

Human Rights Assessment Task

Evaluate the effectiveness of the legal and non-legal international and/or domestic responses to the chosen human rights issue: Capital Punishment

Capital punishment refers to the legal killing of an individual, carried out by the state, to serve as a punishment for an offence. The issue of capital punishment demonstrates the way in which the universal human right - the right to life, is violated. There are continuous efforts within the international and domestic realm – both legal and non-legal measures, which aim to uphold this right to life through the global abolishment of capital punishment. However, there are also persistent challenges to their acquisition, particularly state sovereignty, limiting their effectiveness.

The international community's increased concerns have led to the intervention of international legal measures in the issue of capital punishment. The Universal Declaration of Human Rights is at the core of all treaties relating to the eradication of capital punishment, which states that 'Everyone has the right to life' (Article 3) and 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' (Article 5). The Second Optional Protocol of the International Covenant on Civil and Political Rights explicitly states in its preamble that the 'abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights'. It requires signatories to abolish capital punishment, except in certain war circumstances. Capital punishment constitutes a threat to both international instruments as it denies human rights to offenders, despite human rights being inherent. After recognising the difficulty in abolishing capital punishment across all nations, regulations have been created to limit the use of capital punishment only to offenders who fit certain criteria. State members are obliged to follow the United Nations Safeguards Guaranteeing Protection on the Rights of Those Facing the Death Penalty. It states that capital punishment can only be used in extremely indictable offences, and cannot be used on those under 18 years of age, pregnant, or anyone suffering from insanity. These restrictions on capital punishment imposed on those nations who refuse to abolish it shows positive movements towards the goal of global abolishment. However, these international instruments cannot force any country to follow these conventions. Even if they have ratified them, there are limited avenues of redress if a country is found in breach of these laws as the state is sovereign.

In addition to these documents, the international response extends to the judiciary. Looking at America in particular, it is evident that death row executions have involved the United States with the International Court of Justice (ICJ). NBC News' 'World Court urges U.S to stay 5 executions' (2008) discusses an appeal to the ICJ to block the executions of five Mexicans on death row in Texas. The federal government was seen taking great lengths to carry out ICJ's order when President Bush issued a directive to the state courts to abide by the decision. Despite Texas' refusal to review these cases, this still highlights the effectiveness of pressure imposed by the ICJ. U.S legal adviser, John Bellinger was impressed by the US' efforts as federal governments rarely 'enters an appearance in state court proceedings.' Additionally, the international judicial body, the International Criminal Court (ICC), is unable to impose capital punishment, under Article 77 of the Rome Statute. This achieves effectiveness in upholding the human right to life, because despite its jurisdiction over the most seriously indictable crimes, they still avoid the use of capital punishment.

Amnesty International is a not-for-profit organisation focused on human rights, with over seven million members and supporters. Amnesty considers capital punishment 'the ultimate denial of human rights' and has played a significant, active role in the international movement towards the global abolition of the death penalty. Amnesty's article 'The Death Penalty v Human Rights' explains that capital punishment is a 'symptom of a culture of violence, not a solution to

it'. They also state that 'the death penalty is the premeditated and cold-blooded killing of a human being by the state'. This article was published in 2007, and later that year, Hafez Ibrahim who was awaiting execution in Yemen, sent a mobile text message to Amnesty, which ended up saving his life. He later stated 'I owe my life to Amnesty. Now I dedicate that life to campaigning against the death penalty'. The International Federation of Action by Christians for the Abolition of Torture is committed to the abolition of the death penalty, and so created the World Congress Against the Death Penalty. This event is held every three years in different countries around the world, paying special attention to countries where the issue needs to be addressed. They created the World Day Against the Death Penalty on October 10, and participants have adopted declarations as a result. Huffington Post's article 'Sentencing the Death Sentence' (2014) discusses that 'proponents of death penalty believe that the "eye for an eye" approach deters crime'. However, a study conducted by the University of Colorado revealed over 88% of criminologists believe that capital punishment is ineffective in crime deterrence, highlighting the limited evidence that capital punishment deters crime. Media pressures such as this attempt to influence the international community. Despite these pressures, in 2015, a year after this article's publication, the highest number of executions in 25 years was recorded across the globe. Nonetheless, there is no doubt that this human rights issue has improved from a broader perspective. In 1977, only sixteen countries had abolished the death penalty. Thirty years later, this number increased to 90, and only a short four years after that it was up to 97 countries. We can only assume that this is, in part, due to the response of the international community.

Australia is a signatory to and has ratified most of the international documents against capital punishment. It is state sovereignty that provides this opportunity for Australia to provide protection for its citizens without external interference, as it provides the means for Australia to enact legislation of human right treaties that it is signatory to. In Australia, all states and territories have removed capital punishment under the Commonwealth Death Penalty Abolition Act 1973. However, in this act, there was a remaining possibility that a state could restore the sentence. This gap was filled by the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 (Cth), which inhibits any state or territory to reintroduce capital punishment as a sentence. However, this Act does not prevent Australian authorities from participating in processes leading to death sentences abroad. This is highlighted in the Bali Nine Case where, in 2005, Australians were arrested and convicted in Bali for trafficking heroin, a crime that in Indonesia carries the death penalty. The arrests of the Bali Nine members were aided by key information voluntarily given to the Indonesian government from the Australian Federal Police (AFP). The Act's guidelines were silent on the voluntary sharing of information in the absence of a request. Even if a request had been made, the guidelines permitted the AFP to provide assistance without ministerial approval. This provoked law reform to achieve justice for future cases, as the Government released revised guidelines in 2009, seen under the AFP Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations.

Sydney Criminal Lawyer's article 'Should Australia Extradite People Facing the Death Penalty?' (2015) highlights the political tension of the Bali Nine case, as 'Malaysia [would] bring legal action against Australia' if the Bali Nine members weren't extradited. Under section 15 of The Extradition Act 1988 (Cth), the Attorney-General can only extradite someone once satisfied that they will not face any 'real risk' of being exposed to the death penalty. This draws attention to this case, where the Australian Federal Police attempted to put pressure on the Australian government to follow through with this act. This was inevitably deemed ineffective, as the execution was carried out months later. Reprieve Australia, a non-government organisation working toward the abolition of capital punishment, became involved this case. The Vice President of Reprieve worked on pro-bono for two members of the Bali Nine. Public outrage within the domestic community arose after the increased awareness of the AFP's role and the possible fate of those accused, as shown in Sydney Morning Herald's 'Australians 'sickened' by thought of Bali executions' (2015). The article revealed that 150,000 Australians

signed a mercy petition, which was created by relatives of the Bali Nine members, with the aim to gain more signatures to prevent execution of the Bali Nine members. However, these measures deemed ineffective as the execution followed months later due to the limitations of state sovereignty, which prevented interference from Australia. Despite continued confrontations with the leaders of overseas governments, legally the Australian government have no control over the use of capital punishment of crimes committed abroad.

Conclusively, the myriad of legal and non-legal domestic and international responses that are working towards the global abolishment of capital punishment, have effectively made progress towards this human rights issue despite the limitations of state sovereignty. Major progress has been made, and with continued and persistent political pressure, education and time, these sovereign states who still practice capital punishment may reconsider their position. As Shadow Minister for Foreign Affairs, Tanya Plibersek, states that 'While there is life, there is hope. We will not give up.'

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