Contribution of the International Commission against the Death Penalty to OHCHR: 2022 UNSG´s Report on a Moratorium on the Use of the Death Penalty

The International Commission against the Death Penalty (ICDP) provided an update in March 2022 on developments on the question of the death penalty since 1 July 2020 to inform the preparation of the Secretary-General’s report for the 51st session of the Human Rights Council. Following this report, ICDP has gathered information on developments since 16 December 2020 regarding access to justice and protection of lawyers as well as the impact of the Covid pandemic on death penalty sentencing and executions around the world. Lack of transparency is highlighted throughout as a key issue to protect the rights of defendants to legal counsel and the need to improve death row conditions.

**Covid pandemic**

The Covid pandemic has led to a reduction of the number of death sentences and executions being carried out. Globally, 2020 ended with the lowest number of executions in at least ten years, as per the [April 2021](https://time.com/5956795/global-death-penalty-lowest-in-decade/) report published by Amnesty international. However, this does not mean that countries have stopped executions, and the resumption of executions also requires a closer inspection of the effects of the pandemic on the death penalty around the globe. In fact, Saudi Arabia resumed executions in the first half of 2021, with more individuals executed between January and [July 2021](https://www.aljazeera.com/news/2021/8/3/saudi-arabia-ramped-up-executions-in-first-half-of-2021-amnesty) than during all of 2020. Japan resumed executions in [December 2021](https://www.japantimes.co.jp/news/2021/12/21/national/japan-executions-2019/) after 2 years, in part due to the country hosting the 2020 Olympics in July-August 2021. Singapore restarted carrying out executions in [February 2022](https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2022/02/singapore-resume-executions) and there are serious concerns of imminent executions by its authorities in April 2022 and shortly thereafter. Further illustrating the arbitrariness that has characterized the use of the death penalty during the Covid pandemic, China has reportedly used the death penalty to warn against noncompliance with pandemic restrictions multiple times. Following the reported execution of a man on charges of committing homicides of government officials performing epidemic control duties in [August 2020](https://www.loc.gov/item/global-legal-monitor/2020-08-12/china-man-executed-for-killing-government-officials-performing-epidemic-control-duties/), state-controlled CCTV broadcasted an interview in [October 2021](https://www.washingtonpost.com/world/asia_pacific/china-covid-zero-train/2021/10/29/fbfcc6ae-386b-11ec-9662-399cfa75efee_story.html) with a Beijing-based lawyer in which he emphasized that failing to follow coronavirus rules could amount to "endangering public safety in dangerous ways,” and that it would constitute a crime punishable by death. In [April 2021,](https://www.france24.com/en/live-news/20210423-death-by-zoom-virus-hit-indonesia-orders-executions-online) Indonesia had reportedly continued to order executions via Zoom and other video apps, with 13 individuals reportedly being sentenced to death over drug-related charges. Critics condemned this practice as inhumane and raised questions about the ability to carry out proper legal defence in such circumstances.

These cases are very concerning regarding the rights of defendants and the arbitrariness of the death penalty, but the Covid pandemic has also highlighted the dreadful prison conditions of persons under sentence of death, in particular, and prisoners, in general. As of [4 May 2021](https://www.law.ox.ac.uk/research-and-subject-groups/death-penalty-research-unit/blog/2021/05/covid-19-and-death-row), the United States saw 2,588 prisoners die of Covid, a number exceeding the number of executions carried out in the modern era of the death penalty (1,529). In California alone, where a moratorium is in place, 13 persons under sentence of death died of Covid and related complications. 64-year-old Rommell Broom, an Ohio inmate who survived a botched execution attempt in 2009, reportedly died in prison due to Covid-19 complications following an outbreak in [December 2020](https://www.nbcnews.com/news/us-news/ohio-inmate-who-survived-execution-attempt-dies-prison-possible-covid-n1252553).

Due to lack of transparency, it is not easy to assess the true global impact of the Covid-19 pandemic on people under sentence of death and the number of deaths from Covid-19, its related health complications, which probably were worsened by poor prison conditions and highly inadequate access to appropriate health care. Extrapolating from the US numbers, its impact on the death row population globally must have been significant, prompting governments to commute death sentences and free a number of prisoners to mitigate this risk, as was the case of Zimbabwe in [May 2021](https://abcnews.go.com/International/wireStory/zimbabwe-frees-inmates-reduce-covid-19-risk-jails-77136144). The Covid pandemic has shown that more transparency is necessary to understand the full impact of prison conditions in general and death row conditions, in particular, with a view to ensuring that the rights of defendants and prisoners are protected without having to face the risk of death due to terrible prison conditions. The arbitrariness of the death penalty has also become evident as Governments resume executions after hiatuses during the pandemic.

**Protection of lawyers, access to legal defence**

The United Nations Human Rights Committee has repeatedly emphasised that “in capital cases scrupulous respect of the guarantees of fair trial is particularly important” and that “in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.” However, lawyers in retentionist countries defending individuals sentenced to death sometimes face persecution and intimidation. This adds to the fact that the less well-off are disproportionately sentenced to death due to unequal access to legal counsel.

Iranian human rights lawyer Saeid Dehghan, from the International Bar Association, reported in [July 2021](https://twitter.com/vakilroaya/status/1421319519830695944) that Mohammad Najafi, a defence attorney sentenced to ten years in jail in 2018 for openly discussing the death of a protester in police custody, would have to serve 10 years in prison.

Contravening articles 6, 7, 10, and 14 of the International Covenant on Civil and Political Rights, Iran carried out at least 48 executions between December 2020 and [January 2021](https://www.ibanet.org/article/896945D6-7C5B-4676-A3BD-F984686C5199) with serious violation of fair trial guarantees, including “defendants being denied access to a lawyer, tortured into making confessions, held in prolonged solitary confinement without contact with their families or lawyers.”

In [April 2021](https://www.malaysianow.com/news/2022/01/04/lawyers-accuse-singapore-of-harassment-ahead-of-malaysians-appeal-to-quash-death-sentence/), lawyers accused Singapore of harassment while appealing the death sentence of a Malaysian national, after the Attorney General served a human rights lawyer with contempt of court applications in [February 2021](https://malaysia.news.yahoo.com/lfl-condemns-spores-contempt-charges-043424777.html). This was followed by a High Court order in [November 2021](https://www.channelnewsasia.com/singapore/lawyer-m-ravi-ordered-pay-attorney-general-s10000-costs-over-death-row-prisoners-court-application-2347596) that lawyer M Ravi would be required to pay tens of thousands of Singapore dollars in costs over applications for prisoners under sentence of death in Singapore.

There are also procedural issues that make it more difficult for lawyers to appeal. In Japan, its authorities were sued in [November 2021](https://www.theguardian.com/world/2021/nov/05/japan-death-row-inmates-sue-over-same-day-notification-of-execution-report) by two persons facing the death penalty for the practice of informing inmates of their executions only hours in advance.

Belarus, a retentionist country, deprived at least four lawyers of their licence to practice, some with links to the opposition, in [February 2021](https://www.ibanet.org/article/E0B7D120-1E19-46F8-A462-A65CC7FA0C8B). One of the lawyers was detained by three unknown people, pushed into an unmarked car, and transferred to the Central District Department of Internal Affairs prior to her license to practice law being revoked arbitrarily. After being accused with resisting arrest, the lawyer was subjected to a personal search that resulted in the confiscation of confidential client-attorney records.

Since [February 2021](https://www.ibanet.org/article/94C56515-2605-4D5D-B0B9-683E71343C5D), Myanmar has also detained defence lawyers, drawing the condemnation of the International Bar Association.

In [April 2021](https://www.standard.net/police-fire/courts/2021/apr/23/lovell-death-penalty-attorney-newton-gets-settlement-after-legal-battle-with-weber-county/), a former Utah defence lawyer was awarded a $250,000 compensation after suing Weber County for allegedly firing him in punishment for his public criticism of the lack of proper funding for persons under sentence of death. Underpayment of lawyers and lack of funding are also key in negatively affecting death row prisoners’ access to justice and legal counsel.

These examples of intimidation, harassment and procedural difficulties illustrate why, in countries that retain the death penalty, only a few lawyers are able to take on death penalty cases, which seriously harms the right to legal counsel of the defendants. Civil society organisations have played a key role in raising awareness and effecting change in individual cases. An example would be Project 39A in India, which was involved in the opening of a review into the death penalty process by the Supreme Court in [March 2022](https://www.hindustantimes.com/india-news/supreme-court-opens-review-into-death-penalty-process-101648577188276.html). However, there is an urgent need for an increased prioritisation of improving the conditions of lawyers and enabling them to report irregularities and intimidation in order to ensure that defendants have equal access to justice.

**Transparency**

The Covid pandemic has shown that countries should allow for transparent reporting on matters related to the death penalty. This includes not only aggregated numbers of executions and individuals sentenced to death, regular reporting of numbers of deaths of those persons facing the death penalty due to Covid-related causes. Moreover, lawyers and defendants should be allowed to report on procedural irregularities, intimidation, or any difficulties that they may face throughout the legal process. To ensure better protection, timely action from an independent judiciary or ombudsman should be provided. Failure to report on these issues can seriously harm the right to legal counsel of defendants and prolong unequal access to justice that leads to discrimination and the most marginalised persons in society being disproportionally sentenced to death. Additionally, more transparency is needed to have a better understanding of the prison conditions, including adequate access to qualified health professionals, adequate access to essential medicines, for persons facing the death penalty so that future health pandemics do not become a death sentence for those awaiting trial or appealing their cases.