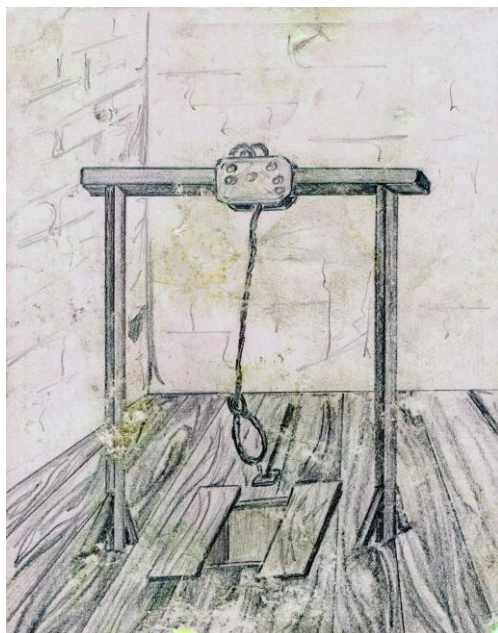




## 2010 GENERAL ASSEMBLY RESOLUTION ON A MORATORIUM ON THE USE OF THE DEATH PENALTY

### Reaffirming the call for an executions-free world

The 65<sup>th</sup> session of the United Nations General Assembly is now considering a third resolution on moratorium on the use of the death penalty. The adoption of the first General Assembly resolution (62/149) in December 2007 called upon retentionist States to establish a moratorium on executions with a view to abolishing the death penalty, and reinvigorated momentum towards abolition of capital punishment.



This document explains why the adoption of a third General Assembly resolution would be a timely reassertion of the UN's commitment to promotion and protection of human rights, and an appropriate reflection of the unmistakable trend towards abolition of the death penalty.

#### 1. THE UN AND THE DEATH PENALTY: THE LONG PATH TOWARDS ABOLITION

The contribution of the General Assembly, comprising all 192 UN member states, to progressively outlaw the use of capital punishment has been fundamental.

Resolutions aiming at restricting the use of capital punishment with a view to abolition have been adopted by the General Assembly since 1959, when resolution 1396 (XIV) mandated the UN Economic and Social Council to "initiate a study of the question of capital punishment, of the law and practices relating thereto, and of the effects of capital punishment, and the abolition thereof, on the rate of criminality". Subsequently, the

General Assembly, in resolutions 2393 (XXIII) of 26 November 1968, 2857 (XXVI) of 20 December 1971, 3011 (XXVII) of 18 December 1972 and 32/61 of 8 December 1977, expressly confirmed the "continuing interest of the United Nations in the study of the question of capital punishment with a view to promoting full respect for everyone's right to life" (resolution 32/61, adopted by consensus).

The International Covenant on Civil and Political Rights (ICCPR), adopted by the General Assembly in 1966, outlines restrictions on the use of the death penalty and sets out safeguards to be observed in capital cases. While the use of the death penalty is not explicitly prohibited in the ICCPR, Article 6(6) clearly states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant." The UN Human Rights Committee observed in a General Comment, that Article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable", and that "all measures of abolition should be considered as progress in the enjoyment of the right to life".



Pursuing the desire to establish an international commitment to abolish the death penalty, in 1989 the General Assembly adopted the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. To date, 72 countries are State parties to the Protocol and three others are signatories to it.

In 1984 the Economic and Social Council adopted “Safeguards guaranteeing protection of the rights of those facing the death penalty”, which were endorsed that same year by General Assembly in resolution 39/188.

In 2007, the General Assembly adopted, with strong cross-regional support, resolution 62/149 on moratorium on the use of the death penalty. The resolution confirmed the commitment of the UN towards abolition of the death penalty and called upon states that still retain it to, inter alia, respect international safeguards guaranteeing the rights of those facing the death penalty, reduce the number of offences for which this punishment may be imposed and establish a moratorium on executions with a view to abolishing the death penalty. The calls of the 2007 resolution were reaffirmed by the General Assembly in resolution 63/168 adopted on 18 December 2008.

Although not legally binding, General Assembly resolutions carry considerable moral and political weight. The adoption of resolutions 62/149 (2007) and 63/168 (2008) galvanized momentum amongst civil society and international governmental organizations, reinvigorating their commitment to the abolition of the death penalty. For example:

- Seminars on the situation of the death penalty have been organized by civil society in the Middle-Eastern region since May 2008 as a follow-up to the General Assembly resolutions. The meetings reviewed the implementation of calls contained in the 2007 and 2008 resolutions and were attended by government officials and representatives of national human rights institutions, human rights activists, lawyers, parliamentarians, journalists.
- On 24 November 2008, the African Commission on Human and Peoples’ Rights adopted a resolution calling on states parties to the African Charter to observe a moratorium on the death penalty.
- The Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) adopted, on 3 July 2009, a resolution voicing the concerns of the OSCE Parliamentary Assembly about the application of the death penalty and urging its participating states to establish an immediate moratorium on executions.

## 2. GLOBAL ABOLITION OF THE DEATH PENALTY: AN UNMISTAKABLE TREND

When the United Nations was founded in 1945, only eight UN member states had abolished the death penalty for all crimes. Today, more than two-thirds of the 192 UN member states have abolished the death penalty in law or practice and only a small number of states carry out executions every year. Concern about the death penalty has increased worldwide as evidence of errors, inconsistencies and discrimination in the sentencing in capital crimes has continued to grow.

- In 2008 Argentina and Uzbekistan abolished the death penalty; and executions were recorded by Amnesty International in 25 states.
- In 2009 Burundi and Togo abolished the death penalty, bringing the number of UN member states that have removed capital punishment entirely from their laws to 92. Executions were reported in 18 states. In countries that continue to sentence people to death, commutations and pardons of death sentences appear to be more frequent.



- Of the 53 states in the African Union, 49 did not carry out any executions during 2008 and 2009.
- In Asia, there were no executions in Afghanistan, Indonesia, Mongolia and Pakistan in 2009, the first execution-free year in those countries in recent times. In January 2010 the President of Mongolia announced the establishment of a moratorium on executions.
- Europe and Central Asia is now virtually a death penalty free zone with only one country – Belarus – still carrying out executions.
- In the Americas, only one state – the United States of America (USA) - consistently executes. However, the number of death sentences passed each year has declined by some two thirds from the peaks of the mid-



- 1990s, and the annual number of executions has dropped by about a half from the total a decade ago. In 2009, New Mexico became the 15<sup>th</sup> state to abolish the death penalty. While 35 US states still retain the death penalty, just three states—Texas, Virginia and Oklahoma—account for more than half of the country's judicial death toll since 1977. Former Supreme Court Justice John Paul Stevens has concluded after three decades on the Court that the imposition of the death penalty amounts to “the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes”.
- The 2010 report of the UN Secretary-General on the implementation the 2007 and 2008 resolutions concludes that “over the lifetime of the United Nations, the balance has shifted between a substantial majority of States Members that maintained the death penalty to, nowadays, a minority, and the tendency seems likely to continue over time”.

### 3. THE 2010 GENERAL ASSEMBLY RESOLUTION ON MORATORIUM ON THE USE OF THE DEATH PENALTY

Amnesty International and many others believe that the death penalty violates human rights, including the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment. The death penalty is discriminatory and is often used disproportionately against poor people, minorities and members of specific racial, ethnic and religious communities. It is imposed and carried out arbitrarily. In some countries it is used as a means of repression, to silence political opposition. In other countries, flaws in the judicial process are exacerbated by discrimination, prosecutorial misconduct and inadequate legal representation. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated.

The 2007 and 2008 resolutions of the General Assembly have strengthened international human rights standards and their implementation, and opened vital space - at the UN and around the world - for meaningful consideration of the illegitimacy of capital punishment.

A third resolution on moratorium on the use of the death penalty, at the 65<sup>th</sup> session will provide the General Assembly with another important opportunity to maintain momentum, reaffirm the call for a global moratorium, review implementation of the previous resolutions, and identify further steps towards restricting the use of the death penalty. The adoption, by an increased majority of states, of a resolution in 2010 will move the community of states closer towards its stated goal of a death penalty-free world.



## AMNESTY INTERNATIONAL RECOMMENDATIONS ON THE DEATH PENALTY:

Pending total abolition of the death penalty, Amnesty International calls upon retentionist countries to:

- immediately establish a moratorium on executions with a view to abolishing the death penalty as provided by UN General Assembly resolution 62/149, adopted on 18 December 2007 and resolution 63/168 adopted on 18 December 2008
- commute without delay all death sentences to terms of imprisonment
- immediately remove all provisions in national law which are in breach of international human rights law, in particular by:
  - abolishing all provisions which provide for death penalty for persons under the age of 18 at the time of their alleged crime;
  - restricting the imposition of the death penalty to only the most serious crimes,
  - abolishing all provisions which provide for mandatory death sentences,
  - prohibiting the imposition of the death penalty on anyone suffering from a mental disability,
  - prohibiting executions of pregnant women and mothers with dependent infants;
- ensure rigorous compliance in all death penalty cases with international standards for fair trial, including the rights:
  - to be tried before an independent, impartial and competent tribunal,
  - to competent defence counsel at every stage of the proceedings,
  - to adequate time and facilities to prepare one's defence,
  - to be presumed innocent until guilt has been proved beyond a reasonable doubt,
  - to appeal to a higher court, and
  - to seek pardon and commutation of sentence.
- ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

Photos: Drawings depicting life on death row in Enugu prison, Nigeria, by former inmate Arthur Judah Angel © Arthur Judah Angel