

LEGAL STUDIES

Human Rights Assessment Task

- Identify the area of human rights that are being abused (civil and political rights; economic, social and cultural rights; environmental and peace rights; and collective right to self determination).
- How is the human rights issue recognised and enforced?
- How effective are the legal measures, both domestically and internationally, in addressing the human rights issue?
- Identify and assess the effectiveness of the non-legal measures involved.

The death penalty can be defined as the execution of a person by the state, as punishment for being found guilty of an offence by a judicial process. It has been used around the world for centuries but has now been abolished by a majority of countries. The death penalty – or capital punishment – has been recognised worldwide as a human rights issue. However, this view is not unanimous and some countries, even though they have signed international human rights agreements, continue to carry out executions. Ultimately, the protection of human rights, including the abolition of the death penalty, is under the control of each country.

Human rights are the conditions, freedoms and expectations that all people are entitled to simply because they are human beings. In 1948, the United Nations (UN) General Assembly adopted the Universal Declaration of Human Rights (UDHR), a document declaring all the human rights that human beings worldwide are entitled to. Human rights can be divided into various categories. Civil and political rights are human rights that protect individuals from an unjust exercise of power by the state. Articles 3 to 21 of the UDHR recognise the civil and political rights that individuals are entitled. These rights include; the right to life, liberty and security of person and freedom from inhumane, cruel or degrading treatment or torture. The death penalty directly violates an individual's civil and political human rights.

Various individuals, groups and governments around the world recognise the death penalty as a human rights violation. This includes 137 countries who have abolished the death penalty as well as international organisations such as the UN, Amnesty International, Reprieve and the World Coalition Against the Death Penalty who all oppose it. Amnesty International states on their website that capital punishment is "the ultimate denial of human rights" and that they oppose it "in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner." There are several international treaties and agreements in place that recognise the death penalty as a human rights issue including the UDHR and the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR recognises the "inherent right to life" of every human being and in Article 6(2) restricts the use of the death penalty to the "most serious crimes." There is also the Second Optional Protocol to the ICCPR (1991) which is an agreement aiming to abolish the death penalty. As of August 2009, 71 countries had ratified the protocol.

Although many countries have signed international agreements to abolish or reduce the use of capital punishment, the enforcement is the responsibility of their government. In Australia, statute law prohibits the use of the death penalty. Members of the UN are encouraged to ratify legislation so that a nation's domestic law can then enforce it. However, the UN cannot force countries to ratify and abide by its legislation as state sovereignty overrides international treaties. For example, the

USA and China were integral in establishing the UDHR yet they violate Article 3 and 5 every time they execute a criminal. This poses a major obstacle to the complete abolition of the death penalty worldwide.

Legal measures addressing the eradication of capital punishment vary in effectiveness around the world. In 1966, Australia signed the ICCPR and ratified it by passing the *Death Penalty Abolition Act 1973 (Cwlth)*. This meant the death penalty was abolished for all federal offences and changed to life imprisonment. However, it wasn't until 1984 that it had been abolished for all crimes nationwide as each state had to pass its own legislation outlawing it. Australia has also signed the Second Optional Protocol to the ICCPR and other international treaties aiming to abolish the death penalty. Recently, Australia looked at passing a federal law that will prohibit the death penalty from being used here ever again. Therefore, the legal measures in Australia addressing the death penalty are very effective as this human rights issue is now a defunct practice.

International legal measures are reasonably successful in promoting the protection of human rights, but are somewhat limited at actually protecting them. Unfortunately, the effectiveness of legal measures internationally is severely restricted due to state sovereignty. This means the UN is unable to successfully enforce its own legislation regarding the eradication of the death penalty. There are several countries such as the USA, Japan, China, etc who have signed the ICCPR yet continue to use the death penalty and fail to recognise it as a human rights issue. The Human Rights Committee monitors implementation of the ICCPR but has no legal power to force countries to abide by the agreement. For example, in the USA 35 of the 50 states still use capital punishment. Although the USA has ratified the ICCPR, the Senate made a provision to it meaning it was unable to be enforced by the courts.

Another difficulty with prohibiting the death penalty worldwide is cultural differences. Islamic countries, such as Saudi Arabia and Iran, use the death penalty as it is part of the Sharia (Islamic Law). China uses the death penalty for 68 offences, including non violent crimes and according to human rights groups, there is a problem with wrongful convictions and forced confessions. In 2009, approximately 5000 people were condemned to death in China, making them the most prolific executioner in the world. China has signed (but not ratified) the ICCPR which many believe was done to relieve international pressure on the government to uphold human rights standards.

Worldwide, the number of countries actively practising the death penalty has reduced significantly due largely to the campaigning of human rights organisations such as Amnesty International, Reprieve and Human Rights Watch. The largest and most influential organisation is Amnesty International which was founded in 1961. They work extensively to abolish the death penalty worldwide by putting pressure on governments to change laws regarding the death penalty and informing the public (via the media) of violations. Amnesty International is a founding member of the World Coalition Against the Death Penalty - an alliance of more than 70 human rights organisations who oppose the death penalty. They also help coordinate the Anti-Death Penalty Asia Network which includes activists from countries such as Australia, Hong Kong, Singapore, etc. Amnesty International has contributed greatly to the increase in abolitionist countries from 16 in 1977, to 137 in 2009. Only 3 developed nations - the USA, Japan and Singapore – still use the death penalty. However, even though they have been somewhat successful in their campaign against the death penalty, they are still limited in what they can do as they cannot force countries to abolish it.

There has been an increased global trend towards the abolition of the death penalty due largely to the lobbying and campaigning of organisations including Amnesty International and the UN. However, some countries such as the USA, China, Japan etc, fail to recognise it as a human rights issue and continue to execute people. International law, like the ICCPR and UDHR, attempts to prohibit the use of capital punishment but is unable to be enforced due to state sovereignty. The death penalty will continue to be an issue for debate until it is abolished worldwide.