

The Feasibility of Conducting Research on Attitudes Towards the Death Penalty in Indonesia

Elite and Public Opinions

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1. Introduction

1.1. Background to and purpose of the study

The past 30 years has seen a revolution in the discourse on and practice of capital punishment around the world. There has been a movement towards abolition and progressive restriction of the death penalty and growing recognition that while each nation has the sovereign right to administer punishments of its own choosing, retention of the death penalty inevitably violates universally accepted human rights, namely, the right not to be arbitrarily deprived of life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.¹ While countries within Asia have made progress, it has been somewhat slower than elsewhere. In many Asian countries, international human rights arguments and instruments aimed at abolition may have limited efficacy, stigmatised as a form of cultural imperialism, an attack on national sovereignty and an attempt to turn a domestic criminal justice issue into a human rights issue. Governments in this region assert that criminal justice policies and punishments must be determined by their unique political, social, and cultural circumstances. Hence, while the death penalty may be retained for a number of offences, it remains in use for offences that elsewhere would not be considered to be very serious; notably for drug offences.

International law currently allows for ‘limited retention’ for only the ‘most serious’ crimes. However, this concept has been interpreted differently according to national culture, tradition and political complexion, particularly across Asia where certain drug offences are considered to be among the most serious crimes. Rising levels of production and trafficking of drugs within Southeast Asia, particularly in the ‘Golden Triangle’ of Laos, Myanmar and Thailand, widely considered to be the centre of the world’s drug trafficking, have alarmed international bodies such as the UN Office on Drugs and Crime and governments across Southeast Asia, as well as further afield in Asia-Pacific. The borders of Malaysia and Indonesia seem to be particularly vulnerable, with high quantities of drugs, particularly methamphetamine, seized in recent years. In consequence, Indonesia and her neighbours considers themselves to be in a state of emergency.

Unsubstantiated assertions are made about the high number of drug-related deaths to justify the punitive criminal justice responses to the use, sale and trafficking of drugs. For example, while over the past few years, it is claimed that Indonesia has seen a decline in drug deaths from a purported daily 55 deaths to about 20, at the same time, there has been an increase in convictions of drug offenders of approximately 8%² and the ‘war on drugs’ discourse continues unabated. However, while the government justified the 19 executions from 2015-16 in terms of a state of emergency caused by drugs³ (Asian Human Rights Commission, 2018), there have been no executions since. Furthermore, Indonesia has introduced therapeutic health care responses to low-level drug users, where the police believe there has been no attempt to sell drugs. Notwithstanding these

¹ R. Hood and C. Hoyle (2015) *The Death Penalty: A worldwide perspective*, Oxford University Press, ch.1; see also R. Hood and C. Hoyle (2009) *The Death Penalty*, Oxford University Press.

² Interviews with senior officers at the BNN (National Narcotics Board of Indonesia), January 2019.

³ “*Indonesia: Indonesian Death Row and Problems of Unfair Trial*”, Asian Human Rights Commission, 9 Apr. 2018.

modest signs of progress, for most caught with illicit drugs, prosecution is inevitable. Indeed, for those arrested in possession of large quantities of drugs, and where there is other evidence of trafficking, death sentences are handed down by the courts, as they are for murder, terrorism-related offences and a number of other violent offences.

A scoping project in Indonesia carried out by The [Death Penalty Project](#) (DPP) and the University of Oxford in January 2019 identified three key assumptions behind Southeast Asia's 'war on drugs': that the public is strongly in favour of capital punishment for drug offenders; that only the death penalty can deter drug offences; and that those who are prosecuted and sentenced to death for drug offences are the most dangerous, powerful and corrupt persons in the drug trade; the kingpins, not the foot soldiers. However, there are no empirical data to test these assumptions.

There has been little research on Asian countries; indeed, almost all death penalty scholarship focuses on the United States of America (USA). The DPP however has conducted empirical work across Asia, including public opinion surveys in Malaysia, Japan, Taiwan and elite opinion research in India and Bangladesh, most of it in cooperation with the University of Oxford. Our scoping project identified a clear rationale for public and elite opinion research in Indonesia aimed at testing one of the three key assumptions used to justify retention of the death penalty: that both elites and the public are strongly in favour of capital punishment and would not tolerate abolition or progressive restriction of its use. Such a study would close gaps in our knowledge and explicate the challenges for Indonesia—and how best to meet them—on the road to abolition.

This work builds on an initial DPP mission to Indonesia in June 2015—where meetings were held with a select group of individuals, including the Directorate General of Human Rights at the Ministry of Law and Human Rights— and a high-level workshop on legal aspects of capital punishment in Bogor, in May 2016 (in partnership with the Ministry of Law and Human Rights and the Ministry of Foreign Affairs). These meetings established the need for research activities, including elite and public opinion research, with a scoping and pilot study, subsequently funded by the UK Embassy in Jakarta. This report presents the findings of that study and proposes empirically rigorous public and elite opinion surveys in Indonesia, the findings of which must be widely disseminated so that criminal justice policy, practice and discourse is informed by accurate data. Such a study would contribute to the wider literature on the relationship between public and elite opinion and death penalty policy, but more importantly, would provide government ministers, parliamentarians and policy-makers, as well as all other key stakeholders, with accurate information on the death penalty and stimulate dialogue and an informed public debate about the utility of the death penalty in Indonesia. It would create a platform for death penalty discussion and encourage transparency in the Indonesian criminal justice system.

1.2. Relationship between opinion research and abolition of the death penalty

Where abolition has come about, it has not been as a result of the majority of the

general public demanding it.⁴ Yet, when faced with critics of the death penalty, retentionist countries typically fall back on the argument that the public are not ready for abolition. In a recent review of statements made by political leaders in Asia, Roger Hood found frequent references to public opinion as a justification for retention of the death penalty.⁵ For example, in 2012, the Justice Minister of the Liberal Democratic Party of Japan was reported to have said; “The death penalty has strong support among victims’ relatives and the public . . . I think the death penalty is necessary.”⁶ In 2014, Taiwan’s Justice Minister voiced her personal support for abolition, but asserted that because about 70% of the public approve of capital punishment, “one should listen to the public’s opinion instead of acting on one’s own opinions.”⁷ More recently, in 2016, the Foreign Minister of Singapore emphasised his country’s view that: “Every State has the sovereign right, indeed a sovereign duty, to decide for itself what works, and to take into account its own circumstances. In Singapore, there are very high levels of support on the part of our people for the death penalty to remain on our books.”⁸

Some argue that political leaders in democratic nations should represent ‘the will of the people’ if they are to remain in power,⁹ and wait for public opinion to change, or seek to educate the public first to create ‘a popular consensus’ in favour of abolition.¹⁰ One key concern is that abolition without public support would undermine confidence in the law and the criminal justice professionals who impose it, and could even lead to private vengeance.¹¹

Abolitionists often present a divergent view; that while it is useful to try to educate the public to change their views on capital punishment, this is difficult to achieve while the death penalty is included in criminal statutes and regarded by the state as proportionate to, and deserved by, those who commit the most heinous crimes. From this perspective, elite-led abolition is not only acceptable, but necessary to shape public expectations of the most severe punishment that a state can legitimately inflict. Furthermore, that it is the duty of the State not to respond to the vengeful sentiments and demands of a vociferous majority but to ensure that even those who commit the very worst of crimes have their rights not to be treated inhumanely protected by the State and its organs of criminal justice. In the end, it is argued, public opinion is shaped by the use made of capital punishment, not vice versa, so that when capital punishment is abolished and is

⁴ R. Hood and C. Hoyle (2015). *The Death Penalty: A worldwide perspective*, Oxford University Press, ch. 10.

⁵ R. Hood (2018) ‘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*, 23:2, pp. 101-124.

⁶ “More Prisoners on Death Row Than at Any Time Since 1949,” *The Asahi Shimbun*, 31 Dec. 2012.

⁷ “Taiwan: Justice Minister voices support for the death penalty to be repealed, unless the majority opinion”, *Hands Off Cain*, 9 Oct. 2014

⁸ “Transcript of Minister Vivian Balakrishnan’s Intervention at the High-Level Side Event at UNGA – ‘Moving Away from the Death Penalty: Victims and the Death Penalty’”, Singapore Ministry of Foreign Affairs Press Release, 21 Sep. 2016.

⁹ A view expressed by Botswana, for example, see M.J. Bossuyt (1987) ‘*The Administration of Justice and the Human Rights of Detainees*’, Report to the United Nations UN doc E/CN.4/Sub.2/1987/20, p.24.

¹⁰ The Taiwan Ministry of Justice (2005) *The Policy of Gradual Abolition of the Death Penalty*, made it clear that ‘a popular consensus on abolition must be established’ before the government ‘will propose significant legislative change’; see also International Federation of Human Rights (FIDH) and Taiwan Alliance to End the Death Penalty (2006) ‘*The Death Penalty in Taiwan: Towards Abolition?*’, Report 450/2, pp. 11–12.

¹¹ In the debate leading to abolition in France, this argument was used by the then Minister of Justice. See G. Picca (1987) ‘*La peine de mort: Un problème politique et social*’, 68 *Revue Internationale de Droit Pénal* 435–450, at p. 448.

no longer legitimated by the State, public support for it begins to wither away as expectations of what is the most severe punishment change.¹² In this view, elite opinions can legitimately shape public opinion. This invites consideration of the value of public and elite opinion research.

1.3. Empirical research on public opinion

While philosophical discussions focus on the appropriateness of measuring public opinion on such a controversial matter, should we wish to be informed, and to try to influence debates and criminal justice practice, they do not help us resolve the rather difficult question of what to measure and how to measure it. National and regional polls of the public's support for the death penalty, such as those conducted by Gallup, are common in the USA, but while these mostly superficial surveys give us an idea of shifting opinions over time, and can demonstrate socio-demographic differences in support which can then be tested by more sophisticated empirical techniques¹³, they are not so helpful in measuring strength of opinion, knowledge about the topic, or how the public might feel about whether particular types of offences or offenders should be subject to capital punishment. Furthermore, such polls cannot elicit nuanced responses to particular features of cases, involving for example strong aggravating or mitigating features, or features of the law, such as retention of the mandatory death penalty or death for particular types of offences. Moreover, those motivated to produce particular responses will find it easy to manipulate the data by the phrasing or ordering of questions or by limiting the provision of possible responses.¹⁴

Hood and Hoyle's review of the literature on public opinion indicates that while surveys suggest majority support for capital punishment in most jurisdictions, attitudes towards the death penalty are malleable.¹⁵ Various factors and influences have been found to shape views on this subject, in particular: knowledge and beliefs about the way in which capital punishment is administered, especially whether it is fairly and equitably enforced and without discrimination and error; and whether it is necessary for public protection. Sophisticated studies, some conducted by the DPP, most in cooperation with the University of Oxford, demonstrate that support for the death penalty rests on a belief that the system will and can be administered without error and tends to dwindle when faith in the system diminishes.¹⁶ We return below to our aims to conduct rigorous and

¹² See note 4 above.

¹³ For example, findings that suggest that support for the death penalty in the USA is associated with gender, race and economic security have been tested. See, for example, J.K. Cochran and B.A. Sanders (2009) 'The Gender Gap in Death Penalty Support: An exploratory study', 37 *Journal of Criminal Justice* 525-533; see also Butler et al. (2018) 'Revisiting white backlash: Does race affect death penalty opinion?', *Research & Politics*; see further P.S. Lehmann and J.T. Pickett (2017) 'Experience Versus Expectation: Economic insecurity, the great recession, and support for the death penalty', 34:5 *Justice Quarterly*, 873-902.

¹⁴ Mai Sato's work in Japan provides robust evidence of this. See M. Sato (2014) *The Death Penalty in Japan: Will the Public Tolerate Abolition?*, Springer VS.

¹⁵ See note 4 above.

¹⁶ On China, see D. Oberwittler and S. Qi (2009) 'Public Opinion on the Death Penalty in China Results from a General Population Survey Conducted in Three Provinces in 2007/08', *Forschung Aktuell/research in brief* 41, Freiburg: Max Planck Institute for foreign and International Criminal Law. On Trinidad, see R. Hood and F. Seemungal (2012), 'Public Opinion on the Mandatory Death Penalty in Trinidad', *The Death Penalty Project*, pp.

efficacious public opinion research, turning for now to consideration of elite opinion research.

1.4. Elite opinion research

To date, little effort has been directed at understanding knowledge of, and opinions on, the death penalty among those who are, or who have been, responsible for crime policy, for the administration of justice, or for influencing those who have the power or the responsibility to design, implement and deliver criminal justice. Surveys that measure the opinions of criminal justice personnel, politicians, the media and other ‘influencers’ are particularly useful for understanding how ‘elites’ can have an impact on abolition and the administration of justice, and for challenging abolitionist rationales. Importantly, elite opinion surveys conducted alongside public opinion research, can generate a more nuanced understanding of both public and elites. For example, a study in China showed that while the government was defending retention in terms of public opinion, the public were in fact much less inclined to support capital punishment than the elites.¹⁷ However, there are very few elite opinion studies around the world.

Elite interviews offer ‘an insight into the mindset of the actor/s who have played a role in shaping the society in which we live’.¹⁸ ‘Elites’ in the criminal justice setting, can refer to politicians, policy-makers, judges, senior police, prosecutors, and defence lawyers. But they can also include those who influence criminal policy and practice, such as newspaper editors and journalists or civil society organisations, ‘...individuals, who hold, or have held, a privileged position in society and, as such, ... are likely to have had more influence on political outcomes than general members of the public’.¹⁹ Interviews can elicit elites’ understanding of motivations, concepts, laws, public opinion, and sentencing rationale; their opinions about all of these; and insight into what has influenced those opinions. Elite interviews do not reveal ‘the truth’; accounts are inevitably subjective, reflecting an active process of creation of meanings.²⁰ However, they can tell us a great deal about how criminal policy is made, sustained and, ultimately how it can be challenged to good effect.

The DPP and the University of Oxford have experience of elite opinion work. For example, they worked with the National Law University of Delhi and Bangladesh Institute of Law and International Affairs to conduct two elite opinion studies, in Delhi and in Dhaka. These aimed to explore judicial attitudes towards the administration of criminal justice in general and the death penalty in particular, and to understand judges’ decisions on death-sentencing. In-depth, semi structured interviews were conducted, with a questionnaire for structure and consistency but considerable opportunity for open-ended questions.

17-18. On Malaysia, see R. Hood (2013), *The Death Penalty in Malaysia. Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences*, The Death Penalty Project, p. 30.

¹⁷ R. Hood (2008) *Abolition of the Death penalty: China in World Perspective*, 1 City University of Hong Kong Law Review 1-22.

¹⁸ D. Richards (1996) *Elite Interviewing: Approaches and Pitfalls*, 16(3) Politics 199- 200.

¹⁹ Ibid, at p.199.

²⁰ A. Portelli (2006) *What Makes Oral History Different* in Perks R. and Thomson A. (eds) *The Oral History Reader*. London: Routledge.

Combining public opinion surveys with elite opinion research provides the best approach for understanding, and challenging the reliability of, influences on government policy and government claims about support for the death penalty. The DPP is currently conducting elite opinion research alongside public opinion surveys in both Kenya and Zimbabwe, and the aim is to do so in Indonesia. Ideally, public opinion research should precede elite opinion interviews so that the findings of the former can feed into the questions in the latter. However, this is not essential and there is room for pragmatism in all empirical research. What matters most is that the findings are rigorous and disseminated to a wide range of audiences, through a variety of outputs so that discourse on capital punishment in Indonesia is informed and has the capacity to inform. In the following section, we describe our plans for elite opinion research, developed from our pilot study conducted in Jakarta in March and April 2019. Following that, we go on to detail two possible approaches for public opinion work.

2. Elite Opinion Survey

2.1. Design of interview schedule

Following on from our elite opinion work in India and Bangladesh, the DPP, in association with the University of the West Indies and the University of Oxford, is currently conducting elite opinion studies across the Eastern Caribbean (in Antigua & Barbuda, Barbados, Dominica, Grenada, St Lucia, St Kitts & Nevis, and St Vincent & the Grenadines). While our Indonesia elite survey interview schedule was designed specifically for Indonesia, to take account of the particularities of that country, and the knowledge we gained from our scoping study, we also adopted some questions used in our other elite opinion surveys to allow for comparative work with other jurisdictions. We added questions that focused on the use of the death penalty for drug offenders, given the weight of that issue in Indonesia, and a set of questions about penalties alternative to death.

Additional questions aimed at testing a theory of jurisdictional competition, which combines criminological theories of crime displacement with economic theories of deterrence (a key assumption in retentionist rationales in Indonesia). The premise is that a state that adopts policies that are harsher than its neighbours will encourage displacement of criminal activity to neighbouring states as criminals may seek to lower their punishment risks (arrest) and costs (prison or death). Hence, states may seek to discourage the influx of criminals by adopting harsher policies than neighbouring jurisdictions. To assess whether drug crime policy may be influenced by understanding of wider regional policies and practices, we ask a set of questions about Indonesia's polices, practices, the perceived risks to drug traffickers and their resulting behaviours and ask interviewees to compare these with the policies and practices of neighbouring states (see Appendix A).

During our scoping study, we identified two partner institutions to work with on the pilot elite opinion study: the Departments of Criminology and Law (Human Rights Centre) at the University of Indonesia, and LBH Masyarakat (Community Legal Aid Institute), Jakarta. These partner institutions were crucial to the success of the pilot study. Professors at the University gave helpful feedback on the pilot interview schedule, suggesting changes to questions as well as additional questions. They then translated the research tools (the Interview schedule, the Participant Information form and the Participant Consent form: see Appendix B & C) and have conducted six 'pilot interviews', which we analysed and report on below. This pilot study was imperative to test the interview schedule; to ensure it is comprehensible, that it produces data of sufficient reliability to answer our research questions and has no misleading questions or questions that produce adverse effects.

2.2. Pilot study

2.2.1. *Methodological matters*

Our researchers suggested that they found it reasonably easy to find elites willing to be interviewed, but the interviewees experienced difficulties understanding a

few of the questions, suggesting a need to clarify some questions and, more importantly, to improve the translation from English to Indonesian.

Four interviews were carried out by the Department of Criminology at the University of Indonesia by three different interviewers with the following elites: a senior police officer; an officer from the National Narcotics Agency, a senior prosecutor, and a Prosecutorial Commissioner. Four interviews were carried out by the Faculty of Law; one with a senior investigator, one with a judge, one with a law professor and the other with a senior prosecutor. The interviews done by the Department of Criminology lasted between 33 minutes and 1 hour 10 minutes, with a mean average of 51 minutes; whereas those by the Faculty of Law lasted between 2 and 4 hours, with the elites engaging in discursive discussion around the issues raised by the questions as well as concerns about the clarity of a few questions. One or two interviewees questioned whether they were, in fact, 'elites', suggesting a clearer explanation of who we consider to be elites or opinion formers might be needed at the start of interviews.

All interviewees read and signed the Participant Consent form. Three were willing to be recorded; another two were initially willing but then asked for the interview to be deleted, in one case during the interview, in another a few days following. Furthermore, a couple of interviewees seemed a little cautious in offering their opinions. This pilot study suggests that this issue is more sensitive for elites than we found in both India and Bangladesh, and reminds us of the importance of making notes and completing the hard copy of the interview questionnaire even if the interviewee initially agrees to be recorded, as withdrawal of consent to be recorded might impact far more cases that we had anticipated. It also reminds us of the importance of making clear to interviewees that their responses will be anonymous.

A few of the questions were difficult for the interviewees to understand, but they appeared to find it easy to ask the interviewer for clarification. Two interviewers reflected that the translation from English to Indonesian had caused the style to be rather formal and recommended further refinements to the translation to enable interviews to flow more naturally and to better reflect the subtleties of the Indonesian language. They also recommended minor changes or editing to a few questions to improve clarity.

One interviewee wanted to complete the questionnaire himself, rather than engage in an interview, asking the interviewer for explanation only when he did not understand the questions. While this might be an efficient way of collecting basic data, it reduces the chances of securing rich, qualitative data and suggests that the interviewer may not have adequately explained the purpose of conducting face-to-face interviews which can generate data beyond the narrow responses to the specific questions. Similarly, some of the qualitative answers are unclear and further training of interviewers will encourage them to do more to encourage unequivocal responses or to explicate ambiguous or imprecise answers for analysis.

2.2.2. *Data analysis*

Knowledge about the death penalty

Analysis of the pilot data suggest that knowledge about the death penalty in Indonesia is reasonably high among elites. All eight interviewees knew a good deal about the administration of the death penalty, though three did not know about Indonesia's response to the attempt by the United Nations General Assembly to bring about a universal moratorium, three did not know about the number currently under sentence of death, and one did not know about the numbers sentenced to death each year. This suggests that this small group of interviewees were well placed to talk authoritatively about the retention and administration of the death penalty, though some were not quite so confident.

We asked respondents four questions about how well informed they felt both they were and *political decision-makers* as a whole were about key issues in relation to the death penalty:

- (i) about research evidence from other countries regarding the lack of any extra deterrent effect of the death penalty on the murder rate
- (ii) about the research evidence from other countries regarding the inevitability of error and conviction of the innocent in countries that retain the death penalty
- (iii) about a relatively recent research report on unfair trial and pre-trial processes for those charged with capital offences in Indonesia
- (iv) about plans to change the approach to the implementation of the death penalty in the new Draft Bill on the Criminal Code of Indonesia

Most felt both they and political decision makers were reasonably, or well informed about research evidence on deterrence and on errors in the justice system, and about the Draft Bill. Most felt that political decision-makers knew about a relevant Report, whereas they were not so well informed about this (see Table 1) (one respondent refused to answer questions about political decision-makers as a whole, saying he was not qualified to judge).

Table 1: Are respondents and politicians well informed about the death penalty?

Informed?	Deterrence		Error/Innocence		Unfair criminal process		Draft Bill	
	Person	Politics	Person	Politics	Person	Politics	Person	Politics
Very well	1	2	2	3	1		5	4
Know something	4	2	3		1	4		1
Not well	1	1	1	1	5	1	2	
Uninformed	2	2	2	3	1	2	1	2

Rationales for retention

Deterrence and public opinion were, in the views of our interviewees, the key rationales for Indonesia's retention of the death penalty. When asked why Indonesia has not abolished, the main reasons given were that the government believes the death penalty is necessary as a deterrent to control drug trafficking²¹,

²¹ This was the main reason for 5 respondents and the 3rd reason for 1.

or as a deterrent to control murder²², and that the majority of citizens are still in favour and so there is no pressure to do so²³. Two respondents also felt that there was an absence of political leadership to make the legal change, and one believed politicians were worried that support for abolition would make them unpopular with the electorate.

A similar question sought to reveal opinions on a moratorium on the death penalty. Asked why Indonesia does not support a universal moratorium, their comments—not surprisingly—revealed similar rationales to those used to justify retention: deterrence and public opinion, though sovereignty was also mentioned. One explained, “Serious crimes such as drugs and terrorism are still too problematic to handle by using only prison sentences and social penalties.” Another said: “this country still needs death penalty to prevent other people to conduct drug offences.” While two believed that *the government* should reconsider its policy on the moratorium, four did not. One person supported a moratorium only in the case of a declining crime rate, and a final interviewee was unsure.

When asked what they thought would happen if the government was to abolish the death penalty, most interviewees were pessimistic, thinking that the public would be strongly opposed or that abolition would adversely impact on the crime rates. Three interviewees said that there might be *some* demonstrations or expressions of dissatisfaction leading up to abolition, but the majority of the public would come to accept it once the law was passed. However, another three thought that there could be demonstrations of *strong* public dissatisfaction, in the media and elsewhere against the decision and repeated calls for its reinstatement. One did not select any of the suggested answers but said instead that “the crime rate would increase, and offenders would feel that they do not have any legal risk (perceived and actual) if they commit crime.” Another similarly expressed concerns about deaths caused by an uncontrolled drugs trade: “If the death penalty is abolished, there will be chaos. The drug trade will uncontrollable. As a consequence, there will be [many] victims”, with another suggesting that ten years from now, there would likely be demonstrations in favour of revoking abolition, drawing on the example of the Philippines.

When asked if they were *personally* in favour of retention, two said they were strongly in favour, while six said they ‘tended to favour it’.²⁴ Their personal reasons were also rooted in deterrence rationales; deterrence for drugs²⁵, for murder²⁶, and for terrorism²⁷, though one suggested, as a second choice, and two others as third and fourth choices, that capital punishment was needed to satisfy victims. A couple of the interviewees were concerned that inconsistent application of the death penalty threatened to weaken its deterrent effect: “Death Penalty will create a deterrence effect only if it is implemented. Currently the implementation has been a concern due to the lack of consistency from the law enforcement officer, judges at all levels.” Two expressed retributive rationales, saying that there

²² The main reason for 1 respondent and the 2nd reason for 4 respondents.

²³ The main reason for 2 respondents, 2nd reason for 3, and 3rd reason for 1.

²⁴ One interviewee answered that he ‘tended to favour abolition’, but later in the interview clarified that he meant the death penalty should be retained but restricted in use.

²⁵ This was the main reason for 4 respondents and the 2nd reason for a further 2.

²⁶ The main reason for 1, the 2nd reason for 1, and the 3rd reason for 1.

²⁷ The main reason for 1.

will always be some criminals who deserve to be executed²⁸. While all interviewees chose public opinion being in favour of the death penalty as their second, third or fourth reason for retention, for one was this the primary factor.

When asked if they would *personally* be willing either to support or not to oppose an Act of Parliament to abolish capital punishment completely in Indonesia, four said they would *strongly* oppose by definitely voting against it; two said they would only support abolition for certain crimes (drug-related offences), though one of these seemed to include most offences in his list of those for which the death penalty should be retained: “Besides terrorism, narcotics, genocide, and those that violate humanity (including sexual violence against children), they may be abolished.” One said that he was not in favour of such an Act but would not oppose it, and a final interviewee said he would support an Act of Parliament to abolish capital punishment but not take the lead.

While two of our interviewees were strongly in favour of retention, six said they would like to see it further restricted in use. They suggested restrictions and changes to the investigation and prosecution processes to prevent mistakes in the judicial process for those charged with capital offences. One respondent thought that new regulations should be introduced to require judges to provide clear and specific (as opposed to generic) reasoning to justify any death sentences. Another respondent said that the death penalty should only be used for repeat offenders. Another explicitly said that if convicted persons on death row had behaved well for a certain period of time, and were evaluated (we must presume that this refers to a risk evaluation, though this was not made explicit), there should be the option to reduce the sentence to a prison term, first a life term, and following this a sentence that is reduceable to a fixed term. However, one of those who were firmly in favour of retention was of the opinion that post-conviction processes should be contracted so that executions take place as soon as the verdict is final.

Asked what they thought was the main purpose of sentencing an offender to death, respondents focused on deterrence (“If the implementation of the death penalty is applied strictly, it will create a deterrent effect”), though two mentioned retribution and two others mentioned justice for victims. That said, one explained that “currently, in Indonesia, we do not talk about the deterrent effect of death penalty as there is no deterrent effect. Therefore, we just need to highlight the purpose of the death penalty; namely, to redress different conflicts as founded in the society.”

Many countries progressively restrict the application of the death penalty before abolishing it completely. They tend to move away from the mandatory death penalty to a discretionary penalty and then restrict its use for only the most heinous crimes, as dictated by international law, typically retaining only for those offences that result in death, and then often only for aggravated murder. Furthermore, restrictions often take place on the types of offenders, with, for example, juveniles or the mentally ill or those with learning difficulties being excluded from the ultimate penalty. We asked our interviewees questions about both the types of offences and the types of offenders that should—or should not—be subject to capital punishment but the answers were similar, suggesting they understood both questions as about the crimes, not the perpetrators. Asked if

²⁸ The main reason for 1 and the 4th reason for 1.

there are some *people* who should never be sentenced to death, three said no, but five said yes, and mentioned ‘drug related offenders who are not dealers or producers’, ‘ordinary murderers’, ‘perpetrators who do not have any intention to commit a crime or who is trapped or deceived’ and ‘those who do not get a fair trial’. While the last reason is about the safety of the criminal process, rather than specific offenders, the other reasons are clearly about offences. Asked whether there *some crimes* that should never result in a death sentence. Three said no and five said yes, mentioning ‘ordinary murders’ and ‘crimes which do not affect a lot of people and do not disturb the stability of the nation’. One suggested that drugs offences should not result in a death sentence ‘to some extent’, and a further interviewee implied that drug offences should not be subject to the death penalty as he listed those crimes that should – focusing on murder and crimes that involve ‘massive victims’, but not mentioning drug offences.

Respondents were asked if they would change their minds if a public opinion survey found that only a minority of the public was strongly opposed to abolition, but six of the eight said they would still be opposed to abolition, with only two saying that in this event, they would favour abolition. They were also asked if knowing that many countries were moving towards abolition affected their views on abolition in Indonesia. One said that he would probably then favour abolition, but did not supply a reason. Two said that even knowing this, they would *probably* still be opposed to abolition; while four said they would *definitely* still be opposed (another did not answer). As one interviewee explained: “Indonesia should not be a follower. If Indonesia wants to change its law, it should be based on Indonesian’s interest and not because following others.”

Most of the interviewees were similarly indifferent to Malaysia’s recent statement about its intention to move towards abolition. Two said that Malaysia’s decision would incline them towards favouring abolition, in one case because of the need to find a ‘common solution among ASEAN members’. However, one said he would *probably* still be opposed to abolition, and a further four were adamant that they would *definitely* still be opposed (another did not answer). One explained that Malaysia was a transit country for drugs, while Indonesia is a destination country and so needed to “impose harsh punishments to drug traffickers in order to control the drug trafficking”.

Trust in the safety and the efficacy of the criminal process

A series of questions aimed to assess their trust in the Indonesian criminal justice system were included in the interview schedule. Asked to what extent they thought wrongful convictions occurred, all said ‘sometimes’ (except one who did not answer) and when asked about adequate safeguards to prevent these, seven thought the system only ‘sometimes’ provided adequate safeguards to prevent wrongful convictions; one thought it always provided adequate safeguards, though he had admitted to thinking there were sometimes wrongful convictions in Indonesia. We asked if they thought that various criminal justice professionals could be trusted to ensure that suspects are treated fairly. Table 2 suggests that the majority feel these criminal justice actors/institutions can only be trusted some of the time.

Table 2: Trust in criminal justice professionals & the courts

	Police	Prosecutors	Courts
YES, they can ALWAYS be trusted	1	2	2
They can sometimes be trusted	7	6	4
NO, they can NEVER be trusted			
I am not sure/ No opinion			2

It is interesting that only one or two believed that police, prosecutors and the courts can always be trusted to provide adequate safeguards, given that they were not personally in favour of abolition. It would seem that low trust in the criminal justice system to ensure pre-trial and trial processes does not result in a desire to remove the most punitive, and irreversible punishment from the system.

Given that all were keen on retaining the death penalty in Indonesia and most justified this by reference to its deterrent effect, it is perhaps surprising that they did not overwhelmingly feel that executions were the most effective means of controlling crime.

Respondents were asked to rank the likelihood of *more executions* as a way of controlling violent crime leading to death when compared to other social and criminal justice policies. Two refused to answer this question, arguing that it was unclear. Two ranked only three of the options, and ‘more executions’ was not among their choices. Remarkably three of the four who answered in full, ranked ‘more executions’ last on the list of nine alternatives, with the fourth ranking it seventh. In order of ranking, they felt that better control of the drug trade²⁹; better moral education of young people against the use of violence,³⁰ reducing poverty/improving housing³¹; more effective policing³²; and more therapeutic interventions for drug users³³ were likely to be more effective. At least one person mentioned each of the following, though for none was it their first choice: better services to prevent domestic violence; and longer prison sentences. It would seem that aspirations focus more on health and social policy than on punitive responses to addressing violent crime.

We also asked respondents to rank a list of other possible ways to control drug-related crime, and how more executions would fare in these rankings (one refused to answer). Six of the remaining seven interviewees selected better control of the drug trade as either their first or second choice³⁴; with more effective policing³⁵; better moral education of young people against the misuse of drugs³⁶; better preventive treatment of those addicted to drugs³⁷; reducing poverty/improving housing³⁸; and longer prison sentences³⁹ all seen as more important than executions in controlling drug-related crimes. Indeed, while one

²⁹ The 1st choice for 2 and the 2nd choice for 1.

³⁰ The 1st choice for 2.

³¹ The 1st choice for 1, the 2nd choice for 1, and the 3rd choice for 1.

³² The 1st choice for 1 and the 3rd choice for 2.

³³ The 3rd choice for 2.

³⁴ The 1st choice for 2 and the 2nd choice for 4.

³⁵ The 1st choice for 1, the 3rd choice for 2 and the 4th choice for 1.

³⁶ The 1st choice for 2, the 2nd choice for 1 and the 3rd choice for 1.

³⁷ The 2nd choice for 1, and the 3rd choice for 3.

³⁸ The 1st choice for 1, and the 3rd choice for 1

³⁹ The 2nd choice for 1 and the 4th choice for 1.

ranked more executions first, two ranked this last, and two ranked this sixth of the seven options. The two who only ranked 3 or 4 options did not include 'more executions' among their choices.

Jurisdictional competition

The final series of questions sought views about reciprocity of crime and drug policies in other countries in the region, and how respondents believe these compare to the laws and policies on the death penalty in Indonesia. These questions aimed to see if interviewees thought that Indonesian policies are influenced by policies in neighbouring countries, and practices of drug offenders, depending on their views about the drugs trade in their region. First, we sought to establish who respondents considered to be Indonesia's neighbours (in terms of similar cultures, crime problems, policies, business links or reciprocal relations). Respondents considered Malaysia, Philippines, Singapore, Thailand, Laos, China, Cambodia, Vietnam, Myanmar, Pakistan, India, Australia to be 'neighbours' of Indonesia, and one even mentioned Saudi Arabia. When asked about their closest neighbours, the list narrowed to Malaysia, Thailand, Myanmar, Singapore, Philippines and China, with Malaysia being the most common response to this question.

When asked in what ways crime and drug problems in those countries affect Indonesia, they focused on drug policies and production in the 'Golden Triangle' and on poor border control:

- "In the case of drugs-related organized crime, especially in the efforts to combat them (because Indonesia has agreements with the other states)."
- Another made clear that Indonesia was a destination country: "Those countries [are] basically the producers and/or transit countries to Indonesia. Indonesia instead is a destination for drug trafficking."
- One explained that as Malaysia is a transit country, "if Malaysia applies strict rules on drug trafficking to Indonesia, it will be easier to handle drug traffickers."

Indeed, most interviewees mentioned that stricter control and harsher punishment of drug crime within neighbouring jurisdictions would help to control drug crime in Indonesia.

They were asked if criminal laws towards drug traffickers in Indonesia are different from the practices in those close neighbouring countries. Their varying opinions suggest that interviewees were in fact unclear: one suggested that the laws were harsher in Indonesia than Malaysia, while another believed they were more lenient, and two others that they were the same⁴⁰. Asked if drug traffickers in Indonesia face the same risk of arrest and conviction and of being sentenced to death as in the main neighbouring country, four felt they did, while one felt that in Indonesia there was a smaller chance of being arrested and convicted but a greater risk of being sentenced to death than those in Malaysia. Several interviewees felt that one or both of these questions were too sensitive to answer.

⁴⁰ Two others stated that the laws differed, but did not want to speculate on whether their relative leniency.

The theory of jurisdictional competition holds that recognising that drug traffickers will make rational choices about where to move drugs to and from, and where to try to sell them, states may seek to discourage the influx of criminals by adopting harsher policies than neighbouring jurisdictions. Our interviewees were clearly of this view, with all agreeing with the following statements (strongly or moderately agree):

- (i) Drug traffickers will choose a location to sell drugs where they are less likely to be *arrested and convicted*;
- (ii) Drug traffickers will choose a location to sell drugs where they are less likely to *receive the death penalty*;
- (iii) Drug traffickers will shift their business to Indonesia if Indonesia reduces the risks of capital punishment for drug traffickers.

Furthermore, there was support, though somewhat weaker, for three other similar statements, such as: 'Drug use is lower in countries that apply the death penalty to drug traffickers'.

Finally, we asked our interviewees to state how strongly they agreed or disagreed with the following two statements:

- (i) Drug trafficking will increase if Indonesia replaces the death penalty with sentences of life in prison for drug traffickers.
- (ii) Drug-related deaths will increase if Indonesia replaces the death penalty with sentences of life in prison for drug traffickers.

Responses suggest most of our interviewees had a sense of Indonesia's drugs policy that corresponded with the theory of jurisdictional competition. One agreed strongly with both statements, four agreed quite strongly with both statements; one person agreed very strongly with the first but strongly disagreed with the second, while two interviewees were equivocal about both.

2.3. Main sample

For the main study, we aim to interview approximately 40 'elites' across Indonesia - people who have jurisdiction over part of the criminal process or who are considered to be influential in shaping or in responding to public opinion. They will include judges, prosecutors, defence lawyers, politicians (both government and opposition), community elders, religious leaders, journalists, and others who may influence policy in the smaller islands.

The interview schedule is similar to the one used in the pilot study described above. However, minor adjustments have been made based on comments from the eight pilot respondents. Given the confusion described above between types of *people* and types of *offence* for which the death penalty may not be appropriate, we have enhanced these two questions and will double check their clarity upon translation. We have improved the questions about whether the death penalty should be further restricted or made less restrictive. We have also introduced consistency across questions that take the same format (e.g. strength of feeling about abolition under various circumstances, and perceptions of fairness in the criminal justice system).

3. Public Opinion Survey

Governments in Southeast Asia seem to assume that it is necessary to retain the death penalty because public opinion reflects a high level of interest in and concern about the issue. However, surveys in China, Singapore and Malaysia⁴¹ found no support for this assertion, with very few respondents saying they were very concerned about this issue, and very few knew a lot about the retention and administration of the death penalty. For example, the survey of 1,500 Singaporeans aged between 18 to 74 years found that the death penalty is not a subject that most respondents were interested in or felt that they were knowledgeable about.⁴² And in Taiwan, only 0.2% of respondents were able to answer basic, factual questions on the death penalty correctly.⁴³

The Indonesian government often cites public support as a key reason for retaining the death penalty. Media polls indicate around 75% support for the death penalty; however, polls were not conducted using rigorous methodologies and the results cannot be relied upon. This study will look beyond the binary question of whether the public supports the death penalty, to consider the salience of the issue, and to examine the public's level of knowledge about the death penalty in Indonesia, showing whether support is based on facts or misconceived ideas. Surveys which fail to test the knowledge on which opinions are based provide misleading assessment of the level of support that can be expected from a well-informed public. Thus, if research demonstrates that support for capital punishment declines if the public is better informed about its administration, governments or others wishing to abolish can prepare the ground by rigorous public information campaigns. The findings will provide a more nuanced view of the death penalty and an authoritative explanation as to why, and to what extent, the public supports the death penalty, for what crimes and what types of offenders.

Fears about the dangers of unfair criminal justice processes and the risk of innocent people being sentenced to death and executed appear to have shaped public opinion in the USA, with declining approval for the death penalty coinciding with growing awareness of significant failures of due process to protect the vulnerable and the innocent.⁴⁴ While the decline is likely to be partly explicable by the increasing availability and use of life sentences without the possibility of parole, the impact of 'innocence' and flawed justice processes has also been shown to influence public opinion elsewhere, such as in Japan, Trinidad, and Singapore.⁴⁵ Hence, support for the death penalty would seem to be contingent upon belief that it can be administered without error. The surveys conducted in China, Singapore and Malaysia found that support fell dramatically when respondents were asked if

⁴¹ See note 16 above, D. Oberwittler and S. Qi (2009) and R. Hood (2013); see also W.C. Chan, E.S. Tan, J. Lee and B. Mathi (2018), '*Public Opinion on the Death Penalty in Singapore: Survey Findings*', National University of Singapore, Faculty of Law Working Paper.

⁴² Ibid, W.C. Chan, E.S. Tan, J. Lee and B. Mathi (2018).

⁴³ H-Y Chiu (2019) '*For or against abolition: Evidence from Taiwan*', The Death Penalty Project.

⁴⁴ F. R. Baumgartner, S. L. DeBoef, and A. E. Boydston (2008) *The Decline of the Death Penalty and the Discovery of Innocence*, Cambridge University Press, p.101. See also, '*The Inevitability of Error: The administration of justice in death penalty cases*' (2014), The Death Penalty Project.

⁴⁵ M. Sato (2018), '*12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*', The Death Penalty Project. See also note 16 above, R. Hood and F. Seemungal (2012); see further note 38 above, W.C. Chan, E.S. Tan, J. Lee and B. Mathi (2018).

it were proven to their satisfaction that innocent persons had been executed: in Malaysia from 91% to 33% for murder, and from 75% to 26% and from 83% to 23% for drug trafficking and firearms offences respectively. We will test if similar changes to support can be found in Indonesia.

There is evidence that the level of public support for the death penalty declines if respondents are asked if they would still support it if new scientific evidence proved that the death penalty is not a better general deterrent than life imprisonment or very long-term imprisonment. For example, in Singapore, where six out of ten of the 92% who were in favour of the death penalty for intentional murder believed in its uniquely powerful deterrent effect, only 57% of the total sample said they would still favour retaining the death penalty if it were proved that it is not more effective as a deterrent to murder than life or long-term imprisonment.⁴⁶ We can test if this is the case in Indonesia, where the deterrence argument is favoured, particularly in respect of drug offences.

We will also test the strength of opinion, something most superficial surveys do not seek to measure. Where surveys have done so, support can decline from a majority to a small minority. For example, in Singapore, it declined from 70% 'generally in favour' of capital punishment to only 9% 'strongly in favour'. Professed support for capital punishment does not mean that respondents are inevitably and unequivocally opposed to abolition. In Taiwan, while a majority of respondents were opposed to abolition, only a minority were 'strongly opposed'.⁴⁷ In Malaysia, 91% claimed to be in favour of the death penalty, yet only 59% said "definitely no" when asked whether Malaysia should follow world trends to abolish capital punishment for all crimes. We will therefore ask specifically about reform and abolition, not assume that general support for capital punishment means that the public will not accept abolition.

Public opinion surveys that ask only abstract questions do not capture people's often less punitive responses to specific cases. Surveys that provide vignettes/scenarios to generate thoughtful responses⁴⁸ are better able to determine if the public may tolerate abolition or progressive restriction and, if so, for which offences or offenders. Respondents to surveys in China, Malaysia, Taiwan and Singapore were asked to judge and select the appropriate punishment for three scenarios of murder cases. Each scenario had an example with aggravating factors and another example with mitigating circumstances. In all surveys, the proportion of respondents who chose death as the appropriate punishment was considerably lower than the proportion who had said they were generally in favour of the death penalty, and always lower where there was a mitigating factor. In Taiwan, support for the death penalty fell from 83% to 34% where concerns were raised about the poor mental health of the defendant. Given that death sentences are frequently imposed for drug offences in Indonesia, we will add to our survey scenarios involving convictions for drug offences, distinguishing between drug traffickers and mules.

⁴⁶ See note 16 above, W.C. Chan, E.S. Tan, J. Lee and B. Mathi (2018), at p. 15 (noting that support for the death penalty for drug trafficking fell from 86% to 44%).

⁴⁷ See note 40 above, H-Y. Chiu (2019).

⁴⁸ See, for example, notes 16 and 42 above, The Death Penalty Project reports on Trinidad, Zimbabwe and Malaysia;; and the recent report on Singapore: W.C. Chan Tan Ern Ser, Jack Lee and Braema Mathi (2018): note 38 above.

Finally, we will ask questions to assess the public's perceptions of the death penalty in relation to other punishments and alternative criminal policy. In China and Singapore, it was found that support for the death penalty declines if the alternative is life imprisonment with early release, declining still further with the alternative of life without the prospect of parole. Similarly, in Taiwan, the proportion of respondents opposed to abolition fell from 85% to 27% if the alternative were to be life without parole. And when asked about appropriate criminal policy for murderers, respondents in Malaysia and Singapore expressed the view that crime prevention policies and police effectiveness were more effective at reducing murders than a greater number of executions.

Research on public opinion conducted by the DPP to date has used the traditional face-to-face method of gathering data, and we propose to do such a survey. It is our preferred method. However, there are high costs to such research as well as benefits and so we propose a second method of collecting data from the public – an online survey, transmitted through WhatsApp – suggesting that this could be an innovative alternative. We know of no other criminal justice survey that has used this approach in Southeast Asia and while it would be harder to secure a representative sample of respondents, it would be a relatively inexpensive method for collecting public opinion data. The questions would be very similar, though may need to be marginally fewer for the online version.

3.1. Face-to-face survey

A survey of public opinion on the death penalty is not an easy thing to do. This is a sensitive issue in countries that retain the death penalty and opinions can be strong and well defended. It is important, therefore, to employ the services of a reputable market research company to ensure that we get valuable feedback on the design of the questionnaire, both on the wording and the order of the questions, and that the tool is administered with care to ensure the quality of the data that are produced.

Stratified sampling will be adopted across Indonesia to ensure randomness of households selected in this door to door approach and it will be aimed to keep the interviews to 30 minutes maximum. Quotas will be set using profiles of the general population from census data, aiming for a sample of 1200, ensuring representativeness across states, districts, and housing areas, as well as across dwelling types to ensure a good spread and representation of:

Ethnicity: Javanese, Sundanese and Batak and 'other';

Religion: Muslim, Christian, and 'other';

Age, 18 – 24, 25 – 34, 35 – 44, 45 – 55, 55 – 65;

Gender: Males, Females;

Strata: Market Centre, Other Urban, Small Island, Rural;

Income.

As long as the sample is stratified, a sample size of 1,200 would give us about a +/- 3% margin of error, which ensures reliable data.

Interviewers will conduct a small pilot study to test the instrument before the study begins. Data will be recorded by hand and then cleaned, coded and entered onto a database and made available to the research team, who will analyse the data and write the Report. We will only use a company that offers quality

control as part of its service, with a fixed percentage (about 25%) of ‘spot checks’ on completed interviews without pre-warning interviewers (by contacting the interviewee to ask about the encounter). If such checks establish problems with any interviewer, checks will be made on *all* of their interviews to ensure quality control. Other verification checks on data entry should also be carried out by the company before data are considered to be sufficiently robust to be passed to the research team.

3.2. Online survey

Some or all of the themes and questions covered by the face-to-face survey could be explored by means of an online survey transmitted through WhatsApp, and it is proposed here that this could be an alternative to, or administered in addition to, a conventional survey.

WhatsApp has recently emerged as a substitute for SMS messaging around the world, particularly in developing countries. Launched in 2009, it soon took over from other platforms as the preferred means of communicating, especially once it allowed for audio notes, videos, location details, emojis, and more recently-free telephone calls. It is estimated that about 40 % of the 142 million internet users in Indonesia use WhatsApp, making it the nation’s most popular messaging application.⁴⁹

While some academics have begun to consider the empowering potential of WhatsApp for certain marginalised communities (e.g. women in Nigeria⁵⁰), and others have sought to explore what people use the platform for (e.g. professionals and students in Pakistan⁵¹), others are considering WhatsApp as a transmission system for online surveys or as a sole or supplementary method for collecting data. A recent UN qualitative study of the needs, fears, perspectives and local conflict dynamics of host communities and Syrian refugees in Lebanon demonstrated its efficacy in a country where WhatsApp is a popular means of communication.⁵²

There are two ways of doing an online survey: using a market research company to deliver an online survey or employing a data clerk to administer the survey for the research team, using WhatsApp to link respondents to an online survey tool, such as ‘SurveyMonkey’ to generate the quantitative data that would be covered in the face-to-face surveys.

The practical challenges of using WhatsApp to transmit an online survey are clear: it is dependent on access to phone numbers. The best route to representative

⁴⁹ “Time to leave? Hoaxes thrive in WhatsApp group chats”, Jakarta Post, 19 Nov.2018.

⁵⁰ N.H. Abubaker and S.I. Dasuki (2018) ‘Empowerment in their hands: use of WhatsApp by women in Nigeria’, 22:2 Gender, Technology and Development 164-183.

⁵¹ S. Shahid (2018) ‘Content Analysis of WhatsApp Conversations: An Analytical Study to Evaluate the Effectiveness of WhatsApp Application in Karachi’, 4(1) International Journal of Media, Journalism and Mass Communications 14-26.

⁵² UNDP (2018) *WhatsApp Surveying Guide: Lessons learnt from two qualitative WhatsApp surveys in Lebanon*. For the results of this survey, see L. Ullrich (2018), ‘Below the Surface: Results of a WhatsApp Survey of Syrian Refugees and Host Communities in Lebanon’, UNDP Research Report; and L. Ullrich (2018), ‘Speak up Via WhatsApp: Understanding the Life Worlds of Syrian refugees and host communities in Lebanon’, UNDP Research Report.

sampling is by gaining access to phone numbers directly through a data sharing agreement with a phone company to ensure that respondents represent all areas of Indonesia, and not only the main cities. The company would supply a database of phone numbers stripped of all personal identification (other than locality, in order to ensure coverage across Indonesia), which could then be used for administering the survey. Another route, typically used by companies who wish to advertise their products, is to pay the phone companies to send an SMS to all their clients introducing the survey and asking people to follow the link to the WhatsApp account where they could receive a message directly from the research team.

We would announce the survey initially through both SMS and WhatsApp to ensure that those people who do not use WhatsApp can download it. The longer introductory message, explaining the survey, will be sent via WhatsApp as voice and text message. This will give information about data protection and cover all the relevant research ethics information. It will explain why we are doing the research and make clear that we want respondents from all socio-demographic backgrounds to ensure the study is as inclusive as possible. We will seek advice from our partner organisations on whether or not to compensate participants for their time upon completion of the survey, with an e-voucher for approximately 1,000,00 Indonesian Rupiah (just over £5).

Recent research by IPSOS found that respondents will complete an online survey using their mobile device for up to 20 minutes without unduly compromising quality of the data (there was no data degradation; quality open-ended responses were good; and there was only a slightly higher 'respondent abandonment' level than found with traditional surveys).⁵³ Indeed, the method secured representative and engaged respondents. Therefore, we would seek to amend the face-to-face survey slightly to ensure completion within 20 minutes. We should not have to lose more than two or three questions.

Online surveys typically generate fewer responses than face-to-face surveys. Response rates vary depending on the topic of research but across studies tend to start at around 10% and rarely secure responses above 35%, whereas face-to-face surveys tend to generate responses at 20 percentage points higher. That said, in Indonesia, where many people are hard to reach because there are so many small islands but where a very high proportion of the population has access to the internet, the online survey may secure a more diverse response in terms of socio-demographic factors. Furthermore, a relatively low response rate is not fatal to the reliability of data gathered in a public opinion survey; what matters is understanding any non-response biases and ensuring representation of the population of interest. Given that our interest is in the opinions of the whole nation, and not just one population, our main concern is to secure geographical coverage, and not to get the majority of our responses from big cities, or from men (men are slightly more likely to complete online surveys than women). While we can weight the data if there is a higher proportion of male respondents, we need to ensure the sample is stratified by location. This can be achieved by filtering the responses by location. The online programme can be designed to first ask respondents for their postal code and once sufficient responses have been collected from each postal area, the survey will inform the respondent that they

⁵³ IPSOS Interactive Services (2017) *Device Agnostic: A Researcher's Guide*.

should not proceed to answer the questions, accepting respondents only from those areas that are not yet fully populated in the data cells. This approach would produce a representative sample which would not need to be higher than approximately 1,800 responses.

We would need to compress some messages (such as long introductory messages) using a free online software to allow us to send them to many phone numbers. There are many decent audio compression tools available; many are free, such as 'Online Audio Converter' or 'Monkey's Audio'.

3.3. Comparative benefits, challenges and costs of the different approaches

The benefits of traditional face-to-face surveys are clear: they allow for accurate demographic data to be collected; for example, it is easier to screen for representative samples of women, or religious or ethnic minorities, or different age groups in a face-to-face encounter. They also allow for the survey company to explain a question that is unclear, and to encourage the interviewee to answer further questions if they are getting tired or bored. However, they are designed for the convenience of the market research company, with the respondent expected to answer questions at a time chosen by the interviewer, rather than when it is convenient to the respondent. Further, interviewer effects can produce responses that the respondent believes to be desirable or expected and thereby introduce bias into the responses. They are expensive and the costs are inflated in a country such as Indonesia, which is the world's largest island country, with some 17,000 islands, and the 4th most populous country in the world.

Online surveying makes the collection of a large sample possible in a short time. It is also low-cost as sending WhatsApp messages is free where Wi-Fi or 3G is available, the survey is inexpensive to use and the data can be transferred easily to a quantitative statistical programme, with the University of Oxford team being responsible for analysis. The respondent can choose a time and place to answer the questions which is convenient and where their responses will not be seen or heard by others. They may include vulnerable and dispersed populations who are typically left out of market research surveys, such as those with precarious lifestyles. The distance between researcher and respondent means that the former should not influence the latter, reducing the risks of social desirability or silencing effects. Furthermore, while interviewees may be anxious about answering questions on sensitive topics like the death penalty in face-to-face encounters, their invisibility in an online survey might produce more robust data.

That said, there is a risk with any online survey that respondents will misunderstand questions, with no interviewer to clarify, or ask follow-up questions. Moreover, online surveys that offer incentives for completion may encourage answer falsification: respondents may enter incorrect demographic data so that they are able to complete the survey and attract a reward, or not take care with their answers so that they can complete all questions and secure the reward, creating some spoiled data.

4. Research Potential and Recommendation

The Elite and Public Opinion studies proposed here have the potential to promote and protect the human rights of those facing the death penalty through engagement with key stakeholders and empirical research on attitudes towards the death penalty. At present, there seems to be insufficient knowledge and some misunderstanding about the use and administration of the death penalty, as we discovered in our scoping study, with current debate characterised by a populist agenda and misinformation, particularly on the ‘drugs emergency’. Furthermore, our elite pilot study suggested that the key rationales for retention centre around notions of its deterrent effect and a belief that the public are strongly supportive of it. This programme of opinion research will identify reasons behind the retention and administration of the death penalty and its utility, leading to an increased level of awareness and knowledge by the executive, parliamentarians, those working within the criminal justice system, the media and the wider public. This knowledge will in turn strengthen democratic governance and promote informed and constructive dialogue on the death penalty at a national level, thereby laying the foundations for any future programme to promote legislative reform in Indonesia. What is more, if these studies are conducted before the completion of the Draft Criminal Code (RKUHP), the findings could inform policy makers and potentially restrict the use of the death penalty further (revisions to the draft Criminal Code are ongoing though it is not clear yet when they will be complete).

We recommend that *both* elite and public opinion research is done as these two different approaches speak to separate, though related matters. Together they have the potential to have a significant influence on policy and practice. We recommend that the public opinion survey work is completed before the full elite opinion survey in order that some of the findings of that research can be integrated into the elite opinion interviews to give participants the opportunity to reflect on and respond to accurate data on what the public thinks, as opposed to what the government believes the public thinks. However, if funds are secured for only the elite opinion work, we will proceed with that research, given that the pilot study has been completed successfully, and change the order of the programme of research. In any event, we hope to disseminate the findings of all empirical research together in a range of outputs.

4.1. Data dissemination, Engagement and Impact

These projects will play a critical role in stimulating informed dialogue and in providing a platform for engagement with key stakeholders. Through engagement at all stages and dissemination of the data gathered throughout the project, ‘elite/opinion leaders’ and ‘experts’, including criminal justice actors and parliamentarians, will be provided with expertise and information that encourage consideration of policies and practices that reduce reliance on capital punishment, that progressively restrict its use, and that ultimately could bring about abolition. For example, the data may encourage therapeutic responses to drug offending, to significantly reduce the number of death sentences and executions imposed in Indonesia, and to provide an alternative way of responding to drug offending for other neighbouring Southeast Asian countries with similar problems and responses.

For the first time, unique data on the views of the general public and ‘opinion leaders’ on the death penalty in Indonesia will provide an alternative tool to engage with key stakeholders in Indonesia on the death penalty. It is a clear aim of this research to have an impact on criminal policy and practice in Indonesia and all efforts at knowledge exchange and at facilitating this impact will be made throughout the research, but particularly at the dissemination stage. Foreign embassies in Indonesia will be encouraged to participate in dissemination events aimed at shifting discourse, practice and policy. Given the wider aim to influence policy across Southeast Asia, significant efforts will be directed towards engagement with media, embassies and officials in neighbouring jurisdictions.

Engagement and dissemination activities will be implemented in partnership with key local actors and NGOs, including our local partners, thus further strengthening the foundation for future activities leading to the restriction of the death penalty. By stimulating dialogue and informed public debate, it is hoped that this programme of research will encourage transparency in the application of the death penalty, and provide all interested parties with the necessary tools to overcome perceived obstacles to abolition or reform.

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Professor Carolyn Hoyle has been at the University of Oxford Centre for Criminology since 1991 and was Centre Director from 2012-2017. She has published empirical and theoretical research on a wide range of criminological topics including the death penalty and wrongful convictions, as well as issues of policing, domestic violence, and restorative justice. She lectures extensively on topics including the death penalty, victims, and restorative justice, and supervises DPhil and MPhil students on these and other criminological topics. Carolyn has recently concluded research concerning wrongful convictions in the UK, and her book, *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission*, was published in January 2019. She is currently working on a study of foreign nationals at risk of capital punishment in Malaysia.

Researchers

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The Death Penalty Project

The Death Penalty Project (DPP) is a legal action charity based in the UK, working to promote and protect the human rights of those facing the death penalty. We provide free legal representation to death row prisoners around the world, with a focus on Commonwealth countries, to highlight miscarriages of justice and breaches of human rights. We also assist other vulnerable prisoners, including juveniles, those who suffer from mental health issues and prisoners who are serving long-term sentences.

For more than three decades, our work has played a critical role in identifying miscarriages of justice, promoting minimum fair-trial guarantees in capital cases, and in establishing violations of domestic and international law. Through our legal work, the application of the death penalty has been restricted in many countries in line with international human rights standards. To complement our legal activities, we conduct capacity-building activities for members of the judiciary, defence lawyers and prosecutors, and commission studies on criminal justice and human rights issues relating to the death penalty.

We have been commissioning, supporting and publishing independent academic research on attitudes towards the death penalty for almost a decade. We use 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. Our previous publications focusing on attitudes towards the death penalty include:

- *Public Opinion Survey on the Mandatory Death Penalty in Trinidad* (2011), by Roger Hood and Florence Seemungal
- *The Death Penalty in Malaysia: Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences* (2013), by Roger Hood
- *The Public Opinion Myth: Why Japan Retains the Death Penalty* (2015), by Mai Sato and Paul Bacon
- *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* (2018), by Mai Sato

These reports and other publications by The Death Penalty Project are available to view and download at www.deathpenaltyproject.org

Lembaga Bantuan Hukum Masyarakat (LBHM)

Lembaga Bantuan Hukum Masyarakat (LBHM) is a frontline not-for-profit non-governmental organisation that provides free legal services for the poor and victims of human rights abuses; undertakes community legal empowerment for marginalized groups; and advocates for law reform and human rights protection through campaigns, strategic litigation, policy advocacy, research and analysis.

LBHM focuses its works in the following areas: abolition of the death penalty, drug policy, HIV and human rights, mental health, and the protection of LGBT rights. For further information please visit www.lbhmasyarakat.org