

THE DEATH PENALTY V. HUMAN RIGHTS

Why Abolish the Death Penalty? ¹ September 2007

The time has come to abolish the death penalty worldwide. The case for abolition becomes more compelling with each passing year. Everywhere experience shows that executions brutalize those involved in the process. Nowhere has it been shown that the death penalty has any special power to reduce crime or political violence. In country after country, it is used disproportionately against the poor or against racial or ethnic minorities. It is also used as a tool of political repression. It is imposed and inflicted arbitrarily. It is an irrevocable punishment, resulting inevitably in the execution of people innocent of any crime. It is a violation of fundamental human rights.

Over the past decade an average of at least three countries a year have abolished the death penalty, affirming respect for human life and dignity.² Yet too many governments still believe that they can solve urgent social or political problems by executing a few or even hundreds of their prisoners. Too many citizens in too many countries are still unaware that the death penalty offers society not further protection but further brutalization. Abolition is gaining ground, but not fast enough.

The death penalty, carried out in the name of the nation's entire population, involves everyone. Everyone should be aware of what the death penalty is, how it is used, how it affects them, how it violates fundamental rights.

The death penalty is the premeditated and cold-blooded killing of a human being by the state. The state can exercise no greater power over a person than that of deliberately depriving him or her of life. At the heart of the case for abolition, therefore, is the question of whether the state has the right to do so.

¹ Updated first chapter from Amnesty International, *When the State Kills...The death penalty v. human rights*, AI Index: ACT 51/07/89, 1989, UK

² Countries that have abolished the death penalty for all crimes in the last 10 years are Albania, Armenia, Azerbaijan, Bhutan, Bosnia-Herzegovina, Bulgaria, Canada, Côte d'Ivoire, Cyprus, East Timor, Estonia, Georgia, Greece, Liberia, Lithuania, Malta, Mexico, Montenegro, Nepal, Poland, Philippines, Rwanda, Samoa, Senegal, Serbia, South Africa, Turkey, Turkmenistan, Ukraine, United Kingdom. Chile, Bolivia, Latvia and Kyrgyzstan abolished the death penalty for ordinary crimes.

When the world's nations came together six decades ago to found the United Nations (UN), few reminders were needed of what could happen when a state believed that there was no limit to what it might do to a human being. The staggering extent of state brutality and terror during World War II and the consequences for people throughout the world were still unfolding in December 1948, when the UN General Assembly adopted without dissent the Universal Declaration of Human Rights.

The Universal Declaration is a pledge among nations to promote fundamental rights as the foundation of freedom, justice and peace. The rights it proclaims are inherent in every human being. They are not privileges that may be granted by governments for good behaviour and they may not be withdrawn for bad behaviour. Fundamental human rights limit what a state may do to a man, woman or child.

No matter what reason a government gives for executing prisoners and what method of execution is used, the death penalty cannot be separated from the issue of human rights. The movement for abolition cannot be separated from the movement for human rights.

The Universal Declaration recognizes each person's right to life and categorically states further that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In Amnesty International's view the death penalty violates these rights.

Self-defence may be held to justify, in some cases, the taking of life by state officials: for example, when a country is locked in warfare (international or civil) or when law-enforcement officials must act immediately to save their own lives or those of others. Even in such situations the use of lethal force is surrounded by internationally accepted legal safeguards to inhibit abuse. This use of force is aimed at countering the immediate damage resulting from force used by others.

The death penalty, however, is not an act of self-defence against an immediate threat to life. It is the premeditated killing of a prisoner who could be dealt with equally well by less harsh means.

There can never be a justification for torture or for cruel, inhumane or degrading treatment or punishment. The cruelty of the death penalty is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

If hanging a woman by her arms until she experiences excruciating pain is rightly condemned as torture, how does one describe hanging her by the neck until she is dead? If administering 100 volts of electricity to the most sensitive parts of a man's body evokes disgust, what is the appropriate reaction to the administration of 2,000 volts to his body in order to kill him? If a pistol held to the head or a chemical substance injected to cause protracted suffering are clearly instruments of torture, how should they be identified when used to kill by shooting or lethal injection? Does the use of legal process in these cruelties make their inhumanity justifiable?

The physical pain caused by the action of killing a human being cannot be quantified. Nor can the psychological suffering caused by fore-knowledge of death at the hands of the state. Whether a death sentence is carried out six minutes after a summary trial, six weeks after a mass trial or 16 years after lengthy legal proceedings, the person executed is subjected to uniquely cruel, inhuman and degrading treatment and punishment.

Internationally agreed laws and standards stipulate that the death penalty can only be used after a fair judicial process. When a state convicts prisoners without affording them a fair trial, it denies the right to due process and equality before the law. The irrevocable punishment of death removes not only the victim's right to seek redress for wrongful conviction, but also the judicial system's capacity to correct its errors.

Like killings which take place outside the law, the death penalty denies the value of human life. By violating the right to life, it removes the foundation for realization of all rights enshrined in the Universal Declaration of Human Rights.

As the Human Rights Committee set up under the International Covenant on Civil and Political Rights has recognized, "The right to life...is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation..." In a general comment on Article 6 of the Covenant issued in 1982, the Committee concluded that "all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life within the meaning of Article 40".

Many governments have recognized that the death penalty cannot be reconciled with respect for human rights. The UN has declared itself in favour abolition. Two-thirds of the countries in the world have now abolished the death penalty in law or practice.

Amnesty International's latest information shows that³:

- **90** countries and territories have **abolished the death penalty for all crimes**;
- **11** countries have **abolished the death penalty for all but exceptional crimes** such as wartime crimes;
- **30** countries can be considered **abolitionist in practice**: they retain the death penalty in law but have not carried out any executions for the past 10 years or more and are believed to have a policy or established practice of not carrying out executions,
- a total of **131** countries have abolished the death penalty in law or practice,
- **66** other countries and territories **retain** and use the death penalty, but the number of countries which actually execute prisoners in any one year is much smaller.

Amnesty International's statistics also show a significant overall decline in the number of reported executions in 2006. In 2006, 91% of all known executions took place in a small number of countries: China, Iran, Iraq, Pakistan, Sudan and the USA. Europe is almost a death penalty-free-zone – the main exception being Belarus; in Africa only six states carried out executions in 2006; in the Americas only the USA has carried out executions since 2003.

Unlike torture, “disappearances” and extrajudicial executions, most judicial executions are not carried out in secret or denied by government authorities. Executions are often announced in advance. In some countries they are carried out in public or before a group of invited observers.

No government publicly admits to torture or other grave violations of human rights, although privately some officials may seek to justify such abuses in the name of the “greater good”. But retentionist governments, those that keep the death penalty, for the most part openly admit to using it: they do not so much deny its cruelty as attempt to justify its use; and the arguments they use publicly to justify the death penalty resemble those that are used in private to justify other, secret abuses.

The most common justification offered is that, terrible as it is, the death penalty is necessary: it may be necessary only temporarily, but, it is argued, only the death penalty can meet a particular need of society. And whatever that need may be it is claimed to be so great that it justifies the cruel punishment of death.

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The particular needs claimed to be served by the death penalty differ from time to time and from society to society. In some countries the penalty is considered legitimate as a means of preventing or punishing the crime of murder. Elsewhere it may be deemed indispensable to stop drug-trafficking, acts of political terror, economic corruption or adultery. In yet other countries, it is used to eliminate those seen as posing a political threat to the authorities.

Once one state uses the death penalty for any reason, it becomes easier for other states to use it with an appearance of legitimacy for whatever reasons they may choose. If the death penalty can be justified for one offence, justifications that accord with the prevailing view of a society or its rulers will be found for it to be used for other offences. Whatever purpose is cited, the idea that a government can justify a punishment as cruel as death conflicts with the very concept of human rights. The significance of human rights is precisely that some means may never be used to protect society because their use violates the very values which make society worth protecting. When this essential distinction between appropriate and inappropriate means is set aside in the name of some "greater good", all rights are vulnerable and all individuals are threatened.

The death penalty, as a violation of fundamental human rights, would be wrong even if it could be shown that it uniquely met a vital social need. What makes the use of the death penalty even more indefensible and the case for its abolition even more compelling is that it has never been shown to have any special power to meet any genuine social need.

Countless men and women have been executed for the stated purpose of preventing crime, especially the crime of murder. Yet Amnesty International has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. A survey of research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988 and updated in 2002, concluded: ". . . *it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.*"⁴

Undeniably the death penalty, by permanently "incapacitating" a prisoner, prevents that person from repeating the crime. But there is no way to be sure that the prisoner would indeed have repeated the crime if allowed to live, nor is there any need to

⁴ Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, third edition, 2002, p. 230

violate the prisoner's right to life for the purpose of incapacitation: dangerous offenders can be kept safely away from the public without resorting to execution, as shown by the experience of many abolitionist countries.

Nor is there evidence that the threat of the death penalty will prevent politically motivated crimes or acts of terror. If anything, the possibility of political martyrdom through execution may encourage people to commit such crimes.

Every society seeks protection from crimes. Far from being a solution, the death penalty gives the erroneous impression that "firm measures" are being taken against crime. It diverts attention from the more complex measures which are really needed. In the words of the South African Constitution Court in 1995, "We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished".

When the arguments of deterrence and incapacitation fall away, one is left with a more deep-seated justification for the death penalty: that of just retribution for the particular crime committed. According to this argument, certain people deserve to be killed as repayment for the evil done: there are crimes so offensive that killing the offender is the only just response.

It is an emotionally powerful argument. It is also one which, if valid, would invalidate the basis for human rights. If a person who commits a terrible act can "deserve" the cruelty of death, why cannot others, for similar reasons, "deserve" to be tortured or imprisoned without trial or simply shot on sight? Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as to the best of us, which is why they protect all of us.

What the argument for retribution boils down to, is often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction of personal vengeance in public policy and legal codes.

If today's penal systems do not sanction the burning of an arsonist's home, the rape of the rapist or the torture of the torturer, it is not because they tolerate the crimes.

Instead, it is because societies understand that they must be built on a different set of values from those they condemn.

An execution cannot be used to condemn killing; it is killing. Such an act by the state is the mirror image of the criminal's willingness to use physical violence against a victim.

Related to the argument that some people "deserve" to die is the proposition that the state is capable of determining exactly who they are. Whatever one's view of the retribution argument may be, the practice of the death penalty reveals that no criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

All criminal justice systems are vulnerable to discrimination and error. Expediency, discretionary decisions and prevailing public opinion may influence the proceedings at every stage from the initial arrest to the last-minute decision clemency. The reality of the death penalty is that what determines who shall be executed and who shall be spared is often not only the nature of the crimes but also the ethnic and social background, the financial means or the political opinions of the defendant. The death penalty is used disproportionately against the poor, the powerless, the marginalised or those whom repressive governments deem it expedient to eliminate.

Human uncertainty and arbitrary judgements are factors which affect all judicial decisions. But only one decision – the decision to execute – results in something that cannot be remedied or undone. Whether executions take place within hours of a summary trial or after years of protracted legal proceedings, states will continue to execute people who are later found to be innocent. Those executed cannot be compensated for loss of life and the whole society must share responsibility for what has been done.

It is the irrevocable nature of the death penalty, the fact that the prisoner is eliminated forever, that makes the penalty so tempting to some states as a tool of repression. Thousands have been put to death under one government only to be recognized as innocent victims when another set of authorities comes to power. Only abolition can ensure that such political abuse of the death penalty will never occur.

When used to crush political dissent, the death penalty is abhorrent. When invoked as a way to protect society from crime, it is illusory. Wherever used, it brutalizes those involved in the process and conveys to the public a sense that killing a defenceless prisoner is somehow acceptable. It may be used to try to bolster the authority of the

state – or of those who govern in its name. But any such authority it confers is spurious. The penalty is a symbol of terror and, to that extent, a confession of weakness. It is always a violation of the most fundamental human rights.

Each society and its citizens have the choice to decide about the sort of world people want and will work to achieve: a world in which the state is permitted to kill as a legal punishment or a world based on respect for human life and human rights – a world without executions.

Recommendations:

Amnesty International calls on the UN General Assembly, 62nd session, (2007) to adopt a resolution:

- Affirming the right to life and stating that abolition of the death penalty is essential for the protection of human rights;
- Calling on retentionist states to establish a moratorium on executions as a first step towards abolition of the death penalty;
- Calling on retentionist states to respect international standards that guarantee the protection of the rights of those facing the death penalty; and
- Requesting the UN Secretary-General to report on the implementation of the moratorium to the next session of the UNGA.