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**Commission on Crime Prevention
and Criminal Justice**

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Item 6 of the provisional agenda*

**Use and application of United Nations standards and
norms in crime prevention and criminal justice**

**Reply by the United States of America to the ninth survey
on capital punishment and on the implementation of the
safeguards guaranteeing protection of the rights of those
facing the death penalty, covering the period 2009-2013
(Sections 3 and 4)****

* E/CN.15/2015/1.

** The present document was submitted by the Government of the United States of America and is reproduced in the form in which it was received. The submission was provided by the United States pursuant to the request for input by Member States for the *Report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty* (E/2015/49), made in Note Verbale CU 2014/167/DO/JS of 15 August 2014. The submission was provided after the processing of the Report and is published at the request of the Government of the United States of America.



II. Reply by the United States of America to Section 3: States that retained capital punishment for ordinary offences as at 1 January 2009

This section is to be completed if in your State capital punishment could have been imposed for ordinary offences under criminal law at the beginning of the survey period (1 January 2009), even if your State abolished it during that period.

1. Was capital punishment abolished for all offences between 1 January 2009 and 31 December 2013?

Yes []

No [X]

Capital punishment was not abolished for all federal offenses during the applicable time period.

Four individual states abolished the death penalty for all offenses by statute during the applicable time period:

New Mexico (2009) (prospectively)

Illinois (2011)

Connecticut (2012) (prospectively)

Maryland (2013) (prospectively)

2. If no, was it restricted in its scope (abolished for some offences or for some types of offender, e.g. juveniles, the aged, women or persons with mental and intellectual disabilities)?

Yes []

No [X]

If yes, please provide details of the restriction in the scope.

3. What were the main reasons why capital punishment was abolished completely or restricted in its scope? Please specify and rank the importance of the reasons, if possible.

To the extent that the United States Supreme Court has restricted the reach of capital punishment, it has largely done so under the auspices of the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishment. Under this authority, the Court has held that capital punishment may not be imposed arbitrarily, nor should it be imposed upon juvenile or intellectually disabled offenders. Restrictions on capital punishment imposed by legislative bodies do not reflect a single consciousness. Where the language of statutes repealing or restricting capital punishment are unclear, outside observers could only speculate about the purposes of the legislation and would have to rely arbitrarily on the statements of legislators who chose to discuss the matter, to the exclusion of those who did not.

4. By what means was capital punishment abolished completely or restricted in its scope?

- By legislative enactment
- By a new constitution
- By constitutional amendment
- By presidential or royal decree
- By a decision of the courts

Please give details:

See response to Question 1, Section 3 above.

5. Was capital punishment:

(a) Reintroduced during the survey period for any offences for which it had previously been abolished?

Yes []
No [X]

(b) Extended during the survey period to new offences not previously subject to it?

Yes []
No [X*]

*** New Hampshire added to the list of offenses eligible for the death penalty murder during the commission of a burglary of any person authorized to occupy the building. Effective July 1, 2011.**

If yes to either/both (a) or/and (b), please give details with dates and specify the reasons or factors leading to reintroduction and/or extension in the table below.

Reintroduced for (name offence)	Date
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Extended to (name offence)	Date
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6. On 31 December 2013, for which offences could capital punishment still be imposed?

Information on federal capital offenses at yearend 2012 is available at <http://www.bjs.gov/content/pub/pdf/cp12st.pdf> (p. 7 tbl. 3). There were no changes to federal capital statutes in 2013.

Capital punishment at the individual state level can be imposed only for a murder offense given the presence of certain aggravating factors codified by state law. Information on capital offenses by state at yearend 2012 is available at <http://www.bjs.gov/content/pub/pdf/cp12st.pdf> (p. 5 tbl.1). Maryland abolished the death penalty prospectively in 2013.

Please specify under the following categories:

- The name of the specific offence
 - Whether the penalty is mandatory or discretionary (tick (✓) appropriate column)
- (a) Offences under ordinary criminal law
- (i) Offences against the person (e.g. murder, rape or robbery)

Specific offence	Mandatory	Discretionary
Murder with the presence of statutorily defined aggravating circumstances.		✓

(ii) Offences against public or private property (e.g. aggravated theft, burglary, embezzlement of public funds or corrupt receipt of pecuniary advantage)

Specific offence	Mandatory	Discretionary

(iii) Offences against drug laws (please list all relevant offences, and specify, if applicable, quantities and types of drug involved)

Specific offence	Mandatory	Discretionary

(iv) Offences against morals or religion (e.g. adultery, homosexuality or apostasy)

Specific offence	Mandatory	Discretionary

(b) Offences against the State (e.g. treason, attempt to overthrow the Government or sedition)

Specific offence	Mandatory	Discretionary

(c) Offences under special emergency laws, and/or counter-terrorism laws

Specific offence	Mandatory	Discretionary

(d) Offences against military law

Specific offence	Mandatory	Discretionary

7. Does legislation in your country provide for any limitations or restrictions on applying the sentence of death that are related to the age of the offender?

Yes [X]

No []

If yes, please provide details and indicate the ages of prisoners sentenced to death:
Federal law restricts the death penalty to adult offenders. See 18 U.S.C. § 3591(a).

The U.S. Supreme Court ruled in *Roper v. Simmons*, 543 U.S. 551 (2005), that it is unconstitutional to impose a capital sentence on persons who were younger than 18 at the time of their offense.

8. Were there any official initiatives to abolish capital punishment for any of the offences listed above?

Yes [X]

No []

If yes, please give details:

Federal legislation was introduced to abolish the federal death penalty. The legislation was not enacted during the period 2009-2013.

HR 3751 (113th Congress): Federal Death Penalty Abolition Act of 2013.

H.R. 3051 (112th Congress): Federal Death Penalty Abolition Act of 2011.

Legislation was introduced during the period 2009-2013 in some of the individual states to abolish capital punishment. See the response to Question 1, Section 3 for a list of states that enacted such legislation.

9. Number of persons sentenced to death during the period 2009-2013:

(a) Originally sentenced to death by a court of first instance

Total number	Male	Female	Total
Type of offence			
Against the person	376	13	389
Against public or private property			
Against drug laws			
Against morals/religion			
Against the State			
Under special emergency laws and/ or terrorism law			
Under military law			
Other (please specify):			

2009: 118 (116 male, 2 female) prisoners under sentence of death received by state and federal prisons.

2010: 109 (106 male, 3 female) prisoners under sentence of death received by state and federal prisons.

2011: 83 (78 male, 5 female) prisoners under sentence of death received by state prisons.

2012: 79 (76 male, 3 female) prisoners under sentence of death received by state and federal prisons.

2013: information not currently available.

With regard to federal cases, there were ten capital judgments, all for homicide offenses, between January 1, 2009 and December 31, 2013: Azibo Aquart (D. Conn.), Joseph Ebron (E.D. Tex.), Edgar Garcia (E.D. Tex.), David Runyon (E.D. Va.), Ricardo Sanchez (S.D. Fla.), Kaboni Savage (E.D. Pa.), Mark Snarr (E.D. Tex.), Daniel Troya (S.D. Fla.), Alejandro Umana-Ramirez (W.D.N.C.), and Ronell Wilson (E.D.N.Y.) (on retrial following the reversal of an earlier capital sentence).

(b) Finally sentenced to death after the appeal/clemency process had been completed

Total number	Male	Female	Total
Type of offence			
Against the person			
Against public or private property			
Against drug laws			
Against morals/religion			
Against the State			
Under special emergency laws, and/or counter- terrorism laws			
Under military law			
Other (please specify):			

No federal death row inmate has undergone the clemency process during the last five years, although some have exhausted their direct and collateral post-conviction remedies. Those defendants who have exhausted their post-convictions remedies have joined the *Roane* litigation, cited below (Question 23, Section 4), and are challenging the government's method of execution in a civil lawsuit.

(b) Sentenced to death in the first instance during the survey period, by type of court

Total number	Male	Female	Total
Type of court			
Ordinary criminal courts	376	13	389
Military courts			
Other courts or tribunals (please specify):			

With regard to federal inmates, the sentences are reported above in response to Question 9(a), Section 3.

Military

**2009: 0
2010: 1
2011: 0
2012: 0
2013: 1**

States

2009: 118 by criminal courts
2010: 109 by criminal courts
2011: 83 by criminal courts
2012: 79 by criminal courts
2013: 78 by criminal courts

10. Number of persons executed during the period 2004-2008:

Total number	Male	Female	Total
Type of offence			
Against persons	250	1	251
Against property/ economic crime			
Against drug laws (please specify the offence)			
Against morals			
Against the State			
Under military law			
Other (please specify):			

^a “Below 18 years” refers to age at the time the offence was committed, not at the time of execution.

No federal inmates were executed during the stated time period.

State inmates:

2004: 59 (0 female)
2005: 60 (1 female)
2006: 53 (0 female)
2007: 42 (0 female)
2008: 37 (0 female)

11. Number of persons sentenced and executed each year during the survey period:

Year	Total number of persons sentenced to death	Total number of persons executed
2009	118	52
2010	110	46
2011	83	43
2012	79	43
2013	Data not yet available	Data not yet available

No federal inmates were executed during the stated time period.

12. How many persons were under sentence of death at the beginning of the survey period and at the end?

Date	Total number of persons under sentence of death
1 January 2009	3,210
31 December 2013	

Data regarding the number of persons under sentence of death as of 31 December 2013 is not yet available. As of 31 December 2012, 3,033 persons were under sentence of death.

13. What is the average length of time between imposition of a death sentence and execution?

Due to differences in case processing times for individual cases and within states, the average varies from year to year. The average was 190 months for those executed in 2012. The average for all inmates executed between 1977 (when executions resumed following the U.S. Supreme Court approval of revised state statutes) and 2012 was 136 months.

14. What is the longest period of time since sentence of death was imposed of a person who has not yet been executed?

Of inmates under sentence of death as of yearend 2013, one inmate had been under sentence of death for 38 years and nine months.

15. Are prisoners under sentence of death segregated from the rest of the prison population? If yes, please provide details on the regime that applies to them (i.e. visits, exercise, etc.).

Inmates sentenced to the death penalty in the federal system are generally housed in the Special Confinement Unit (SCU) located at the Federal Bureau of Prisons facility in Terre Haute, Indiana. Inmates housed in the SCU are segregated from the rest of the prison population. The conditions of confinement in SCU are restricted, in that inmates are limited to their cells for the majority of the time and require security measures to be moved to other programming areas. Inmates may have increased interaction with other inmates over the course of time, based on positive behavior. In any event, inmates in the SCU have significant interactions with staff members; are provided opportunities for visitation, correspondence, and telephone calls; receive medical and mental health care; provided recreation, hobby craft, and educational programs; and receive religious programs and materials if they so choose.

Each individual state within the United States has its own policies regarding where inmates under sentence of death are housed and policies regarding lockdown, visitation, exercise, etc.

16. If no persons were executed during the survey period, when was the last execution?

Federal: 2003

States: N/A

17. If the last execution took place before 2005, is there a settled policy never to execute persons sentenced to death?

Yes []

No (i.e. executions may still take place) [X]

If yes, since when has the policy existed?

18. Has there been an official moratorium on executions?

Yes []

No [X]

If yes, when was it established and in what way? If no, why have no executions taken place for such a long period of time?

There is no moratorium on federal executions.

Three individual states have moratoriums currently in place:

Colorado: On May 22, 2013, Governor Hickenlooper officially granted an indefinite reprieve to an inmate with a scheduled execution date, expressing concerns about the death penalty system in the state being flawed and inequitable.

Oregon: On November 22, 2011, Governor Kitzhaber stated that he would approve no executions in the state while he is in office. He stated that the state had an “unworkable system that fails to meet basic standards of justice.”

Washington: On February 11, 2014, Governor Inslee declared a temporary moratorium. In his statement to the media, he gave the following reasons: the high cost of trials and appeals, the apparent randomness in which death penalties are pursued, and concerns that executions do not deter crime.

In Ohio, a federal district judge has imposed a stay of executions until January 15, 2015.

19. How many people had their death sentences overturned by decision of an appeal court or by presidential or royal commutation of the death sentence to a sentence of imprisonment or by pardon, per year?

Year	Number of appeals	Number of death sentences overturned upon appeal		Number of persons petitioning for reprieve or pardon	Reprieve (commutation) of death sentence granted	Pardon granted
		Conviction quashed	Death sentence changed to imprisonment			
2009		26	53		1	
2010		14	48		5	
2011		10	49		19	
2012		11	36		4	
2013						

Data for 2013 is not currently available.

20. If applicable, what are the main reasons why capital punishment has not been abolished for ordinary crimes in your country?

N/A

21. Are there any sectors of civil society that are engaged in a discussion of:

- (a) Restriction of the scope of capital punishment?
- (b) Restriction of the number of executions carried out?
- (c) Total abolition of capital punishment?

If yes, please give details:

A number of civil society organizations engage in discussion regarding the administration and abolition of capital punishment.

No discussion of the issue

22. When your State requests extradition of a person charged with a capital offence in your country, is it possible to provide assurances to the requested State that capital punishment will not be carried out if so requested?

Yes

No

23. Have there been any such cases during the survey period?

Yes

No

If yes, please give details:

Not available.

24. Has any research on the subject of capital punishment recently been carried out in your country?

Yes [X]

No []

Don't know []

If yes, please give details:

The Department of Justice's Bureau of Justice Statistics collects statistics on capital punishment. Various civil society organizations and scholars conduct research on the subject of capital punishment.

If no, is any government action being taken to promote research in this field?

Yes []

No []

If yes, please give details:

If your State completely abolished capital punishment during the survey period, you need not answer any more questions. Thank you for your assistance.

If your State had not completely abolished capital punishment at the end of the survey period, you should complete section 4.

III. Reply by the United States of America to Section 4: Safeguards guaranteeing the protection of the rights of those facing the death penalty

The safeguards guaranteeing the protection of the rights of those facing the death penalty were adopted by the Economic and Social Council in its resolution 1984/50 and implemented by it in its resolutions 1989/64 and 1996/15. This section should only be completed if in your State capital punishment had not been abolished completely at the end of the survey period, 31 December 2013.

1. Does the law in your country provide that capital punishment may not be imposed retroactively to offences for which it was not provided for at the time of the offence?

Yes [X]

No []

See U.S. Constitution Article I, § 9, cl. 3.

If no, under what circumstances?

2. Have any such sentences been imposed in the period 2009-2013?

Yes []

No [X]

If yes, please give details:

3. Does the law provide that a lighter sentence may be substituted for capital punishment if legislation abolishing capital punishment, or making capital punishment discretionary rather than mandatory, is passed after the person has been sentenced to death?

Yes []

No []

"The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them." *United States v. Santos*, 553 U.S. 507, 514 (2008). The rule of lenity applies only if, after using the usual tools of statutory construction, we are left with a "grievous ambiguity or uncertainty in the statute." *Robers v. United States*, ___ U.S. ___, 134 S. Ct. 1854, 1859 (2014) (quoting *Muscarello v. United States*, 524 U.S. 125, 139 (1998)). Accordingly, if Congress abolished the death penalty prospectively in a statute that was ambiguous with regard to retroactivity, the rule of lenity could apply.

4. Does the law provide that a person who committed an offence when under the age of 18 may not be sentenced to death?

Yes [X]

No []

If no, what is the minimum age?

If no, are there any plans to change the law?

5. Does the law stipulate a maximum age beyond which:

(a) A person may not be sentenced to death

Yes []

No [X]

If yes, what is the age?

(b) A person may not be executed

Yes []

No [X]

If yes, what is the age?

6. Does the law provide that pregnant women may not be executed?

Yes [X]

No []

See 18 U.S.C. § 3596 (b).

7. Does the law provide that mothers of young children may not be executed?

Yes []

No [X]

If yes, what is the age of the children?

8. Does the law provide that a person who became mentally or intellectually disabled after the commission of the offence and is still insane at the time of his or her trial may not be sentenced to death?

Yes [X]

No []

See response to Question 10, Section 4 below.

9. Does the law provide that a person who has been sentenced to death and who subsequently became mentally or intellectually disabled may not be executed?

Yes [X]

No []

If no, is it the practice to postpone execution until the person is recovered from mental or intellectual disabilities?

Yes []

No []

10. Does the law provide that a person with any mental or intellectual disabilities may not be sentenced to death?

Yes [X]

No []

If yes, how is mental or intellectual disabilities defined?

The law is well-settled: “a criminal defendant may not be tried unless he is competent.” *Godinez v. Moran*, 509 U.S. 389, 396 (1993); *Drope v. Missouri*, 420 U.S. 162, 172-73 (1975); see also *United States v. Sanchez-Ramirez*, 570 F.3d 75, 80 (1st Cir. 2009). “Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial.” *Riggins v. Nevada*, 504 U.S. 127, 139 (1992) (Kennedy, J. concurring in judgment). This fundamental protection is secured by the Fifth Amendment’s Due Process Clause. *United States*

v. Rahim, 431 F.3d 753, 759 (11th Cir. 2005). In the seminal case in this area, *Dusky v. United States*, 362 U.S. 402 (1960), the Supreme Court held that competency to stand trial depends upon whether a criminal defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” *Id.* at 420. In *Dusky*, the court announced the two-pronged standard for determining a defendant’s competency to be “whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” 362 U.S. 402, 402 (1960). *Dusky* remains the law. See *Cooper v. Oklahoma*, 517 U.S. at 354 (“The test for incompetence is also well settled”); *Godinez*, 509 U.S. at 402 (rejecting multiple standards in favor of the “*Dusky* formulation” as the standard for determining competency); 18 U.S.C. § 4241(a) (codifying the *Dusky* standard for determination of mental competency to stand trial).

“It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.” 18 U.S.C. § 17(a). “The defendant has the burden of proving the defense of insanity by clear and convincing evidence.” 18 U.S.C. § 17(b).

11. Were any death sentences overturned or commuted during the survey period because of doubts about the safeness of the conviction (i.e. in the belief that the person convicted was in fact possibly or probably innocent)?

- | | |
|-----|-----|
| Yes | [] |
| No | [] |

If yes, please give details:

No federal death sentences were overturned or commuted during the survey period because of doubts about the safeness of the conviction.

12. Does an offender charged with a capital offence have a right in all circumstances laid down in substantive law, in the law of criminal procedure or guaranteed by the Constitution:

- (a) To a public hearing
- | | |
|-----|-----|
| Yes | [X] |
| No | [] |

If no, in what circumstances would there not be a public hearing?

(b) To be presumed innocent until proven guilty according to law?

Yes [X]

No []

(c) To counsel of his or her own choosing, at public expense if he or she does not have the resources to pay for it, at all stages of the proceedings, from the moment that he or she is arrested?

Yes [X]

No []

If no, If no, what provision if any is made for counsel funded at public expense. Please indicate the stages of the proceedings, if any, where counsel funded at public expense is provided?

(d) To the free assistance of an interpreter from the moment that he or she is arrested, if he or she does not understand or speak the language used by the police or in court?

Yes [X]

No []

If no, what are the procedures in your country in such cases?

13. Are all foreign nationals informed of their right to seek the assistance of their consular authorities, at the time of their arrest and/or committal to prison or custody awaiting trial?

Yes []

No [X]

If no, what is the procedure to ensure that this obligation under article 36 of the Vienna Convention on Consular Relations¹ is met?

In the federal system, arrestees are advised in accordance with State Department guidance available at <http://www.state.gov/documents/organization/150546.pdf>.

14. What procedures are in place to ensure a fair trial for persons facing capital punishment if convicted?

While hardly an exhaustive survey of the rights and privileges extended to defendants facing the death penalty in the United States, the foregoing provides a brief introduction to procedural and substantive measures taken to ensure fairness in their criminal proceedings:

The Fifth Amendment to the United States Constitution guarantees that

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land

or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. A person can be tried only upon the indictment as found by the grand jury, and especially upon its language found in the charging part of the instrument. A change in the indictment that does not narrow its scope deprives the court of the power to try the accused. While additions to offenses alleged in an indictment are prohibited, the Supreme Court has now ruled that it is permissible “to drop from an indictment those allegations that are unnecessary to an offense that is clearly contained within it,” such as a lesser included offense.

The constitutional prohibition against “double jeopardy” was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. The underlying idea is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

The privilege against self-incrimination serves two interrelated interests: the preservation of an accusatorial (rather than an inquisitorial) system of criminal justice, which goes to the integrity of the judicial system, and the preservation of personal privacy from unwarranted governmental intrusion. The privilege extends to answers that would in themselves support a conviction and also embraces those that would furnish a link in the chain of evidence needed to prosecute. If the witness, upon interposing his claim, were required to prove the hazard, he would be compelled to surrender the protection that the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. Thus, a judge who would deny a claim of the privilege must be perfectly clear, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer cannot possibly have such tendency to incriminate. While the trial judge may not require a witness to disclose so much of the danger as to render the privilege nugatory, he must determine whether there is a reasonable apprehension of incrimination by considering the circumstances of the case, his knowledge of matters surrounding the inquiry, and the nature of the evidence which is demanded from the witness.

The self-incrimination rule was famously underscored and extended to pretrial detention in *Miranda v. Arizona*, in which the Supreme Court held, “[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be

employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him."

In interpreting the procedural due process guarantee, courts look "not [to] particular forms of procedures, but [to] the very substance of individual rights to life, liberty, and property." The due process clause prescribes "the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. . . . It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

Legislation runs afoul of the Due Process Clause when it fails to give adequate guidance to those who would be law-abiding. Thus, criminal acts must be defined with appropriate definiteness. Average people cannot be required to guess at the meaning of enactments. Statutes that lack the requisite definiteness or specificity are commonly held "void for vagueness."

Due process is also violated when a conviction is obtained by the presentation of testimony known to the prosecuting authorities to have been perjured. The clause "cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury." Furthermore, in *Brady v. Maryland*, the Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

The due process clause protects defendants against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. It reduces the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence. In many past cases, this standard was assumed to be the required one, but because it was so widely accepted only recently has the Supreme Court had the opportunity to pronounce it guaranteed by due process. The presumption of innocence is valuable in assuring defendants a fair trial, and it operates to ensure that the jury considers the case solely on the evidence.

The Sixth Amendment to the Constitution guarantees that

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The right to a speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself. The passage of time alone may lead to the loss of witnesses through death or other reasons and the blurring of memories of available witnesses. Because the guarantee of a speedy trial “is one of the most basic rights preserved by our Constitution,” it is one of those “fundamental” liberties embodied in the Bill of Rights which the due process clause of the Fourteenth Amendment makes applicable to the States. The protection afforded by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been ‘accused’ in the course of that prosecution. Invocation of the right need not await indictment, information, or other formal charge but begins with the actual restraints imposed by arrest if those restraints precede the formal preferring of charges.

This guarantee of a public trial serves several goals: it helps to assure the defendant a fair and accurate adjudication of guilt or innocence, it provides a public demonstration of fairness, it discourages perjury, the misconduct of participants, and decisions based on secret bias or partiality. Closure of trials or pretrial proceedings over the objection of the accused may be justified only if the state can show “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” An accused’s Sixth Amendment-based request for closure must meet the same stringent test applied to governmental requests to close proceedings: there must be “specific findings . . . demonstrating that first, there is a substantial probability that the defendant’s right to a fair trial will be prejudiced by publicity that closure would prevent, and second, reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights.”

The right to a petit jury was guaranteed in the Constitution and in the Sixth Amendment. “Those who emigrated to [the United States] from England brought with them this great privilege ‘as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power.’” *Thompson v. Utah*, 170 U.S. 343, 349–50 (1898).

The constitutional right to be informed of the nature and cause of the accusation entitles the defendant to insist that the indictment apprise him of the crime charged with such reasonable certainty that he can make his defense and protect himself after judgment against another prosecution on the same charge. No indictment is sufficient if it does not allege all of the ingredients that constitute the crime. Where

the language of a statute fully describes the offense, it is sufficient if the indictment follows the statutory phraseology, but where the elements of the crime have to be ascertained by reference to the common law or to other statutes, it is not sufficient to set forth the offense in the words of the statute. The facts necessary to bring the case within the statutory definition must also be alleged. If an offense cannot be accurately and clearly described without an allegation that the accused is not within an exception contained in the statutes, an indictment that does not contain such allegation is defective.

In *Gideon v. Wainwright*, the Supreme Court “that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” The Sixth Amendment has also been held to protect absolutely the right of a defendant to retain counsel of his choice and to be represented in the fullest measure by the person of his choice. The right to counsel is the right to the effective assistance of counsel.” Any appointment must be made in a manner that affords “effective aid in the preparation and trial of the case.” Of course, the government must not interfere with representation, either through the manner of appointment or through the imposition of restrictions upon appointed or retained counsel that would impede his ability fairly to provide a defense. Indeed, “The right to counsel prevents the States from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.”

The Eighth Amendment to the Constitution guarantees:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

In *Trop v. Dulles* the Supreme Court held that divestiture of citizenship was constitutionally forbidden as a penalty more cruel and “more primitive than torture.” Under *Trop*, a punishment must be examined “in light of the basic prohibition against inhuman treatment,” and the Eighth Amendment was intended to preserve the “basic concept . . . [of] the dignity of man” by assuring that the power to impose punishment is “exercised within the limits of civilized standards.” In the years following *Trop*, a coalition of civil rights and civil liberties organizations campaigned against the death penalty, and the Court held in *Furman v. Georgia* that capital punishment, as then administered, violated the Eighth Amendment. Enactment of death penalty statutes by 35 States following *Furman* led to renewed litigation.

In five cases decided in 1976, the Court rejected automatic capital sentencing but approved other statutes specifying factors for jury consideration. First, the Court concluded that the death penalty as a punishment for murder does not itself constitute cruel and unusual punishment. Second, statutes mandating the imposition of death for crimes classified as first-degree murder violate the Eighth Amendment. Because death is a unique punishment, the sentencing process must provide an opportunity for individual consideration of the character and record of each convicted defendant and his crime along with mitigating and aggravating circumstances. Third, while the imposition of death is constitutional per se, the procedure by which sentence is passed must be so structured as to reduce

arbitrariness and capriciousness as much as possible. Thus, the sentencing authority must be given standards to govern its exercise of discretion and be given the opportunity to evaluate both the circumstances of the offense and the character and propensities of the accused. To prevent jury prejudice on the issue of guilt there be a separate proceeding after conviction at which evidence relevant to the sentence, mitigating and aggravating, will be presented.

The overarching principle of this jurisprudence is the rule that the jury should not be “without guidance or direction” in deciding whether a convicted defendant should live or die. The jury’s attention was statutorily “directed to the specific circumstances of the crime . . . and on the characteristics of the person who committed the crime.” Discretion was channeled and rationalized. But in *Lockett v. Ohio*, a Court plurality determined that a state law was invalid because it prevented the sentencer from giving weight to any mitigating factors other than those specified in the law. In other words, the jury’s discretion was curbed too much.

The Eighth Amendment’s procedural limitations on capital punishment are animated and extended in the Federal Death Penalty Act, 18 U.S.C. §§ 3591-93.

15. Are there specific safeguards for defendants facing a charge for which capital punishment might be imposed over and above the general safeguards available to all defendants?

Yes [X]
No []

If yes, what are these safeguards?

See above discussion regarding the Eighth Amendment and Federal Death Penalty Act as well as 18 U.S.C. §§ 3432, 3599.

16. Is there a right to appeal to a court of higher jurisdiction in all cases?

Yes [X]
No []

If no:

- (a) What are the current procedures in your country?
- (b) Are there any plans to introduce in domestic legislation a right of appeal in all cases?

Yes []
No []

17. How much time is allowed to launch an appeal for a person who has been sentenced to capital punishment?

18 U.S.C. § 3595 permits the filing of notice of appeal within the time allowable under the rules of appellate procedure. As a general matter, FRAP 4(b) permits the filing of notice of appeal within 14 days of judgment. Rule 4 specifically prescribes the mailbox rule for incarcerated defendants and permits extensions for good cause.

Rules regarding appeals of death sentences at the state level vary.

18. Are all death sentences automatically reviewed by a court of appeal?

Yes []

No [X]

If no:

(a) What are the procedures for review of death sentences in your country?

The procedures at the federal level are set forth in 18 U.S.C. § 3595.

Procedures for review of death sentences in the individual states vary.

(b) Are there any plans to make such a review automatic?

Yes []

No [X]

19. Is there a right for a person sentenced to death to seek commutation of the sentence or a pardon from the State authorities (e.g. the President, the sovereign or a pardons board)?

Yes []

No [X]

Under the United States Constitution, no person has a right to seek clemency, although various states of the United States have conferred such rights by statute or under state constitutions for violations of state law. Herrera v. Collins, 506 U.S. 390, 414 (1993); Duvall v. Keating, 162 F.3d 1058, 1060 (10th Cir.), cert. denied, 525 U.S. 1061 (1998); see Ohio Adult Parole Authority v. Woodard, 523 U.S. 272, 279-285 (1998); Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 463-467 (1981). On the federal level, Article II, Section 2 of the United States Constitution confers on the President alone the unreviewable power to grant clemency for “offenses against the United States.” Neither Congress nor the courts can set limitations on or review the exercise of that power. Accordingly, no person convicted of a federal offense has a right to seek clemency. However, as a matter of long-standing policy, any person who is serving a federal prison sentence and is not currently challenging the conviction or sentence in the courts is considered eligible to seek commutation of sentence from the President under the advisory rules promulgated for the Federal clemency process. See 28 CFR §§ 1.3, 1.11;

http://www.justice.gov/pardon/commutation_instructions.htm

(a) What are the procedures in your country?

Rules regarding the filing and consideration of petitions for executive clemency at the federal level are set forth at 28 CFR §§ 1.1-1.11.; see <http://www.justice.gov/pardon/clemency.htm>.

The clemency procedures of the individual states vary.

(b) Are there any plans to make such a possibility of seeking commutation or pardon automatic?

Yes []

No [X]

Federal level:

Since the Constitution confers the unreviewable executive clemency power solely upon the President, the decision whether to make consideration of commutation automatic in a federal death penalty case would rest with each President alone, in his or her sole discretion.

The clemency procedures of the individual states vary.

20. How much time is allowed for a person who has been sentenced to death and exhausted all avenues of appeal in the courts to prepare a petition for commutation or pardon?

Federal level:

Pursuant to the pertinent advisory rule regarding the filing of requests for commutation of a death sentence, “[n]o petition for reprieve or commutation of a death sentence should be filed before proceedings on the petitioner’s direct appeal of the judgment of conviction and first petition under 28 U.S.C. § 2255 have terminated. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. All papers in support of a petition for commutation of sentence should be filed no later than 15 days after the filing of the petition itself. Papers filed by the petitioner more than 15 days after the commutation petition has been filed may be excluded from consideration.” See 28 CFR § 1.10(b).

The clemency procedures of the individual states vary.

21. Is execution invariably suspended until all domestic avenues of appeal through the courts and proceedings relating to commutation or pardon have been exhausted and the outcome has been communicated to the defendant or his or her legal advisers?

Yes [X]

No []

If no, what are the procedures in your country?

22. Is execution invariably suspended until all avenues of appeal through international bodies have been exhausted and the outcome has been communicated to the defendant or his or her legal advisers?

Yes []

No []

If no, what are the procedures in your country?

The United States is cognizant of, and honors, its responsibilities under binding treaty agreements.

23. What methods of execution are provided for by law?

A person who has been sentenced to death pursuant to the Federal Death Penalty Act is committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General releases the person sentenced to death to the custody of a United States marshal, who supervises implementation of the sentence in the manner prescribed by the law of the state in which the sentence is imposed. If the law of the state does not provide for implementation of a sentence of death, the court designates another state, the law of which does provide for the implementation of a sentence of death, and the sentence is implemented in the latter state in the manner prescribed by such law. See 18 U.S.C. § 3596(a).

The Department of Justice is presently revising its specific execution protocols. The constitutionality of those protocols is at issue in the case of *Roane, et al. v. Gonzalez, et al.* (District of Columbia case nos. 1:13-cv-00938-RWR 1:12-cv-00782-RWR).

The prior protocol mandated execution “by an intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director, Federal Bureau of Prisons (BOP) and to be administered by qualified personnel selected by the Warden and acting at the direction of the United States Marshal.”

Methods of execution provided for by law vary among the individual states. Information on methods in place as of 2012 is available at <http://www.bjs.gov/content/pub/pdf/cp12st.pdf> (p. 6 tbl. 2).

Where more than one method is provided:

(a) For what types of offence/offender is each provided?

See response to Question 23, Section 4 above.

(b) Is the defendant given a choice of method of execution?

Yes []

No []

The defendant is not given a choice under the Federal Death Penalty Act.

Defendants are given a choice of method of execution in some individual states.

24. Are any procedures employed to minimize the suffering of the person to be executed?

Yes [X]

No []

If yes, what are these procedures?

Subjecting individuals to a substantial risk of future harm can be cruel and unusual punishment if the conditions presenting the risk are “sure or very likely to cause serious illness and needless suffering” and give rise to “sufficiently imminent dangers.” *Helling v. McKinney*, 509 U.S. 25, 33, 34–35. Thus, the government may not utilize a method of execution shown to create a “substantial risk of serious harm,” an “objectively intolerable risk of harm.” *Farmer v. Brennan*, 511 U.S. 825, 842, 846, and n. 9. The likelihood of an isolated mishap does not violate the Eighth Amendment. *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463–64.

At the federal level, as noted above in the response to Question 23, Section 4, the Department of Justice is currently revising its execution protocols. However, the former protocol required the first of three lethal substances injected into the condemned inmate would render him or her unconscious “as determined by qualified personnel utilizing one or more standard assessment of consciousness techniques, including but not limited to: response to verbal command, gentle shaking, vigorous shaking or noxious stimuli such as pinching,” before the execution team could administer the remaining lethal substances (**Pancuronium Bromide and Potassium Chloride**)

25. Does the law permit executions to take place in public?

Yes [X]

No []

If yes:

(a) Does this apply to all offences/offenders?

Yes [X]

No []

If it applies only to certain offences/offenders, please specify:

At the federal level, as noted above in the response to Question 23, Section 4, the Department of Justice is currently revising its execution protocols. However, the former protocol recognized “the desirability of establishing procedures which afford the public information about its operations through the news

media.” “In accordance with established policy,” the protocol required “reasonable efforts . . . be made to accommodate representatives of the news media before, during, and after a scheduled execution. Media representatives will be treated in a fair and consistent manner in accordance with current policies and procedures of the [Bureau of Prisons]. The agency has the responsibility, however, to ensure the orderly and safe operation of its institutions, and therefore must regulate media access.” The protocol permitted ten selected media witnesses to each execution. Additionally, the protocol permitted the condemned inmate to designate six witnesses of his choice, including one spiritual advisor, two attorneys, and three friends or relatives. The protocol also allowed for eight witnesses representing the victim or victims’ relatives.

Rules regarding witnesses to executions vary among the individual states.

26. Have any persons been executed in public during the survey period?

Yes [X]
No []

If yes, how many? **None at the federal level. See response to Question 11, Section 3 above for statistics at the state level.**

27. How are the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 663 (XXIV), annex) applied in your country in order to keep to a minimum the suffering of prisoners under sentence of death?

The Federal Bureau of Prisons operates the Special Confinement Unit located at the Bureau of Prisons facility in Terre Haute, Indiana, consistent with federal law and the requirements of the United States Constitution. Although the Standard Minimum Rules are not binding on the United States, the SCU is also operated consistent with the principles of the Standard Minimum Rules, as the security needs of the offender are balanced with the opportunities for interaction and programming as described above (see response to Question 15, Section 3).

28. Are any procedures in place to ensure that persons responsible for carrying out executions are fully informed until the moment of execution of the status of appeals for clemency for the prisoner in question?

Yes [X]
No []

If no, what are procedures in your country?

At the federal level, as noted above, the Department of Justice is currently revising its execution protocols. The previous protocol required Bureau of Prisons to operate a local, emergency Command Center during the execution operation to coordinate inter-agency functions and serve as an information

processing and operations nerve center for the execution. The command center authorization included dedicated phone lines and radio frequencies.

The former protocol also required frequent contact between the Attorney General, the Bureau of Prisons, and the United States Marshal's Service in regard to any judicial stay or executive grant of clemency. The former protocol also included procedures to implement "last-minute stays."

Procedures vary among the individual states.

29. Are any procedures in place to ensure that family members are informed of the date and time of execution?

Yes [X]

No []

If yes, please provide details?

See response to Question 27, Section 4 regarding allowances in the earlier Department of Justice protocol to permit condemned federal inmates to invite witnesses to their executions.

Procedures to ensure that family members are informed regarding executions vary in the individual states.

30. Are there any provisions of assistance and support that are implemented and/or provided by authorities of your country to children of parents sentenced to death or executed, with a particular focus on the ways and means to ensure the full enjoyment of their rights?

Yes []

No []

If yes, please give details:
