

# The Death Penalty in Kenya: A Punishment that has Died Out in Practice

Part One: A Public Ready to Accept Abolition

Carolyn Hoyle

with the assistance of Diana Batchelor

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The research instrument was designed by Dr Mai Sato, of the Australian National University, and the data collected with the assistance of Infotrak Research and Consulting. I then analysed the data based on that survey, with valuable assistance from Dr Diana Batchelor.

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This survey builds on, and contributes to, a series of similar projects commissioned by The Death Penalty Project and conducted in Trinidad & Tobago, Malaysia, Zimbabwe and, most recently, Indonesia. In particular, the work and expertise by the late Professor Roger Hood has paved the way for a more nuanced and sophisticated method of collecting data on the public’s views on this sensitive topic, an approach that can tell us much more than the typical government surveys.

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Parvais Jabbar guided the progress of the project, with dedicated support from his team.

**Carolyn Hoyle**  
Oxford, March 2022

# Contents

<b>EDITOR'S PREFACE .....</b>	<b>6</b>
<b>FOREWORD .....</b>	<b>8</b>
<b>KEY FINDINGS.....</b>	<b>10</b>
<b>PART ONE: The purpose of the study .....</b>	<b>13</b>
1.1 The context.....	14
1.2 Research design and methods .....	16
1.2.1 Survey design .....	16
1.2.2 Data collection .....	17
1.2.3 Sample.....	17
1.2.4 Generalisability and inferences.....	18
<b>PART TWO: The findings .....</b>	<b>21</b>
2.1 Death penalty support.....	22
2.1.1 A majority against executions.....	23
2.2 Knowledge about the death penalty in Kenya .....	23
2.2.1 Personal connection and concern about the death penalty .....	24
2.2.2 Level of knowledge about the death penalty .....	24
2.2.3 The relationship between concern and knowledge and support for abolition .....	25
2.3 Reasons for supporting abolition or retention .....	26
2.4 Views on crime and the scope of the death penalty.....	28
2.4.1 Views on crime and justice .....	28
2.4.2 Views on serious crimes and vulnerable offenders.....	32
2.5 Malleability of opinions.....	35
2.5.1 Trust in the government and fairness .....	35
2.5.2 Support for capital punishment in practice .....	36
2.5.3 Factors that shift opinions.....	38
2.6 Potential reactions to abolition.....	39
<b>PART THREE: Conclusion .....</b>	<b>43</b>
<b>APPENDIX A: Predicting support for abolition (binary logistic regression analysis) .....</b>	<b>47</b>
<b>APPENDIX B: Survey instrument.....</b>	<b>51</b>
<b>ABOUT THE AUTHOR .....</b>	<b>69</b>

# Editor's preface

As the majority of the world's countries continue steadfast on a path towards the abolition of the death penalty, there remains a significant cohort that retain capital punishment, yet are classified by the United Nations as de facto abolitionists; having not carried out an execution for more than 10 years. Kenya sits among them and, far exceeding the 10-year minimum, has not carried out an execution since 1987.

In addition to its three decades without an execution, further positive steps to restrict the application of the death penalty have been taken; in 2017, Kenya's Supreme Court declared the mandatory death penalty unconstitutional [*Muruatetu & Mwangi v Republic*, 2017] and several leaders have used mass commutations – including 4,000 in 2009 under President Mwai Kibaki, and 2,747 prisoners in 2016, under incumbent President Uhuru Kenyatta – to sporadically clear the country's death rows, after acknowledging the psychological trauma and anguish experienced by those who have served long periods under sentence of death.

Many of Kenya's progressive politicians have affirmed their commitment to human rights and voiced a desire to see the death penalty abolished, yet persistently cite public support as justification for its preservation – upholding the belief that abolition can only be attained through public consensus. To date, the evidence guiding such penal policy has been binary, using simple 'for or against' polling that maintains the status quo and a belief that most citizens strongly support the retention of capital punishment.

For more than 15 years, The Death Penalty Project has commissioned, published, and supported independent academic research on attitudes towards the death penalty around the world, examining how support for – or opposition to – the death penalty changes in light of new information and realistic case scenarios, as well as examining what advantages people presume the death penalty to have over other non-irrevocable and more proportionate punishments. Rigorous empirical studies, such as the one carried out by Professor Carolyn Hoyle in Kenya, provide critical insight and analysis that reflects the complexity of public opinion, and challenges misconceptions around perceived resistance to abolition.

The study, the first of its kind in Kenya, found that 51% – a tiny majority – support the retention of the death penalty, with only 32% strongly in favour. This is a lower percentage than we have seen in similar studies conducted in other abolitionist de facto countries, such as Zimbabwe, where 61% of the public favoured retention given a binary choice.

But, importantly, the findings evidence a flexibility in the attitudes of the Kenyan public, establishing that any initial support for capital punishment is not deeply entrenched. When informed of the abolitionist position of other Sub-Saharan African countries, public support for retention fell to 31%, and presented with the possibility that innocent people had sometimes been executed, support fell to just 28%.

The research sought to interrogate the notion that the Kenyan public wishes to retain the current system and revealed that, when people are presented with details of its administration and realistic case scenarios, the vast majority firmly reject capital punishment.

An initial showing of support for retention is not unique to Kenya, however, and it is important to note that, wherever abolition has been achieved, it has been in spite of public opinion, not because of it. Countries that have abolished have done so through political will and leadership. In most cases, public reservations have soon shifted to acceptance. In July 2021, Sierra Leone abolished the death penalty,

following a unanimous vote in Parliament to replace capital punishment with a minimum 30-year sentence for murder. The decision came not through public demand for change, but through principled leadership. The decision has been applauded by the international community and has met little public resistance.

The Death Penalty Project's growing body of research has evidenced that, even in countries that actively use capital punishment, the public is open to a government policy of abolition, should the death penalty be replaced with appropriate custodial sentencing.

It is my hope that this report will provide the Kenyan government, policy-makers and other stakeholders with an in-depth analysis of Kenyan attitudes on this issue and support further progress towards the end of an archaic punishment.

I would like to thank the report's author, Professor Carolyn Hoyle, and Diana Batchelor, who assisted her, for their dedication in writing this groundbreaking report. I am also grateful for the tireless commitment and support shown by our local partner, the KNHRC, with particular thanks to Samson Omondi, whose expert knowledge and help with facilitating the research made the report possible. As always, I would also like to thank the team at The Death Penalty Project who supported and contributed to the work throughout.

**Parvais Jabbar**

Co-Executive Director, The Death Penalty Project  
March 2022



# Foreword

In July 2021, Sierra Leone became the 109th country to abolish the death penalty. Today, 22 countries in the African Union have abolished the death penalty for all crimes, and one for ordinary crimes, with 17 countries considered abolitionist de facto; just 15 are today considered retentionists. The pace of change on the continent has been rapid; in 1996, 61% of the states in the African Union were classified as retentionist, compared with just 28% today. In Sub-Saharan Africa, just three countries carried out executions in 2020: Botswana, South Sudan and Somalia. According to Amnesty International the number of recorded executions in the Sub-Saharan region fell by 36% in 2020, with a 6% fall in death sentences. Africa, in line with the global trend, is increasingly rejecting capital punishment.

Kenya continues to reject the death penalty in practice, having not carried out an execution for more than 30 years. Yet the death penalty is still applicable as punishment for several offences, and death sentences are regularly passed. At the time of writing this report, there are approximately 600 people on death row, and for as long as the punishment remains in law, there exists a risk that executions could one day resume.

Over the past 10 years, leaders such as President Kibaki have voiced their desire to see capital punishment abolished, but a belief persists that concrete steps cannot be taken until the majority of the public is in favour of change. This was evidenced in 2007, and again in 2015, when the Kenyan Parliament voted against abolition, citing public support for retention as their reasoning.

In 2008, Kenya's representative to the UN Committee Against Torture stated that, once the Kenyan public was educated on the "global trends on the issue of the death penalty" and were "won over", that Kenya could at last become a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights, moving forward to full abolition. More than a decade has passed since then, and despite much being achieved by Kenya's Working Group Against the Death Penalty (of which we are a member) to inform and engage the public on the subject, greater political will is needed to bring about reform.

No country has achieved abolition as a result of public demand, but as long as public opinion is seen as an obstacle, it's vital to understand the true extent of that support.

We are proud to have worked alongside The Death Penalty Project in commissioning Professor Carolyn Hoyle, Director of the Death Penalty Research Unit, University of Oxford, to conduct the first rigorous piece of empirical research of its kind in Kenya, investigating public attitudes on capital punishment.

Professor Hoyle's report presents analysis on how the death penalty is viewed by the Kenyan people, examining how important it is to their everyday lives, how entrenched their support is for the punishment, and whether that support can be challenged by providing more information on specific case scenarios.

The findings revealed that only a fractional majority initially favour retention, and that their support is conditional, falling dramatically when presented with the possibility that innocent people could be executed – an inescapable possibility in all criminal justice systems where the death penalty is applied. Support for retention also fell when the public considered how Kenya could be regarded by its regional and international neighbours who have already abolished capital punishment.

In her insightful analysis, Professor Hoyle examines the evidence to conclude a clear flexibility in people's attitudes and that, after three decades without an execution, the majority of the Kenyan public strongly rejects the use of capital punishment.

Perhaps most strikingly, the report reveals that of the 51% against abolition, the majority (59%) would accept it as government policy, making the case for retention increasingly hard to justify.

It is my sincere hope that, in providing robust and reliable data, the report will reassure the Kenyan government, and leaders of all retentionist countries, that public opinion is not the barrier to abolition many assume. I hope the research can help facilitate the constructive dialogue necessary for progressive penal reform that ensures Kenya is able to uphold justice and human rights.

**Dr Bernard Mogesa**

CEO, Kenya National Commission on Human Rights

March 2022

# Key findings

This report examines Kenyan citizens’ attitudes towards the death penalty in the context of their wider knowledge and understanding about criminal justice and punishment. It does so in the context of decades without an execution, though with regular death sentences being imposed by the courts. It seeks to understand both the public’s support for capital punishment and for abolition, by considering the factors that influence their views on effective and proportionate punishments, including types and seriousness of offences and offenders. It also explores the extent to which their views are fixed or changeable, depending on the information provided.

We draw on analysis of data produced by a survey of a stratified random probability sample of 1,672 respondents across Kenya. The methods adopted for gathering data allow us to make inferences about the total population. Data collection and analysis followed the approach taken in previous surveys commissioned by The Death Penalty Project of public opinions about the death penalty in Zimbabwe, Indonesia, Trinidad and Malaysia. This allows for some comparison of findings across jurisdictions in different continents and broadens our knowledge base on how the public in different countries thinks about crime and punishment.

We provide here the key findings of the report, with detailed analysis and discussion of these and further findings presented in Section 2.

Only half (51%) of Kenyans expressed support for retention of the death penalty, and **only a third (32%) felt that it should ‘definitely be kept’**. This shows lower support for capital punishment among Kenyans than citizens of Zimbabwe, another abolitionist de facto country.

**Support for retention dropped from 51% to 31%** when respondents were informed that 17 countries in Sub-Saharan Africa have abolished the death penalty for all crimes.

**Support for retention dropped from 51% to 28%** when respondents were asked if they would support the death penalty **if it was proven to their satisfaction that innocent people have sometimes been executed**.

**Support for the death penalty in specific (and realistic) scenario cases was lower than support in the abstract:** dropping to 32% for robbery resulting in death and 27% for murder. This declined further, to just 25% for robbery resulting in death and 17% for murder, when respondents were presented with mitigating factors.

While there was a reasonably high level of concern about the death penalty among respondents, **knowledge about its retention and administration was relatively poor**; a third did not know whether the death penalty is used in Kenya, and the majority did not know whether there had been executions in the past decade.

When asked what was the most important problem facing Kenya today, more than half (52%) of our respondents said ‘fighting corruption in the government’, a half said ‘creating jobs’, and 30% ‘improving the living standards of the poor’. **Only 5% thought reducing crime was the most important problem.**

The majority (86%) of the 51% who supported retention of the death penalty did so because they believed it would deter serious crime. However, when asked which measures were most likely to reduce crime, **the majority chose better moral education of young people** (64%), reducing poverty (50%), and reducing corruption in the police (47%). **Only 4% selected more executions as their first choice.**

Those who supported abolition focused on prisoners’repentance’(29%) and their potential for ‘rehabilitation’ (29%). **Almost one in five (18%) was clear that capital punishment is ‘inhuman’.**

Respondents demonstrated low trust in public institutions. For example, almost two-thirds (62%) felt that people are ‘often’ or ‘always’ treated unequally under the law, almost three-quarters (73%) thought officials who commit crimes ‘often’ or ‘always’ go unpunished, and only one in ten fully trusted the police. **This low trust was associated with abolitionist inclinations.**

When asked how they would respond to government policy abolishing the death penalty, **59% of retentionists said they would accept it as government policy’.**

As with similar surveys commissioned by The Death Penalty Project in other jurisdictions, it seems that some support for the death penalty in the abstract is not sustained with sensitive and detailed questioning. Clearly, in Kenya, support for the death penalty is relatively low, not particularly strong, and is neither well thought out nor sufficiently robust to act as a barrier to abolition. Views are rather malleable, and there are many factors present in the administration of the justice system in Kenya, as elsewhere, that militate against support. If the public was more aware of these factors, the overall rate of support would decline quite dramatically. This research demonstrates that opposition to abolition is weak. There is nothing in this survey that should deter the government of Kenya from abolishing a punishment that has, in any event, died out in practice.

# PARADISE ONE

The purpose of the study





1.1 The context

Kenya can be described as ‘abolitionist de facto’, as it has not carried out an execution since 1987. However, prisoners continue to be sentenced to death and, despite the recent end to the mandatory death penalty and frequent mass commutations of many thousands of death sentenced prisoners, approximately 600 prisoners remain on death row.<sup>1</sup>

Kenya’s modern death penalty is a product of colonial rule and an example of executions being used at exceptional times by the state to control political unrest. Though the British did not make much use of the death penalty for political crimes during the 20th century, they made a clear exception for the Mau Mau Emergency between 1952 and 1958, when 2,509 mostly Kikuyu people were tried on capital charges and just less than half of them were executed: “At no other place, and at no other time in the history of British imperialism, was state execution used on such a scale as this.”<sup>2</sup> Indeed, fewer than half this number of executions had been carried out in the half a century before that.<sup>3</sup>

Though the scale of political executions during the ‘state of emergency’ in the 1950s was unparalleled in the history of British colonialism, it could have been higher; at least 400 Mau Mau were granted clemency because they were women, juveniles or could present mitigating circumstances.<sup>4</sup> And, of course, during this time, due process safeguards at pre-trial and trial stages were poor, as were conditions of incarceration, though it is clear that they remain imperfect today.

Kenya gained independence in December 1963, and although the new constitution was subject to some amendments that favoured a more centralised state, and limited certain rights, the Kenyan bill of rights tracked the European Convention on Human Rights and other international instruments that aim to protect civil and political rights – including a right to life provision, though with a death penalty savings clause.<sup>5</sup> Notwithstanding, during Daniel arap Moi’s presidency – from 1978 to 2002 – constitutional protections for prisoners and criminal defendants, and independence of the judiciary and the legal profession, were gradually eroded.

There are four offences punishable by death under the Kenyan Penal Code: treason, murder, robbery with violence, and attempted robbery with violence. However, Kenya makes great use of commutations. In early 2003, the newly elected President Mwai Kibaki commuted the death sentences of more than 200 prisoners and, at the time, his vice-president stated that he wanted the death penalty to be abolished, and that he planned to introduce a bill to that effect, a statement supported by the then Commissioner of Prisons. This was not the first time there had been a call for abolition. In 1997, the Kenya Law Reform Task Force on the Reform of Penal Law and Procedures had recommended that the death penalty be abolished.

In 2007, a motion to abolish the death penalty<sup>6</sup> was heavily defeated in the Kenyan Parliament, but in August 2009, President Mwai Kibaki again commuted more than 4,000 death sentences to life imprisonment, leaving

few on death row – the largest mass commutation known to Amnesty International. This was to relieve the ‘undue mental anguish and suffering, psychological trauma and anxiety’ that results from long periods of time on death row.<sup>7</sup>

A year later, in *Mutiso v Republic*,<sup>8</sup> the Kenyan Court of Appeal followed its neighbouring countries in invalidating the mandatory imposition of the death penalty for murder, although the defendant’s sentence had already been reduced to life imprisonment because of the mass commutation. Unlike courts in Malawi and Uganda however, the Kenyan Court of Appeal grounded its decision not only in the fact that the mandatory death penalty violated the right to a fair trial, and that it amounted to cruel, inhuman and degrading punishment, but also because it violated the fundamental right to life as guaranteed by the Kenyan Constitution. The reasoning of the court was that ‘where the mandatory death penalty fell on defendants who did not necessarily merit the special penalty of death, a right to life violation occurred’.<sup>9</sup> Just a week after this decision, a new constitution was overwhelmingly ratified by Kenyan voters.

The court in *Mutiso* had not been obliged to decide on the mandatory death penalty for treason or robbery with violence, but it did state that the mandatory penalty could be successfully challenged for any offence, implying that it would also be unconstitutional for these offences. In January 2013, the High Court ruled that the death penalty for robbery with violence and attempted robbery with violence should be interpreted as a discretionary sentence.<sup>10</sup> However, in October 2013, in the case of *Mwaura & Ors v Republic*,<sup>11</sup> the Kenyan Court of Appeal held that the mandatory death penalty for robbery with violence was not unconstitutional, as had been implied by *Mutiso*, and that it should continue to be applied until Parliament chose to amend the statute.<sup>12</sup> The death penalty savings clause included in the Kenyan Constitution was preserved, although much more vaguely defined,<sup>13</sup> while the new definition of the right to life contained such ambiguities as to lead some judges to question the validity of the death penalty *tout court*.

In recent years, the government has reiterated a commitment to review the death penalty and the Kenya Law Reform Commission has recommended that the death penalty is abolished.<sup>14</sup> The government has also continued with mass commutations: in October 2016, most death sentences (2,747) were again commuted to life imprisonment.<sup>15</sup> However, a significant change came in December 2017, in *Muruatetu v Republic of Kenya*<sup>16</sup>, a case that revisited the issue of the mandatory death penalty. In *Muruatetu*, the Supreme Court of Kenya made clear that *Mwaura* is not to be followed and it is implicit in the Court’s judgment that a mandatory death sentence under 296 of the Penal Code would violate the 2010 Constitution.<sup>17</sup>

<sup>1</sup> Official statistic from the Kenya Prison Service confirmed that there are 593 death row prisoners in Kenya as of 23 November 2021  
<sup>2</sup> Anderson D, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*, W W Norton Company (New York), 2005, p7  
<sup>3</sup> Novak A, *The African Challenge to Global Death Penalty Abolition: International Human Rights Norms in Local Perspective*, Intersentia, 2016, p150  
<sup>4</sup> Ibid. p143  
<sup>5</sup> Ibid. p153  
<sup>6</sup> Kenya National Commission on Human Rights (2007) *Abolition of the Death Penalty in Kenya*, at <https://www.knchr.org/Portals/0/Penal%20Reforms/KNCHR%20Position%20paper%20-%20Abolition%20of%20the%20death%20penalty%20-%20final.pdf?ver=2018-06-08-154159-423> – accessed: October 2021

<sup>7</sup> Amnesty International, *Death Sentences and Executions in 2009*, 2010, p23  
<sup>8</sup> *Mutiso v Republic* [2010] 1 E.A.L.R. 342 (Kenya C. A.)  
<sup>9</sup> *Mutiso v Republic* (n 41) at 353  
<sup>10</sup> *Ayub Bainito & others v Attorney General of Kenya*, Petition No 2 of 211 in the High Court of Kenya; judgment issued on 28 January 2013 (see UN A/HRC/24/18 (July 2013) para 43)  
<sup>11</sup> An appeal from the judgment of the High Court of Kenya, Criminal Appeal No 5 of 2008  
<sup>12</sup> Joseph Mwaura and others [2013] Criminal Case No 5 of 2008 in the Court of Appeal, Nairobi  
<sup>13</sup> Novak A, ‘The inclusion of a savings clause distinguishes the Kenyan constitution from its neighbours’, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia, and the Caribbean*, Ashgate Publishing, 2014, p115–19  
<sup>14</sup> UN Human Rights Council, 39th session, *Question of the Death Penalty*, Report of the Secretary-General, 10-28 September 2018, A/HRC/39/19  
<sup>15</sup> Ibid.  
<sup>16</sup> *Francis Karioko Muruatetu & Anr v Republic of Kenya* [2017] eKLR, Petition No. 15 of 2015 (as consolidated with Petition No 16 of 2015) [Muruatetu].  
<sup>17</sup> The Death Penalty Project, *Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya*: An expert report submitted by The Death Penalty Project upon invitation by the Government Sentencing Task Force, 2019



As the Court held that a life sentence should not necessarily mean natural life, but could mean a judicially set minimum or maximum term, sentencing re-hearings became inevitable for those released from a mandatory death sentence. Hence, in 2018, a Task Force<sup>18</sup> was established by the Attorney General to advise on the abolition of the mandatory death penalty. It proposed categorising murder into four separate categories, from manslaughter to aggravated murder, and that the latter, which would involve the ‘rarest of rare’ offences, should attract sentences of life in prison without the possibility of parole, thus taking the bold step of recommending complete abolition of the death penalty. However, it added the caveat, ‘if this recommendation is rejected by stakeholders, then this is the only offence that could fetch the death penalty, at the discretion of the judge’.<sup>19</sup> In coming to its conclusions, the Task Force had reviewed Kenya’s criminal justice system, concluding that it was defective. It had surveyed the public and found that Kenyans thought death sentences amounted to torture and inhumane treatment, and believe those convicted of murder and robbery have the potential for reform.<sup>20</sup> Furthermore, it conducted research on death row prisoners, finding that the system generated a death row population with a disproportionate number of poor, uneducated and vulnerable people, as well as innocent people.<sup>21</sup>

While the *Muruatetu* decision meant that all those subject to a mandatory death penalty should be eligible for re-sentencing, the institutions established to prepare a detailed plan for re-sentencing – originally given a year to draw up proposals – took almost two years, leaving the lower courts in some confusion as to how to proceed. It would appear that this has resulted in some courts trying to directly interpret the principles of the *Muruatetu* decision, leading the Supreme Court to issue nine new guidelines in July 2021.<sup>22</sup>

Meanwhile, not everyone whose case is re-sentenced has their death sentence commuted. In March 2020, 23 prisoners had their death sentences commuted to various prison terms, but one prisoner, Ruth Kamande, who had been sentenced to death in 2018 for killing her boyfriend, had her death sentence upheld.<sup>23</sup>

As of January 2021, following the mass commutations of the previous 12 years or so, about 600 people remain under sentence of death. After decades of political, judicial and civil society attempts to limit or abolish the death penalty, and 35 years without an execution, many people remain on death row in Kenya in poor conditions and at risk of dying in prison.

## 1.2 Research design and methods

### 1.2.1 Survey design

Developed by Dr Mai Sato, of the Australian National University, and carried out by Infotrak Research and Consulting, this survey built on earlier studies commissioned by The Death Penalty Project. The survey instrument was designed to produce the most reliable data by looking beyond the binary question of whether

the public supports the death penalty to considering the salience of the issue and examining the public’s level of knowledge about the death penalty in Kenya. It aimed to show whether support is based on facts or misconceived ideas and to consider why people support retention or abolition. Surveys that fail to test the understandings upon which opinions are based may provide a false estimation of the level of support that can be expected from a well-informed public. If research demonstrates that support for capital punishment declines if the public is better informed about its administration, those who hope to support the abolition movement can work towards the dissemination of accurate and complete information about its use.

Questions about the types of people, or types of offences, that could be exempt from the death penalty provide a more nuanced view of support. As well as specific questions on who, and for what offences, death is deserved, this survey adopted a method successfully used in past surveys: presentation of, and questions about, typical cases. Each case description included brief facts about the offence and the offender, in order to test the effects of aggravating or mitigating circumstances on support for capital punishment. Six case scenarios were used, which allowed for systematically varying three factors and analysing their effect on people’s decisions about the appropriateness of the death penalty for certain offenders. The three factors were: previous convictions, motivation for the crime, and relationship to the victim. This allowed us to know whether people favour capital punishment in real cases for real people, rather than simply as an abstract concept.

Other research has found that support for the death penalty is contingent on a belief in both the fairness and infallibility of the criminal process. To test if this is the case in Kenya, we asked questions to measure knowledge and concern about wrongful convictions or unfair criminal justice processes. We also sought opinions on whether social and economic measures, rather than criminal justice, were better able to reduce incidence of those crimes that attracted death sentences.

Having explored rationales for capital punishment, we turned in the final section to participants’ attitudes to abolition of the death penalty; in particular, how they would react, and how they thought others would react, to abolition.

### 1.2.2 Data collection

The nationwide survey of 1,672 Kenyan citizens was managed by Infotrak Research and Consulting. Its team conducted interviews across Kenya between October and November 2019, to obtain a nationally representative sample. The interviews lasted, on average, 35 minutes and were conducted in person, using tablets for computer-aided personal interviews (CAPIs). The interviews were conducted in four languages: English, Kiswahili, Maasai and Somali.

Twenty-four counties were randomly selected across eight regions of the country, and then wards within constituencies were randomly selected across the counties. The number of people surveyed within each area was determined by the population proportion according to the 2009 Population and Housing Census. A set of rules was applied by which to randomly select households within each ward, and to select an individual to interview within each household.

### 1.2.3 Sample

The mean age of our sample of 1,672 respondents was 33.5 years and just more than half (53%) identified as female. Almost three-quarters were employed (72%); the most common occupations were in agriculture

<sup>18</sup> The Task Force comprised representatives of the Attorney General’s office, the Kenya Law Reform Commission, the Power of Mercy Advisory Committee, the Office of the Director of Public Prosecutions, Parliament of Kenya, the Judiciary, the Kenya National Commission on Human Rights, the Ministry of Interior, the Prison Service, and the Probation and After Care Department.

<sup>19</sup> Njau-Kimani M, *The Taskforce on the Review of the Mandatory Nature of the Death Penalty in Kenya*, at <http://congres.ecpm.org/wp-content/uploads/2019/04/Maryann-Njau-Kimani-PRESENTATION-DEATH-PENALTY-BRUSSELS.pdf>, p10 – accessed: October 2021

<sup>20</sup> Muthoni K, Criminal justice system favours the rich, State report reveals, *The Standard*, 4 November 2019, at <https://www.standardmedia.co.ke/nairobi/article/2001348026/freedom-for-the-rich-prison-for-the-poor-injustice-in-corridors-of-law> – accessed: October 2021

<sup>21</sup> The Death Penalty Project is currently conducting research of prisoners sentenced to death, including those whose sentences have been commuted to life imprisonment, to provide further evidence to support these findings.

<sup>22</sup> *Francis Karioko Muruatetu & another v Republic*, Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR

<sup>23</sup> Amnesty International, *Death Sentences and Executions 2020*, ACT 50/3760/2021, 2021, 52

(19%), retail (18%) and homemaking (11%). By religion, the majority of the sample were Protestants and other Christians (63%), with a further quarter identifying as Catholics.<sup>24</sup> Only a third had education beyond secondary school and the majority (60%) lived in rural locations (see Table 1).

Table 1: Demographics of sample

		Percentage of sample
Gender	Female	53%
	Male	48% <sup>25</sup>
Employment	Employed/working	72%
	Seeking work/no work available	7%
	Economically inactive	19%
	Unclassified/undetermined	2%
Religion	Catholic	24%
	Protestant and other Christians	63%
	Muslim	11%
	Atheist	0.5%
	African traditionalists	0.4%
	Refused or don't know	1.7% <sup>25</sup>
Highest level of education	No formal schooling	3%
	Informal schooling only (including Koranic/Madrassa schooling)	2%
	Some primary schooling or primary completed	20%
	Some secondary schooling or secondary completed	41%
	Post-secondary qualifications other than university	22%
	Some university education, or university or post-graduation education completed	12%
Location	Urban	40%
	Rural	60%
Age	Mean = 33.5, SD = 11.5	

1.2.4 Generalisability and inferences

Despite the excellent response rate (91%) and the random selection of participants, there were some differences in the composition of the sample when compared with the adult population of Kenya, as described by the 2019 Housing and Population Census (i.e. the census taken at the time of the survey). While the differences were small, they were found in some important demographic dimensions that could be expected to affect opinions on the death penalty, including, age, gender and location (urban/rural). Therefore, to ensure the sample was representative of the current population, we used a statistical technique called ‘weighting the

<sup>24</sup> Because of rounding, percentages may not total 100%.  
<sup>25</sup> Because of rounding, percentages may not total 100%.

data’ by age, gender and location, according to the proportion in each category found in the 2019 census. The analysis and findings in this report all refer to the *weighted* sample.

Having done so, our stratified random probability sample of 1,672 respondents, weighted by age, gender and location, allows us to make inferences about the views of the entire Kenyan adult population (30 million); findings based on our sample capture the attitudes of the public with a margin of error of ±2.45 per cent at the 95 per cent confidence level. In other words, this is an extremely robust analysis of the views of Kenyan adults on this important and sensitive topic.

# PAR TWO

## The feelings

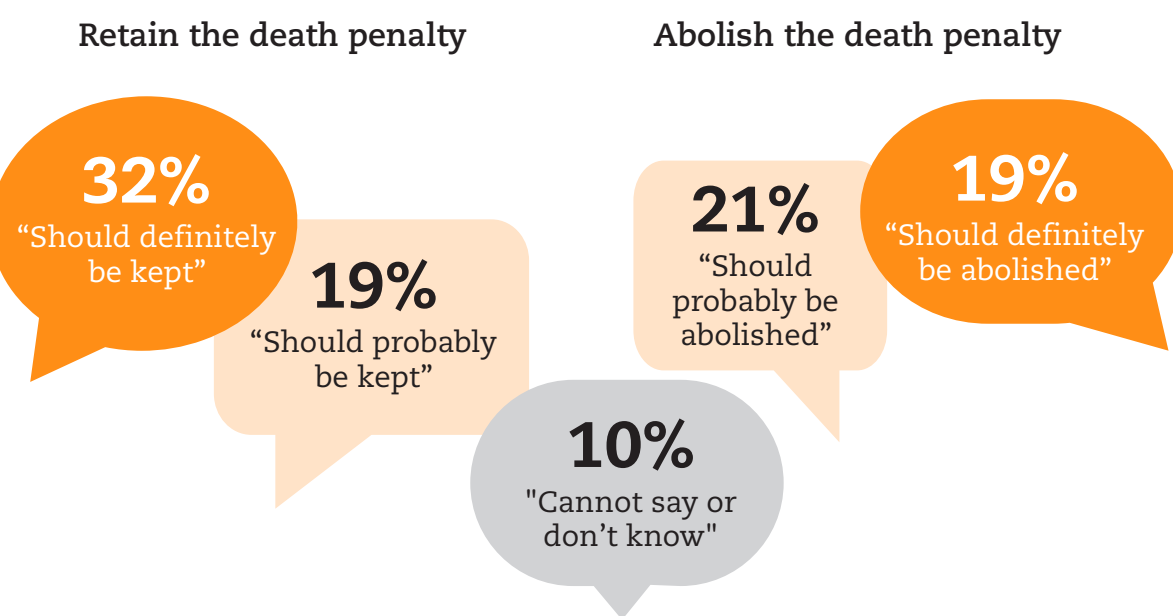




2.1 Death penalty support

In response to an early and simple question (*Do you think the death penalty should be kept or abolished in Kenya?* [Question 15; see survey instrument at Appendix B]), just more than half of the sample<sup>26</sup> of 1,672 people said they thought the death penalty should ‘definitely’ or ‘probably’ be kept (51%). Only 10% responded that they could not say, or did not know, with 40% saying either that it should ‘probably’ or ‘definitely’ be abolished – see Figure 1. This demonstrates very low support for capital punishment in Kenya. For example, a recent public opinion survey in Indonesia<sup>27</sup> found that 69% of the public were in favour of retention and in Zimbabwe<sup>28</sup>, which like Kenya is abolitionist de facto, 61% were in favour of retention.

Figure 1: Preferences for retention or abolition of the death penalty<sup>29</sup>



We further explored whether certain people were more likely to support abolition than others. The respondents’ age, gender, economic status<sup>30</sup>, employment and religion were not associated with support for abolition of the death penalty. Slightly more women, and those who had a university education, supported abolition compared with men and those without a university education, in accordance with previous research<sup>31</sup>. However, the differences were not statistically significant according to a logistic regression analysis (described in more detail in Appendix A).

The only significant<sup>32</sup> demographic predictors of support for abolition were living in an urban area, living in the Nyanza region, and religiosity. Those who lived in urban areas were much *more likely* to support abolition. Those who lived in the Nyanza region were much less likely to support abolition compared with those

living in Nairobi (even controlling for the urban/rural distinction), while support for abolition did not vary significantly in any of the other regions when compared with Nairobi. The more frequently the participant said they practiced their religion [Q52; a measure of religiosity], the more likely participants were to support abolition. This was true while the respondents’ particular religion was not a predictor of support for abolition.

2.1.1 A majority against executions

The interviewers explained to respondents that no executions had been carried out in Kenya since 1987, but that courts had, before the recent abolition of the mandatory death penalty, been obliged to continue to hand down death sentences following all capital convictions, generating a significant number of death sentenced prisoners. A practice of mass commutations had developed to manage an ever-burgeoning death row. Respondents were asked whether it was a good or a bad idea to sentence prisoners to death and later commute their sentences [Q31], and then asked why they thought it was a good or bad idea [Q32 & 33].

The vast majority (88%) of abolitionists thought this was a good practice. A quarter were clear that their priority was that no-one was executed (‘I am against the death penalty’ [25%]) and many (41%) were explicit that death row prisoners deserve forgiveness, although more than a quarter (27%) of abolitionists suggested that the threat of executions may encourage repentance among prisoners.

Just more than a third of those who did not support abolition (i.e., in response to Q15, they supported retention or ‘couldn’t say’) did not approve of the practice of mass commutations, with almost half (47%) of those believing that the government should not interfere with the courts’ decisions to sentence a prisoner to death. However, just less than two-thirds (59%) of those who did not support abolition said they thought the system of imposing and then commuting death sentences was a good idea.

This shows that the majority of those who did not support abolition nonetheless supported a system where people are not executed. Accordingly, support for *carrying out* executions was much lower than overall support for the death penalty. If we combine the numbers of those who supported abolition (40%) and those who did not support abolition but supported the practice of regular commutations (36%), 76% of the public were against *carrying out* executions. They offered similar explanations to those who supported abolition: mainly that death row prisoners deserve forgiveness (42%) and that the threat of executions will make prisoners repent without a need for executions (45%).

2.2 Knowledge about the death penalty in Kenya

Most respondents to public opinion surveys on the death penalty admit they know little about the administration of the death penalty and have little interest in it; across a range of rigorous surveys, only a few respondents are well informed<sup>33</sup>. How well informed people are, and how much they care about an issue, speaks to the salience of that matter and allows politicians and policymakers to know whether opinions for or against the death penalty are likely to be enduring or rather more flexible and receptive to further, accurate information. In other words, it helps us to know if support for abolition could be encouraged.

<sup>26</sup> All findings refer to the weighted sample.  
<sup>27</sup> Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021  
<sup>28</sup> Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018  
<sup>29</sup> Because of rounding, percentages may not total 100%  
<sup>30</sup> We measured this by combining responses to Q4a-e into one ‘economic status/poverty’ variable.  
<sup>31</sup> Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, 2015, Ch10  
<sup>32</sup> Statistically significant in the logistic regression analysis; see Appendix A

<sup>33</sup> Hood R, *Is Public Opinion a Justifiable Reason Not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries*, *Berkeley Journal of Criminal Law*, 2018, 23, pp218-242

### 2.2.1 Personal connection and concern about the death penalty

Having established that only a very small majority of people in Kenya support the death penalty, it is important to consider the salience of this issue – both the extent to which they care about it, and their own level of knowledge on the death penalty, to see if understanding and concern shapes their opinions.

Strikingly, almost one in five of our respondents (19%) said they had a close relative or friend who had been convicted and sentenced to death by a court. This seems to be extraordinary, given that Kenya has a population of approximately 48 million. However, a great many people have been sentenced to death in Kenya in the past two or three decades, and while we do not know the exact number, we can estimate a figure from our knowledge of mass commutations. For example, in 2009, almost all of the 4,000 death row inmates had their sentences commuted to life. By October 2016, when the next mass commutation occurred, the death row population was 2,747, showing that over that period, on average, about 340 people were sentenced to death each year. Between October 2016 and January 2021, at least another 599 people had been added to death row, indicating a lower rate of death sentencing, at about 150 a year. Notwithstanding these high numbers, we remain surprised by this response from our respondents. It may suggest that when people mention a ‘friend’ who has been sentenced to death, they may be referring to someone they have heard of and whose story they have engaged with subsequent to a death sentence, perhaps indicating the interest in this issue among citizens of Kenya.

Indeed, there was a high level of concern about the issue of the death penalty among the public in Kenya (compared with, for example, Indonesia<sup>34</sup>). More than half the sample said they were either ‘very concerned’ (17%) or ‘concerned’ (39%) about the death penalty [Q8] and only 14% said they were ‘not concerned at all’ about the issue. This is much lower than respondents to surveys in Malaysia, Singapore and Ghana, where between a third and 40% of respondents were not very interested in, or concerned about, the death penalty<sup>35</sup>. As a more practical measure of respondents’ interest in the issue, they were asked whether they had discussed the death penalty with their family, friends or colleagues in the past 12 months. Despite apparently high levels of concern, just less than a quarter (24%) had done so [Q9].

### 2.2.2 Level of knowledge about the death penalty

Only two thirds of the public (66%) knew that the death penalty is a punishment in Kenya, with 28% saying they thought it was not and 7% saying they did not know [Q7]. If we compare these findings with our research in Zimbabwe, we see that significantly fewer people knew that the death penalty is used in Kenya than in Zimbabwe (where 84% knew this<sup>36</sup>). Most people did not know how many people had been executed by the state in Kenya in the past 10 years and were not willing to estimate (‘Don’t know’: 60%). Only one in five people correctly knew that no-one had been executed in the past 10 years (21%), with small proportions incorrectly guessing that there had been 1–10 executions (7%), 11–20 executions (3%) or more than 20 executions (10%) [Q10].

Similarly, many participants did not seem willing to estimate the number of people currently on death row in Kenya, with 62% answering that they did not know. Again, just less than one in five people correctly responded that there were more than 100 people on death row at the time of the survey (18%) [Q11]<sup>37</sup>.

Around half the sample knew that the current method of execution in Kenya is hanging (53% – almost the same proportion as in our survey in Zimbabwe<sup>38</sup>), some thought the method was shooting (12%) and only small proportions selected the other options given, such as lethal injection and electrocution. Several answered that they did not know (18%) or that executions have not been carried out for a long time (8%) [Q12].

The majority of respondents correctly identified that the following offences are punishable by death in Kenya: murder (71%), treason (62%) and robbery with violence (57%). However, fewer people knew that attempted robbery with violence (36%) was punishable by death in Kenya. Furthermore, a significant proportion (40%) incorrectly thought that rape was subject to the death penalty, and more than one in five thought that corruption (21%) and robbery (28%) were [Q13A–H].

Around half the sample knew that Kenya does *not* have the mandatory death penalty (53%) [Q29], and more than a third (37%) said they remembered learning that the Supreme Court declared the mandatory death penalty to be unconstitutional, either through friends and colleagues or by reading about it in the media [Q30].

### 2.2.3 The relationship between concern and knowledge and support for abolition

We explored whether respondents’ knowledge and concern about the death penalty predicted their support for abolition, as described in Appendix A. Self-reported levels of concern about the issue did not predict support for abolition; in other words, those who were in favour of retention were just as interested in the topic. Respondents who correctly knew that the death penalty is recognised as a punishment in Kenya were no more (or less) likely to support abolition than those with less accurate knowledge.

However, knowledge about which of the crimes were punishable by death was significantly associated with support for abolition [Q13]. Those who incorrectly thought that rape, corruption and robbery were punishable by the death penalty were less likely to support abolition<sup>39</sup>. We might interpret this to mean that abolitionists were better informed about the use of the death penalty in Kenya. However, those who correctly knew that murder, robbery with violence, and treason were punishable by the death penalty were also less likely to support abolition<sup>40</sup>. In other words, abolitionists appear to be more likely to underestimate the scope of the use of the death penalty. Better knowledge about the death penalty did not seem to predict support for abolition; on the contrary, abolitionists were not as well informed about the method of execution.

<sup>34</sup> Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021

<sup>35</sup> Hood R, *Is Public Opinion a Justifiable Reason Not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries*, *Berkeley Journal of Criminal Law*, 2018, 23, pp218–242

<sup>36</sup> Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018

<sup>37</sup> Only a few provided the other responses: that there was no-one on death row (8%), between 1 and 50 people on death row (7%), or between 51 and 100 people on death row (4%).

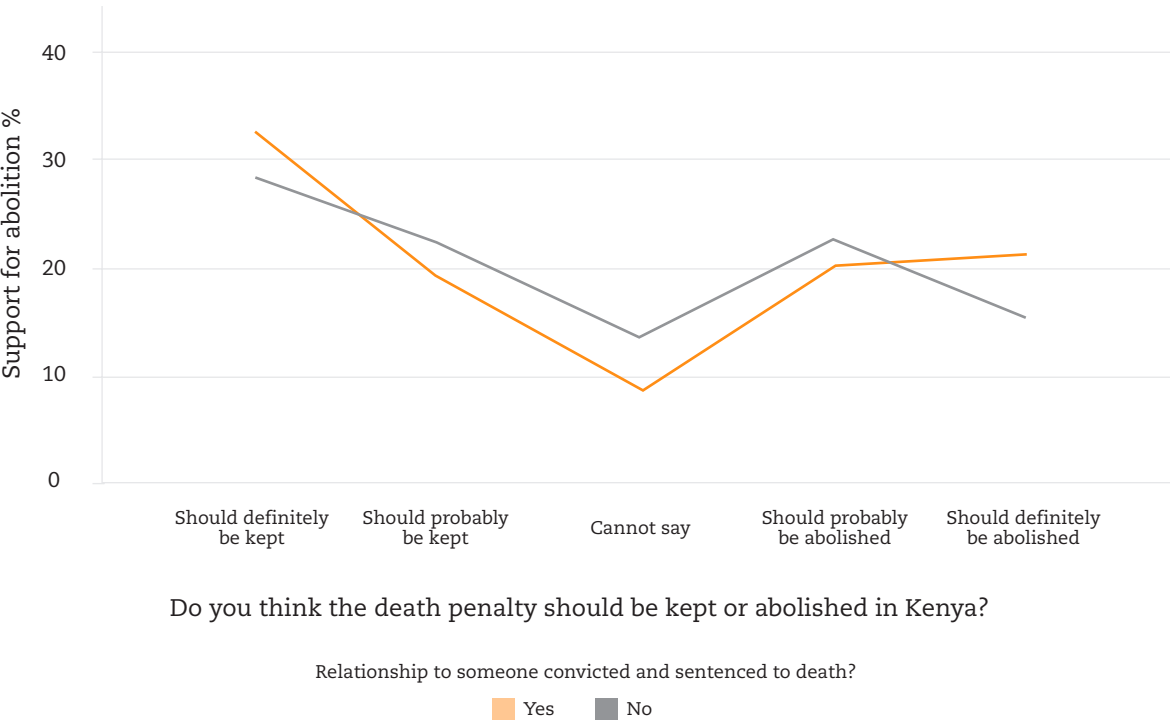
<sup>38</sup> Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018

<sup>39</sup> A measure of their overestimation of crimes punishable by the death penalty was negatively associated with support for abolition in the logistic regression, see Appendix A.

<sup>40</sup> A measure of their (correct) knowledge about the crimes punishable by the death penalty was negatively associated with support for abolition in the logistic regression, see Appendix A.

Somewhat surprisingly, support for abolition was not predicted by having a close relative or friend who had been sentenced to death. However, among those who had a close relative or friend sentenced to death, fewer said they *strongly* supported retention *or* abolition. In other words, their views appeared to be slightly more moderate; see Figure 2. While these findings on a relationship between knowledge and support for capital punishment in Kenya are statistically significant, they are not easy to make sense of.

Figure 2: Support for abolition by relationship to convicted person

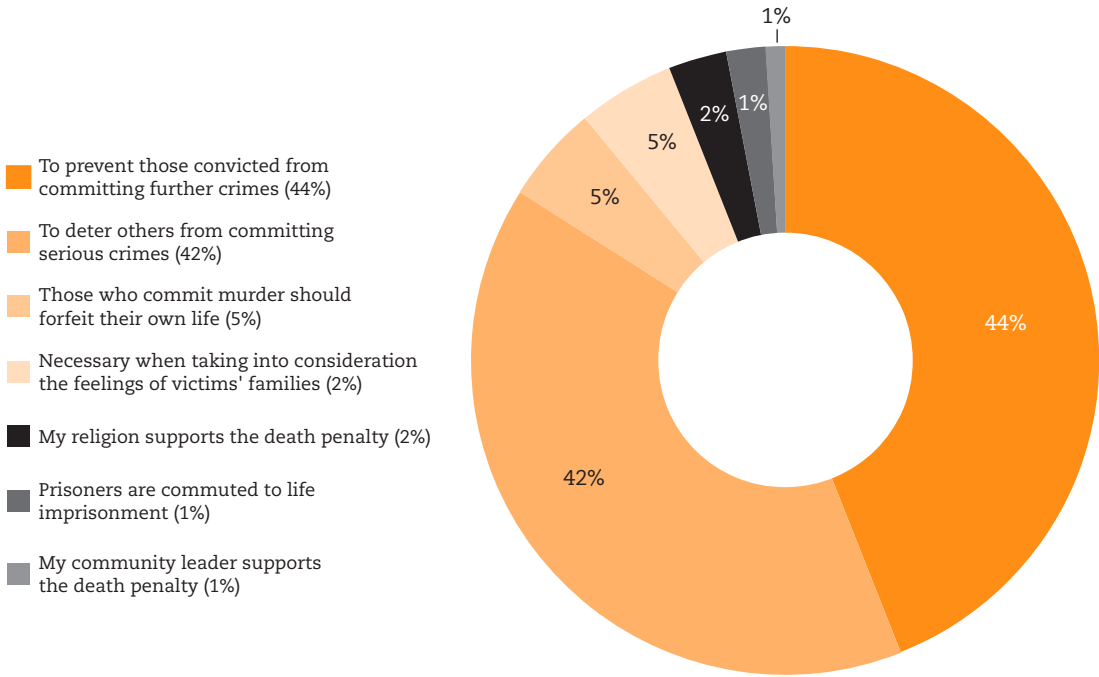


2.3 Reasons for supporting abolition or retention

Retentionists were asked about their reasons for supporting the death penalty. Most of those who offered a reason said their priority was deterrence (86%), either specific deterrence<sup>41</sup> (of the convicted person, 44%) or general deterrence<sup>42</sup> (42%) [Q16].<sup>43</sup> This is considerably higher than our findings from a public opinion survey in Indonesia, where just more than a third supported retention because they believed in its deterrent effect, and our findings in Zimbabwe, where a third supported retention for its general deterrent<sup>44</sup> effect and more than a quarter for its specific deterrent effect. The results are shown in full in Figure 3.

<sup>41</sup> Specific deterrence describes desistance from crime occasioned by the infliction of a penal sanction onto the offender.  
<sup>42</sup> General deterrence refers to the discouragement of potential future offenders through the punishment of those who have been convicted of similar offences and punished to show the high risks associated with offending.  
<sup>43</sup> Ibid.  
<sup>44</sup> Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021, Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018

Figure 3: Reasons given for supporting retention of the death penalty<sup>45</sup>



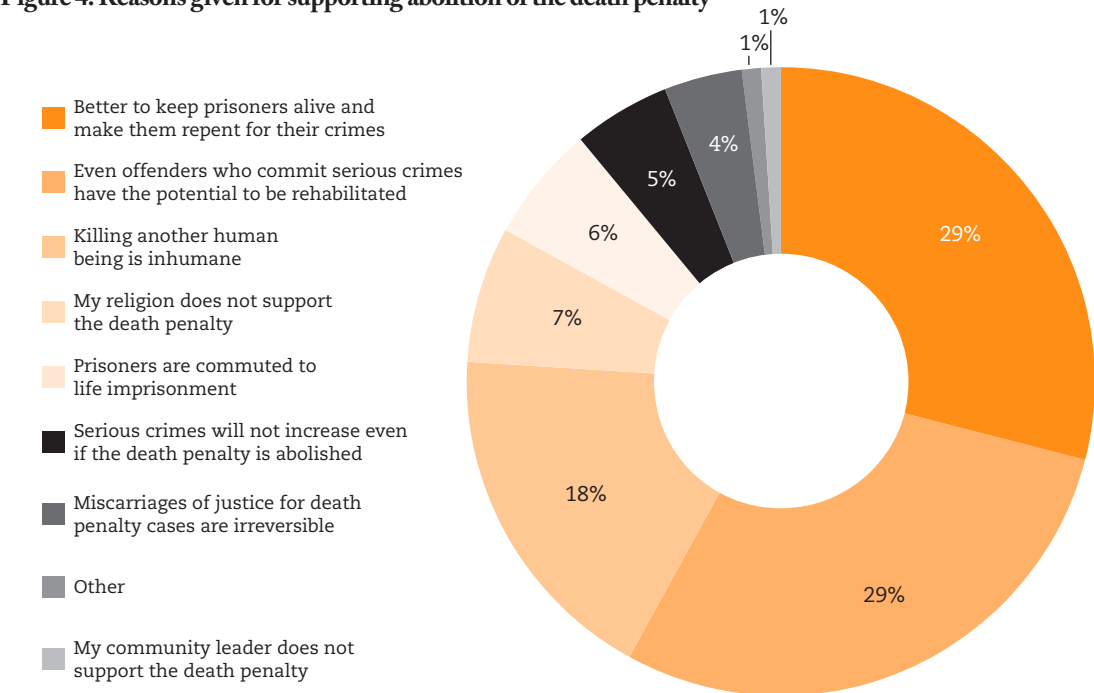
When those who identified as ‘abolitionists’ were asked for their reasons, the greatest proportion said they supported abolition because ‘it is better to keep prisoners alive and make them repent for their crimes’ (29%), that ‘even offenders who commit serious crimes have the potential to be rehabilitated’ (29%), and that ‘killing another person is inhumane’ (18%). Some people said their religion did not support the death penalty (7%), and, interestingly, the religious identification of this group almost mirrored identification with particular religions in our total sample. We might have expected that Catholics were more likely to make such a statement. However, 24% of our sample were Catholics and 26% of those who offered this response had identified as Catholics. Similarly, we might have expected Muslims to be much less likely to *say* that their religion did not support the death penalty, and yet 11% of our sample were Muslim and 12% of those who responded that their religion did not support the death penalty were Muslim (the responses from Protestants similarly mirrored their proportion in the sample). This shows that religiously motivated support for abolition is not predicted by which religion the respondent identified with. The given reasons for supporting abolition can be found in full in Figure 4. Among those who answered ‘other’, several spontaneously mentioned that it could result in innocent people being killed.

Interestingly, one person said he supported abolition because he had been falsely accused of murder and was awaiting a judgment that would probably result in the death penalty if he were convicted, though we have no further information on his case.

<sup>45</sup> Excluding those who did not give a reason.



Figure 4: Reasons given for supporting abolition of the death penalty



Of those who answered that they ‘cannot say’ whether they support retention or abolition of the death penalty, most said it was because the death penalty is a difficult issue on which they could not decide (63%), and some said it was an issue they were ‘not concerned about’ (31%).

Respondents were also asked for their views on the most important reasons for Kenya retaining the death penalty [Q44], regardless of their *own* views on retention or reasons for those views. The most popular response – that it was because ‘heinous crimes were being committed’ (50%) – undoubtedly speaks to the matter of deterrence. One in five thought Kenya kept the death penalty because it was a colonial legacy. Surprisingly, only 4% explained retention in terms of the public wanting to keep the death penalty, far fewer than in other studies. This suggests that respondents do not think that the death penalty is a matter of significant importance to the public, although many do feel that the public should influence policy on this, as we refer to in section 2.6, below.

2.4 Views on crime and the scope of the death penalty

2.4.1 Views on crime and justice

Views on punishment are likely to be shaped, to some extent, by the salience of crime within the population. Interest in and concern about crime among the public can influence trust in government and in justice institutions, and may influence politicians’ thoughts about penal policy if it is assumed that salience is strongly associated with punitive attitudes. Identifying the levels of crime salience, as well as consideration of potential solutions to crime and priorities about punishments, is therefore useful. Research in America suggests that salience might vary across jurisdictions depending, to some extent, on media coverage and political rhetoric about crime in relation to other social and economic problems. Yet, research has shown that the actual crime

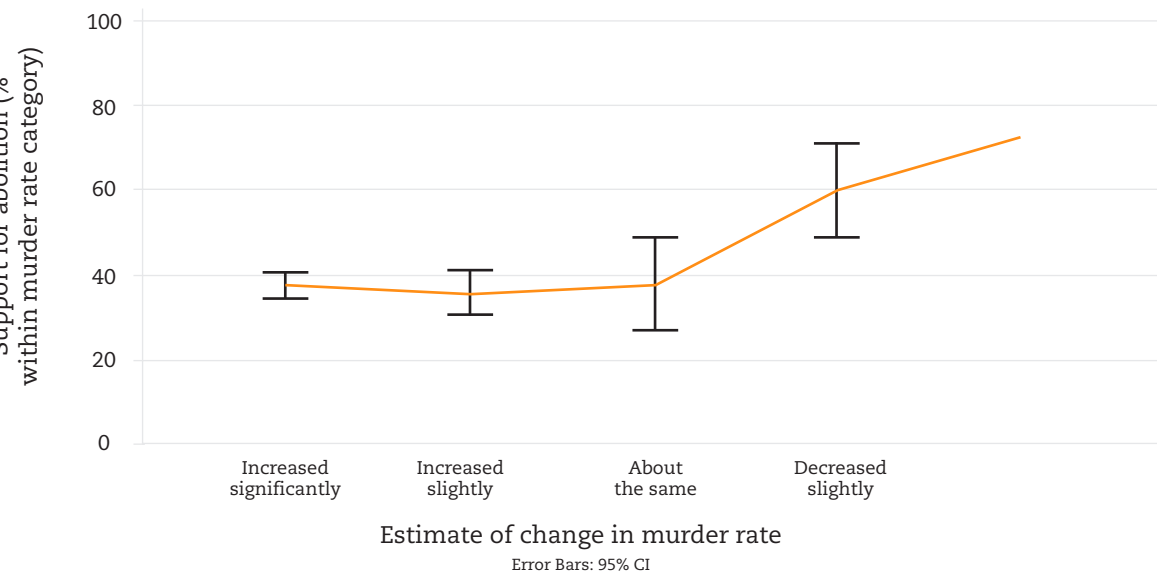
rate does not appear to influence interest in crime<sup>46</sup>, and experience of crime, perhaps counterintuitively, has little effect on punitiveness and support for the death penalty<sup>47</sup>.

This study also found that respondents’ experience of crime had no discernible effect on their support for the retention or abolition of the death penalty [Q6]. Respondents were asked about whether they had anything stolen from the house, or if anyone in their family had been physically attacked in the past 12 months. Respondents who had something stolen (27%), and respondents who had a family member physically attacked (14%) were no more likely to support the death penalty than others in the sample. In addition, while respondents’ *fear* of crime had a small effect on their support for the death penalty, it appeared to influence it in contradictory ways that defy explanation. For example, those who felt unsafe at home were less likely to support abolition, but those who felt unsafe walking in their neighbourhood were slightly more likely to support abolition [Q5].

While people may have somewhat unpredictable responses to fear of a range of crimes, people are likely to be most concerned about homicide. At the time we collected our data, the Global Study on Homicide put the rate across the African continent at more than double the global rate (13 victims per 100,000 people, compared with 6.1 victims globally), but the rate in Kenya was only five per 100,000, slightly lower than the global average<sup>48</sup>. Nonetheless, people may be worried about rising murder rates, regardless of the baseline. Hence, we asked our respondents if they thought that the number of murders in Kenya in the past five years had increased, decreased or remained the same [Q14]. We interviewed respondents in late 2019, so our questions about the rate would refer to 2015-19, inclusive. Over this time, the number of homicides in Kenya rose slightly, from 2,648 in 2015 to 2,971 in 2019. This is not a significant increase, yet those who thought that the number of murders in Kenya had ‘increased significantly’ over the past five years were less likely to support abolition than people who selected any of the other responses to a question about shifting murder rates – see Figure 5 (page 30) for details. It would seem that those who thought murders had risen significantly were concerned about this and responded punitively, either for retributive or, more likely, deterrent reasons.

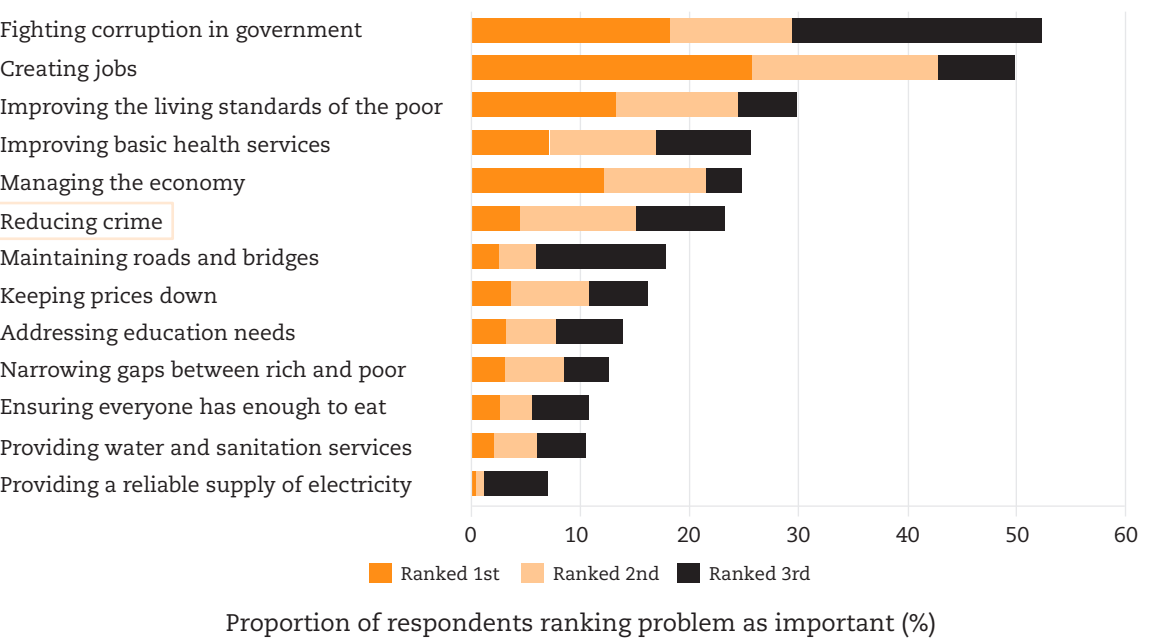
<sup>46</sup> Shi L, Lu Y and Pickett J T, The Public Salience of Crime, 1960-2014: Age-period-cohort and Time-series Analyses, *Criminology*, 2020, p1-26  
<sup>47</sup> Kleck G, & Jackson D B, Does Crime Cause Punitiveness? *Crime and Delinquency*, 2017, 63(12), 1572-1599. <https://doi.org/10.1177/0011128716638503>  
<sup>48</sup> United Nations Office on Drugs and Crime, *Global Study on Homicide*, 2019

Figure 5: Support for abolition by estimate of change in murder rate



However, specific questions about murder rates might suggest a stronger relationship between concern about crime and punitive responses than might be derived from more general questions. Hence, when participants were asked what they thought were the three most important problems facing Kenya today [Q2], most mentioned fighting corruption in the government (52%), followed by creating jobs (50%) and improving the living standards of the poor (30%)<sup>49</sup>. Reducing crime was only the sixth most frequently mentioned problem. It was chosen as the most important problem by only 5%, the second most important problem by 11% and the third most important by 8% (i.e., in total it was mentioned by just 23% of people). This demonstrates that crime is not a high-salience issue in Kenya (the results can be seen in full in Figure 6).

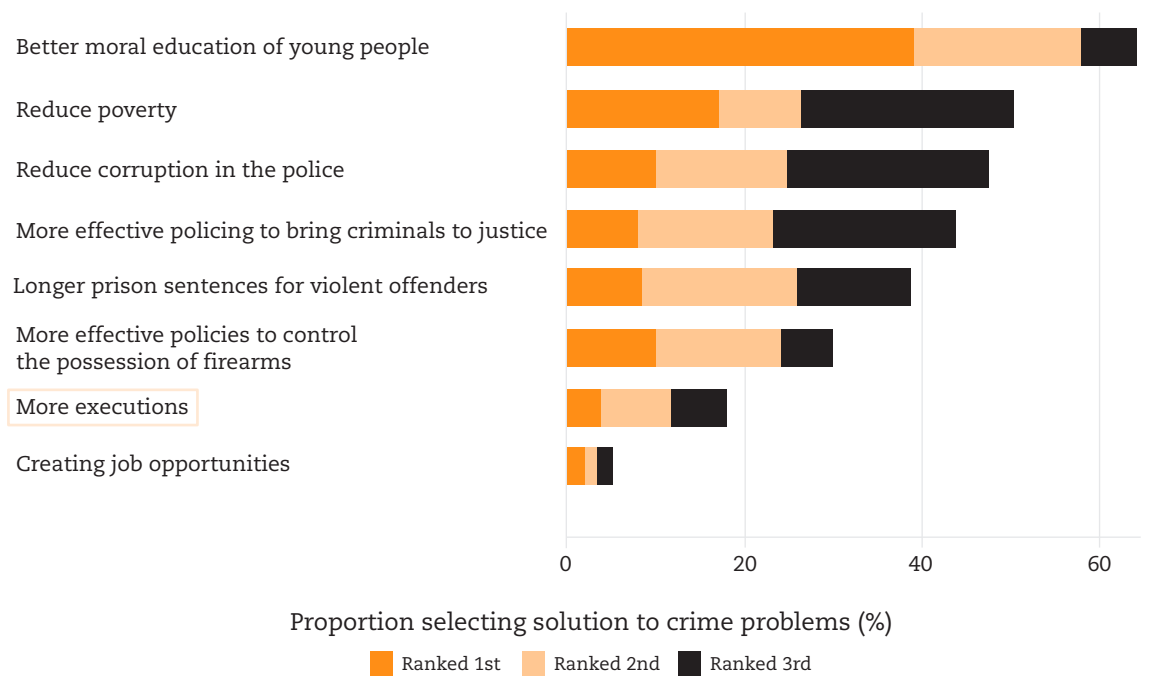
Figure 6: Views on most important problems facing Kenya



<sup>49</sup> These findings are similar to those from our public opinion survey in Zimbabwe, where respondents prioritised ‘creating jobs’ and ‘managing the economy’ over reducing crime; Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018

We also sought information on the extent to which the public thinks that the death penalty is a solution to the problem of crime [Q34]. Respondents were asked to select the top three measures ‘most likely to be able to reduce violent crimes leading to death in Kenya’. Fewer than one in five people thought crime could be reduced by having ‘more executions’ (18%), compared with those who thought the most important solutions were better moral education of young people (64%), reducing poverty (50%), and reducing corruption in the police (47%). Furthermore, only 4% of respondents identified ‘more executions’ as their first choice. These findings align with responses to opinion research conducted with the public and with elite ‘opinion formers’ in Indonesia, Malaysia, Singapore, Zimbabwe and Taiwan<sup>50</sup>. (Responses are shown in full in Figure 7).

Figure 7: Views on measures thought to be most able to reduce violent crimes



These findings are interesting because they show that even those people who support retention of the death penalty favour social measures over punitive justice measures.<sup>51</sup> Ordinarily, public punitiveness manifests itself in demands for tougher sentencing (with the death penalty being the toughest), criticism of the justice system and the courts for being too lenient, and support for policies that emphasise punishment over other objectives, such as rehabilitation<sup>52</sup>. Yet, in Kenya, as in all the other countries where The Death Penalty Project has commissioned similar opinion studies, support for capital punishment is not accompanied by support for the harshest penal policies in a more general question about reducing crime. It is not easy to make sense of this finding, but it may be that the death penalty serves a symbolic purpose – a means of demonstrating concern about serious crimes that affect the moral fabric of society and a desire to do the best to protect people from

<sup>50</sup> Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021; Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Opinion Formers: An Appetite for Change*, The Death Penalty Project, 2021; Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018; Hoyle C, *Time to Abolish the Death Penalty in Zimbabwe: Exploring the Views of its Opinion Leaders*, The Death Penalty Project 2020; Hoyle C, *Legislators’ Opinions on the Death Penalty in Taiwan*, The Death Penalty Project, 2021; Hood R, *Is Public Opinion a Justifiable Reason Not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries*, *Berkeley Journal of Criminal Law*, 2018, 23, pp218-242

<sup>51</sup> Participants were asked to rank the available options but were not required to rank all options. Figures therefore denote how many participants selected each specific option

<sup>52</sup> Hough M, Bradford B, Jackson J and Roberts J, *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*, Ministry of Justice Analytical Series, Ministry of Justice, London, UK, 2013

such harms. If that is the case, the death penalty might be embraced in the abstract, while focused questions on what exactly could protect people concentrate the mind on the most effective measures, which seem to be found outside of the criminal justice system. We return to this idea below, when we compare support for the death penalty in the abstract and in relation to specific cases.

2.4.2 Views on serious crimes and vulnerable offenders

The crimes punishable by death in Kenya are treason, murder, robbery with violence, and attempted robbery with violence. Yet, as mentioned above, many respondents did not know exactly which crimes it can be applied to. When asked specifically about whether the death penalty *should* be applied for a range of different crimes, more than 50% of the population thought it should be applicable in cases of murder, genocide, treason, rape of a child and armed robbery [Q19]. Some of those who did not support retention of the death penalty nonetheless said it should be applied for murder, suggesting that they interpreted the question to mean that ‘in a country where some people will be sentenced to death, which death-eligible crimes do you think most deserve a death sentence?’. In other words, the data are best read as relative to one another, as a measure of what all respondents felt to be the most egregious crimes.

As Figure 8 shows, more than 30% thought the death penalty should be applied in cases of rape of an adult (42%), knowingly infecting others with HIV (41%), stealing public funds (33%), manslaughter (30%) and illegally aborting an unborn baby (30%). Fewer than 30% thought it should be applicable for those engaging in homosexual acts (23%) and adultery (18%). Homosexual acts between men have been illegal in Kenya since 1930 and the government has resisted efforts to bring about legal change; they therefore remain subject to penal sanctions, including up to 14 years in prison. For example, in 2019, Kenya’s High Court upheld its colonial-era laws that criminalise gay sex<sup>53</sup>. While it is surprising that almost a quarter of the public feel that the death penalty is appropriate for homosexuality, it is particularly shocking that 18% supported the death penalty for consensual sex between adults, which is not a criminal offence in Kenya, suggesting that, for some Kenyans, notions of penal desert are closely tied to ideas about morality. Indeed, there is some research evidence in the field of moral psychology to support the view that, when a person registers what they see as transgressive behaviour, it produces an intuitive and emotional response of moral outrage that leads to a desire for retribution<sup>54</sup>.

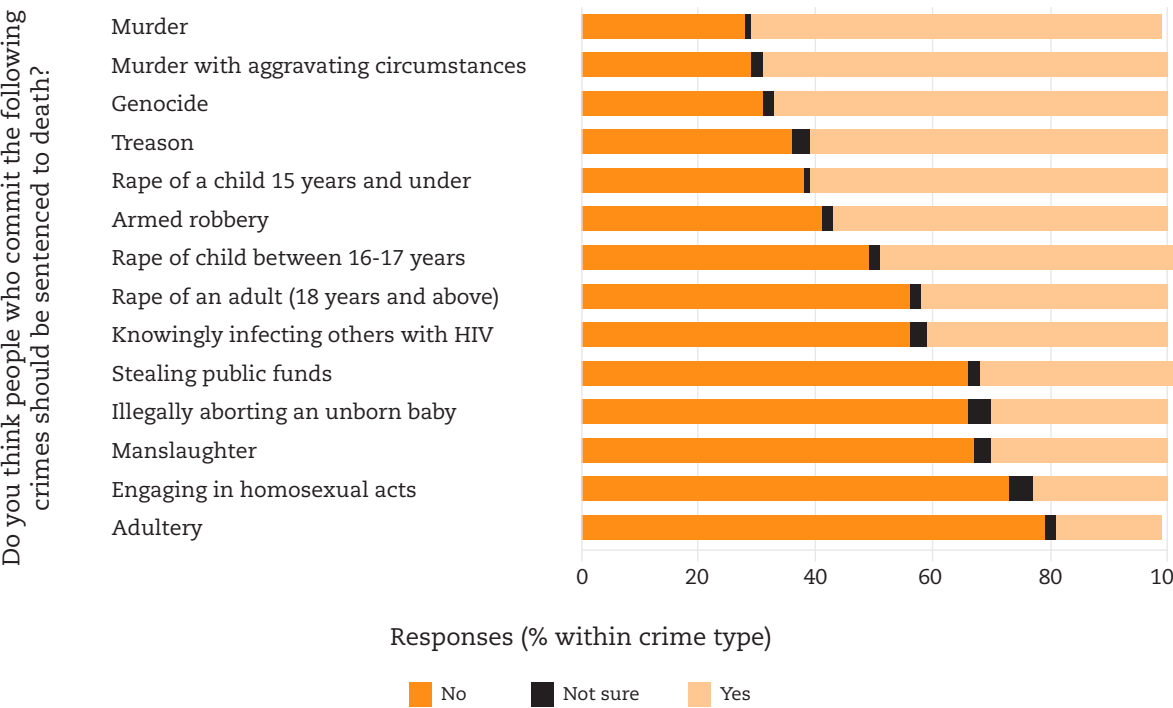
In a country that has been hit hard by the AIDS epidemic, with almost 5% of the population infected with HIV at the time of our survey<sup>55</sup>, it may not be surprising that some respondents expressed punitive views about those who purposely infect others with HIV. Indeed, the African region has a much higher prevalence of adult HIV (at 3.6% on average) than the Americas (1.5%), Europe (0.2%) and the Western Pacific region (0.1%), with East and Southern Africa the hardest hit<sup>56</sup>. In the year before our survey, 46,000 new people in Kenya contracted HIV, though the rate has declined over the past decade<sup>57</sup>. Notwithstanding the declining rate, Kenya has the joint third-largest epidemic in the world, alongside Mozambique and Uganda<sup>58</sup>. Given that HIV-AIDS disproportionately impacts men who have sex with men, data on some respondents’ appetite

for the death penalty for homosexuality and knowingly infecting others with HIV clearly speak to analogous issues of public health.

Similarly, rape, especially of a child or young person, is a highly emotive crime, likely to induce expressions of outrage and vengeance. However, Kenya does not have a particularly high level of rape. At 2.10 per 100,000 it is reasonably low, far behind South Africa (which has the highest rate at 132.40 per 100,000) and behind countries such as Sweden (63.50), the United States of America (27.3) and France (16.2). Indeed, it is far behind the global average of 10.06<sup>59</sup>. These punitive feelings about rape probably speak to public outrage and repulsion about the crime, rather than the risk of victimisation.

The responses in full are illustrated in Figure 8, with crime type ordered by the extent of support for the death penalty, from most to least.

Figure 8: Support for the death penalty according to type of crime



The International Covenant on Civil and Political Rights (ICCPR) Article 6(2) allows for ‘limited retention’ of the death penalty for only the ‘most serious’ crimes. While the UN Economic and Social Council has defined the scope of ‘most serious crimes’ to nothing ‘beyond intentional crimes with lethal or other extremely grave consequences’, across Africa and Asia this concept has been interpreted differently according to national ethos, customs and political imperatives<sup>60</sup>. Stealing, homosexual acts and adultery clearly do not fit within this definition, and many would argue that all offences outside of murder and genocide should be excluded from the death penalty too – though, as a barometer of public morality, these findings are interesting.

<sup>53</sup> This case stemmed from a petition filed in 2016 by an activist, with the support of organisations supporting LGBTQ Kenyans: Petition No. 150 of 2016 between Eric Gitari (Petitioner) and The Hon. Attorney General (Respondent) at <http://kenyalaw.org/caselaw/cases/view/122862/> – accessed: October 2021

<sup>54</sup> Darley J M, Morality in the Law: The Psychological Foundations of Citizens’ Desires to Punish Transgressions, *The Annual Review of Law and Social Science*, 2009, 5: 1-23

<sup>55</sup> Kenya Ministry of Health, report on the findings of the Kenya Population-based HIV Impact Assessment 2018 survey at <https://www.health.go.ke/kenyas-national-hiv-survey-shows-progress-towards-control-of-the-epidemic-nairobi-20th-february-2020/> – accessed: October 2021

<sup>56</sup> HIV.Gov, Global Statistics at <https://www.hiv.gov/hiv-basics/overview/data-and-trends/global-statistics> – accessed: October 2021

<sup>57</sup> AIDInfo at <http://aidsinfo.unaids.org> – accessed: October 2021

<sup>58</sup> Avert, Global information on HIV and AIDS at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/kenya> – accessed: October 2021

<sup>59</sup> World Population Review, Rape Statistics by Country 2021 at <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country> – accessed: October 2021

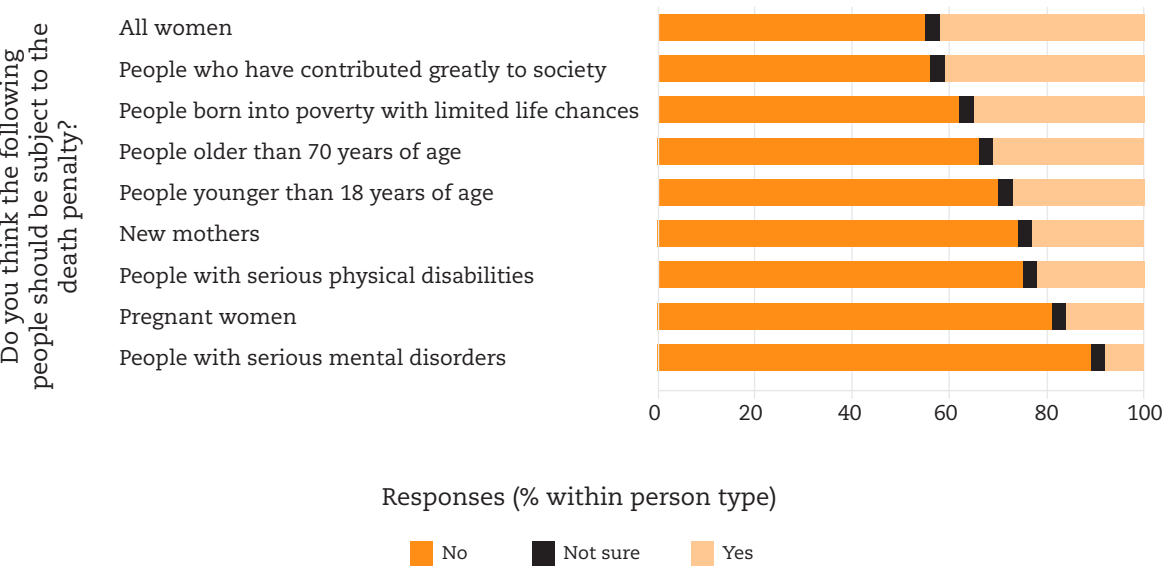
<sup>60</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, United Nations Economic and Social Council 1984



The international *Safeguards* also helped bring about progressive restriction of the death penalty by excluding certain ‘vulnerable’ people: those under the age of 18 at the time of the crime, pregnant women or new mothers, people who have become insane, and – since the *Safeguards* were revised in 1989 – older people and those suffering from limited mental competence. Few retentionist countries ignore these particular restrictions, and the responses to this survey suggest that the majority of Kenyan people do not think the death penalty is appropriate for certain vulnerable people. Indeed, the responses to this question were similar to those of the public in both Zimbabwe and Indonesia<sup>61</sup>.

As Figure 9 shows, when respondents considered specific groups of offenders they appeared to consider the death penalty to be appropriate much less frequently than when thinking about it in the abstract [Q20]. For each of the potentially vulnerable groups mentioned in the survey, more than half of the respondents thought that they should not be subject to the death penalty. Most respondents thought that people with serious mental disorders (89%) or physical disabilities (75%), as well as pregnant women (81%) and new mothers (74%) should not be subject to the death penalty. We were a little surprised by the finding that more than half of the public did not think the death penalty was appropriate for those who had ‘contributed greatly to society’, though this could speak to mitigation. The responses in full are illustrated in Figure 9, with type of person ordered by the extent of support for the death penalty, from most to least.

Figure 9: Support for the death penalty according to offender group



As a follow-up to Q20, respondents were asked about their reasons for believing that women should or should not be subject to the death penalty [Q21 & Q22]. Of those who thought that all women should *not* be subject to the death penalty, about a third offered the following reasons: that women who commit crimes are often under the influence of others (35%), that women need to be protected (29%), and that women should be able to look after their children (28%). Those who thought that all women *should* be subject to the death penalty offered an equality argument – men and women should be treated equally (79%) – or an argument founded in exceptionalism: women who commit heinous crimes are especially evil (21%).

<sup>61</sup> Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021; Sato M, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, The Death Penalty Project, 2018

2.5 Malleability of opinions

Our research on public opinion about the death penalty in other countries has shown that people’s views are often not fixed. Initial support for capital punishment in a survey – the kind of support that unsophisticated opinion polls find – is changeable; it can shift in response to experiences, to new information, to concerns about injustice, and to actual cases. We know from research on public opinion in other settings that, while the public will say they want harsher punishments as a reaction to serious crimes, when presented with actual sentencing scenarios, they are considerably less punitive than we might expect them to be.<sup>62</sup> We therefore explored different factors that may bring about a move away from retentionist inclinations.

2.5.1 Trust in the government and fairness

Trust in government and the justice system is important because it influences people’s perceptions about the legitimacy of those institutions, and high levels of perceived legitimacy are positively correlated with compliance. In other words, people who trust criminal justice professionals are more likely to obey the law and comply with reasonable requests by state officials<sup>63</sup>.

Respondents were asked how much they trusted certain people and institutions [Q45]. There was most trust for religious leaders, the president, and the media (respectively, 38%, 35% and 35% said they trusted them ‘a lot’, and only 11%, 15% and 12% said they did not trust them ‘at all’). There was least trust in politicians (35% said did not trust them ‘at all’) and the police (38% did not trust them ‘at all’), and only 10% said they trusted politicians and police ‘a lot’.

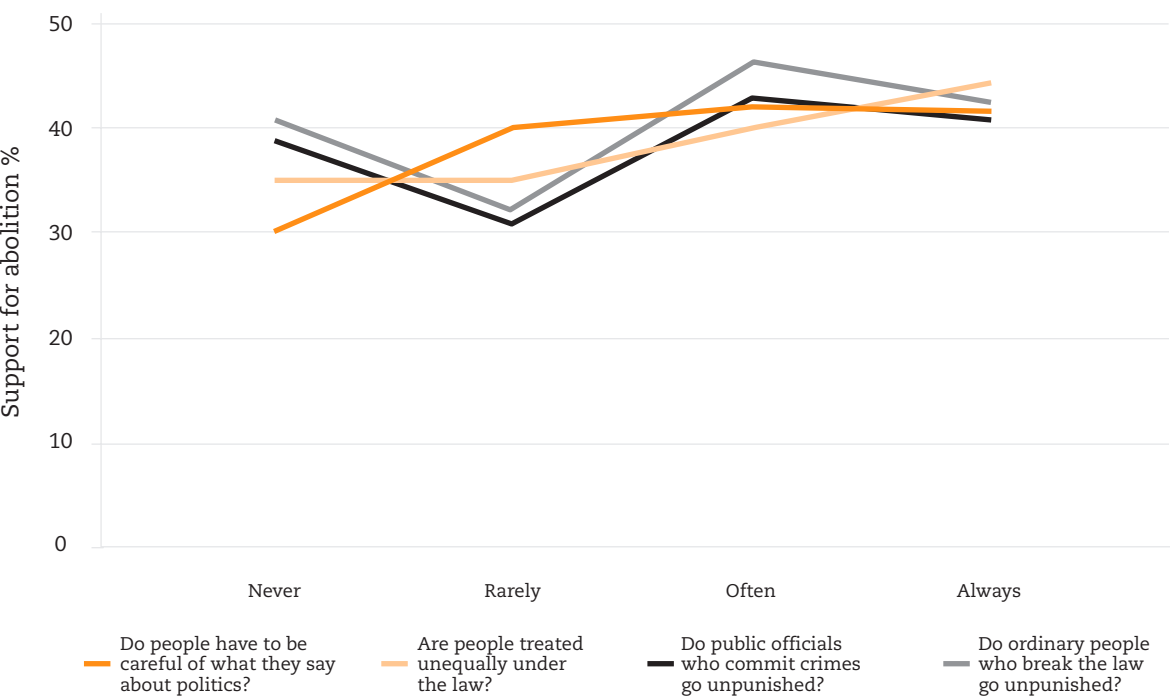
Measuring trust in the police is important because, for many people, the police serve symbolic – as well as instrumental – roles; people make inferences from the police to the wider criminal process, suggesting an interrelatedness of trust in justice<sup>64</sup>. Hence, our finding that only one in 10 of our respondents fully trusted the police should be a cause for concern. However, this lack of trust had no effect on respondents’ support for the death penalty.

Participants were also asked about their perceptions of justice in Kenya, and their responses further demonstrated low trust in public institutions [Q3]. Nearly two-thirds of respondents thought that people ‘often’ or ‘always’ have to be careful of what they say about politics (65%). A similar proportion said that people are ‘often’ or ‘always’ treated unequally under the law (62%), with almost three-quarters saying that public officials who commit crimes ‘often’ or ‘always’ go unpunished (73%). Fewer people, but still a large minority, thought that ordinary people who break the law ‘often’ or ‘always’ go unpunished (39%).

These views had an impact on respondents’ support for abolition, although the effect is not large, as can be seen in Figure 10. In general, the more people thought that you must be careful of what you say about politics, that people are treated unequally under the law, and that politicians and ordinary people go unpunished, the more likely they were to support abolition. To put it simply, low trust in public institutions that should be safe, fair and impartial can lead to low appetite for the harshest of punishments.

<sup>62</sup> Roberts J and Hough M, *Changing Attitudes to Punishment: The Context*, in J V Roberts and M Hough (eds), *Changing Attitudes to Punishment. Public Opinion, Crime and Justice*, Willan Publishing, 2002  
<sup>63</sup> Tyler T, *Why People Obey the Law*, Princeton University Press, 2006; Jackson J, Bradford B, Hough M, Myhill A, Quinton P, and Tyler T. R, *Why do People Comply with the Law? Legitimacy and the Influence of Legal Institutions*, *British Journal of Criminology*, 2012, 52, 6, 1051–1071  
<sup>64</sup> Hough M, Bradford B, Jackson J and Roberts J, *Attitudes to Sentencing and Trust in Justice: Exploring Trends from the Crime Survey for England and Wales*, Ministry of Justice Analytical Series, Ministry of Justice, London, UK, 2013

Figure 10: Support for abolition by views about politics and criminal justice in Kenya



2.5.2 Support for capital punishment in practice

The various public opinion studies commissioned by The Death Penalty Project in other countries have shown that members of the public react more punitively when asked for their views on the death penalty in the ‘abstract’ than they do when faced with a realistic depiction of what serious criminal cases can look like, and what it means to decide between life and death.<sup>65</sup>

Our survey presented respondents with three pairs of scenarios, then asked them to assign an appropriate sentence [Q23–28]. They could choose from a death sentence, a prison sentence for a period of their choosing, a prison sentence with parole if the offender was ‘no longer a danger’, or a prison sentence without the possibility of release. The order of each pair was randomised, so that half the respondents were given one of each pair first, and the other half were given the same question second.<sup>66</sup>

The background information in each pair of scenarios was varied to investigate the effect of three factors. In the first two scenarios, this was aggravating or mitigating features of the crime and, in the first case, whether the offender had prior convictions for robbery (an aggravating feature). In the third case, the distinction concerned the offender’s relationship to the victim, whether she was a stranger or in a romantic relationship

<sup>65</sup> Hood R, Is Public Opinion a Justifiable Reason Not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries, *Berkeley Journal of Criminal Law*, 2018, 23, pp218–242  
<sup>66</sup> The scenarios with manipulated variables were presented sequentially, which is not usually recommended, as respondents are likely to guess that this means the interviewer expects them to change their answer. However, as we are interested here in the types of information that make people susceptible to change their views, rather than in their ‘absolute’ views per se, this approach offers an important insight. It is also important to remember that the respondents’ answers to these questions may also have been influenced by the questions they had answered prior to these questions, which were focused on the death penalty. In other surveys about the death penalty, this question is administered early in the questionnaire to avoid this effect.

with the offender. This, of course, is neither an aggravating nor mitigating feature of the case, but speaks to the respondents’ sense of the relative seriousness of these cases.

Figure 11 demonstrates that, although only about 40% of the respondents supported abolition in the abstract – when asked without a specific context [Q15] – many more of them did not wish the death penalty to be imposed in specific cases. Even in the absence of mitigating circumstances or in the presence of aggravating features, only 32% and 27% supported imposition of the death penalty for robbery resulting in death and murder respectively. When mitigating circumstances were introduced, respondents were much less likely<sup>67</sup> to want the death penalty to be imposed – i.e., if the offender had no prior convictions in the case of robbery (25%), or if the murder was committed as a response to domestic abuse (17%).

The case of the rape and murder of a stranger is a little harder to interpret. In response to a case about the rape and murder of a stranger, 29% of respondents suggested a death sentence, compared with only 24% when the offender and victim were in a relationship. Notwithstanding our concerns that this indicates such crimes involving people known to one another are seen by a few to be less serious, the data still show a much lower level of support for the death penalty for what is a very serious crime than would be apparent from the public’s initial opinions on the death penalty.

Figure 11: Respondents’ sentencing preferences: proportion of respondents who selected the death penalty as a suitable punishment



<sup>67</sup> McNemar’s test of within-subject differences in choice selection confirmed that the reduction in the number of people selecting the death penalty was of statistical significance for all three pairs of scenarios (p= .001, two-sided).

2.5.3 Factors that shift opinions

The discussion above has shown that support for the death penalty can diminish when respondents are presented with information about the offences committed and offenders’ vulnerabilities or circumstances. It also established that many respondents were not particularly well informed about the death penalty. This suggests that fuller and more accurate information about issues of concern or practices in other countries could shift opinion. To understand how malleable respondents’ views could be, we asked a series of questions on due process and death penalty practice in other jurisdictions, to see if they influenced their views about retention or abolition in Kenya.

Executing innocent people?

Respondents were told that mistakes are made in all criminal justice systems and asked which mistake is worse – to convict an innocent person or to let a guilty person go free [Q35]. Overall, respondents did not seem convinced by the general principle that the justice system should err on the side of caution, as 42% thought the worst mistake a justice system could make would be to let a guilty person go free. More importantly, there was no meaningful difference in the responses given by abolitionists and retentionists. Just more than half thought it was worse to convict an innocent person – 55% among those who supported abolition and 56% among those who did not support abolition.

Similarly, respondents’ beliefs about how often innocent people have been sentenced to death in Kenya were not associated with their support for abolition [Q36]. Overall, 61% of the respondents thought that ‘many’ or ‘some’ innocent people have been sentenced to death in Kenya, and this figure was the same among abolitionists (61%) as those who did not support abolition (61%). Only 8% thought that ‘no innocent people have been sentenced to death’ (9% of abolitionists and 8% of those who did not support abolition).

However, knowing that innocent people may be executed does shift views on the death penalty. As mentioned above, some people spontaneously explained that they supported abolition of the death penalty because it may result in innocent people being killed. When this argument was put to retentionists, only just more than half (56%) said they would still support the death penalty if it was proven to their satisfaction that innocent people have sometimes been executed. More than a third (40%) said they would support abolition, and just 4% said they did not know [Q37]. In other words, support for retention dropped from 51% to 28% among the total sample. This shows the power of innocence to sway public opinion on the death penalty.

International pressure?

Retentionists in other surveys have shifted their views on the death penalty when they have discovered that a high proportion of nations around the world have now abolished the death penalty.<sup>68</sup> Retentionists were informed that 17 countries in Sub-Saharan Africa have abolished the death penalty for all crimes [Q39]. When asked whether Kenya should aim to follow these countries and abolish the death penalty, 30% of retentionists said yes and 10% said they did not know. In other words, support for retention dropped from 51% to 31% with knowledge about neighbouring countries’ movement towards abolition. Moreover,

<sup>68</sup> Today, 109 countries worldwide have completely abolished capital punishment.

the following question found that almost a quarter of respondents felt the death penalty harms Kenya’s international reputation [Q40].

Among those 60% of retentionists who remained committed to retention, despite information about the increasing rate of abolition across Africa, 8% said Kenya should not follow the trend in Sub-Saharan Africa because China still has the death penalty, and 11% because the USA still has the death penalty, while 41% considered that other countries’ death penalty policies are irrelevant. These respondents shared a view, maintained by others in similar surveys, about the importance of national sovereignty on such an issue.

2.6 Potential reactions to abolition

Around the world, the death penalty has been abolished in spite of majority support for retention. But after abolition, in time, the public grow to not only accept it, but to embrace it. Once death sentences and executions are no longer considered by the state to be a legitimate punishment for criminal offences, the public starts to see them as an objectionable vestige of the past.<sup>69</sup> Given evidence of this from many different countries, governments that are considering abolition might ask not whether the public supports abolition, but whether the public would accept it if it were introduced by a government policy.

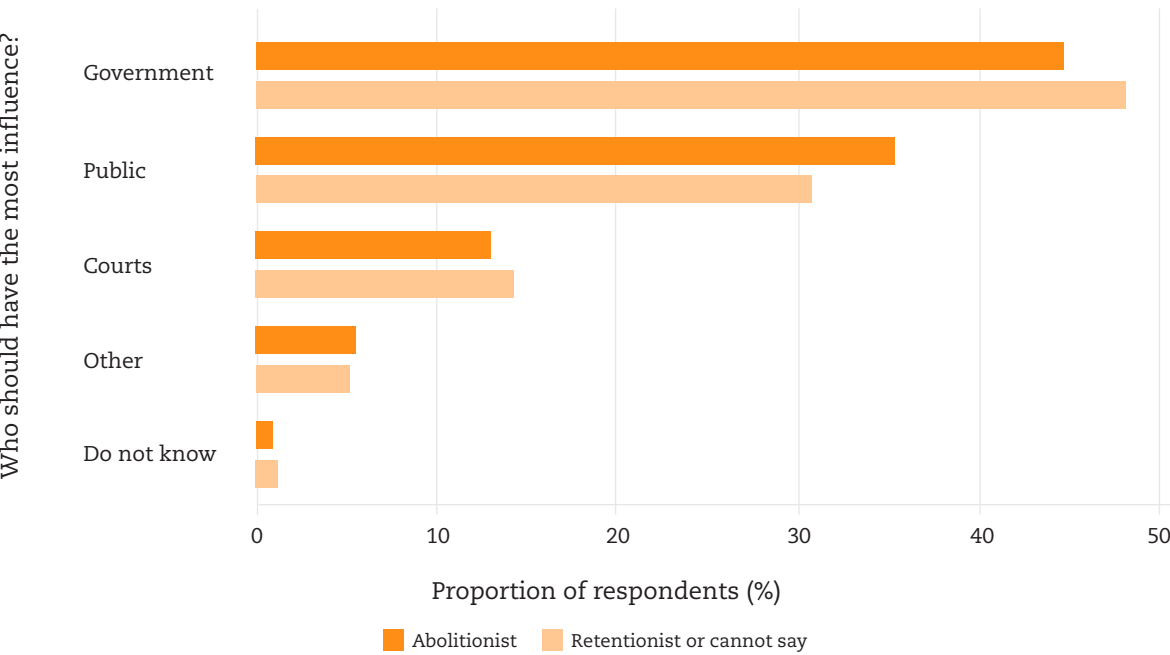
Those respondents to our survey who had identified as retentionists were informed that the Kenyan government ratified an international treaty in 1972 that expressed the desirability of abolition [Q38]. They were then asked whether the decision to abolish the death penalty would affect their everyday life. This is another way of considering the salience of the issue among the public. More than a third (38%) said it would have no impact, almost a third (32%) said it would have a small impact on their everyday life, and just more than a quarter (26%) said it would have a significant impact on their everyday life. A mere quarter of participants responding in this way suggests that the death penalty is not a topic of considerable prominence in Kenya.

Given that most people felt that abolition of the death penalty would not have a significant impact on their life, it is perhaps surprising that when asked, from a list of options, who should have the most influence over whether the death penalty is kept or abolished, a third of our respondents thought that ‘the public’ should have the most influence [Q41]. However, the greatest proportion of the people thought that the government should have the most influence over the decision (47%), and a minority thought the courts should have the most influence (14%). The full results for this question, split by support for abolition, are shown in Figure 12.

<sup>69</sup> Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, 2015



Figure 12: Views on who should influence whether the death penalty is abolished, by support for abolition



In public opinion research we have conducted elsewhere, we have found that many of those who favour retention of the death penalty would nonetheless accept abolition if that were government policy.<sup>70</sup> Respondents were asked to imagine how they and others would react if the death penalty were to be abolished in Kenya [Q42 & 43].

Most retentionists (59%) said they would be unhappy with the decision to abolish the death penalty, but would accept it as government policy (very likely to react this way 35%; likely to react this way 24%). Retentionist responses can be seen in full in Table 2.

Table 2: Retentionist potential responses to abolition<sup>71</sup>

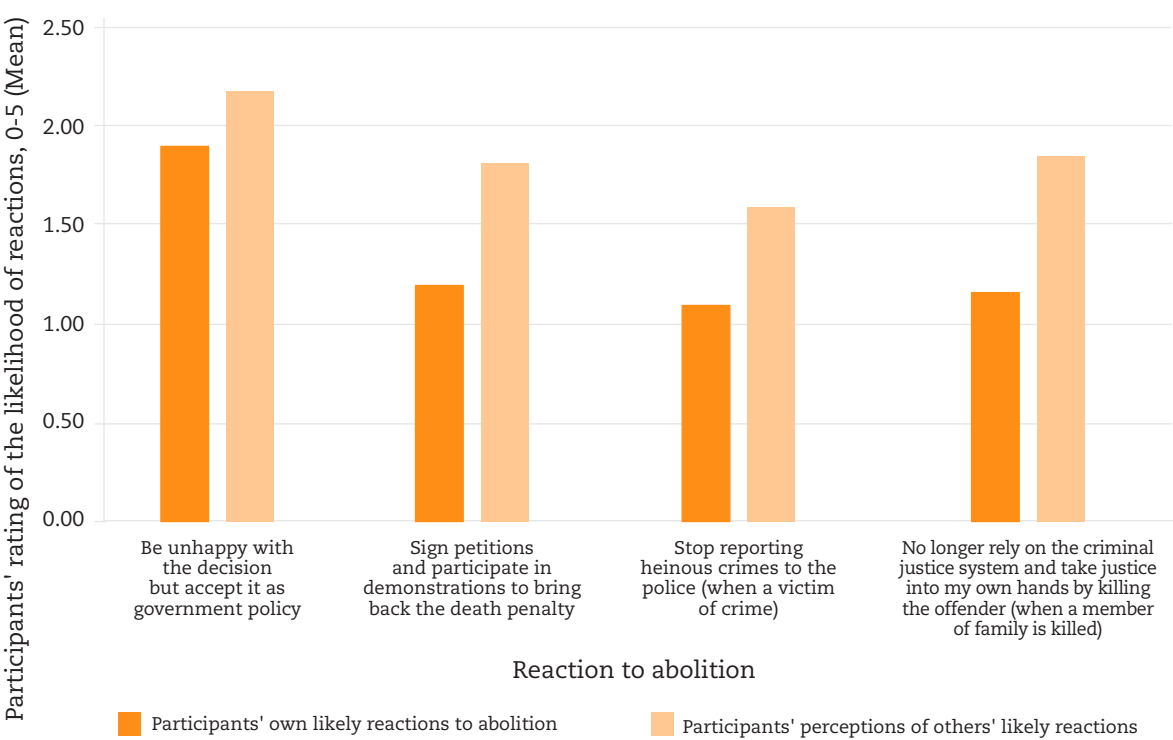
	Very unlikely	Somewhat unlikely	Don't know	Somewhat likely	Very likely
I'd be unhappy with the decision but will accept it as government policy	23%	16%	1%	24%	35%
I will sign petitions and participate in demonstrations to bring back the death penalty	42%	21%	3%	18%	15%
I will stop reporting heinous crimes to the police if I become a victim of crime	48%	21%	2%	18%	12%
If my family is killed, I will no longer rely on the criminal justice system and take justice into my own hands by killing the offender	46%	18%	2%	21%	14%

<sup>70</sup> See, for example, Hoyle C, *Investigating Attitudes to the Death Penalty in Indonesia: Public Opinion: No Barrier to Abolition*, The Death Penalty Project, 2021  
<sup>71</sup> Because of rounding, percentages may not total 100%

Given that each respondent was asked how *they* would respond as well as how *others* would respond, we have a way of testing the accuracy of their perceptions of others' responses. We can do this by comparing what respondents *thought* others would do with what all the other survey respondents (who are those 'others') said *they* would do. Taking the score for their answers on a five-point scale from 0 = very unlikely to 4 = very likely, with 'don't know' in the middle of the scale, the average (mean) scores can be seen in Figure 13.

This bar chart shows that respondents most accurately estimated how likely 'others' would be to accept abolition as government policy [A]. By this we mean that the gap between their own likely responses and their perceptions of others' likely responses is the smallest on the issue of whether respondents and others would accept abolition. Notwithstanding, respondents significantly<sup>72</sup> *overestimated* how likely others would be to react in all four ways: be unhappy but accept it as government policy [A], sign petitions [B], stop reporting crimes to the police [C], and take justice into their own hands [D]. This shows that people overestimate how negative other people's reactions will be.

Figure 13: Participants' thoughts on their own likely reactions to abolition and others' likely reactions



These data suggest that support for the death penalty may be affected by people's belief that others – the public in general – will react negatively to abolition, imagining the likelihood that others' demonstrable opposition could be disruptive. Our findings show that people's overestimation of adverse reactions from the public could influence them towards a more negative approach to the question of abolition, especially among the 27% who felt that the public's views on abolition should be most influential. If they were to be told that retentionists are most likely to accept abolition even if they are not happy about it, they may be less inclined to support retention of the death penalty.

<sup>72</sup> Statistical significance tested for all four questions using a within-subjects factorial MANOVA. p < .001.

# PARATHR

## Concussion



Earlier this year, Sierra Leone became the 22nd country in Africa to abolish the death penalty, following Chad. Recorded executions across sub-Saharan Africa fell by 36% from 2019 to 2020, and only three countries in the region carried out executions: Botswana, Somalia and South Sudan. As a continent, Africa is clearly heading towards abolition.

African countries, particularly in Eastern and Southern Africa, have also followed the worldwide trend to abolish the *mandatory* death penalty, recognising it to be incompatible with human rights.<sup>73</sup> Hence, Botswana, Lesotho, Swaziland, Uganda, Malawi and Zimbabwe are among those nations to retain the death penalty only as a discretionary punishment, a movement supported by the African Commission on Human and Peoples' Rights and the African Court of Human Rights.<sup>74</sup> In 2017, Kenya joined their ranks.

For the past two decades and more, international bodies – such as the UN Human Rights Committee, – and regional bodies, such as the African Commission on Human and Peoples' Rights, regularly called on African nations to abolish, or impose a formal moratorium on, the death penalty.<sup>75</sup>

However, some countries in the region appear to be stuck with an informal moratorium, where death sentences continue to be imposed without executions, apparently serving only a symbolic function. To avoid burgeoning death rows, such countries carry out regular commutations of death sentences, with most of those whose sentences are commuted being given a life sentence in prison. Indeed, Amnesty International recorded an 87% increase in death sentence commutations across Africa in 2020.<sup>76</sup> Having executed no-one for 35 years, Kenya is one such country.

It makes little sense to sentence to death hundreds of Kenyan citizens each year only to commute those sentences in sporadic mass commutations. Nor does it make sense to sentence people to death but then leave them in prison in poor conditions, with no effort to rehabilitate them, until they die in prison. In other countries, successful challenges to the constitutionality of capital punishment on the grounds of unreasonable delays have led to death sentence commutations for those who have been awaiting execution for a period of more than five years, as this is deemed to constitute cruel and unusual punishment.<sup>77</sup> In Kenya, some people have waited for decades before having their sentence commuted, living in intolerable conditions.

In 2012, the Kenyan National Commission on Human Rights conducted a thorough study of the conditions on death row, revealing the severe physical and psychological impacts of death row on inmates and their families – impacts that, in many cases, could amount to torture, and certainly demonstrate cruel, inhumane and degrading treatment or punishment. The study showed that prisoners on death row were not provided with resources to help them to rehabilitate or to gain education; they were isolated and lonely, with some not allowed to participate in recreational activities.<sup>78</sup> Such conditions are not conducive to safe release, but nor are they conducive to safe and humane prison life for such people, their fellow prisoners or prison officers once they are transferred to the regular prison estate.

<sup>73</sup> Novak A, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia, and the Caribbean*, Ashgate Publishing, 2014

<sup>74</sup> African Commission General comment no 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4), (57th ordinary session, 2015), para 24; Also, *Robert John Penness v United Republic of Tanzania*, African Court on Human and Peoples' Rights, 013/2015, 2019

<sup>75</sup> African Commission Resolution 42: Resolution urging states to envisage a moratorium on death penalty (26th ordinary session, 1999) ACHPR/Res.42(XXVI)9; African Commission Resolution 136: Resolution calling on state parties to observe a moratorium on the death penalty (44th ordinary session, 2008) ACHPR/Res.136(XXXVIII), 08

<sup>76</sup> Amnesty International, *Death Sentences and Executions 2020*, ACT5037602021 2021

<sup>77</sup> Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, 2015, ch5

<sup>78</sup> KNCHR, *The Effects of Death Penalty in Kenya: Results of the Survey by the Kenya National Commission on Human Rights* (Second Phase), 2012

It is important to remind the reader of who these death row prisoners are. They have not, in the main, committed the sorts of offences that the public might think to be the 'worst of the worst'. Very many have committed non-fatal offences such as aggravated robbery. Indeed, of those individuals whose sentences have been commuted to life, available data suggests that upwards of 80% had been convicted of robbery with violence or attempted robbery with violence.<sup>79</sup> These were explicitly not the types of offences that the international community envisaged in restricting the death penalty to the most serious offences under the International Covenant on Civil and Political Rights (art. 6(2)).

There have been occasional calls for abolition in Kenya, yet, in 2015, a bill aiming to abolish the death penalty was unsuccessful. Moreover, each year, Kenya abstains from voting for the UN General Assembly's resolution on a universal moratorium on the death penalty, suggesting ambivalence within government, at least. In response to its second Universal Periodic Review in 2015, Kenya noted recommendations to formalise its moratorium and ratify the second optional protocol of the International Covenant on Civil and Political Rights<sup>80</sup>, and accepted calls to abolish.<sup>81</sup> It is still to implement those recommendations. Furthermore, it stated explicitly that 'at this juncture, Kenya is unable to abolish the death penalty as the Kenyan public has overwhelmingly rejected the abolition of the death penalty for the most serious crimes'.<sup>82</sup>

If this is what is holding the government back from abolishing what has become only a symbolic punishment, there is no longer any reasonable justification. Our rigorous survey, the findings of which reflect the views of the nation, shows that the people are ready; they will accept abolition as government policy. Half will enthusiastically embrace it, others will accept it as preferable to executing citizens, and only a small minority would be disconcerted by such a policy. The government cannot resist abolition for fear that a small minority of people will be disappointed. Besides, experiences of other nations have shown us that those people will, in years to come, change their views away from support for capital punishment. Thirty-five years without an execution has been more than enough time for Kenyans to get used to a criminal justice system that does not rely on state killings to try to control serious crime. They are now ready to accept abolition *de jure*.

<sup>79</sup> The Death Penalty Project, *Pathways to Justice: Implementing a Fair and Effective Remedy following Abolition of the Mandatory Death Penalty in Kenya* (An expert report submitted by The Death Penalty Project upon invitation by the Government Sentencing Task Force), 2019, p39

<sup>80</sup> Article 1 of the Second Optional Protocol to the ICCPR states that 'no-one within the jurisdiction of a State Party ... shall be executed'. While not specifically stated, the implication is that, once capital punishment is abolished, it should not be reinstated.

<sup>81</sup> HRC *Report of the Working Group on the Universal Periodic Review: Kenya*, UN doc A/HRC/29/10 (2015), paras 67, 142 & 143

<sup>82</sup> HRC *Third Periodic Report of States Parties: Kenya*, UN doc CCPR/C/KEN/3 (2011), para 141



# APPENDIX

Predicting support for  
abolition (binary logistic  
regression analysis)



The effect of the potential predictors on support for abolition were analysed by adding them to a binary logistic regression model. The outcome variable was ‘support for abolition’ (the respondent either slightly or strongly supported abolition), compared with the rest of the respondents [Q15]. The significant predictors are shown in bold (p<0.05). The size of the final weighted sample was 1,447.

$\chi^2(53) = 232.06^{***}$ , -2LL = 1718.01, R2(Cox & Snell) = .15, R2(Nagelkerke) = .20.

Variable	B	S.E.	Exp(B)
Age	-0.01	0.01	0.99
Gender (Ref = Female)	0.02	0.13	1.02
<b>Location (Ref = Urban)</b>	<b>-0.38*</b>	0.16	<b>0.68</b>
Region (Ref = Nairobi)			
Western	-0.45	0.32	0.64
Rift valley	-0.41	0.28	0.66
<b>Nyanza</b>	<b>-1.03***</b>	0.32	<b>0.36</b>
North Eastern	-0.99	0.52	0.37
Eastern	0.08	0.30	1.08
Coast	0.21	0.34	1.23
Central	-0.15	0.31	0.86
Education (Ref = none)			
Informal only	-1.17	0.71	0.31
Some primary or primary complete	-0.15	0.38	0.86
Some secondary or secondary complete	-0.11	0.38	0.89
Post-secondary qualifications	-0.15	0.40	0.86
Some university or university complete	0.26	0.42	1.30
Religion (Ref = Catholic)			
Protestant and other Christians	0.16	0.14	1.18
Muslim	-0.15	0.31	0.86
Other	0.82	0.44	2.27
<b>Religiosity (1-5)</b>	<b>0.27***</b>	0.06	<b>1.31</b>
Poverty indicators (1-25)	0.01	0.02	1.01
Employment (Ref = Employed)			
Seeking work/no work available	0.30	0.25	1.35
Economically inactive	0.26	0.16	1.30
Unclassified	0.61	0.42	1.83
Relationship to someone sentenced to death (Ref = No)	0.19	0.16	1.20
Concern about death penalty (Ref = not at all)			
Not very concerned	-0.28	0.20	0.75
Concerned	0.14	0.19	1.15
Very concerned	-0.10	0.23	0.91
Don't know	-0.03	0.58	0.97
Knowledge that DP is recognised (Ref = Yes)			
No	0.00	0.14	1.00
Don't know	0.22	0.25	1.24
Method of execution (Ref = Answered incorrectly)			
<b>Answered correctly (hanging)</b>	<b>-0.34*</b>	0.14	<b>0.71</b>

Answered that executions have not been carried out for a long time	-0.24	0.23	0.79
<b>Knowledge of crimes punishable by DP (Score 1-5)</b>	<b>-0.21***</b>	0.05	<b>0.81</b>
<b>Overestimation of crimes punishable by DP (Score 0-3)</b>	<b>-0.18*</b>	<b>0.08</b>	<b>0.84</b>
How often felt unsafe in neighbourhood? (1-5)	-0.01	0.02	0.99
<b>How often feared crime in own home? (1-5)</b>	<b>-0.14*</b>	<b>0.05</b>	<b>0.87</b>
Experienced something stolen (Ref = No)	-0.02	0.14	0.98
Experience someone in family attacked (Ref = No)	0.04	0.19	1.04
Estimate of murder rate (Ref = Increased significantly)			
Increased slightly	0.05	0.16	1.05
About the same	0.20	0.27	1.22
<b>Decreased slightly</b>	<b>0.99***</b>	<b>0.28</b>	<b>2.70</b>
<b>Decreased significantly</b>	<b>1.38***</b>	<b>0.42</b>	<b>3.99</b>
Don't know	0.97	0.67	2.64
Trust in the president	-0.08	0.07	0.92
<b>Trust in politicians from the ruling party Jubilee Party</b>	<b>0.28***</b>	<b>0.07</b>	<b>1.32</b>
Trust in politicians from opposition parties	0.09	0.07	1.09
Trust in the police	-0.01	0.07	0.99
Trust in the courts	-0.11	0.08	0.90
Trust in the alternative justice system	-0.05	0.08	0.95
Trust in community leaders	-0.04	0.08	0.96
Trust in religious leaders	0.03	0.07	1.03
Trust in the media	-0.08	0.07	0.92
Trust in civil society	0.11	0.07	1.12
Constant	-0.11	0.64	0.90
* p < .05, ** p < .01, ***p < .001			

Calculated scores

- Poverty indicator: Sum of questions 4A-E.
- Knowledge of crimes punishable by DP: Sum of Q13: A, C, D, E, H
- Overestimation of crimes punishable by DP: Sum of Q13: B, F, G



# APPENDIX

## Survey Instruments





THE DEATH PENALTY PROJECT

SURVEY ON PUBLIC ATTITUDES TO DEATH PENALTY IN KENYA

Let’s begin by recording a few facts about yourself.

1. How old are you? *[Note; interview Kenyan citizens only who are 18 years old and above]*

Let me start by asking questions about your views on social and political issues in Kenya.

2. In your opinion, what are the THREE most important problems facing Kenya that the government should address? *[Do not read out options. Code from responses. Rank top 3 options.]*

	1 <sup>st</sup> most important	2 <sup>nd</sup> most important	3 <sup>rd</sup> most important
Managing the economy	1	1	1
Improving the living standards of the poor	2	2	2
Creating jobs	3	3	3
Keeping prices down	4	4	4
Narrowing gaps between rich and poor	5	5	5
Reducing crime	6	6	6
Improving basic health services	7	7	7
Addressing education needs	8	8	8
Providing water and sanitation services	9	9	9
Ensuring everyone has enough to eat	10	10	10
Fighting corruption in government	11	11	11
Maintaining roads and bridges	12	12	12
Providing a reliable supply of electricity	13	13	13
Other responses			
Nothing/no problems	0		
Other (1st response) (specify _____)	95		
Other (2nd response) (specify _____)	95		
Other (3rd response) (specify _____)			95
No further reply	96		96
Don't know	99		

3. In your opinion, how often, in this country: *[Read out options]*

	Never	Rarely	Often	Always	Don't know [DNR]
A. Do people have to be careful of what they say about politics?	0	1	2	3	99
B. Are people treated unequally under the law?	0	1	2	3	99
C. Do public officials who commit crimes go unpunished?	0	1	2	3	99
D. Do ordinary people who break the law go unpunished?	0	1	2	3	99

I now have some questions concerning you/your family’s experience in the past 12 months.

4. In the past 12 months, how often, if ever, have you or anyone in your family: *[Read out options]*

	Never	Just once or twice	Several times	Many times	Always	Don't Know [DNR]	NA
A. Gone without enough food to eat?	0	1	2	3	4	99	
B. Gone without enough clean water for home use?	0	1	2	3	4	99	
C. Gone without medicines or medical treatment?	0	1	2	3	4	99	77
D. Gone without enough fuel to cook your food?	0	1	2	3	4	99	
E. Gone without a cash income?	0	1	2	3	4	99	

5. In the past 12 months, how often, if ever, have you or anyone in your family: *[Read out options]*

	Never	Just once or twice	Several times	Many times	Always	Don't Know [DNR]
A. Felt unsafe walking in your neighbourhood?	0	1	2	3	4	99
B. Feared crime in your own home?	0	1	2	3	4	99

6. In the past 12 months, have you or anyone in your family: *[Interviewer: If the respondent answers yes, follow by asking:]* Did this happen once, twice, or three or more times?

	No	Yes			
		Once	Twice	Three or more times	Don't Know [DNR]
A. Had something stolen from your house?	0	1	2	3	99
B. Been physically attacked?	0	1	2	3	99

Let’s move on to questions concerning your views on the death penalty in Kenya.

7. Is the death penalty recognised as a punishment in Kenya?

No <i>[explain to interviewees that the death penalty is recognised as a form of state punishment]</i>	0
Yes	1
Don't know <i>[Do not read]</i>	99

8. How concerned are you about the death penalty in Kenya as an issue? *[Read out options]*

Not concerned at all	0
Not very concerned	1
Concerned	2
Very concerned	3
Don't know <i>[Do not read]</i>	99

9. In the past 12 months, have you discussed the death penalty with your family, friends, or colleagues? *[Read out options]*

No	0
Yes	1
Don't know/Don't remember <i>[Do not read]</i>	99

10. Can you tell me roughly how many people have been executed by the state in Kenya in the past 10 years (January 2009 to December 2018)?

None	1
1-10	2
11-20	3
21 and above	4
Don't know <i>[Do not read]</i>	99

11. Can you tell me roughly how many people are currently on death row in Kenya? *[Explain that ‘death-row’ = prisoners who have been sentenced to death and who are detained waiting to be executed.]*

None	1
1-50	2
51-100	3
101 and above	4
Don't know <i>[Do not read]</i>	99

12. Can you tell me what the current method of execution is in Kenya? *[Read out options]*

Lethal injection	1
Electrocution	2
Hanging	3
Stoning	4
Shooting	5
Beheading	6
Don't know <i>[Do not read]</i>	99
Executions have not been carried out for a long time <i>[Do not read]</i>	999

13. Can you tell me if the following offences are punishable by death in Kenya? *[Read out options]*

	No	Yes	Don't Know [DNR]
Murder	0	1	99
Robbery	0	1	99
Robbery with violence	0	1	99
Attempted robbery with violence	0	1	99
Administering an oath purported to bind a person to commit a capital offence	0	1	99
Rape	0	1	99
Corruption	0	1	99
Treason	0	1	99

14. Do you think the number of murders in the past five years has been increasing, decreasing or has remained about the same in Kenya? *[Read out options]*

Increased significantly	1
Increased slightly	2
About the same	3
Decreased slightly	4
Decreased significantly	5
Don't know <i>[Do not read]</i>	99

15. Do you think the death penalty should be kept or abolished in Kenya? *[Read out options]*

Should definitely be kept	1
Should probably be kept	2
Cannot say	3
Should probably be abolished	4
Should definitely be abolished	5
Don't know <i>[Do not read]</i>	99

16. *[If response to Question 15 is, 'should definitely be kept' or 'should probably be kept', ask:]* What is the MOST important reason you support the retention of the death penalty in Kenya? *[Read out options]*

The death penalty should remain the most severe punishment under law	1
To prevent those convicted from committing further crimes	2
To deter others from committing serious crimes	3
Those who commit murder should forfeit their own life	4
Necessary when taking into consideration the feelings of victims' families	5
My religion supports the death penalty	6
My community leader supports the death penalty	7
Death sentences are commuted to life imprisonment	8
N/A	77

17. *[If response to Question 15 is 'should definitely be abolished or 'should probably be abolished, ask:]* What is the MOST important reason you support the abolition of the death penalty in Kenya? *[Read out options]*

Better to keep prisoners alive and make them repent for their crimes	1
Even offenders who commit serious crimes have the potential to be rehabilitated	2
Serious crimes will not increase even if the death penalty is abolished	3
Miscarriages of justice for death penalty cases are irreversible	4
Killing another human being is inhumane	5
My religion does not support the death penalty	6
My community leader does not support the death penalty	7
Death sentences are commuted to life imprisonment	8
N/A	77

18. *[If response to Question 15 is 'cannot say', Ask]* Why did you choose the option 'cannot say'? *[Read out options]*

The death penalty is a difficult issue: I cannot decide	1
I am not concerned about the death penalty	2
N/A	77
Don't know <i>[Do not read]</i>	99



19. Do you think people who commit the following crimes should be sentenced to death? *[Read out options]*

*[Note: Interviewer, explain the difference between ‘murder with aggravating circumstances’ and ‘murder’. Murder with aggravating circumstances = refers to cases where the murder was perhaps unprovoked or was carried out in a particularly brutal manner. Murder = refer to a situation where there are some mitigating circumstances or perhaps where the murderer had been provoked into carrying out the murder.]*

	No	Yes	Not sure [DNR]
Murder with aggravating circumstances	0	1	2
Murder	0	1	2
Manslaughter	0	1	2
Armed robbery	0	1	2
Rape of a child 15 and under	0	1	2
Rape of a child between 16-17 years	0	1	2
Rape of an adult – 18 years and above	0	1	2
Stealing of public funds	0	1	2
Knowingly infect others with HIV	0	1	2
Illegally aborting an unborn baby	0	1	2
Engaging in homosexual acts	0	1	2
Adultery	0	1	2
Genocide	0	1	2
Treason	0	1	2

20. Do you think the following people should be subject to the death penalty? *[Read out options]*

	No	Yes	Not sure [DNR]
People more than 70 years of age	0	1	2
People less than 18 years of age at the time of committing the crime	0	1	2
All women	0	1	2
Pregnant women	0	1	2
New mothers	0	1	2
People with serious mental disorders	0	1	2
People with serious physical disabilities	0	1	2
People born into poverty with limited life chances	0	1	2
Persons who have contributed greatly to society	0	1	2

21. *[If response to Question 20C is ‘NO’]* You answered that all women should not be subject to the death penalty. Why is this? *[Read out options – multiple answers]*

Women need to be protected	1
Women who commit heinous crimes are often under the influence of others and are not fully responsible for their crime	2
Women should be able to look after their children	3
Other (specify _____)	95
N/A	77
Don't know <i>[Do not read]</i>	99

22. *[If response to Question 20C is ‘YES’]* You answered that all women can be subject to the death penalty. Why is this? *[Read out options]*

Men and women should be treated equally	1
Women who commit heinous crimes are especially evil	2
Other (specify _____)	95
N/A	77
Don't know	99

People have different ideas about sentences that should be given to offenders. You will now be presented with several cases and be asked about your personal opinion in each case.

23. A man robbed a local shop with a gun and shot dead the owner in the head. He took away with him 500 Kenyan shillings in cash. He had not previously been convicted of any crime. He was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence <i>[Interviewer ask: how many years &amp; write number of years in space provided]</i> _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other (specify _____)	95
Don't know <i>[Do not read]</i>	99

24. A man robbed a local shop with a gun and shot dead the owner in the head. He took away with him 500 Kenyan shillings in cash. He had previously been in prison twice for robbery. He was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence <i>[Interviewer ask: how many years &amp; write number of years in space provided]</i> _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other (specify _____)	95
Don't know <i>[Do not read]</i>	99

25. A woman deliberately poisoned her husband who dies, so that she could be free to be with her lover. She had not previously been convicted of any crime. She was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence <i>[Interviewer ask: how many years &amp; write number of years in space provided]</i> _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other (specify _____)	95
Don't know <i>[Do not read]</i>	99

26. A woman who had been abused by her husband for many years decided to kill him by deliberately poisoning his food. A neighbour discovered the death of the husband and reported it to the police. She was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence <i>[Interviewer ask: how many years &amp; write number of years in space provided]</i> _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other (specify _____)	95
Don't know <i>[Do not read]</i>	99

27. A man aged 21 raped and killed a girl aged 17 who was a stranger to him. He had not previously been convicted of any crime. He was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence <i>[Interviewer ask: how many years &amp; write number of years in space provided]</i> _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other ((specify _____)	95
Don't know <i>[Do not read]</i>	99

28. A man aged 21 raped and killed a girl aged 17. They were in a romantic relationship. He had not previously been convicted of any crime. He was convicted. Which sentence do you think is appropriate? *[Read out options. If the response is a prison sentence, ask how many years.]*

Prison sentence [Interviewer ask: how many years & write number of years in space provided] _____	1
Life imprisonment with the possibility of release when no longer a danger	2
Life imprisonment without any possibility of release	3
Death sentence	4
Other (specify _____)	95
Don't know <i>[Do not read]</i>	99

29. Mandatory death sentence means everyone, without exception, convicted of certain crimes must be sentenced to death. The judge has no discretion/choice to take into account the circumstances in which the crime took place or the personal circumstances or character of the person convicted. Does Kenya have the mandatory death sentence? *[Read out options]*

Yes	1
No	2
Don't know <i>[Do not read]</i>	99

30. On December 14, 2017, the Supreme Court of Kenya declared the mandatory death penalty unconstitutional for murder, treason and armed robbery. Kenya no longer has the mandatory death penalty. Do you remember reading about the decision in the media, or learning about it through friends and colleagues? *[Read out options]*

Yes	1
No	2
Don't know <i>[Do not read]</i>	99

31. No executions have been carried out in Kenya since 1987. Courts continue to hand down death sentences, and there are approximately 1,000 prisoners on death row (October 2018). In 2016, the president commuted 2,747 death row prisoners to life imprisonment. Do you think it is a good or a bad idea to sentence prisoners to death and later commute their sentence to life imprisonment? *[Read out options]*

Good idea	1
Bad idea	2
Don't know <i>[Do not read]</i>	99

32. *[If response to Question 31 is ‘Good Idea]* You answered that it is a good idea to sentence prisoners to death and later commute their sentence to life imprisonment. What is the MOST important reason? *[Read out options]*

Even death row prisoners deserve forgiveness	1
The <u>threat</u> of executions will make prisoners repent for their crimes, but executions should not be carried out	2
I'm against the death penalty	3
The death penalty is too lenient compared with life imprisonment	4
Don't know <i>[Do not read]</i>	99

33. *[If response to Question 31 is ‘Bad idea]* You answered that it is a bad idea to sentence prisoners to death and later commute their sentence to life imprisonment. What is the MOST important reason? *[Read out options]*

If prisoners have been sentenced to death, they should be executed	1
The government should not interfere with the courts’ decision to sentence a prisoner to death	2
Life imprisonment is too lenient compared with the death penalty	3
Don’t know <i>[Do not read]</i>	99

34. What measures do you think are most likely to be able to reduce violent crimes leading to death in Kenya? Please rank them in order of likelihood. *[Read out options. Rank 3 most important]*

	1 <sup>st</sup> most likely	2 <sup>nd</sup> most likely	3 <sup>rd</sup> most likely
Better moral education of young people	1	1	1
More effective policies to control the possession of firearms	2	2	2
Longer prison sentences for violent offenders	3	3	3
More executions	4	4	4
More effective policing to bring criminals to justice	5	5	5
Reduce corruption in the police	6	6	6
Reduce poverty	7	7	7
Other responses			
Nothing/no problems	0		
Other (1 <sup>st</sup> response) (specify _____)	95		
Other (2 <sup>nd</sup> response) (specify _____)		95	
Other (3 <sup>rd</sup> response) (specify _____)			95
No further reply		96	96
Don’t know <i>[Do not read]</i>	99		

35. All systems of justice make mistakes, but which mistake do you think is worse... to convict an innocent person, or to let a guilty person go free? *[Read out options]*

To convict an innocent person	1
To let a guilty person go free	2
Don’t know <i>[Do not read]</i>	99

36. Do you think that innocent people have been sentenced to death in Kenya? *[Read out options]*

No innocent people have been sentenced to death	0
Very few innocent people have been sentenced to death	1
Few innocent people have been sentenced to death	2
Some innocent people have been sentenced to death	3
Many innocent people have been sentenced to death	4
Don’t know <i>[Do not read]</i>	99

37. *[If response to Question 15 is, ‘should definitely be kept’ or ‘should probably be kept’, ask:]* Suppose it was proved to your satisfaction that innocent people have in fact sometimes been executed, would you then still support the retention of the death penalty or change your mind and support abolition? *[Read out options]*

I still support the death penalty	1
I will support abolition	2
I support abolition regardless of wrongful executions	3
N/A	77
I don’t know <i>[Do not read]</i>	99

38. *[If response to Question 15 is, ‘should definitely be kept’ or ‘should probably be kept’, ask:]* The Kenyan government ratified an international treaty in 1972 that expresses the desirability of abolition. If the government decides to abolish the death penalty in Kenya, would that decision affect your everyday life? *[Read out options]*

No impact on my everyday life	0
A small impact on my everyday life	1
A significant impact on my everyday life	2
N/A	77
Don’t know <i>[Do not read]</i>	99

*[Note: Interviewer, if asked about the international treaty, explain it is the International Covenant on Civil and Political Rights].*

39. Seventeen countries in Sub-Saharan Africa have abolished the death penalty for all crimes. Do you think that Kenya should aim to follow these countries and abolish the death penalty? *[Read out options]*

Yes – we should follow the trend in Sub-Saharan Africa	1
No – China still has the death penalty	2
No – The USA still has the death penalty	3
No – Other countries’ death penalty policy is irrelevant	4
Don’t know <i>[Do not read]</i>	99

*[Note: the total list may be given to interviewees in case asked. Angola, Burundi, Cape Verde, Côte d’Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Madagascar, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo.]*



40. Do you think that the retention of the death penalty harms Kenya’s international reputation?  
[Read out options]

No	0
Yes	1
Don't know [Do not read]	99

41. When making decisions about the future of the death penalty in Kenya, who should have the most influence over whether it is kept or abolished? [Read out options]

The government	1
The parliament	2
The president	3
The Ministry of Justice	4
Courts	5
Alternative justice system	6
Academic experts in criminal law and criminology	7
The public	8
Don't know [Do not read]	99

42. Let’s assume that the death penalty is abolished in Kenya. How likely are YOU to react in the following way? [Read out options]

	Very likely	Somewhat likely	Somewhat unlikely	Very unlikely	Don't Know [DNR]
I'd be unhappy with the decision but will accept it as government policy	1	2	3	4	99
I will sign petitions and participate in demonstrations to bring back the death penalty	1	2	3	4	99
I will stop reporting heinous crimes to the police if I become a victim of crime	1	2	3	4	99
If my family is killed, I will no longer rely on the criminal justice system and take justice into my own hands by killing the offender	1	2	3	4	99

43. Again, let’s assume that the death penalty is abolished in Kenya. In your view, how likely is it for OTHER PEOPLE to react in the following way? [Read out options]

	Very likely	Somewhat likely	Somewhat unlikely	Very unlikely	Don't know [DNR]
People will be unhappy with the decision but will accept it as government policy	1	2	3	4	99
People will sign petitions and participate in demonstrations to bring back the death penalty	1	2	3	4	99
Victims will stop reporting heinous crimes to the police	1	2	3	4	99
Victims' families will no longer rely on the criminal justice system and take justice into their own hands by killing the offender	1	2	3	4	99

44. What do you think is the MOST important reason Kenya has the death penalty? [Read out options]

Heinous crimes are being committed	1
Religious reasons	2
Colonial legacy	3
Kenyan culture and tradition	4
The president wants to keep the death penalty	5
The government wants to keep the death penalty	6
The politicians want to keep the death penalty	7
The public wants to keep the death penalty	8
Don't know [Do not read]	99

45. How much do you trust each of the following, or haven’t you heard enough about them to say? [Read out options]

	Not at all	Just a little	Somewhat	A lot	Don't know/ HHE [DNR]
The president	0	1	2	3	99
Politicians from the ruling party Jubilee Party	0	1	2	3	99
Politicians from opposition parties	0	1	2	3	99
The police	0	1	2	3	99
Courts	0	1	2	3	99
Alternative justice system	0	1	2	3	99
Community leaders	0	1	2	3	99
Religious leaders	0	1	2	3	99
Media	0	1	2	3	99
Civil society	0	1	2	3	99

Let me ask a few questions about you.

46. Gender of respondent

Female	1
Male	2
Other	3

47. What is your ethnic community, cultural group or tribe? *[Do not read options. Code from response.]*

Kikuyu	3
Luhya	4
Kalenjin	5
Luo	6
Kamba	7
Kisii	8
Somalis	9
Mijikenda	10
Meru	11
Turkana	12
Maasai	13
Kenyan only (or does not think of self in terms of 'ethnic community, cultural group or tribe')	14
Refused to answer	15
Other (specify _____)	95
Don't know	99

48. Which of these things do you personally own? *[Read out options]*

	No: don't own	Yes: do own	Don't know [DNR]
Radio	0	1	99
Television	0	1	99
Motor vehicle or motorcycle	0	1	99
Mobile phone	0	1	99

49. What is your main occupation? *If [unemployed, retired or disabled], ask what your last main occupation was? [Do not read options. Code from response.]*

Never had a job	1
Student	2
Housewife/homemaker	3
Agriculture/farming/fishing/forestry	4
Trader/hawker/vendor	5
Retail/shop	6
Unskilled manual worker (e.g. cleaner, labourer, domestic help, unskilled manufacturing worker)	7
Artisan or skilled manual worker (e.g. trades like electrician, mechanic, machinist or skilled manufacturing worker)	8
Clerical or secretarial	9
Supervisor/foreman/senior manager	10
Security services (police, army, security)	11
Mid-level professional (e.g. teacher, nurse, mid-level government officer)	12
Upper-level professional (e.g. banker/finance, doctor, lawyer, engineer, accountant, professor, senior-level government officer)	13
Other (specify _____)	95
Don't know	99

50. What is your highest level of education? *[Code from answer. Do not read options]*

No formal schooling	1
Informal schooling only (including Koranic/Madrassa schooling)	2
Some primary schooling	3
Primary school completed	4
Intermediate school or some secondary school/high school	5
Secondary school/high school completed	6
Post-secondary qualifications, other than university, e.g. a diploma or degree from a polytechnic or college	7
Some university	8
University completed	9
Postgraduate	10
Don't know	99

51. What is your religion? *[Code from responses. Do not read options]*

Catholic	1
Protestant and other Christians	2
Muslim	3
Hindu	4
Atheist	5
African Traditionalist	6
Atheist	7
Other (specify)	8
Refused	98
Don't know	99

52. People practice their religion in different ways. Aside from weddings and funerals, how often do you personally engage in religious practice like prayer, reading a religious book, or attending a religious service or a meeting of a religious group? Would you say you do so: *[Read out options]*

Never	0
A few times a year	1
About once a month	2
About once a week	3
About once a day	4
More than once a day	5
Respondent has no religion <i>[Do not Read]</i>	6
Don't know <i>[Do not Read]</i>	99

53. Just one more question: In addition to Infotrak, who else do you think sent us to do this interview? *[Do not read options. Code from response.]*

No-one	0
Infotrak	1
Research company/organisation/programme <i>[but not Infotrak]</i>	2
Non-government or religious organisation	3
University/school/college	4
Private company	5
Media	6
Political party or politician	7
Government (including any government official, government agency or ministry, or any other part of government named by the respondent)	8
International organisation or another country	9
God	10
Other (specify _____)	95
Refused to answer	98
Don't know	99

*[Interviewer: If asked, explain that the research is carried out by a UK-based NGO (The Death Penalty Project), and an independent researcher from the Australian National University.]*

54. Had respondent asked the interviewer about organisers before reaching question 53?

No	0
Yes	1



# About the author



**Carolyn Hoyle**

Professor Carolyn Hoyle has been at the University of Oxford Centre for Criminology since 1991 and was Centre Director from 2012-17. She is Director of the Oxford Death Penalty Research Unit, and co-author of the leading international study on the death penalty, *The Death Penalty: A Worldwide Perspective*, the last edition of which was published in 2015 by Oxford University Press.

She has published empirical and theoretical research on a wide range of criminological topics in addition to the death penalty: wrongful convictions, policing, domestic violence, and restorative justice. She lectures extensively and supervises research students on these and other criminological topics.

Hoyle has conducted several studies for The Death Penalty Project, including studies of opinion formers’ views on the death penalty in India, Bangladesh, Zimbabwe, Indonesia and Taiwan. She is also working closely with The Death Penalty Project and other leading international and national NGOs on a study of foreign nationals at risk of the death penalty in Asia and the Middle East.

# Contributor



**Diana Batchelor**

Diana Batchelor is a post-doctoral researcher at the University of Oxford Centre for Criminology, and has worked in criminal justice and conflict resolution in the UK, South Africa and Lebanon. She has an MA in international peace studies from the University of Notre Dame, USA, an MSc in forensic psychology from Middlesex University, UK, and a DPhil in criminology from the University of Oxford, UK. Her current research is about what happens when victims of crime are given the chance to communicate with the people who committed an offence against them.

# The Death Penalty Project

The Death Penalty Project is a legal action NGO based in the UK, with special consultative status before the United Nations Economic and Social Council.

For more than three decades it has provided free legal representation to death row prisoners around the world, to highlight miscarriages of justice and breaches of human rights. It also assists other vulnerable prisoners, including juveniles, those who suffer from mental health issues, and prisoners who are serving long-term sentences.

The Death Penalty Project has been commissioning, supporting and publishing independent academic research on attitudes towards the death penalty for almost a decade. It uses original data from public opinion surveys and other empirical research to engage in dialogue with policy-makers and politicians, and challenge popular misconceptions around the death penalty.

All publications by The Death Penalty Project are available to view and download at:  
[www.deathpenaltyproject.org](http://www.deathpenaltyproject.org)

## Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011). It is the State's lead agency in the promotion and protection of human rights. The operations of the KNCHR are guided by the United Nations-approved Paris Principles on the establishment and functioning of independent national human rights institutions. The National Commission has been accredited by the International Coordinating Committee of National Human Rights Institutions (ICC) and is a member of the Network of African National Human Rights Institutions, the ICC's regional grouping for Africa.

The Commission plays two key broad mandates by acting as a watchdog over the government in the area of human rights and providing key leadership in moving Kenya towards upholding human rights as a state. The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor the compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights, and collaborate with other stakeholders in Kenya.

For further information please visit: [www.knchr.org](http://www.knchr.org)



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