



**Access
to counsel:
A matter of life
or death**

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On 10 October 2020, the World Coalition Against the Death Penalty and abolitionist organizations around the world will celebrate the 18th World Day Against the Death Penalty.

This year the World Day is dedicated to the right to effective legal representation during all stages of arrest, detention, trial and post-trial – a pillar in the right to a fair trial.

Without access to effective legal representation during those stages, due process cannot be guaranteed. In a capital case, the consequences that can arise from a lack of effective legal representation can be nothing less than the difference between life and death.

Since the late 1970s, the global abolitionist movement has won numerous and crucial victories. Today, 142 countries⁽¹⁾ are abolitionist in law or practice, representing more than two thirds of the world's countries. According to Amnesty International's 2020 annual report, at least 26,604 people were known to be under a sentence of death worldwide at the end of 2019.

Most countries in their national law provide, in some capacity, the right to counsel. On the international and regional levels, the right to legal representation is enshrined in most human rights instruments. Unfortunately this right is too often violated, as examples from around the world show the obstacles that can arise: defense lawyers lack sufficient time to confer with their client or prepare a case before trial; legal aid and prosecution lawyers are overburdened with case work and lack capacity; lawyers working at risk to their own lives in hostile environments; inexperienced lawyers compelled to represent capital cases; lawyers paid inadequate sums for their work and lacking budget for basic

(1)Amnesty International, 2020. Global Report. Death sentences and executions 2019.
<https://www.amnesty.org/en/documents/act50/1847/2020/en/>

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expenses, and many more reasons. Whatever the reason, the importance of a lawyer who has the tools, experience and resources to be effective in a case where death may be a result cannot be underestimated.

While working towards the total and complete abolition of the death penalty worldwide for all crimes, it is crucial to alert civil society and the international community to the necessity that, at all stages of the legal proceedings, those facing the cruel, inhuman and degrading punishment of execution should at least have access to effective legal representation. Such legal aid can provide the basic protection of either avoiding the sentence or appealing the verdict.

**For one less
death sentence
is one
human life
saved,
pending final and
universal abolition
of capital punishment.**

The death penalty in practice

- ▶ **106** countries abolished the death penalty **for all crimes**
- ▶ **8** countries abolished the death penalty **for ordinary crimes only**
- ▶ **28** countries are **abolitionist in practice**
- ▶ **56** countries are **retentionist**
- ▶ **In 2019, the 5 countries that carried out the most executions were:**
 - China,
 - Iran,
 - Saudi Arabia,
 - Iraq,
 - Egypt.

What is legal representation?

Legal representation refers to the role of a lawyer in relation to their client. When a lawyer legally represents a client, the lawyer defends the client's interests, speaks for the client in legal matters, and assists the client in the preparation of their defense.

“Access” to legal representation refers to the right to get advice and representation from a lawyer or legal advocate without financial, legal or physical barriers. They must be able to communicate freely with their lawyer in a private, confidential setting. They must be able to consult with their lawyer at any time when their rights may be in jeopardy.

Effective legal counsel refers to the lawyer's obligation to provide zealous, substantial representation for their client to the best of their ability, and to undertake all reasonable actions on behalf of their client. The actions that constitute effective legal counsel vary between countries but may include investigating their client's circumstances, visiting their clients, and having access to court and prison files.

Tepei Ono

Practicing lawyer and member of the Abolition of the Death Penalty Working Group of the Japan Federation of Bar Associations.

“Japanese death row inmates are in extreme isolation. They may be allowed to contact their relatives or lawyers, but [...] even their supporters are not allowed to communicate with them. The asserted reason is the necessity of preserving the ‘peace of mind’ of death row inmates who are forced to await their coming execution and are likely to experience mental distress. [...] Such strict restriction, however, impede them from building and keeping a personal relationship, and even accessing legal assistance.

[A letter was sent] to a death row inmate in Tokyo Detention House by his daughter. She might try to give him a message from his acquaintance, but some parts were redacted. When I met the inmate for the first time, he said to me with a trembling voice, “Look at this letter. Even a letter from my daughter was blacked out. She is my real daughter. This is totally unacceptable.”

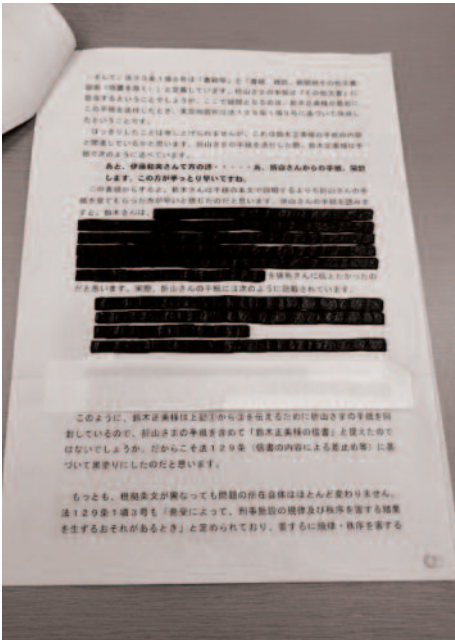
I decided to help him, reaching out to his daughter to find out what was written there. Then I sent a [letter] to advise him that the deletion would be illegal. Nevertheless, parts of the mail I sent, including those about legal advice, was censored and redacted.

Does the restriction posed by the prison law really contribute to their ‘peace of mind’? Rather, it may instead help to break off their relationship with their supporters or close friends – even obstruct communication with their lawyers – which will finally drive them into severe loneliness. The restriction aiming at keeping their ‘peace of mind’ paradoxically threatens their mental stability, as well as their right to legal assistance.”



Photograph provided by witness.

Tepei Ono



Photograph provided by witness.

Redacted letter sent by Tepei Ono to his client.

Source: Testimony organized by the International Association of Lawyers.

IRAN

Mohammadreza Haddadi

sentenced to death in 2003 at the age of 15 and still incarcerated.

“ There was no one from the Coroner's Office at trial [who gave evidence regarding the crime]. There were only the [victim's] next of kin, as well as my father, and that was at the second session [of the trial].

I did not have an attorney in the first session. In the second session, there was a court-appointed lawyer [...], I don't know if they had paid him or what, if they had talked to him or not, I don't know. I did not meet with him in jail or anywhere else; he just showed up in the second session and said some jargon that I felt he was speaking on behalf of the judge. He did not say anything on my behalf.”

Source: Testimony organized by the Abdorrahman Boroumand Center during an interview in prison in 2016.

INTERNATIONAL HUMAN RIGHTS LAWS AND STANDARDS

The rights to legal counsel are protected under both regional and international human rights instruments, including:

- ▶ the Universal Declaration of Human Rights, Article 11;
- ▶ the Basic Principles on the Role of Lawyers, Paragraphs 19 and 25;
- ▶ Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50), Guarantee N° 5;
- ▶ the International Covenant on Civil & Political Rights, Article 14 (3) (d) ;
- ▶ the African Commission on Human & People's Rights Charter (the Banjul Charter), Article 7 (1) (c) ;
- ▶ the European Convention on Human Rights, Article 6 (3) (c);
- ▶ the Arab Charter on Human Rights, Articles 12 and 13;
- ▶ the Organization of American States' American Convention on Human Rights, Article 8 (2) (d) and (e).

NIGERIA

Vincent Soligbo

Capital Offence Defense Attorney in Kaduna.



Vincent Soligbo

Photograph provided by witness.

“ I discovered that a large percentage of prisoners at various detention facilities were awaiting trial inmates and the other percentage are condemned convicts who could not afford the services of a lawyer to appeal their conviction. This usually led to the likelihood of the state to order for their execution by hanging without notice. Interacting with several of the persons on death row, I discovered that most of them at the time of prosecution and even after conviction were never afforded the constitutional opportunity of proper legal representation. Hence, poor representation lead to convictions solely based on confessional statement obtained via torture. This was a common trend; inadequate legal representation at the trial courts led to more persons ending up on death row. ”

Source: Testimony organized by Avocats Sans Frontiers France (Lawyers Without Borders France).



William Fletcher

Jason Koski/University Photography (Cornell University*)

USA

Judge William Fletcher

United States Circuit Judge of the US Court of Appeals for the Ninth Circuit, California.

“ I want to emphasize that the great majority of **prosecutors** are hardworking and ethical. But there are exceptions (...) [and] they often involve the **failure to hand over to the defense exculpatory evidence** (...) On February 10, 1988, Gary Benn shot and killed his half-brother and a friend of his half-brother. Benn immediately called the police and asked them to come to the house. There was no question Benn had committed a double homicide. The question was whether it warranted the death penalty. The Pierce County prosecutor's office decided to seek the death penalty. What made Benn death eligible under Washington law was that—at least in the prosecutor's view—Benn had killed the men to cover up another crime: (...) arson, followed by insurance fraud. Benn's house trailer had burned some time before, and Benn had made an insurance claim based on the fire. Two reports were prepared by fire marshals (...) [and following a thorough investigation] conclusively determined that the fire was an accident (...). The prosecutor gave Benn's lawyers both reports but did not disclose the investigation's conclusion that the fire was accidental. He kept that conclusion secret.”

Source: Testimony sent by the Advocates for Human Rights, from a lecture given in 2013 at New York University.

Claudia Cornelia Goecke

Wife of a currently incarcerated individual in the state of Florida.

“ New experts joined the legal team for my husband's appeal later and asked me when the hearing would take place - the main lawyer in the team did simply not inform his own team. Documents and files we had submitted would always get lost or were not forwarded. At the trial the legal team had almost no mitigating evidence to present - it did not surprise us as **none of his lawyers ever tried to get to know him**. In their testimonies they contradicted themselves; sometimes it felt they were even on the other side. My husband lost his case with a 12:0 decision- worse than the original trial when he represented himself. But he has no means and access to a good legal representation and that's what in the end decides over life or death.”

Source: Testimony organized by the German Coalition Against the Death Penalty.

(*) <http://universityrelations.cornell.edu/resources/>

10 reasons to end the use of the death penalty

1

No State should have the power to take 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 or executed.

3

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 members of racial and ethnic minority groups. In some places, the imposition of the death penalty is used to target groups based on sexual orientation, gender identity, political opinion, or religion.

4

It is inhuman, cruel, and degrading.

Conditions on death row and the anguish of facing execution inflict extreme psychological suffering, and execution is a physical and mental assault.

5

It denies any possibility of rehabilitation.

6

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 seven occasions, the United Nations General Assembly has called for the establishment of a moratorium on the use of the death penalty (resolutions n° 62/149 in 2007, n° 63/168 in 2008, n° 65/206 in 2010, n° 67/176 in 2012, n° 69/186 in 2014, n° 71/187 in 2016 and n° 73/175 in 2018).

7

It creates more pain,

particularly for the relatives of the person sentenced to death, including children, who will be subjected to the violence of forced mourning.

8

It is counterproductive,

because by instituting the killing of a human being as a criminal solution, the death penalty endorses the idea of murder more than it fights it.

9

It is inefficient and does not keep society safer.

It has never been conclusively shown that the death penalty deters crime more effectively than life imprisonment.

10

Not all murder victims' families want the death penalty.

A large and growing number of crime 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.

10 Things YOU can do to end the death penalty

- 1 Organize a demonstration.** *This option must be considered with the utmost care given the COVID-19 pandemic – please use public policy and common sense if you decide to hold a public demonstration.*
- 2 Organize a gathering on a videoconference platform.** It can take the shape of a webinar, remote workshop, conversation, a public debate or even a virtual film screening to create awareness.
- 3 Coordinate a letter/email writing campaign.**
- 4 Participate in a TV show or within a community radio.**
- 5 Organize an art exhibition** (of artwork made by people sentenced to death, of photographs of death row, of drawings or posters) or a [virtual] theatre performance.
- 6 Join the events** prepared for the abolition of the death penalty worldwide. Visit the World Coalition's webpage to learn which events are organized near you!
- 7 Donate** to a group working to end the death penalty.
- 8 Follow the social media campaign** on Facebook, Instagram 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 30 November 2020.

TO FIND OUT MORE

Find out everything about World Day Against the Death Penalty at <http://www.worldcoalition.org/world-day.html>, including:

- The 2020 World Day poster
- The Mobilization Kit
- Detailed factsheet on the death penalty around the world
- Resources for Lawyers, Media, Judges and Police
- The 2019 World Day Report

The World Coalition Against the Death Penalty is an alliance of more than 160 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 actions 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 18th 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.



World Coalition Against the Death Penalty

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