

Constitutional prohibitions of the death penalty

One of the most important steps a country can take to secure human rights for everyone under its jurisdiction is to abolish the death penalty by removing the penalty from its laws. If the country also prohibits the death penalty under its constitution, abolition becomes even more secure.

Out of the 84 countries in the world which have to date abolished the death penalty for all crimes, at least 42 have prohibited it in their constitutions. The latest to do so is Belgium, which amended its constitution in February 2005 to prohibit the death penalty under all circumstances. Five other countries have constitutional provisions which limit the crimes for which the death penalty can be imposed. Almost all of these prohibitions and restrictions have been on human rights grounds.

This paper sets forth the texts of the relevant constitutional provisions. These examples may encourage other countries to adopt similar provisions.

In most legal systems the constitution is the supreme law of the land; other laws must not conflict with it, and it is harder to amend than other laws. Enshrining the abolition of the death penalty in such a constitution is a way of solidifying abolition by establishing an additional legal basis which can serve as an impediment to any hasty attempt to bring the punishment back.

Often a constitution can be seen as the legal embodiment of a country's highest values, extending human rights guarantees to everyone in the country's jurisdiction. By enshrining abolition in its constitution, a country shows the importance it attaches to the decision it has taken to abolish the death penalty.

Amnesty International opposes the death penalty as a violation of human rights, believing that it violates the right to life and is the ultimate cruel, inhuman and degrading punishment. Constitutional prohibitions which link the abolition of the death penalty to human rights, in particular the rights to life and physical and mental integrity (and specifically the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment), give support to Amnesty International's position.

Support for this position comes also from court decisions, including the June 1995 decision of South Africa's Constitutional Court that the death penalty was contrary to the country's interim constitution as a violation of the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the Hungarian Constitutional Court ruling of 24 October 1990 that the death penalty violates the right to life and human dignity as provided under the country's constitution. Further support is evidenced by the adoption of international and regional instruments providing for the abolition of the death penalty: the Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocols Nos. 6 and 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") and the Protocol to the American Convention on

Human Rights to Abolish the Death Penalty. Furthermore, under the Statute of the International Criminal Court adopted in 1998, the death penalty is excluded from the punishments which this court will be authorized to impose, even though it has jurisdiction over extremely grave crimes: crimes against humanity, including genocide, and violations of the laws of armed conflict. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes.

Information on constitutional prohibitions of the death penalty is presented below in three tables.

Table 1 lists the countries whose constitutions prohibit the death penalty in all circumstances, with quotations from the relevant articles.

Table 2 lists the countries retaining the death penalty for at least some crimes whose constitutions limit the scope of the death penalty, with quotations from the relevant articles.

Table 3 lists the countries in the preceding tables and indicates whether the constitutional prohibition or restriction is on human rights grounds; and, if so, whether there is a specific reference to the right to life and/or the right to physical or mental integrity (indicated by the letter "T" for "true"). (The link to human rights may be shown either by a specific reference or by the inclusion of the prohibition or restriction of the death penalty in the section of the constitution which deals with human rights.)

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Table 1. Constitutions that prohibit the death penalty

Country	Title of constitution	Text
ANDORRA	Constitution of the Principality of Andorra (1993)	Article 8(3) states: "3. The death penalty is prohibited." Article 8 is included under Title II, "Rights and Freedoms".
ANGOLA	Constitutional Law of the Republic of Angola (1992)	Article 22 states: "1. The State shall respect and protect the life of the human person. 2. The death penalty is prohibited."
AUSTRIA	Federal Constitutional Law of the Republic of Austria (1920, as amended in 1968)	Article 85 states: "The death penalty is abolished."
BELGIUM	Coordinated Constitution of Belgium (1994, as amended in 2005)	Article 14 bis states: "The death penalty is abolished." Article 14 bis is included under Title II, "Belgians and their Rights".
CAMBODIA	Constitution of the Kingdom of Cambodia (1993)	Article 32 states: "All people have the right to life, freedom and personal security. There shall be no capital punishment."
CAPE VERDE	Constitution of the Republic of Cape Verde (1992)	Article 26(2) states: "No one shall be subjected to torture or cruel, degrading or inhuman punishment or treatment, and in no circumstances shall there be the death penalty."
COLOMBIA	Constitution of Colombia (1991)	Article 11 states: "The right to life is inviolable. There shall be no death penalty."
COSTA RICA	Constitution of the Republic of Costa Rica (1949)	Article 21 states: "Human life is inviolable." Article 21 is included under Title IV, "Individual Rights and Guarantees".
CROATIA	Constitution of the Republic of Croatia (1990)	Article 21 states: "Every human being shall have the right to life. In the Republic of Croatia there shall be no death penalty."
CZECH REPUBLIC	Charter of Fundamental Rights and Freedoms (1992)	Article 6, dealing with the right to life, states: "... (3) The death penalty shall be inadmissible."
DOMINICAN REPUBLIC	Constitution of the Dominican Republic (1966)	Article 8(1) refers to "the inviolability of life" and states: "Therefore, neither the death penalty, torture, nor any other punishment or oppressive procedure or penalty that implies loss or diminution of the physical integrity or health of the individual may be established, pronounced or applied."
ECUADOR	Constitution of the Republic of Ecuador (1979, as codified in 1998)	Article 23 states in part: "...the State recognizes and guarantees all people the following: (1) The inviolability of life. There is no death penalty. ..."

FINLAND	Constitution Act of Finland (1919, as amended in 1995)	Section 6 states in part: "Everyone shall have the right to life and personal liberty, physical integrity and security of person. No one shall be sentenced to death, tortured or otherwise treated in a degrading manner."
GERMANY	Basic Law of the Federal Republic of Germany (1949)	Article 102 states: "The death penalty is abolished."
GUINEA-BISSAU	Constitution of the Republic of Guinea-Bissau (1984)	Article 36(1) states: "In the Republic of Guinea-Bissau in no circumstances shall there be the death penalty." Article 36 is included under Title II, "Fundamental Rights, Liberties, Guarantees and Duties".
HAITI	Constitution of the Republic of Haiti (1987)	Article 20 states: "The death penalty is abolished with respect to all crimes." Article 20 is included under Title III, "Basic Rights and Duties of the Citizen".
HONDURAS	Constitution of the Republic of Honduras (1982)	Article 66 states: "The death penalty is prohibited." Article 66 is included under Title III, "Declarations, Rights and Guarantees".
ICELAND	Constitution of the Republic of Iceland (1944, as amended in 1995)	Article 69 states in part: "The death penalty may never be stipulated by law." Article 69 is included in section VII, which deals with human rights.
IRELAND	Constitution of the Republic of Ireland (1937, as amended)	Article 15(5)(2) states: "The Oireachtas [National Parliament] shall not enact any law providing for the imposition of the death penalty."
LUXEMBOURG	Constitution of the Grand Duchy of Luxembourg of 17 October 1868 (as amended on 29 April 1999)	Article 18 states: "The death penalty cannot be established." Article 18 is included in Chapter II, "People of Luxembourg and their Rights".
MACEDONIA (former Yug. Rep.)	Constitution of the Republic of Macedonia (1991)	Article 10 states: "Human life is inviolable. The death penalty may not be imposed in the Republic of Macedonia for any reason."
MARSHALL ISLANDS	Constitution of the Republic of the Marshall Islands (1979)	Section 6(1) states: "No crime under the law of the Republic of the Marshall Islands may be punishable by death." Section 6 is entitled "Cruel and Unusual Punishment".
MICRONESIA (Federated States)	Constitution of the Federated States of Micronesia (1980)	Article IV, Section 9 states: "Capital punishment is prohibited." Article IV is entitled "Declaration of Rights".
MONACO	Constitution of the Principality of Monaco (1962)	Article 20 states in part: "The death penalty is abolished." Article 20 is included under Title III, "Freedoms and Fundamental Rights".

MOZAMBIQUE	Constitution of the Republic of Mozambique (1990)	Article 70 states: "1. All citizens shall have the right to life. All shall have the right to physical integrity and may not be subjected to torture or to cruel or inhuman treatment. 2. In the Republic of Mozambique there shall be no death penalty."
NAMIBIA	Constitution of the Republic of Namibia (1990)	Article 6 states: "The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia."
NEPAL	Constitution of the Kingdom of Nepal (1990)	Article 12(1) states: "(1) ...no law shall be made which provides for capital punishment." Article 12 is included in Part 3, "Fundamental Rights".
NETHERLANDS	Constitution of the Kingdom of the Netherlands (1983)	Article 114 states: "Capital punishment may not be imposed."
NICARAGUA	Constitution of the Republic of Nicaragua (1987)	Article 23 states: "The right to life is inviolable and inherent to the human person. In Nicaragua there is no death penalty."
PANAMA	Constitution of the Republic of Panama (1972)	Article 30 states: "There is no death penalty...". Article 30 is included under Title III, "Individual and Social Rights and Duties".
PARAGUAY	Constitution of the Republic of Paraguay (1992)	Article 4, "The Right to Life", states in part: "The death penalty is abolished."
PORTUGAL	Constitution of the Portuguese Republic (1976)	Article 24 states: "1. Human life is inviolable. 2. In no case shall the death penalty be applied."
ROMANIA	Constitution of Romania (1991)	Article 22(3) states: "The death penalty is prohibited." Article 22 is entitled "The Right to Life and to Physical and Mental Well-being".
SAO TOME AND PRINCIPE	Constitution of the Democratic Republic of Sao Tomé and Príncipe (1990)	Article 21, "Right to Life", states: "1. Human life is inviolable. 2. In no case shall there be the death penalty".
SEYCHELLES	Constitution of the Republic of Seychelles (1993)	Article 15, dealing with the right to life, states in part: "(2) A law shall not provide for a sentence of death to be imposed by any court."
SLOVAK REPUBLIC	Constitution of the Slovak Republic of 3 September 1992	Article 15, dealing with the right to life, states: "... (3) The death penalty shall be inadmissible. ..."
SLOVENIA	Constitution of the Republic of Slovenia (1991)	Article 17 states: "Human life is inviolable. There shall be no death penalty in Slovenia."

SWEDEN	Instrument of Government (1975)	Article 4 states: "There shall be no capital punishment." Article 4 is included under Chapter 2, "Fundamental Rights and Freedoms".
TURKEY	Constitution of the Republic of Turkey (1982, as amended in 2004)	Article 38 states: "The death penalty. . . shall not be imposed". Article 38 is included in Chapter Two, "Rights and Duties of the Individual".
TURKMENISTAN	Constitution of the Republic of Turkmenistan (1992, as amended)	Article 20 states: "Capital punishment in Turkmenistan is completely abolished and forever forbidden by the first President of Turkmenistan the Great Saparmurat Turkmenbashi". Article 20 is included in Section II, "Fundamental Rights, Freedoms and Duties of Man and Citizen".
URUGUAY	Constitution of the Oriental Republic of Uruguay (1966)	Article 26 states in part: "The death penalty shall not be applied to anyone." Article 26 is included under Section II, "Rights, Duties and Guarantees".
VENEZUELA	Constitution of the Bolivarian Republic of Venezuela (1999)	Article 43 states: "The right to life is inviolable. No law may establish the death penalty, nor may any authority apply it. ..."

Table 2. Constitutions that restrict the scope of the death penalty

Country	Title of constitution	Text
ARGENTINA	Constitution of the Argentine Nation (1994)	Article 18 states in part: "The penalty of death for political offences, all kinds of torture, and flogging, are forever abolished."
BRAZIL	Constitution of the Federative Republic of Brazil (1988)	Article 5, XLVII states in part: "There will be no penalties of: a) death, except in cases of declared war as defined in Article 84, XIX". Article 5, XLVII is included under Title II, "Fundamental Rights and Guarantees".
EL SALVADOR	Constitution of the Republic of El Salvador (1983)	Article 27 states in part: "The death penalty may be imposed only in cases provided by military laws during a state of international war." Article 27 is included under Title II, "Fundamental Rights and Guarantees of the Person".
MEXICO	Constitution of the United States of Mexico (1917)	Article 22 prohibits torture and specific cruel punishments and states: "The death penalty is... prohibited for political crimes and, in relation to other crimes, can only be imposed for treason during international war, parricide, murder that is committed treacherously, with premeditation or against a defenceless person, arson, kidnapping, banditry, piracy and grave military offences."
PERU	Constitution of the Republic of Peru (1993)	Article 140 states: "The death penalty may only be applied for the crime of treason in time of war, and of terrorism, in accordance with national laws and international treaties to which Peru is party."

Table 3. Grounds for prohibiting or restricting the death penalty

Key: T = True

Country	Prohibited or restricted?	Human rights?	Right to life?	Right to phys. or mental integrity?
ANDORRA	Prohibited	T		
ANGOLA	Prohibited	T	T	
ARGENTINA	Restricted	T		
AUSTRIA	Prohibited			
BELGIUM	Prohibited	T		
BRAZIL	Restricted	T		
CAMBODIA	Prohibited	T	T	T
CAPE VERDE	Prohibited	T		T
COLOMBIA	Prohibited	T	T	
COSTA RICA	Prohibited	T	T	
CROATIA	Prohibited	T	T	
CZECH REPUBLIC	Prohibited	T	T	
DOMINICAN REPUBLIC	Prohibited	T	T	T
ECUADOR	Prohibited	T	T	
EL SALVADOR	Restricted	T		
FINLAND	Prohibited	T	T	T
GERMANY	Prohibited			

Country	Prohibited or restricted?	Human rights?	Right to life?	Right to phys. or mental integrity?
GUINEA-BISSAU	Prohibited	T		
HAITI	Prohibited	T		
HONDURAS	Prohibited	T		
ICELAND	Prohibited	T		
IRELAND	Prohibited			
LUXEMBOURG	Prohibited	T		
MACEDONIA (former Yug. Rep.)	Prohibited	T	T	
MARSHALL ISLANDS	Prohibited	T		T
MEXICO	Restricted	T		T
MICRONESIA (Federated States)	Prohibited	T		
MONACO	Prohibited	T		
MOZAMBIQUE	Prohibited	T	T	T
NAMIBIA	Prohibited	T	T	
NEPAL	Prohibited	T		
NETHERLANDS	Prohibited			
NICARAGUA	Prohibited	T	T	
PANAMA	Prohibited	T		
PARAGUAY	Prohibited	T	T	
PERU	Restricted			
PORTUGAL	Prohibited	T	T	
ROMANIA	Prohibited	T	T	T

Country	Prohibited or restricted?	Human rights?	Right to life?	Right to phys. or mental integrity?
SAO TOME AND PRINCIPE	Prohibited	T	T	
SEYCHELLES	Prohibited	T	T	
SLOVAK REPUBLIC	Prohibited	T	T	
SLOVENIA	Prohibited	T	T	
SWEDEN	Prohibited	T		
TURKEY	Prohibited	T		
TURKMENISTAN	Prohibited	T		
URUGUAY	Prohibited	T		
VENEZUELA	Prohibited	T	T	