



Thematic Brief on

Death Penalty

A briefing by the Legal and Human Rights Centre
(LHRC)



Death Penalty violates the Right to Life

As emphasised in the 2015 Tanzania Human Rights Report, the right to life is fundamental. It is a right upon which all other rights depend, and it must be protected. The death penalty is a clear infringement of this right. LHRC openly advocates against the death penalty in its reports and campaigns, highlighting the fact that although the death penalty is part of Tanzanian law, there have not knowingly been any executions since 1994.

The right to life is provided for under Article 14 of the Constitution of the United Republic of Tanzania 1977. However, the protection of this right is not absolute, as this right under article 14 can be subjected to other laws. In the Tanzanian Laws It is stipulated as a mandatory sentence for cases of murder and treason under the Penal Code (sections 39 and 197). In order for the death penalty to be executed, the President must sign a death warrant. Article 13 in the Constitution is also relevant for the discussion about abolishment of the death penalty as this article does not allow any punishment and/or treatment to be torturous inhuman or degrading. LHRC believes that the death penalty subjects people to torture by the mode of its execution (through hanging until death).

Key message: The death penalty infringes the fundamental right to life in Tanzania. In the process of the abolition of the death penalty a number of immediate measures are required such as an official moratorium and the provision of alternative sentences for murder being made available to judges.

Protection of the Right to Life is also covered under a number of international instruments that have been ratified by the government. These are the International Covenant on Civil and Political Rights (ICCPR) (Article 6) and the African Charter on Human and People's Rights (Article 4). The government however has not signed and ratified the ICCPR Second Optional Protocol that calls for the abolition of the death penalty by all member states.

Issues to be addressed

LHRC has identified a number of important issues to resolve in order to further protect the right to life in Tanzania.

1. Public awareness of the death penalty is limited and public opinion is mixed:

Public understanding of the death penalty is limited within the country. There are views expressed in the country on supporting the death penalty that are based on a desire for retribution, religious beliefs and personal experience. Evidence suggests that public opinion on the matter is mixed in Tanzania. As noted in the 2014 Tanzania Human Rights Report, a survey was conducted as part of the Constitutional Review Process, and questions were asked about the death penalty. At least 50% of those interviewed supported the retention of the death penalty at that time.

2. Mandatory death sentences for murder and treason:

Death sentences are mandatory sentences given to individuals convicted of murder and treason. There is no mitigation for people convicted of these sentences. This makes it extremely difficult for a judge to mitigate sentences and opt for alternative sentences rather than issuing a death sentence.

3. The constitution, its interpretation and Tanzanian Law:

The Tanzanian Constitution provides for the protection of the right to life under Article 14 and protection from punishments that are inhuman, torturous and degrading under Article 13 (6)(e). The death penalty violates the right to life and the execution method (hanging) is a torturous, inhuman and degrading form of punishment. LHRC therefore believes that the death penalty is against the Constitution – both Article 14 (which provides the general protection of the right to life) and Article 13 (6)(e) which prohibits torturous, inhuman and degrading punishment.

Yet on the other hand, there is the inclusion of a clause that provides for the words 'according to the law' which allows other laws to counter the right to life. Since the death penalty is provided in the Penal Code, the government argues that the death penalty is legal in Tanzania.

4. An unofficial moratorium exists and a non-ratified specific protocol:

The death penalty still exists but as Amnesty International indicates, Tanzania should be considered having a 'de facto' moratorium status because there has not been an execution by the death penalty since 1994. In effect, there is an unofficial moratorium on the death penalty. Amnesty International calls the country 'an abolitionist state in practice.' Without an official moratorium however the death penalty can still be used at any time.

There is also an issue with a pending ratification at the international level. The ICCPR calls for a total ban on the death penalty, but the government has not yet signed and ratified the specific protocol (known as Second Optional Protocol).

5. Limited knowledge on the status of death row prisoners:

Data is available on the number of death sentences issued each year and on the cumulative number of prisoners on death row, as shown in figure 1. However, there is no data made available on the status and conditions of these prisoners. Gaining access to prisoners on death row in order to provide psychosocial and legal support is difficult for human rights organisations like LHRC.

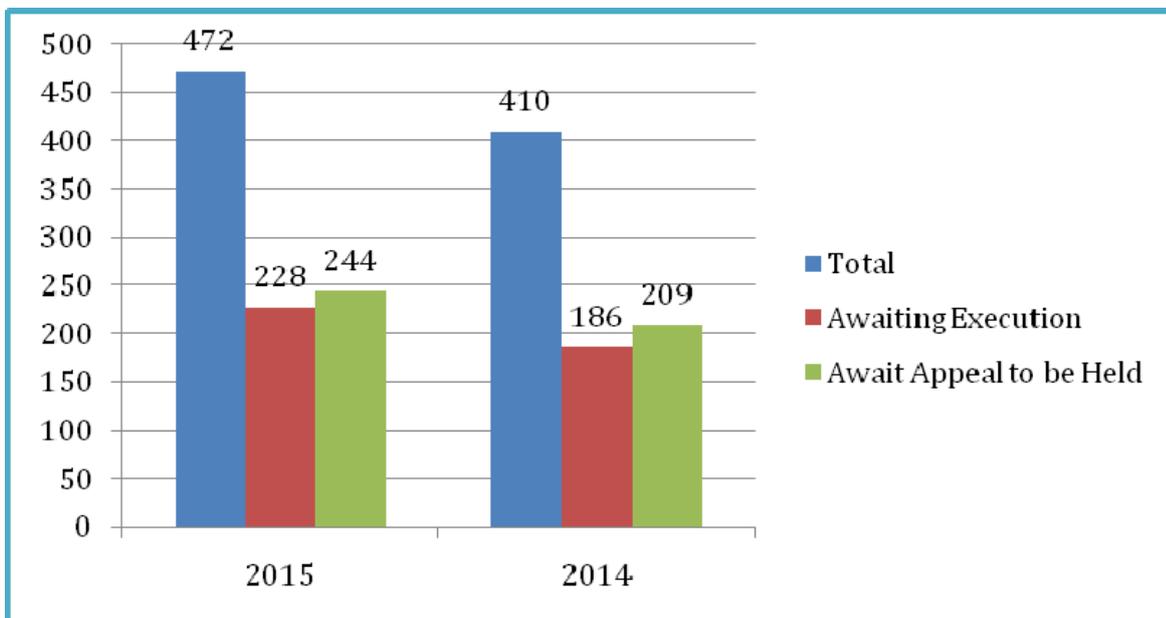


Figure 1. Number of Death Penalty Convicts in 2014 -2015 (Source: THRR 2015)

Key Messages

1. Improve public awareness:

There is an opportunity to improve public awareness on the death penalty. It is important that citizens understand that the death penalty is an affront to the right to life, which is recognised in the Constitution and international frameworks ratified by the government. Furthermore, citizens need to understand that there are alternatives to the death penalty such as life imprisonment. It is also important to understand that the death penalty is not necessarily a deterrent to murder. Religious leaders are a powerful voice to influence public opinion, and have a duty to support the safeguarding of the right to life through advocacy. Other key stakeholders include Human Rights monitors around the country who can play an important role in addressing the public concerning the process of abolition of the death penalty.

2. In the process of abolishing the death penalty, there are two immediate measures that need to take place to safeguard the right to life:

i. **Alternative sentences:** An important first step in the eventual abolishment of the death penalty should be providing judges with an alternative to the death sentence. Government and members of parliament should consider changing the law to provide alternatives such as life imprisonment.

ii. **Official moratorium:** The government should recognise there is in practice a moratorium on the death penalty and make this official. As part of this process, sentences should be commuted to life imprisonment, particularly for those that have been in prison for a long time. A moratorium does three key things if signed:

- Suspends the implementation of death penalty to member states that have not abolished it.
- Forbids re-introducing the death penalty to those members who have abolished it.
- Minimises the cases that are on death penalty.

3. The protection of the right to life needs to be absolute:

Any provision in the constitution needs to be absolute, without any drawback clauses. The Parliamentary Committee for Legal and Constitutional Affairs should look into steps to safeguard the right to life through any future constitutional review process.

4. International frameworks should be signed and ratified:

The second optional protocol of the ICCPR needs to be signed and ratified for the total abolition of the death penalty. The Parliamentary Committee for Legal and Constitutional Affairs should lead on this, to ensure this protocol is signed and ratified.

5. Information required on death row inmates:

LHRC calls on the prison services to allow LHRC and other human rights organisations such as the Commission for Human Rights and Good Governance (CHRAGG) to access prisoners on death row to assess their conditions. The conditions of death row prisoners should be made public to citizens to better inform their opinion on the death penalty. More readily available information from the prison services is needed to have updated figures.

The Committee for Legal and Constitutional Affairs should ensure that the prison services grant access to the files on death row inmates so that numbers can be verified by civil society. This is important to understand the actual number and status of citizens in prison with death sentences. There is currently no independent mechanism to verify these figures. As such, LHRC calls on the prison services as well as the Minister of Home Affairs to provide direct access to LHRC, CHRAGG and others to conduct regular independent monitoring.

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