

The Death Penalty is a Human Rights Violation:

An Examination of the Death Penalty in the U.S. from a Human Rights Perspective

The death penalty is a denial of the most basic human rights; it violates one of the most fundamental principles under widely accepted human rights law—that states must recognize the right to life. The UN General Assembly, the representative body of recognized States, has called for an end to the death penalty and human rights organizations agree that its imposition breaches fundamental enshrined human rights norms. Convention is quickly moving towards a position in support of worldwide abolition.

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the Universal Declaration of Human Right (UDHR), which the U.S. helped draft in the aftermath of World War II and adopted in 1948. Under Article 3 of the UDHR, **life is a human right**. This makes the death penalty our most fundamental human rights violation. As long as governments have the right to extinguish lives, they maintain the power to deny access to every other right enumerated in the Declaration. This first most central right provides the foundation upon which all other rights rest.

The starting and ending point for a human rights based analysis must be that the death penalty is never consistent with fundamental human rights principles. In addition to the right to life, other basic rights are often breached in its application. The death penalty has been found to breach the prohibition against cruel, inhuman, or degrading treatment and there has also been a growing consensus that “death row phenomenon” constitutes a breach in violation of the prohibition against torture under international human rights law. Moreover, the death penalty is often applied in a discriminatory manner, in violation of the principle of non-discrimination.

In many parts of the world, the death penalty is now

generally understood to be a human rights violation. This understanding has led to progress in the abolition of the death penalty worldwide; thirty-five years ago, only 16 countries had put an end to capital punishment for all crimes while today the number stands at 104. Moreover, of those that still have laws on the books, 35 are abolitionist in practice—meaning they have not executed anyone in at least 10 years. In 2010, only 23 countries were known to have carried out executions. Every year, most of the world’s executions take place in only a few countries, and the United States is among those frequent executioners. From 2007 to 2011, the United States executed 220 people. In fact, our frequency of executions is matched only by Saudi Arabia, Yemen, North Korea, Iran, and China.

The Importance of Recognizing the Death Penalty as a Human Rights Violation

Examining the death penalty from a human rights perspective not only highlights the impact of denying the most basic right on all other rights but also demonstrates why the only “solution” to the death penalty is to permanently end its use. If the injustices and practicalities associated with capital punishment could somehow be erased—the costs cut, the racial and class biases removed, and all possibilities for “error” eliminated—the government still cannot do it because it violates fundamental human rights. A human rights based approach does not take issue with the accuracy, technique, or timeliness of an execution. It provides a strict standard with which to say simply and unequivocally—the death penalty is wrong.

In addition to the clear categorization of a human rights approach, such approach also offers accountability and access to the international community. A

human rights approach obligates duty bearers (usually States) to: 1) respect; 2) protect; and 3) fulfill human rights. In the context of the death penalty, this means not depriving the fundamental human rights—such as life—of those sentenced to crimes; taking positive steps to ensure the human rights of the accused and sentenced; and adopting national legislation to achieve full realization of the rights of these individuals.

On October 10, 2011, CCR joined the world in commemorating the 9th Annual World Day Against the Death Penalty, by issuing a position paper entitled, [*The US Tortures Before it Kills: An Examination of the Death Row Experience from a Human Rights Perspective*](#), which analyzes life on death row—including decades in solitary confinement with limited human contact, and the intolerable process of repeatedly coming within hours of execution—as torture under international human rights law. According to the Convention Against Torture (CAT), a treaty ratified by the US in 1994, torture is defined, in part, as “any act by which severe pain or suffering, whether physical or mental, is inflicted on a person for such purposes as [...] punishing him for an act he [...] has committed or is suspected of having committed.”

Torture is a crime against humanity, a war crime, and a violation of the Geneva Conventions, as reflected in the statutes of the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, among other judicial authorities. Over the last 15 years, a substantial body of law has developed that sets forth the elements of torture under customary international law, which largely reflects the definition of torture under the CAT. Torture has been found to be “a violation of personal dignity and is used for such purposes as intimidation, degradation, humiliation and discrimination, punishment, control or destruction of a person.”

It has been shown that **humans experience isolation as torture**. Decades in isolation without access to family, other prisoners, programming, or any other form of intellectual or social stimulation, along with the constant knowledge of one’s impending,

but uncertain death, combine to create the *death row phenomenon*. The UN Special Rapporteur on Torture, Juan Méndez, has recently called for the prohibition of solitary confinement and in August 2011 issued a [report](#) on this practice amounting to torture.

The Death Penalty in the United States

In addition to violating the right to life, critics have argued that capital punishment, as it is applied in the United States, is expensive, racist, arbitrary, and fallible. Further, the deterrent effect of the death penalty has never been proven. Decades of experience have confirmed that capital punishment in the US is not only a fundamental human rights violation, but is also fundamentally flawed in design and implementation. Additionally, prisoners in the US spend decades on death row in dehumanizing conditions which amount to torture under international law.

Legally putting people to death has not been a constant practice in the United States; from 1967-1977 executions were halted across the US. However, currently, approximately 3,300 people still await execution in the United States. 34 states are still retentionist, meaning they have death penalty laws on the books.

People of color have accounted for a disproportionate 43% of total executions since 1976 and 55% of those currently awaiting execution—while they only account for approximately 27% of the general population. The death penalty, as applied, has been found to violate the non-discrimination requirement found in international human rights law. Two treaties which the U.S. has ratified, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR) ensure the right to non-discrimination. In 2006, the UN Human Rights Committee recommended that the U.S. “assess the extent to which [the] death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem.”

In the last decade, some progress has been made against the death penalty in the US, yet there is still much to be done.

- In the 2002 *Atkins v. Virginia Supreme Court* decision, the court found that executing the mentally disabled constitutes cruel and unusual punishment. This decision, however, has left it to the states to determine how to apply this constitutional restriction, resulting in a standard in some states that is hard to meet, and thus, results in the ongoing practice of executing the mentally ill. As a result, the US continues to violate international human rights law (CAT and the ICCPR) in this respect, despite the fact that the UN Commission on Human Rights has called for states to refrain from executing anyone with “any form of mental disorder.”
- In 2005, the Supreme Court overturned the juvenile death penalty in *Roper v. Simmons*. In this case, the Court cited international human rights law in their decision, including the ICCPR and the 1989 Convention on the Rights of the Child (CRC), which prohibits the imposition of capital punishment on persons below 18 years of age. The CRC, ratified by 193 countries, is the most widely accepted human rights treaty in history. The U.S. is one of only three countries which have not ratified the CRC; the others are Somalia and South Sudan.
- Some states have made progress recently with passing legislation abolishing the death penalty. Illinois is the most recent state to abolish the death penalty (2011). In other states, there have been executive decisions to stop executions. For example, on November 11, 2011 the Governor of Oregon put a stay on executions “[b]oth because of [his] own deep personal convictions about capital punishment and also because in practice, Oregon has an expensive and unworkable system that fails to meet basic standards of justice.”

On September 28, 2011, charges were brought in the first death penalty case that will be tried at the US military commissions at Guantánamo Bay, Cuba. These military commissions are unlawful, unconstitutional, and a perversion of justice. Seeking to ex-

ecute people based on a system that allows evidence obtained through torture, secrecy, hearsay evidence, and has considerably low standards for proving guilt is not only illegal, but also morally reprehensible. Even outside the military commission system, the frequent exonerations of convicted and condemned prisoners proves that the US judicial system will never be mistake free.

The experience of American death row inmates fits the international legal definition of torture:

- Among the approximately 3,250 prisoners on death row in the US, the vast majority will serve years in solitary and crippling conditions, awaiting execution.
- Of the 34 states that still kill people, at least 25 hold death row inmates in solitary confinement for 23 hours or more a day.
- Of the 52 people executed in the US in 2009, the average length of time on death row was 169 months – over 14 years.
- Contact with family members is minimal: 17 out of 34 states do not allow prisoners any physical contact with family or friends for the duration of their time on death row, other than the weeks leading up to execution.
- Sensory deprivation is prevalent.

We must once and for all demand a worldwide end to the death penalty. This violation of the most basic of rights shames us all, and impacts many more than the individuals on death row. Family members and friends are forced to live with and bear this torture along with their imprisoned loved ones, and all of us are irrevocably impacted by this practice that is carried out in our names by our government. Please join CCR and the global community in condemning the death penalty and the conditions that reduce those sentenced to death to lives that no human being should endure. The death penalty diminishes the humanity of everyone it touches; let us reaffirm our commitment to human rights and reassert our common humanity by demanding that our government stop killing our fellow human beings.

More Information

- CCR attorney Rachel Meeropol expounds on the inhumanity of the death penalty and death row in [this video](#) and has authored an [opinion piece](#) in Guardian US.
- For some general facts and statistics about the Death Penalty in the US, see this Factsheet by the Death Penalty Information Center: <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>
- The International Justice project's list of Reported Foreign Nationals on Death Row in the US: <http://www.internationaljusticeproject.org/nationalsStats.cfm?print=yes>

Take Action

- Urge the US to abolish the Death Penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights - <http://www.change.org/petitions/ratify-second-optional-protocol-to-the-international-covenant-on-civil-and-political-rights>
- Sign the petition against the death penalty for the December 2012 vote of the United Nations General Assembly on a moratorium on the use of the death penalty: <http://www.worldcoalition.org/Petition.html>
- To take action in your State, go to: <http://www.aclu.org/maps/we-are-all-troy-davis-end-death-penalty>
- If you live in a state that still has the death penalty, take action by sending an op-ed to your local paper. (You can find specific info to include about your state here: http://www.deathpenaltyinfo.org/state_by_state)

Other Groups Working to End the Death Penalty in the US Using the Human Rights Framework:

- Human Rights Advocates: <http://www.humanrightsadvocates.org/?s=death+penalty&x=0&y=0>
- The Advocates for Human Rights: http://discoverhumanrights.org/Human_Rights_and_the_Death_Penalty2.html
- Murder Victims' Families for Human Rights (MVFHR): <http://www.mvfhr.org/>

Worldwide

- World Coalition Against the Death Penalty: <http://www.worldcoalition.org/>
- The International Federation for Human Rights (FIDH): <http://www.fidh.org/-english->
- Reprieve: <http://www.reprieve.org/home.htm>
- Amnesty International: <http://www.amnesty.org/en/50/campaigns/death-penalty>
- The International Justice Project: <http://www.internationaljusticeproject.org/contact.cfm>