



CHAPTER SIX

THE HUMAN RIGHTS COUNCIL

MEMBERS OF THE HUMAN RIGHTS COUNCIL

ALBANIA
ALGERIA
BANGLADESH
BELGIUM
BOLIVIA
BOTSWANA
BURUNDI
CHINA
CONGO
COTE D'IVOIRE
CUBA
ECUADOR
EL SALVADOR
ETHIOPIA
FRANCE
GEORGIA

GERMANY
GHANA
INDIA
INDONESIA
KENYA
KYRGYZSTAN
LATVIA
MALDIVES
MEXICO
MONGOLIA
MOROCCO
NAMIBIA
NETHERLANDS
NIGERIA
PANAMA
PARAGUAY

PHILIPPINES
PORTUGAL
QATAR
REPUBLIC OF KOREA
RUSSIAN FEDERATION
SAUDI ARABIA
SLOVENIA
SOUTH AFRICA
SWITZERLAND
THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA
TOGO
UNITED ARAB EMIRATES
UNITED KINGDOM
VENEZUELA
VIET NAM

ABOUT HRC

HRC is the United Nations body responsible for strengthening the protection of human rights around the globe. The Council replaced the former UN Commission on Human Rights in 2006. It is comprised of 47 Member States elected by the General Assembly. The Council reports to the General Assembly's Third Committee. While its resolutions are non-binding, the Council serves as a moral authority within the UN system.

PURVIEW OF THE HUMAN RIGHTS COUNCIL

The Council serves two primary functions: it sets human rights standards and it attempts to bring non-compliant countries into compliance through persuasion, capacity building, and—if necessary—highlighting human rights abuses on the world stage. The Council also deploys Special Rapporteurs to monitor human rights and study topics of interest. While the Security Council, General Assembly and HRC often address similar issues, the HRC is limited to addressing the human rights aspect of a problem, not broader security and development issues.

Website: www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx

THE QUESTION OF THE DEATH PENALTY

Although use of the death penalty has been quite common throughout history, only 94 States still maintain the death penalty in their legal codes and only 37 States still carry it out today. The question of whether the death penalty is an appropriate punishment consistent with human rights norms has been a recurrent topic since the middle of the twentieth century. During the Second World War, capital punishment was often used to achieve political ends, including to eliminate political opposition, to eradicate minority groups, and to limit dissent in civilian and military populations. These events, and continued use of capital punishment for political ends in the 1940s and 1950s, led to growing pressure for States to abolish the death penalty or, at least, severely restrict its use. Citizens, governments and lawyers increasingly viewed the use of capital punishment as a violation of the right to life, liberty and security

of person, as described in Article Three of the Universal Declaration of Human Rights. Today, over 160 United Nations Member States do not practice the death penalty or have abolished it altogether. Attempts have been made toward safeguarding the rights of those facing the death penalty and the universal abolishment of the practice. In many States, however, cultural and political norms have sustained the use of the death penalty. Globally, capital punishment remains a contentious issue.

The 1966 International Covenant on Civil and Political Rights (ICCPR) was the first global agreement that provided specific limitations on the use of capital punishment. The ICCPR requires the 168 States Parties to dramatically restrict the use of the death penalty or, alternatively, to abolish the death penalty entirely. In 1984 the Economic and Social Council passed resolution 1984/50, laying out guidelines for those States that still carried out the death penalty. These guidelines protected the rights of those facing death, including ensuring that the least painful method of execution was used to end the lives of condemned individuals. Moreover, this resolution established safeguards in an attempt to protect the rights of those facing the death penalty, particularly to reduce the risk of executing innocent people. In 1989, Member States adopted the Second Optional Protocol to the ICCPR, in which 77 States Parties agreed to end the use of the death penalty within their borders.

The Commission on Human Rights, the predecessor to the Human Rights Council, first discussed the question of the death penalty in 1997 as a follow up to the wider discussion of capital punishment and the safeguards put in place for those facing the death penalty. The resulting resolution primarily focused on Member States that had not yet abolished the death penalty, asking them to consider becoming party to the ICCPR and its Second Optional Protocol, observe the safeguards that protected the rights of those convicted as laid out in previous resolutions and make available public information regarding the imposition of the death penalty. The issue was, and remains, a contested one. The later resolutions from the Commission on Human Rights called upon Member States to reserve the death penalty only for those having committed the most serious crimes and further urged them to restrict the number of offences for which the death penalty could be



imposed. These resolutions also looked to protect children, urging Member States to not impose the death penalty on those under the age of eighteen when the crime was committed. In 2015, the Human Rights Council passed a resolution calling on all States to abolish the death penalty, with a contentious, recorded vote. States against the resolution cited the Council's interference with national laws primarily when a State's imposition of the death penalty is in accordance with international obligations.

Recent United Nations General Assembly resolutions mirror those of the Human Rights Council. In 2007, the General Assembly passed a resolution entitled Moratorium on the use of the death penalty, citing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Covenant on the Rights of the Child. Similar resolutions reaffirming the 2007 statements were adopted in the years following, and in 2010 the General Assembly acknowledged, "any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable." The General Assembly passed another resolution calling for a moratorium on the use of the death penalty in 2012, reaffirming a 2011 Human Rights Council decision, which called for the guaranteed protection of the rights of individuals facing capital punishment across the world. In 2013, the General Assembly again called for States to establish a moratorium on executions and maintain an open mind toward abolishing the death penalty once and for all. In 2014, 117 States voted in favor of the resolution on a death penalty moratorium—the largest number of Member States to vote in favor of this resolution since it was first brought to the General Assembly in 2007.

In 2015, the United Nations Assistant Secretary-General for Human Rights, Ivan Šimonović, said that "there is no right more sacred than the right to life." This statement defines the contemporary and future approach of the Office of the High Commissioner for Human Rights (OHCHR) with regard to the death penalty. The OHCHR believes that capital punishment "undermines human dignity, and that its abolition, or at least a moratorium on its use, contributes to the enhancement and progressive development of human rights."

The Human Rights Council faces many challenges going forward, even as States begin to outlaw capital punishment in larger numbers. As of 2014, the number of people being sentenced to death had risen 28 percent in just one year. Reasons for this are various, but the main two are terrorism and drug trafficking. Many people are being sentenced to death for such crimes, a major concern for the OHCHR because of standing moratoriums on capital punishment that will inevitably expire. The Council needs to ensure that Member States comply with existing international frameworks and obligations, such as the ICCPR and the prohibition of torture and other cruel and inhuman punishments. Moreover, the Council might look to work with Member States not party to any existing international treaties to ratify compliant national legislation while respecting any present cultural and societal norms in the process.

Questions to consider from your government's perspective on this issue include the following:

- How can Member States ensure they comply with their obligations under international law regarding the death penalty?
- How might States want to further restrict or limit the death penalty, including through abolition and moratoria?

- What steps can be taken to protect the legal and human rights of those individuals facing capital punishment?

BIBLIOGRAPHY

- Amnesty International (2015). Death Sentences and Executions 2014. 31 March.
- Cornell Law School (2012). Death Penalty Worldwide: Methods of Execution. 22 June.
- Death Penalty Information Center. Introduction to the Death Penalty.
- Šimonović, Ivan (2015). Moving Away from the Death Penalty – Lessons from the African Experience. 11 November.
- United Nations Office of the High Commissioner for Human Rights. Death Penalty.
- United Nations Office of the High Commissioner for Human Rights (2015). Human Rights Council adopts 16 texts on Sri Lanka, Syria, unilateral coercive measures and the death penalty. 1 October.
- United Nations Office of the High Commissioner for Human Rights. Moving Away from the Death Penalty: Lessons in South-East Asia.

UN DOCUMENTS

- Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984).
- Convention on the Rights of the Child (1990).
- International Covenant on Civil and Political Rights (1966).
- United Nations, Commission on Human Rights (1997). The question of the death penalty. 3 April. E/CN.4/RES/1997/12.
- United Nations, Commission on Human Rights (1998). The question of the death penalty. 3 April. E/CN.4/RES/1998/8.
- United Nations, Commission on Human Rights (2001). The question of the death penalty. 20 April. E/CN.4/RES/2001/68.
- United Nations, Commission on Human Rights (2002). The question of the death penalty. 19 April. E/CN.4/RES/2002/77.
- United Nations, Economic and Social Council (1984). Safeguards guaranteeing protection of the rights of those facing the death penalty. 25 May. E/RES/1984/50.
- United Nations, General Assembly (2007). Moratorium on the use of the death penalty. 18 December A/RES/62/149.
- United Nations, General Assembly (2008). Moratorium on the use of the death penalty. 18 December A/RES/63/168.
- United Nations, General Assembly (2010). Moratorium on the use of the death penalty. 21 December A/RES/65/206.
- United Nations, General Assembly (2012). Moratorium on the use of the death penalty. 20 December A/RES/67/176.
- United Nations, General Assembly (2014). Moratorium on the use of the death penalty. 18 December A/RES/69/186.
- United Nations, Human Rights Council (2007). The question of the death penalty: Report of the Secretary-General. 13 February. A/HRC/4/78.
- United Nations, Human Rights Council (2011) Reporting by the Secretary-General on the question of the death penalty. 18 November. A/HRC/DEC/18/117.
- United Nations, Human Rights Council (2014). The question of the death penalty. 14 July. A/HRC/RES/26/2.
- United Nations Human Rights Council (2015). The question of the death penalty. 12 October. A/HRC/RES/30/5.
- Universal Declaration of Human Rights (1948).



HUMAN RIGHTS, SEXUAL ORIENTATION AND GENDER IDENTITY

According to the Office of the United Nations High Commissioner for Human Rights, 76 countries have laws that criminalize behavior on the basis of sexual orientation or gender identity, with penalties ranging from imprisonment to death. Article Two of the Universal Declaration of Human Rights states “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” One of the biggest issues facing the lesbian, gay, bisexual and transgender (LGBT) community is violence and discrimination. Political and cultural norms are the driving factors behind the discrimination in all aspects of life, from access to health services, to adequate housing and education. Throughout the past twenty years there has been a large shift in the attitudes toward the LGBT community. In 2005, Canada became the first country outside of Europe to legalize civil same-sex marriages. And in 2015 the United States Supreme Court ruled to legalize civil same-sex marriages in the country. While other States have also changed their position on human rights in the LGBT community, the issue remains divisive in many regions across the globe.

Human rights, sexual orientation and gender identity is a relatively recent topic for the United Nations. While the topic has global relevance, it remains controversial due to political, religious and cultural norms surrounding sexual orientation and gender identity. In 1994, the United Nations Human Rights Committee—a body of experts responsible for monitoring implementation of the International Covenant on Civil and Political Rights—considered human rights and sexual orientation in the 1994 case of *Toonen v. Australia*. In that case, the Committee declared that criminal laws against homosexuality violate human rights. In 2003, the United Nations Commission on Human Rights—the predecessor body to the Human Rights Council—discussed a draft resolution on the Promotion and Protection of Human Rights. Ultimately, the resolution did not pass, but it would have called upon States to affirm human rights regardless of sexual orientation, and encouraged the Commission on Human Rights to continue to pay special attention to this issue. A group of Member States issued a statement in 2008 supporting LGBT rights and pushed the Council to adopt the statement as a resolution. Many States and other entities refused to support the statement, noting that the statement deals with matters of State sovereignty and may lead to legitimization of acts considered to be deplorable.

Through a 2010 statement the United Nations Secretary-General, Ban Ki-Moon, invoked the ongoing and current debate of the role of social and cultural norms and human rights for this group of people and called for States to end violence against the LGBT community and abolish laws that discriminate on the basis of sexuality. That same year, the United Nations Human Rights Council passed the first resolution at the United Nations on the topic and called for an end to discrimination based on sexuality. The resolution also called for the United Nations High Commissioner on Human Rights to provide the Council with a report on the challenges faced by LGBT persons. The High Commissioner released the report, entitled *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, in November 2011, detailing the legal and social discrimination faced by LGBT persons. On 26 September 2014, the United Nations Human Rights Council passed a resolution

on combating violence and discrimination on the basis of sexual orientation and, more specifically, gender identity, upholding the reports of the High Commissioner and urging further action on the issue.

In 2015 and early 2016, the United Nations published two reports regarding LGBT discrimination. These reports detail States’ obligations in protecting the rights of the LGBT community and discouraging violence. The United Nations Office of the High Commissioner for Human Rights published a report on LGBT discrimination concluding that the discrimination against the LGBT community is continuing, pervasive and often violent, even though some States have taken steps toward equality. The report also found that UN agencies are increasingly integrating issues of sexual orientation and gender identity into their programs, and several regional organizations have taken steps to address the human rights situation of the LGBT community. In January 2016, the UN Special Rapporteur on Torture published a report on gender-based violence which concluded that LGBT persons were far more likely to suffer abusive treatment while in custody. This report found that States have a heightened obligation to prevent violence against the LGBT and intersex communities and should prohibit discrimination against these communities. Moreover, the United Nations has been working to promote LGBT equality through its Free and Equal campaign since 2013 to support LGBT rights around the globe.

The United Nations could help Member States implement some of the recommendations from the High Commissioner’s 2015 report, such as public education campaigns. As the report notes, there is no comprehensive approach that any human rights organization has developed at the international level. As a truly international body, the United Nations could be at a unique advantage in developing such an approach. A comprehensive international approach to monitor and improve the human rights of the LGBT community could have a great impact on the lives and standing of LGBT persons worldwide. The challenge will remain for Member States to best balance national policies and the rights guaranteed in treaties such as the Universal Declaration of Human Rights. The United Nations and the Human Rights Council will continue to look into ways Member States can develop and implement legislation at the national level that both protect the LGBT community and recognize international law. Moreover, the United Nations will look to address the role of culture as it seeks to eliminate discrimination against the LGBT community in all forms.

Questions to consider from your government’s perspective on this issue include the following:

- What steps can the international community take to address violence against LGBT individuals? What barriers exist to addressing the issue?
- How can Member States balance their human rights obligations to LGBT persons and existing cultural norms?
- What steps at the national and international level could Member States take to further protections for LGBT persons?

BIBLIOGRAPHY

- Gay People Around the World Face Bias, Abuse and Violence, a Study Reports* (2011). 15 December.
- Global Issues at the United Nations - [Human Rights](#).
- Human Rights Watch (2008). [UN: General Assembly Statement Affirms Rights for All](#). 18 December.



- United Nations (2010). Confront Prejudice, Speak Out against Violence, Secretary-General Says at Event on Ending Sanctions Based on Sexual Orientation, Gender Identity. 10 December.
- UN Free & Equal (2014). A History of LGBT Rights at the UN. 2 July.
- United Nations Office of the High Commissioner for Human Rights (2012). Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law.
- Worsnip, Patrick (2008). U.N. divided over gay rights declaration. *Reuters*. 18 December.

UN DOCUMENTS

- International Covenant on Civil and Political Rights (1966).
- United Nations, Commission on Human Rights (2003). Promotion and Protection of Human Rights. 17 April. E/CN.4/2003/L.92*.
- United Nations, General Assembly (2006). Human Rights Council. 3 April. A/RES/60/251.
- United Nations, General Assembly (2008). Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly. 22 December. A/63/635.
- United Nations, Human Rights Council (2011). Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. 17 November. A/HRC/19/41.
- United Nations, Human Rights Council (2011). Human rights, sexual orientation and gender identity. 14 July. A/HRC/RES/17/19.
- United Nations, Human Rights Council (2014). Human rights, sexual orientation and gender identity. 2 October. A/HRC/RES/27/32.
- United Nations, Human Rights Council (2015). Discrimination and violence against individuals based on their sexual orientation and gender identity. 5 May. A/HRC/29/23.
- United Nations, Human Rights Council (2016). Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 5 January. A/HRC/31/57.
- Universal Declaration of Human Rights (1948).