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I. Introduction

Origin of the Project

In 2006 Amnesty International and non-governmental organizations, lawyers and lawmakers from Asian nations who oppose the death penalty decided at a meeting in Hong Kong to found the Anti-Death Penalty Asia Network (ADPAN). ADPAN is an independent, trans-regional network – independent from governments and interest groups and without any political or religious affiliation or background. Its members come from 28 countries and comprise lawyers, NGOs, civic groups, human rights defenders or social activists. They all join hands in a concerted effort to work for the abolishment of the death penalty in Asia.

At a second meeting in Hong Kong in 2008, the ADPAN members expressed their concern about unfair trials, death penalty verdicts and executions in Asia. ADPAN opposes in principle the use of capital punishment in any situation because we believe that the death penalty violates the right to life. It is an extremely cruel, inhumane and degrading form of punishment. ADPAN believes that as long as this has not become the mainstream view in the entire Asia-Pacific region we must work to ensure that every person who faces a potential death sentence receives a fair trial.

Unfair Trials Report¹ of 2011

In a concerted effort of all ADPAN members and with the assistance of Amnesty International our Unfair Trials Report was completed in late 2011. The report consisted of three parts: Part 1: *WHEN JUSTICE FAILS: Thousands executed in Asia after unfair trials*. Part 2: *Lethal Injustice in Asia: End unfair trials, stop executions*. Part 3: A collection of eight individual unfair trial cases from China, India, Indonesia, Japan, Malaysia, Pakistan, Singapore and Taiwan (ADPAN appeal cases). The report was presented at a press conference in Taipei on December 6, 2011.

Thanks to its publication the international community was able to gain a clearer picture of the death penalty problem in Asia. On the other hand, it gave anti-death penalty campaigners in many countries a powerful tool for better understanding the problem of unfair trials, and provided them with legal and advocacy discourse.

¹ The Unfair Trials Report of 2011 can be downloaded here: <http://adpan.net/unfair-trials/>

In 2012, the ADPAN members held another conference in Hong Kong to discuss the future of ADPAN and relevant work. The conference participants reached consensus that ADPAN should file for registration to become an official organization. Moreover, it should have its own independent Secretariat to be able to deal with the complex death penalty problem in Asia and the thriving movements for the abolishment of capital punishment. A *Transition Group* was founded and tasked with policy-making during the registration process. Actual advocacy activities were divided up among different work groups. One of them was put in charge of publishing a follow-up report to the *Unfair Trials Report II* with the Taiwan Alliance to End the Death Penalty (TAEDP) serving as the convener.

***Unfair Trials Report II* Compilation Process**

In late 2013, TAEDP won financial support for the report's publication from the Hao Ran Global Partnership Grant. In April 2014, TAEDP set up a work group to determine the content of the *Unfair Trials Report II*. Aside from explaining how much progress had been made since the publication of the 2011 Unfair Trials Report, it would place particular emphasis on the application of the death penalty to the mentally impaired.

On October 10, 2014, the 12th World Day Against the Death Penalty drew attention to people with mental illnesses who are at risk of a death sentence or execution, under the motto Mental Disorder is Never a Crime: Care, Don't Kill. Therefore, this report also attempts to present the situation of mentally ill people who face the death sentence in Asia and to explain why this violates international human rights standards.

After the TAEDP work group finished drafting the questionnaires in April, the ADPAN Unfair Trials Report work group² discussed and finalized them. Then they were sent to the ADPAN members, government organizations and individuals, who are involved with the death penalty debate in Asia. The activists were going to use the questionnaires to collect information on individual unfair trial cases in their respective countries. In August, the Transition Group reported about the work progress and the editorial direction of the *Unfair Trials Report II*. Upon its completion in November, the first draft in Chinese and English was approved by the Transition Group and officially presented to the public on December 6 at a conference in Taiwan titled: *International Conference Against the Death Penalty: Life and Death in Taiwan*.

2 ADPAN's Working Group on Unfair Trials Report includes the following members: The Taiwan Alliance to End the Death Penalty (TAEDP), China Against the Death Penalty (CADP), The Rights Practice, Amnesty International Philippines, LBH Mastiyarakat, KontraS, Imparsial and Odhikar.

II. Unfair Trials in Asia Overview

In Asia, the death penalty is used still quite widely. In 2013, a total of 23 countries worldwide reported executions, according to Death Penalty Worldwide, a Cornell Law School project. Sixteen of these countries are located in Asia³. Almost 80 percent of all executions worldwide in 2013 took place in Asia (Iran, Iraq, Saudi Arabia)⁴. If international estimates of the number of executions in China are factored in, most likely more than 95 percent of all death penalties were carried out in Asia. If we can encourage Asia to march toward the abolishment of the death penalty, the number of executions will decline markedly.

Although the countries with the most executions are concentrated in Asia, there are Asian countries that have already abolished the death penalty in law or in practice. The existence of these abolitionist countries is best evidence that the principled rejection of the death penalty transcends regional boundaries.

As for the execution of those with intellectual disability or mental illness, various Asian countries that retain the death penalty have already established protection safeguards by law or precedents. However, the typical examples of unfair trial cases submitted by the ADPAN members show that these protection safeguards are not necessarily put into practice.⁵ Since mentally handicapped or mentally ill people might be handed even more severe verdicts due to their inability to defend themselves or express regret adequately. It is one of the most fundamental obligations of civilized countries to implement protection measures for intellectually disabled or mentally ill persons in criminal justice proceedings.

As members of the international community many Asian countries have already ratified, acceded or accepted the International Covenant on Civil and Political Rights (ICCPR). Mongolia has meanwhile even ratified the Second Optional Protocol to the ICCPR, pledging to abolish the death penalty

3 Due to the civil war in Syria, Amnesty International was not able to research the use of the death penalty there for its annual Death Sentences and Executions report in 2013. Therefore, the number of countries that carried out executions in 2013 stands at 22. According to Death Penalty Worldwide statistics, which were used in this report, Syrian insurgents executed two people in 2013.

4 Death Sentences and Executions in 2013, P.7, Amnesty International, Index: ACT 50/001/2014

5 as described in Presentation of Major Cases

immediately. Nevertheless, even accession to the ICCPR does not mean that a country loyally fulfills its international human rights obligations. The law does not enforce itself. Human rights do not materialize automatically with the covenant's signing. Only if countries carry out their obligations under the covenant faithfully, human rights will shine a light in the darkest corners of the world.

This report will highlight the death penalty situation and executions in Asian countries between 2010 and 2013.⁶ It will also give an overview over the legal protection measures for the mentally disabled and mentally ill in Asian countries where the death penalty is used.⁷ Furthermore, we have listed Asian countries that have acceded to the ICCPR and its Second Optional Protocol⁸. We have also collected excerpts from international human rights documents. By using these documents for mutual reference, death penalty activists in Asia will be able to get a more comprehensive picture of the use of the death penalty and executions in Asian countries.

Since many Asian countries do not publicize execution figures, and in a bid to circumvent the language barrier, the figures used for this report are based on a comparison of data in English-language sources such as: Death Penalty Worldwide, the World Coalition Against the Death Penalty (WCADP), Amnesty International's Death Sentences and Executions reports of 2010 through 2013, as well as the Death Penalty Information Center. Also taken into account was information that ADPAN members reported back from the frontlines of the death penalty movement. We were very careful and conscientious but we have to admit that there is still room for improvement. Please contact ADPAN should you have any further information.

6 Figure 1,2 and Table 1,2

7 Table 4

8 Figure 3 and Table 3







-  Abolitionist
-  Abolitionist for "Ordinary Crimes" Only
-  Still on the statute books
-  Still on the statute books, including mandatory death penalty



Figure 1: Death Penalty in Law

This report adopts United Nations classification criteria for the status of the death penalty and was written based on data from the Death Penalty Information Center and Death Penalty Worldwide. The report shows that numerous countries in the Middle East, Southeast Asia and the Pacific Islands have already abolished the death penalty in law. In fact, abolitionist countries are no longer the minority in Asia. This phenomenon has fundamentally debunked the myth that "the abolishment of the death sentence is a western value that does not necessarily apply to Asia."

However, while the "mandatory death penalty" has disappeared from the face of the rest of the world, it still exists in Asia. Some defenders of capital punishment use the mandatory death penalty system as evidence for a strong endorsement of the death penalty in Asia. Yet even in countries where the mandatory death sentence is still on the statute books it can be arranged for not using or de facto abolishing it (such as Brunei, Myanmar, Qatar, Sri Lanka).

Table 1: Death Penalty in Law

Status*	Country	Madatory Death Penalty**	Note**
Abolitionist	Australia		
	Bhutan		
	Cambodia		
	Kyrgyztan		
	Nepal		
	New Zealand		
	Philippines		
	Samoa		
	Solomon Islands		
	Timor-Leste		
	Turkey		
	Turkmenistan		
	Tuvalu		
	Uzbekistan		
	Vanuatu		
	Hong Kong		
Macau			
Abolitionist For "Ordinary Crimes" Only [1]	Fiji		
	Israel		
	Kazakhstan		
Abolitionist de facto. [2]	Brunei Darussalam	Yes	No known executions have occurred in Brunei since 1957.
	Maldives	No	The last execution took place in 1954.
	Mongolia	No	The last known execution in Mongolia took place in 2008. On March 13, 2012, however, Mongolia ratified the Second Optional Protocol to the ICCPR, indicating that the country is poised to completely abolish the death penalty. The Protocol entered into force on June 13, 2012.
	Myanmar	Yes	Reportedly, no one has been executed since the 1980s.
	Nauru	No	Nauru has carried out no executions since achieving independence in 1968.
	Papua New Guinea	No	Papua New Guinea's last execution was in 1954.
	Qatar**	Yes	Although a search of Amnesty reports does not confirm any execution since 2000, multiple sources confirm that an appeals court in Qatar confirmed the execution of a man who was then executed by firing squad on March 10, 2003 for a 2001 murder.
	Russian Federation	No	Amnesty International reports that the last execution in the Russian Federation occurred in 1999 in the Chechen Republic, although the Federation as a whole instituted a moratorium on executions in 1996.

	South Korea	No	The last execution was carried out in 1997.
	Sri Lanka	Yes	Sri Lanka's last execution occurred in 1976.
	Tajikistan	No	In 2004, several people were executed before an official moratorium on executions was effectively established. The Organization for Security and Cooperation in Europe (OSCE) reports that the moratorium established in 2004 has remained in effect through at least June 2010. The government remains active in reducing the number of death eligible offenses and in strategizing to formally abolish the death penalty.
	Tonga	No	Tonga's last execution was in 1982.
	Laos	Unsure	
Retentionist.	Afghanistan	Yes	
	Bahrain	No	
	Bangladesh	No	
	China	No	
	India	No	
	Indonesia	No	
	Iran	Yes	
	Iraq	No	
	Japan	No	
	Kuwait	Yes	
	Lebanon	No	
	Malaysia	Yes	
	North Korea	No	
	Pakistan	Yes	
	Palestinian	Yes	
	Saudi Arabia	Yes	
	Singapore	Yes	
	Syria	Yes	
	Taiwan	No	
	Thailand	Unsure	
	United Arab Emirates	Yes	
Viet Nam	No		
Yemen	Yes		
Jordan	Yes	The last execution in Jordan took place in 2006.	
Oman	No		

[1] Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances.

[2] Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty.

* Source: Death Penalty Information Center, unless stated otherwise

** Source: Death Penalty Worldwide, a Cornell Law School project





Figure 2: Death Sentences and Executions

This report is based on the Amnesty International Death Sentences and Executions reports of 2010 – 2013. It collates the number of executions and death penalty verdicts in major countries in the Asia-Pacific region. Several countries in Asia, which lead in terms of number of annual executions, are responsible for more than 80 percent of all executions per year worldwide.

While compiling this report we found out that several countries that retain the death penalty such as Amman, Jordan and Lebanon did not carry out any executions in the 2010-2013 period. Moreover, in 2012 Jordan and Lebanon did not vote against a U.N. resolution for a moratorium on the death penalty. These countries are highly likely to move toward a de facto abolishment of the death penalty. These developments deserve our attention.

Among the de facto abolitionist countries there is still a small number that imposed death sentences (Brunei, Laos, the Maldives, Mongolia, Myanmar, Papua New Guinea, South Korea, Sri Lanka). Among these, Brunei, Myanmar and Sri Lanka still have the mandatory death sentence on the statute books. That might be a reason why it is difficult for the courts not to hand down death sentences. We were not able to draw a conclusion as to why de facto abolitionist countries still produce death sentences because it is impossible to investigate individual cases where the defendant was sentenced to death one by one. Yet this phenomenon proves that a revival of the death penalty in de facto abolitionist countries cannot be ruled out completely as long as their courts still impose capital punishment. Some countries that carried out executions also awarded a high number of death sentences. However, in relation to the number of death sentences the number of executions was rather small (such as in Pakistan). For countries that are torn as to whether executions should be carried out the experiences of other countries could serve as reference. There are ways to keep executions to an absolute minimum or not to implement them at all even if the courts continue to impose death sentences.

Table 2: Death Sentences and Executions

	Rank*	Country	2013	2012	2011	2010	2010~2013	
Retentionist	1	China [1]	1000+	1000+	1000+	1000+	4000+*	executions
			+	+	+	+	+	death sentences
	2	Iran [2]	369+	314+	360+	252+	1295+*	executions
	3	Iraq [3]	169+	129	68+	18	384+*	executions
	4	Saudi Arabia	79+	79+	82+	27+	267+	executions
	5	North Korea	70+	6+	30+	60+	166+*	executions
			+	+	+	+	+	death sentences
	6	Yemen	13+	28+	41+	53+	135+	executions
	7	Syria [4]	2+	1+	1+	17+	21+	executions
	8	Taiwan	6	6	5	4	21	executions
			7	7	16	9	39	death sentences
	9	Afghanistan	2	14	2	0	18	executions
			174	+	+	100	276+	death sentences
	10	Bangladesh	2	1	5+	9+	17+	executions
			220+	45+	49+	32	346+	death sentences
	10	Palestinian	3+	6	3	5	17+	executions
	11	Japan	8	7	0	2	17	executions
			5	3	10	14	32	death sentences
	12	Vietnam	7+	0	5+	1+	13+	executions
			148+	86+	23+	34	291+	death sentences
	13	Indonesia	5	0	0	0	5	executions
			16+	12+	6+	7+	41+	death sentences
	13	Kuwait	5	0	0	0	5	executions
	14	Malaysia	2+	0	1+	1+	4+	executions
			76+	60+	108+	114+	358+	death sentences
	15	India	1	1	0	0	2	executions
	72+		78+	110+	105+	365+	death sentences	
16	United Arab Emirates	0	1	1	0	2	executions	

	17	Singapore	0	0	0	1+	1+	executions
			1+	2+	5+	8+	16+	death sentences
	18	Bahrain	0	0	0	1	1	executions
	18	Pakistan	0	1	0	0	1	executions
			226+	242	313+	365	1146+	death sentences
		Jordan	0	0	0	0	0	executions
		Lebanon	0	0	0	0	0	executions
		Oman	0	0	0	0	0	executions
		Thailand	0	0	0	0	0	executions
			50+	106+	40	7+	203+	death sentences
							Death Sentences **	
Abolitionist de facto.		Sri Lanka	13+	7+	106	+	127+	executions
		Myanmar		17+	33+	2	52+	executions
		Maldives	13	2+		1	16+	executions
		South Korea	2	2	1	4	9	executions
		Laos	3+	+		4	8+	executions
		Papua New Guinea			5		5	executions
		Mongolia		+	+		2+	executions
		Brunei Darussalam				+	1+	executions

[1] Number of executions in China: It is very difficult to obtain reliable figures on executions in China because the Chinese government regards such data as a state secret. Amnesty International estimates that more than 1,000 death sentences were imposed annually in China in the 2010-2013 period. According to Death Penalty Worldwide statistics (which are based on information provided by The Dui Hua Foundation) Chinese courts handed down more than 15,000 death penalties between 2010 and 2013 (an estimated 5,000 in 2010, 4,000 in 2011, 3,000 in 2012 and at least 3,000 in 2013, respectively).

[2] Number of executions in Iran: According to Death Penalty Worldwide estimates, the number of executions in Iran ranged between 424 and 727 in 2013. In 2012 at least 580 persons were executed, in 2011 a total of 676 persons and in 2010 about 650-751 persons.

[3] Number of executions in Iraq: Amnesty International information shows that at least one execution was carried out in Iraq in 2010. However, Death Penalty Worldwide quotes a survey by the U.N. Assistance Mission for Iraq as saying that 18 executions took place in Iraq in 2010. We used the Death Penalty Worldwide figures for this report.

[4] Number of executions in Syria: According to Death Penalty Worldwide Syria (rebel forces) carried out at least two death sentences in 2013.

* Total number of executions for the 2010-2013 period by country in declining order

** De facto abolitionist countries might still impose death sentences. The number of death sentences handed down in abolitionist countries in this table is based on the Amnesty International Death Sentences and Executions annual reports. It is not possible to confirm the number of death sentences in all countries. If countries that retain the death penalty do not appear in this table this does not mean that no death sentences have been imposed.

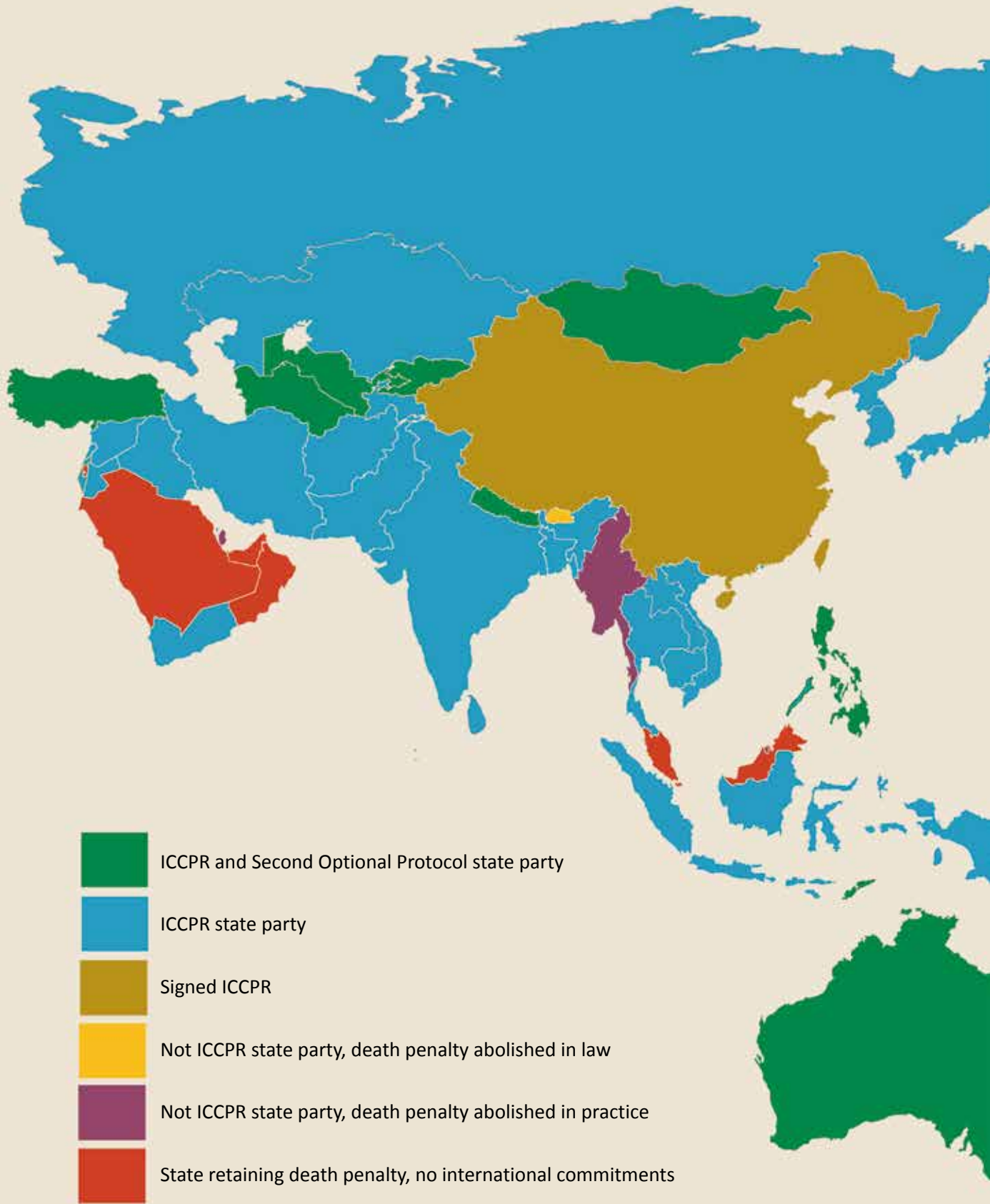




Figure 3: International Commitments

United Nations data show that a vast majority of Asian countries has already accepted the ICCPR, demonstrating their willingness to jointly work for the protection and preservation of human rights as provided in the convention. Unfortunately, some countries continue to use the death penalty on a massive scale although they have already acceded to the ICCPR. The faithfulness of these countries with regard to their compliance with treaty obligations must be put to the test. Given that only a handful of Asian nations have signed, ratified or acceded to the Second Optional Protocol to the ICCPR much more could be done to promote it.

Table 3: International Commitments

Country	Status	ICCPR	Second Protocol to the ICCPR, aiming at the abolition of the death penalty	Vote record of the 2012 UN resolution "Moratorium on the use of the death penalty"	
Australia	Abolitionist	Party	Party	vote in favor	
Kyrgyzstan				vote in favor	
Nepal				vote in favor	
New Zealand				vote in favor	
Philippines				vote in favor	
Timor-Leste				vote in favor	
Turkey				vote in favor	
Turkmenistan				vote in favor	
Uzbekistan				vote in favor	
Cambodia				No	vote in favor
Samoa		No	vote in favor		
Vanuatu		No	vote in favor		
Bhutan		No	No	vote in favor	
Solomon Islands		No	No	vote Abstained	
Tuvalu		No	No	vote in favor	
Hong Kong		No	No	vote in favor	ICCPR came into force to Hong Kong
Macau	No	No	vote in favor	ICCPR came into force to Macau	
Israel	Abolitionist For "Ordinary Crimes" Only	Party	No	vote in favor	
Kazakhstan			No	vote in favor	
Fiji		No	No	vote Abstained	
Mongolia	Abolitionist de facto.	Party	Party	vote in favor	
Laos			No	vote Abstained	
Maldives			No	vote Abstained	
Papua New Guinea			No	vote Abstained	
Russian Federation			No	vote in favor	
South Korea			No	vote Abstained	
Sri Lanka			No	vote Abstained	
Tajikistan			No	vote in favor	
Nauru		Signed	No	vote in favor	
Brunei Darussalam		No	No	vote against	
Myanmar		No	No	vote against	
Qatar		No	No	vote against	
Tonga		No	No	vote against	

Afghanistan	Retentionist	Party	No	vote against		
Bahrain			No	vote against		
Bangladesh			No	vote against		
India			No	vote against		
Indonesia			No	vote Abstained		
Iran			No	vote against		
Iraq			No	vote against		
Japan			No	vote against		
Jordan			No	vote Abstained		
Kuwait			No	vote against		
Lebanon			No	vote Abstained		
North Korea			No	vote against		
Pakistan			No	vote against		
Syria			No	vote against		
Thailand			No	vote Abstained		
Viet Nam			No	vote Abstained		
Yemen			No	vote against		
China			signed	No	vote against	
Palestinian			Not Applicable.	Not Applicable.	Not Applicable.	
Taiwan		Not Applicable.	Not Applicable.	Not Applicable.	Taiwan signed the ICCPR when it was still a member of the UN (that is to say, when it still occupied the seat of "China" at the UN). It did not ratify the ICCPR until 2009. It is not now a state party to the ICCPR, as Taiwan is no longer a member of the UN. Therefore, in order to complete the ratification process and give the ICCPR full legal force within Taiwan, the legislature passed it into law. The law (called the Act to Implement the ICCPR and the ICESCR) took effect on Dec. 10, 2009 and binds Taiwan to implement the full content of the ICCPR and UN Human Rights Committee interpretations within two years. By the end of the two-year period (Dec. 2011), the country had yet to amend or abolish the majority of the acts not in compliance with the covenants.	
Malaysia	No	No	vote against			
Oman	No	No	vote against			
Saudi Arabia	No	No	vote against			
Singapore	No	No	vote against			
United Arab Emirates	No	No	vote Abstained			

*Source:

https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en

Last accessed: Nov. 10, 2014

Table 4: Mentally Impaired and Mentally Ill Persons

Since mentally impaired or mentally ill people have difficulties pleading their cases efficiently during judicial proceedings, they might be handed even more severe verdicts for their inability to express regret adequately. It is one of the most fundamental obligations of civilized countries to implement measures to protect the rights of mentally impaired or mentally ill persons in criminal justice proceedings.

As for the execution of those with intellectual disability or mental illness, various Asian countries that retain the death penalty have already established safeguarding measures by law or during trial. Virtually all Asian countries that retain the death penalty have regulations that allow for diminished responsibility (or diminished capacity) defenses if a crime is committed during a state of mental illness. In comparison, measures to protect the interests of mentally impaired offenders are still inadequate. Moreover, the law does not enforce itself automatically. The representative, unfair trial cases submitted by the ADPAN members show that procedural safeguards are not necessarily applied in actual court proceedings.

One of the most important tasks of Asian governments is to make sure that relevant laws and regulations are applied to death penalty cases. The same goes for procedural safeguards that respect the rights of mentally ill and mentally impaired defendants in line with international human rights laws and obligations under the ICCPR.

Country	Mentally Impaired	Mentally Ill
Afghanistan	Individuals have no penal responsibility for offenses committed while lacking in senses or intelligence due to insanity or mental disease. A person who commits a crime while suffering from a defect in senses or intelligence may be criminally liable but is punished less severely than is a person of normal senses or intelligence.	Individuals have no penal responsibility for offenses committed while lacking in senses or intelligence due to insanity or mental disease. A person who commits a crime while suffering from a defect in senses or intelligence is criminally liable but is punished less severely than is a person of normal senses or intelligence. Individuals might be excluded from execution while mentally ill.
Bahrain	N/A	According to Bahrain's Penal Code, individuals who are found to be mentally ill at the time of the offense, during the course of interrogation, or after sentencing are to be sent to a sanitarium. However, the Penal Code does not specifically refer to the treatment of mentally ill accused individuals in relation to the death penalty.
Bangladesh	N/A	N/A
Brunei Darussalam	Individuals suffering from "abnormality of mind" including "arrested or retarded development" substantially impairing mental responsibility are not to face capital charges such as for murder—they can be convicted of culpable homicide not amounting to murder.	Persons under sentence of death cannot be executed if it is shown that they are "mentally disordered or mentally defective." Individuals suffering from "abnormality of mind" substantially impairing mental responsibility are not to face capital charges such as for murder—they can be convicted of culpable homicide not amounting to murder.

China	N/A	<p>The Criminal Law provides that no criminal responsibility attaches to a "mental patient" if he "causes harmful consequences at a time when he is unable to recognize or control his own conduct." However, a mental patient "whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state." Similarly, "a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime" will bear criminal responsibility though he may benefit from a lighter sentence.</p> <p>We found no legislation prohibiting the execution of prisoners suffering from mental illness at the time of sentencing or execution.</p>
India	According to the Indian Penal Code, individuals who were mentally ill at the time of the crime and who did not understand the nature of the act or know that the act was wrong or against the law cannot be held criminally liable. This could be interpreted to exclude mentally retarded persons from the death penalty.	According to the Indian Penal Code, individuals who were mentally ill at the time of the crime and who did not understand the nature of the act or know that the act was wrong or against the law cannot be held criminally liable.
Indonesia	Pursuant to Article 44(1) of the Penal Code, no criminal liability can be imposed for an act committed "by reason of the defective development or sickly disorder" of the defendant's "mental capacities." We found no law indicating that individuals with significant intellectual disabilities are ineligible for execution apart from the circumstances described in Article 44(1). In other words, individuals with severe intellectual disabilities may be excused from criminal liability if their disabilities are proven to "cause" their criminal behavior. Where a direct causal relationship is not proven, however, there is no provision in the penal code that provides that such individuals shall not be sentenced to death.	Pursuant to Article 44(1) of the Penal Code, no criminal liability can be imposed for an act committed "by reason of the defective development or sickly disorder" of the defendant's "mental capacities." We found no law indicating that individuals who develop a severe mental illness after they are convicted and sentenced to death are ineligible for execution.
Iran	N/A	Under the Islamic Penal Code, individuals who are insane at the time of an offense may be excluded from criminal liability—this was true under Section 51 of the 1991 Penal Code . Individuals who become insane after being sentenced to death can be executed while insane; the law does not exclude them from execution. In practice, the very limited exclusion for people who are insane at the time of their offense is "extremely narrowly defined or applied in a restrictive and discriminatory manner."
Iraq	"Infirmity of the mind," which may include mental retardation, is a "mitigating circumstance" defined by law, and may thus be treated under Paragraph 130 of the Penal Code as a "mitigating excuse" that precludes the death penalty. Otherwise, "infirmity of the mind" may be treated under Paragraph 132 as a circumstance justifying a reduction of sentence.	Insanity is a "mitigating circumstance" defined by law, [13] and may thus be treated under Paragraph 130 of the Penal Code as a "mitigating excuse" that precludes the death penalty. Otherwise, insanity may be treated under Paragraph 132 as a circumstance justifying a reduction of sentence.

Japan	<p>The "weak-minded" are excluded from the death penalty, but the legal standard for mental incompetency is so restrictive that the Japan Federation of Bar Associations does not consider the mentally retarded to be excluded from the death penalty.</p>	<p>The Penal Code excludes crimes committed under insanity, diminished capacity, or lack of awareness of a greater crime while committing a lesser crime from the death penalty. Executions may not be carried out on prisoners while they are suffering from insanity. The Code of Criminal Procedure also provides that when a death-sentenced person is "in a state of insanity," the Minister for Justice must issue an order suspending execution. The execution may resume after the offender has "returned to a state of sanity."</p> <p>Japanese case law shows a concern for the particular needs of mentally-ill defendants. A 1995 judgment by the Supreme Court determined that the mentally ill cannot withdraw their appeals when their mental state precludes them from protecting their own rights. In that case, a death row inmate suffering from delusions and paranoia requested to withdraw his appeal to escape the distress of legal proceedings. In 1984, the Supreme Court affirmed the Court of Appeals' determination that a defendant had diminished mental capacity. The Supreme Court also approved the lower court's review of the defendant's entire mental health evaluation, rather than simple reliance on its conclusions.</p> <p>However, it is reported that Japan has executed mentally ill persons. For instance, in March 1993, the government proceeded with the execution of Kawanaka Tetsuo, who was reportedly mentally ill, and whose mental health had deteriorated in the months preceding the execution. In December 2007, the government executed Seiha Fujima, who had been found legally incompetent at trial. In June 2008, Tsutomu Miyazaki was executed although he had been treated for schizophrenia for the previous decade.</p> <p>The Committee Against Torture has denounced "the absence of a review mechanism to identify inmates on death row who may be suffering from mental illness." Inmates are not allowed access to their own medical records, and visits from non-prison doctors are prohibited.</p>
Jordan	<p>Article 92 of the Penal Code states generally that a person who does not recognize the nature or illegality of his acts because of a mental disorder will not be punished, but will be confined to a mental institution until he no longer represents a danger to public safety.</p>	<p>Article 92 of the Penal Code states generally that a person who does not recognize the nature or illegality of his acts because of a mental disorder will not be punished, but will be confined to a mental institution until he no longer represents a danger to public safety. [6] Article 29 states that the death penalty shall be suspended in the case of a mentally incapacitated person; however, if a medical committee determines that he has regained sanity, he may be executed.</p>

Kuwait	N/A	Proceedings may be suspended for individuals who are mentally unfit to stand trial. A court may find that a defendant has diminished responsibility due to mental illness at the time of the offense, or may acquit the defendant. There is no indication, however, that the law prohibits the execution of individuals who have become insane while awaiting execution of their death sentence.
Laos	Some exceptions based on mental competence could apply to the mentally retarded. The Penal Code states that an offender must be "mentally competent" for an offence to be constituted	An offender must be "mentally competent" and "not insane" for an offence to be constituted. An offender who is "under a state of mental disturbance" at the time of commission of the offence or at the time of sentencing may benefit from medical treatment and be sent to a psychiatric hospital. Normal sentencing procedures resume after the offender has recovered. The duration of treatment must be included in calculating the punishment. If "the accused has lost control of his mental faculties" and there is confirmation from a doctor or the prosecutor or the court request it, the offender's case is suspended and he is sent for treatment. The suspended case is dismissed if the limitation period for prosecution expires.
Lebanon	When mental retardation diminishes a person's ability to comprehend or control his actions at the time of the offense, this is a mitigating excuse.	Insanity at the time of the offense may preclude criminal liability, and intoxication is, in some cases, a mitigating excuse. We do not know whether there are additional exclusions for a person who becomes insane after committing an offense, or whether a prisoner can be executed while insane.
Malaysia	N/A	No offense can be committed by a person who, at the time an act is committed, "by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."
Maldives	Mentally retarded persons might have some protection under Shariah law, especially if they are not competent to stand trial or give a free confession. Law limiting the right to life is required to comply with Shariah principles.	Under the Penal Code of 1968, no criminal liability attaches to an offense committed "by a person who at the time of doing it is by reason of being in a certain state of mind, is incapable of knowing the nature of the act or that it may be contrary to law." The provision does not apply "to a person who creates that state of mind on his own volition or with his consent." Under Shariah law, insane individuals might have more expansive protection than explicitly laid out in the Code, including a protection against being executed while insane.

Mongolia	"Mental deficiency" is a grounds for non-imputability or for delaying a trial; we do not know whether this is interpreted to exclude some mentally retarded persons from capital punishment or facing capital sentencing.	Non-imputability because an individual was "unable to realize the socially dangerous nature of his/her act or omission or to control it" may result in compulsory medical measures instead of conviction. The same can be true in cases of intoxication. Individuals who, after an offense, become unable to realize the nature of their actions, may be committed for medical treatment until they are able to stand trial or face sentencing.
Myanmar	N/A	Nothing is an offense when done by a person who because of unsoundness of mind is incapable of knowing the nature of the act or its wrongness or criminality at the time it is done. Insane individuals cannot stand trial. We do not know whether executions are stayed if the individual becomes insane after sentencing.
Nauru	N/A	Persons of unsound mind cannot stand trial; individuals of unsound mind at the time of the act are to be confined in an institution but are not criminally liable.
North Korea	N/A	N/A
Oman	"Any person with a mental hereditary or acquired disability" shall benefit from a mitigating excuse, and the maximum punishment for a capital offense will be temporary imprisonment of at least one year.	"Any person with a mental hereditary or acquired disability" shall benefit from a mitigating excuse, and the maximum punishment for a capital offense will be temporary imprisonment of at least one year. "A person who commits a crime while in a state of lunacy having deprived him of consciousness or will shall not be punished."
Pakistan	Article 341 of the Criminal Procedure code suggests that individuals who, while sane, cannot understand the proceedings against them may enjoy some additional protections against the death penalty; however, the death penalty for such individuals is still permitted.	Article 306 of the Penal Code and an interview with an experienced Pakistani lawyer indicate that mental health may influence whether a person can be executed for a crime.
Palestinian	N/A	Article 14 of the Palestinian Penal Code of 1936 stipulates that "if the accused one is unable to understand his actions or he is unable to be aware that it is prohibited to commit that act or omission due to an imbalance in the mind, then he is relieved from the capital punishment." There is a similar exclusion under the Jordanian penal code. This could also affect mentally retarded individuals.
Papua New Guinea	While we did not find a law under which mentally retarded individuals are excluded from execution, a Supreme Court opinion from 2006 does suggest that "sophistication" and mental capacity beyond mere sanity could be a consideration in sentencing.	A person unable to understand his actions or unable to control his actions is not criminally liable, and a person who commits an offense due to a delusion is held liable only insofar as the delusion would support criminal liability if it were true.
Qatar	Under Qatar's Penal Code, "mental defect" resulting in partial incapacity is an extenuating excuse, while total incapacity precludes criminal responsibility.	Under Qatar's Penal Code, mental insanity resulting in partial incapacity is an extenuating excuse, while total incapacity precludes criminal responsibility.

Russian Federation	A person unable to understand the nature or consequences of his or her actions, or to control them, by reason of mental deficiency is not criminally liable. Partial incapacity is grounds for mitigation.	A person unable to understand the nature or consequences of his or her actions, or to control them, by reason of mental deficiency is not criminally liable. Partial incapacity is grounds for mitigation.
Saudi Arabia	<p>Saudi courts appear to recognize a person who does not have mental awareness of the consequences of his acts is not criminally responsible beyond payment of compensation. The execution of individuals who cannot satisfy the requirement of intent (or voluntariness in contributing testimonial evidence) is traditionally prohibited under Shari'a rules, and this has—historically—affected the competency of mentally retarded individuals to face capital charges and whether a court may find premeditation and understanding sufficient for criminal liability. We do not know the application of this principle in Saudi Arabia.</p> <p>This has also historically affected the competency of insane individuals to stand trial for capital charges and whether a court may find premeditation and understanding sufficient for criminal liability. It has also affected whether an individual who becomes insane after a verdict can be executed, especially if the offender's testimony was used against him. Intoxication, while (if voluntary) not necessarily preventing criminal liability, may exclude the application of hudud and qisas penalties (thus likely excluding the death penalty). Our review of a Saudi judge's decision-making in sentencing a schizophrenic individual to death did not suggest that these rules are strictly adhered to.</p>	<p>Saudi courts appear to recognize that under limited circumstances, a person who does not have mental awareness of the consequences of his acts is not criminally responsible beyond payment of compensation. Those who are aware of the bad consequences of their acts but unable to control their behavior due to insanity might not be excepted from hadd (mandatory) or qisas punishments but can be excepted from tazir (discretionary) punishments. Those who are insane but could be argued to have the ability to control their actions might not be excused from punishment. The extent to which an individual's judgment is compromised by his mental illness is a question that is left to the courts to determine, and not all individuals with mental illnesses are excluded from the death penalty. One judge, for example, recently wrote about his decision to sentence a man with a schizophrenic disorder to death as qisas for murder (focusing somewhat on the interaction of self-medication attempts with the individual's illness).</p>
Singapore	N/A	"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." Involuntary intoxication or intoxication to the point of insanity also has this result.
South Korea	N/A	A defendant with severe mental illness that prevents object recognition or decision-making is not subject to punishment. Sentence is reduced for a defendant whose state of "unsound mind" only allows feeble object recognition or decision-making. In the case when a defendant is in a state of "unsound mind", the execution is carried out after the recovery from the state of "unsound mind."

Sri Lanka	The Code of Criminal Procedure contains some language that could protect mentally retarded persons who are less able to avail themselves of the safeguard of a fair trial. "If the accused though not insane cannot be made to understand the proceedings the Magistrate's Court or the High Court as the case may be, may proceed with the inquiry or trial, and if such inquiry results in a commitment or if such trial results in a conviction the proceedings shall be forwarded to the Court of Appeal with a report of the circumstances of the case and the Court of Appeal shall pass thereon such order as it thinks fit." We do not know how this language is, in practice, interpreted and applied.	The Penal Code provides: "Nothing is an offense which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." Intoxication provides a limited defense. The Code of Criminal Procedure mirrors this protection, providing that the Court of Appeal may quash a sentence on the grounds that the trial court should have found the accused insane at the time of his offense. Also, if the accused is determined to be of unsound mind and incapable of making a defense at the Magistrate Court or High Court, then the proceedings are postponed. Finally, individuals who are deemed sane but unable to understand proceedings may receive legal protections.
Syria	Under Articles 232 and 241 of the Penal Code, the death penalty is commuted to imprisonment if the offender is mentally deficient.	An offender who was mentally ill at the time of the offense is exempted from the death penalty. "If the offender is afflicted with insanity after committing an offence, during the investigation or trial or after sentencing, enforcement of the penalty is deferred until he is cured."
Taiwan	N/A	According to the government, although the law does not prohibit the execution of mentally ill individuals, such executions are not carried out in practice. However, it is not clear that this exclusion is always adhered to. Mental soundness is assessed "immediately prior" to execution, mental health management is inadequate, and at least some experts conclude that it is unlikely that fair assessments are made prior to execution. One expert concludes that there is no exclusion for mentally ill prisoners. There is also an exclusion from or reduction of criminal liability for individuals who were mentally ill at the time of their offense, although for an exclusion a defendant may have to prove a pre-existing condition.
Tajikistan	Persons who could not account for their actions due to "weak-mindedness" are not subject to criminal liability. In at least one case, a mentally retarded suspect was tortured, convicted and sentenced to death on the basis of a forced confession.	A death sentence cannot be executed against a convict who, after sentencing, evidences a mental disorder depriving him of the ability to understand his actions or control them. Chronic mental illness, temporary derangement or other state of mental disease are grounds for precluding criminal liability.

Thailand	The Criminal code provides lack of intelligence as a potential mitigating circumstance. However, this is a discretionary exclusion, which is not often considered.	Execution of mentally unsound persons is prohibited in Thailand. The current law provides that "Any condemned prisoner proved to be mentally unsound prior to the execution schedule, shall be given a 'Temporary Stay Order' until his mental status is re-examined and proved to be normal and sound...And if his/her mental health is proved to be normal again after one full year of treatment after the passing of the final court judgment, the death penalty shall be commuted to life imprisonment." Thus, if mentally unsound prisoners recover in less than one year, an execution follows; if mentally unsound prisoners recover after one year then the death penalty is commuted and no execution takes place. The law requires prison officials to conduct thorough examinations on the mental status of each prisoner sentenced to death as well as those who have exhausted the application procedures for the Royal Pardon.
Tonga	N/A	Persons may be determined incompetent to stand trial. Additionally, persons who due to mental disease were, at the time of the offense, unable to understand the physical nature of actions or omissions or unable to understand that an act or omission was wrong cannot be held criminally liable. [5]
United Arab Emirates	An individual who is "bereft of understanding or will" due to "mental deficiency" at the time of the offense is not criminally liable for his actions. Partial deficiency is only an extenuating factor. In Shari'a courts, the execution of individuals who cannot satisfy the requirement of intent (or voluntariness in contributing testimonial evidence) is prohibited, and this has—historically—affected the competency of retarded individuals to face capital charges and whether a court may find premeditation and understanding sufficient for criminal liability.	An individual who is "bereft of understanding or will" due to insanity at the time of the offense is not criminally liable for his actions. Partial deficiency is only an extenuating factor. It is possible that the law excludes from execution those who become insane after pronouncement of a judgment. In Shari'a courts, the execution of individuals who cannot satisfy the requirement of intent (or voluntariness in contributing testimonial evidence) is prohibited, and this has—historically—affected the competency of insane individuals to stand trial for capital charges and whether a court may find premeditation and understanding sufficient for criminal liability. It has also affected whether an individual who becomes insane after a verdict can be executed, especially if the individual's testimony played a role in his conviction. Intoxication, while (if voluntary) not necessarily preventing criminal liability, may exclude the application of hudud and qisas penalties (thus likely excluding the death penalty).
Viet Nam	We did not find any legislation that specifically excludes individuals with intellectual disabilities from the death penalty. A person who is suffering from mental disorder that deprives him of the capability to be aware of or to control his acts is not criminally liable. The Penal Code considers mental disorders that restrict the offender's "cognitive capability" as an extenuating circumstance to the death penalty, and this could be applied to prohibit the execution of individuals with mental retardation.	We did not find any legislation that specifically excludes individuals with mental illness from the death penalty. A person who is suffering from a mental illness that deprives him of the capability to be aware of or to control his acts is not criminally liable. The Penal Code considers mental illness that restricts the offender's "cognitive capability" as an extenuating circumstance to the death penalty, and this could be applied to prohibit the execution of individuals with mental illness.
Yemen	Mentally retarded persons may be found incapable of standing trial; additionally, they may be committed to an institution if a court determines that they cannot be held criminally liable for a serious crime.	Mentally ill persons may be found incapable of standing trial; additionally, they may be committed to an institution if a court determines that they cannot be held criminally liable for a serious crime

III. Presentation of Major Cases

This report is a sequel and update to the Unfair Trials Report of 2011 with a particular focus on unfair trials involving mentally impaired and intellectually disabled defendants. The Unfair Trials Report work group gathered individuals cases submitted by The Rights Practice (Britain), Justice Project Pakistan, Amnesty International Hong Kong, Prison Fellowship Pakistan, Union for Civil Liberty (Thailand), China Against the Death Penalty Group, Singapore Anti-Death Penalty Campaign and the Taiwan Alliance to End the Death Penalty (TAEDP). The facts and problems pertaining to these cases, including 14 new ones, are presented and analyzed below.

In death penalty cases with mentally impaired offenders such as Khizar Hayat, Muneer Hussein and Raja Mohammad Asghar from Pakistan as well as Lin Yu-ru, Peng Jian-yuan and Chen Yu-an from Taiwan, the major problem is that courts ignore that the defendants is mentally ill. The cases of Fhat-hee Samae and Luding from Thailand show that the state disregards the principles of due process and fair trial in the name of fighting "terrorism." For lack of concrete evidence, it might use manipulative interrogation tactics and torture to extract confessions and bring false charges against people.

Examples of unfair trial due to flawed evidence or illegally obtained evidence include Hsieh Chih-hung and Cheng Hsing-tse from Taiwan. Both trials were unfair because evidence that should have been investigated was not investigated (such as why the defendant's fingerprints were not found on the murder weapon) and the confessions were extracted through torture. Cheong Chun Yin from Singapore, who was caught with illegal drugs in his luggage, was sentenced to death for drug offense. Cheong cooperated with the Central Narcotics Bureau (CNB) during the investigation by providing information about the drug dealers but since he was not able to submit a Certificate of Cooperation (CoC), he lost the opportunity to be handed a lifelong prison sentence instead of capital punishment, enduring an unfair trial.

Regarding the nine appeal cases announced in the Unfair Trial Report 2011, we followed up developments over the past three years after gathering information from relevant advocacy groups and lawyers and consulting relevant media reports and other reports. Six of the cases in this report have been updated, including Leng Guoquan from China, Aftab Bahadur from Pakistan, Devender Pal Singh from India, Chiou Ho-shun from Taiwan, Iwao Hakamada from Japan and Yong Vui Kong

from Singapore. It is comforting that the six updated cases show concrete progress, be it thanks to a reduced sentence, a commuted death sentence or a retrial. This shows that in individual cases the joint effort of ADPAN members, criminal defense lawyers and advocacy groups can still generate slow but steady progress. The two remaining cases could not be presented because it was not possible to obtain updated information before the report's editorial deadline.

For the newly added and the updated cases highlighted in this report information from ADPAN members, advocacy groups or individual defendant's defense lawyers was collated to briefly state the facts of the case and the reasons for the unfairness of the trial. Through concrete examples, we hope to shine a spotlight on trials that were unfair because they involved mentally impaired defendants or insufficient evidence. We want to draw attention to the problem of unfair trials in Asia in order to reduce their number gradually in the future.

A. New Cases

1. The Mentally Impaired and the Death Penalty

a Khizar Hayat (Provided by Justice Project Pakistan)

Facts of the Case

Khizar Hayat was originally a junior police officer in Lahore. In 2001, he assaulted Gulam Ghaus and his accompanying brother Mohammed Arif, shooting the victim three times with his policeman's gun to take revenge for an old grievance. The victim died at the scene of the gunshot wounds. Khizar Hayat was sentenced to death in the first instance in 2003. In 2009, the Lahore High Court again handed down a death sentence. In 2011, the Supreme Court upheld the original verdict.

Khizar Hayat has received the equivalent of a junior high school education but his close friends say he is a simple minded man and has a low IQ. From childhood on, he has suffered from mental problems. The defendant and the victim were disciples of the same spiritual leader and would always follow his advice. Since the spiritual leader opposed that his daughter socialized with the victim, Khizar Hayat developed hostile feelings toward the victim which led to a brawl and the assault. Khizar Hayat has been in prison now since 2001, for thirteen years. Prison personnel believe that he suffers from a severe mental illness. In 2008, he was diagnosed with schizophrenia but the prison administration only isolated him in the hospital ward or kept him in solitary confinement, which only aggravated his mental illness. Presently, advocacy groups are pleading Khizar Hayat's case with the Lahore High Court, hoping to improve his treatment in prison.

Unfair Trial

Khizar Hayat's family could not afford to hire a lawyer. During the trial proceedings, the public defender never met with the defendant or his family, did not submit exculpatory evidence and did not subpoena witnesses who had given contradictory testimony. He did not point out contradictions

in evidence entered by the prosecution and police during the trial. During the litigation process, the attorney did not enter a plea against the accusations on the ground that the defendant is mentally ill. The preceding resentment between the victim and the defendant was not investigated. The court did not investigate evidence in favor of the defendant. Therefore, the defendant was not able to obtain effective and efficient defense representation. Two years passed between the defendant's arrest and the first court hearing, while another six years elapsed between the verdict and the first appeal, and two more years before the second appeal. The litigation process was an extremely long-drawn out affair, which violated the defendant's right to a speedy trial, but he did not receive any compensation. Moreover, Khizar Hayat's mental health was ignored during his imprisonment, which severely violated the defendant's right to action.

b Muneer Hussein (Provided by Justice Project Pakistan)

Facts of the Case

Muneer Hussein is a worker who usually also works as a farmer. In the late 1970s, Muneer Hussein suffered a gunshot wound to the brain behind the eye. Since that injury, he often complained about headaches. Muneer Hussein has been diagnosed with schizophrenia and affective disorder with symptoms of irritability, agitation, violence and a high level of aggression. Members of his family have said that such outbursts can last for several hours or several days but that Muneer Hussein never accepted any psychiatric treatment. Muneer Hussein has five sons and three daughters, including a grown up son who displays similar symptoms.

Staying one day at the house of his cousin Muhabbat Hussein, Muneer Hussein burst into a violent rage when the wife of his cousin woke him up in the morning. He grabbed a short-handled axe hacking into the women's upper back. Then he rushed downstairs where he attacked two nieces with the axe, inflicting lethal head injuries on the girls. Then he ran to the house of another cousin where he assaulted a nephew, causing fatal injuries to his neck. The indictment stated that a land dispute between Muneer Hussein and his cousins might have been the motive for the murders. In 2011, Muneer Hussein was sentenced to death in the first instance. The High Court also handed him a death sentence in the second instance. In 2009, the Supreme Court upheld the original death sentence in the final verdict. Muneer Hussein has been detained for 13 years now and could be executed anytime.

Unfair Trial

Muneer Hussein has never been sent to a psychiatric institution for an evaluation of his mental health. His history of mental illness did not receive due attention. Since the defendant was not able to retain a defense lawyer, a public defender was appointed, who never met with the defendant

during the period of the trial. He also failed to submit any exculpatory evidence on behalf of the defendant. During the trial or appeal proceedings, it was never raised whether the defendant was fit to stand trial and how his mental state was at the time he committed the crimes.

C **Raja Mohammad Asghar** (provided by Justice Project Pakistan)

Facts of the Case

Raja Mohammad Asghar is a small business owner with junior high school education. He has seven grown up children from two marriages who have immigrated to Britain. Raja Mohammad Asghar suffers from paranoid schizophrenia and delusions. In 2010, he was committed to a British psychiatric institution for one month. After he left the institution, his mental illness deteriorated drastically so that family members had to care for him to ensure that he took his medication. However, he stopped taking medication and returned to Pakistan.

Back in Pakistan, Raja Mohammad Asghar's tenant Muhammad Hafeez failed to pay rent for several months. Therefore, Raja Mohammad Asghar asked him to move out. In retaliation, the angered tenant brought false charges of blasphemy against Raja Mohammad Asghar, accusing him of having claimed to be a prophet. On Jan. 24, 2014, a district court sentenced Raja Mohammad Asghar to death. An appeal has been filed with the Lahore District Court.

Unfair Trial

After Raja Mohammad Asghar appealed his death sentence on the grounds of mental illness, the court designated a medical assessment team to evaluate the defendant's mental health. Due to the prosecution's influence, and after receiving death threats, the medical team found the defendant functioning at a normal mental level. Based on the medical assessment team's evaluation, the court determined that the defendant was not mentally impaired and refused to subpoena doctors as witnesses for the defense.

Raja Mohammad Asghar, who experienced another episode of paranoid schizophrenia at the time, refused to sign a power of attorney that would have authorized his lawyer to appeal his verdict. During the trial process, Justice Project Pakistan repeatedly filed statements calling for a fair trial but the court refused to enter these into the transcript of the court proceedings. The lawyer noted that the court was violating the law, that it must make an entry in the transcript and dismiss this case. However, the presiding judge deleted the volunteer lawyer from the list of the defendant's defense attorneys, severely infringing upon the defendant's right to a fair trial.

d Lin Yu-ju

(provided by TAEDP, Taiwan)

Facts of the Case

The court ruled that Lin Yu-ju bought life insurance policies on Sept. 22, 2008, for her mother and mother-in-law, naming herself as the beneficiary. When Lin got into an argument with her mother on Nov. 9 the same year she pushed her down the staircase, causing her death. In order to be able to claim the life insurance, Lin left the scene after moving her mother's dead body. Nevertheless, the victim's family pointed out discrepancies between the crime scene and Lin's confession and voiced suspicion that the true culprit was another person. Yet the court did not investigate these statements any further. On May 7, 2009, Lin's mother-in-law was hospitalized with an illness. The following day, Lin went to the hospital and injected a poisonous substance concocted by herself into the intravenous drip of her mother-in-law, causing her to die. In court, the defendant defended herself saying her husband had given her the poisonous substance and Lin passed a lie detector test with that statement but the court did not accept this result into evidence. In March or April 2009, Lin faked her husband's signature to buy another life insurance, naming her son as the beneficiary. On July 19, 2009, Lin took advantage of her husband's hospitalization to inject a poisonous substance into his intravenous drip, causing his death.

Lin was indicted on charges of murdering her mother, mother-in-law and husband. In the first instance, she was handed two life imprisonment sentences for killing her mother and mother-in-law and the death penalty for murdering her husband. Upon appeal to the High Court, the death penalty for her husband's murder was commuted to life imprisonment but the court rejected the appeal for the other verdict. The Supreme Court refused to consider an appeal in connection with the murders of the mother and mother-in-law. At the same time, the Supreme Court overturned the second instance ruling on the husband's murder, which had commuted the death penalty into a life imprisonment sentence, on the ground that "Lin has killed three people in a row, how could such bad behavior be termed good-natured." The court reinstated the first instance death penalty verdict. Lin's death penalty became final after her second appeal was rejected in the third instance on the ground that "The court of third instance believes it would amount to an exemption from punishment if the defendant were given another life imprisonment sentence."

Unfair Trial

Two years before her indictment, Lin regularly sought professional psychiatric help for neurotic depression and sleep disorder. In a medical pretrial evaluation at the Tsaotun Psychiatric Center under the Ministry of Health and Welfare after her indictment, Lin was found to have a verbal IQ

of 65, a non-verbal IQ of 51, and a total IQ of 51. The court did not look into the offender's living conditions, moral character or level of intellectual capacity. The court did also not take into account whether the defendant could have been affected by her neurotic depression. Aside from that, the defendant had defended herself saying that she had suffered domestic violence at the hands of her husband for a long time and that her husband had given her the poisonous substance. The court handed down a death sentence without investigating the defendant's statements any further.

Peng Jian-yuan (provided by TAEDP, Taiwan)

Facts of the Case

Peng Jian-yuan stands accused of arson. He went to the family-style karaoke lounge run by his good friend Chou Chih-chiang in Hsinchu City around 2 a.m. on March 12, 2013.

The court believes that the defendant first rang the doorbell and waited for the victim to open the door before he spilled gasoline over the victim. He then set the gasoline on fire and blocked the door with his body when other people tried to escape from the fire. Five people died and three people were severely injured in the blaze. The defense counsel pointed out that the defendant had banged on the shop front's steel roller door to issue a warning before he started the fire and that he did not have the intent to kill anyone. Moreover, Peng suffered from chronic mental illnesses. He had been taking medication over a prolonged period after being diagnosed with neurotic depression and generalized depression, and suffered from "persecutory delusions, heard imaginary voices, talked to himself and displayed abnormal behavior." Peng easily lost emotional control because of his delusions or was perceived by outsiders as being out of control and likely to threaten or assault other people. Therefore, he should not have been sentenced to death but the court did not take that position. Peng was sentenced to death in the first instance, in the second instance and again in a second instance retrial. On Sept. 3, 2014, the Supreme Court confirmed Peng's death sentence as final.

Unfair Trial

In 2013, Taiwan's Supreme Court ruled that the death penalty and executions should not be applied to the mentally ill. In its decision, the Supreme Court cited the following human rights instruments: the ICCPR; Taiwan's Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty approved by United Nations Economic and Social Council resolution; Human Rights Resolution 2005/59 (The Question of the Death Penalty). Moreover, it pointed to the 57 conclusions and recommendations made by a panel of

international experts in 2013 following their review of the initial state report by the government of the Republic of China (Taiwan) on the domestic implementation of international human rights covenants [released in April 2012]. However, in Peng's case the Supreme Court changed its interpretation of the law, holding that the death penalty can be imposed on Peng although he suffers from a mental disease. Since the Supreme Court's interpretation of the law keeps changing, death penalty cases with similar circumstances have starkly differing outcomes.

f Chen Yu-an (provided by TAEDP, Taiwan)

Facts of the Case

Chen Yu-an was charged with stabbing to death his father with a knife. Chen was sentenced to death by lower courts and the Supreme Court threw out an appeal in January 2013, upholding the death sentence, which thereupon became final.

Unfair Trial

Chen underwent a mental health assessment at the Taipei City Hospital's Songde Branch. He was found to have had a schizophrenic episode when he committed the crime but the court still handed him a death sentence.

g Lin Wang-ren (provided by TAEDP, Taiwan)

Facts of the Case

Lin Wang-ren was disgruntled that his wife worked at a karaoke bar in Keelung City. He made repeated phone calls asking the karaoke bar's employees whether his wife was still working there which led to heated arguments. Lin vented his anger by hauling a gasoline bomb into the karaoke bar in June 2004, setting the place on fire and causing the death of five people. Lin's death sentence handed down by lower courts became final in November 2011, when the Supreme Court rejected his appeal.

Unfair Trial

Lin's mental health was evaluated at National Taiwan University Hospital. Lin was found to suffer from organic brain syndrome resulting from a brain injury, including cognitive impairment and

impulse control disorder. Moreover, Lin had been issued a disability certificate due to a psychological disorder. Nevertheless, the court still held that at the time of the crime Lin's mental disorder or intellectual disability did not render him unable to comprehend that he was breaking the law nor did it undermine his ability to act based on what he comprehended. Arguing that Lin's competence [to stand trial] was not markedly reduced in any way, the court sentenced him to death.

2. Other Categories

a **Cheong Chun Yin** (provided by the Singapore Anti-Death Penalty Campaign)

Facts of the Case

Cheong Chun Yun, a Malaysian national, originally ran a video stall together with his father at a night market. In July 2008, he arrived at Singapore's Changi Airport from Myanmar [Burma] with a black suitcase. Cheong believed the suitcase contained gold bars. An acquaintance had persuaded him to smuggle the gold bars into Singapore to evade taxes. Upon arrival at the airport, Cheong handed the suitcase to a woman and left in a taxi. He was arrested when getting out of the taxi in downtown Singapore as his suitcase had been found to contain 2.7 kg of heroin instead of gold bars. In February 2010, Cheong was sentenced to death for the first time. The Court of Appeal upheld the sentence in October 2010. In April 2011, Cheong filed a clemency petition, which has not received any reply to date. Advocacy groups believe the delayed response could be related to the fact that the petition coincided with the 2011 presidential elections and that amendments were made to the mandatory death penalty in July 2011. Under the amended law, defendants can be spared from the mandatory death penalty if they cooperate with the Central Narcotics Bureau (CNB). Cheong, who had cooperated with the CNB, applied for a Certificate of Cooperation in November 2013 but his application was rejected.

Unfair Trial

During the investigation process, Cheong had cooperated with the CNB, providing the name, description and phone number of the man who recruited him. Since the man, called Lau De, had vanished, the CNB did not investigate him further. High Court Judge Choo Han Teck handed Cheong a mandatory death sentence in line with the Misuse of Drugs Act. In his ruling the judge noted: "I did not find his [Cheong] testimony convincing and I was of the view that his evidence did not create any reasonable doubt in my mind that he might not have known that he was carrying heroin." Moreover, while the defendant actively cooperated with the CNB during trial hearings, he did not obtain a Certificate of Cooperation and was therefore unable to get his death sentence commuted to lifelong imprisonment.

Facts of the Case

Defendant Fhat-hee Samae is a Thai Muslim and lives in Pattani on Thailand's northern coast. Before his arrest, Fhat-hee Samae worked as a hired laborer. In 2008, he was charged with participation in a terrorist organization, premeditated murder, and illegal possession of firearms. Although the defendant denied all charges, he was sentenced to death [for terrorism and murder] and was given a separate 18-month prison term [in connection with the firearm] by a court of first instance. The defendant is currently appealing his case to a higher court but has not yet obtained any clear response. °

In the evening of February 2, 2008, the victim was shot at the base of his right ear while riding his motorbike on the way home. He lost balance and fell onto the street. His attackers poured gasoline from a plastic bottle over the victim's body and set him on fire with led to his death. At the crime scene, investigating police officers found a piece of paper with the message: "If a Muslim person is shot again, a Buddhist will be killed." Moreover, they found a plastic bottle that smelled of gasoline, a used match and nails. One day after the crime a police officer collected samples from the blood spatter for DNA testing and took fingerprints from the plastic bottle and the box of matches. The fingerprints were sent for analysis only in mid-June 2008 when other physical evidence such as footprints were collected from the crime scene, too. Five suspects including Fhat-hee Samae had their fingerprints taken and sent for analysis. According to the tests, only one fingerprint matched the index finger of Fhat-hee Samae's right hand. A witness who looked out of the window of his home 30 - 40 meters away saw two people on a motorbike fleeing the scene of the crime. One of the suspects, called Budlun, admitted to persuading the defendant to join a terrorist group. He also admitted that he had distributed leaflets together with the defendant. The defendant denied that he belonged to a terrorist organization and presented an alibi, saying he was at his aunt's house when the crime happened. A friend of the defendant stated that they had been at the Darun Ashikee Mosque between 6 p.m. and 8 p.m. for evening prayers. After that, the pair remained at the mosque to teach children the Koran.

Unfair Trial

The entire case hinges on a single piece of material evidence – one fingerprint that matched one of the defendant's fingerprints. The defense questioned the accuracy of the fingerprint analysis. Police failed to do a thorough job when collecting evidence at the crime scene (they did not take footprints, other fingerprints, bloodstain specimens). On top of that, the fingerprints were only sent for analysis about half a year after the crime. Evidence in favor of the defendant and the defendant's alibi were not accepted by the court, whereas the unfavorable testimony by Budlun was admitted as evidence. The defense voiced suspicion that Budlun had probably made a deal with police to testify against the defendant.

Luding, Jehhem, Suriya (provided by Union for Civil Liberty, Thailand)

Facts of the Case

D1 Luding (also known as Ding or Pao Su Hama), D2 Jehhem (also known as Lee or Leemong Jehmudo) and D3 Suriya (also known as Dolah Sa-ii) are all Muslims and live in Songkhla in southern Thailand. The three men were arrested in October 2007, when four districts of Songkhla were ruled by emergency decree. They were indicted on charges of participation in terrorist acts, organized crime, bombing, premeditated murder and violations of the Firearms Act. The three defendants said in court hearings that they had admitted to the charges under torture.

On May 28, 2007, a motorcycle was parked in front of a supermarket in Songkhla. An explosive device in the motorcycle's front basket was detonated remotely, killing two adults and two children, and injuring 24 others. The explosion also destroyed 11 other motorcycles, two cars and a house. The three defendants were accused of having carried out numerous terrorist attacks since 2005 as members of a Muslim separatist group. These attacks had threatened the safety of local communities and claimed the lives of civil servants. At the crime scene, police retrieved parts and shards that belonged to the explosive device and, several months into the investigation, seized weapons and documents relating to other terrorists crimes. Eventually police also arrested a certain separatist named Bung who implicated the three defendants in the bombing attack with his testimony. However, subsequently he admitted that he had struck a deal with police to testify against the defendants in exchange for police protection and immunity from prosecution.

Unfair Trial

Little is known about the methods employed by the police to collect material evidence at the crime scene. There was a lack of forensic evidence such as DNA or footprints but there were pieces of debris found from the explosion. The testimony against the three defendants by witness Bung was clearly obtained through bribery or torture so that its truthfulness remains questionable. It is unclear whether police had obtained a warrant for the arrest of the three defendants under the Emergency Decree or whether a court-issued ordinary arrest warrant was used. Therefore, suspicion is rife that police arrested the three defendants illegally.

The length of detention for each defendant is unknown at this state. While the court stated that the defendants were allowed to see their lawyers at various stages of the trial, the actual situation remains unknown. What is known is that the defendants remained in detention while awaiting the Supreme Court's decision over their appeal. Although the court denied that the defendants had possibly be subjected to torture during their detention, a female witness confirmed that D1 had red, swollen eyes and looked tense as if he had been tortured when she visited him in prison. Since the

witness feared retaliation from higher-ups, she did not dare to file a complaint. D1 had also once noted that he admitted to the charges because he was afraid of being tortured.

The Court remarked that each defendant had access to a defense lawyer. However, the support group is unsure whether these lawyers were public defenders or privately retained attorneys. Nor do we know whether the defense attorneys were qualified for their job, a particularly important factor in death penalty cases. This case heavily relied on evidence and testimony submitted by police given that witnesses failed to appear in court. There was no direct evidence linking the defendants to the crime. Neither was it proven that a terrorist organization exists in the four districts of Songkhla. The court of first instance did not accept the alibis that the defendants provided and threw out the defendants' statement that their admission of guilt was obtained through torture.

On July 30, 2010, the Court of Appeals (second instance) overturned the first instance ruling, dismissing the charges. The Court of Appeals held that in the absence of direct evidence witness testimony is not enough to link the defendants to the crime. At the same time, the Court of Appeals held that the defendants had signed their confessions under the threat of torture. Since the defendants feared about their personal safety, the court decided that they should remain in prison while awaiting the Supreme Court's decision on their appeal. On Nov. 30, the Supreme Court upheld the Court of Appeals decision. It ruled that evidence presented in this case was not watertight and lacked credibility.

d **Abdullah Satae** (provided by Union for Civil Liberty, Thailand)

Facts of the Case

On Aug. 31, 2005, a group of seven to eight men attacked a highway police outpost using illegal weapons. One police officer was shot dead (victim) while another police officer suffered injuries (first damaged party or FDP). Since the victim's wife was in the outpost's adjoining dormitory room during the attack, she became a complainant too (second damaged party or SDP). The victim and the FDP were on duty at the time of the attack. The victim sustained fatal gunshot injuries to the face and torso during the attack. The FDP and SDP were not hit by bullets. The attackers stole the victim's weapons and set the crime scene at the parking lot on fire, causing damage to a state vehicle and the victim's car.

Abdullah Satae was arrested on July 23, 2008. Although he denied involvement in the crime and provided an alibi, he was not released on bail. The prosecution indicted Abdullah Satae on multiple charges including premeditated murder, robbery, arson and violation of the Firearms Act.

The Court of First Instance accepted the eyewitness account of the FDP. The court also accepted that the FDP, [who had identified the defendant as one of the perpetrators seven days after the attack] got a good view of the defendant although the attack happened at nighttime because the scene was illuminated by streetlights. Moreover, the court determined that the defendant's alibi lacked credibility. Therefore, Abdullah Satae was sentenced to death in the first instance ruling.

The Court of Appeals raised doubts about the credibility of the FDP's witness account. The court also pointed out weak points in the suspect's identification saying the attack happened at night, the eyewitness and the defendant were a distance apart, there were multiple attackers and that the FDP had given his description of the defendant only seven days after the attack. As a result, the Court of Appeals overturned the lower court decision but ordered that the defendant remain in custody during the appeal to the Supreme Court.

The Supreme Court accepted the FDP's witness account on the ground that the FDP would have been able to see the defendant because the streetlamp provided sufficient light and the FDP was watching from a dark spot. It also pointed out that as a police officer the FDP had good observation skills. On Sept. 11, 2012, the Supreme Court repealed the Court of Appeals decision and sentenced Abdullah Satae to death.

Unfair Trial

The Supreme Court accepted the FDP's witness account on the ground that he is a police officer with good observation skills. It also pointed out that his testimony was consistent with accounts given by fellow police officers. However, the court failed to take into account that the police witnesses could have supported the FDP's account out of solidarity with a colleague or other motives. However, when the court validated the defendant's alibi it considered ulterior motives for alibi witnesses.

In this case, the FDP was three meters away from the defendant while around seven attackers were at the scene. Given that the attack occurred in dim light, remembering the appearance of a specific attacker would have been difficult. Moreover, the FDP identified the defendant for the first time seven days after the incident. [The identification report was signed three years after the event]. It is hard to believe that the FDP could still remember the defendant's appearance three years after the attack.

Therefore, evidence from the FDP's eyewitness account is not strong enough to establish the defendant's guilt. The defendant was given an unfair trial because the court handed him a death sentence despite a lack of other supporting evidence.

e Case of 15 people who attacked a military base

(provided by Union for Civil Liberty, Thailand)

Facts of the Case

On Jan. 1, 2011, a group of around 40 armed people attacked the R. 15121 military base in Maruebo Tok, Rangae District, Narathiwat. These men were armed with 7.62 mm Russian machine guns, 5.56 mm machine guns, an unknown quantity of 7.62 mm NATO rifles, an unknown quantity of M79 grenade launchers, and an unknown quantity of improvised explosive devices (IEDs). Some men raided the armory and stole firearms worth 3,113,304 baht, and set fire to buildings at the base. Meanwhile, other members of the group burned tires, cut down trees, scattered nails on the road and shot at a phone booth in the surrounding area to block access for reinforcements attempting to reach the military base. Four Royal Thai Army officers were killed in the attack and eleven others were seriously injured. Fifteen of the armed men (herein referred to as D1 – D15) were arrested and indicted after the incident. D7 was a military official on duty at the time, as were D5, D6, and D11. It was alleged that D7 was a spy for a terrorist organization. He allegedly instructed other military personnel not to obstruct their attack and to have been involved in the attack. D4 was accused of having been involved in activities aimed at preventing reinforcements from entering the military base during the ongoing attack, along with D1 and D3.

Unfair Trial

Regarding the charges against D4 (including D1 and D3), the prosecution relied on testimony by two eyewitnesses who claimed that D1 and D4 had participated in criminal activities carrying guns. However, at the court hearing both witnesses denied having given such testimony. D1 and D3 admitted that they had blocked government reinforcements from entering the base. D1 testified that D4 had joined the criminal activities. D4 provided an alibi during the court hearing. The court held that the alibis provided by D4 as well as by D1 and D3 were not strong enough to refute the prosecutor's charges. It cited as a reason that the men had not given the alibis when first arrested and interrogated. Moreover, the said alibis could only be confirmed by people who knew them. The court did not accept claims by D1 and D3 that they had been forced to sign statements without understanding the content because their wives and lawyers were present during the signing. The court found D4, along with D1 and D3, guilty of the following charges: criminal association; trying to prevent state officers from performing their duty; supporting robbery and causing death of others; supporting others' use of arms and explosives without state permission, killing others and carrying out robbery; supporting bombing; supporting arson by others; supporting the intentional killing of state officers while they were on duty; supporting more than three other persons to fight state officers with unauthorized firearms and explosives; being member of a terrorist group of more than

five members. D4 was given a life imprisonment sentence. D1 and D3 received a reduced sentence of 36 years of imprisonment because they had provided information to the court.

As for charges against D5, D6, D7 and D11, D5, D6, and D11 gave testimony that accused D7 of having planned the attack. D5 stated that he had once overheard a phone call between D7 and members of the attacking commando. D6 testified he had seen D7 take off his military uniform and join the terrorists during the attack. D7 for his part provided an alibi stating that he was at Baan Nok Dao at the time of the attack and that other military officers were present in the building.

The court considered the testimonial evidence by D5, D6, D7 and D11 as trustworthy because the men had made the statements voluntarily. The court found that there was no evidence to support D7's account of events, accepted the testimonial evidence of D5, D6 and D11 because they were military officers at the base, and would not have forgotten the role D7 played during the event. However, the court did not accept this testimonial evidence insofar as it incriminated D5, D6 and D11 arguing it had been obtained during a lengthy period of detention (period unknown). Despite this concern, the court gave weight to this evidence insofar as it implicated D7 and suggested that D7 was a spy who joined the terrorists to commit the crime.

Ultimately, the court gave the benefit of the doubt to D5, D6, and D11 and did not convict them of the charges. D7 was found guilty of the following crimes: criminal association; terrorism; robbery and causing the death of others; using unauthorized firearms and explosives to commit robbery and homicide; arson; premeditated murder of state officers while they were on duty; taking weapons to a public place without proper reason. D7 was handed the death penalty.

Accomplices provided some of the testimonial evidence used in this trial. The major point of contention is the truthfulness of this testimonial evidence and whether it was obtained legally. Therefore, doubts have been raised over the legitimacy of this guilty verdict.

f Hsieh Chih-hung (provided by TAEDP, Taiwan)

Facts of the Case

On June, 23, 2000, at 11 p.m. Kuo Chun-wei and Hsieh Chih-hung met for a drink at Kuo's house before they went out for a motorbike ride. Around 2 a.m. on June 24, they saw the victim stand in front of a convenience store. Kuo accosted the woman and invited her to join them. Although the victim agreed to come with the two men, they got into an argument during their tour. Kuo lost control and used a butterfly knife to kill the victim and an old farmer who happened to witness the crime. Hsieh was

charged with joint enterprise murder. This case has been remanded seven times but in all rulings, Hsieh and Kuo were handed death sentences. Hsieh's death sentence became final in 2011.

Unfair Trial

First, there is no scientific evidence to prove that Hsieh committed the murders: The murder weapon was not examined for fingerprints. No blood spatter was found on Hsieh's clothing nor did Hsieh's motorbike react when it was processed for blood evidence. Second, in 2003 the forensic examination report put forth a wrong scientific assessment concluding that the direction of the stab wounds indicated that two attackers inflicted them. Only when the case was remanded for the seventh time in 2010, the report was corrected stating that it was impossible to determine the number of attackers from the direction of the stab wounds.

The polygraph test report is also one of the points of contention in this case. When Kuo, the co-defendant in the case, underwent a lie detector test, the polygraph expert deemed the results true and correct. However, in Hsieh's case the readings of the lie detector tests produced an inconclusive result. The court used Kuo's test results, which were unfavorable for Hsieh, as basis for its verdict. It did not investigate any further why Hsieh's polygraph readings were inconclusive.

Furthermore, it is likely that Hsieh made his confession under torture. At the police station, three written records of Hsieh's interrogation were made. The first written record was made when Hsieh was interrogated without a lawyer present. He confessed to murder and sexual assault. During the second interrogation, Hsieh changed his statement saying he did not sexually assault the woman. Halfway into the interrogation, Hsieh's lawyer appeared and demanded that the questioning start anew and that a third written record be made. During this third round of interrogation in the presence of the lawyer Hsieh denied participation in all crimes. He claimed he was innocent and that he had confessed earlier due to torture. Since the CD with Hsieh's confession has vanished, it is impossible to reconstruct the scene during the defendant's first interrogation session.

Cheng Hsing-tse (provided by TAEDP, Taiwan)

Facts of the Case

In 2002, a police officer was killed in a shooting at a karaoke bar in Fengyuan, Taichung County, when entering the premises in the line of duty. Cheng Hsing-tse was charged with his murder. No scientific evidence has been presented in this case to prove that Cheng shot the police officer. However, Cheng was sentenced to death in 2006.

On Jan. 5, 2002, Luo Wu-hsiung and Cheng Hsing-tse gathered with friends at the Shisan Yi KTV Bar in Fengyuan. Luo, who was drunk, raised trouble shooting his gun into the ceiling and into empty liquor bottles on a table. When police who had been alarmed rushed to the scene to arrest the culprit, a police officer named Su who first barged into the bar shot back at Luo. The court determined that Luo was shot dead by the police officer immediately and that Cheng began to shoot at Su from where he was sitting at the time. When the other police officers withdrew from the karaoke box, Cheng rushed to Luo's side and fired two shots at Su before returning to his original seat. Su was pronounced dead upon arrival at the hospital. Cheng was sentenced to death for killing the police officer.

In September 2014, the supreme prosecutor filed an extraordinary appeal with the Supreme Court in Cheng's case.

Unfair Trial

The murder gun did not bear Cheng's fingerprints. In the gunfight, Cheng was shot in the calf, sustaining an open fracture. How could he possibly have changed his position to open fire? No blood spatter was found on the floor at the crime scene that would have supported that Cheng had left his original place. Moreover, two people were sitting between Cheng and the place where the bullets were fired from. How could Cheng have moved back and forth between these two positions dragging his injured leg? A friend of Cheng's who was sitting next to him during the gunfight also testified that he did not have the impression that Cheng left his place during the shooting. However, the court did not accept such testimonial evidence in favor of Cheng.

When Cheng wrote his confession at the police station, his left eye was noticeably swollen. On the same day, a medical examination at the Taichung Prison confirmed that Cheng showed "internal hematoma in the left eye, swelling around the left eye, and bruises on the left thigh." Cheng noted that he confessed under police torture including water boarding, electro shocks and battering so that he had no choice but admit to the charges.

When pro bono lawyers filed for a retrial of Cheng's case with the High Court, the same judge who had sentenced Cheng to death in the first instance ruling presided over the retrial hearing. The judge failed to recuse himself and ultimately rejected Cheng's application for a retrial. By law, the judge should have recused himself. This case highlights the flaws and constitutional problems in retrial proceedings in Taiwan.

B. Updated Cases

a Leng Guoquan (provided by China Against Death Penalty, China)

Leng Guoquan is a former driver for the Police Bureau. When his former supervisor Bao Zhongwu was arrested for drug trafficking, he testified that Leng was the source of the drugs. In Sept. 2009, Leng was indicted on charges of smuggling and trafficking crystal meth (methamphetamine).

In 2013, the Dandong Intermediate People's Court in Liaoning Province did not convict Leng of the drug charges. He was given a six-month sentence and was fined 30,000 RMB for disguising and hiding illegal proceeds. Subsequently Leng was released.

b Aftab Bahadur (provided by the Justice Project Pakistan)

Aftab Bahadur was arrested by police in Lahore in Sept. 1992 along with another man on suspicion of murder. He was held in police detention for a period of several months without access to a lawyer. Aftab Bahadur claimed that police had tortured him but he never admitted to the charges. The defendant hails from an influential local family that could afford to exert pressure on the police and pay bribes to make eyewitness Baba Fateh who had incriminated Aftab Bahadur retract his false accusations. During the trial, Aftab Bahadur claimed that police had tortured him and taken to the scene of the crime where they forced him to wet his hands with blood and leave fingerprints. Aftab Bahadur filed a clemency petition on June 1, 2009. Five years later, the president of Pakistan has yet to make a decision.

c Devender Pal Singh (provided by lawyer Yug Mohit Chaudhury, India)

Devender Pal Singh was arrested by police at New Delhi's international airport in January 1995 for

traveling on false documents. Following his arrest, Devender Pal Singh confessed to being involved in a 1993 bomb attack in Delhi that claimed the lives of nine people. During the trial, Devender Pal Singh told the Supreme Court that his confession had been extracted through torture. Devender Pal Singh had been indicted under the 1987 Terrorist and Disruptive Activities (Prevention) Act (TADA) which lapsed in 1995. The only evidence that implicated Devender Pal Singh had been obtained through torture. The Supreme Court nevertheless confirmed his conviction and death sentence in March 2002. In May 2011, the Indian prime minister rejected Devender Pal Singh's petition for a reduced sentence. The court rejected a petition for a retrial on Aug. 14, 2013. Today, Devender Pal Singh suffers from extreme depression, shows symptoms of mental illness and is suicidal.

d Chiou Ho-shun (provided by TAEDP, Taiwan)

In June 2013, an investigation report by the Control Yuan pointed out mutual contradictions and discrepancies in confessions made by Chiou Ho-shun and his co-defendants in connection with the kidnapping and murder of the nine-year-old boy Lu Cheng. The report also noted rampant use of questionable police methods such as tricking, threatening or luring suspects into making statements. It said Chiou's confession lacked voluntary character, was not admissible in court, and could therefore not be used as evidence to convict him. Moreover, Chiou's prolonged detention was violating human rights. In July 2014, the Control Yuan raised the following doubts about the other charges in the case, the murder of Ko Hung Yu-lan: prosecutors and police exerted strong pressure during interrogations so that the confessions lacked voluntary character and were therefore not admissible evidence. Moreover, a police officer who had assisted in the investigation shortly before it came to its end, told the Control Yuan that the Criminal Investigation Division of the Taipei City Police Department at that time used means during the investigation process that went beyond the Code of Criminal Procedure and violated human rights. The case still entails many questionable points that require clarification. Moreover, there is hard evidence for and the investigation report points out the fact that torture was used during the investigation of cases. The admission into court of defendants' self-confessions contravenes the Code of Criminal Procedure.

Over the past three years, Chiou's lawyers have twice filed a petition for an extraordinary appeal with then Prosecutor General Huang Shyh-ming but both were turned down. In 2014, Chiou's lawyers again filed for an extraordinary appeal. We hope that the new Prosecutor General Yen Da-ho will respect the Control Yuan's opinion and address the doubts that legal experts have raised. He could develop the prosecutor general's role as a protector of human rights and grant Chiou the rehabilitation that he deserves.

e Iwao Hakamada (provided by Amnesty International Japan)

In June 1966, the family of four of a miso manufacturing company president in Shizuoka Prefecture was stabbed to death in their home and the house was set on fire. In August, police arrested an employee of the company, Iwao Hakamada, although he adamantly denied the crime. However, after police used questionable interrogation methods and a prolonged period of detention, Hakamada confessed to the crime. One year after the crime, prosecutors found five pieces of bloody clothing in a miso barrel at the miso factory, which were used as evidence to convict Hakamada of the murders. Hakamada was given the death penalty in first and second instance rulings. Hakamada's death sentence became final when the Supreme Court rejected his appeal in November 1980. In April 1981, Hakamada filed for a retrial with the Shizuoka District Court. The application was rejected by the Supreme Court in March 2008. In April 2008, Hakamada's lawyers again appealed for a retrial and on March 27, 2014, the Shizuoka District Court opened the retrial proceedings. At the same time, Hakamada's execution was stayed and Hakamada who had spent 48 years in prison walked out of the Tokyo prison as a free man.

f Yong Vui Kong (provided by the Civil Rights Committee of the Malaysia KL & Selangor Chinese Assembly Hall and We Believe in Second Chances, Singapore)

Yong Vui Kong is a Malaysian national. He was arrested in Singapore at age 19 in 2007 for possessing 47g of heroin. Under Singapore's Misuse of Drugs Act anyone caught with more than 15g of heroin is presumed guilty of drug trafficking, for which the death penalty is mandatory. The High Court convicted Yong in 2008 and sentenced him to death. Yong's lawyers petitioned Singapore's president repeatedly for a commutation of Yong's death sentence but these petitions were all rejected. In 2010, Yong's lawyer appealed Yong's sentence by challenging the constitutionality of the mandatory death sentence for drug trafficking but in 2010 the Court of Appeal rejected the constitutional challenge. In April 2011, Yong's sentence became final, clearing the way for his execution.

However, Singapore's Misuse of Drugs Act was amended in 2013. Under the amendments, the mandatory death penalty for drug trafficking offenders can be commuted to lifelong imprisonment if the defendant proves that he is no more than a courier and if the prosecutor general issues a certificate of cooperation that the defendant has rendered substantial assistance to the Central Narcotics Bureau during the investigation process. In November 2013, the court commuted Yong's death sentence to a lifelong prison term and 15 strokes of the cane.

IV. Conclusions

Overall, progress has been made toward abolishing the death penalty in Asia when we look at the situation in 2014. Some countries have already abolished the death penalty in law or in practice. Despite this progress, the mandatory death sentence still exists which is why some de facto abolitionist countries still carry out executions in isolated cases. Drug offenses, in particular, tend to carry heavy sentences and the death sentence is often used in such cases. This practice needs to be reconsidered. Regarding the use of the death penalty in cases involving intellectually disabled or mentally ill defendants, many countries have already designed protective measures through relevant laws or legal precedents and provide sentencing guidelines that allow for reduced punishment in such cases. Nevertheless, there is room for improvement when it comes to putting such systems into practice. Among the cases submitted by ADPAN members, we found that in quite a number of cases the courts had ignored or not considered the defendants' mental health or level of intelligence. As a result, defendants did not undergo pretrial mental health evaluation to determine their competency to stand trial or the court did not take into account the evaluation report's findings. In some cases, the defense counsel failed to use the defendant's mental illness or intellectual defects for an effective defense, resulting in an unfair trial. Since the treatment of mentally ill defendants during imprisonment is not ideal, this often leads to a further deterioration of inmates' mental condition.

Among the cases in this report, we also found that some death sentences were handed down despite a lack of evidence so that the defendants were found guilty solely based on their self-confessions, statements from accomplices or based on confessions that were extracted by torture. Such verdicts violate the principle of evidence, ignore the in dubio pro reo principle [which holds that courts must take the side of the defendant when there are doubts about the charges] principle and the presumption of innocence. There are not many avenues for relief in death penalty cases so that it is very difficult to reverse miscarriages of justice. During appeals or retrials, the courts do often not closely examine the errors or defects in the original ruling, instead thoughtlessly dismissing the defendant's petition. We have also seen cases where the court deferred or delayed trial proceedings or handed down a ruling more than twenty years after a retrial was ordered. Many death row inmates spend a prolonged time in isolation in special death row cells, a traumatizing experience that severely infringes on their right to action and basic human rights. The situation is

similarly difficult for death row prisoners seeking clemency. After a petition for clemency has been filed it often disappears like a stone dropped into the sea. Unresponsive government officials are also to blame for endless waiting before a response comes forward.

The above report shows that inadequate death penalty legislation in combination with a lack of safeguards for the protection of mentally impaired defendants is the reason why courts continue to produce death penalty cases. Since the standards as to what constitutes evidence of guilt are rather lax, miscarriages of justice continue to occur. As legal remedies remain incomplete, states treat human life like worthless straw harming human rights as a result. Against this backdrop, the judiciary has already completely lost its authority and credibility. Unless the legal process of determining the guilt or innocence of a defendant is very strict, this string of miscarriages of justice will never end and continue to undermine the rule of law.

V. Suggestions

If we want to reach a breakthrough in our campaign against the death penalty in Asia we should first focus on the abolishment of the mandatory death sentence. Then de facto abolitionist countries could ensure that no further death sentences are imposed. Furthermore, a pretrial evaluation of the mental health of defendants should become compulsory in death penalty cases. Treatment measures for defendants with mental disorders should be improved, while defense lawyer training should be strengthened. Lawyers and support groups should be encouraged to cooperate in professional bodies to be able to provide defendants with a substantial and efficient defense.

On top of that, courts should strictly observe legal principles such as the principle of evidence, the presumption of innocence and in dubio pro reo to prevent that a careless determination of the death sentence leads to further miscarriages of justice. The system of legal remedies and clemency should be made practicable through legal amendments to end careless, arbitrary decisions by courts and competent authorities and to provide defendants with substantial guarantees. Lessons should be learned from past errors of justice or erroneous executions. They should be rectified or compensation should be paid.

In order to prevent miscarriages of justice that trample on human rights, a moratorium should be imposed on all executions, and laws should be amended with the goal of eventually abolishing the death penalty. On the other hand, governments should be encouraged to support U.N. resolutions on a moratorium on the use of the death penalty and to sign the ICCPR and phase out the death penalty. Furthermore, we urge the Asian countries to sign the Second Optional Protocol to the ICCPR to achieve the goal of ending the death penalty.

About ADPAN

The Anti-Death Penalty Asia Network (ADPAN) was founded in Hong Kong in 2006. ADPAN is an independent cross-regional network committed to working for an end to the death penalty across the Asia Pacific region. It is not affiliated with any political party, religion or government.

ADPAN is made up of NGOs, civic groups, lawyers and individual human rights activists in 28 countries who are concerned over death sentences and executions resulting from unfair trials in Asia. It currently has the following members:

Afghanistan

Afghanistan Human Rights Organisation (AHRO)

Australia

Amnesty International Australia (AI Australia)
Australians Against Capital Punishment (AACP)
The Australian Coalition Against Death Penalty (ACADP)
Criminal Justice Coalition
Reprieve Australia

Bangladesh

Odhikar

China

China against the Death Penalty Group
Amnesty International Hong Kong
Freelance Journalist
AI Hong Kong Abolish the Death Penalty Group
Hong Kong Joint Committee for the Abolition of the Death Penalty

India

Amnesty International India
Banglar Manabdhikar Suraksha Mancha (MASUM)

Lawyers For Human Rights International (LHRI)
Lawyers Collective
People's Union for Civil Liberties (PUCL)

Indonesia

Commission for the Disappeared Victims of Violence (KontraS)
Imparsial
Lembaga Bantuan Hukum Masyarakat (LBH Masyarakat)

Japan

Amnesty International Japan
Centre for Prisoners' Rights
Forum 90

South Korea

Amnesty International Korea
Catholic Human Rights Committee

Malaysia

Amnesty International Malaysia
Civil Rights Committee of the Kuala Lumpur and Selangor Chinese Assembly Hall (KLSCAH)
Lawyers for Liberty
Malaysians Against the Death Penalty and Torture (MADPET)

Mongolia

Amnesty International Mongolia

Nepal

Amnesty International Nepal

New Zealand

Amnesty International New Zealand

Pakistan

Democratic Commission for Human Development
Human Rights Commission of Pakistan
Justice Project Pakistan (JPP)
Legal Awareness Watch (LAW)
Prison Fellowship Pakistan

Papua New Guinea

Individual and Community Rights Advocacy Forum
(ICRAF)

Philippines

Amnesty International Philippines
Philippine Human Rights Information Center
(Philrights)

Singapore

Singapore Anti-Death Penalty Campaign
Singaporeans for Democracy
Think Centre
We Believe in Second Chances

Sri Lanka

Action for Peace and Human Rights (APHR)

Taiwan

Amnesty International Taiwan
Taiwan Alliance to End the Death Penalty
(TAEDP)

Thailand

Amnesty International Thailand
The Union for Civil Liberty

Tonga

National Centre for Women and Children

Individual Members

Adam Breasley (Australia)
Yug Mohit Chaudhury (Lawyer, India)
Vinay Naidoo (Individual, India)
Usha Ramanathan (Researcher, India)
Otto Nur Abdullah (Member of the Commission of
Human Rights, Indonesia)
Amer Arshad (Lawyer, Malaysia)
Fifa Rahman (Policy Manager, Malaysian AIDS
Council, Malaysia)
Malik Ayub Khan Sumbal (Freelance Investigative
Journalist, Pakistan)
Apolosi Bose (Human Rights Activist, Papua New
Guinea)
Emma Wurr (Human Rights Lawyer, Papua New
Guinea)
M. Ravi (Human Rights Lawyer, Singapore)
Giao Vu Cong (Lawyer and Academic, Viet Nam)

Regional Partners

Amnesty International Asia Pacific Programme
Asia Pacific Youth Network (APYN)
Asian Forum for Human Rights and Development
(FORUM-ASIA)

International Partners

ACAT-France (France)
Amnesty International Death Penalty team
Amnesty International Netherlands
Community of Sant'Egidio (Italy)
Danish Medical Group Against the Death Penalty
Ensemble Contre la Peine de Mort (ECPM, France)
Murder Victims' Families for Human Rights (MVFHR,
USA)
Relieve
The Death Penalty Project (U.K.)
The Rights Practice (Hong Kong)
World Coalition Against the Death Penalty (WCADP)
Worldwide with links to Asia and the Pacific
Academics for Abolition (REDECAP, Spain)

About the Taiwan Alliance to End the Death Penalty (TAEDP)

End Crime, Not Lives

Since its founding in 2003 by several local abolitionist NGOs, the Alliance promotes the reform of Taiwan's penal system and advocates the abolition of the death penalty.

The Alliance's work currently focused on the following areas:

- We try to rescue people from wrongful conviction and miscarriages of justice in death penalty cases and work for the prevention of future miscarriages of justice.
- We offer a platform for training lawyers to improve the quality of the defense counsel in death penalty trials and ensure a fair trial.
- We hold public dialogues and engage in lobbying to spread values that oppose the death penalty and violence, and deepen the respect for life.
- We closely monitor whether the imposition of the death penalty and executions do not violate due process, provide death row inmates with the necessary legal assistance, expose Taiwan's use of the death penalty and monitor the government's implementation of the ICCPR and the ICESCR.
- We work for better social security and victim protection, urge the government to establish sound parole procedure for evaluating prisoners, carry out prison reform and strengthen protective measures for criminal offenders.

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**ANTI
DEATH
PENALTY
ASIA
NETWORK**

The Anti-Death Penalty Asia Network (ADPAN)

Launched in 2006, ADPAN is an independent cross-regional network that campaigns for an end to the death penalty across the Asia-Pacific region. ADPAN is independent of governments and any political or religious affiliation. Members include lawyers, NGOs, civil society groups, human rights defenders and activists from 28 countries.

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