RESPONSIBLE BUSINESS ENGAGEMENT ON THE DEATH PENALTY
A PRACTICAL GUIDE
Business engagement in the death penalty is critical because of the **impact** it can have. Put simply: the power is in your hands. If your business is looking for a human rights issue where it can achieve measurable change, advocacy on the death penalty must be considered.

Global support for the death penalty is declining. Meanwhile, competition for investment is fierce. Governments and the public at large care more about job creation and a healthy economy than a system of executions. Therefore, the voices of businesses and business leaders have a huge role to play in shaping public dialogue about whether to keep – or end – the use of capital punishment.

Businesses looking to open plants, facilities, headquarters or other operations have considerable leverage in terms of where they choose to invest and what they choose to discuss with potential partners and host-states. Business voices, whether speaking at the initial investment stage, or after a long period of partnership with a state, occupy a place of privilege in terms of the weight of their voices and the impact they might have. With this privilege comes a responsibility to speak about the values the company holds and to express a sincere desire to see those values shared with current and potential partners.

In a climate where corporate responsibility to respect and protect human rights is mainstream and firmly rooted in prevailing social expectations, it is important for a values-based entity to consider its policy regarding the death penalty for the following reasons:

**THE DEATH PENALTY IS A HUMAN RIGHTS ISSUE.** Increasingly, stakeholders are demanding companies establish business and human rights policies, and the death penalty should be included. Article 2 of the EU Charter of Fundamental Rights prohibits the use of capital punishment.¹ The Council of Europe, with its 47 member states, has taken an affirmative stance on abolition as reflected in Protocol 13 of the European Convention on Human Rights which requires member states to take steps to secure the global abolition of the death penalty in all circumstances.² The UN has adopted a number of non-binding resolutions calling for a global moratorium on executions, with a view to ultimate abolition.³ The global human rights organization, Amnesty International, has long called for the abolition of the death penalty in line with Articles 3 and 5 of the Universal Declaration of Human Rights.

**THE DEATH PENALTY IS A RULE OF LAW ISSUE.** “The rule of law is crucial for promoting economic growth, sustainable development, human rights and access to justice. Where the rule of law is strong, people and businesses can feel confident about investing in the future.” Former UN Secretary-General, Ban Ki-moon.⁴ Systems of capital punishment are riddled with error. Even in the USA⁵ – with a comparatively sophisticated judicial system – an unknown number of innocent people have been executed. One recent study “conservatively estimated”
only around half of innocent people on America's death row are freed. The few who are formally exonerated are proof the system is flawed. In some cases, states have granted posthumous pardons after execution. Because the death penalty provides for an irreversible punishment, mistakes in the application of the law cannot be corrected, thereby undermining the effectiveness and credibility of the system of laws. The death penalty presents a further rule of law issue in its unequal application: in the USA just 2% of counties are responsible for a majority of executions. The likelihood of a defendant receiving the death penalty depends far more on the postcode in which the crime occurred than the facts of their case.

THE DEATH PENALTY IS RACIST AND DISPROPORTIONATELY AFFECTS THE MOST VULNERABLE MEMBERS OF SOCIETY. A responsible business will want to adopt a comprehensive human rights policy that demonstrates a nuanced response to issues of proven concern to shareholders and customers, like racism, poverty and mental health. The death row population in the USA is 42% Black, nearly three times the general population. Also, there is an apparent heightened value placed on white lives: although half of murder victims are white, the death penalty is sought in over 80% of cases involving a white victim. Finally, in the USA in 2017, 20 of the 23 people executed had one or more of the following impairments: significant evidence of mental illness, evidence of brain injury, developmental brain damage, an IQ in the intellectually disabled range, serious childhood trauma (including neglect and/or abuse), or, they were under the age of 21 at the time of the offence.

THE DEATH PENALTY DOES NOT MAKE COMMUNITIES SAFER NOR DOES IT ADDRESS THE ROOT CAUSES OF CRIME. Responsible businesses care about their communities. This includes supporting criminal justice systems that are cost-effective, sensible and create a safe society with less crime. Statistics from the USA show that states that retain the death penalty have higher murder rates than those without. Law enforcement officials have argued that most offenders do not think about the punishment when committing their crime, therefore negating any deterrent effect. The death penalty does nothing to address and prevent crime and violence, instead it may infer that the state sanctions killing under some circumstances.

THE DEATH PENALTY PREVENTS COMMUNITIES FROM THRIVING BY DRAINING RESOURCES. Responsible businesses want to be good stewards of their investment. The OECD Guidelines reflect that businesses will want to contribute to economic, environmental and social progress in the places they operate. For this reason, businesses have the right to know how their financial contribution to a region is used. A common misconception about the death penalty is that it is cheaper to execute inmates, rather than keep them on death row; this could not be further from the truth. One recent study placed the cost of operating the death penalty at $272 million per execution. Other studies have made similar findings. Businesses have a right to know if their investments are contributing to a system of government that supports expensive executions at the cost of providing resources for community services. A state budget that allocates for a system of capital punishment necessarily reduces funding for education, health care, emergency services, infrastructure and preventative law enforcement, such as policing and drug intervention programs. Further, the community sees no benefit from maintaining a system of capital punishment; states that retain the death penalty are less safe. Simply put, when billions of dollars are being spent on executing a very small number of people, the cost is ultimately borne by a business' workforce and their families.
THE DEATH PENALTY IS DYING. Adopting an affirmative stance in favour of abolition will bring your business firmly onto the right side of history as the death penalty continues to decline. Around 75% of countries have formally ended the use of capital punishment and many more have effectively abandoned its use. Only an isolated minority of countries continue to execute. Just four countries were responsible for 84% of recorded executions in 2017. Even in countries that continue the practice, like the USA, support is falling precipitously. Current polling shows American support for the death penalty sits at around 50% (compared to around 80% in 1996). These statistics reaffirm the global trend towards a rejection of the death penalty.
ADOPT AN ADVOCACY POLICY ON THE DEATH PENALTY.

WHY IS IT IMPORTANT TO ADOPT AN ADVOCACY POLICY ON THE DEATH PENALTY?

Adopting an advocacy policy on the death penalty is a simple and important way to develop an effective strategy on the death penalty. The OECD Guidelines suggest that an enterprise might have an obligation to use its leverage to influence an entity causing an adverse human rights impact, even if the enterprise has not itself contributed to that impact. Using your voice is a highly effective first step to engaging on the death penalty.

A robust advocacy policy on the death penalty reflects a strategic and highly impactful way to intervene: decisions about whether the death penalty continues to be used, how frequently, whether executions take place and by what method are made by a relatively small group of stakeholders. Similarly, the decision as to whether a state should abolish the death penalty through legislative process reflects the choices and conclusions of a relatively small group of people. Speaking directly to these key stakeholders can have an immediate and measurable impact with only a limited number of conversations.

Of equal importance is the role businesses can play in facilitating broader public dialogue on the reasons to end capital punishment. Educating and motivating constituents to support abolition is as important as targeted stakeholder advocacy and it is a relevant role for businesses to play. Equally, speaking to – and seeking out – like minded business leaders is itself a critical contribution to abolition. The private sector is increasingly leading the way in providing platforms for education and information sharing on human rights issues and frequently has the resources and experience necessary to organize and/or participate in convenings in which discussing the death penalty is relevant and important. Concrete examples of what this type of activity might look like are: businesses attending and participating in UN, NGO and other public events regarding the death penalty; businesses publishing blogs or media articles about the death penalty, or even simply re-posting social media or commenting on articles; or, businesses facilitating a discussion amongst their peers in the private sector, whether publicly or privately.

Implementing an advocacy policy is also an efficient and low-risk way to intervene: it does not require a large amount of resources for your business. Small steps can yield big results. Adopting an affirmative goal of communicating your company’s opposition to the death penalty at all or almost-all appropriate opportunities does not require significant time and effort spent, for example, investigating your supply chain. Your business does not need to be concerned about brand impact if it chooses
only to participate in private advocacy efforts. An advocacy policy can be implemented in a way that requires no re-organization of your company’s current processes. In its most basic form, it merely asks leadership and company representatives to adopt an approach that – going forward – will cause positive change.

**HOW DO YOU CREATE AN EFFECTIVE ADVOCACY POLICY?**

Your advocacy strategy is unique to you and your business. You may want to adopt a formal written policy, using the sample language provided below. You may choose to publish the policy on your website, draw attention to it via social media, release a press statement and engage in other public efforts to announce the newly adopted measures and ongoing implementation. You may want to adopt sweeping measures, or only one of the suggestions below.

Alternatively, your business may adopt a more informal approach, for example, through CEO advocacy. A business leader writing an op ed, conducting an interview in which they mention their concerns about the death penalty, or using their voice in one-on-one conversations with key stakeholders will have a major impact on global abolition efforts.

An effective advocacy policy does not need to be public; private communications can be as compelling as a statement. If your business does not choose to publicly announce its stance against the death penalty, it can still have a considerable impact on decisions made about how frequently executions occur and whether laws abolishing the death penalty are enacted through private dialogue with relevant stakeholders. Working closely with the [Responsible Business Initiative on the Death Penalty (RBI)](https://www.responsiblebusinessinitiative.org) will ensure you are refining and targeting your efforts for maximum impact.

As part of an advocacy strategy, your company may also wish to have a policy regarding partners. You may wish to privately act upon – or publicly announce – an intention to prioritize working with partners that share your values. Similarly, you may wish to commit to using your voice and leverage to educate and inform partners as to why your business has chosen to support the abolition of the death penalty.

In sum, there are myriad ways to adopt an effective advocacy strategy. While sample language has been supplied below, we would urge you to avoid an overly prescriptive approach to implementation. RBI was set up to serve the purpose of advising, informing and supporting business engagement on the death penalty. A good first step to adopting any policy on capital punishment is to contact RBI to discuss with their team how you can best support global abolition advocacy.
SAMPLE ADVOCACY POLICY LANGUAGE:

[BUSINESS] will undertake a responsibility to engage in a dialogue about our opposition to the death penalty with relevant stakeholders and decision makers, including governors, lawmakers and local government leaders, at appropriate opportunities.

In line with the OECD Guidelines for Multinational Enterprises, [BUSINESS] will use its leverage to influence and educate key stakeholders who continue to contribute to systems of capital punishment. [BUSINESS] will also undertake to engage in a public dialogue about the death penalty and provide a platform for education and conversation about abolition.

SAMPLE PUBLIC STATEMENT ON THE DEATH PENALTY:

Respecting the rights and innate dignity of every human being is a core value to us at [BUSINESS].

For this reason, we support the global abolition of the death penalty.

The death penalty has been shown to be racist in its application. It is also discriminatory in its impact on those suffering mental illness and disability. In America alone, nearly 9 out of 10 people executed have some form of deficit or disability.

[BUSINESS] stands against racism and discrimination on the grounds of sexuality, disability, socio-economic background or any other factor in every context, including in the administration of the criminal justice system, and especially if the outcome of that system is the taking of a human life.

[BUSINESS] also recognises the danger of executing innocents. Even in a system as sophisticated as the American justice process, for every nine people executed, one innocent person has been exonerated.

Our values form the fabric of our business. We believe the life of every human must be respected and protected. We believe the taking of a life by a state government is wrong and a human rights violation. We stand for an end to the death penalty.

SAMPLE PUBLIC STATEMENTS REGARDING PARTNERS:

We believe in doing business with partners that share our values. We will seek to mitigate the risk of supporting states, institutions or businesses that perpetuate the death penalty through a strengthened partnership due diligence and review process. This will include asking as standard all potential partners whether they directly or indirectly contribute to a system of capital punishment.
We commit to using our voice and leverage to educate and inform when partner-related risks are identified.

SAMPLE PUBLIC STATEMENT ANNOUNCING ADOPTION OF TOOLKIT ELEMENTS:

[BUSINESS] supports the global abolition of the death penalty.

Within the framework of [BUSINESS]'s commitment to respect human rights, and to promote the respect of human rights beyond its corporate activities, [BUSINESS] commits to adopting pro-active measures to assist with the global end to capital punishment and to avoid inadvertently supporting it through investment decisions.

Today [BUSINESS] adopted ... [insert summary of newly adopted measures].

SAMPLE SOCIAL MEDIA STATEMENTS REGARDING ADOPTION OF TOOLKIT ELEMENTS:

• Today, [BUSINESS] implemented a new internal policy to reflect its global opposition to the death penalty. Find out how you can join us in this historic initiative: [link to toolkit: https://www.responsiblebusinessinitiative.org/resources]

• Why is [BUSINESS] taking a stand against the death penalty? Because our values form the fabric of our business and the death penalty is applied in an unfair, arbitrary, and racially biased manner: [link to toolkit: https://www.responsiblebusinessinitiative.org/resources]
STEP 2: ADOPT DUE DILIGENCE AND NON-FINANCIAL REPORTING POLICIES CONNECTED TO THE DEATH PENALTY.

WHY IS IT IMPORTANT TO ADOPT A REPORTING AND DUE DILIGENCE POLICY ON THE DEATH PENALTY?

There is a rapidly growing trend for governments to embed corporate responsibility for human rights into national laws. This may include compulsory reporting requirements for business activities which impact human rights, whether positively or negatively, directly or indirectly. Similarly, these laws may require businesses to undertake compulsory human rights due diligence.

However, whether or not formal laws exist, human rights due diligence and reporting are becoming common practice for large companies that want to manage risk and demonstrate their commitment to using their power as a force for good. They are also part of internationally agreed guidelines that apply broadly to states and companies, for example the UN Guiding Principles on Business and Human Rights, the OECD Due Diligence Guidelines for Responsible Business Conduct and Principle 2 of the UN Global Compact.

Conducting voluntary due diligence and preparing reporting on the death penalty is a good way to publicly demonstrate your commitment to abolition. For example, adopting a policy stating your commitment to consider the death penalty as part of site selection criteria and partner selection is a concrete way to demonstrate your commitment to the issue. You may choose to set a goal for your business: such as aiming for a majority investment in states that have ended their use of the death penalty by 2030. In this way, you can annually report on how your efforts are aligning with that commitment. Finally, due diligence may also alert your company to an existing responsibility to influence the behaviour of others and thus inform your advocacy efforts.

SAMPLE AMENDMENT TO HUMAN RIGHTS DUE DILIGENCE POLICY:

[BUSINESS] will, as part of every investment decision, undertake comprehensive due diligence regarding the use of the death penalty.

SAMPLE POLICY REGARDING SELECTION OF PARTNERS:

[BUSINESS] will place a preference on partners, sub-contractors and suppliers that either have a pro-active anti-death penalty stance, or, at least, do not support it either in practice or through advocacy.

We will ask, as standard, all potential and existing partners, sub-contractors and suppliers whether they directly or indirectly contribute to a system of capital punishment.
We will encourage and support all potential and existing partners, sub-contractors and suppliers to join us in our abolition advocacy efforts.

**SAMPLE AMENDMENT TO SITE SELECTION CRITERIA:**

**[BUSINESS]** will consider the death penalty as part of its site selection criteria.

**SAMPLE AMENDMENT TO NON-FINANCIAL REPORTING:**

**[BUSINESS]** will report each year on its investment in death penalty states.

**SAMPLE NON-FINANCIAL REPORTING STRUCTURE:**

<table>
<thead>
<tr>
<th>Investment</th>
<th>Geographical location</th>
<th>State Type</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing plant</td>
<td>Salt Lake City, UT</td>
<td>Death Penalty State</td>
<td>[BUSINESS] actively supporting Utah’s move towards abolition</td>
</tr>
<tr>
<td>North American headquarters</td>
<td>Seattle, WA</td>
<td>Abolition State</td>
<td>-</td>
</tr>
</tbody>
</table>
**STEP 3: WORK WITH RBI TO PREPARE A BESPOKE STRATEGY.**

The good practices included in this Toolkit are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate. In every case, we urge you to contact RBI as you begin the process of adopting and implementing your company’s policy related to the death penalty. We will work with you to create a structure that exactly matches your company’s position and we will continue to support you as you implement that policy, ensuring that it is tailored to achieve the maximum impact at each stage.
NOTES AND REFERENCES


5 Due to access to available information and expertise, many examples in this Practical Guide are based on the USA, however the arguments are valid globally.


For example, the recently enacted French Vigilance Law establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship. 2019 will likely see the implementation of similar legislation in Switzerland. The EU Non-Financial Reporting Directive of 2014 requires companies to disclose material information on their potential and actual human rights impact of their operations.

The Responsible Business Initiative on the Death Penalty (RBI) was created in 2018 to advise and inform private businesses, trade leaders and government entities who are concerned about the use of capital punishment in the United States. We collaborate with leaders, innovators and influencers to ensure trade and investment decisions are made with integrity and with all the critical facts. In today’s world, human rights issues play an important role in decision making for any leader. RBI sprang out of a need expressed by those leaders to have an informed voice reporting from the ground and to learn about opportunities to share their concerns.

RBI can be reached at: celia@responsiblebusinessinitiative.org

www.responsiblebusinessinitiative.org