



# HUMAN RIGHTS AND THE DEATH PENALTY



## Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>2</sup>

1. that capital punishment may be imposed only for the most serious crimes;
2. that capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission;
3. that persons below eighteen years of age at the time of the commission of the crime, pregnant women, new mothers, or persons who have become insane shall not be sentenced to death;
4. that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts;
5. that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, including adequate legal assistance at all stages of the proceedings;
6. that anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and that such appeals should become mandatory;
7. that anyone sentenced to death shall have the right to seek pardon, or commutation of sentence, which should be available in all cases of capital punishment;
8. that capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence; and
9. that where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

*“Everyone has the right to life, liberty and security of person.”*

**Article 3, Universal Declaration of Human Rights (UDHR), 1948**

*“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*

**Article 6, International Covenant on Civil and Political Rights, 1966**

## WHAT IS THE UNITED NATIONS’ POSITION ON THE USE OF THE DEATH PENALTY BY COUNTRIES AROUND THE WORLD?

Human Rights (“UDHR”), the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), the International Covenant on Civil and Political Rights (“ICCPR”) and their optional protocols. Together, these treaties address a broad array of human rights for all people, including those relevant to the death penalty. In particular, people are guaranteed protections from discrimination, torture, and cruel, inhuman or degrading treatment or punishment, as well as rights to life, liberty and security of person, due process, and equality before the courts.

By United Nations Resolution 2857 (XXVI), issued December 20, 1971, the General Assembly affirmed that to fully guarantee the right to life, which is provided for in Article 3 of the Universal Declaration of Human Rights, States should progressively restrict “the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.” That objective was reaffirmed by the General Assembly in its Resolution 32/61 issued December 8, 1977, in which the General Assembly expressed “the desirability of continuing and expanding the United Nations’ consideration of the question of capital punishment.”

In 1984, the United Nations adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which limits the use of the death penalty and protects those facing it from extensive suffering.<sup>1</sup> More specifically, these Safeguards set forth nine standards for countries retaining the death penalty (see box).

In 1989, the United Nations reiterated its position that the death penalty is incompatible with human rights by adopting the Second Optional Protocol to the International Covenant on Civil and Political Rights (“OP2-ICCPR”), which was aimed at the abolition of the death penalty. The 74 States Parties to the OP2-ICCPR must end all executions and take all necessary measures to abolish the death penalty within their jurisdictions.<sup>3</sup>

Three United Nations resolutions, entitled “Moratorium on the use of the death penalty,” also express the General Assembly’s deep concern about the continued application of the death penalty. On December 18, 2007, the UN General Assembly (G.A.) adopted Resolution 62/149, which calls upon member nations where the death penalty is still in force to impose a moratorium on its use with the ultimate goal of abolishing it.<sup>4</sup> The resolution was reaffirmed in December of 2008 with the adoption of Resolution 63/168,<sup>5</sup> while a third resolution calling for a moratorium on the death penalty (65/206) was passed in 2010.<sup>6</sup> The resolutions call on states that still retain the death penalty:

- a. to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50;
- b. to provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;
- c. to restrict progressively the use of the death penalty and reduce the number of offenses for which it may be imposed; and
- d. to establish a moratorium on executions with a view to abolishing the death penalty. The General Assembly also called on states that have abolished the death penalty not to reintroduce it.

In December 2012, the UN General Assembly will again vote on a fourth moratorium resolution.



### WHAT ARE THE POSITIONS OF THE COUNCIL OF EUROPE, EUROPEAN UNION, AFRICAN UNION AND THE ORGANIZATION OF AMERICAN STATES ON THE USE OF THE DEATH PENALTY BY THEIR MEMBER STATES?

The Council of Europe, European Union (“EU”), and Organization of American States (“OAS”) have adopted policies against the death penalty. The Council of Europe advocates for the abolition of the death penalty<sup>7</sup> and, in 2001, set forth its position in Resolution 1253. Paragraph 1 states that “the [Parliamentary] Assembly considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application constitutes torture and inhuman or degrading punishment within the meaning of Article 3 of the European Convention on Human Rights.”<sup>8</sup> The Assembly cites the ineffectiveness of the death penalty as a deterrent, as well as the risk of executing innocent people as reasons for its opposition.<sup>9</sup> It expressed particular concern over the execution of juveniles and the mentally ill or retarded<sup>10</sup> and is critical of both the United States and Japan for their continued use of the death penalty.<sup>11</sup> The resolution calls on both countries to take steps to abolish the death penalty.<sup>12</sup>

The EU, with its 27 member countries<sup>13</sup> and 5 candidate countries,<sup>14</sup> “is opposed to capital punishment in all circumstances and considers that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights.”<sup>15</sup> Abolition is a prerequisite for membership in the EU. In particular, Article 2(2) of the EU Charter of Fundamental Rights provides that “no one shall be condemned to the death penalty, or executed.”<sup>16</sup>

Moreover, the EU Guidelines on the Death Penalty (“the Guidelines”), adopted in 1998 by the Council of the European Union, underscores “the priority the EU attaches to the fight against the death penalty as a strongly held policy view agreed by all member states.”<sup>17</sup> In furtherance of this priority, the EU acts in its bilateral relations with third countries and in multilateral relations. It consults and engages with third countries in human rights dialogues, public declarations, and interventions in individual cases in line with the Guidelines. It also acts in multilateral fora and has conducted advocacy at the UN level on the issue, such as United Nations Resolutions 62/149, 63/168, and 65/206.<sup>18</sup> Finally, in December 2007, the Council of the EU agreed to establish a “European Day against the Death Penalty,” to be celebrated on October 10 every year, beginning in 2008.<sup>19</sup> This commemorative date is celebrated alongside the international World Day against the Death Penalty, as spearheaded by the World Coalition against the Death Penalty, on October 10.

The African Union does not explicitly prohibit its members from retaining the death penalty. Article 4 of the African Charter on Human and Peoples’ Rights (African Charter), however, protects the right to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child prohibits application of the death penalty for crimes committed by children. In 1999, the African Commission on Human and People’s Rights passed Resolution 42(XXVI) calling upon governments to limit the death penalty to the most serious of crimes and to consider imposing a moratorium on executions and abolishing the death penalty.<sup>20</sup> In 2008, the commission adopted Resolution 136 (XXXVIII), which calls on governments to impose a moratorium on executions and ratify the OP2-ICCPR.<sup>21</sup> The African Commission’s Working Group on the Death Penalty encourages members to either enact a death penalty moratorium or to abolish it altogether.<sup>22</sup> The working group recognizes that the trend in international law is to abolish the death penalty.

Similarly, 13<sup>23</sup> of the 35 independent member states<sup>24</sup> of the OAS have ratified and acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Article 1 of the Protocol provides that the States parties thereto “shall not apply the death penalty in their territory to any person subject to their jurisdiction,” although Article 2(1) allows States, at the time of ratification or accession, to “declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.”<sup>25</sup> Both Brazil and Chile have so declared their reservations for wartime application of the death penalty.<sup>26</sup>

#### Government Obligations<sup>33</sup>

To ensure the rights of those who have been accused, countries have the following obligations:

##### **RESPECT:**

The State must not deprive individuals accused and/or convicted of crimes of their fundamental human rights.

##### **PROTECT:**

The State is required to take positive steps to ensure the protection of the human rights of those individuals accused of and/or sentenced for crimes.

##### **FULFILL:**

The State must adopt national legislation necessary to achieve the full realization of the rights of individuals accused and/or convicted of crimes.

##### **TAKE STEPS:**

The State must use the maximum amount of resources available to ensure the rights of those accused and/or sentenced to crimes based on the resources of society as a whole, not only the resources within the current budget.

##### **MEET MINIMUM STANDARDS:**

The State must ensure the rights of those accused and/or convicted of crimes based on the minimum standards set forth in the State’s national law and those international instruments to which the State is party and immediately address issues regarding arbitrary deprivation of life, torture, and discrimination in the criminal justice system.

##### **NON-DISCRIMINATION:**

The State must take positive measures so that individuals are not subject to discrimination of any kind when accused and/or convicted of crimes but instead are held as equals before the law.

##### **PROTECT MOST VULNERABLE:**

The State must actively ensure that protections are in place for vulnerable individuals accused and/or convicted of crimes including children, the mentally ill and persons with intellectual disabilities.

##### **MONITOR AND REPORT:**

The State must monitor and report on the realization of the rights of those who stand accused or convicted of crimes so as to ensure accountability and the promotion of basic human rights.

For further info, please visit:  
[www.discoverhumanrights.org](http://www.discoverhumanrights.org)

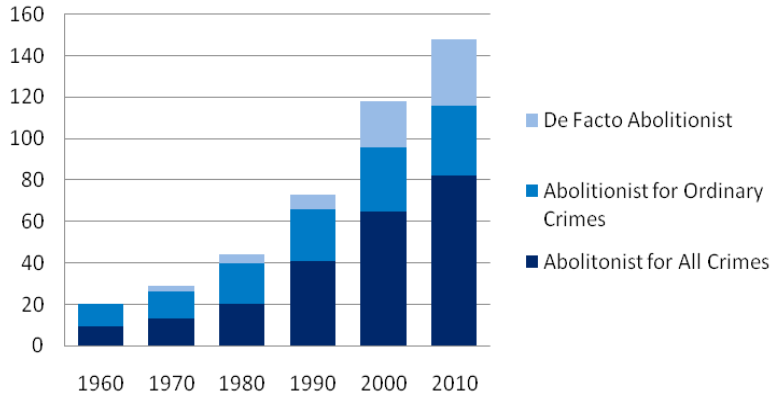


### WHAT HAVE COUNTRIES DONE IN LIGHT OF THE VARIOUS POSITIONS EXPRESSED AGAINST THE DEATH PENALTY?

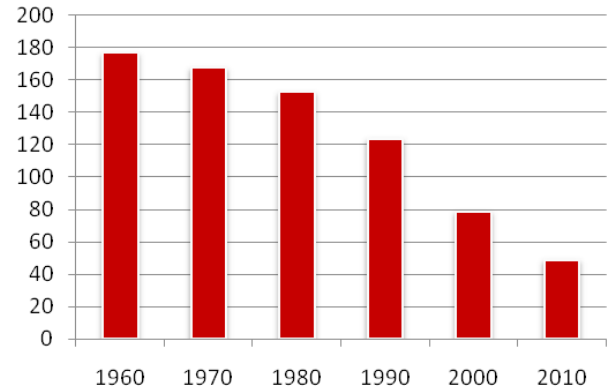
According to Amnesty International, “[m]ore than two-thirds of the countries around the world have now abolished the death penalty in law or in practice.”<sup>27</sup> As of June 2012, Amnesty classified the countries of the world as follows:

- Abolitionist for all crimes: 97
- Abolitionist for ordinary crimes only: 8
- Abolitionist in practice: 36
- Retentionist: 57

#### Abolitionist Countries



#### Retentionist Trend



The United Nations has noted that a general worldwide trend toward abolition is developing.<sup>28</sup> Reports from the UN Secretary General released in 2008 and 2009 observe that reliable figures on the application of the death penalty are difficult to obtain because a number of retentionist states do not provide relevant statistics, or they regard that information as secret. While death sentences were pardoned or commuted in 33 countries, at least 676 people globally and thousands more in China were executed in 2011 according to Amnesty International.<sup>29</sup>

The following developments since the adoption of G.A. Resolution 62/149 demonstrate an international trend toward abolition:

- Uzbekistan, Burundi, Argentina, Togo, Gabon, and Latvia have abolished the death penalty for all crimes.<sup>30</sup>
- In the United States, New Mexico, Illinois, and Connecticut have most recently abolished the death penalty, while Oregon’s governor has declared a moratorium on executions.<sup>31</sup>
- In July 2009, Vietnam abandoned the death penalty for a variety of crimes, including rape, fraud, and bribery, although it still maintains the death penalty for drug trafficking.
- In the same month, Kazakhstan abolished the death penalty for ordinary crimes and restricted its use to terrorism resulting in death and felonies committed during wartime.
- Argentina, Chile, Honduras, Nicaragua, Mongolia, Rwanda, and Uzbekistan have ratified the OP2-ICCPR.
- In February 2008, the Legislation Committee of the Russian State Duma submitted a bill to the lower house of parliament that would officially abolish the death penalty. In November 2009, the Constitutional Court of Russia made a decision that effectively extended the country’s moratorium on the death penalty indefinitely.<sup>32</sup>
- On April 28, 2008, as reported by the Government of Cuba, the President commuted a large number of death sentences to prison terms, resulting in approximately 50 individuals being reprieved, with only three remaining on death row, according to Amnesty International.

*“Considering that the use of the death penalty undermines human dignity and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable...”*

~ United Nations Resolution 62/149, Moratorium on the use of the death penalty, 26 February 2008.



1. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50, U.N. Doc. E/1984/85(1984).
2. *Id.*
3. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. Res. 44/128, annex, 44 UN GAOR Supp. (No. 49) at 207, UN Doc A/44/49 (1989), entered into force 11 July, 1991.
4. UN General Assembly, "Resolution 62/149. Moratorium on use of the death penalty." Accessed June 1, 2012. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/472/71/PDF/N0747271.pdf?OpenElement>.
5. UN General Assembly, "Resolution 63/168 Moratorium on Use of the Death Penalty." Accessed June 1, 2012. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/480/87/PDF/N0848087.pdf?OpenElement>.
6. UN General Assembly, "Resolution 65/206 Moratorium on Use of the Death Penalty." Accessed June 1, 2012. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NI0/524/90/PDF/NI052490.pdf?OpenElement>
7. The Council of Europe was founded in 1949. It consists of 47 member countries and covers almost the entire European continent. The Council "seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals." See Council of Europe, Council of Europe in Brief, <http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en>.
8. EUR. PARL. ASS. RES. 1253 ¶ 1 (2001), available at <http://assembly.coe.int/Documents/AdoptedText/TA01/ERES1253.htm>.
9. *Id.* ¶ 2.
10. *Id.* ¶ 3.
11. *Id.* ¶ 7.
12. *Id.* ¶ 8.
13. The EU's member countries are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. See [http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm).
14. The five candidate countries for membership in the EU are Croatia the Former Yugoslav Republic of Macedonia, Iceland, Montenegro, Serbia, and Turkey See [http://europa.eu/abc/european\\_countries/candidate\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/candidate_countries/index_en.htm).
15. See <http://www.consilium.europa.eu/showPage.aspx?id=1702&lang=EN>.
16. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF#page=3>.
17. See <http://www.consilium.europa.eu/showPage.aspx?id=1702&lang=EN>.
18. See *id.*
19. See *id.*
20. African Commission on Human and People's Rights, ACHPR /Res.42(XXVI)99: Resolution Urging the State to Envisage a Moratorium on Death Penalty (1999).
21. African Commission on Human and People's Rights, ACHPR/Res.136(XXXVIII)08: Resolution calling on State Parties to OBSERVE THE moratorium on the death penalty (2008).
22. African Commission on Human and Peoples' Rights, Working Group on the Death Penalty, Resolution on the Composition and the Operationalisation of the Working Group on the Death Penalty (2005).
23. The thirteen states that have ratified and acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty are Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela. See <http://www.oas.org/Juridico/english/sigs/a-53.html>. It is noteworthy that the United States of America has not ratified and acceded to the Protocol. See *id.*
24. The thirty-five independent member states of the OAS are Antigua and Barbuda, Argentina, The Bahamas (Commonwealth of), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela (Bolivarian Republic of). See [http://www.oas.org/en/states/member\\_states.asp](http://www.oas.org/en/states/member_states.asp).
25. See <http://www.oas.org/Juridico/english/treaties/a-53.html>.
26. See <http://www.oas.org/Juridico/english/sigs/a-53.html>.
27. Amnesty International, "Abolitionist and Retentionist Countries." Accessed June 1, 2012. <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.
28. UN News Centre, Senior UN official cites evidence of growing support for abolishing death penalty, February 24, 2010, <http://www.un.org/apps/news/story.asp?NewsID=33877&Cr=death+penalty&CrI=> (accessed June 7, 2010).
29. Amnesty International, "The Death Penalty in 2011," Amnesty International, 2012, <http://www.amnesty.org/en/library/info/ACT50/001/2012/en> (accessed May 29, 2012).
30. Amnesty International, "Abolitionist and Retentionist Countries." Accessed June 1, 2012. <http://www.amnesty.org/en/death-penalty/countries-abolitionist-for-all-crimes>.
31. Amnesty International, "USA: Another Brick from the Wall." Last modified 04/27/2012. Accessed June 1, 2012. <http://www.amnesty.org/en/library/asset/AMR51/028/2012/en/9be524ac-22b4-433b-9cd8-016bd255d2b9/amr510282012en.pdf>.
32. Alexander Bratersky, "Court Ruling Shelves Death Penalty," Moscow Times, November 20, 2009, <http://www.themoscowtimes.com/news/article/court-ruling-shelves-death-penalty/389994.html>.
33. UDHR-Universal Declaration of Human Rights, G.A. res 217A (III), U.N. Doc A/810 at 71 (1948); ICCPR-International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), (16 December 1966) entry into force 23 March 1967, in accordance with Article 49); ICERD-International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), (21 December 1965) entry into force 4 January 1969, in accordance with Article 19; CAT-International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G. A. res. 39/46 (10 December 1984) entry into force 26 June 1987, in accordance with article 27 (1); Human Rights Committee General Comments: Human Rights Committee, General Comment No. 6: The Right to Life, April 30, 1982; Human Rights Committee General Comment 8: Right to liberty and security of persons, June 30, 1982; Human rights Committee, General Comment No. 13: Equality Before the Courts and the Right to A Fair Trial and Public Hearing by an Independent Court Established by Law, April 13, 1984; Human Rights Committee General comment 18: Non-discrimination, November 10, 1989; Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment, March 3, 1992.