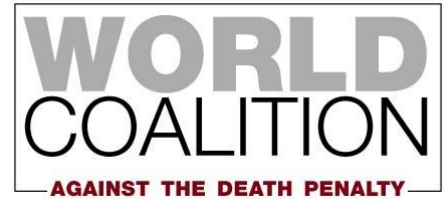




Parliamentarians for Global Action
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي



DEATH PENALTY AND POVERTY

Factsheet for Parliamentarians

15th World Day Against the Death Penalty

Introduction

In many countries across the world, the gap between the lowest and highest income has been increasing. This phenomenon is only deepening the disparities on how the justice systems approaches defendants from lower social classes from those from higher social classes, including how the death penalty is applied.

This is why members of the World Coalition against the Death Penalty have decided to devote the 15th World Day against the Death Penalty to the issue of poverty, to highlight how capital punishment affects disproportionately populations which are disadvantaged economically and disenfranchised.

Parliamentarians for Global Action, under its [Global Parliamentary Platform for the Abolition of the Death Penalty](#), strives to promote full abolition. However, until abolition can be fully abolished in every country, it is pivotal for parliamentarians to be aware and to highlight how the death penalty is effectively applied, in order to construct a fairer justice system in their respective countries.

Poverty: “a multidimensional phenomenon”¹

In its most common use, poverty is understood as the lack of economic resources. However, it is a problem much broader than – the very real issue of – financial challenges. The Committee on Economic, Social and Cultural Rights defined poverty as “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”.²

The different aspects of poverty impact how the justice system treats an individual:

- **The lack of financial resources** has a very immediate impact, preventing the individual from being defended by a lawyer of his or her choice and limits his or her capabilities to present an effective defence.
- **The cultural and educational gap** that most poverty-stricken populations endure often means that such individuals do not have the same understanding of how the judicial system works and how to handle and response to legal developments (such as the right to a lawyer or the right to silence).

¹ This is how the United Nations Special Rapporteur on Extreme Poverty approaches the topic of poverty.

² Committee on Economic, Social and Cultural Rights, Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights , 10 May 2001, E/C.12/2001/10, para. 8.

- **The stereotypes or negative perceptions** that are unfortunately associated with poor populations create a widely spread bias from the judicial system against those individuals, which itself makes them more likely to be prosecuted or to get harsher sentences than other suspects. Such stereotypes also stem from the common traits of the most disenfranchised populations in each specific context, such as race or religion.

What are the relevant international human rights standards?

Article 7 of the **Universal Declaration of Human Rights** provides that “all are *equal before the law* and are entitled *without any discrimination* to equal protection of the law.”

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*.”

Article 26 of the **International Covenant on Civil and Political Rights** provides 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 3 of the **African Charter on Human and Peoples’ Rights** provides that “*every individual shall be equal before the law*” and that “*every individual shall be entitled to equal protection of the law*”. Article 7 provides for “*the right to defence*”.

Article 6 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** provides that “everyone charged with a criminal offence has the following minimum rights: [...] 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 [...].”

Article 24 of the **American Convention on Human Rights** provides that “all persons are *equal before the law*. Consequently, they are entitled, *without discrimination*, to equal protection of the law.” Article 8 provides for “*the right to be assisted by counsel provided by the state*”.

Article 12 of the **Arab Charter on Human Rights** provides that “*all persons are equal before the courts and tribunals*.” Article 16 provides for the right “*to the free assistance of a lawyer*”.

What can parliamentarians do? A look at some key-areas for progress

First and foremost, **it is paramount to raise the debate and open wide discussions about the effect of poverty on the justice system, and especially if it still applies the death penalty**. The disproportionate severity of criminal sanctions towards poverty-stricken individuals is a matter of public debate, which should be tackled by parliamentarians, as elected representatives of the people.

Such discussions and legal and societal reforms are necessary to achieve the Sustainable Development Goals 10 (“Reduce inequality within and among countries”) and 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”).

Besides making sure that this issue is at the forefront of the political debate in their respective countries, parliamentarians can tackle its effects by working on the following key areas.

- **Access to information and outreach**

By nature, all justice systems are very complex and their inner workings are often understood only by a minority of very well-educated people. In concrete terms, this means that **most people, and in particular people living in poverty, lack the education and savviness to navigate the judicial system** they might find themselves confronted to, especially in capital cases: from understanding one's right to remain silent to knowing which legal recourses are available, every step of a legal proceeding disproportionately disadvantages individuals from lower economic backgrounds.

For example, the National Law University of Delhi found that 20% of individuals sentenced to death in India never went to school.³



Parliamentarians can:

- Liaise with civil society groups, especially in areas affected by poverty, to raise awareness about the basic functioning of the judicial system;
- Table bills or amendments to ensure that individuals accused of capital crimes receive comprehensive information about their rights and the legal process of a death penalty case;
- Table bills or amendments to require that a study be made about the overall understanding of the national justice system by the population and of possible measures to improve it;
- Table bills or amendments designed to make sure that documentation about the functioning of the judicial system, such as booklets, comic strips or flyers, are made widely available in public offices throughout the country;
- Press the government so that it adopts a policy of organizing public events aimed at explaining the judicial system in areas affected by poverty and illiteracy;
- Table bills or amendments designed to include civics education in schools, including how the judicial system works.

- **Pre-trial detention and bail**

Pre-trial detention is a common measure that restricts one's liberty, in order to ensure that they will attend their trial, not obstruct the proceedings, not reoffend, or to protect public order. However, in countries where release on bail is possible, people from disadvantaged economic backgrounds are more likely to be put in pre-trial detention and to be denied interim release, as it will be more difficult for them to afford it. Furthermore, whether the suspect has a stable residence or not will be considered by the authorities as an important factor when deciding whether to place him or her in pre-trial detention. In itself, pre-trial detention increases the risks of an accused of being found guilty and of getting a harsher sentence, including the death penalty.



Parliamentarians can:

- Press their governments so that police officers and justice professionals receive training as to the limited situations in which an individual can be put in pre-trial detention;
- Table bills or amendments designed to ensure that bail is calculated proportionately to the economic situation of the defendant and that other assurances can be taken into consideration;
- Ask parliamentary questions or table bills to press the government to ensure that the national framework for pre-trial detention's compliance with international standards is a priority.

³ National Law University, *The Death Penalty India Report*, 2016, p. 108.

- **Effective legal aid**

Being faced to the justice system always has a cost: it can be the cost associated with filing documents with the Court, the fees of an expert witness, or the cost of a good lawyer. This immediately puts people from disadvantaged background in a precarious position where they might not be able to afford defending themselves. This of course is particularly worrying in capital cases. Most judicial systems do have a legal aid or legal assistance mechanism, under which a lawyer can be appointed to indigent defendants. However, the defence provided in such systems is usually of poorer quality, as the attorneys are inexperienced, underpaid and/or overworked, and do not have the necessary means to ensure an effective defence.

For example, the Presidential Commission on Reform of the Administration of Justice of Nigeria had discovered in 2007 that “one of the most intractable problem in death penalty administration in Nigeria is the severe lack of competent and adequately compensated counsel for impoverished defendants and death row inmates seeking appeals”.⁴

No justice system is safe from judicial error and innocent people, especially those without means to defend themselves, are likely to be sentenced to death. The UN Safeguards Protecting the Rights of Those Facing the Death Penalty lays down standards for the conduct of trials including the right to legal representation based on Article 14 of the ICCPR. In many countries, these standards are not met. Some judicial systems thus consider poverty as a mitigating factor when considering the appropriate sentence for a defendant. For example, the Supreme Court of India found that “socio-economic compulsions such as poverty are [...] factors that are to be considered by Courts while awarding a sentence”.⁵



Parliamentarians can:

- Open parliamentary debates about the national legal aid policy and its impact, inviting professionals of the justice system to testify as to their experience;
- Ask parliamentary questions to the government as to the compliance of the national legal aid policy with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems;
- Ask parliamentary questions and table bills regarding the specific impact of the country’s legal aid policy in cases carrying the death penalty;
- Table bills or amendments designed to strengthen their domestic legal aid policy, notably by including training and adequate remunerations for the court-appointed lawyers, lump sums for the defendants to be able to afford experts witnesses or other defence-related costs, and coverage for all appeals and legal recourses available;
- Table bills or amendments to ensure that socio-economic conditions are fully considered by the judiciary when giving out sentences;
- Ensure that legal aid is fully financed when approving the budget bill every year.

⁴ Amnesty International & LEDAP, *Nigeria: Waiting for the Hangman*, 2008, AFR 44/020/2008, p. 17.

⁵ Supreme Court of India, Criminal Appellate Jurisdiction, *Sunil Damodar Gaikwad v. State of Maharashtra*, Judgment, 10 September 2013, Appeals No 165-166 of 2011, para. 24.

- **Corruption in the judicial system**

Many countries suffer endemic corruption, which can affect the police force and the judicial system at large. This inevitably leads to people from lower economic backgrounds to be disadvantaged as they have neither the financial means nor the network to guarantee a favourable outcome to the proceedings led against them. Corruption can also affect basic services, such as the ability to file documents with courts' clerks or conditions of detention.



Parliamentarians can:

- Table bills or amendments designed to fight corruption, especially in the judicial system, including adequate remuneration of police officers, clerks, judges and other professionals involved in legal proceedings, and effective sanctions for public servants that have been caught asking for undue payments;
- Ask parliamentary questions and table bills regarding the specific impact of corruption in cases carrying the death penalty;
- Press the government to implement trainings for judicial and penitentiary professionals so they are made fully aware of the legal framework on corruption, as well as of their duties as public servants.

- **Biases and discrimination**

People from lower social backgrounds can often be the object of negative stereotypes, which themselves drive biases and discrimination within the judicial system. They are more likely to not be believed, to have their defences dismissed, to be found guilty and sentenced to harsher sentences, including the death penalty. This class discrimination is also often interwoven with other forms of discrimination, based on race, religion, etc.

For example, numerous studies have shown that in the United States of America, black men living in poverty-stricken areas are more likely than their counterparts to be arrested and incarcerated.⁶



Parliamentarians can:

- Table bills or amendments to require that a national study be made about the characteristics of defendants and convicts, especially death row inmates, and that such study be renewed regularly so as to examine if improvements have been made;
- Invite civil society representatives to address Parliament about their research and experience about discriminations in the judicial system;
- Press the government so that members of the judiciary are provided with training to help them identify their biases and the negative impact of discriminations on society;
- Table bills or amendments to punish civil servants for the outwardly discriminatory remarks and behaviours they might show during the course of their duties.

⁶ Bruce Western, « Mass incarceration, Macrosociology and the poor », Annals of the American Academy of political and social science, April 2013.



Focus: migrant workers and the death penalty

Migrant workers usually are in a situation of poverty. Their specific situation puts them at an increased risk of being prosecuted and sentenced to death.

For example, in one of the countries where the capital punishment is used the most often, Saudi Arabia, migrant workers are numerous and at a great disadvantage when confronted to the judicial system: as they often lack the Arabic skills, they cannot understand the proceedings and are thus most likely to receive a harsh sentence, for lack of an effective defence.



More generally, Parliamentarians can fight against the death penalty by:

- Liaising with civil society groups to support their work;
- Attending events related to the abolition of the death penalty and show support as a member of parliament, especially on World Day against the Death Penalty (10 October);
- Raising the issue of the death penalty and the disproportionate impact of poverty in Parliament;
- Organising public debates, including in the relevant parliamentary committees;
- Raising awareness about the capital punishment with their constituents;
- Tabling parliamentary questions to their government on the use of death penalty;
- Reviewing draft legislation to assess its compliance with international standards;
- Introducing a resolution stating their Parliament's opposition to the death penalty in general, and in particular when applied unfairly;
- Advocating for the establishment of a parliamentary committee on human rights and the death penalty, and ensure that economic, social and cultural rights are included in the discussions;
- Pressing the government to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Discussing openly in Parliament the outcomes of commissions of inquiry, United Nations officials' visits, Human Rights Committee reports, etc., about the issue of death penalty and the impact of poverty;
- Joining an inter-parliamentary network, such as Parliamentarians for Global Action, to share best practices with their peers in other Parliaments;
- Taking part in social media campaigns and raising the issue of capital punishment in the media in their quality of member of parliament.

To join PGA's Global Parliamentary Platform against the Death Penalty, please visit:

<http://www.pgaction.org/campaigns/abolition-of-the-death-penalty.html>

If you are interested in developing abolitionist initiatives within your Parliament or if you want more information, please contact:

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