

WORLD DAY AGAINST DEATH PENALTY



10 OCTOBER 2020



Geneva International Centre *for* Justice (GICJ)

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World Day Against the Death Penalty – 10 October 2020

International Centre for Justice (GICJ) highlights that the death penalty is cruel, inhumane and degrading and breaches the most fundamental human rights enshrined in the Universal Declaration of Human Rights: the right to life and the right to live free from torture. While an increasing number of States are turning away from the death penalty, people continue to be executed by States as punishment for various crimes, including for acts that should not be criminalized. Death sentences continue to be imposed in grave breach of major international standards, including the right to a fair trial and the principle of non-discrimination. The States with the world's highest execution rates are China, Iran, Saudi Arabia, and Iraq.

A Brief History of the Abolition of the Death Penalty

15 years ago, in 2003, the World Coalition Against the Death Penalty (WCADP) inaugurated October 10th as the World Day Against the Death Penalty with the objectives of strengthening the international movement against the death penalty to influence public opinion and government authorities, and increasing pressure on all States to abolish capital punishment sentences and executions.

The abolition of the death penalty started in the Americas, with Venezuela being the first country to abolish the death penalty in 1863. When the United Nations was founded in 1945, six of the eight countries that led the way in abolishing the death penalty for all crimes were in Central and South America. Since 1977, the number of abolitionist countries in the Americas has gradually increased, and since 2009, with the exception of the USA, the region has been execution-free.

At a time when only 16 countries had abolished the death penalty in 1977, the International Conference on the Abolition of the Death Penalty issued the Stockholm Declaration, which constituted the first international abolitionist manifesto, calling upon all governments to bring about the immediate and total abolition of the death penalty.

Since the 1980s, a global trend towards the abolition of the death penalty has been recorded, which continues until today. In 1977, 16 countries had legally abolished the death penalty for all crimes. Throughout the years, UN Member States from all regions with various legal systems, traditions, cultures and religious backgrounds, have acknowledged that the death penalty undermines human dignity and have either abolished the death penalty or placed a moratorium on its use. Today, two-thirds of all countries (142) are now de jure or de facto abolitionist. Yet, several UN Member States continue to subject prisoners to executions.

Execution methods employed by States today include beheading, electrocution, hanging, lethal injection, shooting in the back of the head and by a firing squad – all of which constitute horrendous forms of cruel, inhumane and degrading treatment and torture.

The fundamental principles of fair trial and non-discrimination are violated on different grounds in the imposition of the death penalty, disproportionately affecting people from socioeconomically disadvantaged and racial, ethnic, and religious minority groups.

This year's World Day Against the Death Penalty is dedicated to effective legal representation to anyone who may face the death penalty. Without access to effective legal representation, due process cannot be guaranteed. In a case of capital punishment, this is especially important, as the act cannot be undone.

In this report, GICJ sheds a light on other issues surrounding effective legal representation, such as trials *in absentia*. In such a case, the defendant is not present at the trial and therefore having effective legal representation is a matter of life or death.

International Legal Framework

The death penalty is in grave violation of the fundamental human rights to life and to live free from torture enshrined in the Universal Declaration of Human Rights. Moreover, the following international laws entail explicit bans on the use of the death penalty, except under certain circumstances during times of war:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights
- Protocol No. 6 to the European Convention on Human Rights
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty
- The European Convention on Human Rights (Protocol No. 13) bans use of the death penalty at all times, even during war.

When the majority of countries still used the death penalty in the early 1960s, the drafters of the International Covenant on Civil and Political Rights (ICCPR) were moving towards its abolition in international law. Although Article 6 of the ICCPR permits the use of the death penalty in limited circumstances, it also determines that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” In 1984, the UN Economic and Social Council (ECOSOC) adopted Safeguards guaranteeing the protection of the rights of those facing the death penalty, which determined, *inter alia*, that capital punishment:

- may be imposed only for “the most serious crimes”;
- must not be applied to persons below 18, to pregnant women or new mothers, or mentally ill persons;
- may be imposed only when the guilt of the person charged is based upon clear and convincing evidence;
- and may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial.

In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR, which determined that “abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights” and that State Parties to the Protocol shall not execute anyone within their jurisdictions. The General Assembly repeatedly adopted resolutions urging States to respect international standards that protect the rights of those facing the death penalty and to phase out capital punishment.

The Office of the High Commissioner for Human Rights (OHCHR) is a strong advocate for the universal abolition of the death penalty, building on the fundamental nature of the right to life; the inadmissible risk of executing innocent people; and the absence of proof that the death penalty serves as a deterrent to crime. Special Procedures whose Mandates entail the use of the death penalty are the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

The execution of juvenile offenders (under the age of 18) is expressly prohibited in the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Convention on the Rights of the Child. Nonetheless, countries like Iran continue to execute juveniles.

Crucially, the principle of non-discrimination and the right to a fair trial are enshrined in international law in relation to the death penalty: The International Covenant on Civil and Political Rights determines that all people are entitled to the equal protection of the law without discrimination, while the UN safeguards on the use of the death penalty provide that people must have received a fair trial, including the right to adequate legal assistance, at all stages.

Central Concerns Regarding the Death Penalty

When the UN marked the World Day Against the Death Penalty six years ago in 2014, the Assistant Secretary-General discerned three fundamental reasons for abolition, *inter alia*, the need to avoid executing those subjected to wrongful convictions; the disproportionately high execution rates among those from marginalized communities; and the lack of statistical evidence indicating that the death penalty is a useful deterrent. An increasing number of States has recognized the failure of capital punishment as means to achieve justice – as it does not deter crimes more than any other punishment. Furthermore, research points towards victims and their families seeking justice without revenge or retribution. Central concerns arising with regards to the use of the death penalty include:

Irreversibility: While execution is the ultimate, irrevocable punishment, the risk of executing an innocent person cannot be eliminated. In the US, for instance, 150 people submitted to death row have later been exonerated since 1973. Others have been executed despite serious doubts about their guilt.

Non-Deterrence: While States clinging to the death penalty cite it as a means of deterrence from committing crimes, this claim has been discredited for lack of evidence for it being any more effective in reducing crime than imprisonment.

Flawed justice systems: Some of the States upholding capital punishment have deeply flawed legal systems. The highest executing countries, including China, Iran and Iraq, continue to issue death sentences after unfair trials and after having extracted “confessions” under the use of torture.

Political oppression: States like Iran and Iraq employ the death penalty against political opponents, under false accusations of “terrorism” or related “security” offenses.

Discrimination: The death penalty disproportionately affects people from racial, ethnic or religious minorities or the socioeconomically marginalized, due to discriminatory justice systems. A lack of legal resources of the poor and marginalized compounds their capacity to defend themselves.

The Link Between the Death Penalty and Poverty

On 6 October 2017, UN human rights experts called for urgent action to cease the disproportionate impact of the death penalty on people from socioeconomically disadvantaged groups. The class-based

discriminatory use of capital punishment was described as arbitrary killing. The reasons discerned are manifold:

“They are an easy target for the police, they cannot afford a lawyer, the free legal assistance they might receive is of low quality, procuring expert evidence is beyond their means, tracing witnesses is too costly, and access to appeals often depends on being able to afford extra counsel. Many cannot afford bail and therefore remain in custody before their trials, further hindering their efforts to prepare an effective defence.” (OHCHR)

Often, by the time the case finally reaches court, fair trial may no longer be possible. Corruption of law enforcement officials can further compound the injustice. Furthermore, poverty deepens existing discrimination on the basis of gender, ethnicity, race, or migration status. The already vulnerable and disadvantaged groups in society such as people of African descent and refugees are thus further disenfranchised and fall victim to unfair justice systems.

Particularly migrants caught up in the criminal justice system face tremendous obstacles in challenging charges brought against them, including limited awareness of their rights, financial constraints, lack of social support, and unfamiliarity with legal language and procedures. Discrimination by law enforcement officials is likely to influence the verdict against them, leaving them vulnerable to receiving death penalty. Discrimination against women is exacerbated by poverty, further inhibiting their ability to gain access to justice on an equal basis with men. Death sentences on women for alleged offences are rarely mitigated on the basis of evidence of domestic abuse and self-defense.

The discussion reveals that core international standards of the right to a fair trial and the principle of non-discrimination are violated by States imposing the death penalty. This finding not only holds true with regards to unfair procedures on the grounds of socioeconomic status but also on racial, ethnic, religious or political grounds – as becomes clear in the following discussion of country situations.

The Right to a Fair Trial and Effective Legal Representation

The right to a fair trial encompasses several rights, such as the right to be presumed innocent until proven guilty, the right to remain silent and the right to have legal aid and to attend one’s trial. The right to legal aid includes funding for a lawyer. Moreover, one must be given adequate time to prepare a defense.

The right to legal assistance is effective upon arrest and remains intact until the court hands down its judgement at the last instance in case the defendant appeals the decision. Legal assistance is necessary not only to prepare an efficient defense, but also to protect the defendant’s physical and psychological well-being during the time they are deprived of their liberty.

The right to be present at one’s trial is also a fundamental principle of international law. It can be limited in certain instances, which leads to trials *in absentia*. In such a case, additional safeguards must be respected. These are as follows: the defendant must receive notice of the proceedings; there must be an appointment of defense counsel and effective representation; and the defendant must be guaranteed a right to retrial. Firstly, the State must take all necessary measures to inform the defendant of the proceedings against them. If they are nowhere to be found, legal representation must be appointed to them. The representation must be effective, meaning the counsel must be able to go to court and defend the accused in their best capacity. Finally, the defendant must have a right to a retrial, where they can present their case with effective legal representation.

Regrettably, these safeguards are not guaranteed in all regions, one disturbing example being the courts in Gaza. Since 2010, almost all death penalty trials have been concluded as trials *in absentia*. On October 6th 2020, the 8th death sentence has been issued by a Gaza court this year. Such sentences are issued without the minimum guarantees of a fair trial and in disrespect of various national and international legal provisions. Furthermore, it reaffirms the challenges of achieving justice and equality among all Palestinians and serves as a simple solution to the complex issue of criminality in the Gaza Strip, which is complicated by the Israeli blockade and the resulting dire economic and social conditions.

The Highest Executioners

Although 2019 marked the year with the lowest number of executions in the last ten years, much progress remains. In 2019, 657 executions took place, and 2307 death penalties were issued in a total of 56 countries. It must be noted, however, that not all executions are adequately recorded and some countries, such as China, have a severe lack of transparency in this regard. GICJ noted that globally, 19,336 people were known to be on death row at the end of 2018. By the end of 2019, the number rose to 26,604. Indeed, while the executions may be in decline globally, the practice remains widespread in a number of countries; in particular in China, Iran, Saudi Arabia, and Iraq. It becomes strikingly evident that the top executioners fail to comply with fundamental principles of international law in their imposition of the death penalty, including with regard to due process, fair trial guarantees and non-discrimination. This is extremely concerning, as the violation of these principles becomes a matter of life or death.

China

China has remained the State with the highest execution rates, with thousands of death penalties imposed annually – a figure that is larger than that of all other countries combined. Yet, the sheer extent of the use of the death penalty remains unknown, as the data is classified a State secret under the country's secrecy laws aimed at obfuscating the shocking scale of executions. A 2017 study by Amnesty International based on an analysis of 701 approved death sentences found in the China Judgements Online database reveal that the executions are imposed on a discriminatory basis, disproportionately affecting socioeconomically disadvantaged and ethnic groups – particularly the Han ethnicity. Moreover, NGOs report thousands of incidents of extrajudicial executions which are usually undertaken in secret prisons.

Iran

Iran continues to rank among the highest executioner countries across the globe. The death penalty is used extensively – to the point that in 2015, Iran alone accounted for 82 percent of all recorded executions in the Middle East. In 2017, Iran's execution rate remained high and accounted for 66 percent of all recorded executions in the region. The majority of those executed are sentenced on drug charges, thus not meeting the threshold of most serious crimes under international law; others are executed for murder or vague security charges. Such death sentences are often handed down following unfair trials, with major concerns including the denial of access to legal counsel, incommunicado detention and solitary confinement, torture or other ill-treatment aimed primarily at extracting "confessions" and the absence of fair and adequate procedures for seeking pardon and commutation of death sentences from State authorities.

Numerous people among those executed in Iran are members of ethnic and religious minorities convicted on false blasphemy charges and drug related offenses, including Kurdish political prisoners and Sunni Arabs. Ahwazi Arabs, Baloch and Kurds are disproportionately represented on death row and in executions. Many of those convicted were political dissidents. Notably, these minorities have restricted access to the legal resources needed to defend themselves in the discriminatory justice

system, face poverty, marginalization and live in militarized zones. In Balochistan, large groups have been executed under the pretext of “fighting drug trafficking”. Some of them were executed without trials or in secret trials before biased judges and lacking legal representation. Moreover, by executing juvenile offenders, Iranian authorities systematically breach the core principles of international law, in particular the Convention on the Rights of the Child.

The Iranian society, however, is now far more aware of the irreversible harm of executions after the work of such activists and NGOs. A very slight decrease from 253 to 251 executions between 2018 and 2019 has been observed.

Saudi Arabia

2019 has been a particularly gruesome year for executions, with the year on course to be the worst in the last decade. By May 2019, 107 individuals had already been executed, with Amnesty International calling the surge a ‘bloody execution spree’. Indeed, by September, this figure had increased to 134, including the execution of six persons who were minors at the time of their arrest. A total of 184 individuals were executed in 2019, an increase from 149 in 2018.

The death sentences and executions are imposed following severely flawed court proceedings that often breach international fair trial standards. Persons are often convicted on the basis of “confessions” obtained under torture and other ill-treatment, denied legal representation in secret trials and denied insights into the legal proceedings in their case.

The death penalty is used on a discriminatory basis against political opponents in an effort to crush political dissent. They are regularly sentenced on accusations of representing a “threat to national security”. Lastly, Saudi Arabia imposes the death penalty for a wide range of offences not considered “most serious crimes” under international human rights law.

Iraq

The Iraqi authorities have a shocking track record regarding the use of the death penalty. In the majority of cases, people are sentenced to death and executed after deeply unfair trials and after extracting “confessions” under torture.

Since the rise of ISIS, the number of individuals sentenced to death in Iraq has increased dramatically; at least 100 people had been executed in 2019 compared to at least 52 in 2018. Indeed, the numbers are likely to be far higher, since hundreds of death sentences are given to those convicted under antiterrorism legislation, the numbers of which are not publicized.

Under the Anti-Terrorism Law No.13 of 2005, capital punishment is legalized for anyone who is allegedly involved in a terrorist act, or is alleged to have financed, provoked, planned, or enabled such an act. Under the vague and broad provisions of the law, the death penalty of a person being charged by the government on any one of 48 terrorism charges can be justified. Such charges do not necessarily entail lethal acts, such as “threats which aim to bring fear among people”. The “fight against terrorism” hence justifies mass executions of oftentimes innocent Iraqis. Under the practice of enforced disappearance, many detainees are executed in secret, with their bodies being found days, weeks, or even months later. Their corpses often show signs of torture and execution.

In 2016, Iraqi courts issued 92 death sentences within only six weeks. The trials violate international fair trial standards, as torture methods have reportedly been used to extract “confessions”. In January 2017, 31 Iraqis who “confessed” to crimes or terrorist acts under serious allegations of torture and were speedily and unlawfully charged with offenses were executed in a single day. Neither the names of those executed nor details of the trials were disclosed by the government, as has been the pattern

during earlier State executions. The death penalty and extrajudicial executions are employed by the Iraqi government as tools of political repression, to eliminate political opposition to sustain its rule, and to maintain a reign of terror over the Iraqi population.

As the UN High Commissioner for Human Rights noted in a statement dated 27 September 2017, the mass execution of 42 prisoners on alleged “terrorism” charges on 24 September at Al Hoot prison in the southern Iraqi city of Nasiriyah constitutes a grave violation of the country’s human rights obligations, including due process and fair trial standards. The devastating situation of Iraqi civilians is exacerbated by the Iraqi governments’ and its allies’ reckless and cruel “counter-terrorism” campaigns. The number of executions in Iraq rose from 52 in 2018 to 100 in 2019, showing an alarming regress. Nevertheless, the number of official death sentences handed down by the authorities decreased from 217 in 2018 to 87 in 2019.

GICJ’s Position and Recommendations

GICJ has raised the pressing issue of the death penalty since its establishment, notably in the form of letters and appeals to the High Commissioner and Special Procedure mandate holders as well as in statements and reports to the Human Rights Council. As capital punishment undermines human dignity and violates the most sacred right of all, the right to life, GICJ maintains that its abolition is integral to the advancement of the human rights of all.

The discussed cases reveal that those States still imposing the death penalty today do so in breach of fundamental provisions of non-discrimination and fair trial and due process standards. As a result, many innocent people pay with their lives for crimes they have not committed. This appalling practice must end. Although international law still provides for the use of death penalty for the most serious crimes, the risk of people being committed on false charges cannot be eliminated. Indeed, some UN Member States execute innocent persons knowingly – on the basis of racial, ethnic, and religious discrimination and political persecution. Therefore, GICJ reiterates the call by the UN for the phasing out of capital punishment. In the meantime, Member States need to undertake urgent reforms to their criminal justice systems to comply with international standards, especially with regards to minority groups and juvenile offenders.

Whatever our belief system, we tend to agree on one principle: One does not have the moral right to take a life nor to decide who lives and who dies. As such, on this International Day Against the Death Penalty, GICJ states firmly that the taking of a life is wrong in all circumstances. While the death penalty may globally be on the decline, various countries have instead walked backwards and re-introduced the practice. We all must be weary.

As such, GICJ repeats its call on all States to ratify the ICCPR Second Optional Protocol and to respect their obligations under customary international law, the ICCPR and other instruments by enhancing the right to life and the right not to be subjected to torture and ill-treatment. Moreover, the fundamental principles of fair trial and effective legal representation must be upheld at all times, especially in cases where the death penalty might be imposed. The international community must make efforts towards the progressive abolition of the death penalty, along with the work to eradicate systemic and institutionalized discrimination against the most vulnerable people in our societies.

Geneva International Centre *for* Justice

Independent, non-profit, non-governmental organization

GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for victims through all legal means available.

Mission

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring that rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work

GICJ has been tackling issues of justice and accountability since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the world. Through these channels, GICJ is able to receive documentation and evidence of human rights violations and abuses as they occur in several countries. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.



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