



**WORLD
COALITION**
AGAINST THE DEATH PENALTY
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POVERTY & JUSTICE

A DEADLY MIX

October 10th 2017 - World day **against** the death penalty

Poverty & Justice: a deadly m

October 10th 2017 - 15th World day **against**

Since the 1980s, there has been a global trend towards the abolition of the death penalty, a trend which continues to this day. According to Amnesty International, 16 countries had abolished the death penalty in law for all crimes in 1977. Today, two-thirds of all countries (141) are now abolitionist in law or in practice.

However, an ongoing feature on the application of the death penalty is that it is inextricably linked to poverty. Social and economic inequalities affect access to justice for those who are sentenced to death for several reasons: defendants may lack resources (social and economic, but also political power) to defend themselves and will in some cases be discriminated against because of their social status.

In **India** for example, a study conducted by the National Law University of New Delhi found that 74.15% of those sentenced to death (370) belong to the economically vulnerable population.

In the **United States**, in 2007, according to the Equal Justice Initiative, 95% of people on death row have disadvantaged economic backgrounds. In those countries, a defendant who does not have the financial capacity to hire a private lawyer will have to rely on free legal aid provided by the government. Such attorneys, however, are often underpaid and unprepared for death penalty cases.

Moreover, the report from the National Law University shows that often, people from disadvantaged backgrounds in India do not trust State-appointed lawyers. As a result, their families may put together the funds to hire a private lawyer, but the quality of that private representation is often ineffective.

A study led by Amnesty International and the Legal Defense and Assistance Project (LEDAP-Nigeria) in October 2008 suggests that the overwhelming majority of the death row population in **Nigeria** is also comprised of economically disadvantaged people.

According to Chino Obiagwu of LEDAP: *"It becomes clear that questions of guilt and innocence are almost irrelevant in Nigeria's criminal justice system. It is all about if you can afford to pay to keep yourself out of the system – whether that means paying the police to adequately investigate your case, paying for a lawyer to defend you or paying to have your name put on a list of those eligible for pardon."*

Saudi Arabia remains one of the top executioners. According to Amnesty International, foreign nationals in Saudi Arabia - particularly migrant workers from disadvantaged economic backgrounds from the Middle East, Asia and Africa - are at great disadvantage in their experience of the criminal justice system. During their trials, their migrant status and the fact that they often lack Arabic language skills place them at particular risk of a death sentence.

the death penalty

In **Belarus**, the law guarantees legal representation at all stages of the trial. In practice, however, defendants cannot choose their lawyers and face limited access to legal representation. While legal counsel is absolutely vital in cases in which defendants are charged with death-eligible crimes, the restrictions on access to counsel may include: denial of access to a lawyer of the defendant's choice; restrictions on access to a lawyer during the pretrial investigation and trial; absence of a lawyer during initial interrogations; replacement of ex officio lawyers without sufficient explanation; and absence of a lawyer during the majority of the investigation, including cross-examinations and interrogations¹.

In addition, individuals with limited financial resources have difficulty keeping their court-appointed lawyer because the lawyer may refuse to participate in hearings if the accused has not paid the lawyer during prison visits².

The death penalty in practice³

- **104 countries** have abolished the death penalty for all crimes
- **7 countries** have abolished the death penalty for ordinary crimes
- **30 countries** are abolitionist in practice
- **57 countries** are retentionist
- **23 countries** carried out executions in 2016
- In 2016, the top five executioners were **China, Iran, Iraq, Pakistan, and Saudi Arabia**.

1. FIDH and Human Rights Center Viasna, "Death Penalty in Belarus : Murder on (Un)lawful Grounds", p. 38-39.

2. Cornell Center on the Death Penalty Worldwide, "Death Penalty Database: Belarus".

3. Source : Amnesty International

Key words

Poverty. Poverty is not solely an economic issue, but rather a multidimensional phenomenon that encompasses a lack of both income and the basic capabilities to live in dignity. The Committee on Economic, Social and Cultural Rights stated in 2001 that poverty was "a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights." (E/C.12/2001/10, para. 8)

Discrimination in the application of the death penalty. Discrimination is the act of distinguishing an individual or a social group from another by extrinsic (income, education, place of residence, etc.) or intrinsic characteristics (gender, ethnic origin, etc.) in order to apply specific and generally negative treatment. The death penalty can be applied in a discriminatory way including because of the criminal justice system, which seems to have a disparate impact on and disempower and further marginalize certain sections of the population.

Fair trial. The right to a fair trial includes the right to equality before tribunals and court of justice, the right to a fair and public hearing by a competent, independent and impartial court, the right to be informed promptly of the charges against the accused, the right to be legally defended and tried without delay, and the right of a convicted person to have his or her verdict re-examined. (Articles 14 and 15, *International Covenant on Civil and Political Rights*). **Fair trial guarantees must be respected from the time of arrest and throughout the trial and appeals.**

Legal aid. Legal assistance means the total or partial payment by the State for the defendant's legal fees and expenses (lawyer, bailiff, expert, etc.) if the defendant has scarce resources.

The right to legal assistance. Allowing those who do not have the means to hire their own legal counsel to be assisted free of charge by a competent lawyer. This right is a necessary condition for all to have access, under fair and equal conditions, to judicial mechanisms. (*Report of the Special Rapporteur on Extreme poverty, A/67/278, 2012*).

[10 reasons why the death penalty is against the poor

1. Unequal access to education and information

All over the world, justice systems are very complex and people facing the death penalty need expertise to assist in their defense.

People living in poverty often lack access to education and are often deprived of necessary and elementary social and financial support and legal knowledge to understand and participate fully in legal proceedings initiated against them in death penalty cases. They are less likely to assert rights and benefits provided by the law, and they may not know how to get support.

In India, 20% of people on death row never went to school and the majority have a low level of education.

(The Death Penalty in India Report, National Law University)

2. Bail and pretrial release

A person from a disadvantaged socio-economic background will be less likely to afford bail and obtain release before trial.

The defendant will therefore be less able to assist in preparing a defense.

3. Unequal access to justice

No justice system is completely free of charge. The expenses related to access to justice are a major obstacle for people living in poverty, as they simply can't cover the costs.

These obstacles are amplified in capital cases, where each stage of the legal process involves an additional cost, such as hiring a lawyer competent to handle legal and evidentiary matters

specific to capital proceedings. These accumulated expenses are one of the main reasons people living in poverty have trouble making use of the remedies available to them in the criminal justice system.

In India, the law provides for the right to legal counsel before the first magistrate hearing. Despite this provision, 89% of prisoners sentenced to death affirmed that they never had legal representation before their first hearing. Only 1.6% had access to legal counsel.

(The Death Penalty in India Report, National Law University)

4. The importance of the effectiveness of the legal assistance

The legal representation for defendants from vulnerable backgrounds is often of lesser efficacy; appointed attorneys are often underpaid, lack adequate means to lead their own investigations, and lack the trial experience required for death penalty cases.

The inferior quality of legal representation places defendants living in poverty at a serious disadvantage, thereby increasing their likelihood of being sentenced to death.

"The death penalty is not for the worst criminal, it's for the person with the worst lawyer."

Clive Stafford Smith, founder of the NGO *Repeive*.

5. Building a strong defense

Building a strong defense in a capital case can require a lot of financial resources.

People from a disadvantaged economic background do not have the means to pay experts or to obtain a more in-depth investigation of facts and evidence.

Such defendants may also not have the resources to effectively assess whether they are receiving adequate representation.

"We have a serious issue in the U.S. Our criminal justice system is very sensitive to wealth. Our system treats you better if you are rich and guilty, than if you are poor and innocent."

Bryan Stevenson, Equal Justice Initiative.

6. The specific case of foreign nationals

Some countries host foreign nationals to perform underpaid or menial work, such as housekeeping or hard physical labor.

Those migrant workers often take such jobs because they come from disadvantaged socio-economic backgrounds in their home countries.

If these people interact with the criminal justice system, they may face additional discrimination because of their status as foreign nationals, because they don't speak the language and don't have the network of people and social influences to support their cases, in addition to the barriers they face as persons living in poverty.

used discriminatorily, and often



In **Saudi Arabia**, according to Shari'a law, the murder victim's family may choose to pardon the murderer in exchange for *Diyat*, or "blood money," but migrant workers often don't have these funds. As a result, they may be executed simply because they don't have enough financial, social, or political power.

(Killing in the name of justice: The Death Penalty in Saudi Arabia, Amnesty International)

7. Biases and discrimination against people living in poverty

In many criminal justice systems, the judge and/or jury may have explicit or implicit biases against people from disadvantaged socio-economic backgrounds, making those defendants more likely to face a guilty verdict and to be sentenced to death.

8. Corruption

Corruption is endemic in many countries, including in the police force, the judicial system, and even judges themselves.

Those who have financial means or who have a strong social network may be able to access much more efficient justice and even ensure a favorable trial outcome⁴.

Those who don't have the financial means to pay for these justice-sector services - which are supposed to be free of charge - see their petitions and requests delayed, rejected, or dropped. Corruption is often coupled with dreadful prison conditions.

Bribery may be the only way for prisoners to survive. Corruption may also permeate the system of pardons and commutations.

In **Nigeria**, bribery is common throughout the criminal justice process, from police interrogations through imprisonment⁵. At the time of the arrest, police often demand payment in exchange for release.

"I was arrested for an offence I never committed. I was at the police station to visit a friend who was in police custody. I was saying my friend should not be arrested and I was arrested as well. Then the police asked my family to pay an amount they could not pay. I was charged to court, there was nobody, no complainant to say I robbed him so I was given a murder case. All my complainants were police. At the end of the day I was given six days of trial, on the seventh day I was sentenced to death[...]"

Arthur Judah Angel, former death row prisoner in Nigeria (*Waiting for the Hangman*, Amnesty International and LEDAP).

9. Death row living conditions

The conditions of detention may largely depend on the financial resources of the convicted person.

For example, people from poor socio-economic backgrounds will have more difficulty accessing certain prison services such as medical care or food, and will not be able to receive financial assistance from family members to remedy the situation.

Poverty can also limit the opportunities a death row prisoner has to stay in contact with family members and friends.

10. Impact on relatives

The economic and social consequences of a death sentence can be dramatic for people living in poverty. Deprived of liberty, they are also deprived of income, employment, and social benefits.

The family is also directly affected, especially if the convicted person was the family's main breadwinner.

The financial burdens on family members throughout the legal proceedings can also lead to poverty.

4. Report of the Special rapporteur on Extreme Poverty, 2012; A/67/278

5. Cornell Center on the Death Penalty Worldwide, "Death Penalty Database: Nigeria"

International human rights standards

The link between poverty and the death penalty is not explicitly stated in international treaties, but the application of the death penalty must meet the non-discrimination and fair trial requirements set in international law:

International Covenant on Civil and Political Rights, Article 26

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Safeguard 5

“Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

UN Commission on Human Rights resolution 2005/59 of 20 April 2005

In resolution 2005/59, the Commission “[e]xpresses its concern at the continuing use of the death penalty around the world, alarmed in particular at its application after trials that do not conform to international standards of fairness and that several countries impose the death penalty in disregard of the limitation set.”

More specifically, the resolution “[c]ondemns the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices.”

Recommendation for governments to abolish the death penalty and address root causes of crime

The death penalty is a discriminatory practice, often used against the poor and should be abolished

We call upon the governments of countries that still apply the death penalty to:

- abolish this unfair practice
- ensure full respect for the right to a fair trial and the right to effective counsel
- work to reduce poverty and inequality in their respective countries

“Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations and an enabling condition for other violations. Not only is extreme poverty characterized by multiple reinforcing violations of civil, political, economic, social and cultural rights, but persons living in poverty generally experience regular denials of their dignity and equality.”

10 reasons to end the use of the death penalty

- 1 No state should have the power to takes a person's life.**
- 2 It is irrevocable.** No justice system is safe from judicial error and innocent people are likely to be sentenced to death.
- 3 It does not keep society safe.** It has never been conclusively shown that the death penalty deters crimes more effectively than other punishments.
- 4 It is unfair.** The death penalty is discriminatory and is often used disproportionately against people who are poor, people with intellectual or psychosocial disabilities, and from racial and ethnic minority group. In some places, the imposition of the death penalty is used to target particular groups based on sexual orientation, gender identity, or religion.
- 5 Not all murder victims' families want the death penalty.** A large and growing number of victims' families worldwide reject the death penalty and are speaking out against it, saying it does not bring back or honor their murdered family member, does not heal the pain of the murder, and violates their ethical and religious beliefs.
- 6 It creates more pain.** The death penalty inflicts pain on the families of people on death row and causes great pain to the family members of people who have been executed.
- 7 It is inhuman, cruel and degrading.** Conditions on death row inflict extreme psychological suffering, and execution is a physical and mental assault.
- 8 It is applied overwhelmingly in violation of international standards.** It breaches the principles of the 1948 Universal Declaration of Human Rights, which states that everyone has the right to life and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. On six occasions, the United Nations General Assembly has called for the establishment of a moratorium on the use of the death penalty (resolutions 62/149, 63/168, 65/206, 67/176,69/186 and 71/187, adopted in December 2007, 2008, 2010, 2012, 2014, and 2016).
- 9 It is inefficient.** It diverts time and money from other more efficient law enforcement measures.
- 10 It denies any possibility of rehabilitation for the criminal.**

10 things you can do to end the death penalty

- 1 Organize a public debate and a movie screening with exonerees, murder victims' families, and experts, to raise awareness on the reality of the death penalty.
- 2 Organize an art exhibition (photographs, drawings, posters) or a theatre performance.
- 3 Organize a demonstration, a sit-in, a 'die-in,' or a flash mob.
- 4 Join events prepared for the abolition of the death penalty worldwide.
- 5 Call upon your government officials to follow the recommendations for World Day.
- 6 Write to a prisoner on death row.
- 7 Donate to the World Coalition Against the Death Penalty or another group working to end the death penalty.
- 8 Follow and contribute to the social media campaign on Facebook and Twitter: #nodeathpenalty
- 9 Mobilize the media to raise awareness on the issue of the death penalty.
- 10 Participate in "Cities Against the Death Penalty/Cities for Life" on November 30, 2017.



TO FIND OUT MORE

Find out everything about
World Day Against
the Death Penalty at
[www.worldcoalition.org/
worldday](http://www.worldcoalition.org/worldday)

including:

- The 2017 World Day poster
- The mobilisation kit
- Detailed factsheets on the death penalty around the world
- The 2016 World Day Report
- Resources for lawyers
- Fact-finding methodology sheet
- Model letter to retentionist countries

The World Coalition Against the Death Penalty is an alliance of more than 140 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition gives a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. The World Coalition Against the Death Penalty created the World Day against the Death Penalty on 10 October 2003. For the 15th World Day, the World Coalition would like to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition.



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