

Asia and the Death Penalty

Reassessing the Prospects for Abolition

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In 2009, David Johnson and Franklin Zimring predicted that: '[o]n current evidence, the abolition of capital punishment in Asia is not a question of whether but of when, and the critical issues seem to concern the pace and processes of change rather than the direction changes will take or their eventual end point'.¹ The authors identified the 'powerful and primary role of democratization', particularly as a consequence of economic development, as the clearest causal factor in stimulating change in execution policy.² There may be anomalies, such as in Japan, and cases where economic development is not accompanied by democratisation, such as China and Vietnam. Because of these, the process of decline may be uneven.³ Nevertheless, the authors maintained that the road to abolition, over an extended time frame, ran in one direction only.⁴

This article reviews progress towards abolition in Asia in the period 2010–20. It argues that trends, which appeared well-established in Asia a decade ago and augured well for abolition (such as the overall decline in the number of executions, the poor social reputation of capital punishment among the region's elites and popular wishes for democratic government),⁵ seem, in the second decade of the 21st century, to be far less certain. New developments, such as China's growing assertiveness and influence in international forums, global economic instability in the wake of the COVID-19 pandemic, and anti-democratic developments and populist resurgences across Asia, cast doubt on previous predictions about the unidirectional move to abolition.

This article outlines three central reasons why the prediction of Asia's downward trajectory for capital punishment requires revision. First, domestic developments in countries such as Afghanistan, Myanmar, Bangladesh and India suggest we can no longer assume the overall rate of executions across Asia will slow. Where the death penalty remains a legal option, as it does in many Asian countries, resuming or continuing executions will remain among the repertoire of responses to social crises and political insecurity. Second, there are reasons to question whether Asian political elites still value the reputational salience of 'belonging' to the group of abolitionist countries. This is significant, given that death penalty reform is held to be an elite-led process. Third, in China and Vietnam, which are two of the world's most steadfast proponents of the death penalty, it is not plausible to assume the inevitable triumph of liberal democracy — and with it the end of capital punishment.

Before examining recent developments and explaining what they signal for the future of the death penalty in Asia, this article explains why the abolition of the death penalty is regarded as the signature issue of the human rights movement.

I The Death Penalty as a Human Rights Violation

From a human rights perspective, opponents of the death penalty argue that the penalty and the way in which the penalty is exercised violate rights that are



fundamental and to which there are no exceptions. Key amongst these is the right to life⁶ and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.⁷ In addition to this, because of its finality, the death penalty is a punishment that far exceeds any crime.⁸ Underpinning these arguments is the belief that the death penalty is inherently inhuman and degrading.⁹ When a state takes the life of a person, in an organised, legal, intentional manner, it denies the convicted person the dignity that attaches to them because they are human. Dignity is stripped away in the profoundly agonising process that begins with conviction and ends in death.¹⁰ Advocates for ending capital punishment explicitly tie abolition to the evolution of civilised society, and to Enlightenment ideals about the sanctity of human life. If the human rights movement has a signature issue, the death penalty is it.

Although the right to life is protected in art 3 of the *Universal Declaration of Human Rights* ('UDHR'),¹¹ no mention is made of the death penalty. This is because when members of the fledgling United Nations signed the UDHR in 1948, most states still employed the death penalty. Indeed, many of the war criminals convicted by post-war tribunals at Nuremberg and Tokyo were sentenced to death.¹² The question for the drafters of the UDHR was whether the death penalty should be included in the UDHR as a specific exception to the right to life; or rather not referred to at all, in the hope that worldwide abolition would soon be part of a new post-war age of respect for the rights and dignity of individuals. In the end, the latter path was chosen.

By the time the drafting of the *International Covenant on Civil and Political Rights* ('ICCPR')¹³ was completed in 1966, it was clear that the path to abolition would be far from smooth. Three of the five great powers of the Cold War period — China, the Soviet Union and the United States — maintained the death penalty.¹⁴ The drafters of the ICCPR, therefore, set out to circumscribe the conditions under which the death penalty could be imposed (only for 'the most serious crimes') and to include specific safeguards and restrictions on its implementation — anyone sentenced to death must be able to seek pardon or commutation; death sentences cannot be imposed for crimes committed by persons under 18 years of age and cannot be carried out on pregnant women.¹⁵ In 1989, an *Optional Protocol* was added to the ICCPR, forbidding state parties to the *Protocol* from carrying out executions.¹⁶ The global advocacy strategy to end the practice of capital punishment involves major international human rights organisations such as Amnesty International and Human Rights Watch, and key United Nations actors, such as the Human Rights Council, the Office of the High Commissioner for Human Rights and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Since 2007, the United Nations General Assembly has passed a biannual resolution calling on states to progressively restrict the use of the death penalty and establish a moratorium on executions with a view to abolishing the death penalty.¹⁷ The ever-increasing number of states supporting the moratorium has been heralded as evidence of global momentum towards the ultimate abolition of the death penalty across the world.¹⁸

II Asia and the Death Penalty

Although it is problematic to define 'Asia' as a coherent region,¹⁹ it is nevertheless possible, for the purposes of assessing global human rights trends, to identify a group of 26 countries that belong either to recognised Asian sub-regional organisations (such as the Association of Southeast Asian Nations or the South Asian Association for Regional Cooperation) or to East Asia. These states are Afghanistan, Bangladesh, Bhutan, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Maldives, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Papua New Guinea, the Philippines, South Korea, Singapore, Sri Lanka, Taiwan, Thailand, Timor Leste and Vietnam.²⁰ With the exception of Taiwan,²¹ these states all belong to the United Nations regional grouping of 'Asia-Pacific States'.²² Almost half these states were present at the historic Bandung Conference in 1955 when Asian and African leaders came together to assert their independence and oppose imperialism in the context of great power rivalry during the early period of the Cold War.²³ These states were also signatories to the 1993 *Bangkok Declaration*, which Asian leaders prepared in the run-up to the World Conference on Human Rights.²⁴ The *Bangkok Declaration* was a critique of what was perceived to be the selective and hypocritical application of human rights standards by Western states on the developing states of Asia.²⁵

For these reasons, in short, it is defensible to consider 'Asia' as a distinct region for the purpose of analysing human rights developments.²⁶

In Europe, only Belarus maintains the death penalty.²⁷ In Asia, all the major population centres are retentionist and China carries out more executions than any other country in the world.²⁸ Those who study the death penalty as a social phenomenon regard Asia as 'the next important frontier' for death penalty reform.²⁹ Writing in 2010, Johnson argued that the death penalty in Asian states was in decline.³⁰ At the time, five states (Bhutan, Cambodia, Nepal, the Philippines and Timor Leste) had abolished the death penalty altogether.³¹ Seven states (Brunei, Laos, Maldives, Myanmar, Papua New Guinea, South Korea and Sri Lanka) were 'de facto' abolitionist — they had not carried out any executions in the previous 10 years.³² The remaining 13 states (Bangladesh, China, India, Indonesia, Japan, Malaysia, Mongolia, North Korea, Pakistan, Singapore, Taiwan, Thailand and Vietnam) retained the death penalty and carried out executions.³³ But Johnson held that, even in retentionist states, the use of the death penalty in sentencing was becoming less frequent and executions were carried out more rarely.³⁴ In South Korea and Taiwan, execution rates had dropped dramatically.³⁵ In India, a significant country because of its large population, only one person was executed in the 10 years between 1998 and 2007.³⁶ The conclusion drawn by Johnson was that, eventually, the death penalty as a criminal sanction in Asia would fall into desuetude and then would finally be abolished.³⁷

The assumption was that Asian states would follow the same path to abolition that states in Europe followed some three decades earlier. First, governments progressively narrowed the category of crimes to which the death penalty applied. Next, they implemented a moratorium on the practice of the death penalty. Finally, they abolished it altogether, often after the election of a left-of-center government.³⁸ One clear distinction between Asia and Europe is the absence in Asia of strong regional organisations, such as the Council of Europe and the European Union, where membership is conditional on the abolition of the death penalty. But from the vantage point of 2010, other causal factors appeared to make comparisons between Asia and Europe, and predictions about Asia's future path, relatively plausible. For example, one factor driving abolition in Europe was the presence of political elites who were opposed to the death penalty.³⁹ These kinds of political elites were also present in Asia.⁴⁰ Another factor leading to abolition in Europe was the collapse of authoritarian regimes and the efforts of new regimes to distance themselves from the old by renouncing state killing.⁴¹ This phenomenon was also taking place in some Asian states, where left-liberal governments, traditionally ill-disposed to capital punishment, were taking power.⁴² Asia's impressive level of economic development was also relevant because in Europe, according to Johnson, this tended to produce 'moral improvements that ultimately produce pressure for political reform'.⁴³

III Asia's Path to Abolition in the Period 2010–20: Retreat and Regression

At first blush, developments in the period 2010–20 appear to bear out Johnson's prediction of a decline in the death penalty in Asia. One piece of evidence is the fact that in the decade from 2010 to 2020, there was an increase in the number of Asian states supporting the United Nations General Assembly's *Moratorium on the Use of the Death Penalty* ('*Moratorium*'). The first vote on the *Moratorium* took place in 2007. In that vote, 16 Asian states were against the *Moratorium* and four abstained from voting.⁴⁴ In contrast, in the 2020 vote, only 11 Asian states voted against the *Moratorium*⁴⁵ and five abstained.⁴⁶ Human rights advocates view voting on the *Moratorium* to be a significant indicator of a state's intention to maintain abolition or to bring an end to capital punishment, because it provides evidence of elite intentions to effect reform and provides transnational advocacy groups, and domestic human rights groups, with a powerful tool to lobby for abolition.⁴⁷

Mongolia's experience demonstrates how international commitments can lead to domestic change. Mongolia voted against the *Moratorium* in 2007 but in favour of it in 2010 and on every subsequent occasion thereafter.⁴⁸ In 2012, Mongolia ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, and in 2015, passed a law abolishing the death penalty.⁴⁹ In 2015, Mongolia hosted what is arguably the most significant annual human rights gathering in the Asia Pacific, the annual meeting of the Asia Pacific Forum of National Human Rights Institutions.⁵⁰ In his opening address to the meeting, Mongolia's President, Tsakhiagiin Elbegdorj, identified the right to life as the beginning of

all human rights, and described Mongolia's transition from a country with one of the highest rates of execution in the world to a country that has abolished capital punishment. He pointed out that the decision to abolish capital punishment in Mongolia did not reflect public opinion. Instead, it was the result of his decision as a leader who valued the pursuit of human rights as his most important job.⁵¹

In the rest of Asia, however, there is a more complicated picture. In the period 2010–20, other than Mongolia, only one other state — Papua New Guinea — moved from the retentionist to the abolitionist camp.⁵² In at least two of the existing abolitionist states, there were concerning developments. In the Philippines, Rodrigo Duterte campaigned on a platform that included the reinstatement of the death penalty.⁵³ Following his election as President, the House of Representatives passed — with a large majority — a bill to reinstate the death penalty.⁵⁴ The bill was ultimately narrowly defeated in the Senate.⁵⁵ Political allies of Duterte continued to agitate for reinstatement, despite the election of a new President who does not appear to support the death penalty.⁵⁶ In Nepal, capital punishment is prohibited under the *Constitution* and no execution has taken place since 1979.⁵⁷ Nevertheless, in the wake of a surge in cases of sexual violence against women and girls, and the execution in 2020 of four rapists in neighbouring India, Nepal's female parliamentarians formed a coalition to lobby for the reinstatement of the death penalty for rape.⁵⁸ Surveys revealed that 84% of the population of Nepal was supportive of the death penalty as a punishment for rape.⁵⁹ Other Asian countries that were 'de facto abolitionist' remained so. But, in 2013, Brunei introduced a new penal code that provides for capital punishment, including death by stoning, for a range of offences.⁶⁰ Unlike Europe, which has, for the most part, abandoned the death penalty,⁶¹ in Asia, even among some of the region's earliest and staunchest proponents of abolition, reinstatement of the death penalty is still a political possibility.

Among the states that in 2010 were regarded as 'de facto' abolitionist because no executions had been carried out in the previous 10 years, capital punishment was still an important sentencing option for judges. In 2017, Sri Lankan courts handed down 218 death sentences.⁶² The continued use of capital punishment in sentencing is a signal of commitment to the death penalty as a social institution, normalising capital punishment in society and popular culture. Furthermore, when large numbers of death sentences are handed down, the stories of those sentenced are depersonalised, making it more difficult for citizens to identify with people who face the death penalty and more difficult for elites to champion the cause of reform.⁶³ In 2022 Sri Lanka's economy collapsed and there was popular revolt against inequality, entrenched political hierarchies and elite corruption.⁶⁴ It is unclear which direction the country will take but there is no clear path to the election of a stable liberal majority government prepared to enact penal reform.

All Asia's retentionist states carried out executions in the period 2010–20.⁶⁵ Some states reversed long-running trends of only very rarely carrying out executions — or carrying out executions in very low numbers. India is one example. Johnson reported that in the 10 years between 1998 and 2007, India executed only one person.⁶⁶ In 2020 alone, India executed four men convicted of the crimes of rape and murder, following public outrage over the death of their victim, 'Nirbhaya' — the fearless one.⁶⁷ In Bangladesh, there were only two years in the period 2010–21 in which no one was executed.⁶⁸ In 2021, the government of Bangladesh expanded the range of crimes to which the death penalty applies to include rape of women and children.⁶⁹ In Afghanistan, a two and a half year moratorium on executions ended in 2011, after which there were executions every year until 2019.⁷⁰ Pakistan lifted a moratorium on executions in 2014.⁷¹ In 2015 alone, 326 people were executed.⁷² In China, Vietnam and North Korea, there are no reliable statistics about the numbers executed.⁷³ China maintained its status as the country that executes more people than any other country in the world.⁷⁴

iv Explaining the Trends

One of the most convincing explanations for why states retain the death penalty concerns the character of government. Authoritarian governments are more likely to both retain and use the death penalty, while changes in death penalty law and policy are more likely to occur when liberal, left-of-center parties control government.⁷⁵ Given this, an important gauge of the future of the death penalty in Asia is whether authoritarian states such as China and Vietnam are likely to democratise

and whether new or fragile democracies will consolidate democratic gains. On this front, the trends in several Asian countries are moving in the wrong direction.⁷⁶

China, Laos and Vietnam remain authoritarian communist states. In Afghanistan, the Taliban took power in 2021, and announced a return to executions and amputations of hands as forms of punishment.⁷⁷ Observers fear the Taliban will resume the form of capital punishment exercised under Taliban rule in the period from 1992–2001, when adultery was punished by stoning to death, homosexuality was punished by being buried alive, and murders and dissidents were summarily executed.⁷⁸ In Myanmar, until July 2022, there had been no executions in three decades. In February 2021, Myanmar's military carried out a coup d'état and replaced the democratically elected government of Aung San Suu Kyi with a military junta.⁷⁹ In June 2022, the military announced that the death penalty would be meted out to former politician Phyo Zeya Thaw and pro-democracy activist Kyaw Min Yu after their conviction by a military tribunal on crimes of terrorism and treason.⁸⁰ Phyo Zeya Thaw and Kyaw Min Yu, and two others, were executed in July 2022.⁸¹ In India and Indonesia, populist leaders hold power.⁸² India's Narendra Modi championed the expansion of the range of crimes to which the death penalty applies to include the rape of minors.⁸³ Indonesia's Joko Widodo, after initially appearing to soften his stance on capital punishment, ultimately supported the death penalty for drug offences as a central part of Indonesia's 'war on drugs'.⁸⁴ With the exception of Malaysia, the rise of liberal, left-leaning governments is less likely now than it was in 2010.⁸⁵

Whatever the governmental system, as David Johnson and Franklin Zimring note, 'the most likely proximate cause of substantive change in death penalty policy is the leadership of political elites'.⁸⁶ An important question, therefore, is how elite views are formed and translated into the political environments in which policy choices take place. In the early 2000s, Ryan Goodman and Derek Jinks identified a process of human rights change *via* a dynamic of *acculturation*, where actors adopt the beliefs and behavioural patterns of surrounding cultures.⁸⁷ The idea is that actors respond to cognitive and social pressures to conform to group norms and expectations. The biannual United Nations General Assembly vote on the death penalty moratorium is an example of how human rights advocates attempt to harness the process of acculturation to encourage elites to join the 'in group' of human rights respecting states to support a moratorium on the death penalty. Within the society of states, death penalty abolition is held out as a position with high moral status.

In 2020, however, it is no longer clear that Asia's elites believe the Western-led, abolitionist 'in group' is the place to be. Leaders such as India's Prime Minister Modi and China's Xi Jinping increasingly assert their country's right to determine its own human rights priorities (generally development and poverty alleviation). New geostrategic alignments are forming, such as the Quadrilateral Security Dialogue (Australia, Japan, India and the United States) where Australia, as the only abolitionist country, is the outsider. The extent of social-psychological influence and the level of effect of moral signalling in international relations is debatable.⁸⁸ But it is uncontroversial that the West's influence and moral cache are dwindling.⁸⁹ How this effects prospects for death penalty reform in Asia remains to be seen.

v Conclusion

Advocates for the abolition of the death penalty assume that in Asia, as in Europe, capital punishment will eventually become a legal remnant, with the number of offences to which it applies gradually dwindling until the penalty itself is finally removed when domestic political circumstances are propitious. This article takes issue with this complacency, arguing that the link between authoritarianism and use of the death penalty is the clearest causal factor explaining the continued use of capital punishment and given this, the trends in Asia run counter to abolition of any predictable timeline. We cannot assume democratisation in Asian countries or the assumption of power by liberal, left-leaning political parties, and we cannot assume the rise of a class of political elites who are well-disposed to Western human rights agendas. At the end of their important 2009 study of the death penalty in Asia, Johnson and Zimring caution that their prediction about abolition contains a large margin of error, and they reminded readers that there is no law that says all political change will be in the direction of more democratic government and increased respect for human rights.⁹⁰ From the vantage point of the second decade of the 21st century, this caution has proven, unfortunately, to be well-founded.

- 1 David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press, 2009) 328 ('The Next Frontier').
- 2 Ibid 297.
- 3 Ibid 329.
- 4 Ibid.
- 5 Ibid 327–8.
- 6 Jon Yorke, 'The Right to Life and the Abolition of the Death Penalty in the Council of Europe' in Jon Yorke (ed), *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics* (Routledge, 2016) 233, 233.
- 7 Patrick Hudson, 'Does the Death Row Phenomenon Violate a Prisoner's Rights under International Law?' (2000) 11(4) *European Journal of International Law* 833, 837.
- 8 Carol S Steiker, 'No, Capital Punishment Is Not Morally Required: Deterrence, Deontology and the Death Penalty' (2005) 58(3) *Stanford Law Review* 751, 765–9.
- 9 William A Schabas, 'International Law and Abolition of the Death Penalty' (1998) 55(3) *Washington and Lee Law Review* 797, 808.
- 10 Richard J Bonnie, 'The Dignity of the Condemned' (1988) 74(8) *Virginia Law Review* 1363, 1377.
- 11 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 3 ('UDHR').
- 12 Schabas (n 9) 797.
- 13 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').
- 14 In 2022, it is still the case that China, Russia and the United States retain the death penalty: 'Death Penalty 2021: Facts and Figures', *Amnesty International* (Web Page, 24 May 2022) <<https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/>> ('Death Penalty 2021').
- 15 ICCPR (n 13) art 6(2).
- 16 *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('Optional Protocol'). At the time of writing, 116 states are signatories to the *Optional Protocol* while 173 countries are state parties to the ICCPR: 'Status of Ratification Interactive Dashboard', *Office of the United Nations High Commissioner for Human Rights* (Web Page, 3 November 2022) <<https://indicators.ohchr.org/>>.
- 17 *Moratorium on the Use of the Death Penalty*, GA Res 62/149, UN GAOR, 62nd sess, 76th mtg, UN Doc A/RES/62/149 (26 February 2008, adopted 18 December 2007); *Moratorium on the Use of the Death Penalty*, GA Res 63/168, UN GAOR, 63rd sess, 70th mtg, UN Doc A/RES/63/168 (13 February 2009, adopted 18 December 2008); *Moratorium on the Use of the Death Penalty*, GA Res 65/206, UN GAOR, 65th sess, 71st mtg, UN Doc A/RES/65/206 (28 March 2011, adopted 21 December 2010); *Moratorium on the Use of the Death Penalty*, GA Res 67/176, UN GAOR, 67th sess, 60th mtg, UN Doc A/RES/67/176 (20 March 2013, adopted 20 December 2012); *Moratorium on the Use of the Death Penalty*, GA Res 69/186, UN GAOR, 69th sess, 73rd mtg, UN Doc A/RES/69/186 (4 February 2015, adopted 18 December 2014); *Moratorium on the Use of the Death Penalty*, GA Res 71/187, UN GAOR, 71st sess, 65th mtg, UN Doc A/RES/71/187 (2 February 2017, adopted 19 December 2016); *Moratorium on the Use of the Death Penalty*, GA Res 73/175, UN GAOR, 73rd sess, 55th mtg, UN Doc A/RES/73/175 (23 January 2019, adopted 17 December 2018); *Moratorium on the Use of the Death Penalty*, GA Res 75/183, UN GAOR, 75th sess, 46th mtg, UN Doc A/RES/75/183 (28 December 2020, adopted 16 December 2020).
- 18 'Helping the World Achieve a Moratorium on Executions', *World Coalition against the Death Penalty* (Web Page, 20 October 2020) <<https://worldcoalition.org/campagne/helping-the-world-achieve-a-moratorium-on-executions/>> ('Moratorium on Executions').
- 19 See Amitav Acharya, 'Asia Is Not One' (2010) 69(4) *The Journal of Asian Studies* 1001; Amitav Acharya, 'The Idea of Asia' (2010) 9(1) *Asia Policy* 32.
- 20 Australia and New Zealand are not included in this list, although they feature in other lists of 'Asian states'. For the purpose of most United Nations regional groupings, Australia and New Zealand belong to the 'Western European and other states' group: 'Regional Groups of Member States', *United Nations* (Web Page). Hong Kong and Macao are not included in this list as they are part of China although they also feature in other lists of 'Asian states'.
- 21 Ibid. Taiwan does not have official recognition as a state. China and most other countries regard Taiwan as part of China.
- 22 Ibid. The United Nations 'Asia-Pacific' group is a regional grouping of 55 states that includes 'Pacific' states, such as Samoa, Tonga, Solomon Islands and Fiji, West Asian states, such as Iran and Iraq, and Central Asian states, such as Kazakhstan and Kyrgyzstan.
- 23 Roland Burke, '"The Compelling Dialogue of Freedom": Human Rights at the Bandung Conference' (2006) 28(4) *Human Rights Quarterly* 947, 961–5.
- 24 *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, GA Res 54/254, UN Docs A/CONF/15/ASRM/8 and PC/23 (7 April 1993).
- 25 See, eg, Diane K Mauzy, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) 10(2) *The Pacific Review* 210, 220–2.
- 26 See also Pip Nicholson, 'The Death Penalty and Its Reduction in Asia: An Overview' (Briefing Paper, Asian Law Centre, 2017).
- 27 'Death Penalty 2021' (n 14).
- 28 Ibid.
- 29 See generally Johnson and Zimring, *The Next Frontier* (n 1) 3.
- 30 David T Johnson, 'Asia's Declining Death Penalty' (2010) 69(2) *The Journal of Asian Studies* 337.
- 31 Ibid 339.
- 32 Ibid.
- 33 Ibid.
- 34 Ibid 337.
- 35 Ibid 340.
- 36 Ibid 339.
- 37 Ibid 345.
- 38 See generally Council of Europe, *The Death Penalty: Abolition in Europe*, ed Tanja Kleinsorge and Barbara Zatlökal (1999).
- 39 Johnson, 'Asia's Declining Death Penalty' (n 30) 341.
- 40 Ibid 340. Johnson identifies President Kim Dae Jung in South Korea and President Chen Shui-bian in Taiwan.
- 41 Ibid 341.
- 42 One example is the election of the National League for Democracy in Myanmar in 2015 and 2020, following decades of military rule.
- 43 Johnson, 'Asia's Declining Death Penalty' (n 30) 342.
- 44 'Moratorium on Executions' (n 18); United Nations, 'General Assembly Adopts Landmark Text Calling for Moratorium on Death Penalty' (Press Release, 18 December 2007) <<https://press.un.org/en/2007/ga10678.doc.htm>>.
- 45 'Statement on the Adoption of the 8th UN General Assembly Resolution for a Moratorium on the Use of the Death Penalty, *World Coalition against the Death Penalty* (Web Page, 17 December 2020) <<https://worldcoalition.org/2020/12/17/statement-on-the-adoption-of-the-8th-un-general-assembly-resolution-for-a-moratorium-on-the-use-of-the-death-penalty/>>. These states are Afghanistan, Bangladesh, Brunei, China, India, Japan, Maldives, North Korea, Pakistan, Papua New Guinea and Singapore.
- 46 Ibid. In 2020, the Asian states that abstained from voting were Indonesia, Laos, Myanmar, Thailand and Vietnam.
- 47 The 'spiral model' of human rights change is described by Stephen Ropp, Kathryn Sikkink and Thomas Risse in their book, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999).
- 48 International Commission against Death Penalty, *How States Abolish the Death Penalty: 29 Case-Studies* (Report, 2nd ed, May 2018) 38 ('How States Abolish the Death Penalty').
- 49 *Optional Protocol* (n 16); 'Mongolia: Historic Vote Abolishes Death Penalty', *Amnesty International* (Web Page, 4 December 2015) <<https://www.amnesty.org/en/latest/press-release/2015/12/mongolia-historic-vote-abolishes-death-penalty/>>.
- 50 The Asia Pacific Forum of National Human Rights Institutions ('APF') was founded in 1996 as a coalition of national human rights institutions that work together to address human rights challenges in the region. In the absence of a pan-Asian human rights institution, the APF does the work of building human rights capacity, supporting advocacy and disseminating human rights norms across the Asia Pacific. See Andrew Byrnes, Andrea Durbach and Catherine Renshaw, 'Joining the Club: The Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the Advancement of Human Rights Protection in the Region' (2008) 14(1) *Australian Journal of Human Rights* 63.
- 51 'Tsakhiagiin Elbegdorj: Mongolia Will Always Say "YES" to Human Rights', *News.mn* (online, 31 August 2015) <<https://news.mn/en/220992/>>.
- 52 'IBAHRI Applauds Papua New Guinea's Decision to Abolish the Death Penalty', *International Bar Association* (Web Page, 22 February 2022) <<https://www.ibanet.org/IBAHRI-applauds-Papua-New-Guineas-decision-to-abolish-the-death-penalty>>.
- 53 *How States Abolish the Death Penalty* (n 48) 41.
- 54 Ibid.
- 55 Ibid; 'Philippines and the Death Penalty', *Parliamentarians for Global Action* (Web Page) <<https://www.pgaction.org/ilhr/adp/phl.html>>; Alexis Romero and Paolo Romero, 'Death Penalty Dead in Senate: Drilon', *The Philippine Star* (online, 27 April 2017) <<https://www.philstar.com/headlines/2017/04/27/1689114/death-penalty-dead-senate-drilon>>.
- 56 Catherine S Valente, 'Marcos Not Keen on Reviving Death Penalty', *The Manila Times* (online, 20 March 2022) <<https://www.manilatimes.net/2022/03/20/news/marcos-not-keen-on-reviving-death-penalty/1836944>>. See also Jose M Jose and Maria Corazon A De Ungria, 'Death in the Time of COVID-19: Efforts to Restore the Death Penalty in the Philippines' (2021) 2 *Forensic Science International: Mind and Law* 100054 1, 1–4; Grace Keane O'Connor, 'Adoption of Bill Allowing the Imposition of the Death Penalty for a New Crime', *World Coalition against the Death Penalty* (online, 30 April 2021) <<https://worldcoalition.org/2021/04/30/adoption-of-bill-allowing-the-imposition-of-the-death-penalty-for-a-new-crime/>>.
- 57 Amnesty International, *The Death Penalty: List of Abolitionist and Retentionist Countries* (Report, 30 January 1991) 3 <<https://www.amnesty.org/en/wp-content/uploads/2021/06/act500011991en.pdf>>.
- 58 Lekhanath Pandey Kathmandu, 'Rape Cases in Nepal Trigger Death Penalty Discussion', *Deutsche Welle* (online, 10 December 2020) <<https://www.dw.com/en/nepal-women-protest-surge-in-rape-cases/a-55248955>>.
- 59 Cilla Khatri, 'The Case against Capital Punishment in Nepal', *The Annapurna Express* (online, 10 October 2020) <<https://theannapurnaexpress.com/news/the-case-against-capital-punishment-in-nepal-2831>>.
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