Foreign &
Commonwealth
Office

HMG Strategy for Abolition of the Death Penalty 2010-2015

Human Rights and Democracy Department
Revised October 2011

Foreign & Commonwealth Office

HMG Death Penalty Strategy

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Executive Summary

This strategy sets out the UK's policy on the death penalty, and offers guidance to FCO overseas missions on how they can take forward our objectives. A list of priority countries are set out in Appendix One and reviewed annually. We encourage posts in these countries to proactively drive forward the death penalty agenda, in order to make progress towards our ultimate goal of global abolition.

Why is abolition of the death penalty important?

Promoting human rights and democracy is a priority for the UK. It is the longstanding policy of the UK to oppose the death penalty in all circumstances as a matter of principle. There is a growing international momentum towards abolition of the death penalty - in the past two decades we have seen a significant rise in the number of countries becoming abolitionist, and we are keen to see this trend continue.

Goals

Our goals are:

i) to further increase the number of abolitionist countries, or countries with a moratorium on the use of the death penalty;

ii) further restrictions on the use of the death penalty in retentionist countries and reductions in the numbers of executions; and

iii) to ensure EU minimum standards are met in countries which retain the death penalty.

Channels of influence

We will work to achieve these objectives through three main channels- bilateral initiatives, the EU, and the UN. Bilaterally, we continue to work hard to lobby governments to establish moratoriums or abolish the death penalty, raise individual cases of British Nationals, use political dialogue and fund projects to further our objectives. We will continue to raise cases of third country nationals through the EU, and work with the EU taskforce on the death penalty to lobby states and pursue common action in international fora, such as the UN. In the UN General Assembly, we support activity to work towards a global moratorium on the death penalty and co-sponsor the cross-regional resolution "on the Moratorium on the use of the Death Penalty", which is tabled biennially. We will continue to work to ensure that an increasing number of countries sign up to the resolution each time it is tabled.

Opportunities for posts

Posts can help to deliver these objectives through a variety of different methods, including via conveying the UK position on the death penalty; lobbying governments to establish moratoriums/abolish the death penalty or to comply with minimum standards relating to its use, in line with their international obligations (under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) if ratified); and lobbying their host country to support the UN Resolution on the Moratorium on the use of the Death Penalty. Posts can also support project work, through suggesting, implementing and monitoring a range of projects. In the past and currently, our projects have included mounting legal challenges to the mandatory death penalty and work which involves changing public opinion.

Our Vision

Why is the death penalty an issue for us?

1. The UK cares about the death penalty because:

   - Promoting human rights and democracy overseas is a priority for HMG. It is the longstanding policy of the UK to oppose the death penalty in all circumstances as a matter of principle because we consider that its use undermines human dignity, that there is no conclusive evidence of its deterrent value, and that any miscarriage of justice leading to its imposition is irreversible and irreparable.
   - It affects British Nationals – there are a number of British Nationals who have been sentenced to death and others awaiting trial for a crime which may carry the death penalty.
   - It affects our provision of police or other justice and security assistance to countries which retain the death penalty – In countries where the assistance we offer could lead to the death penalty, the assistance we may be able to offer will be limited.
   - It affects extradition cases - we cannot extradite someone to a country which retains the death penalty if there is a risk that they will face the death penalty.

2. While the death penalty is not outlawed in international law, there is considerable international pressure for its abolition. In particular, article 6.6 of the International Covenant on Civil and Political Rights (ICCPR) states that nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the Covenant. The ICCPR also states that the death penalty can only be used for the most serious crimes, for example murder. However, where the death penalty is retained, we will continue to lobby for it to be used within the EU's minimum standards, the UN Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty, and other internationally recognised standards on restricting the death penalty (see Appendix Four), and regularly call for steps to be taken towards its abolition. We will continue to lobby states to sign up to and implement international legislation on the death penalty and conform to international standards.

What might happen next?

3. We want to see a continuation of the international trend towards abolition, with more retentionist countries establishing moratoriums with a view to full abolition in the future. Consular directorate addresses cases of British nationals facing the death penalty separately but clearly they remain an extremely high priority.

4. Therefore our overarching goals are:

   - Increase in the number of abolitionist countries, or countries with a moratorium on the use of the death penalty

- Reduction in the numbers of executions and further restrictions on the use of the death penalty in retentionist countries
- Ensuring EU minimum standards are met in countries which retain the death penalty

Alternative Outcomes

There are two other potential outcomes which we do not want to happen- the trend could level out or the situation could get worse, with abolitionist countries taking a step backwards and reinstating the death penalty or ending long standing moratoriums. Taiwan, for example, broke its 5 year moratorium in 2010.

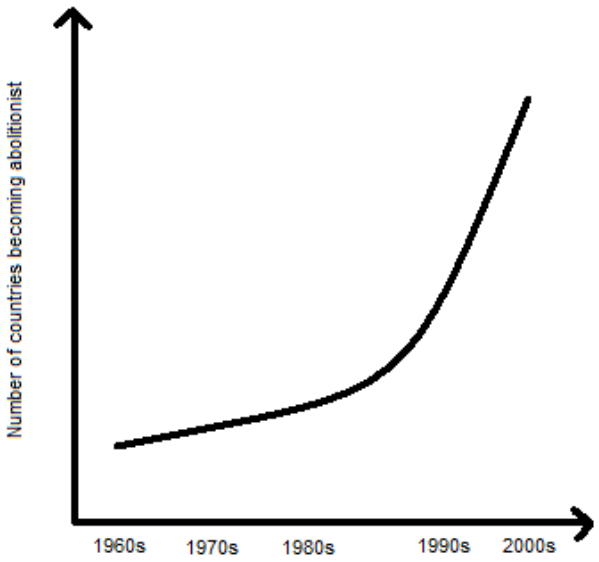
Analysis

What is the current situation regarding the death penalty?

5. According to Amnesty International, 58 countries retain the death penalty, while 96 are abolitionist for all crimes, 9 are abolitionist for ordinary crimes only (countries which retain the death penalty for exceptional crimes such as crimes under military law) and 34 are abolitionist in practice (countries which retain the death penalty but have not executed anyone during the past 10 years)[1].

6. There has been considerable progress on abolition over the past 20 years and the international trend towards abolition is increasing [see figure A]. Our aim is to harness this global momentum to achieve our ultimate aim of global abolition and to avoid the risk that this progress will begin to level out.

   Figure A (source: Amnesty International)



[1] Amnesty International: September 2011

7. There are several key pieces of international legislation, most importantly the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the American Convention on Human Rights. Article Six of the ICCPR states that in countries where the death penalty remains in force, it may only be imposed for the most serious crimes, and it shall not be imposed for crimes committed by persons under 18 years old or pregnant women. Articles 7 and 14 of the ICCPR, which deal with cruel, inhuman and degrading treatment, and the right to a fair trial respectively, are also key elements of the ICCPR which relate to the imposition of the death penalty. The Second Optional Protocol to the ICCPR aims for the abolition of the death penalty. The Sixth Optional Protocol to the ECHR abolishes the death penalty except for in times of war, and the Thirteenth Optional Protocol abolishes the death penalty in all circumstances. For a more exhaustive list of international legislation, as well as key mechanisms available to promote their implementation, see Appendix Five.

Developing the Policy

What methods can we use to advance our objective of global abolition?

8. There are three main channels which the FCO can use to achieve our aims:

Bilateral initiatives:

- High level lobbying
- Political dialogues, including through raising the death penalty in bilateral human rights dialogues
- Funding projects through the Human Rights and Democracy Programme Fund and Bilateral Programme Budgets
- Raising individual cases of British Nationals. HMG policy is to use all appropriate influence to prevent the execution of any British national.
- Raising individual cases of third country nationals where deemed necessary and/or effective, for example when EU minimum standards have not been met.

Through the EU:

- EU Death Penalty Taskforce. The taskforce meets approximately twice a year to discuss and drive forward EU action on the death penalty, and continues work virtually throughout the year.
- Raising individual cases in countries which retain the death penalty and which do not meet the minimum standards as set out in the EU Guidelines on Human Rights. These standards include only imposing the death penalty for the most serious crimes, and not imposing the death penalty on juveniles, pregnant women or the insane. There must have also been a fair trial, a right to appeal, and the right to seek a pardon or commutation. The full list of EU minimum standards can be found at http://www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf
- Lobbying to restrict and reduce its application in retentionist countries

- General demarches in favour of abolition of the death penalty in other countries
- Factoring the death penalty into political and human rights dialogues
- Funding projects through the European Instrument for Democracy and Human Rights (EIDHR) and promoting the EIDHR to stakeholders and as a useful source of funding
- Pursuing common action in international fora such as the UN – including by taking a coordinated approach to UN Resolutions on the death penalty

Through the UN:

- UN General Assembly Resolution on the Moratorium on the use of the Death Penalty biennially, working with others and lobbying where required to secure appropriate language and increased support for each successive resolution.
- Making recommendations to specific countries through the Universal Periodic Review process, and following up on recommendations which have been accepted, for example through funded projects or lobbying activities
- Following up on recommendations made by the UN Human Rights Committee Supporting the UN Rapporteur on extrajudicial, summary or arbitrary executions- acting on the basis of his reports, and using them as a tool to apply pressure

9. The FCO can also use the following channels to achieve our aims on the death penalty:

The Commonwealth:

- Given the number of Commonwealth countries who retain the death penalty and the specific interest of the Commonwealth Secretariat in Human Rights, we will be looking to continue to expand the work we do through the Commonwealth
- Through the Commonwealth Heads of Government Meetings (CHOGM), which are held every two years
- Through the Commonwealth Ministerial Action Group (CMAG), which deals with violations of the Harare Declaration, which sets out the Commonwealth's fundamental political values
- Through the Eminent Persons Group, which will set out recommendations on how to strengthen the Commonwealth.
- Through the Commonwealth Lawyers Association, who have a set policy on abolition of the death penalty, and are committed to seeking abolition worldwide
- By working with Commonwealth countries who support abolition of the death penalty

Other international and regional institutions

- Working with other international and regional institutions, including organisations such as the OSCE.

Delivery

How can posts deliver our objectives on the death penalty?

10. There is no single identified route to abolition of the death penalty. But there are a range of steps which posts can take to advance our objectives towards moratoriums and eventually abolition. (Their use must be adapted to the circumstances of each country.)

11. Steps to take and the tools available to help posts take these forward include:
    - Supporting projects which mount constitutional and other legal challenges to the death penalty, restrict the scope of the death penalty and promote alternatives
    - Encourage adherence to international standards
    - Lobbying countries to immediately establish moratoriums with a view to abolition (core script attached at Appendix Seven)
    - Lobbying countries to vote in favour of the UN Resolution on the Moratorium on the use of the Death Penalty
    - Lobbying on individual cases of British Nationals who have been sentenced to the death penalty or are facing death penalty charges. (Consular Directorate lead on this lobbying strategy, which is specifically tailored to each case)
    - Support projects which change opinions, engaging with civil society, the public, the media and policy makers
    - Other bilateral and regional projects supporting our three goals

12. See Appendix Six for further recommendations of actions posts can take and for more information on the tools available to take these initiatives forward.

Projects funded by the Human Rights and Democracy Programme Fund

13. The death penalty is a thematic priority of the FCO Human Rights and Democracy Programme Fund.[2] Details of past and present projects funded by the Human Rights and Democracy Programme Fund are set out in Appendix Two and updated annually.

14. Projects on the death penalty funded by the Human Rights and Democracy Programme Fund aim to contribute to one or more of our three goals and ultimately the abolition of the death penalty. The following indicators have been identified to help posts assess project proposals and their outcomes:
    - More legislative, constitutional or procedural amendments leading to a reduction in the number of offences to which the death penalty applies or to the number of sentences imposed.

[2] The Programme Fund runs until March 2012. Subsequent decisions on the Programme Fund will be taken annually.

- Greater transparency in the application of the death penalty (including trial procedures) and debate between policy makers regarding its effectiveness and alternatives.
- Legislative, procedural, constitutional or policy amendments leading to a reduction in the number of offences to which the death penalty applies, or number of sentences imposed.
- Governments enabled to ratify the 2nd optional protocol to the ICCPR or have greater adherence to international standards and principles in relation to the death penalty.

15. Posts can also run their own bilateral projects from their own bilateral funds. HRDD would be happy to advise on any suggested project proposals.

What are our priority countries and regions?

16. Priority countries and regions are listed in Appendix One and updated annually. Priority countries are selected for a number of different reasons, including where we would most like to see change, where we think HMG efforts may have an impact, or where the country in question is an influential player in the region. Our posts in the priority countries should actively be pursuing our objectives on the death penalty.

Results

What has been achieved to date

17. A report of our project work under the Human Rights and Democracy Fund and bilateral funding streams, detailing both our achievements and the challenges we have faced, is set out in Appendix Three. Appendix Three also contains an assessment of progress more generally towards the abolition of the death penalty. We will continue to review progress by updating Appendix Three annually.

Human Rights and Democracy Department
October 2011

APPENDIX ONE - PRIORITY COUNTRIES

We use five criteria to identify our priority countries. These are:

1. The ability to make progress against our three goals
2. Willingness of country to engage on the abolition of the death penalty
3. Numbers of executions
4. Lack of minimum standards/transparency
5. Global influence of country concerned/ impact of country's abolition elsewhere in the world

We have identified the following priority countries for 2011/12.

China

[criteria 3, 4 & 5]

China is the most prolific user of the death penalty, but its use remains very opaque. Statistics remain a state secret so we do not know the true figure of the number of executions which take place in China every year. However, there have been positive developments over the past few years, such as the return of the power of final review to the Supreme People's Court and the reduction of the number of crimes eligible for the death penalty from 68 to 55 in February 2011. We engage with the Chinese through our bilateral human rights dialogue, our project work and through the EU. We focus our work in China on Goals two and three.

Iran

[criteria 3 &4]

Iran is second only to China in the total number of people it executes. It is one of the few countries which still executes juvenile offenders in contradiction to its commitments under the International Covenant on Civil and Political Rights (ICCPR). Iran continues to execute juveniles and uses stoning as a method of execution. Lack of fair trials and due process are also areas of grave concern. There are no state published statistics on the numbers of executions but Amnesty International estimate that in 2010 there were over 252 executions. International pressure including ministerial statements can have a positive impact on individual cases. We have identified Iran as a priority due to its numbers and method of executions and the lack of due process prior to sentence, and continue to focus our work on Goals two and three.

The Commonwealth Caribbean

[criteria 1]

All of the countries in this region retain the death penalty and there is much public support for its use. We have had successes with projects there, particularly over restricting the use of the death penalty. The mandatory death penalty in Barbados was declared unconstitutional by the Supreme Court in 2009, although this decision is yet to come into force, and in Dominica the gallows were demolished as a direct result of our projects. There is however more work we can do in the Caribbean over restricting the use of the death penalty. Executions are extremely rare in the Caribbean, and the most recent execution was in St Kitts and St Nevis in 2008. Our main area of work here is under goals one and two.

USA

[criteria 1, 2 & 5]

34 out of 50 states in the USA retain the death penalty, and although complete abolition isn't likely within a decade, there have been some positive steps recently. For instance Illinois abolished the death penalty in March 2011 and New Mexico abolished the death penalty in 2009. Colorado, Montana, Maryland, Kansas and Connecticut have all debated the issue in recent years. Debates have focused on the costs of execution and the risk of executing innocent people. In 2010, 46 executions were known to have been carried out, 17 of which took place in Texas, but overall the number of death sentences issued in the US has declined year on year for the past eight years. If the USA abolished the death penalty, it could potentially have a significant knock on effect on other retentionist countries, and send a positive message to the rest of the world. We are aiming for a reduction in numbers of executions of British Nationals, as well as EU and other third country nationals, and for abolition on a state by state basis, which fits into Goals one and two.

Belarus

[criteria 5]

Belarus is the last country in Europe to retain the death penalty, though numbers of executions are low. It is a major stumbling block for EU relations with Belarus. Belarus is not a member or observer of the Council of Europe because of its retention of the death penalty. Abolition in Belarus is a priority for the EU and the Council of Europe. If Belarus were to abolish the death penalty, Europe would be the first region free of the death penalty and this would send an important signal to the rest of the world. We raise the death penalty regularly with the Belarusian authorities, and also support NGOs and the Council of Europe who are work to raise public awareness. We are therefore working towards Goal one.

A second tier of priority countries and regions has been identified where posts should also be working towards one or more of our goals:

Goal One: Increase in the number of abolitionist countries, or countries with a moratorium on the use of the death penalty	**Goal Two:** Reduction in the numbers of executions and further restrictions on the use of the death penalty in retentionist countries	**Goal Three:** Ensuring minimum standards are met in countries which retain the death penalty
Africa		
Kenya Malawi Nigeria Sierra Leone Tanzania Ghana Zambia	Ghana Nigeria Uganda	Botswana Ghana Uganda Zimbabwe Nigeria Sierra Leone Tanzania
Russia, South Caucasus and Central Asia		
Tajikistan		Tajikistan
Asia Pacific		
Papua New Guinea South Korea Indonesia Malaysia Thailand	Singapore Vietnam Indonesia Malaysia Taiwan India	Thailand Japan
Americas (excluding USA and Caribbean)		
Guatemala		
Middle East and North Africa		
Iraq Tunisia Jordan Morocco	Iraq Pakistan Morocco Jordan	Pakistan

APPENDIX TWO – HUMAN RIGHTS AND DEMOCRACY PROGRAMME FUND

1. All funds have been committed until the end of the financial year (2011/12).

2. In the period 2011-12, the FCO is funding three multi country projects. Two of these projects are run by the Death Penalty Project, an organisation led by human rights lawyers, which offers free legal representation for prisoners facing the death penalty and makes legal challenges to the mandatory death penalty. These projects aim to provide assistance for prisoners facing the death penalty and work to create legal restrictions on the use of the death penalty in Commonwealth countries in Africa and the Caribbean. Our third multi-country project is being run by Penal Reform International and covers Tunisia, Morocco and Jordan. This project aims to provide a platform for informed debate among policy makers, civil society and the public, towards progressive abolition of the death penalty.

3. Other death penalty projects funded by the Human Rights and Democracy Programme Fund are currently running in China and Nigeria.

APPENDIX THREE – RESULTS AND TRENDS

1. There is a clear international trend towards abolition of the death penalty, as we have seen from the increasing numbers of abolitionist countries over the past ten years (22 countries since 2000). Reflecting the global trend towards abolition, we have seen several positive developments recently. In March 2011, Illinois became the 16th state in the US to abolish the death penalty. In January 2010, Mongolia announced a moratorium on the death penalty, and Kyrgyzstan acceded to the 2nd Optional Protocol to the ICCPR. In 2010, Japan set up a study group at its Ministry of Justice to look at the death penalty. In 2009 Burundi and Togo both abolished the death penalty for all crimes, the Russian Constitutional Court extended indefinitely the current moratorium, and the Kenyan President commuted the sentences of 4000 people to life imprisonment.

2. According to Amnesty International, in 2010, at least 23 countries carried out executions, and at least 527 executions took place, although this does not include the number of executions carried out in China.

3. We have had direct results from our project work. In 2009 the Barbados government agreed to comply with the ruling of the Inter-American Court on Human Rights and abolish the mandatory death penalty. In capital cases in the Caribbean more generally, minimum standards have tightened through international case law, international tribunals and through the Inter-American Court. Other recent results include the Supreme Court of Uganda declaring that the mandatory death penalty amounted to inhuman punishment; the court ruled that anyone sentenced to death and not executed or pardoned within three years should have their sentence commuted to life imprisonment. In July 2010, the Court of Appeal in Kenya declared the mandatory death penalty for murder to be unconstitutional.

4. We achieved excellent results at the UNGA Resolution on the Moratorium on the use of the Death Penalty in 2007, 2008 and 2010. In November 2010, the resolution was adopted with record support. 109 countries voted in favour, 41 voted against and there were 35 abstentions. We aim to build on this success in Autumn 2012, by gaining even more signatories for the next resolution. We consider the establishment of a moratorium as a positive step towards total abolition, and these resolutions have been and should continue to be an international driving force towards a global moratorium.

5. We have also made progress in some of our consular death penalty cases. Most significantly in 2010 Ministers intervened on behalf of Neil Revill, a British national on death row in the US, and for whom ultimately the prosecution decided not to pursue the death penalty at trial; and dual national Aziz Qayoumi (an official HMG brief was submitted to court), whose death sentence was commuted to a sentence of imprisonment at the Afghan Supreme Court. We currently have eight British nationals sentenced to the death penalty and awaiting execution, and a further 30 British nationals who are facing charges that attract the death penalty. Consular staff in London and at our overseas missions continue to work hard, in collaboration with NGOs and the local lawyers working on many of these cases. For each case, we

have agreed a handling strategy with those involved, to ensure that our representations are targeted and appropriate. From January to July 2011, we made Ministerial and Ambassadorial representations on cases in the US, Ghana, Democratic Republic of Congo, Indonesia, Malaysia, and Pakistan.

6. However, despite these positive steps, there have also been some setbacks. In April 2011, Jamaica passed a constitutional amendment to make the death penalty easier to carry out. In March 2011, Taiwan executed five people after having broken its five year de facto moratorium in 2010. The Death Penalty Project unsuccessfully challenged the mandatory death penalty for drug offences in Singapore in 2010, one of our funded projects in Vietnam was cut due to lack of government buy in from the Ministry of Public Security and in 2009, China executed Akmal Shaikh, a British National, sentenced to death for drug smuggling, despite continuous high level lobbying, and concerns over his mental health.

7. There were no reports of any executions by stoning in 2010, although Amnesty International report that death sentences by stoning were imposed in Iran, Nigeria and Pakistan.

APPENDIX FOUR: MINIMUM STANDARDS ON THE USE OF THE DEATH PENALTY

EU Minimum Standards

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

iii) Capital punishment may not be imposed on:

Persons below 18 years of age at the time of the commission of their crime;
Pregnant women or new mothers;
Persons who have become insane.

iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.

v) Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.

vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.

vii) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.

ix) Capital punishment may not be carried out in contravention of a state's international commitments.

x) The length of time spent after having been sentenced to death may also be a factor.

xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.

xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.

UN Safeguards guaranteeing protection of the rights of those facing the death penalty

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

APPENDIX FIVE: INTERNATIONAL LEGISLATION AND INTERNATIONAL MECHANISMS

Key international legal instruments:
International Covenant on Civil and Political Rights (ICCPR) and the 2nd optional protocol
European Convention on Human Rights (ECHR) and 6th and 13th protocol
The American Convention on Human Rights and the Protocol to Abolish the Death Penalty
UN Convention on the Rights of the Child (CRC)
African Charter on the Rights and Welfare of the Child
UN Safeguards Guaranteeing the Protection of the Rights of Those facing the Death Penalty- ESCR 1984/50, 1996/15
EU guidelines on the Death Penalty
Convention Against Torture and its Optional Protocol
African Charter on Human and Peoples' Rights
Arab Charter on Human Rights

Key International mechanisms to promote implementation of these instruments:
Courts
– European Court of Human Rights
– African Court on Human and Peoples Rights
– Inter American Court of Human Rights
Advisory bodies
– UN Human Rights Committee
– UN Human Rights Council / UN General Assembly 3rd Committee
– UN Committee on the Rights of the Child
– Inter American Commission on Human Rights
– UN Committee Against Torture

APPENDIX SIX: STEPS WHICH POSTS CAN TAKE TO ADVANCE OUR OBJECTIVES AND THE TOOLS AVAILABLE

Steps to take	Tools and Methods available
Legal challenges to the death penalty; restricting the scope of the death penalty and promotion of alternatives	
Restriction of the application of the death penalty to only the most serious offences of murder. Legal challenges to the constitutionality of the imposition and application of the death penalty are a good tool to use, eg to the mandatory nature of the death penalty, delay on death row or the mercy process. However, even if successful, a subsequent change to the constitution would be all that is required to take countries back to square one. Posts should use this tool as a stepping stone but be clear that this needs to be backed up by pressure on the government to change its position. Progressive restriction of the number of offences the death penalty applies to: in particular excluding economic crimes, drugs, rape and sexual offences, religious crimes, political crimes. Follow up on project work. Look out for constitutional review processes taking place and contact Death Penalty Project and other relevant NGOs (contact details through HRDD).	Domestic courts, Supreme Courts, Regional bodies (via NGOs) Legally challenge the following: - Constitutionality - compliance with own constitutions, international obligations - Art. 6 ICCPR compliance (right to life and use of the death penalty) - Art. 7 ICCPR compliance (cruel, inhuman and degrading treatment) - Art. 14 ICCPR compliance (fair trial procedures) - Mercy process- including petitions for clemency, and mercy committees - Transparency The Death Penalty Project
Adherence to international standards	
The ICCPR allows the use of the death penalty for the most serious crimes. This does not include the use of the death penalty for under 18s, persons who have become insane and pregnant women. Lobbying on individual cases where they do meet the minimum standards as set out in the EU guidelines on the death penalty. An engagement with governments / civil society on the relationship between the death penalty and Sharia law. Ensuring a fair trial for all. Highlighting the use of the death penalty on victims of a miscarriage of justice and long periods on death row which could constitute inhuman and degrading treatment.	Bilateral lobbying ICCPR (Art. 6) ECHR EU guidelines on the death penalty UN Safeguards guaranteeing protection of the rights of those facing the death penalty Standards for human rights tribunals Legal challenges (as above)
Lobbying activities	
Convey the UK's position on the death penalty. Obligations under international instruments/ regional mechanisms/ domestic laws. Recalling the 2010 UNGA Third Committee resolution which calls for a moratorium on the use of the death penalty with a view to abolition, and lobbying ahead of the 2012 UNGA resolution. Lawyers (eg Bar Associations) / Ministries of Justice / Human rights institutions/ Parliamentarians.	Political pressure via: - EU lobbying and demarches - United Nations General Assembly resolutions - Bilateral lobbying - Commonwealth (as appropriate), - Council of Europe - Human Rights Council (i.e. side events, running thematic or country resolution. Nb. Need to be aware of the make up of the committee) - Special Rapporteur (ExtraJudicial, Summary or Arbitrary Executions) - Bilateral dialogues (eg UK / EU - China dialogue) - Aid and assistance (police assistance)
Changing opinions	

Establishment of an abolitionist movement in country / civil society engaged on abolition of the death penalty. Increased access to information- publication of statistics by government Address issues around retention of the death penalty such as challenging the assumption that there is a need for death penalty, developing arguments or evidence around the effectiveness of the death penalty as a punishment and the punishment providing no added value as a deterrent. Promote / hold open debates on death penalty (for example, through the public/legislators/Parliament). Highlight the cases of miscarriage of justice and treatment of those on death row. Countries should note the sensitivities in country and ensure that action taken would not hasten executions.	- Public pressure/ public opinion - NGOs - Media - Religious groups - National human rights institutions - Medical Organisations - Youth groups / student organisations
Projects	
Focused country projects Regional projects	Funding opportunities: - DFID funding projects - EU funding- EIDHR - Civil society
Other	
Consulting experts on strategy and implementation. EU and World Day Against the Death Penalty- 10 October. An opportunity to release a statement, hold an event, media article etc. Debates on the death penalty. Annual human rights report and debate. FCO website (and internally through FCONet to help posts).	Death Penalty Sub Group to the Foreign Secretary's Advisory Group on Human Rights - HRDD consult experts from NGOs, academia, and human rights lawyers, on death penalty issues. Contact HRDD for more information.

APPENDIX SEVEN: DEATH PENALTY CORE SCRIPT

It is the longstanding policy of the UK to oppose the death penalty in all circumstances as a matter of principle because we consider that its use undermines human dignity, that there is no conclusive evidence of its deterrent value, and that any miscarriage of justice leading to its imposition is irreversible and irreparable. Our work to eradicate the death penalty around the world falls into three main categories:

- the UK carries out various bilateral initiatives to support global abolition including high-level lobbying and the funding of projects through our Human Rights Programme Fund. We are currently supporting projects in the Commonwealth Caribbean, African Commonwealth countries, China, Nigeria and the Middle East, working with key UK partners such as the Death Penalty Project and Penal Reform International.

- working through the EU to lobby countries to move towards abolition. For example, by factoring the death penalty into political and human rights dialogues; raising individual cases which do not meet the minimum standards as set out in the EU Guidelines on Human Rights (e.g. if executions involve minors or if death sentences are imposed for crimes which are not of a particularly grave nature); funding projects through the European Instrument for Democracy and Human Rights; and pursuing common action in international fora such as the UN.

- using the United Nations as tool to deliver our objectives by showing that global momentum is shifting towards abolition. The UK played an active part in helping to secure successful outcomes to the United Nations General Assembly resolutions on the moratorium on the use of the death penalty in 2010, 2008 and 2007, and the UK will be working with others to secure record support for the resolution in autumn 2012.

Arguments against the death penalty

<u>The death penalty is irreversible</u>
We oppose the death penalty in all circumstances as a matter of principle. The principle is absolute: no justice system is perfect; in our past innocent people were executed and it clearly happens elsewhere. We, together with our EU Partners, call upon all states to abolish the death penalty for all crimes and forever.

Our view is that capital punishment tends to further a casual attitude towards the right to life. It increases the level of brutality in society and may, inadvertently, legitimise the taking of lives. A state that endorses the death penalty sends the message that killing is an acceptable way of solving social problems. Violence begets violence.

<u>We do not believe that the death penalty has any value as a deterrent</u>
We do not accept that the death penalty is necessary in order to deter murder and other serious crimes. Numerous academic studies have failed to establish that execution deters more than the prospect of a long sentence. For example, the US has one of the highest

murder rates in the industrialised world and rates are highest in those southern States that execute most people.

International law

We accept that the death penalty is not outlawed in international law. But where it is retained, we urge states to observe minimum standards, for example by not executing pregnant women, persons who have become insane or those under eighteen at the time of the crime in question.

Public opinion

We consistently point out that it is for governments and parliaments to lead domestic debate. The death penalty has never been abolished as the result of public pressure. The reverse is true: it is usually done in the face of public opposition. But when governments do give a lead, domestic public opinion tend to accept it and the subject henceforth falls off the agenda. This has been the case in the UK.