

Committee: SOCHUM 2

Question of: the use of the death penalty

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Introduction

The death penalty is a government-sanctioned practice whereby a person is put to death by the state as a punishment for a crime. The sentence that someone is punished in such a manner is referred to as a death sentence, whereas the act of carrying out the sentence is known as an execution. Crimes that can result in a death penalty are known as capital crimes or capital offences. Fifty-eight countries retain capital punishment, 102 countries have completely abolished it de jure for all crimes, six have abolished it for ordinary crimes (while maintaining it for special circumstances such as war crimes), and 32 are abolitionist in practice. Notable countries that still hold the death penalty included China, Indonesia, Saudi Arabia, India and the USA.

Issue

Execution of criminals and political opponents has been used by nearly all societies—both to punish crime and to suppress political dissent. In most countries that practice capital punishment it is reserved for murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious crimes such as apostasy in Islamic nations (the formal renunciation of the state religion). In many countries that use the death penalty, drug trafficking is also a capital offence. In China, human trafficking and serious cases of corruption are punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offences such as cowardice, desertion, insubordination, and mutiny.

The death penalty in the contemporary era was abolished due to political change, a move from authoritarian rule to democratic rule. The Soviet Union executed 25 million people during Stalin's rule. Recently when countries have shifted to democracy the death penalty has been abolished and Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. This means that all European states have to abolish the death penalty to join the EU has part of one of the prerequisites.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations on 10th December 1948. The Universal Declaration of Human Rights aims to ensure that through the right of law protects human rights.

Member States of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. The Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The whole problem with UDHR is that it is not legally binding, despite being a prerequisite of joining the UN. Countries maybe prosecuted by the ICJ however the UN Charter protects countries in most cases due to a country's national sovereignty.

This is key because when it comes to the issue of the death penalty the UDHR states in Article 3: everyone has the right to life, liberty and security of person. Furthermore Article 5: no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The death penalty directly goes against the article three with regards to the right to life. With regards to article 5 some forms of the death penalty can be considered torture. However the plot thickens, prisoners have their own set of rights as seen below.

Basic treatment of prisoners:

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. The resolution states the following:

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. All prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

These two clauses state clearly that prisoners have the same basic human rights as all other people. This means that they too have the right to life so the UN stands firmly holding a position of against the death penalty that all member states should aim to follow.

Types of death penalty:

Lethal Injection: In 1977, Oklahoma became the first state to adopt lethal injection as a means of execution, though it would be five more years until Charles Brooks would become the first person executed by lethal injection in Texas on December 2, 1982. Today, all of the 32 states that have the death penalty use this method. This lack of medical participation can be problematic because inexperienced technicians or orderlies perform often injections. If a member of the execution team injects the drugs into a muscle instead of a vein, or if

the needle becomes clogged, extreme pain can result. Many prisoners have damaged veins resulting from intravenous drug use and it is sometimes difficult to find a usable vein, resulting in long delays while the inmate remains strapped to the gurney. (Ecenbarger, 1994 and Weisberg, 1991)

Electrocution: Seeking a more humane method of execution than hanging, New York built the first electric chair in 1888 and executed William Kemmler in 1890. Soon, other states adopted this execution method. Today, electrocution is not used as the sole method of execution in any state. Electrocution was the sole method in Nebraska until the State Supreme Court ruled the method unconstitutional in February 2008. For execution by the electric chair, the person is usually shaved and strapped to a chair with belts that cross his chest, groin, legs, and arms. A jolt of between 500 and 2000 volts, which lasts for about 30 seconds, is given. The current surges and is then turned off, at which time the body is seen to relax. The doctors wait a few seconds for the body to cool down and then check to see if the inmate's heart is still beating. If it is, another jolt is applied. This process continues until the prisoner is dead. The prisoner's hands often grip the chair and there may be violent movement of the limbs which can result in dislocation or fractures. The tissues swell. Defecation occurs. Steam or smoke rises and there is a smell of burning.

Gas Chamber: In 1924, the use of cyanide gas was introduced as Nevada sought a more humane way of executing its inmates. Gee Jon was the first person executed by lethal gas. The state tried to pump cyanide gas into Jon's cell while he slept. This proved impossible because the gas leaked from his cell, so the gas chamber was constructed. (Bohm, 1999) Today, five states authorise lethal gas as a method of execution, but all have lethal injection as an alternative method. A federal court in California found this method to be cruel and unusual punishment. For execution by this method, the condemned person is strapped to a chair in an airtight chamber. Below the chair rests a pail of sulphuric acid. The prisoner is instructed to breathe deeply to speed up the process. Most prisoners, however, try to hold their breath, and some struggle. The inmate does not lose consciousness immediately. According to former San Quentin, California, Penitentiary warden, Clifton Duffy, "At first there is evidence of extreme horror, pain, and strangling. The eyes pop. The skin turns purple and the victim begins to drool." (Weisberg, 1991) Caryl Chessman, before he died in California's gas chamber in 1960 told reporters that he would nod his head if it hurt. Witnesses said he nodded his head for several minutes.

Firing Squad: On March 23, 2015, firing squad was reauthorised in Utah as a viable method of execution if, and only if the state was unable to obtain the drugs necessary to carry out a lethal injection execution. Prior to this reauthorisation, firing squad was only a method of execution in Utah if chosen by an inmate before lethal injection became the sole means of execution. The most recent execution by this method was that of Ronnie Gardner. By his own choosing, Gardner was executed by firing squad in Utah on June 17, 2010. For execution by this method, the inmate is typically bound to a chair with leather straps across his waist and head, in front of an oval-shaped canvas wall. The chair is surrounded by sandbags to absorb the inmate's blood. A black hood is pulled over the inmate's head. A doctor locates the inmate's heart with a stethoscope and pins a circular white cloth target over it. Standing in an enclosure 20 feet away, five shooters are armed with .30 caliber rifles loaded with single rounds. One of the shooters is given blank rounds. Each of the shooters aims his rifle through a slot in the canvas and fires at the inmate. (Weisberg, 1991) The prisoner dies as a result of blood loss caused by rupture of the heart or a large blood vessel, or tearing of the lungs. The person shot loses consciousness when shock causes a fall in the supply of blood to the brain. If the shooters miss the heart, by accident or intention, the prisoner bleeds to death slowly. (Hillman, 1992 and Weisberg, 1991)

Hanging: Until the 1890s, hanging was the primary method of execution used in the United States. Hanging is still used in Delaware and Washington, although both have lethal injection as an alternative method of execution.

For execution by this method, the inmate may be weighed the day before the execution, and a rehearsal is done using a sandbag of the same weight as the prisoner. This is to determine the length of 'drop' necessary to ensure a quick death. If the rope is too long, the inmate could be decapitated, and if it is too short, the strangulation could take as long as 45 minutes. The rope, which should be 3/4-inch to 1 1/4-inch in diameter, must be boiled and stretched to eliminate spring or coiling. The knot should be lubricated with wax or soap "to ensure a smooth sliding action," according to the 1969 U.S. Army manual. (The Corrections Professional, 1996 and Hillman, 1992)

Immediately before the execution, the prisoner's hands and legs are secured, he or she is blindfolded, and the noose is placed around the neck, with the knot behind the left ear. The execution takes place when a trap-door is opened and the prisoner falls through. The prisoner's weight should cause a rapid fracture-dislocation of the neck. However, instantaneous death rarely occurs. (Weisberg, 1991)

If the inmate has strong neck muscles, is very light, if the 'drop' is too short, or the noose has been wrongly positioned, the fracture-dislocation is not rapid and death results from slow asphyxiation. If this occurs the face becomes engorged, the tongue protrudes, the eyes pop, the body defecates, and violent movements of the limbs occur. (The Corrections Professional, 1996 and Weisberg, 1991).

Reading the descriptions above the methods in which the death penalty are inhuman to say the very least. Facts and figures can be used to justify these punishments used as a deterrent however the second main inconsistency is the crimes that the death penalty is applicable. This can range from murder to political protest. A solution may include standardising the cases when the death penalty is applicable with the aim to completely eradicate the death penalty.

Key Events

| Event / Date | Explanation |
|--------------|--|
| June 2002 | The U.S. Supreme Court rules in <i>Ring v. Arizona</i> that the finding of an aggravating factor justifying a death sentence must be made by a jury, not merely by the sentencing Judge. The ruling reversed a 1990 opinion upholding the Arizona death penalty procedures in <i>Walton v. Arizona</i> . Along with four other states (Colorado, Idaho, Montana, Nebraska), Arizona commits both capital sentencing factfinding and the ultimate sentencing decision entirely to the sentencing Judge. The ruling would appear to be retroactive and reverse all death sentences in these 5 states, approximately 168 cases. |
| 2016 | The international rights group Reprieve called the executions "appalling", saying at least four of those killed, including Sheikh Nimr, were put to death for offences related to political protest back in 2011. Saudi Arabia carried out more than 150 executions last year, the highest figure recorded by human rights groups for 20 years. |

Previous Attempts to Solve the Issue

Since 1977, 16 countries had abolished the death penalty in law or practice. Today, the number has risen to 140 - nearly two-thirds of countries around the world. Execution is the ultimate, irrevocable punishment: the risk of executing an innocent person can never be eliminated. Since 1973, for example, 150 US prisoners sent to death row have later been exonerated. Others have been executed despite serious doubts about their guilt. Some of the countries executing the most people have deeply unfair legal systems. The 'top' three executing countries – China, Iran and Iraq – have issued death sentences after unfair trials. Many death sentences are issued after 'confessions' that have been obtained through torture.

The United Nations General Assembly has adopted, in 2007, 2008, 2010, 2012 and 2014[4] non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition.[5] Although most nations have abolished capital punishment, over 60% of the world's population live in countries where executions take place, such as China, India, the United States and Indonesia.

Possible Solutions

- Gradual phasing in of abolishing of the death penalty

- Placing laws as to when the death penalty can be used e.g. abolishment of the death penalty for political crimes
- Imposition of penal or administrative sanctions,
- Educational campaigns on the pros and cons of the death penalty
- Introduction of law binding clauses

Bibliography

- <https://www.amnesty.org/en/what-we-do/death-penalty/death-penalty-your-questions-answered/>
- <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>
- <http://www.deathpenaltyinfo.org/descriptions-execution-methods>
- <http://www.bbc.co.uk/news/world-middle-east-35213244>
- <http://www.bbc.co.uk/ethics/capitalpunishment/>