

Human Rights Council

The rights of prisoners in cases of capital punishment



Forum: Human Rights Council
Issue: The rights of prisoners in cases of capital punishment
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Introduction

Capital punishment is taking someone’s life because they committed a capital crime. Many countries have abolished the capital punishment, but 58 countries still practice it due to a variety of factors. The question of capital punishment is a very complicated issue because of international law and human rights. However, the countries own laws should also be taken into account. Many suffer from the use of capital punishment as 60% of the world's population live in countries where executions occur. The countries in which capital punishment occurs can be seen in figure 1 and include the United States of America (USA), China and India.

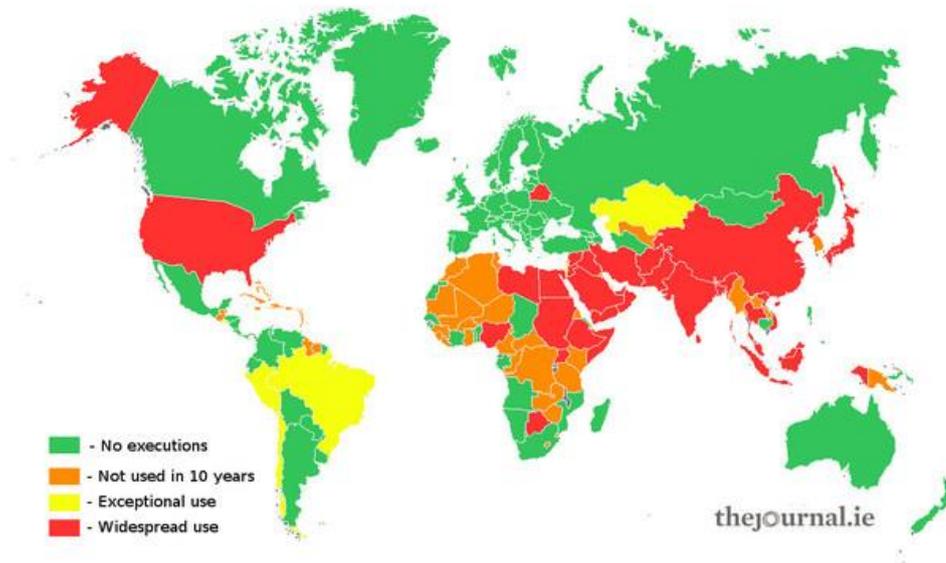


Figure 1: The status of all countries when it comes to capital punishment.

Source: A diagram of the use of capital punishment in the world. Digital image. The Journal.ie. The Journal.ie, n.d. Web.
 <<http://img2.thejournal.ie/inline/1972821/original/?width=630&version=1972821>>.

The use of capital punishment has been deemed inhuman and breaks many articles of the Universal Declaration of Human Rights (UDHR). The former UN Secretary-General Ban Ki-moon has stated "the death penalty has no place in the 21st century." (*Death Penalty*.) For example, people are discriminated based on race and sexuality when it comes to capital punishment, this goes against article I and II of the International Declaration of Human Rights (IDHR). Capital punishment also undermines all human dignity and this means that the human rights of the prisoners on death row have been abused. Other articles that are not upheld in the case of capital punishment are article III, article V and article VII.

Definition of Key Terms

Capital Punishment

Capital punishment, also known as the death penalty, is a government-sanctioned practice whereby a person is put to death by the state as a punishment for a crime.

Capital Crimes

Crimes that are punishable by death are known as capital crimes or capital offenses, and they commonly include offenses such as murder, treason and espionage.

Execution

The infliction of capital punishment.

Inmate

A person confined to one place; in this case, this is a person confined to prison.

Death Row

The part of a prison used to house inmates that have received the death penalty. The term death row is also used to describe the number of people awaiting the capital punishment.



International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a treaty adopted by the United Nations General Assembly on the 16 December 1966. It was in force from 23rd of March 1976. As of February 2017, the Covenant has 169 parties and six more signatories without ratification. It commits its parties to respect the civil and political rights of individuals; this includes the right to life, freedom of speech, freedom of religion, freedom of assembly, the right to due process and a fair trial and electoral rights. Even though article 6 of the ICCPR permits the use of capital punishment in limited circumstances. The status of all countries on the ICCPR can be seen in Appendix III.

General Overview

Facts and Figures

Capital punishment still occurs in 58 countries; these can be seen in figure 1 and are listed in Appendix I. However not all these countries use the capital punishment on a regular basis; 23 out of the 58 countries that use the capital punishment executed people in 2016. Amnesty International reports that there was a dramatic 54 per cent increase in executions globally in 2015. This can be seen in figure 2. Even though the number of executions has not decreased in recent years, the number of countries that have abolished the capital punishment has steadily been increasing. This can be seen in figure 3. The use of capital punishment per country can be seen in Appendix II. (*What We Do.*)

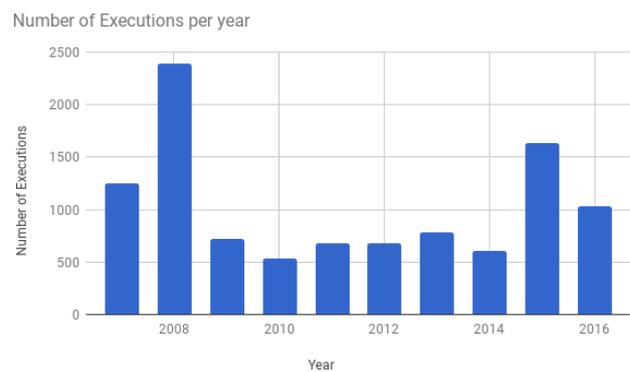
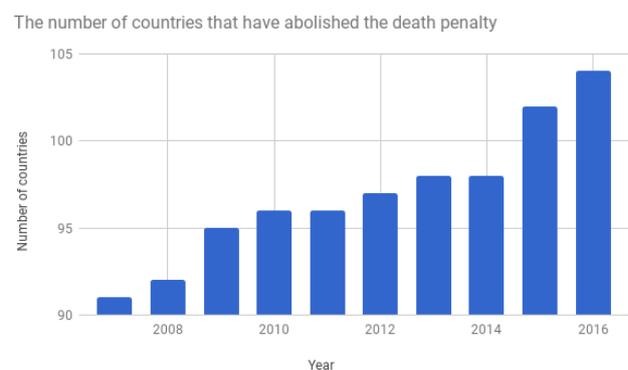


Figure 2 (above): Number of executions per year.

Figure 3 (below): The number of countries that have abolished capital punishment.

Data: "What We Do?" Amnesty International. Amnesty International, n.d. Web. 14 June 2017. <<https://www.amnesty.org/en/what-we-do/death->



Why it is used

Capital punishment has been used for a very long time and for various reasons. The first record of capital punishment dates back to 18 BC in the Code of King Hammurabi of Babylon. At this time there were only 25 capital crimes. Capital punishment was also mentioned in Hittite Code in 14 BC, Draconian Code of Athens in 7 BC and the Roman Law of the Twelve tablets in 5 BC. In the Draconian Code of Athens, Capital punishment was the only punishment for all crimes. Methods of execution at this time included crucifixion, drowning, burning alive, beating and impalement. (*Part I: History of the Death Penalty.*)

The British used capital punishment throughout history with different laws that changed with different kings. From 1028 - 1087, during Willem the Conqueror's reign, execution was not allowed for any crimes except for in times of war. However with the reign of Henry VIII in the 16th century, around 72,000 people were executed. During this time capital crimes included marrying a Jew, not confessing to a crime and treason. From 1823 to 1837, over 100 of 222 capital crimes in Britain were eliminated. The use of capital punishment in the UK was fully abolished in 1998. (*Part I: History of the Death Penalty*)

The British influenced the use of capital punishment in the USA. The first recorded execution took place in 1608. (*Part I: History of the Death Penalty.*) In the late 1600's, capital punishment used to execute those accused of practising witchcraft in the Massachusetts, this period was known as the Salem Witch Trails. During the Salem Witch Trails there was a discrimination against gender. 78% of those accused of performing witchcraft were women. Only 19 executions took place in 1692. In 1846, the first state to abolish capital punishment for all crimes except treason was Michigan. (*Quinn.*)

Currently, it is thought to be more financially benefiting and create a safer environment. However, there is no evidence that the implementation of capital punishment decreases crime rates and increases public safety. It is believed to be more financially benefiting for the government. However, this can be proven to be false. Currently in California, there are 747 people on death row, 21 women, and 726 men. Taxpayers spend US\$ 150 000 000 every year to support the use of capital punishment. This has added up to more than US\$4 000 000 000 since 1978 when capital punishment was reinstated. However, only 13 people have been killed since 1978 and none have been killed in the last decade. On top of this, it is also estimated that the annual cost of pursuing executions to be US\$184 000 000 more than pursuing life without parole. This has now added up to around US\$5 000 000 000 since 1978. California's Legislative Analyst's office even estimates that California alone would save US\$150 000 000 a year if it abolishes capital punishment. (*Amnesty International.*) On top of this, there has been no proof of increased public safety as stated by Amnesty International.



Discrimination

Article I states that all humans are born free and equal. Article II states that all the rights in this Declaration are entitled to everyone without distinction to factors such as race, sex and religion. However, this has proven to be a problem when it comes to the use of the capital punishment. There is a disproportionate application of the capital punishment against people of colour and people who are poor. (*Death Penalty.*)

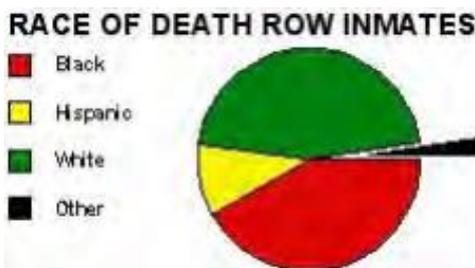


Figure 4: The race of death row inmates in 2015 in the USA. Even though there was a relatively small number of non-white convictions compared to white people convicted. A larger percent of the Black, Hispanic and other non-white races were convicted. This is also this way because there is higher crime rates of non-white people in comparison to white people.

Source: Race of Prisoners Currently on Death Row. Digital Image. Death Penalty. N.p., n.d. Web. 9 Jun. 2017. <<http://deathpenalty.org/article.php?id=54>>.

Discrimination based on race is a specific problem in the USA. This can be seen in figure 4. Another figure that is important to consider is that in the USA, 40% of the death row population is black, this is nearly three times the proportion of the general population. (*O'Malley*) The racial discrimination can be further seen in figure 5. Figure 5 compares the culpability index and the estimated probability of a death sentence in Philadelphia from 1983 to 1993. Culpability means direct involvement in the wrongdoing, such as through participation or instruction. When the defendant's culpability index and scale score is the same, a black defendant involved with a non-black victim has a higher chance of being sentenced to capital punishment than a black defendant involved with a black victim, a non-black defendant involved with a non-black victim and a non-black defendant involved with a black victim. At a high culpability index, a black defendant involved with a non-black victim is 150% more likely to be sentenced to the death penalty than a non-black defendant involved with a black victim. A factor that may impact this data is that 98% of all prosecutors responsible for death penalty decisions are white. (*Dieter.*) Even though this data is from 1983 to 1993, figure 4 shows that this racial discrimination still occurs in more recent years in the USA. 5 cases that involved racial discrimination can be found in appendix IV. A solution to this discrimination may be holding blind trials where the defendant's and victim's race are not revealed and therefore do not influence the sentence.

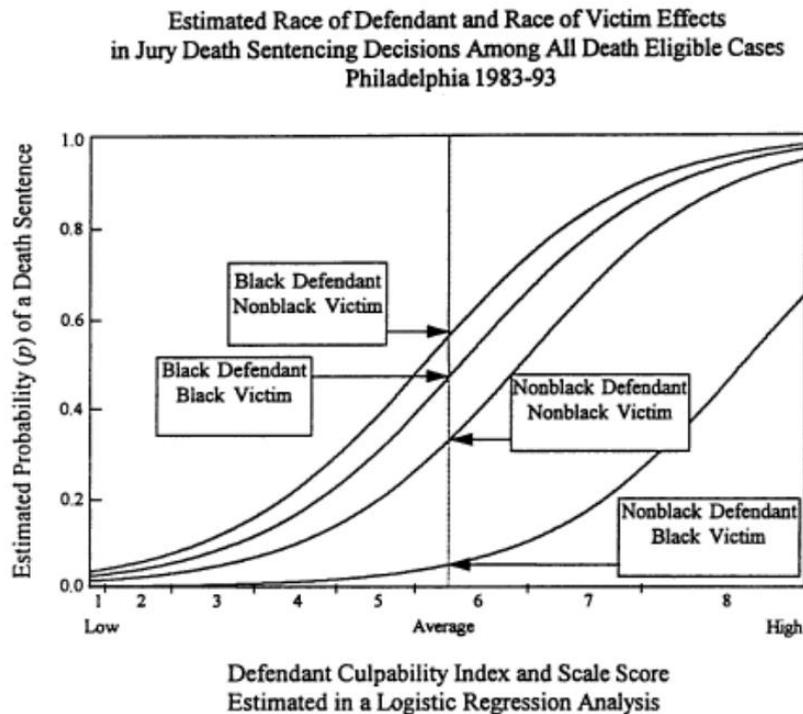


Figure 5: A graph showing the estimated race of defendant and race of victim effects in Jury death sentencing decisions among all death eligible cases in Philadelphia from 1983 to 1993. The graph compares 4 different scenarios, where the defendant is black and the victim is nonblack, where the defendant is black and the victim is black, where the defendant is nonblack and the victim in nonblack and where the defendant is nonblack and the victim is black.

Source: Dieter, Richard C. *Estimated Race of Defendant and Race of Victim Effects in Jury Death Sentencing Decisions Among All Death Eligible Cases Philadelphia 1983-93*. Digital image. *Death Penalty Information Center*. DPIC, June 1998. Web. 7 Aug. 2017. <<https://deathpenaltyinfo.org/death-penalty-black-and-white-who-lives-who-dies-who-decides>>.

There is also discrimination against ones sexuality when it comes to capital punishment in various countries. Homosexuality is seen as a capital crime and therefore the capital punishment is used as a sentence for this crime. Countries in which this occurs include; Yemen, Saudi Arabia, Iran, Iraq, Northern Nigeria and Sudan. In Qatar and Mauritania, only Muslim men can be sentenced to death for being homosexual.

Discrimination is also a subject in the UDHR in article 7 which states that 'all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'

Age

The age of people eligible for capital punishment has sparked controversies. In some countries, people under the age of 18 are executed, which is in direct violation of the International Covenant on Civil and Political Rights (ICCPR). This is stated in Article 6 of the ICCPR as mentioned above. Local laws in some countries, such as China, have adopted some of the articles in the ICCPR. Article 49 in the Chinese criminal code explicitly forbids the capital punishment for offenders who are under the age of 18 at the time of the crime.

International law

Article 6 of the ICCPR provides strict guidelines and limitations on the use of capital punishment. When the ICCPR was drafted from 1947-1966, only 10 countries had abolished the capital punishment. This helps ensure that the rights of prisoners are respected as much as possible. Article 6 states that the capital punishment can only be imposed for the most serious crimes and cannot be imposed if the following conditions are met:

1. A fair trial has not been granted
2. Other ICCPR rights have been violated
3. The crime was not punishable by the death penalty at the time it was committed
4. The offender is not entitled to seek pardon or a lesser sentence
5. The offender is under the age of 18
6. The offender is pregnant. (*Iba.*)

On top of this, the use of capital punishment is also banned under 'Protocol No. 6 to the European Convention on Human Rights' and 'The Protocol to the American Convention on Human Rights to Abolish the Death Penalty'.



UDHR

The Universal Declaration of Human Rights (UDHR) should very much be considered when looking at the question of capital punishment, there are various articles mentioned above, but the following should not be disregarded. Article 5 states that no one shall be subjected to cruel, inhuman or degrading treatment or punishment. Article 9 states no one shall be subjected to arbitrary arrest, detention or exile. Article 10 states that everyone is entitled in full equality to a fair and public hearing to determine which charge is held against him or her.

The World Coalition Against the Death Penalty

The World Coalition Against the Death Penalty (WCADP) is an alliance of more than 146 member organisations. This includes NGOs, bar associations, local authorities and unions. WCADP was created on the 13th of May 2002 in Rome. It was founded as a result of the commitment made by the signatories of the First declaration of the 1st World Congress Against the Death Penalty organised by the French NGO Together Against the Death Penalty (ECPM) in Strasbourg in June 2001. The aim of the WCADP is to fight the use of capital punishment and aims to universally abolish the death penalty. The WCADP strives to achieve the aims in the following ways: By supporting national and regional abolitionist forces, by organising international campaigns, including the World Day Against the Death Penalty and by lobbying international organisations and States.

Methods of Execution

Various methods of execution include; lethal injection, hanging, electrocution, stoning, guillotine, firing squad and gas chamber. Stoning is known as the most inhuman method of execution. This is the process of executing someone by throwing stones at them. Nine countries authorise this practice; these countries are Indonesia, Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, Sudan, United Arab Emirates, and Yemen. However, stoning is only authorised for particular offences; in Mauritania, it is only authorised for adultery and homosexual relations; in Nigeria stoning is authorised for adultery, rape, incest and homosexual sodomy and in Pakistan stoning is authorised for rape and adultery. In recent years, stoning has not been carried out to execute criminal offenders; instead, it has been carried out extra-judicially. An example of this is armed groups in Somalia. The United Nations Human Rights Commission has noted that execution by stoning was a 'particularly cruel or inhuman means of execution' in Resolution of the Question of the Death Penalty, para. 7(i) in 2005/29. The most humane method of execution is lethal injection. This one of the methods used to perform capital punishment. This is the practice of injecting a drug or various drugs into a person. This process was developed in the United States of America and is used in other



countries such as China and Vietnam. The injection first makes the person unconscious, and then it will stop the breathing and then the heart. There are 3 different drugs used for the lethal injection each of which have a different purpose in the process. To render the person unconscious, sodium thiopental or pentobarbital is used. To stop the respiratory system by causing muscle paralysis, pancuronium bromide is used. Finally, to stop the heart potassium chloride is used.

Major Parties Involved

China

The use of capital punishment is legal in China and is mostly used for murder and drug trafficking. Other capital crimes include armed mass rebellion, rape of a person under the age of 14 and theft of cultural relics. China has the highest number of executions annually. The Dui Hua Foundation estimated that in from 2008 to 2010, 5000 people were executed annually. The Dui Hua Foundation is a non-profit humanitarian organization founded in 1999 based in San Francisco who seek clemency and better treatment for at-risk detainees. They achieve this through effective communication with the China. The number of executions is a state secret but from what has been reported, the number has dropped significantly since the Supreme People's Court regained the power to review all death sentences in 2007. (*Fan, Maureen.*) The Dui Hua Foundation estimates that 12,000 people were executed in 2002, 6,500 people in 2007, and roughly 2,400 in 2013 and 2014. However, given these estimates, executions in China accounted for more than 58% in 2009 and 65% in 2010 of executions worldwide. The method of capital punishment used in China is lethal injection or shooting. Capital punishment has also brought problems between Hong Kong and Mainland China, this is because Hong Kong abolished capital punishment in 1993 and this has been a major reason to why there is no rendition agreement.

Russia

The use of capital punishment has been indefinitely suspended in Russia. In 1707 the law of Yaroslavl put restrictions on Capital Punishment. Later this law was amended to abolish the use of capital punishment. Currently, Article 20 of the Russian Constitution states that everyone has the right to live and that until its abolition, capital punishment may only be passed for the most serious crimes against human life. These capital crimes include murder, encroachment on the life of a person or engaged in a preliminary investigation, encroachment on the life of an officer of a law enforcement agency, encroachment on the life of statesman or public figure and genocide. However, capital punishment is not required for these crimes and



life imprisonment can also be given as a sentence. On top of this, these sentences all require a jury trial. The legal method of execution is shooting. (*The Death Penalty in Russian Federation.*)

Amnesty International

Amnesty International is an international non-governmental organization (INGO) founded in 1961 that serves to protect international human rights. Amnesty has a very clear view on the use of capital punishment. Amnesty has stated that it is the ultimate denial of human rights. They actively work to abolish it.

Iran

Iran is known to be one of the worst countries when it comes to capital punishment, they are believed to execute most people per capita. Capital punishment is legal in Iran and can be used to punish for crimes including murder, child molestation, drug trafficking, terrorism, rape, treason, sodomy, kidnapping and armed robbery. It is estimated by Amnesty International that there were 360 executions in 2011, 735 in 2014 and 694 in 2015, however, the UN Special Rapporteur on Human Rights in Iran stated that there were at least 966 people put to death in 2015. This is around double the number executed in 2010. Of the executions which occurred in 2015, 74% were drug related. (*IRAN / Death Penalty.*)

Saudi Arabia

Capital punishment is a legal penalty based on Islamic law. Amnesty International counted a minimum of 79 in 2013, almost half of these executions were foreigners mainly on convictions for murder and drug smuggling. There was a two-decade high in 2015 with at least 157 executions and 47 people were executed on the 2nd of January 2016. The use of capital punishment has risen due to the concern with the rise of violent crimes in the 1970's, similarly to the USA and China. Capital crimes in Saudi Arabia include apostasy, adultery, sodomy, murder, rape, homosexuality, lesbianism, witchcraft, and drug trafficking. Saudi Arabia is one of the only 6 countries that still perform public executions. (*Saudi Arabia.*)

United States of America (USA)

19 States in the United States of America (USA) have abolished capital punishment and it still occurs in 31 States. The methods are different for various state, federal, and military policies. Methods include lethal injection, hanging, electric chair, firing squad and the gas chamber. Capital punishment can be used for murder, homicide-related crimes, treason, espionage, robbery, terrorism and drug trafficking. However, capital punishment is not imposed



for crimes committed by a person under 18 years old. In 2016 there was a 25-year low with only 20 executions in that year. The American Convention on Human Rights to Abolish the Death Penalty calls for total abolition of capital punishment but allows states parties to retain capital punishment for crimes in time of war if they make a reservation to that effect at the time of the ratification or accession to the Protocol.

Democratic People's Republic of North Korea

Public executions are performed in North Korea using a firing squad, hanging or decapitation as the method. According to the law in North Korea, capital crimes include; drug transactions, plots against national sovereignty, murder of a North Korean Police Guard, watching South Korean and foreign Drama & Soap Operas, burglary, insubordination, inappropriate words, drug trafficking, armed robbery, violation of Juche customs, taking unauthorized photographs, unauthorized religious activity and many more. North Korea is not open about the number of executions that take place there, Amnesty International, however, believes that many executions do take place.

Europe

49 of the independent states in Europe are UN members or have a UN observer status. Only one country, Belarus, maintains capital punishment. It has been this way since 1999. Russia currently has the abolitionist in practice and the remaining 47 countries, 96% have abolished the use of capital punishment. This may also be due to the fact that the abolition of capital punishment is a pre-condition for entry into the European Union. This is because it is considered a cruel and inhuman practice and has not been shown in any way to act as a deterrent to crime. 2009 and 2015 were the first two years in which there were no recorded executions. Protocol Number 6 of the European Convention on Human Rights states that capital punishment should be abolished in peacetime. Protocol Number 13 states that capital punishment should be abolished in all circumstances.



Timeline of Key Events

| Date | Description of Event |
|-------------------------|---|
| 18 BC | First record of capital punishment. |
| 1692 | 19 women were executed during the Salem Witch Trails. |
| 1866 | Venezuela abolished capital punishment for all crimes and was the first country to do so. |
| 1947-1966 | International Covenant on Civil and Political Rights was drafted |
| 1966 | Support for capital punishment reaches an all time low with a Gallup poll showing that only 42% support the use of the death penalty. |
| 16 December 1966 | International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly |
| 23 March 1976 | International Covenant on Civil and Political Rights was in force |
| 1977 | The last guillotine was used in France |
| 1981 | France abolishes capital punishment. |
| 1998 | United Kingdom abolished capital punishment. |
| 13 May 2002 | World Coalition Against the Death Penalty was created. (<i>History.</i>) |
| 2003 | World Coalition Against the Death Penalty created the first World Day Against the Death Penalty. (<i>History.</i>) |
| 2007 | The Council of Europe and the European Union officially recognize the World Day, October 10th, as European Day Against the Death Penalty. |
| 18 December 2007 | UN General Assembly discusses the United Nations moratorium on the death penalty, A/RES/62/149. |
| 15 May 2008 | The International Bar Association's Human Rights Institute's Council Resolution on the Abolition of the Death Penalty was adopted. |
| 2016 | In this year, 23 countries executed 1032 people. |
| 2017 | Capital punishment has been abolished in all European countries except Belarus and Kazakhstan, which will only use capital punishment for wartime crimes. |
| February 2017 | The International Covenant on Civil and Political Rights now has 169 parties with six more signatories without ratification. |



UN Involvement, Relevant Resolutions, Treaties and Events

The UN has had much involvement with the issue of Capital Punishment.

1. The United Nations moratorium on the death penalty, 18 December 2007. (A/RES/62/149)
2. The United Nations moratorium on the death penalty, 18 December 2008. (A/RES/63/168)
3. The United Nations moratorium on the death penalty, 21 December 2010. (A/RES/65/206)
4. The International Covenant on Civil and Political Rights (ICCPR)
5. World Coalition Against the Death Penalty (WCADP)
6. International Bar Association's Human Rights Institute (IBAHRI)

Previous Attempts to Resolve the Issue

Firstly, the United Nations Moratorium on the Death Penalty is not legally binding; therefore countries are not obliged to follow the guidelines provided. This means that this has not been very effective, as countries do not have initiatives to follow the guidelines provided. In 2007, 104 members voted for, 54 voted against and 29 abstained from voting. In 2008, 106 voted in favour, 46 voted against and 34 abstained. In 2010, 109 voted for, 41 voted against and 35 abstained. The resolution was approved in all years. The goal of the moratorium was not fully achieved but it has been effective. This can be seen in the gradual decrease in member states voting against the resolution.

Secondly, the International Covenant on Civil and Political Rights was quite effective. As of February 2017, the Covenant has 169 parties and six more signatories without ratification. It set down limitations for the use of capital punishment, however these have not been followed by all countries. All the rights in the ICCPR are violated in Iran, Sudan and Saudi Arabia, for example, they still execute people under the age of 18. Other countries such as China and North Korea keep records of execution as a state secret. Therefore it is not clear whether the laws stated in the ICCPR are being followed.

Thirdly, the World Coalition against the Death Penalty (WCADP) has been effective. It involves more than 146 member organisations and has helped to fight the use of capital punishment. It has however not setup any laws and therefore cannot force any country to



abolish capital punishment. They have been successful in running campaigns including World Day Against the Death Penalty and lobbying states and organisations to abolish capital punishment.

Possible Solutions

There are various solutions to this issue help combat this issue. One solution would not combat the issue fully and therefore a combination of solutions should be used to ensure that the rights of prisoners are fully upheld in cases of capital punishment.

Firstly, the most obvious way to solve this issue is to abolish the use of capital punishment. This can be done by forming a new treaty can be made to abolish the use of capital punishment. To ensure that all countries sign this treaty, various initiatives may be used. This can include financial initiatives. A newly created body could promote abolition. This body could work with member states willing to work towards a world without capital punishment and existing (I)NGO's such as Dui Hua Foundation and Amnesty International. If member states want to ensure that the use of capital punishment is abolished, countries can boycott member states that still use capital punishment, as they do not comply with international law and many articles on the UDHR.

Secondly, a new policy can be implemented on capital punishment to ensure that a majority of articles of the UDHR are being upheld even when capital punishment is being used. This policy could include that a fair trial is granted and that every prisoner follows the same process. This would mean that a rigorous process would have to occur before capital punishment can be imposed on a prisoner. This would also ensure that capital punishment complies with article 7 and article 10 of the UDHR. The policy could also include regulations on sentencing prisoners without hard evidence. This has occurred many times in the past, this goes against article 9 of the UDHR.

Thirdly, trials should not be influenced by any factor other than the offence that took place. Therefore the discrimination occurring in the case of capital punishment has to be combatted. The discrimination goes against article 1 and 2 of the UDHR. To ensure no discrimination is present, blind trails can be held where the race, gender, sexuality and any other factors with do not influence the trail are not revealed of both the defendant and the victim. However, these things may be revealed if they are relevant to the trail.

Lastly, there are various methods of executions, some more humane than others. A solution could be to find the most humane process to execute inmates and require



the use of this particular method instead of other inhumane methods. However, to fully preserve the human rights of prisoners, the capital punishment should be abolished.

Appendices

Appendix I

The 58 countries that still use capital punishment.

<http://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>

Appendix II

An interactive map showing the use of capital punishment in various countries from 2008 to 2016.

<https://www.amnesty.org/en/what-we-do/death-penalty/>

Appendix III

Status of countries in relation to the ICCPR

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en

Appendix IV

5 cases which involve racial discrimination

<http://www.motherjones.com/politics/2015/03/racism-courtroom-5-death-penalty-cases/>



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