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*The Question of Capital Punishment and the Implementation of Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty*



**RESEARCH  
REPORT**

Recommended by:



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# RESEARCH REPORT

**Forum: Human Rights Council**

**Issue: The question of capital punishment and the implementation of safeguards guaranteeing the protection of the rights of those facing the death penalty**

**Student Officer: Zeynep Büyükyazgan**

## Introduction

When observed death penalties also known as capital punishments were in order through many years. Making themselves the roughest punishments it is considered that capital punishment orders and death row sentences are given without excluding ideas of prejudice, bias, discrimination, sexism and further more. In some cases it is even believed that the amount of death row sentences that has been granted are more than what is believed to be adequate. In addition to the mentioned ideologies some believe that the economical categorization of the country has a direct effect on the efficiency of the defendants supported by the government in order to defend the one who has been or is being faced with the chance of a death sentence. Without any measurements taken the ongoing bias in the criminal justice system will eradicate the ones who are supposed to be free as well as the guilty.

## Definition of Key Terms

**Abolish:** To eradicate completely and officially.

**Retention:** To be able to grant the perpetual use of someone or something.

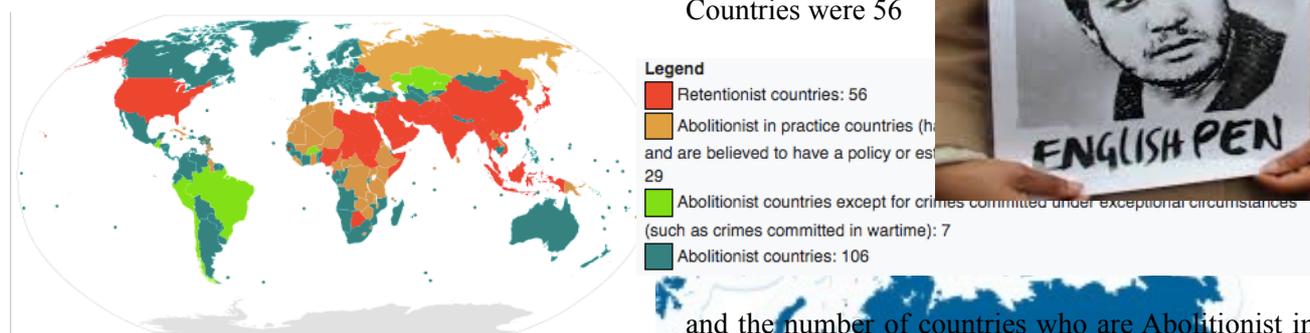
## General Overview

Capital punishment was first put in order for those who have been charged with first degree murder. Now it is possible for countries who haven't abolished capital punishment to sentence prisoners to death due to the listed offenses : offense of sexual crimes, religious crimes, Qisas crimes, drug trafficking, drug possession ... etc. With the beginning of the human rights movement, the submission of the Declaration of Human Rights (1948) and the ongoing political reforms in many world countries , nations have begun to abolish the death penalty since sentencing lives to death meant to be a violation under the Universal Declaration of Human Rights due to the listed articles in the Declaration :

“Everyone has the right to life, liberty and security of person” (article 3), “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (article 5).

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Currently the death penalty status of countries can be seen on the world map inserted below and the numbers may be evaluated as (in 2017): the total number of countries who have fully abolished capital punishment was 106, abolished for ordinary crimes only was 7, been in practice to abolish 29, Retentionist Countries were 56



and the number of countries who are Abolitionist in law or practice was 142.

Even though there has been a great amount of increase in the number of countries who have abolished capital punishment there still are countries who haven't abolished the death penalty and who aren't able to protect the basic rights of those who are facing the death penalty. According to the data obtained from Amnesty International, countries who have granted death sentences the most was listed to be China, Iran, Saudi Arabia, Vietnam, and Iraq. Not putting China in the equation 78% of cases where capital punishment was granted belonged to only the listed countries: Iran, Saudi Arabia, Vietnam and Iraq. And the People's Republic of China remained as the most executing country during the years. Besides the numerical factors these countries were found to be ineffective in preserving the rights of those who were facing the death penalty by many non governmental organizations such as but not limited to the Human Rights Watch and Amnesty International.

The most known case can be distinguished as the death sentence of a Palestinian poet Ashraf Fayadh. On November 17, 2015, an originally Palestinian poet Ashraf Fayadh was sentenced to death with the "said to be done" offense of apostasy. The sentence was ruled due to the testimony of an anonymous witness who claimed to hear absurd comments made by the poet upon the topics of religion and governmental strategies. Although the poet Mr. Fayadh claimed the opposite, his argument wasn't taken into consideration and he was sentenced to death. When the incident is evaluated under the International Human Rights Laws and when considered that the poet did make comments about his very own beliefs upon the topics mentioned it should be taken in to consideration that a preamble of the Declaration of Human Rights states that "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people," meaning everyone

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has the right to seek and enjoy the freedom of speech and belief. As a result the incident can be considered as a violation towards the seventh article of the Declaration of Human Rights which states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.", since a fair trial wasn't granted to the innocent poet. On the following timeline Special Rapporteur mentioned that declaring capital punishment to a poet for his alleged absurd writings and comments hadn't had any interpretation of human rights. The Special Rapporteur regarding cultural rights specified that the death penalty was a violation of freedom in artistic expression.

Not excluding the aforementioned countries many nations aren't able to preserve the rights of their citizens whom are facing the death penalty. For instance Kenya, Malawi and the Philippines aren't able to guarantee the safety of the rights of those who are facing the death penalty. In 2016, the Commission on Human Rights in the Philippines said that "while the law is not discriminatory, the practical effect of the death penalty is discrimination [sic] against the poor". Very similarly, the Commission on Human Rights in Kenya reported that "many of the death row inmates do not benefit from a fair trial largely because of extrinsic factors including poverty, poor education and remote location". In addition to the situations in Kenya and the Philippines, the Commission on Human Rights in Malawi stated their concerns about the legal aid office in Malawi not being efficient and under-resourced as well as being under in staff. The situation in India may be considered similar as well due to the fact that the Supreme Court of India considered that "poverty or socioeconomic, psychic or undeserved adversities in life shall be considered as mitigating factors" in a capital case, if those factors had "a compelling or advancing role to play in the commission of the crime or otherwise influencing the criminal". In addition to the claimed bias towards the poor the Commission on Human Rights in Indonesia believes that there is ethnic discrimination and bias toward foreign nationals. In these cases the Indonesian authorities failed to distinguish the defendants nationality and as a result those defendants weren't able to seek asylum and assistance from counselor authorities of their original states. Likewise, the Human Rights Committee expressed its concern about the continuing use of the death penalty in the United States of America and, in particular, the number of granted cases amongst African American defendants which is considered to be more than an acceptable rate.

As seen, even though treaties which are inserted below were signed and ratified by the aforementioned countries discrimination, prejudice and bias in the criminal justice system are ongoing complications and countries aren't fully able to preserve the rights of those who are facing the death penalty.

### Major Parties Involved and Their Views

#### China

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Many NGO's are concerned about the violations of the rights of those who are facing the death penalty in China. There has been unlawful executions which were later on published via social media. Considering that The Peoples Republic of China isn't transparent about their executions on capital punishment the published news created great chaos within the society.

Although the International Law on Human Rights guarentees the right to seek pardon or commutation of their sentences to those who are facing the death penalty currently China doesn't allow the prisoners who are facing the death penalty to request these measures.

China has been illegally been a part of organ trafficking with the organs of those who were sentenced to death. In 2007 China agreed to put an end to the illegal organ donation system and clearly stated that "in jurisdictions where the death penalty is practised, executed prisoners must not be considered as organ and/or tissue donors" However with the Chinese government not being transparent the system wasn't well moitored and in 2014 the now former Vice-Minister of Health Huang Jiefu stated that the government would stop the "organ donation and transplantation systems" However it is now seen that the Chinese government is still benefiting from the organs of those who were sentenced to death.

### Iran

Iran follows the laws established by the Islamic Consultative Assembly meaning the internal laws of Iran can be distinguished as biased and discriminatory towards people who are facing the death penalty.

Although it is forbidden for countries to sentence minors (children who are younger than the age 18) to death. However an informative post published by Amnesty International states that in 2008 a Hamid Ahmadi ,a boy aged 17 was sentenced to death with an alleged offense of first degree homicide . After facing an injustice trial in 2009 with the help of the voice of the society and the lack of evidence shown in the primary trial he got the chance to have a retrial in 2015 where Hamid pointed out the fact that his "confessions " were based upon torture and ill treatment he received from the authorities and guards during his prison stay. As seen Iran hasn't been able to sentence prisoners to death with valid evidence and hasn't been able to preserve the basic rights of those who are facing the death penalty.

### Saudi Arabia

Regarding the aforementioned death sentence case of a young poet , it can be seen that Saudi Arabian judiciary system hasn't been efficient enough to provide a fair trial to those who were facing the death penalty. Also it can be seen that the conducted trials were insufficient for those who were facing the death penalty for instance in the case of Ashraf Fayadh the poet was sentenced to death because of a testimony delivered in an anonymous state which isn't credible and adequate in order to sentence one to death under normal circumstances . Also due to the fact that Mr. Fayadh was an ethnically different minority the court was found to be biased by many Special Rapporteur's meaning the court has been violating the seventh article of the Universal Declaration of Human Rights which states" 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."

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## Vietnam

Just like the aforementioned countries Vietnam has sentenced prisoners to death without a fair trial but differently the prisons in Vietnam follow a different procedure where the guards and authorities don't specify the execution date. As a result the prisoners with death sentences become individuals who are diagnosed with mental issues due to the cruel procedure. These prisoners aren't able to seek psychological help due to the lack of psychological help in prisons. Under normal circumstances granting the death penalty to individuals with mental disabilities or issues is forbidden and is a violation towards the rights of those who are in need of seeking health facilities.

## Timeline of Events



Date of Event	Description of Event
1764	Italian Jurist criticizes Death Penalty That Influences Abolitionists
1948	Establishment of the Declaration of Human Rights
1953	The European Convention on Human Rights was put in order
1954	International Covenant on Civil and Political Rights
2015	Death sentence of Palestinian poet Ashraf Fayadh

## Treaties and Events

**Ashraf Fayadh's death penalty sentence** - On the day Ashraf Fayadh was sentenced to the death penalty, it was first observed that the rights of citizens facing the death penalty weren't protected as stated in treaties.

**The American Convention on Human Rights** - This convention suggested by the General Assembly of the Organization of American States in 1990 aims to abolish the death penalty but retain it during war time.

**The European Convention for the Protection of Human Rights and Fundamental Freedoms** - This convention aims for the abolition of capital punishment in time of peace

**The Core International Human Rights treaties and the Declaration of Human Rights** - These treaties and conventions aim to express the rights of any individual not regarding gender, ethnicity, race and furthermore.

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**The International Covenant on Civil and Political Rights** - Although the Covenant states that capital punishment is a danger for human rights, delegates should keep in mind that death penalty is not prohibited under the International Covenant on Civil and Political Rights (ICCPR) or any other universal treaty.

### Evaluation of Previous Attempts to Resolve the Issue

In 2015, the forum regarding minority issues considered and evaluated the positions of minorities in the criminal justice system more specifically the use of death penalty against minorities. The forum suggested that countries who haven't abolished capital punishment to implement safeguards preserving the rights of minorities whom are facing the death penalty. It further suggested that States should further study the cases to identify the underlying factors of the racial and ethnic violations in the application of the death penalty, in order to develop effective strategies aimed to eliminate discriminatory practices. However in October 2016, the Special Rapporteur on extrajudicial, summary, arbitrary executions stated their concerns regarding many the anti-terrorism laws discriminating against religious minorities in practice and that in some cases trials had resulted in executions. In this particular case, the concerns of the Special Rapporteur weren't satisfied since there wasn't any implementations made in the laws making it harder to control the executions via safeguards.

### Possible Solutions

Firstly regarding the chaos that occurred in China when two capital punishment case files were leaked the society became chaotic as well as aware of the unfair judicial system. Although there was an occurrence of chaos to a certain extent it is important to create awareness within the society to create movement towards the good and justice. Thus establishing organizations whom will be responsible with updating the society regarding up to date complications upon the issue is a way to create awareness and change in the society.

Secondly, it has been reported that the judicial system is biased towards minorities. In order to avoid simple majority and other discriminatory acts which are causes of racial, ethnic differences there should be diversity within the judicial staff and a higher and unbiased authority whom will monitor the case and all the case files which will be mandatory to file should be present.

Thirdly, many countries aren't able to grant a fair trial to those who are facing the death penalty due to the aforementioned reasons. For instance, some countries aren't able to provide adequate legal aid to those who are going for a death trial due to the lack of financial help the department gets or the lack of number in staff. In order to tackle this issue it can be suggested to create a universal legal aid department where the defense attorneys will be recruited by the aforementioned authorities in any case of complication.

Finally, it is always beneficial to create funds and a funding systems for NGO's which are specialized in the field of Human Rights and Capital Punishment for sustainable data and research . Consequently in order to provide and obtain sustainable data, funds should be created for NGO's which will continue their work with the help of Undata.

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