



## DEATH PENALTY AND POVERTY

### Detailed Factsheet

#### 15th World Day Against the Death Penalty

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On October 10th, 2017, the World Coalition Against the Death Penalty and abolitionist organizations from all over the world will celebrate the 15th World Day Against the Death Penalty. This year, we are focusing upon the relationship between poverty and the death penalty. The World Coalition is addressing this issue as we are aware that people from disadvantaged economic backgrounds are most commonly at risk of execution. While we will always continue to strive for the complete abolition of the death penalty we also need to ensure that retentionist countries provide access to justice for all their people, without prejudice or discrimination.

### Introduction



This detailed factsheet highlights the links between the application of the death penalty, poverty and socio-economic discrimination. Poverty is a factor to be taken into account at all stages of the death penalty. Indeed, the socio-economic circumstances of an accused in a death penalty proceeding are relevant to an assessment of the crime itself, greatly influence the criminal trial and have a significant impact upon the sentencing process.

This sheet will therefore trace the impact of poverty alongside the different stages of the operation of the death penalty. It is divided into four sections: the first section sets the context and provides some key definitions. The second section demonstrates the impact of poverty in the period prior to arrest. The third section describes the impact of poverty during the trial by addressing the issues of legal assistance, the right to a fair trial and the problem of corruption. Finally, the fourth section will focus on the impact of poverty after conviction by briefly analysing the conditions of detention on death row and the impact of that an execution has upon a person's relatives.

This note was prepared by the World Coalition Against the Death Penalty in partnership with The Advocates for Human Rights thanks to data provided by the law firms Fredrikson & Byron, P.A. and Faegre Baker Daniels. The Death Penalty Worldwide database, Amnesty International's publications and the Report on the Death Penalty of the National Law University in Delhi, as well as FIDH and Viasna's report on the death penalty in Belarus, among others, were used for this note.

### Context



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 of 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 often lack the social, economic and political resources to adequately 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 attempt to gather funds in order 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 a great disadvantage within the criminal justice system. During their trials, a lack of Arabic language skills coupled with their migrant status places them at particular risk of a death sentence.

According to Ivan Simonovic, former UN Assistant Secretary-General for Human Rights, there is no tangible evidence of the deterrent effect of the death penalty on criminals. "On the other hand, there is evidence of the link between the death penalty and discrimination against vulnerable communities". He highlights that most people executed come from poor backgrounds, belong to minorities or are socially disadvantaged.

- **What is 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)

The definition of poverty can be very broad, as Philip Alston, Special Rapporteur on Extreme Poverty stated: “**Poverty should be understood as a multidimensional phenomenon involving much more than a lack of income alone**”.

The Inter-American Commission on Human Rights states that poverty is one of the most worrying situations of human rights<sup>1</sup>. It specifies that discrimination and the social exclusion of people living in poverty diminishes their participation in social life, their access to justice and the effective enjoyment of their rights. This should necessarily highlight the indivisibility of rights: **a violation of an economic social and cultural right is generally accompanied by a violation of a civil and political right.**<sup>2</sup>

- **What is discrimination ?**

In its general definition, discrimination is the fact of treating unequally and unfavorably one or more individuals<sup>3</sup>. More specifically, 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.<sup>4</sup>

**The death penalty is often applied in a discriminatory way because the criminal justice system doesn’t always protect the disempowered from further marginalization.**

Nonetheless, **Article 7** of the **Universal Declaration of Human Rights** states that “All are equal before the law and are entitled without any discrimination to equal protection of the law. “

The death penalty in the **United States** is often criticized as “discriminatory” and for “being used disproportionately against the poor, minorities and members of racial, ethnic and religious communities”<sup>5</sup>.

<sup>1</sup> Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Paraguay*. OEA/Ser.L/VII.110 doc. 52, March 9, 2001, para. 5.

<sup>2</sup> Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Paraguay*. OEA/Ser.L/VII.110 doc. 52, March 9, 2001, para. 4.

<sup>3</sup> UNICEF, *Egalité homme fille, fiche thématique* (Boys and girls’ equality, factsheet): [https://www.unicef.fr/sites/default/files/userfiles/09-Fiche\\_thematique\\_Visite\\_Lulu.pdf](https://www.unicef.fr/sites/default/files/userfiles/09-Fiche_thematique_Visite_Lulu.pdf)

<sup>4</sup> Edwige Rude-Antoine, *L’éthique de l’avocat pénaliste : vers l’égalité des armes* (The ethics of the criminal lawyer: towards the equality of weapons), Paris, 2014, Harmattan, p.127.

<sup>5</sup> Amnesty International, *Know the Facts About Capital Punishment*, 2012.

**Article 26** of the **International Covenant on Civil and Political Rights** states that: “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.”

**Article 24** of the **American Convention on Human Rights** specifies that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

Furthermore, the **African Charter on Human and Peoples' Rights** prohibits discrimination based on economic considerations by establishing in its **Article 2** equal rights and guarantees to all individuals irrespective of their "national and social origin, fortune, birth or any status”.

Finally, the **Arab Charter on Human Rights**, adopted in 1994 and amended in 2004, contains an article imposing a principle of non-discrimination based on wealth or social origin.

It is in this context that **Resolution 2005/59** of the **United Nations Commission on Human Rights of 20 April 2005** "Condemns the continuing application of the death penalty under laws, policies or discriminatory practices”.

## Impact of poverty before the trial

- **Arrest**

Most of the currently available data concerns the socio-economic circumstances of the broader prison population without a specific focus upon death penalty inmates. As a consequence, we can primarily rely upon these findings in order to assess the relationship between poverty and the likelihood of arrest and incarceration.

In the **United states**, people living in poverty-stricken areas are overexposed to incarceration. According to a study conducted by Bruce Western, an American sociologist at Harvard University, for black men without a diploma, the probability of being incarcerated in their lifetime was estimated to be of 60%<sup>6</sup>.

- **Access to justice**

Access to justice is a fundamental principle of the rule of law. In its absence, citizens cannot be heard, exercise their rights, challenge discriminatory measures or engage decision makers. States must provide the right to access to justice for all, including members of vulnerable groups, and undertake all necessary measures to ensure that, without discrimination, all people have access to an equitable, transparent and effective system of justice.<sup>7</sup>

- **Lack of financial resources**

People living in poverty face many obstacles when approaching the criminal justice system. Their lack of financial resources often undermines the extent and quality of legal advice that they receive and their capacity to pay critical administrative fees and other collateral costs is limited.<sup>8</sup> In addition to the costs of legal assistance, there are numerous other costs associated with accessing justice which constitute a major barrier for the poor, who simply cannot afford those expenditures.<sup>9</sup> Fees are encountered at every stage of the legal process, along with several indirect costs that include payments for obtaining legal documents, witness costs, commissioning independent experts, photocopies and phone calls. **The cumulative impact of those costs is a crucial factor preventing the poor from accessing and benefiting from the justice system.**<sup>10</sup>

<sup>6</sup> Bruce Western, “Mass incarceration, Macrosociology and the poor”, The annals of the American Academy of political and social science, April 2013.

<sup>7</sup> UN document, “Access to Justice : United Nations and the Rule of Law”, available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

<sup>8</sup> UN document, “Extreme poverty and human rights”. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 17

<sup>9</sup> UN document, “Extreme poverty and human rights”. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 51

<sup>10</sup> UN document, “Extreme poverty and human rights”. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 51

- **Unequal access to education and information**

All over the world, justice systems are very complex and people facing the death penalty need expert assistance to sustain their defence. People living in poverty often lack access to education and are also regularly deprived of necessary social, financial and legal support. Without such reinforcement, people living in poverty are not often in a position to understand and fully participate in death penalty proceedings initiated against them. They may not know how to obtain legal support, are less likely to assert their rights and subsequently may not benefit from protections that do exist at law.

The Supreme Court of **Iran** ruled that those sentenced for drugs offences prior to the adoption of the 2015 Code of Criminal Procedure had the right to appeal, but many death row prisoners remained unaware of this development. It is likely that people who are socio-economically vulnerable would have less access to this development. Often people who have socio-economic vulnerabilities have lower levels of education compared to the general population. The lack of education may contribute to the difficulty in understanding the legal system and its development that they and their families experience. This may in turn deprive them of the possibility of appealing after being sentenced to death<sup>11</sup>.

This precarious situation is amplified by the tendency of legal systems to better protect the interests of the most privileged while treating the disadvantaged and those living in poverty with less importance and damaging effect.<sup>12</sup>

According to the Special Rapporteur on extreme poverty of 2012, "limited access to information and limited participation in political and social life means that they are disregarding the law and their rights", which constitutes a real obstacle to access to justice<sup>13</sup>.

The Death Penalty in **India** report of the National Law University, Dehli, specifies that 74,1% of the people sentenced to death interviewed (370) are economically vulnerable. The report shows that the majority of those who are sentenced to death are less educated and among those who are economically vulnerable, 20% never went to school<sup>14</sup>.

- **Foreign nationals and migrant workers**

Some countries host foreign nationals to perform underpaid or menial work, such as housekeeping or hard physical labour. Those migrant workers often take such jobs because they come from disadvantaged socio-economic backgrounds in their home countries. If these people are required to interact with the criminal justice system then they may face discrimination in addition to the immediate barrier of poverty due to their status as foreign nationals.

In certain countries such as **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. Migrant workers often lack the financial and social resources, as well as the political relations needed and will most likely be executed<sup>15</sup>. Furthermore, migrant workers are seven times more likely to be executed in Saudi Arabia than Saudi nationals<sup>16</sup>.

<sup>11</sup> Amnesty International, *Report 2016/2017. The State of the World's Human Rights*, p. 244

<sup>12</sup> UN document, "Extreme poverty and human rights". Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 25

<sup>13</sup> UN document, "Extreme poverty and human rights ". Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 17

<sup>14</sup> National Law University, *The Death Penalty India Report*, 2016. p. 108.

<sup>15</sup> Amnesty International, *Killing in the name of justice. The Death Penalty in Saudi Arabia*, 2015.

<sup>16</sup> Cornell Center on the Death Penalty Worldwide, "Facts About the Death Penalty: Saudi Arabia". Available at : <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Saudi+Arabia>.

## Impact of poverty during the trial

- **Legal assistance**

The defendant's right to legal assistance, enshrined in numerous international and regional human rights instruments, is essential for ensuring due process and equality before the courts.<sup>17</sup>

**Article 6** of the **Convention for the Protection of Human Rights and Fundamental Freedoms** provides several guarantees regarding legal assistance. The convention states that: "Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In **Belarus**, the law guarantees legal representation beginning at the time of detention for individuals suspected of death-eligible crime. In practice, however, defendants are denied access to the lawyer of their choice, and have limited access to their lawyer during the pre-trial investigation and the trial itself, including crucial investigative actions like cross-examinations. Defendants from poor socio-economic backgrounds may have a hard time retaining court-appointed counsel because counsel will "often refuse to be present at interrogations if their clients are not able to pay for in-jail visits<sup>18</sup>." For those requesting that the procedure be in Belarusian and not in Russian, access to a lawyer may be denied. As a result, Belarusians belonging to ethnic minorities and generally lacking financial resources receive unfair convictions and are more likely to be exposed to the death penalty<sup>19</sup>.

The **American Convention on Human Rights** in its **Article 8** provides for every person to have the right to a hearing with due guarantees and within a reasonable time and in particular "the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing", and also "the right to be assisted by counsel provided by the state".

The **African Charter on Human and Peoples' Rights** in its **Article 7** provides for "the right to defence, including the right to be defended by counsel of his choice".

In **Nigeria**, the majority of the people sentenced to death come from vulnerable socio-economic backgrounds and do not have access to adequate legal assistance. Olawale Fapohunda, a leading human rights lawyer working for an independent organisation providing free legal aid declared that Nigeria's death row inmates wanting to appeal were essentially "without legal representation" because of the absence of a fully financed state legal aid scheme<sup>20</sup>.

The **UN Commission on Human Rights Resolution 2005/59 of 20 April 2005** "Expresses 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 limitations set out in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and of the safeguards guaranteeing protection of the rights of those facing the death penalty".

<sup>17</sup> UN document, "Extreme poverty and human rights ». Available at

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 60

<sup>18</sup> FIDH and Human Rights Center Viasna, *Death Penalty in Belarus: Murder on (Un)lawful Grounds*, 2016. p.35-38.

<sup>19</sup> Cornell Center on the Death Penalty Worldwide, "Death Penalty Database: Belarus". Available at : <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Belarus&region=&method=#a7-6>.

<sup>20</sup> IPS, "Death Penalty Abolition Project: Poverty and capital punishment go hand in hand", 2007. Available at: <http://www.ipsnews.net/2007/10/rights-poverty-and-capital-punishment-go-hand-in-hand/>

**Principle 3** of the **Basic Principles on the Role of Lawyers**, require states to provide sufficient funding and other resources to provide legal counsel to the poor and disadvantaged.

In **Japan**, state-appointed defence lawyers are only appointed after a judge has made a detention decision. One consequence of this procedure is that from arrest to detention there is a strong possibility that suspects without resources will have no legal representation. Moreover, since state-appointed defence lawyers are only appointed for certain kinds of crimes which are punishable by death, life imprisonment, or imprisonment for more than three years, suspects do not receive this essential form of assistance for minor offences. Problems commonly arise in murder cases that also involve the crime of disposing of a dead body. In this kind of case, the suspect is often arrested, detained, and investigated for the peripheral crime first, without access to a defence lawyer. In addition, once a criminal penalty has been finalised, legal aid cannot be used, even to seek a retrial. Hence, some inmates have resigned themselves to their death sentence even when they believe it is unjust, simply because they cannot afford to pay for the assistance of defence counsel<sup>21</sup>.

Allowing those who cannot afford legal representation to a full and effective legal defence, free of charge, is necessary if judicial systems are to operate fairly and equally.

Although the **United States** Constitution requires the accused to have counsel, some defendants reportedly do not receive representation at all stages of legal proceedings. For example, in California, one estimate suggests that about 14% of death row inmates are currently without counsel for their direct appeal. In the state of Alabama, death row inmates have no right to counsel in post-conviction proceedings. This is alarming considering that “[p]erhaps the most important factor in determining whether a defendant receives the death penalty is the quality of representation he or she is provided<sup>22</sup>.”

Often, the criteria governing access to legal aid is arbitrary and far too restrictive.

In **China** for example, the appointed lawyer belongs to a law firm chosen by the court<sup>23</sup>.

The **Arab Charter of Human Rights** of 2004, ratified by seven countries, including Libya, Syria and the United Arab Emirates, establishes in its **Article 16** the right "To have free legal assistance of a lawyer to defend himself if he does not have sufficient means to pay for his defence, and if the interests of justice so require" and the right "To have the free assistance of an interpreter if he cannot understand or speak the language of the court", as well as "Not to be compelled to testify against himself or to confess to guilt".

The **Saudi** government claims to provide publicly-funded, court appointed attorneys for criminal defendants, but as of 2008, Amnesty International indicated that defendants were not usually provided with lawyers in criminal trials, while those defendants who received access to counsel were provided a short amount of time to prepare their cases and were in some instances not allowed to visit with counsel in order to prepare a defense<sup>24</sup>.

Legal aid programs are an essential component of the strategy to improve access to justice. However, in some countries, court-appointed lawyers are sometimes ill-prepared for death penalty cases and legal assistance is not always available at all stages of the appeal process.<sup>25</sup> These programs can only be effective if they are sufficiently funded.

In practice, legal assistance is not always available. In **India**, the law provides for the right to representation prior to the first production before the Magistrate<sup>26</sup>. Despite this provision, "The Death Penalty in India Report" indicates that 89% of the prisoners sentenced to death did not have representation by the time they made the first production before the Magistrate. Only 1.6% of the respondents had legal aid<sup>27</sup>.

<sup>21</sup> The Death Penalty Project, *The death penalty in Japan*, 2013. p.25.

<sup>22</sup> Cornell Center on the Death Penalty Worldwide, "Death Penalty Representation". Available at: <http://www.deathpenaltyinfo.org/death-penalty-representation>.

<sup>23</sup> Individual communication of the World Coalition Against the Death Penalty with a Chinese lawyer in November 2016.

<sup>24</sup> Amnesty International, *Saudi Arabia: Mass death sentences in 'spy trial' a travesty of justice*, 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/12/saudi-arabia-mass-death-sentences-in-spy-trial-a-travesty-of-justice/>.

<sup>25</sup> *Ibid*.

<sup>26</sup> Constitution of India, Art. 22.

<sup>27</sup> National Law University, *The Death Penalty India Report*, 2016, p. 133.

It is important to highlight the impact of poverty upon a death sentence. Amnesty International reported that the majority of death row prisoners in the United States could not afford the services of a lawyer for the trial<sup>28</sup> and as a result must turn to court-appointed representation.

According to the Death Penalty Information Center, “In many cases, the appointed attorneys are overworked, underpaid, or lacking the trial experience required for death penalty cases...There have even been instances in which lawyers appointed to a death case were so inexperienced that they were completely unprepared for the sentencing phase of the trial. Other appointed attorneys have slept through parts of the trial, or arrived at the court under the influence of alcohol.”<sup>29</sup>

“We found that one of the most intractable problems in death penalty administration in **Nigeria** is the severe lack of competent and adequately compensated counsel for indigent defendants and death row inmates seeking appeals<sup>30</sup>.”

There is a clear link between a public defender’s lack of experience in death penalty cases and the corresponding likelihood of a death sentence or execution. Legal representation for defendants from vulnerable backgrounds is often of insufficient; appointed attorneys are routinely 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.

In **Nigeria**, “In some cases the government appoints inexperienced lawyers who are doing their National Youth Service or have recently graduated to handle capital cases<sup>31</sup>”.

The effectiveness of the lawyer is a determining factor in the application of the death penalty, as stated by Clive Stafford Smith, founder of the NGO Reprieve, “**The death penalty is not for the worst criminal, it is for the person with the worst lawyer**”.<sup>32</sup>

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. Furthermore, these defendants may not themselves be in a position to accurately determine whether they are receiving adequate representation.<sup>33</sup>

In **India**, people who are economically vulnerable also face a greater likelihood of being sentenced to death because of the poor quality or complete absence of legal representation. For example, 80% of the prisoners sentenced to death who are economically vulnerable reported that they did not have legal representation during police interrogations<sup>34</sup>.

In **Nigeria**, if suspects are unable to pay for fuel the police will not travel to see witnesses in order to assess the accused’s alibi. These critical investigations simply don’t take place for people who live in poverty.

In one such case, three elderly men, Peter (73), Isaac (83) and Mohammed (61), were arrested in April 2004 on suspicion of killing two people in the aftermath of a festival. “The festival was on 5 March 2003, a Sunday. I was in [town] that day, but left town at 3 pm. The police said the incident happened after 6.30 pm,” Mohammed recalls. At the festival a fight broke out and two people reportedly died. According to the men, it was not until one month after the festival that the police arrested 150 people. In the end 10 were arraigned. “I was arrested on 15 April on the way between my house and the junction. The police demanded 200,000 Naira to let me go,” Mohammed said. All three deny they have anything to do with the crime. Mohammed claims: “There is no body, no doctor reports, no proof.” The three men were sentenced to death on 19 December 2006<sup>35</sup>.

<sup>28</sup> Amnesty International, *The Death Penalty and Arbitrariness*. Available at <http://www.amnestyusa.org/pdfs/DeathPenaltyFactsMay2012.pdf>.

<sup>29</sup> Cornell Center on the Death Penalty Worldwide, “Death Penalty Representation”. Available at <http://www.deathpenaltyinfo.org/death-penalty-representation>.

<sup>30</sup> Presidential Commission on Reform of the Administration of Justice, 2007 in Amnesty International and LEDAP, *Nigeria : Waiting for the hangman*, 2008. p.18.

<sup>31</sup> Amnesty International and LEDAP, “Nigeria : Waiting for the Hangman”, 2008, p.18.

<sup>32</sup> Rebecca Lowe, “The Ultimate Price of Poverty,” International Bar Association. Available at <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=096d14f2-359c-4830-8ace-4a16cb937747>.

<sup>33</sup> Stephen B. Bright, “The Failure to Achieve Fairness: Race and Poverty Continue to Influence Who Dies,” *Journal of Constitutional Law*, Vol. 11, Issue 1 (Dec. 2008). Available at [https://www.law.upenn.edu/journals/conlaw/articles/volume11/issue1/Bright11U.Pa.J.Const.L.23\(2009\).pdf](https://www.law.upenn.edu/journals/conlaw/articles/volume11/issue1/Bright11U.Pa.J.Const.L.23(2009).pdf).

<sup>34</sup> National Law University, *The Death Penalty India Report*, 2016. p. 132.

<sup>35</sup> Amnesty International and LEDAP, *Nigeria: Waiting for the hangman*, 2008, p.15.

- **Fair trial**

Everyone has the right to be tried by an independent and impartial judge in a fair trial.

**Article 10** of the Universal **Declaration of Human rights** states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

**Articles 14 and 15** of the **ICCPR** provide for the right to a fair trial. The right to a fair trial includes the right to equality before tribunals and courts 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.

**Article 6** of the **European Convention on Human Rights** also provides for the right to a fair trial in terms similar to the above instruments

Finally, **Articles 12 and 13** of the **Arab Charter on Human Rights** establishes that “All persons are equal before the courts. The State Parties ensure the independence of the courts and the protection of judges against interference, pressure or threat. All persons within the territory of the State Parties are ensured a right to legal remedy”<sup>36</sup> and that “Everybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights”.<sup>37</sup>

- **Corruption**

Corruption is endemic in many countries, including in the police force, the judicial system, and even amongst the judiciary. Those who have significant financial means or a strong social network may be able to derive more efficient and favorable outcomes. Those who don't have the financial means to pay 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 regarded by many as the only way for prisoners to survive. Corruption may also permeate the system of pardons and commutations.<sup>38</sup>

According to Death Penalty Worldwide, **Nigeria's** criminal justice system is experiencing serious corruption problems. Bribery is a common practice throughout the proceedings, from police interrogation to imprisonment. At the time of the arrest, the police are known to ask for money in return for a release<sup>39</sup>.

The system of pardons and commutation of sentences can also be subject to corruption. While in some countries the standards for pardon may be blurred or difficult to grasp, it is easy to see that those with sufficient financial resources benefit from this right.

In **Nigeria**, according to several prison governors, detainees eligible for commutation of their sentence are listed, and it is up to the directors to choose the names of those who deserve clemency. However, according to certain prisoners, they have to pay the prison officials for their names to appear on the list.

A prisoner on death row in Nigeria stated : “My mother is a village woman. She cannot interfere. She cannot go and see a senator for me. That is why we languish in prison<sup>40</sup>.”

The existence of corruption is also associated with the terrible deterioration of living conditions for those sentenced to death. Without the help of friends or family outside the prison, those in poverty confront great difficulties in obtaining sufficient food or medical treatment.

<sup>36</sup>Arab Charter on Human Rights, Art.12.

<sup>37</sup>Arab Charter on Human Rights, Art.13.

<sup>38</sup> UN document, “Extreme poverty and human rights”. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/67/278&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/278&referer=/english/&Lang=E) para 57

<sup>39</sup> Cornell Center on the Death Penalty Worldwide, “Death Penalty Database: Nigeria”. Available at: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria&region=&method=>.

<sup>40</sup> Amnesty International, *Nigeria : Waiting for the Hangman*, 2008, p.23.



## Impact of poverty after the sentence

- **Impact of poverty on the living conditions of the people on death row**

The provisions of the International Covenant on Economic Social and Cultural Rights establishes standards concerning the economic, social and cultural rights of individuals. For example, Article 11 of the Covenant states: " The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent". This provision should apply to all people, including those detained and sentenced to death. In practice, the current conditions of detention appear to often be dependent upon the financial resources of the convicted person themselves.

The Inter-American Commission on Human Rights observes that the conditions of detention of prisoners with limited financial resources are worse than for the rest of the prison population. They conclude that this is due to the difficulty of obtaining access to normally available services which are improperly restricted by the requirement of payments to guards or other prisoners.<sup>41</sup>

Conditions of detention in **Indian** prisons are harsh and life-threatening because prisons are severely overcrowded. India's prison system officially has a capacity to hold 332,782. As of the end of 2011, however, prisons held 372,926 inmates, more than 112% of its overall capacity. Indian prisons also fail to provide sufficient food, potable water and medical care. Sanitation is also lacking. Some prisons, such as the Mirzapur prison for female inmates, completely lacked medical facilities<sup>42</sup>.

In **Belarus** once sentenced to death, individuals face inhumane living conditions and a poor quality of life. The average individual stays on death row for 6 months to 1.5 years. The time and place of the individual's execution is kept a secret, even from family members<sup>43</sup>.

- **Impact of poverty on the relatives after execution**

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.<sup>44</sup> The financial burdens for family members that arise throughout the legal proceedings can also lead to poverty.

As far as children are concerned, most of the time they receive little help from the State: "Potential alternative carers, including other family members, may not take in the children of parents sentenced to death or executed. This can be because they are unable to do so due to the additional costs of supporting the children, lack of accommodation, or because they are unwilling due to the stigma associated with the crime, or fear of revenge by those affected by the crime. If nobody else steps in to support the children, they will have to look after themselves. They may end up living on the street, may be more vulnerable and at a much higher risk of becoming victims of crime, including sexual violence and exploitation, or may turn to crime themselves in order to survive."<sup>45</sup>

In **India** nearly half of the people on death row who shared their employment history were working in the unorganized sector and taking low-paying and vulnerable jobs throughout most of their lives. Among those people sentenced to death who are economically vulnerable, 63.2% are the sole or primary source of income in their families. For these people, who are the primary earners for their families, a death sentence is made even more devastating, not just for their lack of resources for legal representation, but also because the death sentence will have such a serious impact upon the economic well-being of their family members who were dependent on their income<sup>46</sup>.

<sup>41</sup>Inter-American Commission on Human Rights, *Preliminary report on poverty, extreme poverty, and human rights in the Americas*, 2016. Available at: [www.iachr.fr](http://www.iachr.fr)

<sup>42</sup> U.S. Department of State, *2011 Human Rights Report: India, Prison and Detention Center Conditions*. Available at: <http://www.state.gov/j/drl/rls/hrrpt/2011/sca/186463.htm>

<sup>43</sup> FIDH and Human Rights Center Viasna, *Death Penalty in Belarus: Murder on (Un)lawful Grounds*. 2016. p.59

<sup>44</sup> Doc NU, « Extrême pauvreté et droits de l'Homme », disponible sur [http://www.un.org/fr/ga/search/view\\_doc.asp?symbol=A/67/278](http://www.un.org/fr/ga/search/view_doc.asp?symbol=A/67/278).

<sup>45</sup>Quaker United Nations Office, *Children of parents sentenced to death or executed: how are they affected? How can they be supported?*, 2012. P.5. Available at :

[http://quono.org/sites/default/files/resources/English\\_Children%20of%20parents%20sentenced%20to%20death%20or%20executed.pdf](http://quono.org/sites/default/files/resources/English_Children%20of%20parents%20sentenced%20to%20death%20or%20executed.pdf)

<sup>46</sup> National Law University, *The Death Penalty India Report*, 2016, p. 105

The WCADP, an alliance of more than 155 NGOs, bar associations, local bodies and unions, was created in Rome on 13 May 2002. It was founded as a result of the commitment made by the signatories of the Final Declaration of the 1st World Congress against the Death Penalty, which was organised by the French NGO Together Against the Death Penalty (ECPM) in Strasbourg in June 2001. The aim of the WCADP is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the end of death sentences and executions in those countries where the death penalty is in force.



The WCADP is striving to achieve these by lobbying international organisations and States, organising international events, and facilitating the creation and development of national and regional coalitions against the death penalty. Since 2003, the WCADP has made 10 October the World Day against the Death Penalty.

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