

# **2016 WORLD DAY AGAINST THE DEATH PENALTY**

**STOP THE CYCLE OF VIOLENCE: THE USE OF THE DEATH  
PENALTY FOR TERRORISM-RELATED OFFENCES**

**AMNESTY  
INTERNATIONAL**



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# GLOSSARY

<b>ABOLITIONIST FOR ALL CRIMES</b>	Countries whose laws do not provide for the death penalty for any crime.
<b>ABOLITIONIST FOR ORDINARY CRIMES</b>	Countries whose laws provide for the death penalty only for exceptional crimes, such as crimes under military law or during war.
<b>ABOLITIONIST IN PRACTICE</b>	Countries which retain the death penalty in law for ordinary crimes but have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.
<b>RETENTIONIST</b>	Countries that retain the death penalty in law for ordinary crimes, such as murder, in times of peace and do not meet criteria for “abolitionist in practice”.
<b>CLEMENCY</b>	An act showing mercy or leniency, usually by the executive, by lessening or even completely eradicating a sentence; used as a general term covering both commutations and pardons.
<b>COMMUTATION</b>	The death sentence is replaced by a less severe punishment, such as a term of imprisonment, often by the judiciary on appeal, but sometimes also by the executive.
<b>PARDON</b>	The convicted person is completely exempted from further punishment; this can be granted for a variety of reasons, usually by the executive such as the head of state or government, or in some cases by clemency boards, which have been given final authority.
<b>EXONERATION</b>	After sentencing and the conclusion of the appeals process, the convicted person is later freed from blame or acquitted of the original criminal charge, and therefore is regarded as innocent in the eyes of the law.
<b>MOST SERIOUS CRIMES</b>	The only category of crimes to which the use of the death penalty must be restricted to under international law. International bodies have interpreted this as being limited to crimes involving intentional killing.
<b>MORATORIUM ON EXECUTIONS / ON THE USE OF THE DEATH PENALTY</b>	A public commitment made by the highest authorities or courts, which officially suspends the carrying out of death sentences, or even imposition of the death penalty as such; this should not be confused with a period of time where executions have in fact not been carried out.

# 1. THE DEATH PENALTY: NEVER THE SOLUTION

*“Breivik did what he did because he thought it was justified. Would we be any better if we did the same to him thinking we were justified? I refuse to follow the path of terrorists.”*

Bjørn Ihler, a survivor of the attacks carried out by Anders Behring Breivik in 2011 which resulted in the death of 78 people

On 10 October 2016 Amnesty International joins the global abolitionist movement in marking the 14th World Day Against the Death Penalty, whose focus on the use of the death penalty for terrorism-related offences is timely. While armed and other violent attacks are not a new phenomenon, recent years have seen repeated high-profile violent attacks – in many cases against a backdrop of political instability and conflict – that have sent shockwaves throughout the world.

The rise of the armed group calling itself Islamic State, which has sought to internationalise its activities across multiple regions and continents, has attracted particular global attention, giving rise to calls in many countries for an intensified confrontation with such groups and those involved in them. In countries which have abolished the death penalty, some politicians and lawyers have argued for the reinstatement of the death penalty.

Attacks on the general population cause terrible suffering to the immediate victims and their families. They can also create a climate of fear in which communities live in terror. Such attacks can never be justified. Amnesty International will continue to condemn them, and to call upon governments to properly investigate and bring those suspected of responsibility to justice, to expose the truth about what has happened, and to provide ways for those affected to obtain support and reparations.<sup>1</sup>

However, when security threats are involved, governments too often respond in ways which undermine human rights. In recent years, Amnesty International has documented a wide range of practices that are inconsistent with human rights, including attempts to justify the use of torture, and flagrant breaches of international law - for example, in relation to the treatment of detainees in US detention centres in Afghanistan and at Guantánamo Bay, and those held at undisclosed locations elsewhere. In other contexts, state responses to concerns over security have intensified existing patterns of human rights violations or have sought to justify new abusive practices carried out in the name of security.

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<sup>1</sup> See for example, Amnesty International, Indonesia: Vicious Jakarta attack shows utter contempt for human life, 14 January 2016, <https://www.amnesty.org/en/latest/news/2016/01/indonesia-vicious-jakarta-attack-shows-utter-contempt-for-human-life/>; Iraq: Amnesty International Condemns Deadly Bombing, Warns Against Further Executions, 4 July 2016, <https://www.amnesty.org/en/documents/mde14/4394/2016/en/>; Boko Haram attacks: End these shocking acts of brutality, 19 November 2015, <https://www.amnesty.org/en/latest/news/2015/11/boko-haram-attacks-end-these-shocking-acts-of-brutality/>; and Pakistan: Attack on Quetta hospital abhorrent disregard for the sanctity of life, 8 August 2016, <https://www.amnesty.org/en/latest/news/2016/08/pakistan-attack-on-quetta-hospital-abhorrent-disregard-for-the-sanctity-of-life/>.

The death penalty is the ultimate sanction that a state can impose; it is a cruel, inhumane and degrading punishment, denying people the human right to life that governments often resort to in times of perceived national crisis, to demonstrate their “strength” in dealing with threats.

Although the use of the death penalty for such offences is often shrouded in secrecy, Amnesty International has found in its research that it has been increasing in recent years. At least 20 countries sentenced people to death or carried out executions for terrorism-related crimes last year: Algeria, Bahrain, Cameroon, Chad, China, DRC, Egypt, India, Iran, Iraq, Jordan, Kuwait, Lebanon, Pakistan, Saudi Arabia, Somalia, Sudan, Tunisia, UAE and the USA. Since 2014, Amnesty International has recorded a resumption in executions linked to states’ responses to terrorism-related offences in at least two countries, and the expansion of legislation to make state security offences punishable by death in at least five countries. In some cases this legal expansion has violated international law, which restricts the use of the death penalty to intentional killing, by defining “terrorism” in an overly broad and vague way, including such offences as “undermin[ing] the stability of the State”.

Amnesty International opposes the death penalty in all circumstances. Even in contexts where crimes of unimaginable scale and horror have occurred, the death penalty has been ruled out: Burundi, Bosnia and Herzegovina, Cambodia, Germany, South Africa and Rwanda have all abolished the death penalty. The international community has ruled out the death penalty as a sentencing option in international tribunals for genocide, war crimes and crimes against humanity.

There is no evidence that the death penalty deters violent crime more effectively than alternative punishments. It does not tackle the root causes of violent armed attacks. By highlighting terrorism-related offences on the World Day Against the Death Penalty, Amnesty International appeals to policy-makers around the world not to allow state policies to be driven by the strong reactions that understandably emerge in the aftermath of violent attacks and to take all steps within their power to confine the use of the ultimate cruel, inhuman and degrading punishment to history.

## **SARIN GAS ATTACK**

**Thirteen members of the Aum Shinrikyo cult** who were found guilty of and sentenced to death for carrying out a deadly sarin gas attack in the Tokyo subway in 1995 and other illegal activities are now at risk of execution in Japan. This followed the conclusion of the trials of other cult members. The 13 men are: Seiichi Endo, Satoru Hashimoto, Kiyohide Hayakawa, Yasuo Hayashi, Kenichi Hirose, Yoshihiro Inoue, Chizuo Matsumoto (also known as Shoko Asahara), Kazuaki Miyamae, Tomomasa Nakagawa, Tomomitsu Niimi, Toru Toyota, Masami Tsuchiya and Masato Yokoyama.

On 7 September the High Court of Tokyo upheld the conviction and indefinite prison sentence of the last man charged in relation to the 1995 sarin gas attack in the Tokyo subway system. The attack killed 13 people and injured over 6,000 others. The completion of the last judicial case related to this event means that the 13 Aum Shinrikyo cult members are now at risk of execution. They were convicted and sentenced to death, in separate trials between 2006 and 2011, for their respective roles in orchestrating and carrying out the gas attack.

Three additional members of the Aum Shinrikyo cult, also suspected of involvement in the sarin gas attack, were subsequently arrested and charged, which resulted in a temporary stay of the executions of the 13 men. Under Article 475 of the Criminal Procedure Code, executions in Japan cannot take place until the cases of all co-defendants are finalized. The confirmation of the conviction and sentence in the last remaining case by the Tokyo High Court in September 2016 has paved the way for the 13 executions to be carried out, as any further judicial reviews of the most recent cases would not involve the participation of witnesses in the proceedings.

# 2. THE FLAWED CASE FOR DETERRENCE

***“[T]he Government’s view according to which the death penalty is a deterrent to violence, including terrorism, appears not to be valid given the deteriorating security situation over the past years.”***

UN Assistance Mission for Iraq, 2014

Governments that use the death penalty in response to armed and other violent attacks often argue that this punishment addresses the problem by serving as a deterrent.

However, there is no credible evidence that the death penalty deters violent crime more than other punishments. A series of authoritative studies conducted for the United Nations in regions around the world have repeatedly found that the death penalty does not have a greater deterrent effect on crime than a term of imprisonment. The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded: "...research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".<sup>2</sup> Additionally, statistics from countries that have abolished the death penalty demonstrate that the absence of the death penalty has not resulted in an increase in crime. In Canada, for example, the homicide rate remains significantly lower than prior to its abolition in 1975.<sup>3</sup>

Those who argue in favour of the death penalty because of its deterrent effect base their position on the assumption that behavioural choices can be influenced through threats: the potential offender understands the consequences of his or her actions, makes a rational decision to allow his or her behavior to be influenced by the threat, and perceives the threat as real loss.<sup>4</sup> As criminologist Jeffrey Fagan has noted, in the case of terrorism-related acts, the logic of the deterrence argument may not always apply as death may not be viewed as a threat.<sup>5</sup> In 2015 a prison official in Pakistan told Amnesty International that when a member of the Lashkar-e-Jhangvi militant group was executed, he heard that the organization was distributing *mithai* [confectionary sweets] to celebrate his ‘martyrdom’.<sup>6</sup> A UN report on the death penalty in Iraq noted that, “as many of those engaged in committing acts of terrorism in Iraq are motivated by an

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<sup>2</sup> Roger Hood, “The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control”, UN document E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially in 2008 (see endnote 86).

<sup>3</sup> Roger Hood, “The Death Penalty: A World-wide Perspective”, Oxford, Clarendon Press, Fourth edition, 2008, p. 325.

<sup>4</sup> Paul Robinson and John Darley, “Does the criminal law deter?” Oxford Journal of Law, 24 (2004), p. 173.

<sup>5</sup> Jeffrey Fagan, Deterrence And The Death Penalty In International Perspective, in United Nations, Moving Away From The Death Penalty: Arguments, Trends And Perspectives, 2015.

<sup>6</sup> See also: “Death penalty – the human tragedy behind the numbers”, The Express Tribune, 1 August 2015, available at <http://tribune.com.pk/story/929979/death-penalty-the-human-tragedy-behind-the-numbers/>

extremist ideology and are prepared to die to achieve their objectives, it may well be that they do not view the death penalty as a deterrent”.<sup>7</sup>

Two country examples undermine claims in favour of the death penalty’s role in deterring violent armed attacks. Authorities in Cameroon introduced the 2014 anti-terrorism law, prescribing the death penalty for acts of “terrorism”, specifically to combat violent attacks by the armed group Boko Haram. Since then, Boko Haram has significantly increased its attacks, including suicide bombings, in Cameroon. From July 2015 to July 2016 the group carried out at least 200 attacks, including 38 suicide bombings, in the Far North region of Cameroon, which killed more than 470 people.<sup>8</sup> The frequency of Boko Haram’s attacks in northern Cameroon peaked between November 2015 and the end of January 2016, with a record of one attack every three days.<sup>9</sup> January 2016 was also the worst month, with at least nine suicide attacks killing over 60 people.<sup>10</sup> In Iraq, hundreds of people have been sentenced to death and executed under the 2005 Anti-Terrorism Law since it was introduced 16 years ago. The UN Assistance Mission in Iraq found in 2014 that “the Government’s view according to which the death penalty is a deterrent to violence, including terrorism, appears not to be valid given the deteriorating security situation over the past years.”<sup>11</sup>

The reality is that the issues giving rise to violent armed attacks on the general population and terrorism-related acts are complex and multi-faceted, and require States to engage with these. One 2015 study examining factors associated with terrorism-related crime found that “terrorism is driven by a variety of country-specific factors and individual characteristics.” The study cites a history of armed conflict, ongoing conflict within the country, corruption and a weak business environment as being strongly correlated with terrorism-related attacks in non-OECD countries, while in OECD countries, socio-economic factors such as youth unemployment, confidence in the press, belief in democracy, drug crime and attitudes towards immigration appear to be more significant correlating factors.<sup>12</sup> These are complex human problems, to which the death penalty offers a highly simplistic response.

Where governments present the death penalty as a solution to armed and other violent attacks they are not basing this on any solid evidence. Rather than being a solution, the use of the death penalty is often an attempt to demonstrate that governments, under domestic pressure in the wake of attacks, are acting to protect security.

## **ENDING THE CYCLE OF VIOLENCE: A DIFFERENT RESPONSE IS POSSIBLE**

When a heinous crime occurs, public outcries for action and retribution are understandable responses. However, anger and grief – no matter how justified – should not be used to justify the resumption of executions or retention of the death penalty. Moreover, victims of crime have often demanded an effective response that does not include the death penalty, which they see as perpetuating the cycle of violence. Death penalty advocates who claim to be acting on behalf of victims often imply that all those affected by crime support the death penalty.

In April 2015, Bill and Denise Richard, who lost a son and whose daughter was seriously injured in the Boston marathon bombing, wrote in the *Boston Globe*:<sup>13</sup>

<sup>7</sup> Office of the High Commissioner for Human Rights, Pakistan and the UN Assistance Mission for Iraq: Report on the Death Penalty in Iraq, October 2014, available at [http://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_HRO\\_DP\\_1Oct2014.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf)

<sup>8</sup> Amnesty International, Timeline of Boko Haram’s attacks in the Far North region from July 2015 to May 2016. Also, Amnesty International, Human rights under fire: Attacks and violations in Cameroon’s struggle with Boko Haram, 16 September 2015, (Index: AFR 17/1991/2015), <https://www.amnesty.org/en/documents/afr17/1991/2015/en/>

<sup>9</sup> Amnesty International’s Interview with Senior Army Staff, Maroua, 10 February 2016.

<sup>10</sup> Amnesty International, Timeline of Boko Haram’s attacks in the Far North region from July 2015 to May 2016.

<sup>11</sup> Office of the High Commissioner for Human Rights, Pakistan and the UN Assistance Mission for Iraq: Report on the Death Penalty in Iraq, October 2014, available at [http://www.ohchr.org/Documents/Countries/IQ/UNAMI\\_HRO\\_DP\\_1Oct2014.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf)

<sup>12</sup> Institute for Economics and Peace, “Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism”, page 14. <http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf> (accessed 27 September 2016)

<sup>13</sup> “To end the anguish, drop the death penalty”, *Boston Globe*, 16 April 2015, available at <https://www.bostonglobe.com/metro/2015/04/16/end-anguish-drop-death-penalty/ocQLejp8H2vesDavItHIEH/story.html>

*“We understand all too well the heinousness and brutality of the crimes committed. We were there. We lived it. The defendant murdered our 8-year-old son, maimed our 7-year-old daughter, and stole part of our soul. We know that the government has its reasons for seeking the death penalty, but the continued pursuit of that punishment could bring years of appeals and prolong reliving the most painful day of our lives. We hope our two remaining children do not have to grow up with the lingering, painful reminder of what the defendant took from them, which years of appeals would undoubtedly bring. For us, the story of Marathon Monday 2013 should not be defined by the actions or beliefs of the defendant, but by the resiliency of the human spirit and the rallying cries of this great city. [...] As long as the defendant is in the spotlight, we have no choice but to live a story told on his terms, not ours. The minute the defendant fades from our newspapers and TV screens is the minute we begin the process of rebuilding our lives and our family.”*

Bjørn Ihler is a survivor of the attacks carried out by Anders Behring Breivik in 2011 which resulted in the death of 78 people. In 2016 he wrote about his perspective on Breivik and the justice system:<sup>14</sup>

*“In 2011 I lost friends to Breivik, he took aim at me and his bullets barely missed me. He could have killed me. Many suggest that torture and capital punishment would be appropriate responses, but to me that would be sinking to the levels of terrorists. It wouldn't serve any purpose to take another life. Breivik did what he did because he thought it was justified. Would we be any better if we did the same to him thinking we were justified? I refuse to follow the path of terrorists [...] With our humanity in hand it's time we look to the future and break out of the cycle of violence. It's time we stand up and clearly say that we hold these truths to be self-evident, that we all are created equal, regardless of our crimes, what religion we belong to, what the colour of our skin is or where we might have come from, that we are endowed with certain unalienable Rights. Only through that can we in the long term build peaceful societies and put an end to violent extremism.”*

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<sup>14</sup> Bjørn Ihler, “Defiantly principled: Breivik v Norway”, 25 April 2016, available at <https://www.opendemocracy.net/can-europe-make-it/bjorn-ihler/defiantly-principled-breivik-v-norway>

# 3. RECENT DEVELOPMENTS

## 3.1 RESUMPTION OF EXECUTIONS

***“The decision of these countries to remove moratorium on death penalty contradict the world trend on the abolition of the death penalty and the international human rights law.”***

*UN independent experts, 23 December 2014*

Since 2014 the governments of at least two countries have resumed executions in response to perceived increase in armed or other violent attacks, after significant periods in which executions had not been carried out. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that executions may be considered arbitrary if they are resumed owing to extraneous developments, unrelated to the crime or individual in question.<sup>15</sup>

On 17 December 2014, the day after a school in Peshawar was attacked, leaving more than 149 people dead including 132 children, the government of **Pakistan** lifted a six-year moratorium on civilian executions for terrorism-related offences. Seven people were executed in less than two weeks. All had been convicted under the Anti-Terrorism Act.

On 29 August 2015, after 12 years without executions in **Chad**, 10 people convicted of carrying out the twin attacks that killed 38 people in N’Djamena in June 2015 were executed by firing squad. They were accused of being Boko Haram members and were sentenced to death in a trial held behind closed doors the previous day. The executions were the first in Chad since 2003. The authorities had announced in 2014 that they would abolish the death penalty.

## 3.2 VIOLATIONS OF INTERNATIONAL FAIR TRIAL STANDARDS

***“Terrorist attacks should not prevent States from complying with international law which imposes stringent requirements that must be met before the death penalty may be imposed.”***

*UN independent experts, 23 December 2014*

Those accused of involvement in terrorism-related offences are particularly likely to be subjected to unfair trials. A selection of recent cases from Kuwait, Iraq and Egypt is illustrative.

For example, in **Kuwait**, Hassan Abdulhadi Ali al-Hajiya and Iranian national Abdulredha Haydar Dahqani were convicted and sentenced to death, the latter in his absence, on 12 January 2016, following

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<sup>15</sup> “The Hated and the Hater, Both Touched by Crime”, The New York Times, 18 July 2011, available at [http://www.nytimes.com/2011/07/19/us/19questions.html?\\_r=0](http://www.nytimes.com/2011/07/19/us/19questions.html?_r=0)

proceedings that did not meet international fair trial standards. The men were arrested, together with 21 other men, after Kuwaiti authorities seized a cache of arms, ammunition and explosives on a farm in Abdali, near the border with Iraq. The charges against them included "spying for Iran and Hezbollah to carry out aggressive acts against the State of Kuwait" by smuggling in and assembling explosives, as well as firearms and ammunition. From the start of the trial, the defendants said that they had been tortured to make them "confess", and that they still had marks of torture on their bodies.<sup>16</sup>

Since 2005, the vast majority of those executed in **Iraq** have been sentenced to death for terrorism-related offences, under the 2005 Anti-Terrorism Law, in most cases after unfair trials. Courts have consistently relied on coerced "confessions" in justifying their verdicts. Even those defendants who have complained about torture during investigations in front of courts and recanted their "confessions", found themselves convicted and in some cases sentenced to death. On 8 July 2015 the Central Criminal Court of Iraq in Baghdad sentenced 24 men to death by hanging under Article 4 of the 2005 Anti-Terrorism Law. They were convicted of involvement in the killing of at least 1,700 military cadets from the Speicher Military Camp, near Tikrit in Salahuddin governorate, on 12 June 2014. The trial of the men, which lasted only a few hours, relied mainly on "confessions" obtained from the defendants during interrogation, and video footage of the massacre. According to reports from the courtroom the defendants denied involvement in the killings and said that their "confessions" were extracted from them under torture. Some defendants denied being in the Tikrit area at the time of the massacre.

On 20 February 2016, 40 people, also arrested in connection with the Speicher incident, were sentenced to death after expedited mass trials under the same anti-terror law. Several claimed to have been tortured into "confessing" the crimes, but the court did not order independent investigations into their claims and ignored the severe breaches of procedural guarantees. After the ruling was upheld by a higher court against 36 of the 40 defendants, the Iraqi authorities carried out their mass execution on 21 August 2016.

In **Egypt**, six men were executed on 17 May 2015 for "terrorism" following a trial before a military court that did not comply with international fair trial standards. The court convicted them, in October 2014, of taking part in deadly attacks on security forces between 13 and 19 March 2014. The men's representatives said that security forces had tortured the men in order to force them to "confess" to terrorism-related offences. The men's casefiles claim that security forces had arrested them on 19 March 2014 during a raid on a warehouse owned by an armed group. However, the men's families and lawyers said all six were already in custody at the time the authorities stated that the raid took place.

### 3.3 USE OF MILITARY COURTS TO IMPOSE DEATH SENTENCES

UN studies and experts have recommended that military justice systems should not in any circumstances have the power to impose the death penalty because they are ill suited to ensuring full compliance with fair trial standards as required in capital cases,<sup>17</sup> yet their use for this purpose continues in several countries.

On 7 January 2015, President Mamnoon Hussain of **Pakistan** signed the 21st Constitutional Amendment Bill of 2015 and the Pakistan Army (Amendment) Act 1952, allowing military courts newly established under the Act, for a period of two years, to try civilians suspected of terrorism-related offences. Proceedings in these military courts do not meet international fair trial standards. On 2 December 2015, four men were executed after they were convicted by a military court of involvement in the 2014 Peshawar school attack. A press release from the military listed the men as Maulvi Abdus Salam, Hazrat Ali, Mujeeb ur Rehman, and Sabeel alias Yaya. The authorities did not disclose information on the exact charges against the four men. The

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<sup>16</sup> For further information: 'Abdali cell' sentenced to prison or death, 14 January, <https://www.amnesty.org/en/documents/mde17/3194/2016/en/>

<sup>17</sup> UN Economic and Social Council, Civil and Political Rights, Including Questions of Torture and Detention: Report of the Working Group on Arbitrary Detention, UN document E/CN.4/1999/63, para. 80, 18 December 1998; UN General Assembly, Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document A/67/275, paras 30-33, 121, 9 August 2012

secrecy that surrounded the proceedings is particularly concerning in view of reports that the men made self-incriminating “confessions”.

In **Cameroon**, more than 100 people accused of belonging to or supporting Boko Haram, including at least five women, have been sentenced to death since June 2015 in military trials which violate fair trial rights. Many of these cases were prosecuted under the anti-terrorism law passed in December 2014. Due to the deficiencies of the anti-terrorism law and the drastic shortcomings of the military proceedings mandated under the law, verdicts in these cases raise serious concerns that a significant number of people have been sentenced to death in unfair trials. The large majority of cases before Maroua’s Military Court, where most people suspected of supporting Boko Haram are tried, result in a conviction, and of those convicted almost all are sentenced to death, though none have been executed yet. Most crimes in Cameroon are triable in civilian courts, but civilians can be tried in military courts for a few serious crimes against the state, such as espionage, insurrection, secession and creation of an armed group.

Pre-trial proceedings against six detainees at the **US** naval base at Guantánamo, Cuba, continued in 2015. Five men were charged with plotting the attacks of 11 September 2001, while Abd al-Rahim al-Nashiri’ was charged with masterminding an attack on US warship USS Cole in 2000. The US government have stated that they intend to seek the death penalty for all six men if they are convicted. Proceedings before the military commission do not meet international fair trial standards, and accordingly the imposition of the death penalty in their cases would constitute arbitrary deprivation of life.

**Ammar al-Baluchi** is facing the death penalty in connection with his trial before a military commission at the US naval base in Guantánamo Bay, Cuba. He has been charged, together with four other men, with crimes relating to the attacks in the USA on 11 September 2001 in which nearly 3,000 people were killed. Specifically, Ammar Al Baluchi has been charged with wiring money to men later involved in the hijackings of the planes on 11 September 2001.

Ammar al-Baluchi was born in Kuwait and moved together with his family in Pakistan as a young man. He eventually moved to the United Arab Emirates where he started a career in information technology. In secret CIA custody, Ammar al Baluchi was subjected to enforced disappearance and to torture and other ill-treatment. Among other things, he has alleged that he was subjected to the technique known as “walling” (“they smashed my head against the wall repeatedly”), to suspension from the ceiling of his cell, forced nudity, loud music, darkness, and threats. Where he was held during his three and a half years in CIA custody and the full range of his treatment during that time remains classified top secret.

Ammar al Baluchi and his co-defendants were first charged on 5 June 2008 under the Military Commissions Act (MCA) of 2006 for trial by a military commission. These charges were dismissed two years later, after the then new Obama administration announced in November 2009 that it would transfer the men from Guantánamo to the US mainland to bring them to trial in civilian federal court in New York. However, in April 2011, citing congressional blocking, the US Attorney General announced a U-turn and the US Department of Defense announced that Ammar al Baluchi and the four other men had been charged with crimes under the revised MCA of 2009, including conspiracy, attacking the general population, murder in violation of the law of war and terrorism, and would be tried by military commission. In 2012 the Convening Authority for military commissions, which heads the work of the military commissions, authorized the prosecution to seek the death penalty against all five defendants. The trial has yet to begin.

According to his lawyers, Ammar al Baluchi displays symptoms of post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) as a result of the torture and other ill-treatment to which he has been subjected in CIA custody. Multiple formal requests for a full medical assessment and treatment of Ammar al Baluchi have been denied by the military judge and Convening Authority. As consequence of his physical and psychological injuries and related apparent mental disability, his lawyers maintain that his capacity to assist them in preparing his defence and to meaningfully participate in pre-trial hearings is substantially impaired. Amnesty International has consistently called for those responsible for crimes relating to the attacks of 11 September 2001 to be brought to justice in accordance with international fair trials standards and without resort to the death penalty. The USA’s military commission system does not meet these standards, as it lacks the independence required for a fair trial under international law, a deficit even more troubling in a situation where the defendant has been subjected to human rights violations at the hands of the prosecuting government.

## 3.4 EXPANSION OF THE SCOPE OF THE DEATH PENALTY AND USE FOR POLITICAL AIMS

Since 2014 the scope of the death penalty has been expanded to cover terrorism-related offences in at least five countries, including for crimes other than intentional killing, to which the use of the death penalty must be restricted under international law.<sup>18</sup> Broadly drawn provisions risk criminalizing acts which should not be criminalized, and may violate the right to freedom of expression, and provisions which are vaguely drawn violate the principle of legality which imposes an obligation on states to define criminal offences precisely. They offer the possibility for the death penalty to be used as political tool to suppress dissent or opposition.

- In July 2014, the **United Arab Emirates** introduced a new anti-terror law which widened the scope of the death penalty, providing a broad and vague definition of “terrorism” that includes “whoever commits or refrains from committing an act meant or intended to undermine the stability, safety, unity, sovereignty or security of the State”.
- In response to attacks by the armed group Boko Haram, **Cameroon** passed an anti-terrorism law in December 2014 which provides for the death penalty for acts of “terrorism”. The law includes an extremely broad definition of “terrorism and at least 100 people have been so far sentenced to death under it.
- In **Tunisia** a new law that provided for the use of the death penalty for terrorism-related offences, defined in vague and broad terms, was adopted in July 2015.
- In the same month **Chad** enacted an anti-terrorism law that was used to convict 10 people who were executed in August 2015. The use of the law to convict the men raises concerns that the law was introduced in response to the N’Djamena attacks and retroactively applied.
- In December 2015, the parliament of **Guyana** adopted the Anti-Terrorism and Terrorist-Related Activities Act, which broadens the definition of terrorist acts and provides for the mandatory death penalty for such acts when they result in death.<sup>19</sup>

In recent years, death sentences have been imposed for vaguely or broadly defined “terrorist acts” or for various forms of “treason”, “acts against national security”, “collaboration” with a foreign entity, “espionage”, “questioning the leader’s policies”, participation in an “insurrectional movement and terrorism”, “enmity against God” (*moharebeh*) and other “crimes against the state”, whether or not these involve intentional killing.<sup>20</sup>

**China** has used the death penalty as a tool in the “Strike Hard” campaign, which the authorities characterized as a response to terrorism and religious extremism in the north-western Xinjiang Uighur Autonomous Region. On 16 June 2014, 13 people involved in seven separate cases were executed. They had been convicted of various offences including organizing, leading and participating in terrorist groups; murder; arson; theft; and illegal manufacture, storage and transportation of explosives.<sup>21</sup> In 2015, three

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<sup>18</sup> Article 6(2) of the International Covenant on Civil and Political Rights provides: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.” Under international human rights standards “most serious crimes” have been interpreted as being limited to crimes involving intentional killing.

<sup>19</sup> See Amnesty International, Death sentences and executions in 2015, (ACT 50/3487/2016), available at <https://www.amnesty.org/en/documents/act50/3487/2016/en/> and Amnesty International, Death sentences and executions in 2014, (ACT 50/001/2015), available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

<sup>20</sup> See Amnesty International, Death sentences and executions in 2013, (ACT 50/001/2014), available at [www.amnesty.org/en/documents/act50/001/2014/en/](http://www.amnesty.org/en/documents/act50/001/2014/en/); Amnesty International, Death sentences and executions in 2014, (ACT 50/001/2015), available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>; Amnesty International, Death sentences and executions in 2015, (ACT 50/3487/2016), available at <https://www.amnesty.org/en/documents/act50/3487/2016/en/>

<sup>21</sup> “13 executed over terror attacks, violent crimes in Xinjiang”, Xinhua, 16 June 2014, available at [http://news.xinhuanet.com/english/china/2014-06/16/c\\_133411946.htm](http://news.xinhuanet.com/english/china/2014-06/16/c_133411946.htm) (accessed on 21 September 2016).

people from the Uighur minority were executed in Yunnan province on 24 March. They had been convicted of murder and leading a “terrorist” organization for their alleged association with five people involved in a 2014 attack at the Kunming train station that resulted in the death of 31 people.<sup>22</sup>

On 2 January 2016 **Saudi Arabia** executed 47 people in a single day. Those put to death included prominent Shi’a Muslim cleric Sheikh Nimr Baqir al-Nimr, who was convicted after a political and grossly unfair trial at the Specialized Criminal Court. Sheikh Nimr al-Nimr had been a vocal critic of the Saudi Arabian government and had called for political reform. With the exception of the Sheikh and three Shi’a Muslim activists, the others were convicted of involvement with al-Qa’ida. The Saudi Arabian authorities stated that the executions were carried out to fight terror and safeguard security.<sup>23</sup>

The authorities in **Sudan** in August 2016 filed charges that included waging war against the State, espionage, and terrorism against six human rights defenders linked to a prominent Khartoum-based organisation, Training and Human Development. All of the charges carry the death sentence. The six facing charges are Khalafalla Mukhtar, Arwa Elrabie, Midhat Hamadan, Alhassan Kheiri, Mustafa Adam and Raye Imany Leyla. Months before their arrest, the six were harassed and their offices raided by the National Intelligence and Security Service. A group of UN human rights experts have expressed concerns that the charges brought against the six appear to be directly linked to their work in the defence of human rights.<sup>24</sup>

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<sup>22</sup> “China executes 3 over last year’s mass knife attack at Kunming train station”, The Globe and Mail, 24 March 2015, available at [www.theglobeandmail.com/news/world/china-executes-3-over-last-years-mass-knife-attack-at-kunming-train-station/article23589510/](http://www.theglobeandmail.com/news/world/china-executes-3-over-last-years-mass-knife-attack-at-kunming-train-station/article23589510/) (accessed 5 March 2016)

<sup>23</sup> Shia cleric among 47 executed by Saudi Arabia in a single day, Amnesty International, 2 January 2016, available at <https://www.amnesty.org/en/latest/news/2016/01/shia-cleric-among-47-executed-by-saudi-arabia-in-a-single-day/> (accessed 3 October 2016)

<sup>24</sup> “Sudan: UN rights experts condemn charges of death penalty crimes for human rights activists”, OHCHR, 31 August 2016, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20435&LangID=E> (accessed 3 October 2016)

# 4. CONCLUSION AND RECOMMENDATIONS

There is no justification for armed and other violent attacks targeting the general population. When these attacks occur, whether or not they result in the loss of lives, governments should respond effectively by bringing those responsible to justice, in proceedings that meet international fair trial standards and without recourse to the death penalty. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It is a punishment that should be abolished unconditionally.

The majority of states, 103 countries, have now abolished the death penalty for all crimes. These countries have accepted that crime in whatever shape or form can be addressed without using the death penalty. It is time for countries that use the death penalty for terrorism-related-offences to accept this fact.

Amnesty International calls on all countries that still retain the death penalty for terrorism-related-offences to:

- Immediately establish an official moratorium on executions with a view to abolishing the death penalty;
- Commute without delay all death sentences;
- Ensure that trials for crimes carrying the death penalty must comply with the most rigorous internationally recognized standards for fair trial; where that has not been the case the individual must be given re-trial in proceedings which comply with these standards, and without recourse to the death penalty;
- Ensure full compliance with all international standards on the use of the death penalty;
- Ratify, without reservations, the International Covenant on Civil and Political Rights, and its Second Optional Protocol, aiming at the abolition of the death penalty.

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WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
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# 2016 WORLD DAY AGAINST THE DEATH PENALTY

## STOP THE CYCLE OF VIOLENCE: THE USE OF THE DEATH PENALTY FOR TERRORISM-RELATED OFFENCES

On 10 October 2016 Amnesty International joins the global abolitionist movement in marking the 14th World Day Against the Death Penalty, to raise awareness around the application of the death penalty for terrorism-related offences and to call on policy makers around the world to confine the use of the ultimate cruel, inhuman and degrading punishment to history.

While armed and other violent attacks are not a new phenomenon, recent years have seen repeated high-profile violent attacks that have sent shockwaves throughout the world.

Attacks on the general population cause terrible suffering to the immediate victims and their families and can never be justified. Amnesty International condemn them, and call upon governments to properly investigate and bring those suspected of responsibility to justice.

However, there is no evidence that the death penalty deters violent crime more effectively than alternative punishments. It does not tackle the root causes of violent armed attacks.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime, regardless of the guilt, innocence or other characteristics of the individual, and regardless of the method used by the state to carry out the execution.