

# 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 57 countries in the world which have to date abolished the death penalty for all crimes, 24 have gone on to prohibit the death penalty in their constitutions, often on human rights grounds.<sup>1</sup> The latest to do so is Iceland, which amended its constitution in 1995 to include the prohibition of the death penalty. Five other countries<sup>2</sup> have constitutional provisions which limit the crimes for which the death penalty can be imposed.

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

In some 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, holding 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 security of person (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, in particular the June 1995 decision of South Africa's Constitutional Court that the death penalty is contrary to the country's interim constitution as a violation of the right not to be subjected to cruel, inhuman or degrading 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, Protocol No.6 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.

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<sup>1</sup> The 24 countries are Austria, Cape Verde, Colombia, Dominican Republic, Ecuador, Germany, Haiti, Honduras, Iceland, Italy, Marshall Islands, Federated States of Micronesia, Monaco, Mozambique, Namibia, Netherlands, Nicaragua, Panama, Portugal, Sao Tomé and Príncipe, Spain, Sweden, Uruguay and Venezuela. For a list of countries which have abolished the death penalty see Amnesty International, List of Abolitionist and Retentionist Countries (issued periodically).

<sup>2</sup> The five countries are Brazil, El Salvador, Luxembourg, Mexico and Peru.

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

TABLE 1 lists the 24 countries whose constitutions prohibit the death penalty, with quotations from the relevant articles.

TABLE 2 lists the five countries whose constitutions limit the scope of the death penalty, with quotations from the relevant articles.

TABLE 3 lists the 29 countries in Tables 1 and 2 and indicates whether the constitution prohibits or limits the death penalty (shown as “P” or “L” respectively); whether the death penalty is prohibited or restricted on human rights grounds; and, if so, whether there is a specific reference to the right to life and/or security of person. (The link to human rights may be shown either by a specific reference or by the inclusion of the prohibition or limitation of the death penalty in the section of the constitution which deals with human rights.)

TABLE 4 lists the 29 countries by region, indicating whether the constitution prohibits or limits the death penalty and whether the death penalty is prohibited or limited on human rights grounds.

**TABLE 1 - CONSTITUTIONAL PROVISIONS PROHIBITING THE DEATH PENALTY**

| <b>Country</b>     | <b>Title and date of constitution</b>                                     | <b>Article prohibiting the death penalty and reference to human rights</b>  |
|--------------------|---|---|
| Austria            | Federal Constitutional Law of the Republic of Austria, as revised in 1929 | Article 85 states: "The death penalty is abolished."  |
| Cape Verde         | Constitution of the Republic of Cape Verde (promulgated in 1981)          | Article 26 (2) states: "...in no case will there be the death penalty. "Article 26, "The Right to Life and to Physical and Mental Integrity", is included under Title II, "Rights, Liberties and Guarantees".   |
| Colombia           | Constitution of Colombia (1991)   | Article 11 states: "The right to life is inviolable. There will be no death penalty." Article 11 is included under Title II, "Rights, Guarantees and Duties".   |
| Dominican Republic | Constitution of the Dominican Republic (promulgated in 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." Article 8 is included under Title II, Section I, "Individual and Social Rights". |
| Ecuador            | Constitution of the Republic of Ecuador (1979)                            | Article 19 (1) refers to "The inviolability of life and personal integrity" and states in part: "There is no 2 death penalty." Article 19 is included under Title II, "Rights, Duties and Guarantees".  |
| Germany            | Basic Law of the Federal Republic of Germany (of 23 May 1949)             | Article 102 states: "The death penalty is abolished."   |
| Haiti              | Constitution of the Republic of Haiti (1987)                              | Article 19 states: "The death penalty is abolished in all cases." Article 19 is included under Title III, "Basic Rights and Duties of the Citizen".   |
| Honduras           | Constitution of the Republic of Honduras (1982, in force since 1985)      | Article 66 states: "The death penalty is abolished." Article 66 is included under Title III, "Declarations, Rights, and Guarantees".  |
| Iceland            | Constitution of the Republic of Iceland (1944)                            | Article 69, as amended in 1995, reads in part: "Capital punishment may never be stipulated by law." Article 69 is included in the section of the Constitution which deals with human rights.  |
| Italy              | Constitution of the Republic of Italy of 27 December 1947                 | Article 27 states in part: "The death penalty is not admitted except in cases specified by military laws in time of war."   |

| Country                          | Title and date of constitution  | Article prohibiting the death penalty and reference to human rights  |
|----------------------------------|---|--|
|                                  |   | Article 27 is included under Title I, Part One, "Rights and Duties of Private Citizens".   |
| Marshall Islands                 | Constitution of the Republic of the Marshall Islands (came into effect on 1 May 1979) | "No crime under the law of the Marshall Islands may be punished with death." (Article III)   |
| Micronesia (Federated States of) | Constitution of the Federated States of Micronesia (came into effect on 10 May 1979)  | "Capital punishment is prohibited." (Article IV, Section 9)  |
| Monaco                           | Constitution of the Principality of Monaco of 17 December 1962                        | Article 20 states in part: "The death penalty is abolished." Article 20 is included under Title III, "Liberties 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." Article 70 is included under Part II, "Fundamental Rights, Duties and Freedoms".                           |
| Namibia                          | Constitution of the Republic of Namibia (1990)  | Article 6, "Protection of Life", 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 Article 6 is included under Chapter 3, "Fundamental Human Rights and Freedoms". |
| Netherlands                      | Constitution of the Kingdom of the Netherlands (1983)                                 | Article 114 states: "The death penalty may not be imposed."  |
| Nicaragua                        | Constitution 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." Article 23 is included under Title IV, "Rights, Duties and Guarantees of the Nicaraguan People".  |
| 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".  |
| Portugal                         | Constitution of the Portuguese Republic (1976)  | Article 24, "Right to Life", states: "1. Human life is inviolable. 2. In no case will there be the death penalty." Article 24 is included under Part I, "Fundamental Rights and  |

| Country               | Title and date of constitution  | Article prohibiting the death penalty and reference to human rights  |
|-----------------------|---|--|
|                       |   | Duties".   |
| Sao Tomé and Príncipe | Constitution of the Republic of Sao Tomé and Príncipe (1990)                              | Article 21, "Right to Life", states: "1.Human life is inviolable. 2.In no case will there be the death penalty." Article 21 is included under Title II, "Personal Rights".   |
| Spain                 | Spanish Constitution (1978)   | Article 15 states: "All have the right to life and physical and moral integrity and in no case may they be subjected to torture or inhuman or degrading punishment or treatment. The death penalty is abolished except in those cases which may be established by military penal law in times of war." |
| Sweden                | Instrument of Government of the Swedish Constitution (came into effect on 1 January 1975) | Chapter 2, Article 4 states: "Capital punishment may not occur." Chapter 2 is entitled "Fundamental Freedoms and Rights".  |
| Uruguay               | Constitution of the Oriental Republic of Uruguay (1970)                                   | Article 26 states in part: "The death penalty will not be applied to anyone." Article 26 is included under Section II, "Rights, Duties and Guarantees".  |
| Venezuela             | Constitution of the Republic of Venezuela (1961)  | Article 58 states: "The right to life is inviolable. No law can establish the death penalty, nor any authority apply it." Article 58 is included under Title III, "Duties, Rights and Guarantees".   |

**TABLE 2-CONSTITUTIONAL PROVISIONS LIMITING THE SCOPE OF THE DEATH PENALTY**

| Country     | Title and date of constitution                           | Article limiting the death penalty and reference to human rights   |
|-------------|--|--|
| 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 of 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, "Rights and Fundamental Guarantees of the Individual". |
| Luxembourg  | Constitution of the Grand Duchy                          | Article 18 states: "The death penalty on political   |

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|        | of Luxembourg of 17 October 1868                   | grounds and civil death and branding are hereby abolished."   |
| Mexico | Constitution of the United States of Mexico (1992) | Article 22 states in part: "The death penalty is prohibited for political crimes and, in relation to other crimes, can only be imposed for betraying the country during international war, parricide, murder that is committed against a defenceless person, with premeditation or treacherously, arson, kidnapping, banditry, piracy and grave military offences." |
| Peru   | Political Constitution of Peru (1993)              | Article 140 states: "The death penalty may only be applied for the crime of treason in times of war, and of terrorism, in accordance with national laws and international treaties to which Peru is party".   |

**TABLE 3 - GROUNDS FOR CONSTITUTIONAL PROHIBITIONS OR LIMITATIONS  
ON THE DEATH PENALTY**

| Country            | Prohibition (P) or limitation (L) | P or L on human rights grounds | P or L on grounds of right to life | P or L on grounds of right to security of person |
|--------------------|-----------------------------------|--------------------------------|------------------------------------|--|
| Austria            | P                                 |                                |                                    |  |
| Brazil             | L                                 | x                              |                                    |  |
| Cape Verde         | P                                 | x                              | x                                  | x  |
| Colombia           | P                                 | x                              | x                                  |  |
| Dominican Republic | P                                 | x                              | x                                  | x  |
| Ecuador            | P                                 | x                              | x                                  | x  |
| El Salvador        | L                                 | x                              |                                    |  |
| Germany            | P                                 |                                |                                    |  |
| Haiti              | P                                 | x                              |                                    |  |
| Honduras           | P                                 | x                              |                                    |  |
| Iceland            | P                                 | x                              |                                    |  |
| Italy              | P                                 | x                              |                                    |  |
| Luxembourg         | L                                 |                                |                                    |  |
| Marshall Islands   | P                                 |                                |                                    |  |
| Mexico             | L                                 |                                |                                    |  |
| Micronesia         | P                                 |                                |                                    |  |
| Monaco             | P                                 | x                              |                                    |  |
| Mozambique         | P                                 | x                              | x                                  | x  |
| Namibia            | P                                 | x                              | x                                  |  |
| Netherlands        | P                                 |                                |                                    |  |
| Nicaragua          | P                                 | x                              | x                                  |  |
| Panama             | P                                 | x                              |                                    |  |
| Peru               | L                                 |                                |                                    |  |

| Country               | Prohibition (P) or limitation (L) | P or L on human rights grounds | P or L on grounds of right to life | P or L on grounds of right to security of person |
|-----------------------|-----------------------------------|--------------------------------|------------------------------------|--|
| Portugal              | P                                 | x                              | x                                  |  |
| Sao Tomé and Príncipe | P                                 | x                              | x                                  |  |
| Spain                 | P                                 | x                              | x                                  | x  |
| Sweden                | P                                 | x                              |                                    |  |
| Uruguay               | P                                 | x                              |                                    |  |
| Venezuela             | P                                 | x                              | x                                  |  |

**TABLE 4-CONSTITUTIONAL PROHIBITIONS AND LIMITATIONS ON THE DEATH PENALTY BY REGION**

**AFRICA**

| <b>Country</b>        | <b>Prohibition (P) or limitation (L)</b> | <b>P or L on human rights grounds</b> |
|-----------------------|--|---------------------------------------|
| Cape Verde            | P  | x                                     |
| Mozambique            | P  | x                                     |
| Namibia               | P  | x                                     |
| Sao Tomé and Príncipe | P  | x                                     |

**AMERICAS**

| <b>Country</b>     | <b>Prohibition (P) or limitation (L)</b> | <b>P or L on human rights grounds</b> |
|--------------------|--|---------------------------------------|
| Brazil             | L  | x                                     |
| Colombia           | P  | x                                     |
| Dominican Republic | P  | x                                     |
| Ecuador            | P  | x                                     |
| El Salvador        | L  | x                                     |
| Haiti              | P  | x                                     |
| Honduras           | P  | x                                     |
| Mexico             | L  |                                       |
| Nicaragua          | P  | x                                     |
| Panama             | P  | x                                     |
| Peru               | L  |                                       |
| Uruguay            | P  | x                                     |
| Venezuela          | P  | x                                     |

**ASIA**

| <b>Country</b>                   | <b>Prohibition (P) or limitation (L)</b> | <b>P or L on human rights grounds</b> |
|----------------------------------|--|---------------------------------------|
| Marshall Islands                 | P  |                                       |
| Micronesia (Federated States of) | P  |                                       |

### EUROPE

| <b>Country</b> | <b>Prohibition (P) or limitation (L)</b> | <b>P or L on human rights grounds</b> |
|----------------|--|---------------------------------------|
| Austria        | P  |                                       |
| Germany        | P  |                                       |
| Iceland        | P  | x                                     |
| Italy          | P  | x                                     |
| Luxembourg     | L  |                                       |
| Monaco         | P  | x                                     |
| Netherlands    | P  |                                       |
| Portugal       | P  | x                                     |
| Spain          | P  | x                                     |
| Sweden         | P  | x                                     |