

INTERNATIONAL PERSPECTIVE ON THE DEATH PENALTY

INTERNATIONAL LAW DISFAVORS USE OF DEATH PENALTY FOR NON-HOMICIDE OFFENSES SUCH AS RAPE

- ⇒ At the time the United States Supreme Court decided *Coker v. Georgia*, “out of 60 major nations in the world surveyed in 1965, only 3 retained the death penalty for rape where death did not ensue.”
- ⇒ Currently, the only major countries to authorize the death penalty for non-homicide rapes are China and the United States.
- ⇒ In 2002, 24 countries authorized the death penalty for non-homicide rape.¹
- ⇒ Since 2002, nine countries that had authorized the death penalty for non-homicide rape have altered their law, or confirmed a *de facto* moratorium on the death penalty.²
- ⇒ The United States now stands alone with countries such as Cuba, China, Egypt, and Saudi Arabia in authorizing the death penalty for non-homicide rape. These countries have criminal codes which are contrary to the United States.
 - Saudi Arabia, like Egypt, United Arab Emirates, and Jordan, appear to derive the criminal code from Sharia, subjecting individuals to the death penalty for blasphemy, apostasy, adultery, prostitution and homosexuality. In Saudi Arabia, under Sharia, survivors of rape appear subjected to significant corporal punishment.
 - China also authorizes the death penalty for tax evasion and other non-violent offenses.
 - Cuba uses the death penalty to stifle political dissent.

INTERNATIONAL LAW PROHIBITS EXPANSION OF THE DEATH PENALTY IN THE UNITED STATES OF AMERICA

- ⇒ Louisiana has expanded the use of the death penalty to non-homicide rape.
- ⇒ The American Convention on Human Rights (ACHR), to which the United States is a signature party, provides, in Article 4(2) (The Right to Life), that the death penalty "shall not be extended to crimes to which it does not presently apply."
- ⇒ The International Covenant on Civil and Political Rights calls for the narrowing application of the death penalty.³

INTERNATIONAL TREND TOWARDS ABOLITION

- ⇒ The trend internationally is towards the disuse of the death penalty, or to the curtailment of it to the most serious offenses. In 2006, there were 25% fewer executions than in 2005.⁴
- ⇒ Of all known executions that took place in 2006, 91% were carried out in six countries: China, Iran, Pakistan, Iraq, Sudan and the United States.⁵
- ⇒ International law now favors abolition of the death penalty.⁶
- ⇒ Since the United States Supreme Court opinion in *Coker v. Georgia* in 1977, 77 countries have abolished the death penalty for ordinary (or all) crimes.
- ⇒ In total 133 countries have abolished the death penalty in law and / or practice.
- ⇒ On December 18, 2007, the United Nations General Assembly voted 104 to 54 to implement a moratorium on the death penalty.

¹ In 2002, Roger Hood observed that in addition to the United States of America, the following countries had the death penalty for the non-homicide offense of rape: Belarus (aggravated rape); China (in special circumstances, including unlawful sexual intercourse with girls under the age of 14); Egypt (abduction combined with rape); Iraq (rape and incest, by a decree of the Revolutionary Command Council in 2001); Jordan (mandatory death penalty if victim under 15); Kazakhstan; Kuwait; Kyrgyzstan; Lesotho; Malawi; Mongolia (aggravated rape or rape of a minor); Morocco; Pakistan (gang rape); Philippines (mandatory under nine aggravating circumstances, including victim under 7); Saudi Arabia; South Korea; Syria (aggravated rape); Taiwan; Tajikistan; Thailand; Tunisia; Uganda (defilement of a female under the age of 18 and unlawful sexual intercourse with a prisoner); United Arab Emirates; Uzbekistan (rape of a female under the age of 14). Roger Hood, *The Death Penalty: A Worldwide Perspective* (2002).

<http://ipsnews.net/news.asp?idnews=32861>

² In 2005, Taiwan's parliament abolished the Act for the Control and Punishment of Banditry, commonly known as the Bandit Law which had provided for the death penalty for *inter alia*, rape. Taiwan promulgated legislation to begin the gradual removal of the death penalty, and the president of Taiwan launched a campaign to abolish the death penalty "so that Taiwan could become a country founded on the basis of human rights." The death penalty is now limited to offenses involving the death of the victim, drug trafficking or political offenses. In 2006, the Philippines – one of the few democratic nations which authorized the death penalty for rape – abolished the death penalty altogether. Thailand now appears to require the death of the victim in order to impose the death penalty. Belarus has limited the death penalty "cases of premeditated murder with aggravating circumstances." Kyrgyzstan abolished the death penalty for ordinary (non-political) crimes in 2007. See (last visited 12/18/2007).

[/www.deathwatchinternational.org/the_facts.php](http://www.deathwatchinternational.org/the_facts.php) Malawi, Morocco, South Korea and Tunisia have been identified as abolitionist in practice. <http://www.deathpenaltyinfo.org/article.php?scid=30&did=140> Cuba, on the other hand has expanded the death penalty to the offense of rape.

³ See *Roper v. Simmons*, 543 U.S. at 576 citing American Convention on Human Rights: Pact of San Jose, Costa Rica, Art. 4(5), Nov. 22, 1969, 1144 U. N. T. S. 146 (entered into force July 19, 1978) (same). . See also UN Human Rights Committee, 2005/59, adopted on 20 April 2005 (observing "Extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the International Covenant on Civil and Political Rights," calling on States "not to extend its application to crimes to which it does not at present apply.").

⁴ See <http://www.deathpenaltyinfo.org/article.php?did=127&scid=30#interexec>.

⁵ See footnote 4.

⁶ See International Covenant on Civil and Political Rights (ICCPR), Article 6 (2). The Second Optional Protocol to the Covenant, entered into force in 1991, observed that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights."