



**REGIONAL GUIDELINES**  
**for Lawyers Representing Individuals**  
**Facing the Death Penalty and Execution in Asia**

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## **BACKGROUND**

These guidelines result from a sustained collaboration among civil society organisations across Asia, recognising the urgent need to strengthen legal representation in death penalty cases. In 2021, a group of legal and human rights organisations—including the Institute for Criminal Justice Reform (ICJR, Indonesia), The Square Circle Clinic (TSCC, formerly Project 39A) (India), Justice Project Pakistan (JPP), Taiwan Alliance to End the Death Penalty (TAEDP), Transformative Justice Collective (TJC, Singapore), Malaysian Centre for Constitutionalism and Human Rights (MCCHR), and a Chinese legal researcher—conducted research on fair trial standards in capital cases. Later, representatives from the Centre for Prisoners Rights (CPR, Japan) and Japan Federation of Bar Associations joined this initiative, further enriching the collaboration with their expertise and perspective. The Anti-Death Penalty Asia Network (ADPAN) also contributed to discussions. Facilitated by The Rights Practice, this initiative documented structural, procedural, and institutional challenges affecting capital defence. Despite differences in legal systems, common barriers emerged, including inconsistent defence standards, restricted access to case materials, inadequate legal aid, and the limited capacity of lawyers to present mitigating factors. These findings underscored the urgent need for a regionally grounded framework to support defence lawyers in navigating the complexities of capital cases.

In 2023, an initial convening brought together legal practitioners and human rights advocates to discuss the research findings and explore solutions. While international human rights instruments provide fundamental legal benchmarks, participants identified a lack of regionally specific guidance for capital defence. Participants agreed that an Asia-led initiative was necessary—one tailored to the region's diverse legal, political, and cultural contexts rather than an adaptation of external models.

Building on these discussions, a second meeting in November 2024 in Kuala Lumpur brought together civil society organisations and legal practitioners to shape the content of the guidelines. Participants engaged Ricky Gunawan, an Indonesian human rights lawyer with extensive experience in capital defence, to facilitate the meeting and spearhead the drafting process. The meeting allowed participants to define key legal and procedural safeguards, ensuring that the guidelines would be both practical and aspirational in elevating defence standards.

Following the Kuala Lumpur meeting, between January and March 2025, Gunawan led the drafting with strategic oversight, integrating regional feedback, conducting further legal research, and refining the structure to enhance clarity and applicability across diverse jurisdictions. The process involved multiple rounds of consultation, ensuring that the framework reflected both legal soundness and practical defence strategies across diverse jurisdictions.

The version presented here is the culmination of this collaborative effort. It represents a regionally driven initiative aimed at strengthening legal representation in capital cases and reinforcing broader fair trial protections. These guidelines serve as both a practical tool for defence lawyers and a strategic advocacy document, reinforcing the role of legal practitioners in upholding due process, ensuring professional ethics, and advancing fair trial standards in capital cases across Asia.

# PREAMBLE

The death penalty remains the most severe and irreversible form of punishment, where the quality of legal representation often determines life or death. Unlike other criminal proceedings, where appellate mechanisms may remedy errors, procedural missteps in capital cases frequently lead to irreparable consequences. The gravity of such cases underscores the imperative for competent, well-resourced, and strategically adept legal representation from arrest to clemency petitions and final appeals.

In Asia, where the majority of jurisdictions retain and enforce capital punishment, the need for a regionally tailored framework for capital defence is more pressing than ever. With 20 countries<sup>1</sup> in the region maintaining the death penalty, legal landscapes vary significantly—some states are progressively restricting its application, while others continue to impose it under conditions that contravene fair trial rights and international human rights standards. This diversity underscores the urgent need for a cohesive approach to safeguarding the rights of individuals facing capital punishment. Given these systemic deficiencies and the absence of uniform safeguards, a coherent and regionally adapted set of principles is necessary to equip defence lawyers with the tools to protect the rights of those facing capital punishment.

The death penalty disproportionately affects marginalised and socioeconomically disadvantaged individuals, including those who lack the financial resources for private legal representation, persons with psychosocial disabilities, foreign nationals unfamiliar with local legal systems, and those facing systemic discrimination. Once a death sentence is imposed, the likelihood of reversal declines drastically, owing to evidentiary barriers, procedural restrictions, and judicial reluctance to overturn capital convictions. Many Asian jurisdictions lack consistent procedural safeguards, further exacerbating these challenges and making early, proactive legal intervention critical for securing a fair trial.

The need for regionally responsive, practice-oriented guidelines for capital defence lawyers is paramount. These guidelines seek to address systemic flaws by providing legal practitioners with a principled, structured, and ethically rigorous framework. By codifying best practices and drawing from international legal instruments—including the International Covenant on Civil and Political Rights (ICCPR), the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, and the UN Principles and Guidelines on Access to Legal Aid—this document aims to institutionalise standards that guarantee competent and high-quality legal representation.

While these guidelines draw from international legal frameworks, comparative jurisprudence and similar guidelines, such as the American Bar Association (ABA) Guidelines on Defence Counsel in Death Penalty Cases and Death Penalty Worldwide’s Best Practices Manual, they do not seek to transplant external legal traditions into Asian jurisdictions. Instead, they articulate a regionally grounded approach, shaped by the legal, cultural, and procedural complexities of Asia. These guidelines reflect lessons learned from comparative resources while centring the realities of defence lawyers working in the region. This initiative is led by and for Asian legal practitioners, recognising the unique institutional, resource, and procedural constraints that define capital litigation in Asia.

Beyond improving individual case outcomes, these guidelines serve as a strategic tool for strengthening institutional frameworks and reinforcing procedural safeguards. They seek to reduce arbitrariness in the application of the death penalty, enhance access to justice, and align defence strategies with international human rights principles. Lawyers play a pivotal role in ensuring capital punishment is applied with strict adherence to legal and procedural safeguards and, where abolition is not yet achieved, that the process remains fair, transparent, and rigorously scrutinised.

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<sup>1</sup> According to Amnesty International’s 2023 Global Report on the Death Penalty.

## SCOPE AND PURPOSE

These Guidelines emerge in response to persistent and deeply entrenched structural deficiencies in legal systems across the region, particularly as they relate to capital punishment. They confront a landscape marked by inconsistent access to qualified legal representation, recurrent violations of fair trial guarantees, insufficient use of mitigation, and acute barriers to justice for individuals from marginalised or vulnerable groups. Conceived as a principled yet practical intervention, the Guidelines are intended primarily for lawyers who represent individuals facing the death penalty—irrespective of the nature of the offence or the lawyer’s level of experience. Whether newly called to the bar or seasoned by years of litigation, all legal practitioners stand to benefit from the coherent set of values, duties, and standards articulated herein.

More than a technical reference or aspirational statement, these Guidelines function as a normative framework of safeguards: a regional architecture to reinforce fair trial rights and promote principled legal defence in the most serious of cases. By grounding capital defence practice in procedural integrity and substantive fairness, the Guidelines serve as a shield against arbitrariness, reinforcing both the dignity of the accused and the credibility of legal institutions. Civil society actors, bar associations, and academia may also draw on the Guidelines to advance structural reforms, enrich legal pedagogy, and challenge entrenched systemic inequities in capital cases.

The Guidelines span the entire continuum of a capital case—from the moment of arrest and pre-trial detention through trial, appellate review, clemency processes, and the final stages prior to execution. They address critical issues such as access to counsel, evidentiary standards, mitigation, the use of experts, and the procedural safeguards required in both domestic and transnational contexts. Particular attention is also given to the treatment of foreign nationals, individuals with psychosocial disabilities, and those whose life histories intersect with systemic forms of disadvantage. This breadth reflects a holistic understanding of capital defence—one that recognises the interdependence of legal advocacy, procedural justice, and the broader conditions in which the death penalty is applied.

Importantly, these Guidelines do not purport to introduce new legal obligations. Rather, they distil and synthesise existing legal norms, ethical duties, and jurisprudential insights into a single, accessible framework. Rooted in international human rights law and informed by regional legal realities, the Guidelines aim to support legal practitioners in navigating the complex intersection of law, culture, politics, and morality that characterises capital cases in Asia.

They are conceived as a living instrument, to be revised, refined, and strengthened over time in light of evolving jurisprudence, implementation experience, and shifts in national and international legal landscapes. As such, they are intended not only to reflect prevailing standards but also to shape the trajectory of capital defence practice across the region.

Given the intrinsic interrelationship among legal safeguards, representation standards, and broader systemic reform, some degree of thematic convergence across the articles is both deliberate and necessary. The Guidelines are meant to be read as an integrated whole—each article reinforcing and complementing others—thereby providing a coherent and comprehensive vision for principled and effective capital defence.

## **Chapter I GUIDING PRINCIPLES**

### **Upholding Dignity and Rights**

- 1. Lawyers must provide the best defence possible and represent their clients rigorously and comprehensively from the time of arrest and/or investigation through to the final stages of clemency, pardon, or mercy petitions, or in a certain case – execution.**

This responsibility entails providing skilled legal counsel and unwavering commitment and advocacy to safeguard the client’s fundamental rights at every stage of the legal process. Lawyers must act decisively and exhaust all available legal avenues from the moment of arrest, intervening to prevent rights violations, ensuring strict adherence to procedural fairness, and addressing systemic challenges that may compromise the integrity of proceedings.

All evidence forming the basis of guilt must be meaningfully challenged, ensuring that no conviction stands without rigorous scrutiny. At the sentencing stage, the defence must be substantive, and actively engaged in securing the most lenient possible outcome for the client, going beyond formalistic procedural compliance.

In clemency or mercy proceedings, lawyers are obliged to pursue all possible legal options, presenting robust mitigation evidence and invoking relevant international human rights principles. Even when execution appears imminent, lawyers have a critical responsibility to scrutinise procedural safeguards and challenge any errors or prevent potential miscarriage of justice. In all instances, lawyers’ efforts must reflect the highest standard of professional diligence and ethical commitment. Their actions constitute the first and final line of defence against irreversible harm, underscoring their essential role in upholding justice, due process, and the rule of law.

- 2. Lawyers should identify and must actively and meaningfully challenge systemic injustices, procedural irregularities, and institutional biases that compromise the integrity of capital proceedings.**

Lawyers have a duty to critically examine and address systemic barriers that perpetuate unfair outcomes in capital cases. This responsibility requires vigilance in identifying patterns of discrimination, procedural flaws, and structural inequities that disproportionately affect marginalised communities or vulnerable individuals. Systemic injustice extends beyond individual trials and encompass broader failures within the capital punishment framework, including the treatment of death row prisoners, prison conditions, and procedural rules that shape capital convictions. By addressing these structural deficiencies, lawyers help ensure that their clients receive a fair and impartial hearing, in accordance with the fundamental principles of justice.

Actively challenging such injustices involves scrutinising and opposing laws and procedural obstacles designed to hinder meaningful legal review at all stages, including conviction, sentencing, judicial review, constitutional challenges, and stay of execution proceedings. Lawyers must contest provisions that impede access to remedies, such as restrictive post-conviction appeal mechanisms, legal presumptions that favour conviction, and unjust limitations on challenges to aspects of the death penalty regime—such as methods of execution, clemency processes, and detention conditions. Moreover, lawyers should challenge coercive law enforcement practices, including entrapment, the systematic denial of legal representation, and procedural shortcuts that undermine due process. Where possible, they should advocate for

the reopening of cases where newly discovered evidence, procedural violations, or failures of legal safeguards indicate that an injustice has occurred.

Beyond individual cases, lawyers must work toward broader reforms to eliminate systemic biases and strengthen adherence to the rule of law. This includes challenging restrictive criminal procedure rules, demanding transparency and accountability in capital trials, and working to dismantle entrenched legal barriers that deny defendants full access to justice. By fulfilling this role, lawyers protect not only the rights and dignity of individuals facing the death penalty but also the legitimacy of the legal system itself. These efforts reinforce fairness, prevent arbitrary and disproportionate punishments, and uphold fundamental human rights in capital proceedings.

**3. Lawyers must uphold the presumption of innocence and ensure that the burden of proof remains fully with the prosecution, which must establish guilt to the highest standard under the law.**

The presumption of innocence is a foundational principle of fair trial rights. It guarantees that every person accused of crime is treated as innocent unless and until proven guilty. This principle applies at all stages of legal proceedings, beginning from arrest and investigation through to trial, sentencing, and appeal. Lawyers have a duty to assert this right rigorously and to ensure that their clients are not subjected to prejudicial treatment or assumptions of guilt before the legal process has been fully and fairly exhausted.

The burden of proof must rest entirely with the prosecution, who are required to establish the client's guilt to the highest standard of proof—beyond reasonable doubt. In capital cases, this means presenting clear, compelling, and irrefutable evidence that exclude any reasonable hypothesis of innocence. Lawyers must challenge prosecutorial shortcuts, evidentiary weakness, or legal presumptions that reverse this burden. Defending the presumption of innocence is especially critical in jurisdictions where public or institutional bias may influence proceedings, and where the consequences of error are irrevocable.

**4. Lawyers must respect the client's will, decisions, and autonomy, as they make every possible effort to advocate effectively for their clients. This includes ensuring that clients are fully informed of their legal rights, the consequences of their decisions, and available legal avenues.**

In cases involving the death penalty, lawyers must carefully balance this respect for client autonomy with their broader responsibility to challenge the use of capital punishment. Sensitivity to these issues is essential, particularly when addressing clients who may be vulnerable or experiencing pressure to accept legal outcomes that may not serve their best interests. Lawyers must be mindful of external factors, such as coercion, despair, or misinformation, that may influence their clients' decisions. By fostering a relationship of trust and open dialogue, lawyers can effectively represent their clients, while upholding their ethical and professional obligations.

### **Addressing Vulnerabilities**

**5. Lawyers should actively identify and document vulnerabilities of their clients to ensure they are effectively presented as mitigating factors during legal proceedings, thereby highlighting the broader systemic failures that contribute to criminal behaviour.**

Defence lawyers have a professional duty to identify client vulnerabilities, including histories of trauma, mental health conditions, severe poverty and systemic exploitation, such as coercion by drug trafficking syndicates. These considerations must align with international human rights standards, to present robust mitigation strategies. Highlighting such vulnerabilities is critical to humanising defendants and exposing systemic failures that contribute to criminal behaviour. Lawyers should also proactively develop mitigation strategies to ensure that all legal decisions are made with a comprehensive understanding of their potential consequences.

While advocating for these factors, lawyers must ensure they do not retraumatise their clients in the process. Engaging in a trauma-informed approach, they should employ sensitive interview techniques, allow clients to share their experiences at their own pace, and provide a supportive environment that prioritises their well-being. Lawyers should coordinate with psychological and social support services to ensure that clients receive appropriate care and that their histories are presented in a way that strengthens their defence without causing further distress.

### **Inclusion of Families**

- 6. Lawyers must ensure their clients' families are fully informed and empowered to participate meaningfully throughout the legal process, including supporting clemency petitions, attending key hearings, and contributing to mitigation efforts.**

Active collaboration with clients' families is an indispensable element of holistic legal representation. Families often serve as invaluable advocates, providing emotional support to the defendant and offering personal narratives that humanise the case. Their involvement strengthens mitigation arguments and underscores the societal and familial impact of capital punishment. However, supporting families is a complex and often resource-intensive responsibility that extends beyond the immediate legal defence. Lawyers must ensure families are actively included in the legal process while recognising the need for collaboration with civil society organisations, advocacy groups, and other relevant actors who may be better placed to provide broader psychosocial and practical support.

Given the emotional strain, logistical challenges, and advocacy demands involved, lawyers must balance their core legal duties with the need to engage families effectively. While legal representatives play a crucial role in facilitating communication and ensuring procedural transparency, there are aspects of family support—such as public advocacy, media engagement, and long-term psychosocial assistance—that may fall outside their professional obligations. In such cases, civil society actors, community networks, and other relevant stakeholders should be mobilised to ensure families receive comprehensive support without compromising the lawyer's primary responsibility of legal representation. A structured, multidisciplinary approach strengthens the overall defence strategy and ensures that families are supported in a manner that is both sustainable and aligned with the broader pursuit of justice.

### **Cultural and Religious Considerations**

- 7. Lawyers are expected to respect and incorporate cultural norms and religious beliefs into their advocacy, where relevant.**

Cultural and religious contexts must be integrated into an effective legal strategy. For example, lawyers may raise awareness of cultural traditions or religious practices that provide context for the defendant's actions, or seek the involvement of religious leaders during clemency proceedings to offer moral and spiritual support. This approach not only strengthens the defence

but also fosters a culturally sensitive narrative that resonates with decision-makers. Understanding cultural motivations behind specific actions or facilitating religious support during clemency proceedings may substantially influence the perception of the case and the outcome.

### **Equal Treatment and Non-Discrimination**

- 8. Lawyers are required to advocate for equal treatment and non-discrimination, ensuring that no client is disadvantaged based on factors such as race, gender, ethnicity, socio-economic, or other status.**

This obligation entails challenging systemic biases and entrenched inequities within the judicial process, which often perpetuate unequal outcomes that disproportionately affect marginalised communities. By ensuring fair treatment, lawyers uphold the principles of justice and equity that are fundamental to both domestic and international legal standards.

In capital cases, the stakes are particularly high, as systemic biases frequently intersect with socio-political inequalities, amplifying the risk of wrongful convictions. Lawyers must confront these intricacies with vigilance, employing evidence-based arguments. Furthermore, they should actively advocate for systemic reforms, such as improved access to legal aid, implicit bias training, and effective mechanisms for accountability.

### **Transparency and Accountability in Capital Proceedings**

- 9. Lawyers must actively promote transparency in capital proceedings by challenging opaque legal processes, exposing systemic deficiencies, and ensuring that information on death penalty cases is accessible to civil society, oversight bodies, and the public. This responsibility extends beyond individual cases to advocating for greater institutional accountability and reform.**

The secrecy surrounding capital punishment often enables procedural violations, unfair trials, and arbitrary application of the death penalty. Lawyers are uniquely positioned to document, analyse, and disclose critical information regarding state practices in capital cases, including deficiencies in legal representation, coercive law enforcement tactics, and inconsistencies in clemency and sentencing decisions. Where permitted by professional ethics and client consent, lawyers should work in collaboration with civil society organisations, independent oversight bodies, and international mechanisms to highlight these concerns and push for systemic reforms.

Lawyers should also advocate for greater transparency in state decision-making processes, including the publication of sentencing data, clemency decisions, execution procedures, and prison conditions. This is particularly crucial in jurisdictions where capital punishment is applied in secrecy, preventing meaningful public scrutiny and denying the defendant a fair and dignified legal process. By strengthening transparency and fostering public awareness, lawyers help expose patterns of injustice, hold institutions accountable, and contribute to long-term efforts to safeguard due process and human rights protection in death penalty cases.

## **Chapter II LEGAL SUPPORT AND TRAINING**

### **Adequate Compensation and Support**

- 10. Lawyers engaged in capital cases must receive fair and adequate compensation and financial support to ensure they can provide high-quality representation.**

States must allocate sufficient resources to enable capital defence lawyers to access the necessary tools, funding, and institutional support required for effective legal representation. Beyond fair remuneration, financial support should cover essential resources, such as, investigative services, expert witnesses, forensic analysis, and travel expenses to meet clients in detention. Adequate compensation is not merely a matter of fairness but a prerequisite for attracting and retaining skilled lawyers to navigate the complexities of death penalty cases. Ensuring sustainable funding allows lawyers to dedicate the necessary time and resources to each case, engage relevant specialist, and develop thorough defence strategies without financial constraints. Additionally, fair remuneration acknowledges the unique challenges and emotional toll associated with handling capital cases, reinforcing the value of such critical legal work in safeguarding justice and human rights.

### **Competence and Experience**

- 11. Lawyers taking on death penalty cases must possess adequate competence, demonstrated through prior relevant experience, specialised training, or education, to navigate the intricate legal, procedural, and ethical challenges inherent in capital punishment litigation.**

Specialised training and experience are non-negotiable for lawyers handling death penalty cases. Competence encompasses not only legal knowledge but also a deep understanding of mitigation strategies, cultural sensitivities, international human rights standards, and an acute awareness of clients' vulnerabilities, all of which are critical to effective representation. It requires lawyers to demonstrate empathy, emotional intelligence, and sensitivity to their clients' unique circumstances, enabling them to cultivate reliable trust and craft a defence strategy that fully reflects the human dimension of each case.

Bar councils and legal professional bodies have a responsibility to ensure that lawyers handling capital cases receive adequate training, resources, and institutional support to strengthen their capabilities. This includes structured mentorship programs, continuous legal education, and access to forensic, psychological, and investigative expertise to build a robust pool of competent capital defence advocates.

In many capital cases, lawyers must navigate a complex media and political landscape that can significantly impact public perception and judicial proceedings. Political interference, sensationalist reporting, and public pressure can distort the course of justice and create an environment hostile to fair trial guarantees. While media engagement can be an important tool for exposing systemic injustices or mobilising public support, it must be approached with strategic discipline. Lawyers have a duty to ensure that their client's privacy and the dignity of their families are protected, particularly when public exposure risks causing further harm or undermining the legal strategy. Wherever possible, lawyers should obtain informed consent from their clients before engaging with the media and carefully consider the potential legal and personal consequences of publicity. Responsible engagement requires balancing the value of

public awareness with the paramount obligation to protect the client's rights, safety, and well-being.

- 12. Capacity building initiatives should prioritise the leadership of Asian lawyers and civil society organisations, recognising their deep-rooted trust, extensive networks, and profound understanding of regional contexts and their capacity to address the specific legal and cultural challenges faced in the region.**

These organisations, with their established relationships and credibility, are well-placed to drive sustainable and locally relevant efforts. They have the ability to design and implement programs that reflect local realities, such as differing and complicated legal frameworks, engrained cultural dynamics, and resource constraints, and can benefit from longstanding engagement with affected populations. This approach fosters a locally grounded framework for driving meaningful changes, led by those with the most direct expertise and community connection.

### **Chapter III ACCESS**

#### **Lawyers' Access**

- 13. Lawyers must have unhindered access to individuals facing capital charges from arrest through all stages of trial and post-trial proceedings, ensuring continuous and effective representation. Further, lawyers must provide clients with clear, comprehensive guidance on their legal rights, the ramifications of their choices, and the legal recourse available to them.**

Lawyers must be present at all critical stages of the process, including arrest, interrogations and any proceedings that may affect their client's rights. This access is a fundamental legal safeguard, forming a cornerstone of due process and fair trial guarantees. It ensures that individuals facing capital charges can meaningfully exercise their legal rights and receive competent legal representation without obstruction or delay. Every accused person, regardless of their nationality, background or alleged crime, has the right to effective legal representation, including those who are detained, held *incommunicado*, or facing other restrictions.

In cases involving foreign nationals, access to legal representation should extend to lawyers from their country of origin, particularly where state-appointed legal aid may be inadequate or unfamiliar with the unique legal, linguistic, and cultural challenges the defendant faces. Lawyers should advocate for their clients to have access to counsel of their choice, including cross-border legal assistance where necessary.

Unhindered access to legal counsel is critical in preventing procedural violations that may lead to wrongful convictions or arbitrary imposition of the death penalty. Authorities must not obstruct, delay, or impose unjustified or unreasonable restrictions on lawyer-client interactions, whether or not they involve legal matters, as such barriers directly undermine the right to an adequate defence. Some communications may not pertain directly to legal matters, yet they are fundamental to preserving the trust and rapport between lawyers and their clients.

National bar councils or legal professional bodies should take proactive steps to guarantee that lawyers have full and timely access to their clients at all times, particularly during pre-trial detention when rights violations are most likely to occur.

- 14. Lawyers must prioritise clear and accessible communication by employing qualified interpreters, culturally sensitive communication methods, and visual or simplified materials where necessary, to help address language or literacy barriers.**

This approach is particularly vital for foreign nationals and individuals from marginalised communities who may face systemic disadvantages within the legal system. By ensuring clients fully understand their rights, the charges against them, and the legal proceedings, lawyers enhance trust, mitigate power imbalances, and strengthen the overall quality of defence representation.

### **Access to Experts**

- 15. Lawyers must collaborate with forensic experts, mental health professionals, mitigation specialists, and other relevant experts to strengthen their cases and ensure that every aspect of the defence is comprehensively developed. Clients facing the death penalty must also have meaningful access to these experts, allowing them to participate in assessments, present relevant medical or psychological evidence or history, and strengthen mitigation arguments.**

In instances where local resources are insufficient, regional partnerships should be fostered to ensure access to specialised expertise. Expert testimony plays a pivotal role in bolstering defence arguments by offering critical insights, particularly in establishing mitigating circumstances or diminished responsibility. It is essential that experts engaged in capital defence cases operate with independence and remain free from institutional bias, ensuring that their assessments and testimonies are based on the highest professional integrity rather than external pressures. This independence is particularly crucial when advocating for state allocation of resources to support expert access, as reliance on government-appointed specialists may raise concerns about impartiality and undue influence.

Beyond individual cases, lawyers should actively advocate for the institutionalisation of such collaborations, urging governments and relevant institutions to allocate sufficient resources and establish mechanisms for sustained access to independent and qualified expertise, including forensic analysis, trauma evaluation, and cultural assessment. Strengthening these structural frameworks ensures that capital defence proceedings are not reliant on ad-hoc arrangements but are instead supported by a robust and well-integrated network of impartial and competent professionals. By embedding expert collaboration into legal defence strategies, lawyers contribute to a fairer, more credible adjudication process in capital cases.

- 16. Lawyers must actively engage with civil society organisations and other relevant stakeholders to build a resilient and comprehensive ecosystem that enhances the protection of individuals facing the death penalty.**

Capital defence extends beyond providing legal assistance in individual cases—it requires a robust support system that, in many Asian countries, remains underdeveloped or insufficient. In many Asian jurisdictions, the absence of well-established support structures places an excessive burden on individual lawyers, making it essential for legal practitioners to advocate for a more robust and sustainable framework. Lawyers should take an active role in fostering cooperation with civil society organisations, professional associations, and other stakeholders to address systemic gaps, improve legal frameworks, and ensure that capital defence aligns with international human rights standards.

A well-functioning ecosystem must connect legal practitioners with mitigation experts, forensic specialists, mental health professionals, and other relevant experts, ensuring access to multidisciplinary support necessary for building a strong defence. Additionally, lawyers should work to strengthen professional networks that facilitate the exchange of lessons learned, consolidate best practices, and promote ongoing professional development. By encouraging collaboration among these actors, lawyers can contribute to a more just and equitable system that prioritises the dignity, rights, and fair trial protections of all individuals facing the death penalty.

### **Access to Documents and Evidence**

- 17. Lawyers must have the unequivocal right to immediate and comprehensive access to all relevant documentation throughout all stages of the legal process. This includes, but is not limited to, investigation records or reports, interrogation logs, medical reports, forensic analyses, evidence collection logs, and other case-related materials. Such access is indispensable for lawyers to adequately prepare a thorough and effective defence, safeguarding the rights of clients, and ensuring adherence to international human rights standards.**

Access to pre-trial documentation is particularly critical for identifying and addressing procedural violations, such as coercion, unlawful evidence-gathering practices, and other forms of misconduct. Early access empowers lawyers to challenge the admissibility of unlawfully obtained evidence, construct credible defence strategies, and uphold their clients' right to a fair trial. Moreover, it serves as a systemic safeguard against abuse, promoting accountability, and reinforcing the integrity of the justice system.

Relevant authorities have a binding obligation to provide such access promptly and without unnecessary hindrance, recognising that delays or denials can critically undermine the fairness of proceedings and the client's ability to mount a robust legal challenge. Transparency in evidence-sharing is not merely a procedural necessity but a cornerstone of fair trial rights, essential in capital cases. Ensuring unimpeded access to case documentation strengthens the credibility of the justice system, affirms due process guarantees, and safeguards against wrongful convictions or unfair sentencing.

- 18. Lawyers must also facilitate access to case-related information for their clients' families, enabling them to support the legal process effectively.**

Such facilitation, however, must be conducted with strict adherence to confidentiality protocols to safeguard sensitive information. Lawyers should strike a careful balance between providing families with meaningful participation in the case and protecting privileged or sensitive details that could jeopardise the client's position. This collaboration empowers families to play a constructive role, while ensuring the integrity of the legal defence remains uncompromised.

### **Confidentiality and Data Protection**

- 19. Lawyers must ensure that all communications with their clients, through all means including in-person visits, are treated as strictly confidential, and take proactive steps to protect this confidentiality throughout the legal process. Lawyers should also actively inform their clients of their right to confidential communication and ensure they understand how sensitive information will be handled and protected.**

Upholding confidentiality fosters trust, encourages full participation in the defence, and is essential to preserving the integrity of attorney-client privilege.

Strict adherence to confidentiality protocols is a core professional and ethical obligation. Lawyers must remain alert to any attempts—by authorities or otherwise—to undermine this protection and take all necessary steps to prevent breaches, thereby safeguarding both the client’s rights and the fairness of the proceedings.

## **Chapter IV**

### **ENSURING FAIRNESS AND PROTECTION IN CAPITAL CASES**

#### **Preventing Torture and Ill-treatment in Capital Cases**

- 20. Lawyers must take proactive and strategic measures to safeguard their clients from torture, coercion, violence, or other forms of ill-treatment, particularly during arrest, detention, and interrogation. Given the heightened risks of abuse in capital cases, lawyers must act as frontline safeguards against practices designed to extract confessions and/or information, undermine fair trial rights, or exert undue pressure on defendants.**

Lawyers must actively monitor detention conditions and advocate for safeguards that prevent mistreatment, including access to legal counsel during interrogations, protections against incommunicado detention, and the right to remain silent. Pre-trial detention is often characterised by overcrowding, poor supervision, and unchecked power dynamics, making individuals facing capital charges especially vulnerable. Lawyers must ensure that any signs of physical or psychological abuse are promptly identified, meticulously documented, and brought to the attention of oversight bodies, courts, or international mechanisms. Where mistreatment occurs, lawyers must file urgent legal challenges to exclude coerced evidence and demand accountability for violations.

Beyond legal advocacy, lawyers should work in coordination with independent medical professionals and forensic experts to assess, document, and present evidence of torture or other ill-treatment. They must also push for systemic reforms, including greater transparency in detention records, independent monitoring of interrogation practices and detention facilities, and adherence to international human rights standards such as the United Nations Convention Against Torture (CAT) and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). In collaboration with civil society organisations and national human rights institutions, lawyers can play a pivotal role in challenging structural conditions that enable abuse and pushing for policy changes that strengthen protections for individuals facing the death penalty.

- 21. Lawyers must rigorously challenge the admissibility of any evidence obtained through torture, coercion, violence, other forms of ill-treatment, or other unlawful means. The reliance on such evidence fundamentally undermines the integrity of legal proceedings and increases the risk of wrongful convictions. Courts have a duty to exclude evidence obtained through coercion or unlawful means, and lawyers must ensure that this obligation is strictly enforced.**

In capital cases, where the stakes are the highest, lawyers must scrutinise the methods by which evidence—particularly confessions—is obtained. They must conduct a thorough assessment into the circumstances of evidence collection, ensuring that interrogation practices, detention conditions, and the use of coercive tactics are rigorously examined. Where violations occur, lawyers must demand full disclosure of interrogation logs, medical examination reports, and

detention facility records to substantiate claims of ill-treatment. Excluding tainted evidence is not only a procedural necessity but a fundamental safeguard against unfair trials and miscarriages of justice.

Beyond courtroom advocacy, lawyers should proactively engage with independent forensic and medical experts to provide credible documentation of torture or coercion. Expert testimony and forensic analysis can provide compelling evidence to support exclusion motions and highlight systemic flaws within the investigative or prosecutorial process. Where necessary, they should also petition national and international human rights bodies to intervene, particularly in cases where systemic abuses are prevalent. Lawyers must push for mandatory safeguards, such as video recordings of interrogations, independent oversight of custodial procedures, and legal frameworks that impose accountability for the use of forced confessions. Strategic litigation challenging coercive practices can serve as a catalyst for broader institutional reforms, reinforcing protections for all accused individuals, especially those facing the death penalty.

In the longer term, lawyers should work toward institutional reforms that eliminate coercive interrogation practices and strengthen safeguards against torture. This includes advocating for greater transparency in interrogation procedures, mandatory video recordings of all custodial questioning, and more robust oversight mechanisms. By challenging abusive practices at both the individual and systemic levels, lawyers help ensure that justice is not only done but is also seen to be done, reinforcing public trust in the legal system and upholding the rule of law.

### **Safeguarding the Health and Well-Being of Clients**

- 22. Lawyers should actively monitor and advocate for the physical and mental health and well-being of their clients, recognising that the conditions of detention and prison, combined with the trauma of impending execution can result in severe psychological distress and rapid health deterioration.**

Prison conditions, including overcrowding, poor hygiene, inadequate sanitation, solitary confinement and prolonged isolation on death row, exacerbate both physical and psychological vulnerabilities. Many capital defendants already suffer from pre-existing trauma, psychosocial disabilities, or histories of abuse, making them particularly susceptible to severe mental health decline, self-harm, or suicide risk. Lawyers must ensure their clients receive independent medical evaluations, timely and adequate access to healthcare, and appropriate psychological support, advocating for detention and prison conditions that meet international human rights standards, including the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

Beyond securing immediate medical interventions, lawyers should challenge conditions of confinement that may amount to cruel, inhumane, or degrading treatment and advocate for broader reforms to mitigate death row phenomenon—the psychological and emotional toll of prolonged detention under the constant threat of execution. Lawyers should also document and raise concerns about deteriorating health conditions as part of clemency applications or any relevant legal motion, demonstrating how such factors impair their client’s ability to meaningfully participate in legal proceedings or justify reconsideration of the death sentence. Where necessary, lawyers must work with medical professionals, human rights organisations, national human rights institutions, and independent monitoring bodies, to expose systemic health deficiencies in capital detention and prison facilities and hold authorities accountable for failing to uphold the dignity and well-being of death row prisoners.

## Pursuing Appeals, Clemency Petitions and Stays of Execution

- 23. Lawyers must exhaust all available legal remedies, including appeals and post-conviction motions, and other judicial review mechanisms, to protect their clients and rectify errors that could lead to an irreversible miscarriage of justice. The duty to pursue appeals extends beyond procedural compliance—it requires a rigorous and strategic approach that challenges wrongful convictions, procedural violations, and disproportionate sentencing in capital cases.**

An effective appellate strategy demands a meticulous reassessment of trial records, the identification of legal and procedural errors, and the introduction of newly discovered evidence where applicable. It must also challenge misapplications of legal doctrine, judicial overreach, and deviations from established precedent that may have resulted in an unfair conviction or disproportionate sentence. Additionally, lawyers must rigorously expose violations of due process, prosecutorial misconduct, ineffective assistance of counsel, and any reliance on coerced confessions or unlawfully obtained evidence—all of which undermine the fairness of capital proceedings.

Where relevant, lawyers should also contest the constitutionality of the death penalty, particularly in cases involving vulnerable defendants, including persons with psychosocial disabilities, survivors of abuse, or those subjected to systemic discrimination. Appellate litigation must be pursued at both domestic and international levels, where applicable, ensuring that available judicial and procedural safeguards are fully utilised. Given the complexities of capital appeals, lawyers should actively engage expert consultation, collaborate with legal networks, and align with broader advocacy efforts to strengthen systemic challenges to wrongful convictions and unjust sentencing.

- 24. Lawyers must pursue clemency or mercy as a critical last resort, ensuring that all available avenues for relief are meaningfully explored before execution is carried out. A well-prepared clemency petition is not merely a procedural formality but a fundamental safeguard against unjust and disproportionate sentencing, particularly where appeals have been exhausted.**

A strategic and well-supported clemency application requires lawyers to work closely with families, mitigation specialists, and relevant experts to build a compelling case for clemency or mercy. This includes presenting detailed life histories, evidence of rehabilitation, mental health assessment, and broader socio-economic and political arguments or considerations that underscore the need for leniency. Where systemic discrimination or procedural irregularities have tainted the conviction, clemency applications should explicitly highlight these factors as grounds for relief.

Lawyers must insist on full transparency and procedural fairness in the clemency process, advocating for substantive and adequate time for executive review, and the right to an explanation for decisions made. In jurisdictions where clemency is rarely granted, lawyers should work in coalition with civil society organisations and/or international human rights bodies (whenever possible) to challenge restrictive policies and push for more robust, transparent, and accountable mechanisms for executive review.

- 25. Lawyers must file a stay of execution whenever an execution is (imminently) scheduled. The stay of execution serves as a final and indispensable procedural safeguard, preventing irreparable harm and allowing time for further legal, humanitarian, or procedural challenges.**

Given the finality of capital punishment, lawyers have a paramount duty to exhaust all available legal mechanisms to delay or halt executions. This includes invoking humanitarian grounds to prevent unjust state-imposed deaths. No execution should proceed while unresolved legal flaws, unexamined mitigating factors, or broader human rights violations persist.

## **Chapter V SPECIFIC CONSIDERATIONS**

### **Legal Precedents and National Framework**

- 26. Lawyers should actively seek to align domestic arguments with international standards and/or comparative law, and strategically utilise national legal frameworks and judicial precedents to build strong defence for individuals facing capital charges.**

Domestic constitutional provisions, legislative safeguards, and judicial rulings provide critical avenues for challenging the legality of death sentences, particularly where sentencing practices conflict with fundamental rights, procedural fairness, or emerging jurisprudence that restricts capital punishment. Building on established legal precedents and national constitutional safeguards is a strategic necessity for lawyers in death penalty cases. By referencing authoritative judgments and engaging with domestic legal frameworks, lawyers can construct compelling arguments to challenge the validity of capital convictions. This process involves not only leveraging existing case law but also identifying gaps or inconsistencies in national statutes that may undermine the fairness of capital trials.

Legal practitioners should also collaborate with bar associations, legal scholars, and human rights organisations to consolidate best practices, document jurisprudential trends, and promote systemic reforms.

### **Transnational Context**

- 27. Lawyers must diligently investigate and document any legal or procedural irregularities that may arise in transnational contexts, involving foreign nationals or individuals who may be subjected to extradition or cross-border prosecution, ensuring such issues are presented as key arguments in defence strategies.**

Cases involving refugees or foreign nationals require lawyers to navigate complex transnational legal issues with precision and cultural sensitivity. Foreign nationals have a fundamental right to consular access and assistance, as established under the Vienna Convention on Consular Relations (VCCR). Lawyers must ensure that their clients are informed of this right and that consular authorities are granted timely access to provide necessary support. In politically sensitive cases—such as those involving political dissidents, or individuals accused of offences linked to national security—diplomatic considerations may hinder consular access or fair trial guarantees. Lawyers must anticipate and challenge such obstacles to prevent undue political interference in judicial proceedings.

Additionally, political dynamics often influence extradition decisions, the enforcement of bilateral agreements and the treatment of foreign nationals within judicial systems. Lawyers should be prepared to contest politically motivated prosecutions, challenge extradition requests that could expose their clients to unfair trials or ill-treatment, and advocate for non-discriminatory legal protections. Strengthening international legal cooperation and leveraging

human rights mechanisms can serve as crucial tools in mitigating the impact of political pressures on transnational capital cases.

### **Victim Families**

- 28. Lawyers must approach cases involving victims’ families with sensitivity and strategic foresight, recognising that their engagement can play a crucial role in influencing legal proceedings, including sentencing outcomes, clemency considerations, and restorative justice efforts. Where appropriate and in alignment with the client’s defence strategy, lawyers should explore avenues for constructive engagement with victim families while ensuring that such interactions do not compromise their client’s rights or defence.**

In many jurisdictions, the position of the victim’s family can significantly impact prosecutorial decisions, judicial discretion, and public sentiment regarding capital punishment. Lawyers must navigate this delicate dynamic with care, balancing the need to respect the perspectives of victims’ families while advocating for sentencing alternatives to the death penalty. In some cases, mediation, reconciliation mechanisms, or victim-offender dialogue—conducted through independent facilitators—may provide an opportunity for victim families to support commutation or alternative sentencing. However, lawyers must remain vigilant against coercive or state-influenced narratives that place undue pressure on victims’ families to either seek or oppose capital punishment.

Additionally, defence lawyers should highlight broader systemic concerns, such as the absence of state-supported victim compensation schemes or rehabilitative justice initiatives, which often leave families with limited options beyond punitive measures. By advocating for sentencing alternatives that prioritise justice, accountability, and the potential for rehabilitation, lawyers can challenge the punitive reflex of capital punishment while promoting legal strategies that uphold human dignity. A defence approach that emphasises proportionality, restorative justice, and the broader societal benefits of non-capital sentencing can shift narratives away from retribution and towards a more just and principled legal framework.

## **Chapter VI WELL-BEING**

### **Mental Health and Support Systems**

- 29. Lawyers handling death penalty cases must have access to comprehensive mental health support, recognising the immense psychological toll of their work. Sustained well-being is essential not only for their personal resilience, but also for maintaining the quality and effectiveness of legal representation. Legal institutions, bar associations, and professional networks should ensure that well-resourced and structured support systems are in place to safeguard lawyers’ mental health.**

The emotional burden of defending individuals facing the death penalty and particularly execution, is profound, often leading to burnout, vicarious trauma, and long-term psychological distress. Lawyers require confidential and accessible mental health services, including regular counselling and peer support mechanisms, to navigate these challenges. Bar associations and legal organisations should facilitate these resources, ensuring that lawyers are not left to manage these pressures in isolation.

Additionally structured peer support networks should be established to allow lawyers to share experience, seek guidance, and foster solidarity and/or collective resilience. Capacity-building

programming, including workshops on secondary trauma, self-care, and stress management, should be integrated into professional development programmes. Lawyers must be equipped with strategies to maintain emotional balance while sustaining their commitment to justice. These safeguards not only fortify the well-being of individual lawyers, but also enhance the overall sustainability and effectiveness of capital defence work.

### **Collaboration and Peer Learning**

**30. Lawyers should actively engage in collaborative forums and learning exchanges where they can share knowledge, refine strategies, and gain insights from diverse perspectives.**

Participation in interdisciplinary teams and peer learning initiatives is critical to fostering professional growth and improving legal outcomes. Lawyers should strive to build long-term partnerships with peers and experts, fostering an environment of continuous learning and support that addresses both professional and personal challenges inherent in handling death penalty cases. Regional and international networks play a vital role in facilitating these interactions by providing platforms to exchange best practices and access specialised resources, such as expertise in mitigation strategies or forensic evidence. By participating in these networks, lawyers not only enhance their own capabilities but also contribute to a broader collective effort to improve justice outcomes in death penalty cases.

# CAPITAL OFFENCES IN ASIA

In Asia, the death penalty is predominantly applied to five categories of crimes: drug offences, terrorism, homicide, sexual offences and blasphemy. These offences reflect diverse legal frameworks and political priorities across the region, often influenced by strict state policies and the perceived need to address social or security concerns. However, the application of the death penalty in these cases frequently raises significant human rights implications, particularly regarding fairness, proportionality and adherence to international law.

## Drug Offences

Drug-related offences account for a significant proportion of death penalty cases in Asia, with several countries adopting harsh penalties, including mandatory death sentences, as part of their so-called war on drugs. While governments argue that these measures are essential to combating the illicit drug trade and ensuring public safety, they often come at the expense of fundamental human rights, including the right to a fair trial, proportional sentencing, and protection from arbitrary punishment.

By advocating for a paradigm shift that addresses drug-related offences through a public health and socio-economic lens, rather than solely as criminal acts, lawyers can emphasise the importance of evidence-based policies. This includes advocating for harm reduction services, access to voluntary-based treatment programmes, and the decriminalisation of drug use and possession for personal use. Such approaches not only align with human rights principles but also address the root causes of drug-related issues, offering more effective and humane alternatives to punitive measures like the death penalty.

- **Proportionality principle:** the International Covenant on Civil and Political Rights (ICCPR), specifically Article 6(2), limits the application of the death penalty to the “most serious crimes,” which the UN Human Rights Committee has unequivocally clarified as crimes involving intentional killings. Drug offences do not meet this threshold. The imposition of the death penalty in such cases represents a disproportionate response.
- **Mandatory sentencing violations:** General Comment No. 36 of the UN Human Rights Committee emphasises that mandatory death sentences are incompatible with fair trial guarantees under Article 14 of the ICCPR. Lawyers can invoke this standard to challenge the lack of judicial discretion in drug-related cases.
- **Rehabilitation over punishment:** the UN Office on Drugs and Crime (UNODC) promotes treating drug-related issues as public health concerns rather than purely criminal matters. Lawyers can use this perspective to advocate for alternative sentencing focused on rehabilitation rather than retribution.

## Terrorism

Anti-terrorism laws in Asia often highlight a delicate tension between safeguarding national security and upholding fundamental human rights. While states have a legitimate obligation to protect their citizens from acts of terrorism, such efforts frequently result in the erosion of due process rights and the overreach of state power. Measures such as rushed trials, denial of legal counsel, or the use of secret evidence are often justified under the guise of national security but risk undermining the principles of justice and fairness enshrined in international law.

The ICCPR permits certain rights to be limited during public emergencies, but these limitations must be strictly necessary, proportional, and non-discriminatory. Lawyers play a crucial role in holding

governments accountable to these standards, particularly when terrorism laws are applied disproportionately or target specific ethnic or religious groups. By demonstrating that protecting human rights reinforces the legitimacy and efficacy of anti-terrorism efforts, lawyers can advocate for a more balanced approach that respects both security imperatives and the rule of law.

- Due process: Article 14 of the ICCPR unequivocally guarantees the right to a fair trial, encompassing access to competent legal counsel, sufficient time to prepare a defence, and impartial adjudication. Any deviation from these safeguards, particularly under the guise of national security, constitutes a grave violation of international human rights standards.
- Proportionality in sentencing: the UN Economic and Social Council's Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty strictly limit its application to intentional killings, reinforcing the principle of proportionality. Many terrorism-related offences, including those that do not involve direct loss of life, fail to meet this threshold.

### **Homicide**

Homicide remains one of the most universally cited justifications for the death penalty, rooted in the perception that intentional killing constitutes a severe moral and legal violation warranting the ultimate punishment. In many Asian jurisdictions, capital punishment continues to be applied in cases of intentional killing, often with a strong emphasis on retribution and deterrence. However, this approach frequently fails to account for the nuanced and multifaceted realities that underpin many homicide cases, such as the socio-economic, psychological, and systemic conditions that may have influenced the offender's actions.

Mitigating factors such as mental health conditions, histories of abuse, extreme poverty, or coercion often play a critical role in shaping the context of homicide cases but are frequently disregarded in sentencing. Additionally, the argument that the death penalty serves as an effective deterrent lacks empirical support, with numerous studies indicating that it does not significantly reduce homicide rates compared to alternative penalties. Ignoring these factors perpetuates systemic inequalities and fails to address the root causes of violent crimes, calling into question both the morality and effectiveness of capital punishment.

### **Sexual Offences**

Certain Asian countries impose the death penalty for sexual offences, particularly rape, especially where the victim is a minor. While states have a legitimate interest in deterring and punishing sexual violence, the use of capital punishment raises serious concerns regarding proportionality, wrongful convictions, and compliance with international human rights standards. The UN and various human rights bodies have reaffirmed that the death penalty should be restricted to the "most serious crimes," which has been interpreted to mean intentional killings.

The risks of wrongful convictions in sexual offence cases are exacerbated by evidentiary limitations, reliance on coerced confessions, and weak legal representation. In some jurisdictions, broad or vague definitions of sexual offences and the absence of adequate procedural safeguards increase the likelihood of unfair trials. Lawyers must ensure that due process rights are rigorously upheld, advocate for the application of alternative punishments, and challenge the use of capital punishment where it is disproportionate to the crime.

## **Blasphemy**

Blasphemy, sedition, and other political offences continue to attract capital punishment in some Asian jurisdictions. These laws are often applied selectively, targeting political dissidents, religious minorities, and individuals exercising their right to free expression. The imposition of the death penalty for such offences violates international human rights obligations, which protects freedom of thought, conscience, religion, and expression.

The application of capital punishment in these cases is often arbitrary, lacks due process, and fosters a climate of fear and repression. In many cases, blasphemy and sedition laws are weaponised against minority groups or critics of the government, raising concerns about discrimination and the erosion of fundamental freedoms. Lawyers defending individuals accused of such offences must invoke international legal protections, challenge the legality of such charges, and advocate for the abolition of capital punishment for non-violent crimes. Additionally, they should work with civil society organisations and human rights defenders to push for legal reforms that uphold democratic principles and human rights norms.