuggling.

**China**

China executes more prisoners than the rest of the world combined, according to Amnesty International, which believes the number executed is around 2,466. But the organisation said due to state secrets the true figure of executions is not known.

China executes by lethal injection or firing squad. Drug-related crimes accounted for 8 per cent of executions, while economic-related crimes accounted for 15 per cent.

China’s ‘strike hard’ campaign to act tough on terrorism resulted in 21 executions between June and August 2014 in the autonomous region of Xinjiang, home to the large, mostly Muslim Uighur ethnic minority.

An Australian man has been sentenced to death for drug smuggling, but that could be commuted to life. Meanwhile, Australian-New Zealand dual national Peter Gardner remains in a Chinese jail and could face a death penalty over drug smuggling allegations.

A spokesperson from New Zealand’s Ministry of Foreign Affairs and Trade said consular staff from the country’s Consulate-General in Guangzhou are continuing to provide consular advice and check on Mr Gardner’s wellbeing.

**Iran**

More than 289 people were executed in Iran in 2014, but Amnesty International believes as many as 454 more were killed.

Public hanging is Iran’s most common form of capital punishment, despite a 2008 moratorium on public executions. Under some circumstances, those sentenced are flogged before they are hanged.

Crimes punishable by death include murder, terrorism-related offences, rape, robbery, kidnapping, burglary, drug offences such as trafficking, economic crimes, adultery, apostasy, homosexuality, treason and espionage, according to Cornell University.

Stoning is also a legal method of execution for adultery in Iran and is overwhelmingly inflicted on women.

Women are buried up to their shoulders but men only up to their waists. Stones are hurled at them until...
they die or escape the pit. The condemned are spared if they free themselves before dying.

Iran has the world’s highest rate of execution by stoning, though the practice is widely used in Afghanistan, Iraq and Pakistan.

Iranian human rights lawyer Shadi Sadr said most stonings take place in secret, at prisons, in the desert or during early mornings in cemeteries.

Iran’s Islamic Penal Code, adopted in 2013, does not prohibit stoning and permits punishment prescribed by Sharia law, which includes stoning. The UN harshly condemns the practice.

Saudi Arabia

Saudi Arabia executed at least 90 people in 2014, including two women. Beheading in public using a sword is the most common form of execution in the country. Shooting prisoners via firing squad is also used.

Death penalty crimes include adultery, blasphemy, fornication, homosexuality and sorcery.

Stoning is also a legal method of execution for adultery in Saudi Arabia, as in Iran.

Iraq

Iraq put at least 61 prisoners to death in 2014, with hanging being the main method of execution.

In Iraq, prisoners can be hung for war crimes, treason, espionage, military offences, drug offences, rape, kidnapping, murder and aggravated murder.

United States

The United States executed 35 death row inmates in 2014, down from 39 in 2013, all through lethal injection. It is the only Western democracy in the top 10 executing nations.

Capital punishment is legal in 32 states, but only seven states put prisoners to death in 2014, with most executions conducted in the southern states including Texas, Florida and Oklahoma.

All of those executed in 2014 had been on death row for eight years or more. Seven states have not conducted executions for a decade.

The crimes punishable by death vary from state to state, but first-degree murder and treason are the primary crimes. The state of Washington has an official moratorium on executions.

Lethal injection remains the most common method of execution across the country. However there is currently a shortage, impacted by a ban on EU countries supplying the necessary components. The worst year to date for botched executions by lethal injection in the United States was 2014.

Electrocution remains an option for eight states. Tennessee uses the electric chair if the lethal drugs are not available for injection. Gas chamber, hanging and firing squad are backup options for some states where lethal injection is not a possibility.

About 150 people have been exonerated since 1973.

Indonesia

The firing squad is the main method of execution in Indonesia. In December 2014, Indonesia resumed executions for drug-related offences under the new leadership of president Joko Widodo. Within Mr Widodo’s first 100 days of office, six prisoners were executed.

If the president maintains his hardline stance on drug crimes, about 40 more foreign citizens on death row could be executed. At the end of 2014, 64 out of 130 death row prisoners were due to be killed for drug trafficking.

A number of crimes are punishable by death including murder, terrorism, robbery, treason, economic crimes, espionage and war crimes.

The five countries with the highest rates of executions are China, Iran, Saudi Arabia, Iraq and the United States.
An alarming number of countries used the death penalty to tackle real or perceived threats to state security linked to terrorism, crime or internal instability in 2014, Amnesty International found in its annual review of the death penalty worldwide.

- States used the death penalty in a flawed attempt to tackle crime, terrorism and internal instability.
- Sharp spike in death sentences largely due to Egypt and Nigeria – at least 2,466 imposed globally, up 28 per cent on 2013.
- 607 executions recorded, down almost 22 per cent on 2013 (excluding those carried out in China, which executed more than the rest of the world put together).
- 22 countries known to have executed, the same number as 2013.

The number of death sentences recorded in 2014 jumped by almost 500 compared to 2013, mainly because of sharp spikes in Egypt and Nigeria, including mass sentencing in both countries in the context of internal conflict and political instability.

“Governments using the death penalty to tackle crime are deluding themselves. There is no evidence that shows the threat of execution is more of a deterrent to crime than any other punishment,” said Salil Shetty, Amnesty International’s Secretary General.

“The dark trend of governments using the death penalty in a futile attempt to tackle real or imaginary threats to state security and public safety was stark last year. It is shameful that so many states around the world are essentially playing with people’s lives – putting people to death for ‘terrorism’ or to quell internal instability on the ill-conceived premise of deterrence.”

But there was also good news to be found in 2014 – fewer executions were recorded compared to the year before and several countries took positive steps towards abolition of the death penalty.

**Top executioners**

China again carried out more executions than the rest of the world put together. Amnesty International believes thousands are executed and sentenced to death there every year, but with numbers kept a state secret the true figure is impossible to determine.

“There is no evidence that shows the threat of execution is more of a deterrent to crime than any other punishment.”

Salil Shetty, Amnesty International’s Secretary General

The other countries making up the world’s top five executioners in 2014 were Iran (289 officially announced and at least 454 more that were not acknowledged by the authorities), Saudi Arabia (at least 90), Iraq (at least 61) and the USA (35).

Excluding China, at least 607 executions were known to have been carried out in 2014, compared to 778 in 2013, a drop of more than 20 per cent.

Executions were recorded in 22 countries in 2014, the same number as the year before. This is a significant decrease from 20 years ago in 1995, when Amnesty International recorded executions in 41 countries, highlighting the clear global trend of states moving away from the death penalty.

“The numbers speak for themselves – the death penalty is becoming a thing of the past. The few countries that still execute need to take a serious look in the mirror and ask themselves if they want to continue to violate the right to life, or join the vast majority of countries that have abandoned this ultimate cruel and inhuman punishment,” said Salil Shetty.

**State security**

The disturbing trend of states using the death penalty to combat threats against state security was visible around the world, with China, Pakistan, Iran and Iraq all executing people accused of ‘terrorism’.

Pakistan resumed executions in the wake of the horrific Taliban attack on a Peshawar school. Seven people were executed in December, and the government has said it will put hundreds more convicted on terrorism-related charges to death. Executions continued at a high rate in 2015.

In China authorities made use of the death penalty as a punitive tool in the ‘Strike Hard’ campaign against unrest in the Xinjiang Uighur Autonomous Region. Authorities executed at least 21 people during the year related to separate attacks, while three people were condemned to death in a mass sentencing rally conducted in a stadium in front of thousands of spectators.
“In a year when abhorrent summary executions by armed groups were branded on the global consciousness like never before, it is appalling that governments are themselves resorting to more executions in a knee-jerk reaction to combat terrorism and crime,” said Salil Shetty.

In countries including North Korea, Iran and Saudi Arabia, governments continued to use the death penalty as a tool to suppress political dissent.

Other states made use of executions in similarly flawed attempts to tackle crimes rates. Jordan ended an eight-year moratorium in December, putting eleven murder convicts to death, with the government saying it was a move to end a surge in violent crime. In Indonesia, the government announced plans to execute mainly drug traffickers to tackle a public safety ‘national emergency’ – promises it made good on in 2015.

Spike in death sentences
There was a dramatic rise in the number of death sentences recorded in 2014 compared to the previous year – at least 2,466 compared to 1,925 – a jump of more than a quarter. This was largely due to developments in Nigeria and Egypt, where hundreds of people were sentenced to death.

In Nigeria, 659 death sentences were recorded in 2014, a jump of more than 300 compared with the 2013 figure of 141. Military courts handed down mass death sentences against some 70 soldiers during the year in separate trials. They were convicted of mutiny in the context of the armed conflict with Boko Haram.

In Egypt, courts handed down at least 509 death sentences during 2014, 400 more than recorded during the previous year. This included mass death sentences against 37 people in April and 183 people in June following unfair mass trials.

Methods and crimes
Methods of executions in 2014 included beheading, hanging, lethal injection and shooting. Public executions were carried out in Iran and Saudi Arabia.

People faced the death penalty for a range of non-lethal crimes including robbery, drug-related crimes and economic offences. People were even sentenced to death for acts such as ‘adultery’, ‘blasphemy’ or ‘sorcery’, which should not be considered crimes at all. Many countries used vaguely worded political ‘crimes’ to put real or perceived dissidents to death.

REGIONAL BREAKDOWN

The Americas
The USA continued to be the only country to put people to death in the region, although executions dropped from 39 in 2013 to 35 in 2014 – reflecting a steady decline in the use of the death penalty in the country over the past years. Only seven states executed in 2014 (down from nine in 2013) with four – Texas, Missouri, Florida and Oklahoma – responsible for 89 per cent of all executions. The state of Washington imposed a moratorium on executions in February. The overall number of death sentences decreased from 95 in 2013 to 77 in 2014.

Asia Pacific
The Asia Pacific region saw a mixed bag of death penalty developments in 2014. Executions were recorded in nine countries, one fewer than the year before. Pakistan lifted a moratorium on execution of civilians. Thirty-two executions were recorded in the region, although these numbers do not include China or North Korea, where it was impossible to confirm numbers. Indonesia announced plans to resume executions mainly of drug traffickers in 2015.

The Pacific continued to be the world’s only virtually death penalty free zone, although the governments of both Papua New Guinea and Kiribati took steps to resume executions or introduce the death penalty.

Sub-Saharan Africa
Sub-Saharan Africa saw particular progress in 2014. 46 executions were recorded in three countries compared to 64 executions in five countries in 2013 – a drop of 28 per cent. Only three countries, Equatorial Guinea, Somalia and Sudan, were known to have carried out executions.

Madagascar took a progressive step towards abolition when the country’s National Assembly adopted a bill abolishing the death penalty on 10 December, although the bill has to be signed by the country’s president before becoming law.

Europe and Central Asia
Belarus – the only country in the region that executes – put at least three people to death during the year, ending a 24-month hiatus on executions. The executions were marked by secrecy, with family members and lawyers only being informed after the fact.

Middle East and North Africa
The widespread use of the death penalty in the Middle East and North Africa continued to be extremely troubling. Iran, Iraq and Saudi Arabia accounted for 90 per cent of all recorded executions in the region, and 72 per cent of all recorded executions globally (excluding China).

In 2014 executions were recorded in eight countries, two more than in 2013. Sixteen countries imposed death sentences – a large majority of countries in the region.

The overall number of executions recorded in the MENA region dropped from 688 in 2013 to 491 last year. These figures do not include hundreds of executions that are known to have occurred in Iran but which were not officially announced. In 2014 the Iranian authorities acknowledged 289 executions, however reliable sources reported another 454 executions, bringing the total to 743.
The following extracts from an annual Amnesty International report feature the summary and overview of the death penalty around the world in 2014

**SUMMARY**

“There are too many flaws in the system. And when the ultimate decision is death there is too much at stake to accept an imperfect system.”

Jay Inslee, Governor of Washington State, USA, 11 February 2014.

Amnesty International recorded executions in 22 countries in 2014, the same number as in 2013. At least 607 executions were carried out worldwide, a decrease of almost 22% compared with 2013. As in previous years, this figure does not include the number of people executed in China, where data on the death penalty is treated as a state secret. At least 2,466 people are known to have been sentenced to death in 2014, an increase of 28% compared with 2013. This increase was largely due to sharp spikes in death sentences in Egypt and Nigeria, where courts imposed mass sentences against scores of people in some cases.

An alarming number of countries that used the death penalty in 2014 did so in response to real or perceived threats to state security and public safety posed by terrorism, crime or internal instability. For example, Pakistan lifted a six-year-long moratorium on the execution of civilians in the wake of the horrific Peshawar school attack. The government also pledged to execute hundreds of people on death row who had been convicted on terrorism-related charges. China made use of the death penalty as a tool in the ‘Strike Hard’ campaign, which the authorities characterised as a response to terrorism and violent crime in the Xinjiang Uighur Autonomous Region.

There is no evidence that the death penalty has a greater deterrent effect on crime than terms of imprisonment. Where governments present the death penalty as a solution to crime or insecurity they are not only misleading the public but – in many cases – failing to take steps to realise the goal of abolition recognised in international law.

Many of those states that retain the death penalty continued to use it in contravention of international law and standards. Unfair trials, ‘confessions’ extracted through torture or other ill-treatment, the use of the death penalty against juveniles and people with mental or intellectual disabilities, and for crimes other than ‘intentional killing’ continued to be concerning features of the use of the death penalty in 2014.

Despite these concerns, the world continues to make progress towards abolition. Despite these concerns, the world continues to make progress towards abolition.

With the exception of Europe and Central Asia region, where Belarus – the only country in the region that executes – resumed executions after a 24-month hiatus, Amnesty International documented positive developments in all regions of the world. The Sub-Saharan Africa region saw particular progress, with 46 executions recorded in three countries, compared to 64 executions in five countries in 2013 – a 28% reduction. The number of executions recorded in the Middle East and North Africa region decreased by approximately 23% – from 638 in 2013 to 491 in 2014.

In the Americas, the USA is the only country that executes, but executions dropped from 39 in 2013 to 35 in 2014, reflecting a steady decline in executions over recent years. The state of Washington imposed a moratorium on executions.

Fewer executions were recorded in the Asia-Pacific region, excluding China, and debates on abolition began in Fiji, South Korea and Thailand.

**THE USE OF THE DEATH PENALTY IN 2014**

“We must continue to argue strongly that the death penalty is unjust and incompatible with fundamental human rights.”

UN Secretary-General Ban Ki-moon, 10 October 2014.

**GLOBAL FIGURES**

**Executions**

Amnesty International recorded executions in 22 countries in 2014, the same number of countries as in 2013. Although the number remained constant, there were some changes in the countries carrying out executions. Seven countries that executed in 2013 did not do so in 2014 (Bangladesh, Botswana, Indonesia, India, Kuwait, Nigeria and South Sudan) while seven
others resumed executions (Belarus, Egypt, Equatorial Guinea, Jordan, Pakistan, Singapore and the United Arab Emirates [UAE]). Amnesty International was unable to confirm whether judicial executions took place in Syria.

At least 607 executions were carried out worldwide, a decrease of almost 22% compared to the figures recorded for 2013. This figure does not include the number of people who were believed to have been executed in China. In 2009 Amnesty International stopped publishing the organisation’s estimated figures on the use of the death penalty in China, where data on capital punishment is considered a state secret. Instead the organisation has challenged the Chinese authorities to prove their claims that they are achieving their goal of reducing the application of the death penalty by publishing the figures themselves.

For some countries, such as Nigeria and Tanzania, the rise in the number of recorded death sentences is also partly due to the authorities providing more complete data to Amnesty International.

At least 19,094 people were believed to be under sentence of death worldwide at the end of 2014.

**Commutations, pardons and exonerations**

Commutations or pardons of death sentences were recorded in 28 countries: Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Egypt, Ghana, India, Iran, Jamaica, Jordan, Kuwait, Malaysia, Mali, Myanmar, Nigeria, Saudi Arabia, Sierra Leone, Singapore, South Korea, Sri Lanka, Sudan, Tunisia, Trinidad and Tobago, UAE, USA, Viet Nam and Zimbabwe.

Amnesty International recorded 112 exonerations of death row prisoners in nine countries: Bangladesh (4), China (2), Jordan (1), Nigeria (32), Sudan (4), Tanzania (59), USA (7), Viet Nam (2) and Zimbabwe (1). The release of prisoners from death row on the grounds of innocence exposes the fallibility of human justice and sparked debates on the death penalty in several countries, including countries where support for capital punishment has traditionally been strong, such as China, Japan, Viet Nam and the USA.

**How the death penalty was used in 2014**

The following methods of executions were used: beheading (Saudi Arabia), hanging (Afghanistan, Bangladesh, Egypt, Iran, Iraq, Japan, Jordan, Malaysia, Pakistan, Palestine, Singapore, Sudan), lethal injection (China, USA, Viet Nam) and shooting (Belarus, China, Equatorial Guinea, North Korea, Palestine, Saudi Arabia, Somalia, Taiwan, UAE, Yemen).

As in previous years, there were no reports of judicial executions carried out by stoning. In UAE one woman was sentenced to death by stoning for committing ‘adultery’ while married. Public executions were carried out in Iran and Saudi Arabia.

Amnesty International has received reports indicating that at least 14 people were executed in Iran for crimes they allegedly committed when they were under 18 years of age. Egypt, Iran and Sri Lanka sentenced juvenile offenders to death in 2014. The imposition and execution of the death penalty against people aged under 18 when the crime was committed is a violation of international law. Often the actual age of the offender is in dispute because no clear proof of age, such as a certificate of registration at birth, exists. Amnesty International remained concerned that in Iran, Maldives, Nigeria, Pakistan, Saudi Arabia, Sri Lanka and Yemen, people who were juveniles at the time of their alleged crimes were under sentence of death during 2014.

People with mental or intellectual disabilities were under sentence of death in several countries including Indonesia, Japan, Malaysia, Pakistan, Trinidad and Tobago and the USA.

In the majority of countries where people were sentenced to death or executed, the death penalty
The death penalty was imposed or implemented for drug-related offences in a number of countries, including China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, UAE and Viet Nam.

Other capital crimes which did not meet the standard of “most serious crimes” but for which the death penalty was imposed in 2014 included: economic crimes such as corruption (China, North Korea and Viet Nam); armed robbery (DRC); committing ‘adultery’ while married (UAE); rape that resulted in death (Afghanistan); rape committed by repeat rape offenders (India), rape (Saudi Arabia, UAE); kidnapping (Saudi Arabia); torture (Saudi Arabia); ‘insulting the prophet of Islam’ (Iran); blasphemy (Pakistan); ‘witchcraft’ and ‘sorcery’ (Saudi Arabia).

Finally, different forms of ‘treason’, ‘acts against national security’, ‘collaboration’ with a foreign entity, ‘espionage’, participation in ‘insurrectional movement and terrorism’ and other ‘crimes against the state’, whether or not they led to a loss of life, were punished with death sentences in Lebanon, North Korea, Palestine (in the West Bank and in Gaza), Qatar and Saudi Arabia.

**Positive developments**

The number of executions recorded in 2014 decreased by 22% compared with 2013. In Sub-Saharan Africa, 46
Throughout 2014, together with other members of civil society and stakeholders in all regions, Amnesty International activists helped to stop executions and secure positive action on the death penalty in a number of states.

For example:

On 27 March Iwao Hakamada was temporarily released from death row in Japan pending a retrial. He had spent 45 years at the Tokyo Detention Centre under sentence of death, and developed a severe mental illness during his time on death row. Amnesty International’s members had been campaigning on his behalf for nearly a decade.

Chandran s/o Paskaran was spared execution in Malaysia on 7 February after an outcry from human rights groups, including Amnesty International.

Osariakhi Ernest Obyangbon, a Nigerian national, was due to be executed in Malaysia on 14 March 2014. He had not received a fair trial and had been diagnosed as having schizophrenia, for which he had been receiving treatment before his appeal in 2007. Amnesty International was notified of the imminent execution 36 hours before it was due to be carried out and issued urgent appeals to the Malaysian authorities. After Osariakhi Ernest Obyangbon’s execution was stayed, his brother wrote to Amnesty International, saying: “I am profoundly grateful to you and your entire team for saving my brother’s life at the last minute. My brother was already moved from his room to the execution room and given different clothes to wear for the execution before you saved his life. We, the members of his family, will forever appreciate your magnanimity towards him.” Both Chandran s/o Paskaran and Osariakhi Ernest Obyangbon remain on death row.

ThankGod Ebhos was sentenced to death in Nigeria in 1995. On 23 June 2013 he was taken to the gallows with four other men, all of whom were hanged in front of him. At the last minute, the prison authorities realised that ThankGod Ebhos’s death sentence required a firing squad and he was returned to his cell. On 24 October, following campaigns against his execution, ThankGod Ebhos was released from death row.

Meriam Yehya Ibrahim was released from prison in Sudan, on 23 June. Her death sentence for apostasy, imposed by a Khartoum court on 15 May, was overturned by an appeals court. Meriam Yehya Ibrahim’s case attracted widespread international attention with over one million people responding to Amnesty International’s appeal for her release.

On 3 December the Court of Appeals for the Fifth Circuit stayed the execution of Scott Panetti in Texas, USA, less than eight hours before it was due to be carried out. His mental illness, which included schizophrenia, predated, and apparently contributed to, the murder for which he was sentenced to death. Amnesty International began campaigning on his behalf in 2004.
In December the UN General Assembly adopted its fifth resolution on a moratorium on the use of the death penalty. The number of votes in favour of resolution 69/186 increased by six, from 111 in 2012 to 117 in 2014, while 38 voted against and 34 abstained. Six more countries supported the resolution compared to last time a similar vote took place in 2012. New votes in favour of the 2014 resolution came from Equatorial Guinea, Eritrea, Fiji, Niger and Suriname. In a further positive sign, Bahrain, Myanmar, Tonga and Uganda moved from opposition to abstention. Regrettably, Papua New Guinea moved from abstention to a vote against the resolution.

New additions to the text of the 2014 resolution included calls on all states to comply with their obligations under the 1963 Vienna Convention on Consular Relations and respect the right of foreign nationals to receive information on consular assistance when legal proceeding are initiated against them; make available relevant information on the countries’ use of the death penalty “disaggregated by sex, age and other criteria” as well as on the number of commutations, acquittals and pardon granted; and to not expand the scope of the death penalty.

The use of the death penalty to combat crime and insecurity

Many countries that imposed or implemented death sentences in 2014 did so in response to real or perceived threats to state security and public safety posed by terrorism, crime or internal instability.

- Pakistan lifted a six-year long moratorium on the execution of civilians in the wake of the horrific Peshawar school attack. Seven people were executed in less than two weeks at the end of 2014. The government also pledged to execute hundreds of people on death row who had been convicted on terrorism-related charges.
- China made use of the death penalty as a tool in the ‘Strike Hard’ campaign, which the authorities characterised as a response to terrorism and violent crime in the Xinjiang Uighur Autonomous Region. Three people were sentenced to death in a mass sentencing rally involving 55 people convicted of terrorism, separatism and murder. Between June and August, 21 people were executed in the Xinjiang Uighur Autonomous Region in relation to separate terrorist attacks.
- Both Cameroon and the UAE expanded the scope of the death penalty to include ‘terrorism-related’ crimes.
- Jordan resumed executions in December after an eight-year hiatus, executing men convicted on murder charges. The authorities clearly stated that the move was in response to increasing murder rates.
- In December, Indonesia announced the resumption of executions for drug-related offences to confront “a national emergency”.

The argument in support of use of the death penalty to combat crime ignores the fact that there is no convincing evidence that the death penalty works as a particular deterrent to crime, or that it is more effective than terms of imprisonment. This has been confirmed in many studies carried out by the UN and across different countries and regions.

NOTES

1. In 2013 and in 2014 Amnesty International was unable to confirm whether executions were carried out in Syria.
2. Article 6(6) of the International Covenant on Civil and Political Rights states clearly that provisions in the same Article allowing for the use of the death penalty under certain circumstances “shall not be invoked to delay or to prevent the abolition of capital punishment”. In its General Comment no.6, the UN Human Rights Committee has stated that Article 6 “refers generally to abolition in terms which strongly suggest [...] that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life”. Human Rights Committee, General Comment No.6, Article 6 (Sixteenth session, 1982), Compilation of general comments and general recommendations adopted by human rights treaty bodies, UN doc. HRI/GEN/1/Rev.9, May 2008.
3. Exoneration is the process where, after sentencing and the conclusion of the appeals process, the convicted person is later freed from blame or acquitted of the criminal charge, and therefore is regarded as innocent in the eyes of the law. Iwao Hakamada was temporarily released in Japan pending retrial and therefore his case is not included in this list.
4. Governments should apply a full range of appropriate criteria in cases where age is in dispute. Good practice in assessing age includes drawing on knowledge of physical, psychological and social development. Each of these criteria should be applied in a way that gives the benefit of doubt in disputed cases so that the individual is treated as a juvenile offender, and accordingly should ensure that the death penalty is not applied. Such an approach is consistent with the principle that the best interests of the child shall be a primary consideration in all actions concerning children, as required by Article 3(1) of the UN Convention on the Rights of the Child.
5. Syria’s membership was suspended because of the violence used to suppress uprisings. Due to the ongoing conflict, Amnesty International could not confirm any information on the use of the death penalty in Syria in 2014.
6. The bills were adopted in Fiji and Suriname in February and March 2015 respectively.
7. The USA voted against the resolution but its vote was not captured in the official voting sheet.
8. On 20 December 2012, 111 states voted in favour, 41 against and 34 abstained in the vote on the UN General Assembly resolution 67/176. The full list of co-sponsors of and voting on the 2014 resolution can be found in Annex IV of this document.
FIVE BRUTAL METHODS OF EXECUTION

EMILY BRIGGS FROM AMNESTY INTERNATIONAL AUSTRALIA TAKES A LOOK AT FIVE METHODS OF EXECUTION CURRENTLY USED AROUND THE WORLD

1. LETHAL INJECTION
Carried out in: China, Vietnam, USA

The lethal injection generally consists of three chemicals: sodium pentothal (an anaesthetic), pancuronium bromide (used to paralyse the prisoner) and potassium chloride (used to stop the heart).

Sounds pretty scientific, doesn’t it? However, due to botched executions by inexperienced prison staff, the executions of some of the men and women sentenced to die by lethal injection haven’t run ‘smoothly’. In March 2014 Dennis McGuire, an Ohio death row inmate, took 26 minutes to die by lethal injection as he lay on a gurney with his mouth opening and closing.

2. ELECTROCUTION
Carried out in: USA

After the prisoner is shaved and strapped to a chair, a metal skullcap-shaped electrode is attached to their scalp and forehead over a sponge moistened with saline. The prisoner is then blindfolded. A jolt of between 500 and 2,000 volts, which lasts for about 30 seconds, is repeatedly administered until the prisoner is declared dead.

Just like the lethal injection, the electric chair is far from foolproof. In 1990, Jesse Joseph Tafero suffered three jolts of electricity before he stop breathing, during which time six-inch flames erupted from his head. This botched execution was put down to “inadvertent human error” with the inappropriate substitution of a synthetic sponge for a natural one.

3. HANGING
Carried out in: Afghanistan, Bangladesh, Botswana, India, Iran, Iraq, Japan, Kuwait, Malaysia, Nigeria, Palestinian Authority (Hamas authorities, Gaza), South Sudan, Sudan

The ‘long drop’ is the most commonly used hanging method. In some countries prisoners are weighed the day before their execution to determine the length of ‘drop’ necessary to ensure a quick death. If the rope is too long, the inmate could be decapitated, and if it is too short, death by strangulation could take as long as 45 minutes. Some countries, such as Iran, use cranes to publicly hang the condemned.

4. SHOOTING
Carried out in: China, Indonesia, North Korea, Saudi Arabia, Somalia, Taiwan, Yemen

Execution by firing squad typically involves the prisoner being bound to a chair (sitting) or a pole (standing), with a black hood pulled over their head. Up to 20 feet away, the shooters, usually no less than five of them, aim for the prisoner’s heart. If the shooters miss their target, by accident or intention, the prisoner can bleed to death slowly.

5. BEHEADING
Carried out in: Saudi Arabia

Beheading as a form of execution is routine in Saudi Arabia. An historic form of execution, beheadings in Saudi Arabia are carried out in public using a sword, usually in a town square or close to a prison. The condemned, who is blindfolded, handcuffed and often given a sedative, typically wears white – as does the executioner.

‘Crimes’ punishable by death in Saudi Arabia include: adultery, blasphemy, fornication, homosexuality and sorcery.
In less than 40 years, 124 countries have abolished the death penalty – AND HERE’S WHY THE REST SHOULD END IT TOO

By Diana Sayed, human rights lawyer and Amnesty International crisis campaigner

Marched in handcuffs across the tarmac by a group of heavily armed officers wearing balaclavas and thick helmets, the bare faces of Andrew Chan and Myuran Sukumaran appeared even more tragic. The blurry images showing them being taken onto the plane headed for Nusakambangan Island Prison highlighted the inhumanity of the fate that Indonesia’s President Joko Widodo is adamant they will face.

After more than 10 years in prison, they are among the next group whom Widodo says will be executed.

Chan, 31, and Sukumaran, 33, were convicted in Indonesia in 2006 for drug trafficking. Their highly-publicised plight represents all that is wrong with the death penalty.

Amnesty International has been campaigning to end the death penalty since 1977. When this campaign began, only 16 countries had ended capital punishment; now 140 countries have abolished the practice.

Despite Widodo’s claims that he’s carrying out executions to serve as a warning about drugs, there is in fact no evidence that the death penalty serves as a deterrent. Nor is it humane.

After a four-year moratorium on the death penalty, Indonesia resumed executions in March 2013.

In Indonesia, death sentences are carried out by firing squad with the prisoner in front of 12 gunmen, three of whose rifles are loaded with live ammunition, while the other nine are loaded with blanks. The squad fires from a distance of between five and 10 metres. The prisoner has the choice of standing or sitting, and can decide whether to have their eyes covered by a blindfold or hood.

A single shot is fired from each rifle, aimed at the chest. If that does not kill the prisoner, the commander will fire a point-blank shot to the head. No witnesses or family are allowed to be present. According to a Catholic priest who witnessed the executions of two Nigerians in Indonesia in 2008, it took them up to eight minutes to die and they “were moaning in pain”.

Long, slow deaths

A drawn-out death is reflected in many of the stories about executions internationally. In Iran, it took 12 minutes of Alireza M hanging by his neck before he was pronounced dead.

The execution had failed. Alireza went on to have his sentence commuted by the Iranian justice system, and was handed a life sentence instead.

After 18-months of no executions, Vietnam resumed using the death penalty in August 2013. Nguyen Anh Tuan, convicted for murder in 2010, was reportedly executed in the Ha Noi Police prison through lethal injection – the first execution in the country since around January 2012.

The European Union export ban on the chemicals needed for lethal injections has meant that Vietnam faces a shortage of drugs needed to carry out executions.

Five Yemeni men in Saudi Arabia were beheaded and crucified publicly in May 2013, with pictures emerging on social media appearing to show five decapitated bodies hanging with their heads wrapped in bags.

Texas, the most prolific death penalty state in the US, executed its 500th person in June 2013 – a worrying landmark in America’s capital punishment history since state-sanctioned killing resumed in 1977. Kimberly McCarthy was administered a single, lethal dose of pentobarbital, a barbiturate. She was pronounced dead 20 minutes later.

To date, the US remains one of the top five countries carrying out executions globally.

Even more alarming is that death sentences can be wrong. Just last week the Texas Court of Criminal Appeals issued a stay of execution in the case of Rodney Reed after new scientific evidence came to light that established his probable innocence. He was due to be put to death on March 5.

In the last 40 years, more than 140 death row inmates have had their innocence proven. This margin of error alone should be enough to point out the flaws in the system if the method of execution hasn’t.

Diana Sayed is a human rights lawyer and crisis campaigner for Amnesty International.

Countries with and without the death penalty

COUNTRIES THAT DO NOT HAVE THE DEATH PENALTY

- To date, more than 100 countries have abolished the death penalty for all crimes.
- More than two-thirds of the countries in the world have now abolished the death penalty in law or practice. As of 31 December 2014 the numbers were as follows:
  - Abolitionist for all crimes: 98
  - Abolitionist for ordinary crimes only: 7
  - Abolitionist in practice: 35
  - Total abolitionist in law or practice: 140
  - Retentionist: 58
- All European countries, except for Belarus and Russia, have removed capital punishment. China, India, Brazil, the majority of the United States of America and most north African and Middle Eastern countries still impose it.

AUSTRALIA – Murderer Ronald Ryan was the last person executed. He was hanged on February 3, 1967. Federally the death penalty wasn’t abolished until 1985, but states removed capital punishment at various points from 1922 to 1984. Queensland was the first state, NSW was the last.

ARGENTINA – Civilian capital punishment was abolished in 1853, but the death penalty for military crimes stayed in place until 2009.

CANADA – Murderers Arthur Lucas and Ronald Turpin were the last people executed, hanged on December 11, 1962. Canada abolished the death penalty officially in 1976 except for certain military offences, which were removed in 1998. A bill to reintroduce the death penalty was narrowly defeated in 1987.

FIJI – Abolished the death penalty for ordinary crimes in 1979 but only removed the last reference to capital punishment for military crimes in 2015.

GREAT BRITAIN – Last execution was by hanging in 1964. Capital punishment was abolished for murder in 1965 and for all crimes in 1998.

MEXICO – The last civilian execution was in 1937 and for military members in 1961 but Mexico officially abolished the death penalty in 2005.

NEW ZEALAND – Wife killer Walter Bolton was the last person executed. He was hanged in 1957. New Zealand abolished the death penalty for murder in 1961 and for all crimes in 1989.

MEXICO – The last civilian execution was in 1937 and for military members in 1961 but Mexico officially abolished the death penalty in 2005.

UNITED STATES OF AMERICA – 18 states do not have the death penalty. 32 states do. The most recent execution was in April 2015 in Texas.

Abolitionist for all crimes

Countries whose laws do not provide for the death penalty for any crime:
- Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cabo Verde, Colombia, Cook Islands, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Togo, Turkey, Turkmenistan, Tuvalu, Ukraine, UK, Uruguay, Uzbekistan, Vanuatu, Venezuela.

COUNTRIES THAT STILL HAVE THE DEATH PENALTY

- 58 nations, including the United States of America, still enforce the death penalty.
- They are: Afghanistan, Antigua and Barbuda, The Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of Congo, Cuba, Dominica, Eritrea, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States of America (32 states), Vietnam, Yemen and Zimbabwe.

Seven countries carry the death penalty for crimes committed under exceptional circumstances or military crimes.

- In 2012, 111 nations voted in favour of a moratorium on the use of the death penalty at the United Nations. 41 nations voted against and 34 abstained.

Sources:
- AAP (29 April 2015), Countries that do not have death penalty.
- World Coalition Against the Death Penalty.
- Australian Institute of Criminology.
UNITED NATIONS AND THE ABOLITION OF THE DEATH PENALTY
THE UNITED NATIONS EXPLAINS THE PROCESS INVOLVED IN ITS GLOBAL CAMPAIGN TO ABOLISH CAPITAL PUNISHMENT

UN Secretary-General Ban Ki-moon’s remark that “The death penalty has no place in the 21st century” reflects the global trend away from capital punishment. More and more Member States from all regions acknowledge that the death penalty undermines human dignity, and that its abolition, or at least a moratorium on its use, contributes to the enhancement and progressive development of human rights.

The Office of the High Commissioner for Human Rights, with its mandate to promote and protect all human rights, advocates for the universal abolition of the death penalty. The UN Human Rights Office argues this position for other reasons as well, including the fundamental nature of the right to life; the unacceptable risk of executing innocent people; and the absence of proof that the death penalty makes society any safer.

What do they say about the death penalty?

VICTIMS
“If a great country cannot ensure that it won’t kill an innocent citizen, it shouldn’t kill at all.”
Kirk Bloodsworth, victim of wrongful conviction

“They took us to trial, and the evidence was the Stephen King novels that I read, the music I listened to and the clothes that I wore. They found us guilty, and I was sentenced to death.”
Damien Echols, 18 years on death row for a crime he did not commit

OFFICIALS
“In the 21st century, the right to take someone’s life is not a part of the social contract between citizens and a state…”
Ivan Simonovic, UN Assistant-Secretary-General for Human Rights

“Rejecting capital punishment is about choosing what kind of society we want to live in, and which values – including human rights and dignity, democracy and the rule of law – we want to uphold.”
Federico Mayor, President of the International Commission against the Death Penalty

ACTIVISTS
“... The risk that innocent people will be executed can never be eliminated…”
Saul Lehrfreund, co-executive director of The Death Penalty Project

“Discrimination is a problem in the application of the death penalty around the world.”
Alice Mogwe, director of the Botswana Centre for Human Rights

“The cruel ultimate punishment has little chance of healing society.”
Mario Marazziti, Community of Sant’Egidio and member of the Italian legislature

SCHOLARS
“The empirical research conducted over the past few decades demonstrates that no matter what politicians argue or the public believe, neither deterrence nor public opinion should be seen as barriers to abolition.”
Carolyn Hoyle and Roger Hood authors of The Death Penalty: A Worldwide Perspective

“The death penalty is one of America’s most prominent vestiges of slavery and racial oppression.”
Stephen Bright, president of the Southern Center for Human Rights in Atlanta, Georgia

“Terrible tragedies involving sensational crimes too often make bad law.”
Stephen L. Braga, professor at the University Of Virginia School of Law


This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: The Geelong College, Newtown, andrea.mcgucken@geelongcollege.vic.edu.au
The Death Penalty Debate: Issues in Society

The death penalty serves as a deterrent to crime. In line with General Assembly resolutions calling for a phasing out of capital punishment, the UN Human Rights Office supports Member States, civil society and other stakeholders campaigning for a moratorium on the death penalty and ultimately its abolition worldwide.

**The international framework**

From the early 1960s, although a majority of countries still used the death penalty, the draftees of the *International Covenant on Civil and Political Rights* (ICCPR) had already begun moves for its abolition in international law.

Although Article 6 of the ICCPR permits the use of the death penalty in limited circumstances, it also provides that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

- **Safeguards guaranteeing protection of the rights of those facing the death penalty**
  
  In 1984, the UN Economic and Social Council adopted Safeguards guaranteeing protection of the rights of those facing the death penalty.

- **Second Optional Protocol to**

**Timeline: the United Nations and the death penalty**

1966: The *International Covenant on Civil and Political Rights*, adopted by the UN, permits the application of the death penalty in countries that “have not abolished” it only if it is imposed for “the most serious crimes”. There are only 26 abolitionist countries at the time.

1977: The UN General Assembly adopts resolution 32/61. The resolution states that throughout the world, it was desirable to “progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment.”

1984: The UN Economic and Social Council adopts principles related to the imposition of the death penalty, also known as Safeguards guaranteeing protection of the rights of those facing the death penalty.

1989: The UN General Assembly adopts the Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty. This gives abolition a decisive new momentum.

2007, 2008, and 2010: The General Assembly adopts a series of resolutions calling upon States to respect international standards that provide protection of the rights of those facing the death penalty and to progressively restrict its use and reduce the number of offences for which it may be imposed.

Since 2012: OHCHR has organised a unique series of knowledge events in New York and Geneva to encourage member states to move away from the death penalty. These events have brought together UN officials, including the Secretary-General, representatives of Member States, academia, civil society, as well as legal experts and victims of wrongful convictions.

25 September 2014: For the first time, the United Nations will host a High-Level discussion with Head of States on the issue of moving away from death penalty and the role of leadership.

10 October 2014: 12th International Day against the death penalty.

November 2014: Vote of a UN General Assembly resolution on the question of the death penalty.

ICCPR, aiming at the abolition of the death penalty
In 1989, 33 years after the adoption of the Covenant itself, the UN General Assembly adopted the Second Optional Protocol to the ICCPR that gave abolition decisive new momentum. Member States which became parties to the Protocol agreed not to execute anyone within their jurisdictions.

• UN General Assembly resolutions
In a series of four resolutions adopted in 2007, 2008, 2010 and 2012, the General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death.

Moving away from the death penalty: lessons in South-East Asia
In March 2015, the United Nations Human Rights Office for South-East Asia (OHCHR) released a report on death penalty in South-East Asia. The report provides an extensive review of global trends in the application of the death penalty, a summary of the applicable international legal standards, and the current status of legislative reform related to the death penalty in the region.

This publication comes at an important juncture where the region appears to follow global trends in 'moving away' from capital punishment while facing complex challenges, such as the application of death penalty for drug-related crimes and pressures to return to executions after periods of moratorium.

Some States are fully abolitionist (Cambodia, Timor Leste, and the Philippines), others are abolitionist in practice (Brunei Darussalam, Lao PDR, Myanmar), while others have an unofficial moratorium in place (Thailand).

Some are undertaking efforts to reduce the numbers of executions and other reforms (Singapore, Malaysia), while in others, the direction seems more uncertain (Indonesia, Vietnam).

As stated by Professor William Schabas: “Fundamentally, it is a positive picture of progress and one consistent with the worldwide trend. The continuation of this trajectory should be encouraged so this region may eventually be free of capital punishment.”

The publication is based on a number of years of work of the OHCHR Regional Office for South-East Asia. The Office collaborated with the Ministry of Justice in Thailand to organise an Expert Seminar on “Moving Away from the Death Penalty in South-East Asia” in Bangkok on 22-23 October 2013. Participants laid the ground for establishing a forum for intra-regional exchange between key stakeholders on international and regional law and practice regarding the death penalty. As a follow-up to that meeting, the Indonesian Representative to the ASEAN Inter-governmental Commission on Human Rights (AICHR) organised with OHCHR its Third Jakarta Human Rights Dialogue on “The Right to Life and Moratorium on the Use of the Death Penalty” in Jakarta on 10-11 November 2014.

Both events had participants from Governments, AICHR, national human rights institutions, non-governmental organisations, as well as international experts, lawyers, and academia from the region.

“We hope this publication can be a resource for further discussions in the region and help to establish moratoria on the use of death penalty and ultimately its abolition,” noted Matilda Bogner, the Regional Representative of the OHCHR Regional Office for South-East Asia.

10 FACTS ABOUT THE DEATH PENALTY

- Wrongful convictions are simply not avoidable.
- Capital punishment is too final and irrevocable.
- There is no empirical evidence that the death penalty deters crimes.
- Death penalty is not imposed in a just and equal way.
- As long as the death penalty exists, it can be misused.
- The world is moving towards the abolition of the death penalty.
- 160 countries are abolitionist in law or practice.
- Not all victims’ families support the death penalty.
- Methods of execution currently used can inflict inordinate pain and suffering.
- Death penalty is not an entitlement of the state, as it violates human rights.


International law and the death penalty

To date, there exist in international law four international treaties that provide for the abolition of the death penalty. One is global, while the other three are regional in application.

Second Optional Protocol to the International Covenant on Civil and Political Rights

Adopted by the UN General Assembly in 1989, the Protocol aims at the total abolition of the death penalty but allows states parties to retain the death penalty for crimes in time of war if they make a reservation to that effect at the time of the ratification or accession to the Protocol.

**States parties:** Albania, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Honduras, Hungary, Iceland, Ireland, Italy, Kyrgyzstan, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Moldova, Monaco, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, San Marino, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Turkey, Turkmenistan, Ukraine, UK, Uruguay, Uzbekistan, Venezuela. *(total: 81)*

**Signed but not ratified:** Angola, Madagascar, Sao Tome and Principe. *(total: 3)*

Protocol to the American Convention on Human Rights on the Abolition of the Death Penalty

Adopted by the General Assembly of the Organisation of American States in 1990, this Protocol provides for the total abolition of the death penalty but allows states parties to retain the death penalty for crimes in time of war if they make a reservation to that effect at the time of the ratification or accession to the Protocol. Any state party to the American Convention on Human Rights can become a party to the Protocol.

**States parties:** Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, Venezuela. *(total: 13)*

Protocol No.6 to the European Convention on Human Rights

Adopted by the Council of Europe in 1982, this Protocol provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes “in time of war or of imminent threat of war”. Any state party to the European Convention on Human Rights can become a party to the Protocol.

**States parties:** Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK. *(total: 46)*

**Signed but not ratified:** Russian Federation. *(total: 1)*

Protocol No.13 to the European Convention on Human Rights

Adopted by the Council of Europe in 2002, this Protocol provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war. Any state party to the European Convention on Human Rights can become a party to the Protocol.

**States parties:** Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, UK. *(total: 44)*

**Signed but not ratified:** Armenia. *(total: 1)*

UN General Assembly resolutions

In a series of four resolutions adopted in 2007, 2008, 2010, 2012 and 2013, the General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death.

**SOURCES:**

- OHCHR (2015), *Death Penalty*.
THE DEATH PENALTY IN SE ASIA: IS THERE A TREND TOWARDS ABOLITION?

Pip Nicholson examines progress towards ending the death penalty in the region closest to Australia, in this article first published in The Conversation

In 2013, scholars David T. Johnson and Franklin E. Zimring characterised Asia as the “next frontier” in the global campaign to abolish the death penalty. While hard data on death penalty practices is notoriously difficult to find, there are indications of a South-East Asian trend towards abolition.

The death penalty was abandoned in the Philippines in 2006, East Timor in 1999 and Cambodia in 1989. The last known executions in Laos and Myanmar were in 1989. Thailand has a high rate of clemency, which amounts to ‘de facto’ abolition – its last reported execution was in 2009.

Bucking this alleged trend, Malaysia executed two people in 2013 and an average of one person per year between 2007 and 2011. Indonesia resumed executions in 2013, ending a practical moratorium that began in 2008. Before that it executed between one and ten people annually. So far Indonesia has executed six people in 2015 and two Australians, Andrew Chan and Myuran Sukumaran, are being transferred on Wednesday to a prison island where they will be executed.

Vietnam allegedly executes about 100 people a year. Singapore hanged two people in 2014, none between 2010 and 2013, and at least one each year from 2007 to 2009.

Generalisations about the death penalty in South-East Asia suggest abolitionist sentiments are increasing, yet practices vary substantially. To better understand the trends we must consider the context and political priorities of states that retain the death penalty. This is not to deny the significance of the death penalty reform movement, but to say that this activism must be understood in a local context.

The death penalty in Vietnam

In 2005, Vietnam reduced the offences to which the death penalty applies from 44 to 22. These reforms reportedly arose from an ambition to advance human rights.

The debate in Vietnam about changing sentencing principles is ongoing. Proposed changes include an exemption from the death penalty for people aged over 70; a qualification that the death penalty only apply in “particularly serious cases”; and the possibility of a suspended death penalty provision.

This last approach involves the court ordering the death penalty, but suspending its implementation pending proof of rehabilitation over a period of years.

Vietnam also briefly suspended executions by firing squad. This followed a government decision in late 2011 that execution should be more humane and be done by lethal injection.

Subsequently, the European Union imposed a ban on the export of a constituent chemical, Propofol, which resulted in a radical increase in the number of prisoners on death row and an impasse about whether to reinstate death by firing squad. In August 2013, executions by lethal injection began after ingredients were developed locally.

In effect, Vietnam is reformist and reductionist – but it is premature to classify it as abolitionist.

The death penalty in Singapore

Arguably, Singapore echoes a reductionist, rather than an abolitionist, trend.
Activists are seeking the abolition of the death penalty locally. In 2013 Singapore amended the Misuse of Drugs Act to remove the mandatory death penalty in drug cases. The act now allows for a life sentence and caning when an accused demonstrates that they were only a courier and that they provided “substantial assistance” to the authorities. The latter must be evidenced by a certificate from the Public Prosecutor.

Government figures claimed that the reform targeted increased co-operation with police. It did not reflect an abolitionist agenda. Others argue that global condemnation of the Singaporean government in 2005, when it executed young Australian drug mule Van Tuong Nguyen, contributed to the removal of the mandatory death penalty for some drug offences.

The next frontier?

If Asia is indeed the ‘next frontier’, what is the status of abolitionism today in Vietnam and Singapore? There are now live discussions about abolition throughout these countries, particularly among lawyers, and this is nurtured through pragmatic support. This is balanced by those advocating for its retention, particularly where drugs, terrorism or treason are involved.

However, when jurisdictions want to execute foreign citizens they must navigate particular perils. This is especially true when global media are galvanised against them.

Vietnamese practice suggests there has been differential treatment for some foreign nationals, made possible through the clemency process. Singapore rejects this approach, yet recent legal changes in Singapore offer “substantial assistance” as a means to avoid execution. Could this deliver the possibility of (foreigners) escaping the death penalty?

Current practices suggest Vietnam and Singapore demonstrate practical ways to reduce the incidence of the death penalty, particularly where foreigners are involved, rather than abolitionist tendencies. It is important to distinguish social and global media focus on the death penalty, which can either assist or hinder abolitionism, from policy changes.

At this stage, the death penalty remains in Singapore and Vietnam with little prospect of abolition. What we have seen are more humane approaches to execution (Vietnam) and reductionist reforms (both states). Over time, the prospect of foreign nationals escaping the death penalty seems likely to increase – although current experience in Indonesia exemplifies the danger of assuming this.

Pip Nicholson is Director, Asian Law Centre, Comparative Legal Studies Program; Associate Director, Vietnam; Director of Studies, Asian Law at University of Melbourne.

Generalisations about the death penalty in South-East Asia suggest abolitionist sentiments are increasing, yet practices vary substantially. To better understand the trends we must consider the context and political priorities of states that retain the death penalty.

DEATH PENALTY AND AUSTRALIA

A BACKGROUND BRIEF FROM THE LAW COUNCIL OF AUSTRALIA

Nobody has been executed in Australia since 2 February 1967 when Ronald Ryan was hung in Melbourne for shooting a prison guard during an escape attempt.

Since 1973 and the passage of the Death Penalty Abolition Act 1973 (Cth), the death penalty has not applied in respect of offences under the law of the Commonwealth and Territories.

Similar State legislation has outlawed the practice in the remaining Australian jurisdictions. QLD was the first to abolish the death penalty for all crimes in 1922; NSW was the last in 1985. (NSW abolished the death penalty for murder in 1955, but retained the death penalty for treason and piracy until 1985.)

On 11 March 2010, with bipartisan support, the Commonwealth Parliament passed the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act. This Act amends the Death Penalty Abolition Act 1973 (Cth) to extend the current Commonwealth prohibition on the death penalty to all states and territories. This forecloses the possibility of any individual State jurisdiction reintroducing the death penalty.


More recently, on 19 December 2007, Australia sponsored and voted in favour of a landmark United Nations General Assembly resolution which called for an immediate moratorium on executions as a first step towards the universal abolition of the death penalty.

While not binding, this UN Resolution sends a powerful message that the majority of the world’s nations are not only committed to the abolition of the death penalty within their own jurisdictions, but are also committed to the abolition of the death penalty beyond their borders.

Two previous attempts at a General Assembly resolution of this kind had failed but this time, despite concerted lobbying by certain countries which retain the death penalty, more than half the General Assembly was prepared to vote in favour.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Abolished</th>
<th>Last execution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queensland</td>
<td>1922</td>
<td>1913</td>
</tr>
<tr>
<td>Tasmania</td>
<td>1968</td>
<td>1946</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>1973</td>
<td>–</td>
</tr>
<tr>
<td>ACT</td>
<td>1973</td>
<td>–</td>
</tr>
<tr>
<td>NT</td>
<td>1973</td>
<td>1952</td>
</tr>
<tr>
<td>Victoria</td>
<td>1975</td>
<td>1967</td>
</tr>
<tr>
<td>South Australia</td>
<td>1976</td>
<td>1964</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1984</td>
<td>1964</td>
</tr>
<tr>
<td>New South Wales</td>
<td>1955/1985*</td>
<td>1940</td>
</tr>
</tbody>
</table>

(*) Though the death penalty for murder was abolished in NSW in 1955, NSW was the last state to completely abolish the death penalty when in 1985 capital punishment was abolished for treason and piracy: Crimes Amendment (Death Penalty Abolition) Act 1985 (NSW).


There is no doubt that the global momentum towards abolition continues.

Of course, abolishing the death penalty at home, signing on to international conventions and putting Australia’s name to General Assembly Resolutions is not the beginning and end of the death penalty debate for Australia.
Faced with the prospect of the execution of some of our own citizens abroad, the Australian community has increasingly been forced to grapple with the question: what does it mean to be opposed to the death penalty in a region where our neighbours and allies continue to shoot and hang people?

Faced with the prospect of the execution of some of our own citizens abroad, the Australian community has increasingly been forced to grapple with the question: what does it mean to be opposed to the death penalty in a region where our neighbours and allies continue to shoot and hang people?

Questions have been raised, for example, about the AFP Practical Guide on international police-to-police assistance in potential death penalty situations which allows the AFP to provided assistance to foreign law enforcement agencies in death penalty cases up until the point that a person is detained or charges are laid, and even beyond that point with Ministerial approval. Is it consistent with Australia’s opposition to the death penalty to allow the AFP to work cooperatively with foreign law enforcement agencies in the investigation of offences which carry the death penalty – knowing that the provision of that assistance and information may ultimately lead to charge, conviction and eventual execution?

Questions have also been raised about whether the Mutual Assistance Act, should, as it currently does, allow the Attorney General a broad discretion to authorise the provision of mutual assistance in death penalty cases if he or she is satisfied that “special circumstances” exist. The term “special circumstances” is not defined in the Act.

And of course, questions have also been asked about whether Australia’s opposition to the death penalty requires Australia to do more than make diplomatic noise when one of its own is executed or is under threat of execution. Should Australia, for example, be equally vocal in condemning the execution of non-citizens, such as the Bali bombers?

SOURCEs
Butler, G (20 February 2015). ‘Attitudes towards the death penalty at home and abroad’, FlagPost.
What more can Australia do to end the death penalty worldwide?

AUSTRALIA CAN BOOST ITS ADVOCACY ROLE IN THE GLOBAL ABOLITIONIST MOVEMENT, ARGUES AMY MAGUIRE IN THIS ARTICLE FROM ‘THE CONVERSATION’

Foreign Minister Julie Bishop has initiated a parliamentary inquiry into Australia’s efforts in campaigning against the death penalty. The Joint Standing Committee on Foreign Affairs, Defence and Trade has sought submissions with regard to:

...reviewing how Australia currently engages internationally to promote abolition of the death penalty, and further steps Australia could take to advocate for worldwide abolition.

This inquiry is a progressive response to the executions of Australians Andrew Chan and Myuran Sukumaran in Indonesia this year. Ideally, it will generate a shift in Australia’s global abolitionist efforts.

Australia’s legal position on capital punishment

Australian law is unequivocal in its rejection of capital punishment. The last man hanged in Australia was Ronald Ryan in 1967. In 1973, the federal parliament passed legislation prohibiting capital punishment for any federal crime. In 2010, the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act prohibited capital punishment in all Australian jurisdictions.

Australia has enacted the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Its legal position demonstrates commitment to the global movement to abolish the death penalty. Australia is obliged by international and domestic law to strengthen its advocacy.

Australia’s engagement in the abolitionist movement

Australia lobbied firmly for clemency for Sukumaran and Chan. Bishop was particularly strong in her advocacy. Bishop emphasised the men’s rehabilitation as a primary justification for sparing their lives.

However, beyond general expressions of “opposition” to capital punishment, Australia did not emphasise specific human rights principles in its lobbying of Indonesia. Australia’s advocacy was genuine but ultimately ineffective. Chan and Sukumaran, along with six others, were put to death by firing squad. Indonesia’s position on the death penalty for drug offenders is unchanged. Australia is now stepping back to confront the reality of capital punishment globally.

Strengthening Australia’s advocacy

Australia has a very strong legal position in opposition to capital punishment. However, its advocacy position is weaker. It could be fairly said to object loudly to capital punishment only when Australian nationals are subject to it.

Australia has a very strong legal position in opposition to capital punishment. However, its advocacy position is weaker. It could be fairly said to object loudly to capital punishment only when Australian nationals are subject to it.

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: The Geelong College, Newtown, andrea.mcgucken@geelongcollege.vic.edu.au

Issues in Society | Volume 399

The Death Penalty Debate
Government MP Philip Ruddock acknowledged this when the inquiry was announced:

_We need to go beyond an approach where our voice is loudest immediately prior to a planned execution._

Recent reductions in foreign aid could further weaken Australia's advocacy position. If Australia is to influence, it must be seen to contribute. Australia must also aim for consistency in its human rights orientation.

Australia's advocacy for the abolition of capital punishment may be strengthened by reference to human rights principles:

1. Australia must identify the death penalty as a violation of the right to life. This fundamental right is not subject to limitation – it must always be respected.
2. The ICCPR imposes a pragmatic limitation which requires countries to impose capital punishment for only the most serious crimes. It must be unacceptable to Australia that some countries execute people for "crimes" that are either not crimes or not regarded as "most serious" crimes under Australian law.
3. Australia should decry capital punishment as torture. This is both because of the methods used and the length of time convicted persons are kept on death row. Australia must also identify and lobby in cases where torture is used to extract confessions on which death sentences are based. These arguments must be put even to important allies like the US and China. The prohibition on torture is an absolute principle in international law.

Clearly, though, not all countries are receptive to human rights arguments. Australia can also develop its pragmatic position against capital punishment.

The death penalty has and will continue to be imposed on innocent people. This is an even greater risk where a country's justice system is subject to corruption. Australia ought to question whether the inevitable killing of innocents can be justified to preserve the option of capital punishment.

Australia ought also to emphasise that capital punishment has no demonstrated enhanced deterrent value when compared to life imprisonment. The prospect of the death penalty can even be a motivating factor for terror offenders who aspire to martyrdom.

**What Australia may achieve**

Bolstered by such arguments, Australia can revitalise its role in the global abolitionist movement. A broader-scale advocacy effort would enhance Australia's perceived legitimacy on this issue. Australia could follow the lead of the UK in developing a foreign affairs public strategy aimed at universal abolition.

Former prime minister Tony Abbott was famously dismissive of international human-rights-focused advocacy. However, Malcolm Turnbull may encourage a change in strategy.

Bishop has just announced that Australia will bid for a seat on the UN Human Rights Council in 2018-2020. She sees this as an opportunity for Australia to become:

... a leading advocate for global abolition of the death penalty.

Indonesia reacted defensively to Australia's lobbying for Chan and Sukumaran. If Australia extends its abolitionist advocacy to key allies like China and the US, future lobbying on behalf of Australian nationals may be less likely to be received as attacks.

Australia's recent legal action against Japan over its whaling program demonstrates that positive relationships may be maintained even while one government seeks to persuade its ally to dramatically change policy.

Amy Maguire is a lecturer in International Law at the University of Newcastle, and a member of Amnesty International and Australian Lawyers for Human Rights.
ON THE ABOLITION OF THE DEATH PENALTY

Since an early criminologist made the case against capital punishment over two centuries ago, history has moved mainly in the direction of abolition, writes Cameron Muir in this article first published in Inside Story.

In 1652 a Swiss washerwoman, Michée Chauderon, was arrested after the Devil visited her in the form of a shadow and, during intercourse, left a small mark under her breast and another on her thigh. Prosecutors determined that if these marks produced no blood after being pierced with a needle this would be proof she had relinquished God. Chauderon winced in pain when they pricked her chest, and blood did flow. It looked as though she might be innocent. The court ordered further interrogations, and when the mark on the thigh produced no blood, she was tortured, until finally she told the truth – yes, she had let the shadow defile her, and she had made a pact with the Devil in exchange for promises of wealth. She was burnt at the stake in Geneva.

Australians don’t think about the death penalty very often. That’s not so surprising: the last person hanged here was Ronald Ryan, back in 1967. For most of us, capital punishment belongs to a different time, a time of archaic beliefs and superstitions, when justice was corporeal and pain could purify the transgressor. Breaking on the wheel, impalement, boiling in oil, slow slicing, burning at the stake, flaying alive, and hanging, drawing and quartering – all are unimaginable acts of torture and killing we associate with the Middle Ages, yet they persisted in post-Enlightenment Europe, especially in the colonies. Even the United States used the breaking wheel during the period when slavery was legal.

Capital punishment sits uneasily with the values of the modern state, whose aim is to maximise the potential of every individual for the benefit of the state as a whole ... In this era, new designs and technologies – guillotines, electric chairs, gas chambers and lethal injections – were used to make killing more efficient and, proponents argued, less cruel.

When Australians are reminded of the death penalty now, and in a way that occupies the thoughts of a good chunk of the nation, it’s usually because an Australian citizen has been sentenced to death for breaking the laws of a country that still uses capital punishment in its justice system. The most recent victim was twenty-five-year-old Van Tuong Nguyen, hanged in Changi Prison, Singapore, on 2 December 2005.

The coverage of the plight of Andrew Chan and Myuran Sukumaran in Indonesia has reminded us again about a feature of some legal systems that we don’t usually have to think about. We tend to feel that this kind of punishment will eventually melt away, as it has in Australia. But at times like this, when we stop to think deeply about people facing death at the hands of the state – when we think about Chan and Sukumaran lined up on that island – progress doesn’t seem fast enough.

The death penalty will disappear. And, if you take a historical view, it’s happening fast. Enlightenment thinkers argued for reform of the judicial and penal system based on reason, articulating the basis of secular, inviolate rights, and among them one of the most influential was the early Milanese criminologist Cesare Beccaria. In 1764 he published his treatise On Crimes and Punishments, which was reprinted frequently and translated into many languages. Beccaria argued that punishment should be proportional to the crime, and that no state had the authority to torture or take another person’s life. His ideas shaped reforms throughout Europe and in the United States. Twenty years after the book’s publication, the Grand Duchy of Tuscany abolished the death penalty. In 1826, Swiss philanthropist Jean-Jacques de Sellon held an international competition for an essay on the subject of abolition. Only a century and a half before, his country had been burning witches. In the United States, the...
The state of Michigan abolished the death penalty in 1847, and Wisconsin followed in 1853. Venezuela, Greece and Portugal soon followed, and by the late 1800s there are too many others to list here.

Much of the public had come to realise that “long and lamentable experience” had shown that the death penalty was “altogether ineffectual” as a deterrent. All it accomplished was to diminish the sanctity of life and risk brutalising members of the public, continuing a cycle of violence.

Australia had its own abolitionists – people like David McLaren, a Scottish-born banker who managed the South Australian Co. in Adelaide. On a Thursday evening in mid December 1840, McLaren gave a lecture, “On the Abolition of Capital Punishments,” at the Literary and Scientific Association and Mechanics’ Institute in Adelaide. Only forty years earlier, he reminded his audience, capital crimes had included sheep stealing, theft from a shop of goods worth more than five shillings, and theft from a person’s pocket above the value of one shilling. “Long-continued and laborious efforts” saw the penalty in these cases purged from the criminal code, McLaren told his audience. The public now “revolts against the judicial deprivation of life,” he added, except in cases of murder, “a mighty improvement effected in the course of a generation.”

Even at that time, much of the public had come to realise that “long and lamentable experience” had shown that the death penalty was “altogether ineffectual” as a deterrent. All it accomplished, he said, was to diminish the sanctity of life and risk brutalising members of the public, continuing a cycle of violence. McLaren ended his lecture by circulating a petition on the subject addressed to Queen Victoria.

The move towards a global acceptance of abolition began, of course, with the formation of the United Nations in 1945 and its commitment to defining and safeguarding human rights. Smaller nations that had already stopped using capital punishment took the lead in pushing for reform. In 1957, the United Nations’ Third Committee (the one responsible for human rights) began debating Article 6 of the Draft Covenant on Civil and Political Rights (the one about the right to life), with the United Kingdom, the United States and Russia arguing over wording that would still allow a state to use capital punishment in some circumstances.

The Uruguayan delegation, with the support of the Colombians, proposed an amendment to prohibit the taking of life under any circumstances. The delegation’s spokesperson, Adolfo Tejera, pointed out the irony of a UN committee defining cases in which it would be acceptable for a state to take the life of another human being. Drop the article altogether, they argued, and replace it with something simpler – nothing can justify the death penalty. The big powers defeated the amendment, but it was the beginning of a continuing effort to have the death penalty banned in international law, an endeavour that has attracted increasing support among member nations over the years. The most recent efforts have been led by Italy and New Zealand. The majority of the world’s countries have abolished or abandoned use of capital punishment, and the United Nations continues to work towards the goal of worldwide abolition.

I’m no expert on the death penalty, but I’ve been...
appalled and horrified by the idea of it since I was a little kid, allowed to watch movies I’d never let my own kids see. To my young mind, governments were at the peak of a long line of authorities that started with parents and school teachers. They possess all the power, and they have the monopoly on violence, but they are also supposed to be the most responsible, to lead by example, to protect and care, to be better than our individual fears and failings and emotional extremes, to represent the best in humanity, to serve as the epitome of our collective ideals. Orchestrated, deliberate group violence shocked me.

Over the last 300 or so years, abolitionists have often described capital punishment as an anachronism, as if, in the march of progress, the abandonment of the death penalty will be a given. It doesn’t work that way. The United States and Japan are advanced democracies, powerful global leaders, yet both countries retain the death penalty. Some states have abolished it only to reinstate it later.

Over the last 300 or so years, abolitionists have often described capital punishment as an anachronism, as if, in the march of progress, the abandonment of the death penalty will be a given. It doesn’t work that way. The United States and Japan are advanced democracies, powerful global leaders, yet both countries retain the death penalty. Some states have abolished it only to reinstate it later. ISIS militants have set up a tribunal system to deal with everything from petty civil disputes to crimes they deem to be the most serious, such as murder, rape and being an enemy of their ‘state’. Capital punishment is part of their tribunal system, and they have resurrected the spectacle and theatre of the death penalty, broadening the idea of a public execution to a global audience.

World leaders have denounced ISIS’s gruesome acts, as they should. But we shouldn’t get to choose which sorts of orchestrated public or group-sanctioned violence are acceptable. Burning someone alive in a cage is likely to be more painful for the victim than shooting him or her in the chest, but both are wrong. There are better options for dealing with crime in leading democracies such as the United States, Japan and Indonesia.

The death penalty isn’t going to disappear all on its own as we become more ‘civilised’. Where it has been abolished it’s been the result of determined political struggle. Those who oppose capital punishment, overall, are succeeding in their cause.

If anything positive were to come out of the bleak events unfolding in Indonesia, it would be a renewed interest among politicians, diplomats and the public in working with other abolitionist countries to put an end to capital punishment. These processes will seem slow to us, but they will grind on, and things will change.

In his book Bury the Chains, historian Adam Hochschild reminds us how a small group of people challenged slavery in the late 1700s. They saw it as an urgent problem and felt it was taking far too long to make any difference, yet less than a century elapsed between their first organised protests and the formal act of abolition, a remarkably rapid transformation.

European Australia started off as a military outpost with floggings, hangings, and massacres of Aboriginal people. My parent’s generation was alive at the time of Australia’s last execution. That kind of act is so far from our minds that we don’t think about it, and when we’re reminded it still occurs, most of us are dismayed.

You might be surprised to learn that it wasn’t until 2010 that the federal government prohibited the death penalty in all states and territories, making it extremely unlikely any of them could reintroduce it. From this perspective, we’re really just at the beginning of the abolitionist struggle. The end of the death penalty is inevitable because the abolitionists have the resolve and the momentum, but we need to keep up the pressure.

Cameron Muir is a Postdoctoral Fellow at the Australian National University and National Museum of Australia.

Should we bring back the death penalty?

The death penalty is a controversial issue the world over. This Sydney Criminal Lawyers blog posting explores the arguments for and against reintroduction of the death penalty in Australia

Globally, human rights organisations campaign to put an end to execution as a form of punishment, while some countries maintain that the death penalty is necessary, and has a valid place as a form of criminal justice.

Australia abolished the death penalty in 1973, although the last person to be executed in Australia was in 1967.

Internationally, Australia takes a firm stance against capital punishment, and in 2007 voted for a UN General Assembly global moratorium on the death penalty.

In spite of Australia’s public stance against the death penalty, there are those who still support capital punishment and believe there are good reasons why the death penalty should be brought back as a legal punishment for certain offences.

A number of people have made comments about the death penalty over the years and suggested that it should be reintroduced, but federal legislation was put in place in 2010 to prevent this happening.

It could still theoretically be possible to reintroduce the death penalty into the Australian states, but it would be very difficult to do so.

**Arguments for the death penalty**

There are a number of arguments that are often stated in favour of the death penalty and these generally centre on the idea of justice and what a just punishment is for a serious crime like murder.

Those in favour of the death penalty believe that the only fair way to punish someone for taking another person’s life is to take their life.

Deterrence is another common argument in favour of bringing back the death penalty.

It could be argued that simply having the death penalty as an option may deter people from committing serious crimes like murder, and therefore make Australia a safer country.

Similarly, it can be argued that the death penalty prevents serious criminals from reoffending which is a possibility if they are imprisoned and then later released on parole or they manage to escape.

Even if they are imprisoned without the possibility of parole, it is possible that they could pose a danger to other prison inmates and staff.

There are a number of other arguments in favour of the death penalty, including providing closure to families of victims and reducing overpopulation in the prison system.

**Arguments against the death penalty**

Human rights organisations like Amnesty International list a number of reasons why they believe the death penalty should be abolished for good.

The abolition of the death penalty in Australia and the subsequent support of abolition worldwide is backed up by a number of arguments.

The death penalty is the most final punishment possible, and there have been cases where people have been executed and then later found to be innocent.

As death is irreversible there is no way to make amends for a wrongful conviction, and if there is even the slightest chance of an error it means that an innocent person could end up being killed.

The methods used for execution and capital punishment are often painful and humiliating and this forms a strong argument against bringing back the death penalty.

For many who are against the death penalty, the methods used to execute people as well as the psychological effects of being on death row, sometimes for decades, are unacceptable breaches of human rights.

There is no conclusive evidence that the death penalty is effective as a deterrent.

In many countries including Canada, the murder rate has actually decreased in the years since the death penalty was abolished.

The death penalty goes against the possibility of rehabilitation and is believed by many to be an unfair consequence for those with mental or cognitive impairments.

It also costs more to execute a prisoner than to keep them in jail for life, using resources which could be put to better use elsewhere in the criminal justice system.

Given the restrictions on the re-introduction of the death penalty in Australia it is highly unlikely that it will ever be brought back, but there is no doubt the debate will continue well into the future.

5 REASONS SOME PEOPLE THINK THE WORLD NEEDS THE DEATH PENALTY

Michael Hayworth from Amnesty International Australia tries to answer some of the tougher questions – addressing why it is fundamentally important to abolish the death penalty

IS THERE ANY GOOD NEWS?

The anti-death penalty movement has been winning the fight over the last 30 years. When Amnesty International first pledged to abolish executions in the ‘70s, only six countries had stopped killing people as a form of punishment; now over 140 countries have abolished the practice.

The majority of executions happen in just a handful of countries: China, USA, Iran, Saudi Arabia, Yemen and Iraq. Even in those countries we’re seeing progress, with a number of US States abolishing the practice in the last few years.

Despite the overwhelming global trend against executions, a number of reasons for the death penalty continue to come up. Here is my attempt to respond to them.

1. We need to be ‘tough on crime’

Everyone agrees that crime is bad and we need to stop it. This seems sensible and logical in every way, until we ask the question: do we need the death penalty to be ‘tough’ on crime? The answer is no, we don’t.

The fallacy that crueler punishments deter crime doesn’t take into account that there are complex social and economic factors that drive crime rates, and secondly, that criminals don’t often plan on getting caught or think through all the consequences of their actions.

Simplified statistics don’t help either.

Did you know that since Canada stopped executing the murder rate has dropped by 44 per cent? Does this mean that stopping executions will stop murders? Of course not, but it does demonstrate that the issues that drive and prevent crime are too complex to fit into a one line statistic or sound bite.

The point here is that preventing crime takes long-term research into the causes, effective police work and rehabilitation. All of which can happen without the use of the death penalty.

2. ‘They did the crime, they should do the time’

Various iterations of this comment came thick and fast when Amnesty began calling for the clemency of Australians Andrew Chan and Myuran Sukumaran, currently on death row in Bali for drug offences. Ironically, with the death penalty, we are not talking about time, we are talking about the opposite.

Both men acknowledge their crimes and recognise that they must face punishment. But a death sentence deprives people of the opportunity to reform. Myuran Sukumaran and Andrew Chan are great examples of reform, one running art classes and the other studying to be a pastor. Their reform has come so far that a former governor of Kerobokan prison has argued they shouldn’t be executed.

Many others who languish on death row across the world have acknowledged their crime and reformed. There is no benefit to the state in killing these people, a senseless deprivation of life.

The immediate counter argument is that the threat of death forces people to reform. Again, the evidence for this simply isn’t conclusive.

Criminal justice systems the world over have had great...
success of reform without the threat of death, and often due to programs that focus on offender rehabilitation.

3. The criminal justice system is fair

Australia’s criminal justice system is largely fair, but that certainly can’t be said of many of the countries using the death penalty. We know that the death penalty is applied overwhelmingly to the working class, ethnic minorities and other marginalised groups. This happens not because people in these categories are more prone to crime, but because they have less access to legal resources.

Ask any criminal lawyer whether or not the amount of legal resources available on a particular case makes a difference and they will give you a deadpan ‘yes’. Legal support might not get the verdict is changed, but mitigating circumstances can be presented, alternate arguments explored and evidence double-checked. All of this makes a difference to whether a death sentence is handed down.

Many justice systems are stacked against the person charged with the crime. Siti Zainab is an Indonesian national on death row in Saudi Arabia. Siti was a domestic worker who, after horrific treatment at the hands of her employer, allegedly killed a member of the household. Domestic workers are often unable to escape their employers treatment in the Gulf and Siti reportedly suffers from a mental illness.

Regardless of the country, a fair criminal justice system does not mean an infallible one – errors can and do occur. Troy Davis was executed in Georgia, USA after seven of nine key witnesses changed their testimony, some going so far as to argue for Troy’s innocence.

We can’t give back a life once it is taken, and for one I would prefer a cautious approach to even the slightest possibility of taking an innocent person’s life.

4. It is cheaper and more humane to execute people

Even I was surprised by the facts on this one. A study done in California discovered that it was actually more expensive to execute a person than to keep them in jail for life. Yes, that’s right – the amount of time and money spent on taking a person’s life is greater than keeping them in prison.

For those of us who think there is a humane way to execute, let’s reflect on how some executions actually occur.

Often prisoners are woken with no knowledge they are to be killed, taken to a remote location, tied to a post and shot in the chest. If they don’t die, a captain takes a pistol and shoots them in the head. For hangings, people are sometimes strapped to a steel board to stop them moving as they are wheeled up to a noose.

Governments often keep this information on executions secret, even to the point of loading some of the guns with blanks so no one definitively knows who in the firing squad fired the death blow.

Whichever way you look at it, killing another human isn’t humane, not even close. And when you get to the details it is simply vengeful and cruel.

5. But what about [insert horrible despot here]: surely they should be executed?

There are a lot of people who have done horrific, unspeakable things, but modern societies should not join their ranks by also carrying out a murder. People are judged by their actions, and killing another human being is about as profound as actions come.

We can’t take back death, we know that systems make mistakes and we are lucky enough to live in a country where the majority of people oppose this cruel punishment.

This knowledge give us an opportunity, a chance to ask our neighbours in the region to end this practice. Today, thousands of Australians will start a movement and light candles at vigils all across the country to end the backslide towards execution in Asia.

It might sound simple but we shouldn’t underestimate the capacity of a group of Australians to change the world.

Michael Hayworth is the Crisis Response Campaigner with Amnesty International Australia, working to defend the rights of people in emerging or worsening human rights crises around the world.

5 reasons to abolish the death penalty

Killers, murderers, terrorists, drug lords. Who cares if they are faced with death, right? These are the arguments of many pro-death penalty advocates who highlight the guilt of the convicted and the serious nature of their crime. But what if you couldn’t be sure? What if it wasn’t only reserved for the “worst of the worst”? World Day Against the Death Penalty reminds us all to challenge the notion of “an eye for an eye” equals justice.

Here are five reasons why, from Jacinda Valeontis, Amnesty International Australia:

1. **YOU CAN’T TAKE IT BACK**
   The death penalty is **irreversible**. Absolute judgements may lead to people paying for crimes they did not commit. Texas man Cameron Todd Willingham, for example, was found innocent after his 2004 execution.

2. **IT DOESN’T DETER CRIMINALS**
   In fact, evidence startlingly reveals the opposite! Twenty seven years after abolishing the death penalty, Canada saw a **44 per cent drop in murders** across the country. And it wasn’t alone.

3. **THERE’S NO ‘HUMANE’ WAY TO KILL**
   The 2006 execution of Angel Nieves Diaz, by a so-called ‘humane’ lethal injection, took 34 minutes and required two doses. Other methods of execution used around the world include hanging, shooting and beheading. The nature of these deaths only continues to **perpetuate the cycle of violence** and does not alleviate the pain already suffered by the victims’ family.

4. **IT MAKES A PUBLIC SPECTACLE OF AN INDIVIDUAL’S DEATH**
   Executions are often undertaken in an extremely public manner, with **public hangings** in Iran or **live broadcasts of lethal injections** in the US.

5. **THE DEATH PENALTY IS DISAPPEARING**
   Out of **198 countries** around the world only 21 continue to use capital punishment. And while countries that carried out executions in 2011 did so at an alarming rate, those employing capital punishment have decreased by more than a third in the last decade. With this clear **downward trend**, public pressure may help persuade the world’s biggest executors China, Iran, Saudi Arabia, Iraq and the USA to stop.

There are countless arguments for and against the death penalty. In an imperfect world where we can never be sure we have ever got the “worst of the worst” is it ever justified to take a life?

Valeontis, J (9 October 2012). *5 reasons to abolish the death penalty.*
Why the death penalty should be abolished
Reasons for abolition from the International Commission against the Death Penalty

The risk of executing innocent people exists in any justice system
There have been and always will be cases of executions of innocent people. No matter how developed a justice system is, it will always remain susceptible to human failure. Unlike prison sentences, the death penalty is irreversible and irreparable.

The arbitrary application of the death penalty can never be ruled out
The death penalty is often used in a disproportional manner against the poor, minorities and members of racial, ethnic, political and religious groups.

The death penalty is incompatible with human rights and human dignity
The death penalty violates the right to life which happens to be the most basic of all human rights. It also violates the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. Furthermore, the death penalty undermines human dignity which is inherent to every human being.

The death penalty does not deter crime effectively
The death penalty lacks the deterrent effect which is commonly referred to by its advocates. As recently stated by the General Assembly of the United Nations, “there is no conclusive evidence of the deterrent value of the death penalty” (UNGA Resolution 65/206). It is noteworthy that in many retentionist states, the effectiveness of the death penalty in order to prevent crime is being seriously questioned by a continuously increasing number of law enforcement professionals.

Public opinion is not a major stumbling block for abolition
Public support for the death penalty does not necessarily mean that taking away the life of a human being by the state is right. There are undisputed historical precedences where gross human rights violations have had the support of a majority of the people, but which were condemned vigorously later on. It is the job of leading figures and politicians to underline the incompatibility of capital punishment with human rights and human dignity.

It needs to be pointed out that public support for the death penalty is inextricably linked to the desire of the people to be free from crime. However, there exist more effective ways to prevent crime.

DEATH PENALTY: FREQUENTLY ASKED QUESTIONS
FAQS FROM ANTI-DEATH PENALTY CAMPAIGNER REPRIEVE AUSTRALIA

Why do we need Reprieve Australia when Australia abolished the death penalty?

In Australia the Commonwealth abolished the death penalty in 1973 with the passing of the Death Penalty Abolition Act. Similarly all of the Australian States and Territories have separately, by Acts of Parliament, eliminated the death penalty as a criminal sanction.

In April 2010 the Commonwealth passed the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act. This amendment prohibits the reintroduction of the death penalty by legislation of any State. It also prohibited the use of torture within Australia.

Australia is also a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights, meaning that Australia has taken up an “international commitment to abolish the death penalty”. We want to abolish the death penalty worldwide with a current focus one of our biggest trading partners in the USA and right here in our own backyard in South-East Asia where we believe we can effect the most change.

Reprieve Australia directs resources towards the protection of people on death row in other countries, whether they are Australian or otherwise. We make arrangements for volunteer international internship programmes these have been conducted in the United States since 2001 and we are now sending interns to undertake work throughout South-East Asia. We are also supporters of the Mercy Campaign for the remaining members of the Bali 9 still on death row.

We do also regularly hold sessions within Australia in order to make clear our opposition to the practice of execution and to propel efforts for the abolition of the death penalty internationally. We are able to make clear the inadequacies of the systems of capital punishment elsewhere. In that way, Reprieve Australia ensures that those within Australia are less likely to support the reintroduction of the death penalty.

Do you oppose the death penalty in all circumstances?

Yes. In every case, without exception, we oppose the death penalty.

We do not believe that any criminal justice system should have the death penalty as a punishment. It should not be for the State to take up violent action against its citizens. We don’t accept that there is any scenario in which the death penalty should be applied.

Does the death penalty work as a deterrent for crime?

No. There is no evidence to support the notion that the death penalty prevents crime. Claims that each execution deters a certain number of murders have been thoroughly discredited by social science research. The four year moratorium on the death penalty in the USA between 1972 and 1976 serves as a good example. During that break, there was no appreciable change in crime rates.

Likewise, differences in criminality between states with and without the death penalty are effectively the same. In fact, in the last ten years States that still use the death penalty actually have higher murder rates than those that do not. In 2012 a study of USA based criminologists found that 88 per cent of those surveyed did not believe that capital punishment had any deterrent effect.

Isn’t the death penalty cheaper than life imprisonment?

No. It is actually more expensive to retain the death penalty.
penalty. Research estimates show that it is half the cost to incarcerate an individual for the rest of their life than it is to enforce the death penalty. This is primarily due to the long, expensive, and understandable process of appeal, given the finality of execution. Because nearly all people on death row are poor the state must pay for the defence lawyers, the prosecutors and court staff at all of these appeals, which places a greater burden on the taxpayer. Australia stands as an example of this saving when compared to similar countries that have retained the death penalty.

Can the death penalty be applied fairly?

No. It is a punishment that has proved that it cannot be applied fairly. It is a punishment that is usually inflicted upon people from a low socio-economic background. The death penalty is disproportionately used against minority groups. In Louisiana, the odds of a death sentence are 97 per cent higher for those whose victim was white than for those whose victim was black. The quality of representation for death row clients is usually inferior because those cases are assigned to legal aid lawyers who have little experience.

Part of Reprieve Australia’s charter is to help provide legal and humanitarian assistance to those facing the death penalty. In this role we hope to help tackle the underlying fairness issues that result in a death penalty conviction rather than a prison sentence. We provide assistance to lawyers working on capital cases in the USA and across South-East Asia so that clients are able to receive the best quality representation. We also provide research assistance to show the inequality of the application of the death penalty across both regions.

Reprieve Australia stands opposed to the death penalty in all circumstances. There is no acceptable measure of deterrence, protection or gratification achieved by execution.

The death penalty law is a legalised discriminative ‘Government Program’. Sadly, the many arguments against the death penalty will not lead to abolition.

Political leaders use the death penalty as a ‘populist tool’ to prove they are ‘tough on crime’. Politicians play with people’s lives for political advantage. Very often political rivalries between Governments play a major role in executions.

Too many governments still believe that they can solve social problems by executing prisoners. Many people all over the world are unaware that the death penalty offers society not further protection but further brutalisation.

The death penalty is imposed arbitrarily, capriciously and at random, worldwide. It is applied to some people who commit non-violent crime and not to others who commit violent crime. Some death row prisoners are ‘chosen/selected’ to be legally killed while others are not. Nor is it true, that the executed people are only those guilty of the worst-of-the-worst crimes. Executions include everything from murder, adultery, blasphemy and a variety of non-violent and moral crimes. It is no surprise that there are no powerful or wealthy people on death row, anywhere, around the world.

The major players in drug-trafficking are never caught, never punished, never executed, because the major players are corrupt governments, legislators, judges and lawyers who ‘play’ the system.

The state-sanctioned killing of a human person depends on the moral order that society lives by. Killing a criminal is easy, but preventing crime is a complex process that Governments often are unwilling to undertake. It is easier to dismiss a criminal as being ‘evil’ than to face the tangle of social failures within our society.

The state-sanctioned killing of a criminal is not an occasion to celebrate. Indeed, rejoicing as a society at the killing of a criminal shows the moral degradation of society. When the law metes out vengeance disguised as justice, it becomes complicit with criminals.

Whether you are for or against the death penalty, nobody can dispute that it is a barbaric, brutal, cruel, degrading, inhuman, uncivilised and vile form of punishment. The death penalty is the most premeditated, meticulously prepared, carefully planned, cold-blooded ‘legal ritual’ of killing a human being by Government-chosen stealth executioners who go home to their families and still able to sleep peacefully at night.

The death penalty law is a legal demon – determining ‘who’ among the condemned deserves to die ... like flipping a coin to see ‘who’ will live and ‘who’ will die.

Education and moral leadership shape an informed public opinion. It is the responsibility of political leaders, law legislators, influential intellectual individuals, and the media to lead public opinion in factual matters of human rights – the death penalty cannot be separated from international human rights.

A reminder, that not so long ago public opinion overwhelmingly supported slavery, racial segregation, flogging, lynching and even torture. The decision to abolish the death penalty has to be taken by politicians, even though public majority supports it.

For example ... decent civilised governments would never introduce laws such as human torture even if public majority supported it. Yet, the death penalty is both mental (prolonged) and physical torture.

The issue of legally killing criminals in every abolitionist country was framed as a ‘moral’ concern for society as a whole. The death penalty was considered incompatible with the basic principles of human rights, and thereby abolished.

Political leaders need to express a principled opposition to the death penalty around the world, in terms of the sanctity of human life and dignity.

For abolition to happen, opponents of the death penalty and political leaders will have to ‘speak’ about the death penalty in the clear language of ‘moral’ principle.

Abolition cannot be achieved without demanding political leaders do what is ‘ethically and morally’ right.

FACT CHECK: NO PROOF THE DEATH PENALTY PREVENTS CRIME

IS THE DEATH PENALTY A DETERRENT AGAINST SERIOUS CRIME?

ABC FACT CHECK LOOKS AT THE RESEARCH

Following the executions of Andrew Chan and Myuran Sukumaran in Bali, debate about the role of the death penalty in society has led to calls for Australia to push for an end to the punishment around the world.

While advocating for a reprieve for the two drug smugglers during a visit to Bali in February, Victorian Supreme Court judge Lex Lasry told ABC TV’s 7.30 that the death penalty does not deter crime.

“There are all sorts of other punishments – life imprisonment and so on – but the idea that a government would take individuals out into the bush, as they would here, and shoot them is just something that I can never live with and never understand, and apart from anything else, from a legal point of view, no one really claims now that it has any real deterrent value. It’s just a terrible thing to do,” he said.

THE DEATH PENALTY

More than half of all the nations in the world retain the death penalty in some form or other. A small number retain it only for war-time offences and others have not used it for over 10 years, but there are a large number that retain and use the death penalty, predominately as a punishment for murder.

According to advocacy group Harm Reduction International, thirty-three nations retain the death penalty for drug offences. Of those, not all carry out capital punishment for these offences on a regular basis, and Harm Reduction International estimates that “executions for drug offences have taken place in only 12 to 14 countries over the [five years to 2012]”.

It lists six countries with a ‘high’ rate of applying the death penalty in drugs cases: China, Iran, Vietnam, Saudi Arabia, Singapore and Malaysia.

Oxford University professors Roger Hood and Carolyn Hoyle say Indonesia, which resumed executions for drug traffickers in 2013, might soon be added to that list “if it carries out its threat to execute more drug traffickers”.

In the fifth edition of their book *The Death Penalty: A Worldwide Perspective* released in January, Professors Hood and Hoyle write that Indonesia may be “ready to be downgraded to ‘low application states’”.

The United Nations has strict guidelines for the use of the death penalty, restricting it to the “most serious crimes”.

A resolution of the Economic and Security Council, first made in the 1980s, endorsed by the UN General Assembly in December 1984, and updated in 1999 says that “capital punishment may be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences”.

Since the adoption of this guideline, other UN bodies have made rulings about how to interpret the “most serious crimes” provision, which exclude drug offences. And the UN’s Special Rapporteur on extrajudicial executions, Christof Heyns, said recently that Indonesia was a signatory to the *International Covenant on Civil and Political Rights* and its use of the death penalty for drug offences was “in violation of international human rights standards”.

A review of Indonesia’s use of the death penalty and the Bali Nine case by Colman Lynch, published in the *Columbia Human Rights Law Review* in 2009, says capital punishment is also arguably against Indonesia’s constitution.

Mr Lynch wrote that “though Indonesia had a legal obligation to abolish capital punishment as a punishment for drug-trafficking crimes under its constitution and applicable international law, as interpreted by relevant international bodies, its judiciary was able to find sufficient ambiguity in the wording of each obligation to buck the international trend of abolishing capital punishment”.

THE DEATH PENALTY IN THE UNITED STATES

Fact Check asked Justice Lasry whether he had any particular research in mind when he said the death penalty wasn’t a deterrent. A spokeswoman for the Victorian Supreme Court said that the judge’s comments were based on “a general body of research that indicates the death penalty has no real deterrent value”.

In their book, Professors Hood and Hoyle say almost all the academic studies available for review are concerned with the deterrent effect of capital punishment on the rate of murder in the United States.

The authors say theoretical and methodological issues have “dogged the attempts to prove or disprove...
the existence of the deterrent effect of executions in the United States” and “a fierce controversy continues” in the United States over attempts to use econometric models to address the question.

After reviewing the literature they conclude that “it is not prudent to accept the hypothesis that capital punishment, as practised in the United States, deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment”.

A comprehensive review of the research in this area over 34 years was conducted in 2012 by a committee of the American National Academy of Sciences National Review Council. The committee concluded that “research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates”.

It said the studies it reviewed should not be used to influence policymakers. “Claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgements about capital punishment,” it said.

One of the main problems was that it was impossible to know what a jurisdiction’s murder rate would be with different sentencing options. “The data alone cannot reveal what the homicide rate in a state without (with) a capital punishment regime would have been had the state (not) had such a regime.”

A second problem was “the use of incomplete or implausible models of potential murderers’ perceptions of and response to the capital punishment component of a sanction regime”.

Without this basic information, “it is impossible to draw credible findings about the effect of the death penalty on homicide”.

**EXPERT OPINION**

While that review found the evidence was inconclusive, Jeffrey Fagan, a professor of law at Columbia University in the US, told Fact Check he believed that there was no evidence that showed the death penalty deterred.

Professor Fagan, who appeared as an expert witness for Mr Chan and Mr Sukumaran in an unsuccessful appeal in 2007, said there was “no credible scientific evidence that the death penalty deters criminal behaviour”.

“Even when executions are frequent and well-publicised, there are no observable changes in crime. Executions serve only to satisfy the urge for vengeance. Any retributive value is short-lived, lasting only until the next crime.”

His position is shared by the majority of criminologists in relation to homicide, according to a 2009 survey of members of the American Criminology Society, who were asked to limit their answers to their understanding of the empirical research and to exclude their personal opinions.

That study found that over 88 per cent of the criminologists did not believe the death penalty deterred murderers.

“In short, the consensus among criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment,” the study said.

Professor Franklin Zimring of the University of California, Berkley, told Fact Check the evidence wasn’t there to support the argument that the death penalty acted as a deterrent to murder.

“The number of homicide studies over the past century is vast and there is no consistent evidence of marginal deterrent effect,” he said.

**MURDER, THE DEATH PENALTY AND ASIA**

Professor Zimring, with Professor Fagan and David T. Johnson of The University of Hawaii, conducted a study that compared Singapore – a country that does have the death penalty – with Hong Kong.

According to the study, in the mid 1990s, Singapore’s execution rate was among the highest in the world. There was a steep drop off in the decade after 1997 – a reduction of an estimated 95 per cent.

Hong Kong abolished the death penalty in 1993.

The three concluded that “the Singapore experience magnifies the impact of American assertions [that the death penalty deters] to a patently silly status”.

They found that “homicide levels and trends are remarkably similar in these two cities over the 35 years after 1973, with neither the surge in Singapore’s executions nor the more recent steep drop producing any differential impact”.

**SOUTH AFRICA**

In South Africa, the Constitutional Court considered the issue in 1995, and in a judgement that struck out use of the death penalty, said:

“We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction.”

The court rejected the argument of the Attorney General that the death penalty was a powerful deterrent.

**THE DEATH PENALTY AND DRUG OFFENCES**

When it comes to assessing deterrence in relation to drug-related crime, Harm Reduction International says finding reliable ways to measure the impact of executions is a big challenge for researchers.
The Death Penalty Debate

“A plethora of indicators could be used to consider deterrence with drugs,” it says in its 2012 global review of the death penalty for drug offences.

“Might it be arrests for drug offences? Representation of drug offenders in the prison population? Hospital admissions for drug-related issues? Overdose statistics (which can be brought down anyway with simple and cheap harm reduction interventions)? Moreover, which drugs: marijuana, cocaine, heroin, so-called ‘party drugs’ like ecstasy? Would a reduction in arrests for marijuana represent a successful indicator for all drugs?

“Trying to prove or disprove the deterrent value of drug laws is extraordinarily difficult. Anecdotally, one could say harsh drug laws do not work. For example, Iran has some of the toughest drug laws in the world and a high prevalence of injection drug use. Sweden does not have the death penalty and it has comparatively low rates of problematic drug use.”

In their book, Professors Hood and Hoyle agree that producing evidence is difficult. They write that in all 33 countries with the death penalty for drug offences, “it has been argued that the death penalty is an indisputable deterrent to drug trafficking, but no evidence of a statistical kind has been forthcoming to support this contention”.

There is scant research on whether the death penalty deters drug trafficking. Experts who have considered the issue of the death penalty as a punishment for murder, and in some cases drug offences, around the world, say there is not enough evidence to conclude that the death penalty deters.

What’s more they say it is unlikely that any such evidence could be gathered.

“The low rates of effectiveness of law enforcement, the relative immunity from the law of those who profit most from the trade in drugs, and the higher risks of violence and death they most probably run from others engaged in the drugs trade, all make it seem implausible that the death penalty in itself will have a marginally stronger deterrent effect than long terms of imprisonment, especially when... only 11 of 33 countries with power to execute offenders for drugs offences have actually done so within the past 10 years.”

In Mr Lynch’s 2009 review of Indonesia’s use of the death penalty and the Bali Nine case, he quotes Professor Fagan’s expert testimony used in an attempt to appeal the death sentences for Mr Chan and Mr Sukumaran on a human rights basis.

Professor Fagan “described extensive studies showing that criminals are deterred more by an increase in their likelihood of apprehension than by an increase in the magnitude of their punishment, meaning that likely capture is a more effective deterrent than potential death,” Mr Lynch wrote.

Professor Fagan argued that the comparative drug crime rates in Singapore and Indonesia, when compared with death sentences handed down showed that there was no deterrent effect.

“If capital punishment had a deterrent effect on drug trafficking, this would lead to less drug trafficking, and therefore higher wholesale drug prices, in Singapore. However, wholesale drug prices for both cocaine and heroin were significantly higher in Indonesia than in Singapore from 2003 to 2006, and drugs generally were more prevalent in Singapore than Indonesia in that period, indicating that drug trafficking was not deterred as a result of Singapore’s high levels of capital punishment,” the article says.

Mr Lynch wrote that a typical factor in drug trafficking cases is the potential for large monetary gains, for which a trafficker might be prepared to risk even the death penalty. He quoted research discussing “the overwhelming effect of drug smugglers’ potential financial gains, including one smuggler’s comment that ‘the money overrode any – any rational judgement’.”

THE VERDICT

There is scant research on whether the death penalty deters drug trafficking. Experts who have considered the issue of the death penalty as a punishment for murder, and in some cases drug offences, around the world, say there is not enough evidence to conclude that the death penalty deters.

Justice Lasry’s claim that it has no real deterrent value is well founded.

SOURCES

- Interview with Lex Lasry, ABC 7.30, February 11, 2015.
- United Nations General Assembly 1984 resolution ‘Human rights in the administration of justice.’
- Deterrence and the Death Penalty.
- Do executions lower homicide rates?
- Executions, Deterrence and Homicide: A Tale of Two Cities.
- The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis.
- Indonesia’s Use of Capital Punishment for Drug Trafficking Crimes.
- State v T Makwanyane and M Mchuwa, Constitutional Court of the Republic of South Africa.
- Uses and Abuses of Empirical Evidence in the Death Penalty Debate.
- The Death Penalty: No Evidence for Deterrence.

Reproduced by permission of the Australian Broadcasting Corporation and ABC Online. All rights reserved. © ABC 2015.

DO THESE DEATH PENALTY JUSTIFICATIONS HOLD UP?

Whichever way you look at it, capital punishment raises questions with no easy answers and we ought not shout each other’s viewpoints down, writes Michael Bradley.

The Inquisition, an institution of the Catholic Church which was tasked with rooting out heresy and which freely used torture to extract confessions, is thought to have taken as many as 5,000 lives.

However, technically it didn’t actually kill anyone. When a heretic had been condemned, they were handed over by the Inquisition to secular authorities to be burned at the stake, because the Church obviously couldn’t shed people’s blood.

It’s a neat illustration of the complexity that attends the question of capital punishment. The impending executions of Andrew Chan and Myuran Sukumaran have brought the issue back to life in Australia. Although capital punishment is never likely to be re-introduced here, plenty of people are not opposed to it.

The arguments are worth exploring. Whatever position you adopt, the gravity demands that it is reasoned.

Punishment of any kind requires justification. The conventional theories underpinning criminal punishments are retribution, rehabilitation, specific deterrence and general deterrence. Most societies rely on a mix of these in determining what is appropriate. Each has a solid basis in ethics and logic and can be argued for or against on those grounds.

The simple argument for retributive justice is found in the biblical “eye for an eye” (e.g. Leviticus 24:19-21 – “he that killeth a man shall be put to death”). A combination of ultimate pragmatism and hard core morality, this principle attracts a lot of support, and many Christians cite it as justification for the death penalty in murder cases. Adopting it on religious grounds, however, is immediately problematic, as the eye for an eye rule is contradicted by both the 5th Commandment (also a problem for Jews) and pretty much everything Jesus ever said.

In fact, Jesus expressly rejected the eye for an eye doctrine and saved an adulteress from being stoned with the words “Let whoever is without sin cast the first stone”. Still, plenty of Christians have found their way around these problems, and it can’t be said that they’re necessarily wrong on the basis of a 2,000-year-old text, any more than they can be sure they’re right.

Abolitionists, on the other hand, mostly just say that capital punishment is “wrong”, meaning that none of us has the right to make that call. There are blurred lines here too, once we start admitting necessary exceptions (self-defence, war). Either way, taking the moral approach is tricky, but at least saying nobody should be put to death “because it’s wrong” has the benefit that nobody dies.

The pragmatic component of retribution draws in the other theories of punishment, particularly deterrence. A dead person cannot do more harm. If we all agree that an Ivan Milat must be removed from society permanently because we are entitled as a society to not accept the risk which he presents, then what is the point of locking him up forever? This logic assumes that rehabilitation is unachievable, or rather that we are not prepared to give it a chance.

While the evidence suggests that very few people are incapable of rehabilitation altogether, most of us would agree that we are justified in not taking the chance in the most extreme cases. Therefore, death penalty proponents argue, we might as well kill them. Some make the additional points that it saves a lot...
of money, and that it is arguably less cruel.

The problem with the pragmatic approach is that it assumes boundaries which don’t exist. No two people will ever agree where the line should be drawn on which individual cases justify capital punishment and which don’t. This necessarily calls into play value judgements about culpability and prospects for rehabilitation, which are entirely subjective. That means that we would inevitably be executing people in circumstances where there’s no agreement about whether that’s right in the particular case.

Apart from the risk of executing innocent people (it’s estimated that this has happened about 50 times in the US since 1974), there simply is no way of objectively determining which of the guilty ones should be put to death.

That leaves general deterrence – the idea that the death penalty acts to dissuade others from committing crime. Countries with capital punishment reserve it for the worst crimes, and murder is always on the list. There is no evidence that executing murderers in any way deters would-be murderers. Statistically, there’s no correlation, and anyway we know that almost all murders have motivations which are unlikely to be affected by fear of the likely punishment. So it doesn’t work for murder.

Does it work for other crimes, such as drug dealing? Some Asian countries, such as Singapore, believe very strongly that it does. Zero tolerance for drug crimes and extreme punishments including death are, they say, responsible for keeping drug dealers out. It’s not easy to be sure, because some other countries in Asia with similar tough laws have had much less success in controlling drug dealing. It could be that other factors, such as police resourcing and the level of corruption within the enforcement and judicial systems, have a more significant effect than the actual punishments meted out.

In the end, whichever way you look at it, capital punishment raises questions with no easy answers and we ought not shout each other’s viewpoints down. I personally oppose the death penalty in all circumstances, for two reasons. I can’t find adequate comfort in any of the usual justifications. And, throughout history, it has ended innocent (or, as with Chan and Sukumaran, potentially redeemable) lives as well as guilty ones, but we don’t yet know how to give life back.

Michael Bradley is the managing partner of Marque Lawyers, a Sydney law firm.

The death penalty is morally unacceptable

Any countries that want to take the moral high ground and campaign against capital punishment for their nationals who have committed crimes in other countries should abide by some rules of their own, writes David Swanton

Capital punishment has recently become an increased focus of international attention and debate. From an ethical perspective, many of the arguments for and against the death penalty are missing a consideration of key issues.

Criminologists consider that the major reasons for criminal penalties are rehabilitation (reforming the prisoner to be a better citizen), incapacitation (preventing the prisoner from committing other crimes), deterrence (discouraging the prisoner and others from further crime) and retribution (society punishing the prisoner as vengeance for a criminal act). Rehabilitation and incapacitation can be achieved through appropriately lengthy jail sentences. The only reasons that could possibly be offered in support of a death penalty are deterrence and retribution.

However, the large majority of experts consider that there is no credible scientific evidence supporting the contention that the death penalty deters criminal behaviour. This is a surprising result for some, but perhaps the criminal mind doesn't think of consequences or has difficulty computing the risk profiles associated with undertaking a criminal act.

That leaves retribution. Consider whether people would advocate retribution in a hypothetical situation. Imagine that you are the world's best neurosurgeon and you have surgically removed a patient's large brain tumour, which would have caused extremely violent outbursts. At the same time, a DNA test links your patient to the violent deaths and rapes of your closest friends. As the world's foremost surgeon, you know that this person will no longer commit such crimes (they were a model citizen until the tumour developed). There is no need for incapacitation, your patient has been rehabilitated through your surgery, and there is no need for deterrence (as people don’t plan to have brain tumours).

Yet some people might still consider that retribution, although many might support retribution as an argument for the death penalty, it doesn’t conform to modern notions of how we should treat fellow humans. A better alternative to many people's eye for an eye system of morality is one based on an ethical principle that it is wrong to kill other people against their will.
capital punishment, is desirable, despite its unjustness. What would we want to happen if, instead, each of us were the patient? This hypothetical situation is not unrealistic, because many people and cultures consider it acceptable to kill people against their will. Many religions teach that their gods or deities of choice have killed many others, through great floods, the Passover (death of newborn infants), and much general smiting done without presumptions of innocence and trials. Many people believe that these religious teachings are good. Over time, these beliefs have manifested themselves in many legal systems. Indeed, the four most populous countries, China, India, the United States of America and Indonesia, have the death penalty on their statute books.

Although many might support retribution as an argument for the death penalty, it doesn’t conform to modern notions of how we should treat fellow humans. A better alternative to many people’s eye for an eye system of morality is one based on an ethical principle that it is wrong to kill other people against their will. There are some exceptions to this of course, self defence being the most notable. According to this principle the death penalty would be forbidden. If it is wrong for one individual to kill another then it should be unacceptable for the state to cause a person’s death in civilised societies. The state, as a collective of individuals, should not generally have moral rights that individuals do not have.

Modern societies recognise that prisoners should be treated humanely, consistent with human rights obligations. Some criminals do commit horrific crimes, but capital punishment, torture, or mistreatment of prisoners serves no utilitarian purpose and signals, wrongly, that violence can solve problems.

It seems clear then that any countries that want to take the moral high ground and campaign against capital punishment for their nationals who have committed crimes in other countries should abide by some rules.

First, they should not have the death penalty on their own statute books. That would be hypocritical.

Second, they must not consider that killing some people is acceptable according to some of their belief systems. It is hypocritical to denounce killing in somebody else’s moral or legal system, if you accept it in your own.

Third, they should not campaign against capital punishment only for their citizens. In moral matters, what is right for one nationality ought to be right for people of other nationalities. To do otherwise is self-serving, nationalistic, and a form of racial/cultural/ethnic discrimination.

Fourth, they should make representations against the death penalty with equal vigour to all countries that have capital punishment. To make representations to one country, and not for example, to China or the United States, indicates bias. International relations are complex, but moral campaigns aimed at one country over others cannot be morally sound.

If countries follow these rules, they can work diplomatically and cooperatively with each other to endorse and uphold the principle that killing others against their will is wrong, and in so doing eliminate capital punishment. This principle should be applied to all people, in all countries, at all times.

David Swanton is an ethicist, PhD scientist and director of Ethical Rights. He is also ACT Chapter Coordinator for Exit International.

THE FAILINGS OF CAPITAL PUNISHMENT: INDONESIA EXECUTES THE TRAFFICKERS

THOSE WHO PERISH BEFORE THE CAPITAL PUNISHMENT DO SO AS POLITICAL, RATHER THAN JUDICIAL SACRIFICES, OBSERVES BINOY KAMPMARK

We have been reduced to morbid reflections, those moments when the smell of death, and the exiting life, is near. “The two boys died well,” explained Australian lawyer Peter Morrissey. “They made their preparations, they were dignified. They’re strong against the death penalty, they were supportive of their families.” Andrew Chan and Myuran Sukumaran died before the firing squad without being given the last rites. They were joined by six others: Okwuduli Oyatanze, Martin Anderson, Raheem Agbaje Salami, Silvester Obiekwe Nwolise, Rodrigo Gularte and Zainal Abidin.

The eight executions that took place at 12.35 in the morning local time on the prison island of Nusakambangan were not averted by the involvement of the UN Secretary General Ban Ki-moon. Or the EU. Neither did the pleas of France, Australia, Brazil, or Nigeria have much sway, though Philippines woman Mary Jane Veloso received a last minute reprieve from Manila that she be spared to act as a witness against a woman charged with trafficking her.

The entire saga has been one of state-sustained cruelty. One of the executed, Rodrigo Gularte, was a confirmed schizophrenic. The man executed as Raheem Agbaje Salami was actually Jamiu Owolabi Abashin, a Nigerian national whose fake identity was used by authorities from his conviction to his clemency pleas. He died, effectively, as a fake. Australians Chan and Sukumaran, leaders of the ‘Bali Nine’ drug group, had been passing time in the throes of rehabilitation, with Sukumaran learning to paint and Chan finding God and a vocation in teaching English.

Even as those on death row were awaiting their last gasps of life, they were greeted by the vicious legal lottery that is capital punishment. Earlier this month, the “shock therapy” that Indonesia’s unrelenting president Joko Widodo described as necessary against drug traffickers was far from evident in the Bandung High Court. In commuting the death sentences of Iranians Mosavipour bin Sayed Abdollah and Moradalivand bin Moradali to life imprisonment, the court spoke of a need to educate rather than exact revenge.

Death here is taken in various guises. Drugs kill, though some are more permissible than others. Traffickers profit, suggesting that they, too, are the profiteers of the sick society. But visiting death upon such individuals in this bullet-ridden context is an
The Bali Nine saga did not make for pretty reading and viewing. There was sentimentalising, not least of all attempts to transform moral chaff to patriotic wheat. Australian actor Brendan Cowell decided to get stroppy, urging the Australian prime minister in a video packed with celebrity wishes to “show some balls” in getting “over to Indonesia and bring[ing] these boys home.”

The inconsistency in the approach of certain countries to protecting their citizens was also exposed. Australia’s politicians were adamant in mucking in the emotional stakes for Chan and Sukamaran, but indifferent to citizens caught in the so called “war on terror” (David Hicks) or those who would meddle with the muscular presumptions of US foreign policy (Julian Assange). State policy is often merely a form of established hypocrisy.

There were also the parochial outbursts. Indonesians felt that drug dealing convicts were being romanticised as victims, while their legal system was being derided as fetid. Right to the point of the executions, there were suggestions on the part of Chan and Sukumaran that the judges hearing their case were compromised by corruption.

A judicial commission indicated that it had investigated claims that the judges had asked for $130,000 to reduce the sentences to less than 20 years in prison, only to refuse to release its findings. “I don’t think executions should take place if the investigations have not taken place,” suggested defence counsel Todung Mulya Lubis. “I don’t even know what is the outcome of the investigation.” The legal proceeding had become a parody of itself.

What matters in the spirit of rehabilitation is that there is no bridge too far – in some cases. Beating a retreat to the realm of measured sanity and stability are possible. Those efforts, if they are not at least rewarded, should not be ignored by populist, executive fiat. Those who perish before the capital punishment do so as political, rather than judicial sacrifices. Sovereignty kills.

Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University, Melbourne and blogs at Oz Moses.
INDONESIA’S RETRIBUTIVE JUSTICE WAS DEAF TO PLEAS FOR REFORMED BALI DUO

Australia’s appeal to spare reformed Bali duo Andrew Chan and Myuran Sukumaran failed in the face of Indonesia’s retributive justice system, observes Giri Ahmad Taufik

In spite of vigorous appeals from Australia for Indonesia to spare the lives of Bali duo Andrew Chan and Myuran Sukumaran, most Indonesians were not persuaded. Chan and Sukumaran were executed last week, along with five other foreigners and an Indonesian who were on death row for drug charges.

Australia argued that Chan and Sukumaran were reformed men who had learnt from their previous mistake. A reasonable person, regardless of whether they were Australian or Indonesian, would agree that executing a rehabilitated person serves no point.

Therefore, the question lingers. Why did the rehabilitation argument fail to convince the Indonesian public?

Comparing Australia and the Philippines

Some argue that Australian government diplomacy and some public campaign strategies contributed to the failure. The Australian government’s “megaphone diplomacy” created antipathy among Indonesian officials. They prefer quiet diplomacy which emphasises friendship and personal networks among officials. Indonesians also saw social media campaigns such as Boycott Bali as arrogant and offensive.

In contrast, the Philippines government was more successful in its diplomatic strategy to save the life of its citizen, Mary Jane Veloso. The Philippines, one of the ASEAN countries, understands the culture of ASEAN diplomacy. The government avoided the spotlight and noisy diplomacy.

Philippines civil society engaged with Indonesian migrant worker organisations to campaign for Veloso’s life. She was spared at the 11th hour.

Additionally, the portrayal of Veloso as a poor migrant worker who is a victim of human trafficking resonates well with the Indonesian public. It brings to mind images of poor Indonesian workers facing similar conditions in other parts of the world, especially in the Middle East.

But regardless of the questionable approach it adopted, Australia made valid arguments in the appeal to save Chan and Sukumaran. This failed to persuade Indonesians for two reasons.

First, Indonesians are at odds with the concept of rehabilitation for criminal offenders. Many Indonesians consider that the purpose of criminal sanctions is not to rehabilitate offenders but to requite the crimes they have committed.
to rehabilitate offenders but to requite the crimes they have committed.

Second, the flaws and corrupt practices in Indonesian correctional facilities raised doubt about the ability of Indonesia’s prisons to rehabilitate inmates – especially those convicted of drug-related crimes.

**A shift from rehabilitation to retribution**

Retribution for crime is a concept embedded culturally in some segments of Indonesian society. Many Indonesians hold the view that a criminal is a person who needs to be punished rather than be rehabilitated. The degree of abhorrence for criminals is based on the types of crimes committed. Traditionally, people who had committed murder or sexual abuse are abhorred more than other criminals. Recently, terrorists, drug traffickers and corrupters have been added to the list.

In terrorism cases, police raids on terrorist suspects often result in death. Some neighbourhoods refuse to accept the body of terrorist suspects to be buried in their local cemetery even if the deceased originated from the area.

This abhorrence is reflected in government policy. In 2012, the Indonesian government enacted Regulation Number 99/2012 which tightens the process and requirements for remissions of sentences for prisoners convicted of terrorism, drugs and corruption crimes.

Initially, Indonesia’s penal system adopted a rehabilitative approach. This was reflected in the 1995 Law on Correctional System. However, the 2012 government regulation shifted the rehabilitative approach to retribution, especially for the above three categories of crime.

The 2012 regulation places an additional requirement on people convicted of terrorism, drugs or corruption offences to get their sentence reduced. They are required to become a “justice collaborator” by providing intelligence on conspirators in the drug or corruption crimes they were involved in.

In many cases, defence lawyers say that it is almost impossible for their clients to meet this requirement, due to the circumstances of the case, such as concerns for their safety or simply because they just do not know.

**Corruption in the prison system**

In drug and corruption cases, the retribution mindset is exacerbated by the rampant corruption in Indonesia’s prisons. In recent years, Indonesia’s National Narcotics Agency (BNN) has pointed out that correctional facilities have become headquarters of the drugs trade in Indonesia. Many convicted drug traffickers can freely operate their business from their prison cells.

Corruption crimes carry the maximum death penalty, but Indonesia has never sentenced a corrupter to death. In corruption cases, many convicts are released after serving less than half their sentences. They can also enjoy lavish facilities, such as air-conditioned rooms and ensuite bathrooms. One high-profile corruption convict had her own living room with state-of-the-art television set.

Needless to say, the operation of a drugs business or the generous discount on sentence and ‘five star’ facilities do not come free.

Under these circumstances, where drug crimes are abhorred and the prison system is considered not effective in stopping drug and corruption crimes, death is seen as the ultimate retribution in the most serious crime, such as trafficking substantial amounts of drugs.

Giri Ahmad Taufik is a Legal Researcher at the Indonesian Center for Law and Policy Studies (PSHK).

THE BALI NINE, INDONESIA AND STATE-SANCTIONED VIOLENCE

Before we congratulate ourselves on how civilised and humane we’ve become, perhaps we should consider the violence that is still being inflicted on innocent people around the world in our collective name, cautions Mark Beeson

Many Australians are understandably appalled by the brutal and pointless executions of Andrew Chan and Myuran Sukumaran. The death penalty looks anachronistic and ineffective at the best of times, but to kill two people who had clearly made the most of their long periods of incarceration to transform themselves and make amends for their actions looks gratuitous and cruel.

Consequently, Indonesia’s actions raise more general questions about the powers we give to states – or, more accurately, to those who control the coercive apparatus of the state at any particular moment. As German sociologist Max Weber pointed out, one of the key features of an effective state is that it has a monopoly over the legitimate use of violence.

State officials can order people to be killed because – especially in democracies – we authorise them to do so.

However disappointed we may be in the actions of Indonesian President Joko Widodo – in whom so many inside and outside Indonesia have invested such hopes as a progressive force – he can make a couple of claims in his defence.

First, Widodo – popularly known as Jokowi – is Indonesia’s elected leader and is fulfilling his promise to crack down on what he and many other Indonesians see as a problem. Indonesia’s domestic political context and the need to be seen as not giving favourable treatment to foreigners left him very little room to manoeuvre. This is not a justification for his actions, but it helps to explain why he was so impervious to pleas for mercy.

Whatever we may think about the underlying principles and administration of justice in Indonesia, at least Jokowi can claim that it is essentially a domestic issue. We may not like Indonesia’s laws, but they are being applied evenly-handedly within national borders where state officials have authority.

Significantly, it is those same national borders that demarcate the extent of Indonesia’s leaders ability...
– or even desire, perhaps – to use their capacity for state-sanctioned violence. Other countries – including Australia – have no such inhibitions and regularly kill perfectly innocent civilians in the course of one conflict or another.

This propensity for the application of state-sanctioned violence seems especially germane when we consider another president about whom great things were expected, but who has inevitably disappointed. After the unilateralism of George W Bush, Barack Obama was widely predicted to be a very different sort of president and one who would not make the sort of catastrophic strategic miscalculations of his predecessor.

Paradoxically enough, though, while Obama has been widely criticised for a lack of decisiveness and unwillingness to commit more American forces to the Middle East, this has done nothing to curb the use of state-sanctioned violence. On the contrary, the use of drone strikes has become a key part of America’s continuing war on terror. The news that Islamic State leader Abu Bakr al-Baghdadi has been seriously injured in one such attack attests to their continuing effectiveness.

It is unsurprising, perhaps, that a cerebral and reflective leader such as Obama should be attracted to drones as a weapon of choice. Unlike Jokowi, Obama doesn’t have to confront the personal narratives of the people who die at his command. Or he doesn’t unless they’re American citizens, at least. The recent death of an American hostage during a recent drone strike highlights the potential for “collateral damage”.

Are these cases comparable? Yes and no. Widodo’s executions were cold-blooded, unnecessary and highly political. Obama clearly was not intending to kill Americans, and this has only become an issue because one of the hostages actually was.

What was done in the name of the Indonesian state was undoubtedly awful, futile and reprehensible. Whether our moral calculus is quite so self-evidently superior is not quite so clear.

However, dozens of entirely innocent women and children from other countries are routinely killed in such strikes with little comment. The key point is that we are collectively responsible for such deaths at some level or another, especially if our leaders and state officials carry them out.

Do good intentions justify one death and not another? Perhaps. Would we encourage the state to kill a thousand innocents if it meant eliminating Hitler? Almost certainly. Would we authorise a drone strike to kill Baghdadi if we thought a couple of passers-by might die, too? Perhaps. Would we permit the state to execute people? Not any longer in Australia, at least.

But before we congratulate ourselves on how civilised and humane we’ve become, perhaps we should pause to consider the violence that is still being inflicted on perfectly innocent people around the world in our collective name. What was done in the name of the Indonesian state was undoubtedly awful, futile and reprehensible. Whether our moral calculus is quite so self-evidently superior is not quite so clear.

Mark Beeson is Professor of International Politics at the University of Western Australia.

This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: The Geelong College, Newtown, andrea.mcgucken@geelongcollege.vic.edu.au
International pressure has mounted on Indonesia in recent months to stop its enforcement of the death penalty. President Joko Widodo – known as Jokowi – ordered the execution of six convicted drug traffickers, five of whom were foreign nationals, in January. Another group, including Australian duo Andrew Chan and Myuran Sukumaran, has been told that they will be executed on the island of Nusakambangan on Tuesday – now that various legal appeals have been exhausted.

Despite international concern, Jokowi should maintain his tough anti-drug stance for a number of reasons. Indonesia’s drug problem is a state of emergency. It holds a sovereign right to enforce the law within its territory and its enforcement of death penalty does not violate international law.

Indonesia’s move to enforce the death penalty on convicted drug traffickers is protected by the principle of state sovereignty. Under this principle, Indonesia has the freedom to make and apply laws within its territory and on its citizens wherever they are without any interference from other states or entities.

**Drug emergency**

Millions of people are affected by drugs in Indonesia. According to the National Agency for Narcotics (BNN), one million people are addicted to drugs with little chance of recovery. Around 1.6 million people occasionally take drugs while 1.4 million are regularly consumers.

Indonesia is South-East Asia’s drug hub. BNN – along with customs and police – have confiscated large quantities of drugs. In January this year, the police confiscated 8.1 kilograms of crystal methamphetamine. Last year, BNN confiscated 157 kilograms of crystal meth in a drug bust in Jakarta, and the year before, the police confiscated 9.9 kilograms of crystal meth.

Each day, more than 30 people die of drugs according to BNN estimates.

Some have challenged the accuracy of data provided by BNN, doubting the government’s claim that Indonesia is facing a drug crisis that warrants the executions of convicted drug traffickers. However, these considerations should not divert attention from Indonesia’s efforts to combat drug abuse.

Indonesia’s estimates on drug use were jointly produced by BNN and a reputable research centre, the University of Indonesia’s Centre for Health Research. They used scientifically based research methodologies and have considered the margin of error carefully in their studies.

So far, Indonesia does not have any other data than BNN’s 2008 studies. Experts admit that new data will provide stronger estimates than what is currently available. However, conducting a survey on Indonesia’s large population is not easy.

We cannot ignore the victims of drug abuse just because the harm cannot be accurately quantified. It’s better to believe the worst situation of drug abuse based on BNN’s data and by looking at the realities in Indonesian communities.

In a personal interview, the head of the BNN said that the government has allocated additional funding to reduce the demand for drugs. Under a new policy, drug users are not sent to jail but sentenced to mandatory rehabilitation. The program targets at least 100,000 people to recover from drug addiction a year.

Under this policy, no drug user will be sent to prison. Only those who trade and gain profit from illegal drugs will be criminalised.
**A sovereign right**

Indonesia’s move to enforce the death penalty on convicted drug traffickers is protected by the principle of state sovereignty. Under this principle, Indonesia has the freedom to make and apply laws within its territory and on its citizens wherever they are without any interference from other states or entities.

Since the development of international law, the concept of state sovereignty has been the main foundation of the system of relationships between countries. Indonesia is a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In addition, to ensure the fulfilment of its human rights, Indonesia became a party to the International Covenant on Civil and Political Rights (ICCPR).

As part of the implementation of its international obligations, Indonesia has enacted several anti-drug laws such as Law No.35 of 2009 on Narcotics and Law No.5 of 1997 on Psychotropic Substances.

Indonesia has the authority to enforce these laws on anyone, including foreign nationals in Indonesia’s territory. Other states must not pressure or interfere in Indonesia’s domestic application of the law. If other states intervene, it can be considered a violation of customary international law, which gives the right for Indonesia to retaliate to redress interventions.

**Compliance with international law**

Indonesia is not violating international law in upholding the death penalty. Under the anti-drug trafficking convention, Indonesia is still allowed to apply the maximum penalty as deemed appropriate by the state to provide a deterrent to drug trafficking crime.

Indonesia has enshrined the death penalty into law in its 2009 anti-drug law. And in a 2007 judicial review, the Constitutional Court ruled that the death penalty was in line with Indonesia’s constitution.

Some human rights activists argue that Indonesia is obliged to respect the right to life as stipulated under the ICCPR. They suggest Indonesia should abolish the death penalty. But Indonesia provides all death row convicts equal opportunities to appeal. And after all legal proceedings have been completed, people on death row can request clemency to the president.

Some might disagree and condemn the execution of convicts before the firing squad. However, we should also think about the victims of drug abuse who have died and those who are now suffering.

Some have indicated that some courts’ procedures and rulings have been corrupted. But we cannot generalise the whole proceedings of Indonesian courts to be corrupt. Notorious decisions based on fraud and corruption were committed by small number of judges. Indonesia’s legal system is not perfect, but the country is not a failed state in upholding the rule of law.

Indonesia’s stance on the death penalty is in accordance with Article 6 Paragraph 2 of the ICCPR, which states that countries may impose the death sentence “only for the most serious crimes in accordance with the law in force at the time of the commission of the crime”.

Some might disagree and condemn the execution of convicts before the firing squad. However, we should also think about the victims of drug abuse who have died and those who are now suffering.

Considering the grave threat drugs pose to Indonesia’s younger generations, the Indonesian government should continue its forceful policy against drug-related crimes.

**Arie Afriansyah is Lecturer in Law at the University of Indonesia.**

---

Posturing over the death penalty

To save our citizens from off-shore gallows we can flavour our diplomatic entreaties with respect and proffered friendship, something which just may have a more beneficial result than condescension, derision and threats, offers Philip Lillingston

While not denying that negligence can still be a crime, it is sickening that two young Australian drug mules traffickers, Andrew Chan and Myuran Sukumaran, have paid with their lives for a crime where there was malice directed at no one.

However when our Foreign Minister considered diplomatic sanctions, our Prime Minister vowed to “find ways to make our displeasure felt” and Senator Gary Humphries, declared death penalty abolition was the “... hallmark of a civilised society ...”, it was also sickening. That Australia’s political leaders and prominent commentators could attempt to attain mercy for the two, not by humble entreaties based upon the friendship and mutual respect with our neighbour, but by high-handed lecturing about its allegedly less than civilised practices, with the obvious implication that Indonesia still had not made it into that club of first-world enlightened nations.

What is galling is that our ‘leaders’ have the temerity to lecture on behalf of the Australian people, despite the fact that the majority of those people have no problem with what Indonesia did, as shown by earlier polls and confirmed in January 2015 by Roy Morgan Research.

So why all the outcry about this ultimate state punishment? At the height of the rhetoric our prime minister declared the practice was “... pretty barbaric ...”, but without bothering to define the term and explain how it described a judicial death sentence. Are executioners bare foot, unkempt, long haired Vandals, who perform their work in public in front of baying drunken mobs? Apparently all you have to do is declare it is barbaric and nothing more needs to be said.

The Australian newspaper did at least give a reason to support its position. There is a sanctity of human life which must in all situations be respected, it said on the 30th April. Well, tell that to a terminally ill patient wishing to buy a lifesaving kidney from a living donor willing to sell. This matter-of-life-or-death transaction cannot proceed because the government, in its benevolent wisdom, has made all such transactions illegal due to the “questionably morality” of the practice. Apparently the sanctity of life extends to child rapists and terrorist bombers, but not to some law abiding citizen vainly trying to save his or her own life.

The only commentator who did, in his own way, attempt to explain how the term ‘barbaric’ fitted, was broadcaster Alan Jones on the televised Q&A program when he declared, “To think that you justify punishment by murder – statutory murder – means quite frankly that the barbarians are at the gate.”

Even though this sentiment has also been expressed by Greens MP Colleen Hartland and former Foreign Minister Bob Carr, it is difficult to fathom how this hyperbolic statement, described by the Melbourne Age’s crime reporter John Silvester as “bordering on the idiotic”, relates to a democratically governed state carrying out a death sentence.

Is the state also a thief when collecting speeding fines, or guilty of kidnapping/false imprisonment when jailing convicted home invaders? Words have specific meaning, and unless you are writing poetry there is no justification for using an incorrect, but more emotive, word instead of what is appropriate.

Murder can be defined as the intentional killing of an innocent (in the context of the situation) person, with malice aforethought. Does the state really do that? What the state does is kill, after due process, what it declares an
extremely antisocial human being
for, what it believes are, reasons of
protecting and comforting society.
The fact that two courses of action
have the same result of a warm
corpse does not necessarily mean
that they are morally equivalent.
One suspects the way Moses drafted
his sixth commandment should
take some responsibility for this
simplistic interpretation of the
death penalty. Could he have not
gone to the trouble of differentiating
between malevolent, and other
types of killing?

Civil Liberties Australia,
believed to other rights' organi-
sations, wrote to the Indonesian
Ambassador hoping to stop the
execution, claiming it was a viola-
tion of "... the right to life ..." as
stated in the Universal Declaration
of Human Rights. An identical
claim is sometimes presented
by self-described 'liberal' politi-
cians quoting documents such as
the American Declaration of
Independence, which, in following
the teachings of philosopher John
Locke, held we "... are endowed with
certain unalienable rights ..." such
as "... life, liberty and the pursuit of
happiness ...".

Both these documents not
only declare the right to life but
also that of liberty (the above
mentioned UDHR at its Article
#3). So if allegedly our right to life
can never be removed by the state,
then does it not follow that our
right to liberty is also inalienable?
In which case how would the
state punish criminals without
incarcerating them: arrange a two
hour intervention with family and
friends after every conviction of
rape or murder?

Fathers of Classic Liberalism
from the Enlightenment, John
Locke and John Stuart Mill, both
supported the death penalty, and
their attitude to civil rights was
simply that citizens possess them,
but only while their behaviour
remains civil, and beyond that they
forfeit them to the degree they
violate the rights of others.

Yes there is also the argument
that, in practice, the state is
imperfect and innocents may
occasionally be executed, but
then there is the reverse side to
this. Between 1973 and 2009 in
Australia, a number of children
were sexually assaulted, one woman
was raped and three other people
murdered, in separate, unrelated
incidents, by an Eric Thomas Turner
and a Leigh Robinson, both of
whom were earlier on death row
for previous capital crimes but,
unfortunately for the community,
had their sentences commuted
before eventually being released.

Australia, which is a small
country needing to maintain good
diplomatic, security and trade
relations among its larger, demo-
cratic, death penalty neighbours of
Malaysia, Indonesia, Japan, India
and the United States, is playing
a precarious game in its hectoring
and condescending attitude based
upon suspect principles. If we
are to follow different sentencing
programs we should be diplomatic
enough to keep our comments to
ourselves.

To save our citizens from off-
shore gallows we can flavour our
diplomatic entreaties with respect
and proffered friendship, some-
thing which just may have a more
beneficial result than condescen-
sion, derision and threats.

Philip Lillingston, has previously taught
political science and now maintains
the website, Why Not Proportional
Representation?

‘Posturing over the death penalty’,
On Line Opinion. Retrieved from
WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book.

The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

CONTENTS

BRAINSTORM 52
WRITTEN ACTIVITIES 53
DISCUSSION ACTIVITIES 54
MULTIPLE CHOICE 55-56
Brainstorm, individually or as a group, to find out what you know about the death penalty debate.

1. What is the death penalty, and under what circumstances is it used?

2. What is a moratorium, and how does it relate to the death penalty?

3. When, and why, was the *International Covenant on Civil and Political Rights* adopted by the UN?

4. What does the term ‘death row’ mean?
Complete the following activity on a separate sheet of paper if more space is required.

“Modern societies recognise that prisoners should be treated humanely, consistent with human rights obligations. Some criminals do commit horrific crimes, but capital punishment, torture, or mistreatment of prisoners serves no utilitarian purpose and signals, wrongly, that violence can solve problems. An eye for an eye society is one that is of years gone by, and unsuited to a modern civilised society.”

David Swanton, The death penalty is morally unacceptable.

Do you agree or disagree with the above statement? Write a few paragraphs explaining why you feel that prisoners should, or shouldn’t, be treated humanely and whether you feel that the death penalty is unsuited to modern society. Include reasons for your views, and cite examples to back up your argument.
Complete the following activity on a separate sheet of paper if more space is required.

“We must continue to argue strongly that the death penalty is unjust and incompatible with fundamental human rights.”

UN Secretary-General Ban Ki-moon, 10 October 2014.

Consider the above statement. Are you for or against the death penalty? Form into two or more groups in your class and compile a list of points with which to discuss your arguments for or against the death penalty. Share your thoughts and arguments with the other groups, and take a final vote to reflect the overall views of the class.

FOR

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

AGAINST

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
MULTIPLE CHOICE

Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of the next page.

1. In what year did Australia ratify the Second Optional Protocol to the *International Covenant on Civil and Political Rights*?
   a. 1788
   b. 1967
   c. 1973
   d. 1985
   e. 1990
   f. 2010

2. In what year was the *Death Penalty Abolition Act* passed in Australia?
   a. 1788
   b. 1967
   c. 1973
   d. 1985
   e. 1990
   f. 2010

3. Ronald Ryan was the last person executed in Australia. In what year was he hanged?
   a. 1788
   b. 1967
   c. 1973
   d. 1985
   e. 1990
   f. 2010

4. From Federation in 1901 until 1967 how many people were legally executed in Australia?
   a. None
   b. 14
   c. 41
   d. 114
   e. 411
   f. 1014
   g. 4011

5. Which of the following countries do NOT enforce the death penalty? (select all that apply)
   a. China
   b. Indonesia
   c. Iran
   d. Australia
   e. New Zealand
   f. Singapore
   g. Fiji
   h. Japan
   i. Great Britain
   j. India
   k. Mexico
   l. Thailand
   m. Egypt
6. Respond to the following statements by circling either 'True' or 'False':

a. Indonesia is violating international law in upholding the death penalty.  
   True / False

b. Andrew Chan and Myuran Sukumaran died before a firing squad in Indonesia after being charged with trafficking drugs.  
   True / False

c. Every state in the United States enforces the death penalty.  
   True / False

d. Crimes resulting in the death penalty in Australia once included; theft from a shop, theft from a person’s pocket, and the stealing of sheep.  
   True / False

e. There was no appreciable change in crime rates during a 4-year moratorium on the death penalty in the US between 1972 and 1976.  
   True / False

f. Beheading is a no longer a routine form of execution in Saudi Arabia.  
   True / False

g. In 2014, a death row inmate took 26 minutes to die by lethal injection as he lay on a gurney with his mouth opening and closing.  
   True / False
Executions worldwide are down almost 22% to 607, but that figure excludes China which maintains strict secrecy on its death penalty figures (ABC News, #TalkAboutIt: Capital punishment around the world). (p.1)

22 countries executed prisoners in 2014, though that’s just more than half the number that executed prisoners 20 years ago (ibid). (p.1)

The 5 countries with the highest rates of executions are China, Iran, Saudi Arabia, Iraq and the US (ibid). (p.1)

China executes more prisoners than the rest of the world combined (ibid). (p.1)

More than 289 people were executed in Iran in 2014, but Amnesty International believes as many as 454 more were killed (ibid). (p.1)

The US executed 35 death row inmates in 2014, down from 39 in 2013, all through lethal injection. It is the only Western democracy in the top 10 executing nations (ibid). (p.2)

Indonesia resumed executions for drug-related offences under the new leadership of president Joko Widodo. Within Mr Widodo’s first 100 days of office, 6 prisoners were executed (ibid). (p.2)

Sub-Saharan Africa saw partial progress in 2014 – 46 executions were recorded in 3 countries compared to 64 executions in 5 countries in 2013 – a drop of 28% (Amnesty International Australia, Death penalty 2014: Alarming rise in death sentences). (p.4)

An alarming number of countries that used the death penalty in 2014 did so in response to real or perceived threats to state security and public safety posed by terrorism, crime or internal instability (Amnesty International, Death sentences and executions in 2014). (p.5)

3 countries – Iran, Iraq and Saudi Arabia – were responsible for 72% of the 607 recorded executions worldwide (ibid). (p.5)

At least 19,094 people were believed to be under sentence of death worldwide at the end of 2014 (ibid). (p.5)

Pakistan lifted a 6-year long moratorium on the execution of civilians in the wake of the horrific Peshawar school attack. 7 people were executed in less than 2 weeks at the end of 2014. The government also pledged to execute hundreds of people on death row who had been convicted on terrorism-related charges (ibid). (p.5)

In March 2014, Dennis McGuire, an Ohio death row inmate, took 26 minutes to die by lethal injection as he lay on a gurney with his mouth opening and closing (Briggs, E, Five brutal methods of execution). (p.10)

In 1990, Jesse Joseph Tafero suffered 3 jolts of electricity before he stop breathing, during which time 6-inch flames erupted from his head (ibid). (p.10)

‘Crimes’ punishable by death in Saudi Arabia include: adultery, blasphemy, fornication, homosexuality and sorcery (ibid). (p.10)

After a 4-year moratorium on the death penalty, Indonesia resumed executions in March 2013 (Sayed, D, In less than 40 years, 124 countries have abolished the death penalty – and here’s why the rest should end it too). (p.11)

In Indonesia, death sentences are carried out by firing squad with the prisoner in front of 12 gunmen, 3 of whose rifles are loaded with live ammunition, while the other 9 are loaded with blanks. The squad fires from a distance of between 5 and 10 metres. The prisoner has the choice of standing or sitting, and can decide whether to have their eyes covered by a blindfold or hood (ibid). (p.11)

In the last 40 years, more than 140 death row inmates have had their innocence proven (ibid). (p.11)

Murderer Ronald Ryan was the last person executed in Australia. He was hanged on February 3, 1967. Federally the death penalty wasn’t abolished until 1985, but states removed capital punishment at various points from 1922 to 1984. Queensland was the first state, NSW was the last (AAP, Countries that do not have death penalty). (p.12)

New Zealand abolished the death penalty for murder in 1961 and for all crimes in 1989 (ibid). (p.12)

In 2012, 111 nations voted in favour of a moratorium on the use of the death penalty at the United Nations. 41 nations voted against and 34 abstained (ibid). (p.12)

The death penalty was abandoned in the Philippines in 2006, East Timor in 1999 and Cambodia in 1989. The last known executions in Laos and Myanmar were in 1989. Thailand has a high rate of clemency, which amounts to ‘de facto’ abolition – its last reported execution was in 2009 (Nicholson, P, The death penalty in SE Asia: is there a trend towards abolition?). (p.17)

The first recorded execution in Australia took place in Sydney on 27 February 1788, when Thomas Barrett was hanged for stealing food from the public stores. In the 19th century as many as 80 people per year were hanged for a range of crimes including sheep stealing and forgery, as well as murder and manslaughter. From Federation in 1901 until 1967, 114 people were legally executed (Butler, G, Attitudes towards the death penalty at home and abroad). (p.20)

In many countries, the murder rate has actually decreased in the years since the death penalty was abolished (Nedim, U, Should We Bring Back the Death Penalty?). (p.26)

Out of 198 countries around the world only 21 continue to use capital punishment. And while countries that carried out executions in 2011 did so at an alarming rate, those employing capital punishment have decreased by more than a third in the last decade (Valeontis, J, 5 reasons to abolish the death penalty). (p.29)

In Australia, the Commonwealth abolished the death penalty in 1973 with the passing of the Death Penalty Abolition Act (Reprieve Australia, FAQs). (p.31)

A study by the American Criminology Society found that over 88% of the criminologists surveyed did not believe the death penalty deterred murderers (ABC, Fact check: No proof the death penalty prevents crime). (p.35)

Only 11 of 33 countries with power to execute offenders for drugs offences have actually done so within the past 10 years (ibid). (p.36)
Abolition
The termination or annulment of institutions, systems or permanently established practices. An abolitionist is someone who holds the view that the death penalty is not an acceptable punishment and should therefore be banned.

Acquittal
The judicial deliverance from a criminal charge on a verdict or finding of not guilty.

Amnesty
A general pardon granted by the authorities to a group of individuals who did not follow a certain law.

Appeal
The request process to elevate a court case to a higher court for review with the objective of changing an official decision.

Capital punishment
Death as punishment for a crime. Also referred to as the death penalty.

Clemency
Leniency and compassion shown toward offenders by a person or agency charged with administering justice. The provision of demonstrating mercy, such as to a prisoner whose death sentence has been commuted to a life sentence.

Commutation
A change in length or severity of a penalty or punishment.

Death penalty
The sentence of death as given to a convicted criminal, also referred to as capital punishment.

Death row
The section of a prison that houses inmates awaiting execution. The term is also used to refer to the state of awaiting execution.

Death sentence
A sentence of death, handed down in some judicial systems.

Deterrence
The prevention of certain actions by the induction of fear for threatening negative consequences.

Electrocution
Death brought about by the flow of electricity through an organism.

Execution
The infliction of capital punishment.

Exoneration
To be cleared of a charge, and made free from blame.

Gallows
A framework erected for the purpose of hanging.

International Covenant on Civil and Political Rights
The ICCPR was adopted by the UN General Assembly in 1966 and entered into force in 1976. Together with the Universal Declaration on Human Rights and the International Covenant on Economic Social and Cultural Rights, it makes up what is known as the International Bill of Human Rights. It covers a wide range of civil and political rights including the rights to life (Article 6) and the prohibition of torture or to cruel, inhuman or degrading treatment or punishment (Article 7).

Lethal injection
The lethal injection generally consists of three chemicals: sodium pentothal (an anaesthetic), pancuronium bromide (used to paralyse the prisoner) and potassium chloride (used to stop the heart).

Mitigating circumstances
These are factors found and considered as reasons for why someone should be given a lighter penalty for a crime.

Moratorium
The establishment of a moratorium on the use of the death penalty (i.e. the suspension of executions) in a retentionist country is considered to be an important step towards the abolition of the death penalty. It often underlines the will of national key decision makers to review the utility of capital punishment or to initiate its abolition in the legislation of retentionist countries.

Pardon
To release (a person) from punishment; exempt them from a penalty; to let (an offence) pass without punishment.

Punishment
The fact of being punished for an offence or fault; something that is inflicted as a penalty.

Recidivism
The tendency to lapse into a previous pattern of behaviour, especially a pattern of criminal habits.

Rehabilitation
The education of someone who has committed a crime for the resumption of normal activities; the restoration of a prisoner to a former capacity or standing, or to rank, rights or privileges that were lost or forfeited.

Retentionist
One who holds the viewpoint that the death penalty is a suitable punishment and should therefore be retained by the state.

Retribution
Punishment imposed (as on a convicted criminal) for purposes of repayment or revenge for the wrong committed.

Second Optional Protocol
The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Protocol), is the only international treaty of worldwide scope to prohibit executions and to provide for total abolition of the death penalty. This text, annexed to the United Nations’ International Covenant on Civil and Political Rights (ICCPR) in 1989, requires the States that ratify it to renounce the use of the death penalty definitively.

Vengeance
Vengeance is a reactionary, retaliatory act against a person or group. Many people feel that executing convicted murderers will satisfy their need for justice and/or vengeance.
Websites with further information on the topic

Amnesty International Australia  www.amnesty.org.au
Attorney-General’s Department (Australian Government)  www.ag.gov.au
Australian Human Rights Commission  www.humanrights.gov.au
Australian Law Reform Commission  www.alrc.gov.au
Australians Against Capital Punishment  http://aacp.wordpress.com
Campaign to End the Death Penalty  www.nodeathpenalty.org
Death Penalty Information Center  www.deathpenaltyinfo.org
Death Penalty Focus  http://deathpenalty.org
Death Penalty Worldwide – Cornell University Law School  www.deathpenaltyworldwide.org
International Commission against the Death Penalty  www.icomdp.org
National Coalition to Abolish the Death Penalty (US)  www.ncadp.org
NSW Council for Civil Liberties  www.nswccl.org.au
Pro-Death Penalty.com  www.prodeathpenalty.com
Reprieve Australia  www.reprieve.org.au
World Coalition Against the Death Penalty  www.worldcoalition.org

ACKNOWLEDGEMENTS
The publisher is grateful to all the contributors to this book for granting permission to reproduce their works.

COPYRIGHT DISCLAIMER
While every care has been taken to trace and acknowledge copyright the publisher tenders its apology for any accidental infringements or where copyright has proved untraceable. The publisher would be pleased to come to a suitable arrangement with the rightful owner.

ILLUSTRATIONS AND PHOTOGRAPHS
Photographs and illustrations courtesy of iStockphoto.

THANK YOU
➤ United Nations
➤ Amnesty International Australia
➤ United Nations Information Centre, Canberra.