

FDFA Strategy

on the Universal Abolition of the Death Penalty 2013-2016

03/10/2013

TABLE OF CONTENTS

<i>Preface</i>	2
<i>Executive summary</i>	3
1. Background and challenges	4
2. Principles and means of action	4
3. Objectives and key areas of activity	6
4. Agenda	8
<i>Annex I: Global situation</i>	10

Preface by the Head of the FDFA

Justice that kills is not justice. Inspired by this conviction, Switzerland has made itself one of the spearheads in the fight to abolish capital punishment worldwide. By virtue of the *Federal Department of Foreign Affairs' Strategy on the Universal Abolition of the Death Penalty 2013-2016*, we seek to reaffirm, systematise, and further strengthen the commitment of our country to putting an end to a punishment that no longer has its place in today's world.

The rejection of the death penalty is an integral part of our values. The right to life – the supreme right – and the respect for human dignity lie at the core of the Swiss foreign policy. This is the reason why we relentlessly and firmly support the positions and the advances being made by the abolitionist movement, which has undeniably been successful in gaining momentum throughout the world. More and more states are step by step opting for the path to abolition.

Capital punishment has no positive effect at all on the prevention of crime or on security. Neither does it provide redress to the victims or to their families. Its application is often a reflection of discrimination and it can also irreversibly strike innocent people. Moreover, it is inevitably accompanied by numerous violations of human rights both of the person sentenced and of his or her relatives.

We find it necessary to underscore these principles since we are entering a crucial phase on the path towards universal abolition. Today only 58 States still recognise the death penalty, while twenty years ago there were almost twice as many. Nonetheless, despite the fact that the general progress recorded over the last two decades continues, there is a risk that this progress could slow down as the pockets of resistance become more and more rare. Recently certain states have even resumed executions after having experienced a *de facto* moratorium. And in countries that have abolished the death penalty – including Switzerland – from time to time voices that call for its reinstatement emerge in reaction to current news.

These negative points, however, also have a salutary aspect by reminding us that the universal abolition of the death penalty in the near future is not something we can take for granted. This objective cannot be reached if we stand by idly and wait. Quite the contrary. Universal abolition of the death penalty demands a collective and coordinated effort on the part of all the states involved and members of civil society who have subscribed to this goal. It is we who are in the majority. It is in this spirit and in the prospect of a world without the death penalty by 2025 that we have formulated this strategy.

Executive summary

Worldwide commitment to human rights and their promotion is a priority of Swiss foreign policy. One of the key issues in this respect is the abolition of the death penalty as set out in the FDFA's Foreign Policy Human Rights Strategy 2013-2016. This strategy aims to specify this objective in greater detail¹.

Basic principle:

Switzerland is opposed to the death penalty under any circumstances and consequently throughout the world. This form of punishment is incompatible with the respect for human rights and violates the right to life in particular. The majority of states oppose capital punishment and the global trend continues to move in this direction. In view of the circumstances involved in the death penalty, it violates human dignity and the right not to be tortured or subjected to other cruel, inhuman or degrading treatment or punishment. Capital punishment is ultimately the definitive and irreversible denial of any right.

Often used in a discriminatory way, the death penalty results in the punishment of innocent parties in certain cases. Furthermore, according to all existing studies to date, it does not act as more of a deterrent than other severe punishments. It does not improve security or provide the families of victims of crime with a sense of justice or reparation.

Objectives:

Switzerland's main objective is the abolition of the death penalty worldwide by 2025 and the achievement of a universal and comprehensive moratorium on executions. In light of the current global situation, the following four subsidiary objectives are being pursued to this end:

- i. To encourage all countries and territories to introduce a *de jure moratorium* or at least a *de facto moratorium* in order to ultimately implement a complete abolition of the death penalty;
- ii. To endeavour to restrict the offences punishable by the death penalty and the number of death sentences in general to a minimum in countries and territories which retain capital punishment;
- iii. To work towards ensuring adherence to the minimum standards recognised by international law in these countries.
- iv. To strengthen the existing legal framework, to show commitment to multilateral forums and to encourage countries to ratify existing international instruments applicable in this area.

Areas of activity :

In order to achieve the aforementioned objectives, Switzerland is working on a multilateral level (in particular at the UN General Assembly (UNGA), the UN Human Rights Council (UNHRC), the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe; on a bilateral level (including through a more regular and coherent policy of diplomatic demarches); in collaboration with civil society and other partners (International Commission against the Death Penalty (ICDP), World Congress against the Death Penalty, NGOs, members of parliament) and by means of specifically selected projects to influence public opinion. To this end, Switzerland also looks for synergies and works closely with like-minded countries and partner organisations.

Role of the Swiss network of representations:

In cooperation with headquarters, the representations abroad work actively and independently towards the abolition of the death penalty. Wherever possible, they work together closely with like-minded countries as well as multilateral and civil society partner

¹ FDFA Human Rights Strategy 2013-2016

organisations. The representations also identify opportunities for interventions and activities, undertaking these within the means at their disposal.

1. Background and challenges

Capital punishment was universally abolished throughout Switzerland with the entry into force of the Swiss Penal Code (1937) in 1942 (with the revision of the Swiss Armed Forces Act in 1992).² The last executions took place during the Second World War. The Swiss Constitution of 2000 now concisely stipulates in article 10, paragraph 1: “Everyone has the right to life. The death penalty is prohibited.”

The fact that the death penalty is not completely prohibited worldwide as a violation of the right to life in accordance with the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) is primarily explained by historical reasons. Article 6 of the ICCPR restricts the use of the death penalty while additional protocols to ICCPR and the ECHR as well as other regional human rights instruments provide for the abolition of capital punishment.³ Since the Second World War and in particular since the 1980s and 1990s, there has been an exponential increase in the number of countries and territories that have abolished the death penalty. Today, 140 of 198 countries have abolished capital punishment (97 for all offences; 8 just for offences under ordinary law) or are observing a de facto or de jure moratorium (35).⁴ In 2012, executions were only still effectively carried out in 21 states and the vast majority were carried out in China, Iran, Saudi Arabia, Iraq, the USA, Afghanistan, Sudan and Yemen.

At present, the greatest challenge is undoubtedly maintaining the recent global trend towards abolition, and ultimately, persuading the minority of states and territories (still 58) that currently continue to use this anachronistic and inhuman form of punishment, to eradicate its use. A cause for concern is the fact that certain states (Botswana, Gambia, India, Japan, Pakistan, Kuwait and Nigeria since 2012) have resumed executions after relatively long periods of suspension. In addition to these actual setbacks, hesitancy in the signing and ratification of the Second Optional Protocol on the ICCPR has been observed, particularly since 2008. Furthermore, no spectacular progress was achieved with the moratorium resolution (issued every two years) at the UNGA – a yardstick of universal abolition – at the end of 2012.⁵ This resolution nevertheless continues to represent a strong signal from the international community regarding abolition and the aforementioned Second Optional Protocol is clearly of global significance.

Switzerland has continued to show strong commitment to the abolition of the death penalty at various levels, in particular since the first report on the Swiss Human Rights Policy of 2 June 1982. This commitment is to be further intensified in view of the current challenges.

2. Principles and means of action

Switzerland categorically supports the abolition of the death penalty under any circumstances because it is incompatible with respect for human rights and human dignity.

The **right to life** is a fundamental human right. However, the issue of the death penalty has to be addressed by taking account of **all human rights obligations**. Emphasis must be

² For a history of death penalty abolition in Switzerland see *Historical Dictionary of Switzerland*, article „Todesstrafe“.

³ See annex III

⁴ See annex I. “De-facto moratorium” is used if no executions have taken place in a country over the last 10 years; as this is not legally binding however, it can be broken. Therefore, the above numbers may vary slightly.

⁵ See also annexes I and III.

placed on respect for **human dignity** in all matters, in particular through the absolute prohibition on torturing humans or subjecting them to cruel, inhuman or degrading treatment (notably with regard to detention in death cells and methods of execution). The use of capital punishment can also be regarded as extrajudicial, arbitrary and, under certain circumstances, amount to a summary execution, e.g. if the death penalty is imposed after an **unfair trial**.

Many studies also indicate that executions are often carried out based on **discrimination** (skin colour, ethnic and religious affiliation, political or sexual orientation). Moreover, they are irrevocable without any scope for reviewing judgements. Death penalties are imposed on the basis of arbitrary, unlawful trials and even innocent persons are executed. This punishment should be denied any legitimacy on account of the risk of executing innocent persons alone. All studies carried out to date indicate that it does not act as more of a deterrent than other severe forms of punishment for the most serious crimes. It does not improve security or provide the families of victims of crime with a sense of justice or reparation.

Switzerland is endeavouring to ensure adherence to and consolidation of existing standards. It also supports national and international debate on the death penalty because transparency and public awareness are extremely important with regard to this issue.

In order to achieve coherence, Switzerland's commitment to the abolition of the death penalty is closely linked to its position on executions and torture. In this regard, national framework conditions must also be reviewed and amended where necessary. Based on the model of the European Union, the export of Swiss products suitable for use in lethal injections, for example, should be restricted in states that retain capital punishment.

Switzerland adopts a pragmatic approach however. On the one hand, it resolutely and vigorously combats the death penalty at the international level by means of initiatives and resolutions. On the other, it adapts its approach to the respective situation in a country or territory by encouraging abolition and providing support to achieve this.

In order to enable its approach to achieve breakthroughs, Switzerland deploys the entire range of diplomatic means at its disposal at the bilateral and multilateral levels. Wherever possible, it works closely with like-minded countries and multilateral and civil society partner organisations.

Emphasis at the multilateral level is primarily placed on initiatives at the UNGA, its Third Committee and the UNHRC in particular. Secondly and at the regional level, it focuses on activities within the Council of Europe and the OSCE.

Bilaterally a more regular and coherent policy of diplomatic representation is being implemented by the representations abroad. Where appropriate, the abolition of the death penalty is included as a priority issue in bilateral human rights dialogue and political consultations, and is also put on the agenda of meetings at a high political level.

The establishment of partnerships and the support of activities in civil society are of fundamental importance. The role of the members of parliament with regard to the issue of capital punishment essentially involves encouraging and supporting the most important proponents of abolition (e.g. the ICDP with its secretariat in Geneva, the World Congress against the Death Penalty, which took place in Geneva in 2010 and in Madrid in 2013, Sant'Egidio, Hands off Cain or Penal Reform International (PRI)).

Switzerland's commitment should be supported within the scope of the resources at its disposal as well as by means of specific measures and projects which promote trust and contribute towards abolition. Together with civil society, specific projects can increasingly be developed in priority regions (in particular Africa) and/or selected countries in order to create transparency and to inform public opinion - which often votes to retain the death penalty by a majority - about the issue.

Projects can be made public or kept confidential. Opportunities to issue public statements (calls, press releases, etc.) are actively used to communicate Switzerland's position.

In order to promote the issue, existing synergies unquestionably need to be reinforced, whether this is in civil society, between states, or between governments committed to the abolition of the death penalty, international and regional organisations, as well as other key players such as NGOs playing an active international role (e.g. Amnesty International or Ensemble contre la Peine de Mort (ECPM)).

3. Objectives and key areas of activity

MAIN OBJECTIVE:

Switzerland is actively committed to the complete and universal abolition of the death penalty by 2025. To this end, it encourages states which still recognise capital punishment to work towards its abolition (by adhering to a de jure or de facto moratorium).

Subsidiary objectives:

i) Switzerland is striving both at the multilateral and bilateral level to persuade an increasing number of states and territories to introduce a de jure or at least a de facto moratorium in order to ultimately achieve complete abolition of the death penalty.

ii) Switzerland is endeavouring bilaterally and multilaterally to ensure that in states which retain the death penalty, the offences punishable by the death penalty are restricted, the number of death sentences is generally reduced to a minimum, and suitable steps towards abolition are undertaken.

iii) Switzerland is aiming to ensure that at least minimum standards recognised by international law are adhered to with regard to death penalty sentences (no mandatory imposition of the punishment, sentencing only for the most serious crimes, no imposition of the death penalty on minors, no application of the death penalty on pregnant women or persons with mental disabilities etc., no arbitrary and unlawful trials, transparency).

iv) Switzerland is endeavouring to strengthen the existing legal framework, to show commitment multilateral forums and to encourage countries to ratify the existing international instruments in this field, in particular the Optional Protocol to ICCPR concerning the abolition of the death penalty.

Multilateral commitment

Switzerland is stepping up its commitment to the abolition of the death penalty by taking the initiative itself or by pursuing appropriate opportunities on the various UN committees:

- General Assembly: Switzerland is working towards consolidation of the resolution issued every two years by the General Assembly on a moratorium on the use of the death penalty and an increase in the number of countries that support it.
- Human Rights Council: Switzerland is constantly evaluating the expediency of new resolutions involving the impact of the death penalty on human rights or examining the incorporation of provisions on capital punishment into existing resolutions. As part of the Universal Periodic Review (UPR), it makes recommendations on this issue and, during the plenary assembly (agenda item 4), names those countries which still enforce the death penalty thereby violating their obligations under international law.
- United Nations Office on Drugs and Crime (UNODC): Switzerland emphasises that drug offences are not categorised as the most serious crimes and consequently should not be punishable with the death penalty. It also advocates for the human rights aspect of the death penalty (solitary confinement, visiting rights for family members) in the review process of the Standard Minimum Rules on the treatment of prisoners (SMR).

Switzerland also supports the proposal of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to carry out a comprehensive legal study on the prohibition under customary law of the death penalty under any circumstances in accordance with fundamental respect for human dignity. Over the long-term, it is further considering the opportunity of supporting a new mandate for a Special Rapporteur on the Death Penalty.

At the Council of Europe, Switzerland is endeavouring to ensure that the last states yet to have signed or ratified Protocol no. 13 on the complete abolition of the death penalty do so.

Finally, Switzerland is also putting the issue of the death penalty on the agenda at the OSCE. It actively participates in the annual meeting in Warsaw (Human Dimension Implementation Meeting (HDIM)) and organises, in agreement with civil society, parallel events on the abolition of the death penalty.

3.2. Bilateral commitment

Switzerland is pursuing a regular and coherent policy of diplomatic demarche with regard to the death penalty in line with its geographical priorities (see Annex I). The embassies and other representations abroad are actively promoting the abolition of capital punishment vis-à-vis their host states within an appropriate framework (individual cases, positive or negative developments). Wherever possible, they work together closely with like-minded countries and multilateral organisations.

Switzerland also presents the abolition of the death penalty as a priority issue in its human rights dialogue with states which retain capital punishment. The death penalty and its abolition are also put on the agenda during political consultations on human rights. Last but not least, Switzerland is also considering various ways of ensuring consular protection in its commitment to combatting the death penalty.

3.3. Support of civil society and partnerships

Switzerland is consolidating its partnerships with civil society and reinforcing synergies between the various players committed to the abolition of the death penalty. It provides funding for NGOs which operate in this field in the target countries and develops, together with civil society, projects aimed at the abolition of the death penalty.

It also continues to make a significant contribution to the work of the ICDP which has its secretariat in Geneva. Not least, it also promotes contact and cooperation between members of parliament.

4. Agenda

Activities	Timeframe
<p>Extension of the call of 10th October (World Day against the Death Penalty)</p> <p><i>In view of the ten-year anniversary of Protocol no. 13 to the ECHR concerning the complete abolition of the death penalty (which entered into force on 1st July 2003), a call against the death penalty is signed by 42 member states to the protocol and published in the European media.</i></p>	10th October 2013
<p>Participation in and financial support of the annual conference of ministers of justice on the abolition of the death penalty organised in Rome by the NGO Sant'Egidio.</p>	25th to 27th November 2013
<p>Preparation and submission of a new resolution on the death penalty in the Human Rights Council</p>	2014
<p>Declaration by the FDFA's head of department in his capacity as chairperson-in-office of the OSCE at the opening of the 25th session of the UN Human Rights Council on the death penalty</p>	March 2014
<p>Active participation in the panel discussion on the death penalty at the UN Human Rights Council</p>	March 2014
<p>Extension of the call of 10th October (World Day against the Death Penalty)</p> <p><i>The call of 10th October 2014 uses the momentum and network of 2013 to launch a general call for the universal abolition of the death penalty over the coming years. The call should be signed by states from all regions of the world.</i></p>	10th October 2014
<p>Consolidation of the resolution issued every two years by the UN General Assembly on a moratorium on the use of the death penalty and/or an increase in the number of countries that support it.</p>	November 2014
<p>Continuation of Switzerland's commitment at the World Congress against the Death Penalty organised by the NGO "Ensemble contre la Peine de Mort". If possible, patronage of the 6th Congress in 2016 to be taken on.</p>	2016
<p>Consolidation of the resolution issued every two years by the UN General Assembly on a moratorium on the use of the death penalty and/or an increase in the number of states that support it.</p>	November 2016
<p>The abolition of the death penalty is included as a priority issue in dialogue and consultations on human rights.</p>	Ad hoc
<p>Where appropriate, abolition of the death penalty is included in discussions at bilateral meetings during the high-level week at the UN General Assembly.</p>	Ad hoc
<p>Where appropriate, the issue is included in political consultations at all levels.</p>	Ad hoc
<p>The Swiss embassies and representations abroad actively work towards the abolition of the death</p>	Ad hoc

penalty by means of demarches, interventions and small-scale projects.	
--	--

Annex I: Global situation

The following details come from the latest report by Amnesty International of 9 April 2013⁶:

- 140 of 198 states and territories in the world have abolished the death penalty (97 for all crimes – most recently Gabon and Latvia – 8 for offences under general law) or observe a de jure or de facto moratorium.
- 58 states and territories retain the death penalty.
- The number of death sentences fell from 1923 in 2011 in a total of 63 states to 1722 in 2012 in 58 states (excluding the very high number in China which is regarded as a state secret).
- 21 states carried out executions in 2012 (682 in total) of which three-quarters took place in Iran, Iraq and Saudi Arabia (excluding China).
 - Five states resumed executions in 2012: Botswana, Gambia, India, Japan and Pakistan.
 - China, Iran, Saudi Arabia, Iraq and the USA carried out the most executions followed by Afghanistan, Sudan and Yemen.
- 18 of 50 states (including Maryland since spring 2013) in the USA have abolished the death penalty. In 2012, 43 executions were carried out in 9 states and 77 death sentences were imposed in 18 states. 3170 persons are currently on death row (724 in California, 407 in Florida, 308 in Texas, 204 in Pennsylvania and 200 in Alabama).
- The 2nd Optional Protocol on the International Covenant on Civil and Political Rights on the abolition of the death penalty has been ratified by 77 states and signed by 36 states to date (as of July 2013).
- Protocol no. 13 to the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) of the Council of Europe concerning the abolition of the death penalty under any circumstances obliges the states of the Council of Europe to abolish the death penalty. Protocol no. 13 was ratified by all Council of Europe states except for Armenia (signed but not ratified) and Azerbaijan and Russia (neither signed nor ratified) - (as of September 2013).

⁶ For further information please refer to latest reports from *Amnesty International* and *Hands off Cain*.