



Developing guidelines limiting capital punishments



GA6

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Introduction

The legality of capital punishment has always been a highly controversial issue amongst member states. Where in some eyes capital punishment is seen as disruptive to international peace and justice, others believe it maintains peace and security around the world.

The terms capital punishment and the death penalty are often confused to be the same thing, yet in actuality they are two different sentences. Where the term death penalty refers to the sentencing of a prisoner to death the term capital punishment refers to the actual execution of said prisoner.

Capital punishment is controversial for many reasons. The questions have been and remain the same after centuries of controversy. Is it ok for a state to take the life of a person who has been proven by their courts to have committed a certain crime? When is capital punishment appropriate? Is capital punishment a crime in itself?

The reason why capital punishment is so debated is extremely complex. However, the questions commonly asked often surround the legality, the impacts and the context that the punishment is put in. As of now international law aims to prohibit capital punishment to the best of its abilities, but the frameworks surrounding its abolition are extremely weak and aren't respected by many member states. To secure the safety of our world all member states must therefore work together to come to a conclusive decision and establish a strong framework in order to ensure that all citizens of the world are protected in their right to live.

Definition of Key Terms

Capital punishment

Capital punishment is the actual execution of an offender of the law who has been sentenced to the death penalty prior to their execution.

Death Penalty

The death penalty is the sentencing of an offender of the law to death, often attached to the death penalty is a date when they will suffer capital punishment.

Jurisdiction

The official power to make legal decisions and judgements under a certain constitution or set of laws which the jurisdiction closely respects and follows. They, in some respective way, contribute to the enforcement of said laws and should aim to protect the rights of both the people subject to violations of the law and the people who violate the law.

Military court

court which operates within the military justice system and judges violations of military law or regulation, such as misconduct or more serious offenses such as war crimes or treason.

Right to appeal

The right for an individual in a legal proceeding to request a higher court to reconsider the decision made by a lower court, allows the possibility to review potential mistakes or unfairness.

Treason

The crime of betraying one's country, which is most commonly seen through the form of plotting to or attempting to overthrow a nation's government or active leadership. This crime challenges the sovereignty of a nation but is not always considered a crime under international law.

General Overview

Punishments have been used to discourage the members of a community from committing crimes throughout human civilisations. We can date the origins of capital punishment back to ancient civilisations when humans started to create self-governed societies in which this form of punishment was commonly used to combat the committing of crimes including sexual misconduct, murder, military actions and especially treason. Execution has always been a form of punishment within human societies however, the problem lies within the corruption and exploitation of this available means of punishment. States themselves all have varying existing frameworks, and although these frameworks often comply with the rules of international law, it is still impossible to say all systems are just. Some member states consider things to be crimes that others do not, and how member states prove someone to have committed a crime also varies per country. With the weak judicial systems that many nations have in place and the variety thereof between member states, it becomes almost impossible to offer all citizens of the world equal opportunity regarding their right to free trial.

During the 1960s the International Covenant on Civil and Political Rights (ICCPR) decided to work towards the abolition of capital punishment and the death penalty under international law. The ICCPR was later adopted by the General Assembly under resolution 2200A. The ICCPR is a multilateral treaty and focuses on the protection of each individual's civil and political rights. 173 states comply with the ICCPR however, the ICCPR does not completely abolish Capital Punishment in any way. The Human Rights Council is now responsible for the monitoring and implementation of the ICCPR.

In 1989 the second optional protocol to the ICCPR was adopted by the general assembly and aimed to create further momentum in the abolition of the death penalty. With this protocol member states who complied agreed never to give any of their civilians capital punishment within their jurisdictions. This second protocol has only been adopted by 90 parties although it has been promoted through several resolutions throughout the 21st century. A survey by Amnesty has shown that around 42 countries have prohibited the death penalty in their constitutions. Almost all of these prohibitions are on human rights grounds.

Even though the number of states abolishing the death penalty is growing, global executions have a significant increase in 2022. Amnesty International reported that in 2022, at least 883

individuals were executed, excluding Chinese executions as figures are safeguarded, marking the highest number since 2017. Alarming, 93% of these recorded executions occurred in the Middle East and North Africa region, particularly in Iran with more than 576 recorded executions, and Saudi Arabia with 196 recorded executions.

Furthermore, and contrary to the global trend, certain States that had abolished or implemented a long-standing moratorium on the death penalty, continue to run against this global abolitionist trend. Thus, in many countries, voices are rising, advocating for stricter criminal sentences and the revival of capital punishment. In this context, it is the responsibility of the abolitionist movement to intensify its efforts towards achieving universal abolition of the death penalty.

To this date the statistics are as follows; 112 States have abolished the death penalty for all crimes, 7 have abolished the death penalty for ordinary crimes, and 47 have introduced a moratorium on executions, whether by law or in practice. Yet even though these facts still stand, the death penalty can be applied in 52 states and territories.

In 2020, 18 States carried out executions, compared to 20 in 2019 and 2018. The latest annual report by Amnesty International recorded 483 confirmed executions in 2020, continuing the significant downward trend observed over the last few years where we saw 993 executions recorded in 2017, 1,032 in 2016, and 1,634 in 2015. When we look at the death penalty, this decline is far less prominent. The number of death sentences recorded in 2018, 2,531, only slightly declined compared to 2017 2,591. It is important to remember that these figures are not considered accurate. The real figure of total executions remains hard to establish given the lack of official statistics in some countries, including China.

Minors Subject to the Death Penalty

The use of the death penalty for crimes committed by minors is prohibited under international law, yet some countries still decide to allocate the death penalty to minors, a clear violation of human rights under international law. All of said countries are UN member states and so signed the Universal Declaration of Human Rights, such as not keeping to their promises. Such executions are few compared to the total number of executions recorded by Amnesty International each year.

Since 1990 Amnesty International has documented at least 163 executions of people who were below the age of 18, in 10 countries which include China, DR Congo, Iran, Nigeria, Pakistan, Saudi Arabia, South Sudan, Sudan, the US and Yemen. Notably all countries are known to have weaker policies surrounding the use of capital punishment in response to crimes committed. Several of these countries have changed their laws to exclude the practice. Iran has executed more than twice as many people who were below the age of 18 at the time of the crime as the other nine countries combined which aligns with their high number of executions overall.

Existing legal frameworks

International law has adopted essential legislation which defines the current capital punishment guidelines

Article 6 of the International Covenant on Civil and Political Rights, calls and strongly encourages the abolition of capital punishment in all countries. This measure is portrayed as an important advance in matters of human rights in any country, however, there are not any enforcement mechanisms which would make this legally binding. The UN Human Rights Committee considers the abolition of the death penalty as integral in the fight for and the guarantee of the Right to Life (Article 3 of the UN charter), which would make the legality of capital punishment an infringement of the charter to which all UN members are party to. They have attempted to denounce countries party to the International Covenant on Civil and Political Rights which have yet to abolish the death penalty, but this has had little effect and no sanctions have been put in place against any of the aforementioned countries.

As outlined by the Rome Statute which founded the International Criminal Court in 1998, the court is not allowed to condemn individuals to the death penalty, despite the severity and horrors of the crimes which the International Criminal Court deals with (genocide, war crimes etc).

Through the adoption of resolution 2005/59, the UN Human Rights Committee strongly suggested that States “no longer apply the death penalty but maintain it in their legislation to abolish it”. Article 6 (2) of the International Covenant on Civil and Political Rights was added in order to concede that countries which maintain the use of capital punishment, must however only enforce it for “the most serious crimes.” Article 6 (5) also affirms that "Sentences of death shall not be

imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." (*"International Standards on the Death Penalty"*)

In 1996, the UN Economic and Social Council (ECOSOC) firmly stated that states that still enforce the death penalty have the moral and legal responsibility to ensure a fair trial for all accused individuals facing capital punishment, following the UN Basic Principles on the Role of Lawyers and the UN Standard Minimum Rules for the Treatment of Prisoners.

In 1989, ECOSOC urged UN member states "to publish, for each category of offence for which the death penalty is authorized, and [...], information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal". (*"International Standards on the Death Penalty"*) This was adopted in an effort to ensure the transparency of the application of the death sentence in order to counter any abuses and mishandling.

The international legal framework has expanded to include specific mental health cases. Indeed, it is illegal to execute "insane" prisoners within customary international law, which means it is legally binding and well effective for every state, regardless of whether or not they have signed or ratified any relevant treaties. The State is not allowed to condemn to death any individual who may suffer from significant mental illnesses, a status which can be declared after thorough medical tests.

These developments have concurred with an increased understanding of mental health needs and challenges. An offender's mental health ought to be attended to in the same manner as their other medical needs. It is important to acknowledge that some inmates have mental health issues prior to their incarceration and that some inmates experience mental health issues during their incarceration. According to the UN Human Rights Committee, putting someone to death (or keeping them imprisoned indefinitely) for mental illness is cruel, inhumane, and degrading punishment.

Another aspect of the enforcement of capital punishment which international law has sought to amend is the resort to the death penalty in times of emergency rule and/or martial law.

Indeed, international law still allows the resort to the use of capital punishment in wartime or states of emergency in the face of a threat to the stability of the State. Protocol 65 of the European Convention Convention on Human Rights stipulates that "A State may make provision in

its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. Protocol 2 of the Statute of Rome affirms that the use of the death penalty can be deemed acceptable in case of serious military crimes committed during the war. However, the definition of a “serious military crime” is vague and provides no clear delimitation of what it constitutes which allows anyone to justify execution by simply invoking “serious military crimes.”

Furthermore, according to Penal Reform International, sentencing and condemnation during martial law and enacted by military courts are often founded on baseless claims. These condemnations account for a large part of arbitrary arrests and of innocents sentenced to death.

Possibilities of reform and challenges

Several reform proposals have been brought to the table in order to consolidate and theoretically amend problems which face current international guidelines. Indeed, in order to ensure that capital punishment is only a last resort in case of serious offenses, NGOs such as Amnesty International and Penal Reform International have pushed to prohibit military courts from passing death sentences. Indeed, this would help to reduce unfair and arbitrary sentences which could potentially sentence innocents to capital punishment. Furthermore, they are now pushing to prohibit civilians from being tried in military courts and also argue that capital punishment should not be available when the accused soldier has been killed within the domain of lawful acts of war, as defined by the role of a lawful combatant under the 1949 Geneva convention (an individual who openly fights as a member of military armed forces.)

Additionally, NGOs have pushed for the UN and adjacent organizations to recognize and protect the right to appeal, especially in military or special courts, which is the principle by which individuals tried in court are allowed to request that the decision made in court be reconsidered in order to review any mistakes or instances of unfairness.

Though the right to appeal is enshrined in international law, in practice it is often denied to prisoners, who are unable to access higher courts which may be able to review their cases. Many countries, such as China, who attempt to show the validity of their judicial system by allowing the right to appeal, will still however execute soldiers whose appeals are still ongoing. Additionally, the higher courts which review the appeal are not always independent and impartial, which denies prisoners an objective review of their case. The UN has attempted in the past to establish international standards regarding the right to appeal through the 1984 ECOSOC Safeguards, which

include calling for not only the procedure of the case appealed, but the substance of it to be reviewed as well as automatically delaying an execution when an appeal is processed. However, like the majority of current international guidelines, the UN has been unable to enforce these standards.

Members of the UN which have abolished capital punishment in their own countries have been increasingly important in encouraging other abolitionist countries to respect moral and legal obligations vis-à-vis states which still allow capital punishment by not causing the use of capital punishment. To this effect, the delegation of Norway in particular has established a set of proposals, such as; refraining from deporting individuals who could be sentenced to death in their country of origin, not exporting goods and services to countries which could be used in the execution process, as well as legislative or law enforcement help in countries where offenders can be subject to the death penalty (this is particular the case for drug enforcement programmes which track down drug dealers in middle eastern countries, often subject to capital punishment).

Major Parties Involved

China

China has one of the highest execution rates in the world, though the extent of its use is shrouded as this data is hidden from the international community, but Amnesty International estimates a number of at least 883. However, this lack of transparency makes it difficult to continuously assess and evaluate China's compliance with international standards. Furthermore, the international community has concerned itself with the lack of judicial independence in China; tightly controlled by the governing party. This could potentially lead to added arbitrary and unjust condemnations to execution. Given China's influence and importance on the global scene, its visible compliance with international law is extremely important and if they were to move towards fewer executions, this could have a positive impact on the universal adherence to international guidelines.

United States

The United States remains one of the few more developed countries that still allows capital punishment in its federal law. As of 2023, more than 1,583 prisoners have been executed since 1976. The abolishment of the death penalty has already been ensured in many states but remains a point of contention and division for Americans, with those advocating for its abolishment through the lens of universal human rights. As a member of various international organizations and treaties which

condemn the use of the death penalty, the contradiction in America's legislation is heavily scrutinized.

Saudi Arabia

Between 2010 and 2021, at least 1,243 people were executed. Much like in China, the Saudi Arabian judiciary system has long been criticized for its lack of transparency and fairness. The country resorts to the death penalty for offenses such as drug trafficking and apostasy, both crimes which are considered to be non-violent and not of such severity to warrant the death penalty, going against international guidelines. The country has therefore been the subject of various condemnations for disrespect of basic human rights and principles.

Iran

90% of deaths by capital punishment, excluding China, have taken place in Iran or Saudi Arabia in the last 10 years. In 2023 alone, there were at least 390 executions. Much like its neighbor, Saudi Arabia, Iran is regularly accused of using capital punishment for crimes which do not meet the "serious crime" criteria outlined by international law. However, further than that, Iran is accused of using capital punishment as an arbitrary means to legitimize mass murders to instill fear and maintain the authority of the current regime. In May of 2023, three protesters were executed based on allegedly false confessions forced out of them through torture, sparking international backlash and criticism.

Norway

Capital punishment in Norway was fully abolished in 1979 and constitutionally abolished in 2014. They were among the first to abolish it and therefore have led the fight to abolish it internationally. Allied with various countries, they have called on the UN to introduce more legally binding legislation to achieve full abolition. Working with NGOs, they continue to put forth moral and legal arguments to put an end to capital punishment.

Canada

The death penalty in Canada was abolished in 1998, though the last civilian executions date back to 1962. In 2005, the country ratified the International Covenant on Civil and Political Rights and demonstrated its commitment to international efforts against the use of capital punishment. Much like Norway, they have been active internationally in encouraging all states to follow their

examples, however, they have been criticized by Amnesty International for not preventing the execution of Canadians in foreign countries.

Amnesty International

Amnesty International is a non-governmental organization (NGO) that fights for the respect of human rights advocacy and activism. The organization is known for its efforts to investigate and expose human rights abuses and mobilize public pressure to force governments and other entities to respect and uphold human rights standards. The NGO has played a significant role in the fight to abolish capital punishment, publishing new statistics regularly to combat the lack of transparency as well as calling for the UN to reinforce its guidelines.

Penal Reform International

Penal Reform International is an NGO which has played a significant role in pushing for the abolition of capital punishment worldwide by supporting reforms which attempt to make criminal justice fairer and non-discriminatory. They often cooperate directly with criminal justice systems in order to implement these reforms and document key evolutions in different criminal justice systems in order to prioritize raising awareness of the abuse of human rights.

Possible Solutions

One focus of debate could be to try and increase transparency amongst all member states. As some nations such as China continue to reclude and safeguard basic information such as the total number of people subject to capital punishment each year, the statistics recorded by NGOs such as Amnesty and other parties remain inaccurate. With more accurate records and an increased amount of data the Human Rights Council will be more successful in its implementation of the ICCPR and more rights of civilians under the death penalty will therefore be respected and protected throughout the lead-up to their eventual capital punishment.

Strengthening the framework not only surrounding capital punishments but also that of the death penalty will further encourage its abolition. This may be beneficial to all member states as through this furthering of the framework it will be more secure as to which civilians are subjected to capital punishment. Many a time civilians who are subjected to the death penalty are not protected in their rights and a stronger framework will prevent more people from being subject to capital punishment.

Another possible solution to the issue could be to revise the ICCPR which is already in place and further define certain aspects of the ICCPR. As capital punishment has taken a different shape over the past decades due to the ICCPR and the Human Rights Council which aims to implement it, the ICCPR no longer is completely accurate or applicable to today's forms of capital punishment. In order to stimulate further abolition of certain forms of capital punishment which have become more popular over the past decades we must look back to move forward.

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