

CSHL NEWSLETTER

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BY ELBBL STUDENT

Death Penalty under International Human Rights Law*

For every crime that one commits, justice will be served for their wrongful deed. Amongst all criminal sentences, the death penalty—also known as “capital punishment”—remains the ultimate state punishment for a convict. Its definition is self-explanatory: “the punishment of execution of a person.”[1]

The topic and legality of the death penalty have been a hot topic of discussion among legal scholars and lawmakers around the globe throughout its existence. As of 2021, more than 70% of countries have completely abolished the death penalty.[2] Although international law does not prohibit its usage, many charters and conventions were created to regulate the practice to ensure its humanity and fairness. As former United Nations Secretary-General Ban Ki-moon once said, “The death penalty has no place in the 21st century,”[3] which indicated its obsolescence and incompatibility with human rights and modern-day philosophies.

According to Article 6 of the 1966 International Convention on Civil and Political Rights (ICCPR), the right to life is non-derogable. However, there is an exception that the death penalty may be imposed for “the most serious crimes.”[4] The term “most serious crimes” remains ambiguous as there is no specific threshold or manner of assessment. For instance, the majority of Islamic states regard adultery, homosexuality, and apostasy as the most serious crimes,[5] while other countries such as China and Vietnam believe corruption and drug-trafficking are suitable for imposing capital punishment[6]—all of which may contradict the essence of Article 6. Twenty-three years after the ICCPR, the Second Optional Protocol to the ICCPR was adopted, aiming to abolish the death penalty completely. Article 1 of this Protocol states, “No one within the jurisdiction of a State Party to the present Protocol shall be executed.”[7] However, Article 2 allows reservation for military crimes committed during wartime.[8] As of 2021, 89 countries have ratified this Optional Protocol and become states parties.

Besides the implementation and provision set out by the ICCPR, the UN Economic and Social Council also approved some “safeguards” in 1984 to protect a convicted person’s rights and modify states’ procedures for imposing the death penalty. Without all these regulations, countries might violate the rights of the accused/convicted, such as fair-trial rights, by not providing adequate opportunities or solutions before the law; imposing sentences on vulnerable groups such as persons with disability, minors, and pregnant women; or, in the worst-case scenario, executing them in an inhumane and degrading way.[9]

* Special thanks to Mr. SUY Seanghay, ELBBL junior student, for his contribution to this newsletter.

[1] “Death Penalty” Oxford Languages, n.d.

[2] “International”. (n.d) Deathpenaltyinfo. Retrieved from <https://deathpenaltyinfo.org/policy-issues/international>

[3] ‘Death penalty has no place in 21st century,’ declares UN chief. (2014, July 02) UN News. Retrieved from <https://news.un.org/en/story/2014/07/472282-death-penalty-has-no-place-21st-century-declares-un-chief>

[4] ICCPR, Article 6.

[5] “UN Says Unlawful ‘Shari’a Courts’ Carrying Out Cruel, Inhuman Punishments”. (2015, January 21) RadioFreeEurope/RadioLiberty. Retrieved from

<https://www.rferl.org/a/islamic-state-un-sharia-courts-cruel-inhuman-punishments/26805537.html>

[6] Scobell, A. (1990). The Death Penalty in Post-Mao China. The China Quarterly. Cambridge University Press.

[7] Second Optional Protocol of ICCPR, Article 1.

[8] Ibid.

[9] Safeguards guaranteeing protection of the rights of those facing the death penalty. UN Economic and Social Council (1984, May 25).

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