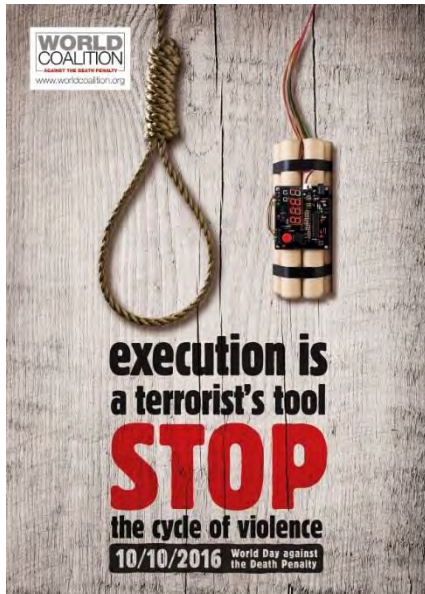




Parliamentarians for Global Action
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي



THE DEATH PENALTY FOR TERRORISM

Factsheet for Parliamentarians

14th World Day Against the Death Penalty

INTRODUCTION

The past few years, including 2016, have been marked by terrorist attacks across the world, which in turn has led to renewed support for the death penalty and other “tough” actions to fight terrorism.

Since the 1980s, there has been a global trend towards the abolition of the death penalty, which continues to this day. 16 countries had abolished the death penalty in law for all crimes in 1977; today, there are 140 *de jure* or *de facto* abolitionist countries. However, this global trend is suffering setbacks, as governments resort to capital punishment in order to fight against terrorist groups, in the name of protecting their countries and citizens.

Why the Death Penalty for Terrorism-related Offences is Ineffective, Counter-productive and Violates Human Rights

This runs counter to major signs of a global shift towards abolition, with the United Nations General Assembly (UNGA), representing equally all Member States of the world, adopting since 2007 five resolutions¹ calling on retentionist States to establish a moratorium on the use of capital punishment and work towards abolition. While those resolutions are not legally binding, they are a strong indication of a global shift on the path to abolition of the death penalty. Reintroducing, extending or applying the death penalty to terrorism-related offences goes against the conclusion the International Community is slowly coming to: the death penalty is not only ineffective at deterring crime and a huge risk in cases of miscarriages of justice, it is also cruel and a violation of human rights.

On 10 October 2016, the World Coalition against the Death Penalty (WCADP), Parliamentarians for Global Action (PGA) and other abolitionists worldwide will mark the 14th World Day Against the Death Penalty and draw attention to the particular issue of capital punishment for terrorist offences. Often regarded as ‘heinous’ crimes, the terrorist nature of certain criminal acts is easily used to justify restrictions or violations of human rights, including the right to life.

¹ UNGA, [Moratorium on the use of the death penalty, Resolution 62/149](#), 18 December 2007, A/RES/62/149; [Moratorium on the use of the death penalty, Resolution 63/168](#), 18 December 2008, A/RES/63/169; [Moratorium on the use of the death penalty, Resolution 65/206](#), 21 December 2010, A/RES/65/206; [Moratorium on the use of the death penalty, Resolution 67/176](#), 20 December 2012, A/RES/67/176 and [Moratorium on the use of the death penalty, Resolution 69/186](#), December 2014, A/RES/69/186.

Execution is a terrorist's tool: stop the cycle of violence.

Despite the 19 international legal instruments relating to terrorism produced by the United Nations since 1960, no single and comprehensive definition of "terrorism" has emerged. The International Community has yet to reach a consensus on a universal, legal definition of terrorism, despite many attempts to do so. This, in turn, leaves a large margin of discretion to States when defining what constitutes a terrorist offence, making it easier to criminalize as terrorist some acts that might not constitute terrorism.

Terrorist offences are often defined by two cumulative components:

- the criminal act itself, such as causing death or injury to a person, taking hostages, using explosives, destroying infrastructure, or damaging the environment;
- and the criminal intent, i.e. the terrorist motivation for the act, which is often ill-defined but may be the intent to disturb public order, endanger the safety of the community or spread terror among the population.

The Death Penalty for Terrorism-Related Offences: the Role of Parliamentarians

In 2016, 65 countries retain the death penalty in law for terrorism-related offences. Of these, 15 carried out executions for terrorism and 12 others sentenced terrorist suspects to death at least once over the past ten years. In the last ten years, countries like Bangladesh, India, Nigeria, Tunisia and others have modified their legal framework to expand the scope of capital punishment to include terrorism-related offences. More recently, Pakistan and Chad resumed executions in the name of the fight against terrorism, putting an end to moratoriums that had lasted for years.



Against this background, parliamentarians are essential in furthering the process of abolition and also fighting setbacks such as the reintroduction of the death penalty, the increase of capital offenses, or renewed executions. They are central to law-making in their own countries and within regional and global government entities, as well as to awareness-raising with their constituents.

Parliamentarians can lead and influence policy and public opinion. They can expose flaws in their national criminal justice systems and

highlight the dangerous and irreversible nature of the death penalty. They can also identify and promote better ways to protect victims and improve security. In the long term, they can play a role in campaigning and influencing parties and individuals who may form future governments.

For members of parliaments in retentionist countries, working on abolition can prove difficult when public opinion remains hostile. In these cases, parliamentarians can promote a step-by-step process towards abolition which may be more acceptable to their constituents. For example, they can raise public awareness of the growing international movement against executions, work to introduce legislation to reduce the number of offenses that carry the death penalty, and carry out parliamentary inquiries to ensure that all trials for capital offenses follow the highest standards.

How Can Parliamentarians Take Action?

Parliamentary work

- Raise the issue of the death penalty in Parliament;
- Organise a public debate, for example in the Legal Affairs Committee;
- Table parliamentary questions to the Government on the use of the death penalty for terrorism-related offences;
- Review draft legislation to assess its conformity with international standards;
- Table a bill reforming the applicable legal provisions to abolish the death penalty or at least improve legal safeguards for individuals accused of terrorist acts;
- Introduce a resolution stating your Parliament's opposition to the death penalty in any circumstance, including for terrorism-related offences;
- Advocate for the establishment of a parliamentary committee on human rights and the death penalty, and ensure that it is linked to counter-terrorism as well;
- Advocate for the creation of a parliamentary inquiry on the use of the death penalty in relation to terrorist acts;
- Join an inter-parliamentary network, such as Parliamentarians for Global Action (PGA),² to share best practices with your peers in other Parliaments.

Awareness-raising

- Liaise with civil society groups;
- Attend events related to the abolition of the death penalty and show support as a member of parliament, especially on World Day Against the Death Penalty (10 October);
- Raise awareness with your constituents on the issue of the death penalty, for example by discussing the international standards and arguments against the death penalty for terrorism-related offences when visiting your constituency;
- Follow the social media campaign on Facebook and Twitter (#nodeathpenalty);
- Write op-eds or take part in radio and televised interviews to raise awareness.

Arguments against the Death Penalty for Terrorism-Related Offences

The Death Penalty for Terrorism-Related Offences is Not Effective

The death penalty does not deter terrorism

No study so far has been able to show that the death penalty deters crimes more effectively than other punishments.³ On the contrary, some studies have shown that crime rates might actually decline when the death penalty is abolished and the rule of law is strengthened.⁴

Moreover, the correlation between crime rates and the death penalty seems to be even less relevant in the case of terrorism, where the act is politically-motivated and planned without any cost-benefit calculation. People committing terrorist acts are dedicated to their cause, and often ready to die for it, which counteracts and neutralizes whatever

²² You can apply to join Parliamentarians for Global Action (PGA) [online](#).

³ C. HOYLE & R. HOOD, Deterrence and Public Opinion, in "Moving Away from the Death Penalty: Arguments, Trends and Perspectives", United Nations Office of the High Commissioner for Human Rights (OHCHR), 2015.

⁴ C. HOYLE & R. HOOD, Deterrence and Public Opinion, *idem*; P. J. BHATTI, Towards a Moratorium on the Death Penalty, in "Moving Away from the Death Penalty: Arguments, Trends and Perspectives", United Nations Office of the High Commissioner for Human Rights (OHCHR), 2014.

legal threat is meant to deter them and actually transforms it into a “perverse incentive”.⁵ When the death penalty is applied against individuals inspired by a violent extremism ideology, who commit terrorism and mass-atrocity crimes (including crimes against humanity and genocide), death-sentences may become an incentive for what is purported to be a supreme form of “martyrdom” or sacrifice in their misleading and wrongful fundamentalist beliefs. The culture of death for death, and the false idea of dying to reach paradise as a reward, makes the death penalty imposed to operatives of groups like Daesh/ISIS highly counter-productive, whereas a term of imprisonment would represent the maximum form of retribution and punishment. The resolution adopted by the Human Rights Council on the High-Level Panel Discussion on the question of the death penalty, held during the Human Rights Council’s 30th Session, noted that the deterrent effect of the death penalty in combatting terrorism was not proved.⁶

Extending the death penalty to terrorism-related offences is often a mere political stance

In retentionist countries, murder is most likely already a capital offence, which means that many terrorist acts can already be prosecuted as murder and result in the death penalty: the argument that there needs to be a tougher answer to those crimes is not based on facts, as the extension of the death penalty does not, in fact, increase the applicable punishment.

However, this legal reform often has political motives: faced with an existing or perceived terrorist threat, governments want to appear to be taking strong actions. The measure of adding terrorist offences to capital offences has a strong symbolic value, which benefits politicians supporting it. As such, the death penalty is used as a way to show that government authorities are strong and will seek revenge – which is not justice.

Jordan

In 2014, Jordan introduced a new anti-terrorism law, which increases penalties and requires the death penalty for any act that causes death, destroys or damages a building if someone is inside, uses poisonous or dangerous materials, or constitutes a life-threatening attack against the king, queen or crown prince.⁷

On 3 February 2015, IS released a video depicting the brutal killing of Muadh al-Kasasbeh, a Jordanian fighter pilot. The Jordanian government vowed “punishment and revenge” and a day later, on 4 February 2015, Jordan executed two people⁸ for alleged acts of terrorism.⁹

Carrying out the death penalty often goes against the victims’ families’ wishes and rights

It is often argued that executing the perpetrator of a crime, and in particular of a terrorist act, is necessary and called for by the families of those who were killed and the affected communities. However, this is not always the case, and many victims believe that the act of killing the terrorist will not bring any form of just and fair retribution or closure. Indeed, some will even argue that this only perpetuates the cycle of violence that cost them their loved ones. For some, it might also violate their ethical and religious beliefs, which may include the duty of the perpetrator to be obliged to pay some form of reparation to the victims, her/his family and/or community.

Moreover, the high-risk of miscarriage of justice that death penalty cases carry actually runs against the rights of the victims to seek justice, since it might impede the authorities’ efforts to uncover the truth.

⁵ J. FAGAN, Deterrence and the Death Penalty in International Perspective, in “Moving Away from the Death Penalty: Arguments, Trends and Perspectives”, *ibid*.

⁶ UNGA, Human Rights Council, Report of the United Nations Commissioner for Human Rights, High-level panel discussion on the question of the death penalty, 16 July 2015, A/HRC/30/21.

⁷ Human Rights Watch, Jordan: Terrorism Amendments Threaten Human Rights, 17 May 2014.

⁸ One of the accused also reported being tortured and submitted a communication to the UN Special Rapporteur on Torture. See: Amnesty International, Annual Report 2015/16, 2016.

⁹ I24 News, Amman announce avoir exécuté les djihadistes Sajida el-Rishawi et Ziyad el-Karbouli, 4 February 2015.

The death penalty denies any possibility of rehabilitation of the criminal

In its very nature, capital punishment denies the accused the possibility of repenting and rehabilitating himself or herself. In the specific case of anti-terrorism policies, this is overlooked whereas some experiences show that repenting terrorist militants are more likely to be able to reach out to people susceptible of being radicalized. Their experience as former terrorist sympathizers is helpful in countering and preventing terrorism and violent extremism at the source. Additionally, rehabilitation of the perpetrators that manifests itself through effective or symbolic forms of reparations for the benefit of victims, their families and/or their communities, may bring about a situation of closure in a given society, including in post-conflict situations, which may deter retaliation and the repetition of violence and crime.

The Death Penalty for Terrorism-Related Offences Causes Human Rights Violations

The right to life: no one can be arbitrarily deprived of life

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right to life of every human being. While the ICCPR does not prohibit the death penalty, it does provide some legal safeguard. In particular, Article 6(2) provides that it can only be applied for the “*most serious crimes*”. According to the Special Rapporteurs on Torture and on Extrajudicial, summary or arbitrary executions, the wording “*most serious crimes*” can only refer to intentional killing.

This standard is also supported by the Inter-American Commission of Human Rights (IACHR),¹⁰ as well as the African Commission on Human and Peoples’ Rights (ACHPR).¹¹

In its “Human Rights, Terrorism and Counter-Terrorism Factsheet”, the United Nations Office of the High Commissioner for Human Rights (OHCHR) stressed that “*under international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation*”.¹²

Terrorism-related offences are too loosely-defined to satisfy international standards regarding criminal law: therefore applying the death penalty is highly arbitrary

International law does not provide one unified definition of what falls under terrorism-related offences. As a result, States use various definitions of terrorist acts and the definitions used are often very broad, vague and include non-violent acts or those that do not constitute the “most serious crimes”. Among those acts, the participation in criminal gangs and/or terrorist groups is often considered a terrorist act, and is punishable by death in several countries.¹³

International standards dictate that criminal law shall be precise, in order to prevent arbitrary arrests, detentions and punishments. The fact that terrorist offences are drafted loosely and can be applied to a wide range of acts is in itself a violation of international standards, and thus should not carry the death sentence – an irreversible punishment.

¹⁰ IACHR, [Report on Terrorism and Human Rights](#), 22 October 2002, OEA/Ser.L/V/II/116.

¹¹ ACHPR, [General Comment No 3 on the African Charter on Human and Peoples’ Rights: the right to life \(article 4\)](#), 18 November 2015.

¹² OHCHR, [Human Rights, Terrorism and Counter-terrorism](#), Fact Sheet No 32, July 2008.

¹³ Afghanistan, Bahrain, Congo, Egypt, Iraq (Kurdistan), Mali, Mauritania, Qatar, Sudan, UAE, Vietnam.

Libya

Libyan law punishes by death acts aimed at “*vandalizing, looting or killing people*” and terrorism-related offences not resulting in death can receive the death penalty if they were committed against the security of the state.¹⁴

Indonesia

The Law No 15 of 2003 on combatting terrorism provides that the act of creating, planning or inciting others to create a “*widespread atmosphere of terror*” by taking liberty, property or damaging public resources is punishable by death.¹⁵

The definition of terrorism-related offences can be used as a tool of repression

The very loose definition of terrorism-related offences can also serve political purposes and be intentionally-used to encompass acts that do not fall under the more generally-accepted definition of terrorism. In some countries, speaking out or engaging in non-violent actions can be characterized as terrorist acts punishable by death.

Regardless of the criminal offence considered, the death penalty is very often used in a discriminatory way which impacts primarily people from less wealthy backgrounds and from racial, ethnic, or religious minorities. This risk is even more acute in cases of terrorism-related offences, as they can be used to repress non-violent political movements or ethnic groups.¹⁶

Iran

In the Islamic Republic of Iran, the 1991 Islamic Penal Code, as amended in 2013, provides for the death penalty for *moharebeh* or “enmity against God”, which corresponds to an armed insurrection aiming to sow panic among the population.¹⁷

However, people who have not carried out violent acts and who come from ethnic and/or religious minorities have been executed for *moharebeh*. For example, in 2015, executions were reportedly carried out for this crime against Sunnis and a Kurd, because of alleged collaboration with the Party for a Free Life in Kurdistan (PJAK), a political organization rendered illegal in Iran.¹⁸

Saudi Arabia

On 2 January 2016, 47 men were simultaneously executed in 12 Saudi cities, in the name of a *hadd* (i.e. a crime considered to be committed against God and where the sentence is invariably death).¹⁹ While 43 of them were sentenced for their involvement with various Al-Qaeda attacks, the remaining four, all Shiites, were sentenced for demanding political reform by demonstrating in the majority Shiite Eastern Province in 2011.²⁰ The demonstrations had indirectly caused the death of police officers.²¹

Ethiopia

In 2012, journalists and members of the opposition were convicted under the 2009 Anti-Terrorism Proclamation for “*criticizing the Government, demanding reforms and discussing demonstrations and arrests*”.²²

¹⁴ Criminal Code, Articles 197, 202, and 211, 1953.s

¹⁵ Dr. Simon Butt, ARC Federation Fellowship, Islam, Syari’ah and Governance, Background Paper Series: Anti-Terrorism Law and Criminal Process in Indonesia, p. 9, The University of Melbourne, August 2008.

¹⁶ U. RAMANATHAN, The Death Penalty in India: Down a Slippery Slope, in “Moving Away from the Death Penalty: Arguments, Trends and Perspectives” (2014), *op. cit.*

¹⁷ Death Penalty Worldwide, Death Penalty Database, Iran, Crimes and Offenders Punishable By Death.

¹⁸ Amnesty International, Global Report, Death Sentences and Executions – 2015, 2016.

¹⁹ Human Rights Watch, Saudi Arabia: Mass Execution Largest Since 1980, 4 January 2016.

²⁰ Amnesty International, Shia cleric among 47 executed by Saudi Arabia in a single day, 2 January 2016.

²¹ Reuters, Shi’ite cleric among 47 executed in Saudi Arabia, stirring anger in region, 2 January 2016.

²² Amnesty International, Global Report, Death Sentences and Executions – 2012, 2013.

Legal safeguards: trials of alleged terrorists rarely meet fair trial standards

Articles 14 and 15 of the ICCPR expressly protect the right to a fair trial and define several of the necessary guarantees. They do not offer any exception: the right to a fair trial must be respected in all circumstances, including for terrorism-related offences. Similar safeguards are included in Article 6 of the European convention on Human Rights. Fair trial standards and the right to life are closely linked where capital punishment is concerned: the Human Rights Committee has consistently found that imposing a death sentence upon a trial that fails to meet the legal standards of fairness breaches not only Article 14 of the ICCPR but also Article 6, which protects the right to life.²³

The ACHPR also adopted Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, which clearly provide that African States must comply with the right to a fair trial even in the context of counter-terrorism.²⁴

In practice, terrorism-related offences are often prosecuted and tried by military or special courts, during unfair and speedy trials. Confessions obtained under duress or torture may be used and the convicted individual is often prevented from using his right to appeal, if an appeal is at all provided for by the judicial system concerned.

In its report "Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism", the UN Office of the High Commissioner for Human Rights underlined the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in relation to fair trial standards in prosecutions of terrorist acts.²⁵

Chad

On 29 August 2015, ten people suspected of belonging to Boko Haram and accused of carrying out twin attacks that had killed 38 people in N'Djaména in June 2015 were executed merely three days after their trial²⁶ and less than a month after the adoption of the new Anti-Terrorism Act of 31 July 2015.

No reliable information as to their right to appeal and to file a mercy petition was available as the hearings had been moved to a secret location. The speed with which the executions were carried out effectively prevented the individuals from exercising any right they might have had under Chadian law.

Algeria

In 2016, Algeria handed down 62 death sentences for terrorist acts, in many cases after a trial *in absentia*.²⁷

Terrorism-related cases are often dealt with in violation of the prohibition of torture and death row detention and executions often violate the prohibition of torture, inhuman cruel and degrading treatments and punishments

The prohibition of torture, and inhuman, cruel or degrading treatments and punishments is one of the most well-established international human rights norm. It is prohibited under Articles 7, 10 and 14 of the ICCPR, as well as in the Convention against Torture (CAT), and all regional human rights systems. This prohibition does not suffer any exception or derogation and the International Criminal Tribunal for the former Yugoslavia (ICTY) found that it was in fact a *jus cogens* norm.²⁸

²³ Human Rights Committee, *Carlton Reid v. Jamaica*, Communication No 250/1987, 20 July 1990, CCPR/C/39/D/250/1987.

²⁴ ACHPR, *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism*, 7 May 2015.

²⁵ Counter-Terrorism Implementation Task Force (CTITF), *Basic Human Rights Reference Guide, Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, October 2014.

²⁶ Jeune Afrique, *Tchad : exécution des 10 membres présumés de Boko Haram condamnés à mort*, 29 August 2015.

²⁷ Amnesty International, *Global Report, Death Sentences and Executions – 2015, 2016*.

²⁸ ICTY, Trial Chamber I, *The Prosecutor v. Anto Furundzija*, Judgment, 10 December 1998, IT-95-17/1-T.

The prohibition of torture is absolute and non-derogable, as Article 2.2 of the CAT states that “*no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture*”. Individuals suspected of terrorist acts cannot be subjected to acts of torture or inhuman, cruel and degrading treatments or punishments. Confessions or evidence obtained under torture or duress must be excluded and no sentence, especially a death sentence, can legally be passed solely on a confession or evidence obtained under torture.

In practice however, torture is often used to extract confessions from suspected terrorists, which is a violation of their human rights. A tougher stance on terrorism-related offences leads to a stronger incentive to obtain confessions, including through torture.

Moreover, the prolonged detention of death row inmates in itself is a source of great psychological suffering, and can cause what is known as “death row syndrome”. Various courts around the world have recognized that the length of incarceration suffered by those sentenced to capital punishment can amount to an inhuman and cruel punishment.²⁹

Pakistan

Pakistan has one of the largest death row populations in the world and an overwhelming majority of the death row inmates are convicted of terrorism-related crimes, due to an extremely-broad definition of terrorism. 6 or more death row inmates are often detained in cells built for 1 or 2 people, and they are confined for up to 23 hours a day. General sanitary conditions are extremely bad and nutrition is poor.³⁰

While execution is by definition an attack on the physical integrity of the victim, various national courts have considered some methods of execution as cruel or inhuman punishments. In one decision, the Human Rights Committee found that “*by definition, every execution of a sentence of death may be considered to constitute cruel and inhuman treatment*” and that, if the capital sentence does have to be carried out, it must be done “*in such a way as to cause the least possible physical and mental suffering*”.³¹ In this decision, the Human Rights Committee considered that execution by gas asphyxiation, where the gas may take over 10 minutes to take effect, amounted to cruel and inhuman treatment.

²⁹ Death Penalty Worldwide, [Death Row Phenomenon](#).

³⁰ See Justice Project Pakistan’s [website](#).

³¹ Human Rights Committee, *Charles Chitat Ng v. Canada*, Communication No. 469/1991, 5 November 1993, CCPR/C/49/D/469/1991, para. 16.2.

About the Global Parliamentary Platform for the Abolition of the Death Penalty

Parliamentarians for Global Action (PGA) is a network of 1300 parliamentarians from 143 Parliaments across the world who support international justice, the Rule of law, democracy and human rights. In 2013, PGA launched the first-ever *Global Parliamentary Platform for the Abolition of the Death Penalty* with the goal of a stronger, shared culture of legality and human rights where death penalty has no place and justice is not revenge. PGA utilizes a peer-to-peer advocacy methodology (parliamentarian to parliamentarian), to allow for a multi-partisan involvement of the concerned stakeholders to strengthen their understanding of misconceptions about the death penalty and its ineffectiveness in crime prevention and justice. PGA also provides technical assistance and coordinates actions to strengthen the political will for parliamentary initiatives and legislative reforms to overcome the obstacles stalling the process of abolition. PGA's platform works for the ratification of international legal norms prohibiting the death penalty, including the Second Optional Protocol to the International Covenant on Civil and Political Rights and the United Nations General Assembly Resolutions on the moratorium on the use of the death penalty.

For more information on the Platform, please contact Parliamentarians for Global Action:

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About the World Day Against the Death Penalty

World Day against the Death Penalty was created in 2003 by the World Coalition Against the Death Penalty to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition. The World Coalition Against the Death Penalty is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition gives a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. Parliamentarians for Global Action is a member of the World Coalition.

For more information about World Day:

www.worldcoalition.org/worldday