

To,

Human Rights Council

Office of the United Nations High Commissioner for Human Rights, United Nations

Office at Geneva, CH 1211 Geneva 10, Switzerland.

Sub: Input on a moratorium on the use of the death penalty

Respected Sir/ Madam,

I would like to submit my input for the Secretary-General's report will be presented to the General Assembly at its seventy-ninth session in September 2024, for the report to be presented to the General Assembly at its seventy-ninth session in September 2024

As an academic and member of civil society, I am submitting my inputs highlighting the topic "Towards Justice: Advocating For A Death Penalty Moratorium"

I also consent to my contribution being published on the website.

Submission prepared by,

Arijit Chowdhury - Undergraduate Student; Student Convenor of Centre of Intellectual Property Rights & Strategic Advancement, Core Committee Member, Centre for Human Rights Law and Policy, School of Legal Studies, REVA University, Bengaluru

TOWARDS JUSTICE: ADVOCATING FOR A DEATH PENALTY MORATORIUM

The death penalty, or capital punishment, is the legal authorization to execute someone as a punishment for a crime. Its use and perception vary significantly around the world, shaped by social, legal, and international perspectives. Socially, the death penalty is highly divisive. Supporters argue it serves as a deterrent against serious crimes and provides a sense of justice for victims and their families. Opponents, however, see it as morally wrong, potentially discriminatory, and irreversible, especially concerning cases of judicial error. Legally, the death penalty is enshrined in the criminal justice systems of over 50 countries for crimes considered especially heinous, such as murder, terrorism, and, in some jurisdictions, drug trafficking. Key regions where it remains in active use include parts of Asia (e.g., China, India, Iran, and Saudi Arabia), Africa (e.g., Egypt and Somalia), and the United States. In contrast, over 100 countries have abolished it for all crimes, with Europe (excluding Belarus), much of Latin America, and several African states being abolitionist zones. Its application must typically pass through rigorous legal procedures intended to minimize wrongful executions, though concerns about fairness and miscarriages of justice persist. Globally, there is a clear trend towards abolition, with over two-thirds of countries having eliminated it or ceased practicing it. International bodies like the United Nations advocate for its abolition, citing the right to life and human dignity.

INTERNATIONAL CONVENTIONS & TREATIES

International law, particularly human rights law, provides several safeguards aimed at protecting the rights of individuals facing the death penalty. These safeguards are intended to ensure a fair and humane treatment in the administration of capital punishment, while also gradually encouraging the abolition of the death penalty globally. Key international instruments and standards that address these concerns include the *Universal Declaration of Human Rights (UDHR)*, 1948¹, *Article 3* states that everyone has the right to life, liberty, and security of person, which implies protection from the death penalty. the *International Covenant on Civil and Political Rights (ICCPR)*, 1966² particularly *Articles 6 and 14*, which are central to the international regulation of the death penalty. *Article 6(4)* specifically entitles anyone sentenced

¹ United Nations General Assembly. (1948). Universal Declaration of Human Rights. <https://www.un.org/en/universal-declaration-human-rights/>.

² United Nations. (1966). International Covenant on Civil and Political Rights, Article 6, 6 (4) & 14. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

to death to seek pardon or commutation. The Covenant also insists on strict adherence to due process and fair trial rights for death penalty cases, The *Second Optional Protocol to the ICCPR, 1989*³ aims at the abolition of the death penalty but recognizes that countries not abolishing the death penalty must provide all possible safeguards to protect the rights of those on death row, including the right to seek pardon or commutation. *UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* adopted by the *Economic and Social Council in 1984 (resolution 1984/50)*⁴, safeguards stipulate that capital punishment must not be carried out except according to a final judgment rendered by a competent court, ensuring fair trial rights. They also require that anyone sentenced to death shall have the right to seek pardon or commutation. *International Standards on the Protection of Human Rights of Persons Facing the Death Penalty (ECOSOC Resolution 1984/50)*⁵, this resolution sets out a series of safeguards to protect the rights of individuals facing the death penalty, including the right to seek pardon or commutation. *The Convention on the Rights of the Child (CRC), 1989, Article 37*⁶ of the CRC states that the imposition of the death penalty on individuals under the age of 18 at the time of the offense is prohibited and *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979*⁷, both conventions advocate for the protection of specific vulnerable populations, including juveniles and women. Under the CRC, it is prohibited to impose capital punishment for offenses committed by persons below eighteen years of age. *Universal Periodic Review (UPR) and Treaty Bodies* mechanisms under the UN Human Rights System involve regular reviews of countries' human rights records and provide recommendations related to the death penalty, including adherence to international standards and the provision of data on its application. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984*⁸, While not explicitly prohibiting the death penalty, the CAT prohibits the use of torture and cruel, inhuman, or degrading treatment or punishment, which could encompass the imposition of the death penalty under certain circumstances. *Council of Europe's, 1949, Protocol 6* prohibits the death penalty

³ Second Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/44/128 (1989).

⁴ UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50, UN Doc. E/RES/1984/50 (1984).

⁵ International Standards on the Protection of Human Rights of Persons Facing the Death Penalty, "Economic and Social Council resolution 1984/50, UN Doc. E/RES/1984/50 (1984).

⁶ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), Article 37.

⁷ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1979).

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984).

in peacetime⁹, and Protocol 13 to the European Convention on Human Rights (ECHR), 1953 abolishes the death penalty in all circumstances¹⁰. These protocols are legally binding on member states of the Council of Europe.

KEY GLOBAL CASES SHAPING DEATH PENALTY MORATORIUMS

1. *United Kingdom - The Death Penalty Abolition Act (1965)*¹¹, While not a court case per se, the abolition of the death penalty in the United Kingdom was a significant milestone in the global movement against capital punishment. The Death Penalty Abolition Act of 1965 suspended the death penalty for murder in England, Scotland, and Wales, and it was later abolished for all offenses in 1998. This legislative action reflected changing societal attitudes towards capital punishment and paved the way for similar reforms in other countries.
2. In the case of *Minister of Home Affairs v. Fisher (1979)*¹², The Bermuda and Privy Council ruled that mandatory death sentences were unconstitutional as they constituted inhumane or degrading treatment. This judgment led to legislative reviews and the eventual abolition or moratorium on mandatory death penalties in various Commonwealth jurisdictions, emphasizing the importance of judicial discretion and the individual assessment of cases. The case had broader implications throughout the Commonwealth.
3. In the case of *Bachan Singh v. State of Punjab (1980)*¹³, This landmark case challenged the constitutionality of the death penalty in India under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The Supreme Court of India held that the death penalty could be imposed only in the "rarest of rare" cases, where the alternative option of life imprisonment would be unquestionably inadequate and the collective conscience of society would be shocked if the death penalty was not imposed. While this case did not lead to the abolition of the death penalty in India, it introduced the "rarest of rare" doctrine, which significantly restricted the circumstances in which capital punishment could be imposed. The judgment emphasized the need for

⁹ Council of Europe. (1949). Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in Peacetime, ETS No. 114.

¹⁰ Council of Europe. (2002). Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in All Circumstances, ETS No. 187.

¹¹ The Death Penalty Abolition Act, Pub. L. No. 17 of 1965.

¹² *Minister of Home Affairs v. Fisher*, [1979] 3 All ER 21 (PC).

¹³ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

individualized sentencing and consideration of mitigating factors in capital cases, reflecting a more cautious approach toward the imposition of the death penalty.

4. In the case of *R. v. Smith (1987)*¹⁴, The Canadian Supreme Court's decision struck down the death penalty as unconstitutional, citing the right to life and security of the person protected by the Canadian Charter of Rights and Freedoms. The Court concluded that the death penalty was a cruel and unusual punishment and therefore violated the Charter. This decision effectively abolished the death penalty in Canada for all crimes in 1998.
5. In the case of *Soering v. United Kingdom (1989)*¹⁵, the European Court of Human Rights ruled that the extradition of a German national to the United States to face the death penalty would violate Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights. The court held that the conditions on death row in the United States amounted to inhuman and degrading treatment, highlighting concerns about the use of the death penalty in countries that are parties to the Convention.
6. In the case of *State v. Makwanyane (1995)*¹⁶, heard by the Constitutional Court of South Africa shortly after the end of apartheid. The court ruled that the death penalty was unconstitutional, holding that it violated the right to life and the prohibition of cruel, inhuman, or degrading punishment under the South African Constitution. The decision effectively abolished the death penalty in South Africa and emphasized the importance of human dignity and the evolving standards of decency in international law. This decision led to the abolition of the death penalty in South Africa in 1997.
7. In the case of *Arthur Judah Angel v. Zimbabwe (1996)*¹⁷, The African Commission on Human and Peoples' Rights found Zimbabwe in violation of the African Charter on Human and Peoples' Rights for placing Arthur Judah Angel on death row for over a decade. The Commission highlighted the mental anguish and psychological trauma associated with prolonged periods on death row, coining the term "death row phenomenon." This case contributed to discussions on the inhumanity of prolonged death row confinement and influenced death penalty debates in Africa.

¹⁴ *R. v. Smith*, [1987] 1 S.C.R. 1045.

¹⁵ *Soering v. United Kingdom*, 11 Eur. H.R. Rep. 439 (1989).

¹⁶ *State v. Makwanyane*, 1995 (3) SA 391 (CC), Application No. CCT/3/94.

¹⁷ *Angel v. Zimbabwe*, Communication No. 149/96, Afr. Comm'n on Human & Peoples' Rights (1999).

8. In the case of *Ng v. Canada (1997)*¹⁸, Although not a criminal case, this case brought before the United Nations Human Rights Committee highlighted the issue of extradition to countries where the death penalty is practiced. The committee ruled that Canada violated Article 6 (right to life) of the International Covenant on Civil and Political Rights by extraditing individuals to countries where they faced a risk of execution. The decision underscored the international consensus against the use of the death penalty and the obligation of states to protect the right to life.
9. *R v. Secretary of State for the Home Department, ex parte Hindley (1998)*¹⁹, United Kingdom, The case involved Myra Hindley, a notorious British serial killer, who sought a judicial review of a decision denying her release on parole. The House of Lords ruled that the Home Secretary's refusal to consider Hindley's release was lawful, but the case raised broader questions about the use of life imprisonment as an alternative to the death penalty. It contributed to the ongoing debate about the effectiveness and morality of capital punishment in the UK.
10. In the case of *Republic v. Tsatsu Tsikata (2001)*²⁰, the Supreme Court of Ghana ruled that the mandatory death penalty violates the constitutionally guaranteed right to life, leading to a significant reduction in the use of the death penalty. Although Ghana has not formally abolished capital punishment, Tsatsu Tsikata's case has contributed to a de facto moratorium, with no executions since 1993 and several death sentences being commuted to life imprisonment.
11. *Case 11.855, Juan Carlos Abella v. Argentina (2004)*²¹, Inter-American Commission on Human Rights (IACHR), In this case, the IACHR declared that Argentina's imposition of the death penalty violated the American Convention on Human Rights. The Commission urged Argentina to abolish the death penalty and commuted the death sentences of individuals awaiting execution. While Argentina had already abolished the death penalty for ordinary crimes, this case reinforced its commitment to human rights standards.
12. In the case of *Roper v. Simmons (2005)*²², before the U.S. Supreme Court resulted in the abolition of the death penalty for juveniles. The court ruled that executing individuals who were under the age of 18 at the time of their crimes violated the Eighth

¹⁸ *Ng v. Canada*, [1997] 1 S.C.R. 865.

¹⁹ *R v. Secretary of State for the Home Department, ex parte Hindley*, [1998] 1 WLR 726 (HL).

²⁰ *Republic v. Tsatsu Tsikata*, [2001] 2 SCGLR 619.

²¹ *Juan Carlos Abella v. Argentina*, Case 11.855, Inter-Am. C.H.R., Report No. 136/04, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 (2004).

²² *Roper v. Simmons*, 543 U.S. 551 (2005).

Amendment's prohibition against cruel and unusual punishment. The decision reflected a growing recognition of the diminished culpability of juvenile offenders and the need to consider factors such as age and maturity in capital sentencing.

13. In the case of *Francis Korbely v. Hungary (2008)*²³, The United Nations Human Rights Committee (UNHRC) found Hungary in violation of its obligations under the International Covenant on Civil and Political Rights (ICCPR) for trying an individual retroactively under a law that prescribed the death penalty, which was later commuted to life imprisonment. The UNHRC's views in this case underscored the principle that laws imposing the death penalty must not be applied retroactively and emphasized the trend toward the abolition of capital punishment.
14. *Decision No. 285/2008/QD-UBND, Vietnam*²⁴, In 2008, the Vietnamese government issued Decision No. 285/2008/QD-UBND, abolishing the death penalty for seven crimes and limiting its application to only the most serious offenses. This decision was influenced by international pressure and Vietnam's desire to comply with human rights standards, as well as concerns about wrongful convictions and the effectiveness of capital punishment as a deterrent.
15. In the case of *Attorney General v. Kigula & Others (2009)*²⁵, The Ugandan Supreme Court's decision in this case led to the commutation of death sentences for over 400 prisoners to life imprisonment. The Court found that holding prisoners on death row for an extended period constituted inhuman treatment and, significantly, that the mandatory death penalty was unconstitutional. This ruling prompted discussions on the reform of death penalty laws in Uganda and other African countries.
16. In the case of *Trabelsi v. Belgium (2014)*²⁶, the European Court of Human Rights reinforced its stance against the death penalty by ruling that Belgium violated the European Convention on Human Rights by extraditing Nizar Trabelsi to the United States without obtaining assurances that he would not face the death penalty. This case highlighted the responsibility of states under international law to ensure that individuals are not subjected to capital punishment.

²³ *Korbely v. Hungary*, Application No. 9174/02, Eur. Ct. H.R. (2008).

²⁴ *Decision No. 285/2008/QD-UBND, Government of Vietnam* (2008).

²⁵ *Attorney General v. Kigula & Others*, [2009] UGCC 2.

²⁶ *Trabelsi v. Belgium*, Application No. 140/10, Eur. Ct. H.R. (2014).

CONCLUSION

From both legal and social perspectives, the call for a moratorium on the use of the death penalty is compelling and reflects a growing consensus on the need to reevaluate its role in contemporary society. Legally, the implementation of a moratorium allows for a critical examination of the fairness, efficacy, and morality of capital punishment within existing legal frameworks. It provides an opportunity to address systemic flaws in the criminal justice system, such as racial and socioeconomic biases, wrongful convictions, and the lack of adequate legal representation for defendants facing the death penalty. Moreover, from a social standpoint, the call for a moratorium on the death penalty reflects evolving attitudes toward punishment, justice, and human rights. Increasingly, societies around the world are recognizing the inherent dignity and value of every individual, regardless of their actions. There is a growing acknowledgment that the death penalty perpetuates a cycle of violence and fails to address the root causes of crime, such as poverty, inequality, and lack of access to education and mental health services. Instead, there is a growing emphasis on rehabilitation, restorative justice, and prevention as more effective approaches to promoting public safety and addressing crime. Furthermore, a moratorium on the death penalty allows for a deeper exploration of alternative sentencing options, such as life imprisonment with the possibility of parole, which can provide both accountability and the opportunity for redemption. By prioritizing rehabilitation and reintegration into society, rather than retribution and vengeance, societies can foster a more compassionate and humane approach to criminal justice. From both legal and social perspectives, the implementation of a moratorium on the use of the death penalty represents a crucial step toward promoting fairness, justice, and human rights. It provides an opportunity to confront the shortcomings of the death penalty system, address systemic inequalities, and reaffirm society's commitment to the inherent dignity and worth of every individual. By embracing alternative approaches to punishment and prioritizing rehabilitation and prevention, societies can move closer to achieving a more just and compassionate criminal justice system for all.
