



**Commission on Crime Prevention
and Criminal Justice (CCPCJ)**

Study Guide

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Commission on Crime Prevention and Criminal Justice (CCPCJ)

The Commission on Crime Prevention and Criminal Justice (CCPCJ) was established by the Economic and Social Council (ECOSOC) resolution 1992/1, upon request of General Assembly (GA) resolution 46/152, as one of its functional commissions. The Commission acts as the principal policymaking body of the United Nations in the field of crime prevention and criminal justice. ECOSOC provided for the CCPCJ's mandates and priorities in resolution 1992/22, which include improving international action to combat national and transnational crime and the efficiency and fairness of criminal justice administration systems. The CCPCJ also offers Member States a forum for exchanging expertise, experience and information in order to develop national and international strategies, and to identify priorities for combating crime.

In 2006, the GA adopted resolution 61/252, which further expanded the mandates of the CCPCJ to enable it to function as a governing body of the United Nations Office on Drugs and Crime (UNODC), and to approve the budget of the United Nations Crime Prevention and Criminal Justice Fund, which provides resources for technical assistance in the field of crime prevention and criminal justice worldwide. The CCPCJ coordinates with other United Nations bodies that have specific mandates in the areas of crime prevention and criminal justice, and is the preparatory body to the United Nations Crime Congresses. Declarations adopted by the congresses are transmitted through the CCPCJ and the ECOSOC to the GA for endorsement. The CCPCJ implements the outcome of the congresses into concrete action through decisions and resolutions, many of which are recommended for adoption by the ECOSOC or, through the ECOSOC, by the GA.

Intersessional meetings of the CCPCJ are regularly convened to provide policy guidance to UNODC. Towards the end of each year, the CCPCJ meets at a reconvened session to consider budgetary and administrative matters as the governing body of the United Nations crime prevention and criminal justice programme.¹

¹ <https://www.unodc.org/unodc/en/commissions/CCPCJ/>

Topic A: Abolition of Capital Punishment

Topic introduction

Capital punishment, also called death penalty, execution of an offender sentenced to death after conviction by a court of law of a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment.²

Overview

Capital punishment was widely applied in ancient times; it can be found (c.1750 BC) in the Code of Hammurabi. From the fall of Rome to the beginnings of the modern era, capital punishment was practiced throughout Western Europe.³

Historically, executions were public events, attended by large crowds, and the mutilated bodies were often displayed until they rotted. Public executions were banned in England in 1868, though they continued to take place in parts of the United States until the 1930s. In the last half of the 20th century, there was considerable debate regarding whether executions should be broadcast on television, as has occurred in Guatemala. Since the mid-1990s public executions have taken place in some 20 countries, including Iran, Saudi Arabia, and Nigeria, though the practice has been condemned by the United Nations Human Rights Committee as “incompatible with human dignity.”

In many countries death sentences are not carried out immediately after they are imposed; there is often a long period of uncertainty for the convicted while their cases are appealed. Inmates awaiting execution live on what has been called “death row”. The European Union regards this phenomenon as so inhumane that, on the basis of a binding ruling by the European Court of Human Rights (1989), EU countries may extradite an offender accused of a capital crime to a country that practices capital punishment only if a guarantee is given that the death penalty will not be sought.

From the early 1960s, although a majority of countries still used the death penalty, the drafters of the International Covenant on Civil and Political Rights (ICCPR) had already begun moves for its abolition in international law.

Although Article 6 of the ICCPR permits the use of the death penalty in limited circumstances, it also provides that “nothing in this article shall be invoked to

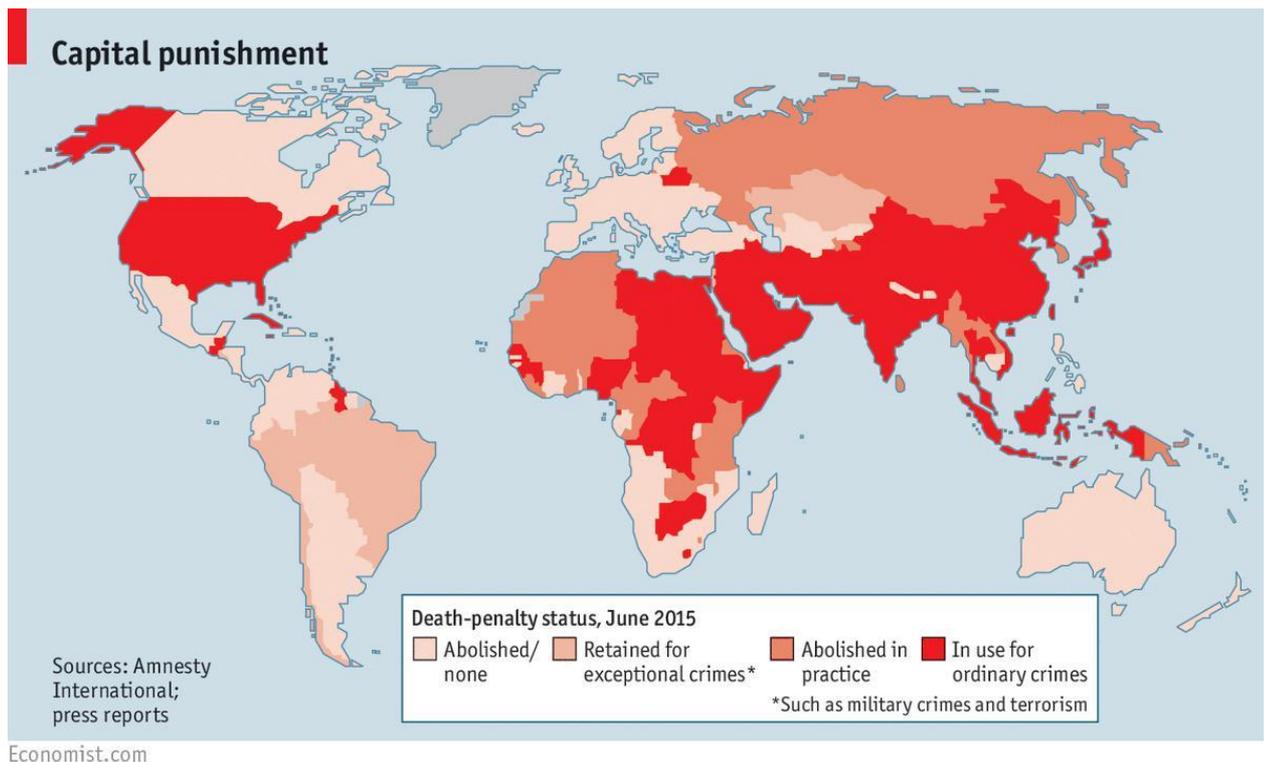
² <http://www.britannica.com/topic/capital-punishment>

³ <http://deathpenalty.procon.org/view.answers.php?questionID=000988>

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 adopted Safeguards guaranteeing protection of the rights of those facing the death penalty.

In 1989, 33 years after the adoption of the Covenant itself, the UN General Assembly adopted the Second Optional Protocol to the ICCPR that gave abolition decisive new momentum. Member States which became parties to the Protocol agreed not to execute anyone within their jurisdictions.⁴



A few countries are applying the death penalty more freely. However, the global trend is towards abolition. On June 29th America’s Supreme Court upheld Oklahoma’s use of midazolam, a sedative, in executions—despite evidence that it can fail to cause unconsciousness, leaving those being killed in agony from the lethal drugs with which it is combined. Meanwhile some countries in the Muslim world, notably Indonesia, Iran, Pakistan and Saudi Arabia, are executing people with increasing enthusiasm. Several others, including Nigeria and Egypt, are sentencing large numbers to death, though most of those sentences are unlikely to be carried out.⁵

⁴ <http://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIndex.aspx>

⁵ <http://www.economist.com/news/international/21656666-few-countries-are-applying-death-penalty-more-freely-global-trend-towards>

Debate

For	Against
1. Morality	
<p>The crimes of rape, torture, treason, kidnapping, murder, larceny, and perjury pivot on a moral code that escapes apodictic [indisputably true] proof by expert testimony or otherwise. But communities would plunge into anarchy if they could not act on moral assumptions less certain than that the sun will rise in the east and set in the west. Abolitionists may contend that the death penalty is inherently immoral because governments should never take human life, no matter what the provocation. But that is an article of faith, not of fact. The death penalty honors human dignity by treating the defendant as a free moral actor able to control his own destiny for good or for ill; it does not treat him as an animal with no moral sense.⁶</p>	<p>Ultimately, the moral question surrounding capital punishment in America has less to do with whether those convicted of violent crime deserve to die than with whether state and federal governments deserve to kill those whom it has imprisoned. The legacy of racial apartheid, racial bias, and ethnic discrimination is unavoidably evident in the administration of capital punishment in America. Death sentences are imposed in a criminal justice system that treats you better if you are rich and guilty than if you are poor and innocent. This is an immoral condition that makes rejecting the death penalty on moral grounds not only defensible but necessary for those who refuse to accept unequal or unjust administration of punishment.⁷</p>
2. Constitutionality	
<p>Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' (quoting the opinion of the Court from <i>Farmer v. Brennan</i>, 511 U. S. 825, 842, 846 (1994)) that qualifies as cruel and unusual... Kentucky has adopted a method of execution believed to be the most humane available, one it shares with 35 other States... Kentucky's decision to adhere to its protocol cannot be viewed as probative of the wanton infliction of pain under the Eighth Amendment... Throughout our history, whenever a method of execution has been challenged in this Court as cruel and unusual, the Court has rejected the challenge. Our society has nonetheless steadily moved to more humane methods of carrying out capital punishment.⁸</p>	<p>Death is... an unusually severe punishment, unusual in its pain, in its finality, and in its enormity... The fatal constitutional infirmity in the punishment of death is that it treats 'members of the human race as nonhumans, as objects to be toyed with and discarded. It is thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity.' (quoting himself from <i>Furman v. Georgia</i>, 408 U.S. 238, 257 (1972)) As such it is a penalty that 'subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the Clause.' (quoting C.J. Warren from <i>Trop v. Dulles</i>, 356 U.S. 86, 101 (1958)) I therefore would hold, on that ground alone, that death is today a cruel and unusual punishment prohibited by the Clause... I would set aside the death sentences imposed... as violative of the Eighth and Fourteenth Amendments.⁹</p>
3. Deterrence	
<p>Common sense, lately bolstered by statistics, tells us that the death penalty will deter murder... People fear nothing more than death. Therefore, nothing will deter a criminal more than the fear of death... life in prison is less feared. Murderers clearly prefer it to execution - otherwise, they would not try to be sentenced to life in prison instead of death... Therefore, a life sentence must be less</p>	<p>There is no credible evidence that the death penalty deters crime more effectively than long terms of imprisonment. States that have death penalty laws do not have lower crime rates or murder rates than states without such laws. And states that have abolished capital punishment show no significant changes in either crime or murder rates. The death penalty has no deterrent effect. Claims that each</p>

⁶ <http://prodquotes.info/prodp/default/view/1659/Attorneys-from-the-USA-III>

⁷ *Professor of Law at New York University School of Law*

"Close to Death: Reflections on Race and Capital Punishment in America," from Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Best Case 2004

⁸ <http://deathpenalty.procon.org/sourcefiles/2008bazerees.pdf>

⁹ <http://deathpenalty.procon.org/sourcefiles/GreggvGeorgia.pdf>

<p>deterrent than a death sentence. And we must execute murderers as long as it is merely possible that their execution protects citizens from future murder.¹⁰</p>	<p>execution deters a certain number of murders have been thoroughly discredited by social science research.</p>
<h4>4. Retribution</h4>	
<p>Society is justly ordered when each person receives what is due to him. Crime disturbs this just order, for the criminal takes from people their lives, peace, liberties, and worldly goods in order to give himself undeserved benefits. Deserved punishment protects society morally by restoring this just order, making the wrongdoer pay a price equivalent to the harm he has done. This is retribution, not to be confused with revenge, which is guided by a different motive. In retribution the spur is the virtue of indignation, which answers injury with injury for public good... Retribution is the primary purpose of just punishment as such... Rehabilitation, protection, and deterrence have a lesser status in punishment than retribution.¹¹</p>	<p>Retribution is just another word for revenge, and the desire for revenge is one of the lowest human emotions — perhaps sometimes understandable, but not really a rational response to a critical situation. To kill the person who has killed someone close to you is simply to continue the cycle of violence which ultimately destroys the avenger as well as the offender. That this execution somehow give 'closure' to a tragedy is a myth. Expressing one's violence simply reinforces the desire to express it. Just as expressing anger simply makes us more angry. It does not drain away. It contaminates the otherwise good will which any human being needs to progress in love and understanding.¹²</p>
<h4>5. Irrevocable Mistakes</h4>	
<p>No system of justice can produce results which are 100% certain all the time. Mistakes will be made in any system which relies upon human testimony for proof. We should be vigilant to uncover and avoid such mistakes. Our system of justice rightfully demands a higher standard for death penalty cases. However, the risk of making a mistake with the extraordinary due process applied in death penalty cases is very small, and there is no credible evidence to show that any innocent persons have been executed at least since the death penalty was reactivated in 1976... The inevitability of a mistake should not serve as grounds to eliminate the death penalty any more than the risk of having a fatal wreck should make automobiles illegal.¹³</p>	<p>Since the reinstatement of the modern death penalty, 87 people have been freed from death row because they were later proven innocent. That is a demonstrated error rate of 1 innocent person for every 7 persons executed. When the consequences are life and death, we need to demand the same standard for our system of justice as we would for our airlines... It is a central pillar of our criminal justice system that it is better that many guilty people go free than that one innocent should suffer... Let us reflect to ensure that we are being just. Let us pause to be certain we do not kill a single innocent person. This is really not too much to ask for a civilized society.¹⁴</p>
<h4>6. Cost of Death vs. Life in Prison</h4>	
<p>Many opponents present, as fact, that the cost of the death penalty is so expensive (at least \$2 million per case?), that we must choose life without parole ('LWOP') at a cost of \$1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA (Justice for All) estimates that LWOP cases will cost \$1.2 million-\$3.6 million more than equivalent death penalty cases. There is no question that the up front costs of the death penalty are significantly higher than for equivalent LWOP cases. There also appears to be no question that, over time, equivalent LWOP cases are much more expensive... than death penalty cases.</p>	<p>In the course of my work, I believe I have reviewed every state and federal study of the costs of the death penalty in the past 25 years. One element is common to all of these studies: They all concluded that the cost of the death penalty amounts to a net expense to the state and the taxpayers. Or to put it differently, the death penalty is clearly more expensive than a system handling similar cases with a lesser punishment. It combines the costliest parts of both punishments: lengthy and complicated death penalty trials, followed by incarceration for life... Everything that is needed for an ordinary trial is needed for a death penalty case, only more so:</p>

¹⁰ <http://deathpenalty.procon.org/sourcefiles/GreggvGeorgia.pdf>

¹¹ <http://www.firstthings.com/article/2004/08/capital-punishment-the-case-for-justice>

¹² <http://sandiegofreepress.org/2012/09/prop-34-yes-means-well-never-execute-an-innocent-person/>

¹³ <http://www.clarkprosecutor.org/html/death/death.htm>

¹⁴ <https://www.gpo.gov/fdsys/pkg/CREC-2000-04-26/html/CREC-2000-04-26-pt1-PgS2940-4.htm>

<p>Opponents ludicrously claim that the death penalty costs, over time, 3-10 times more than LWOP.¹⁵</p>	<ul style="list-style-type: none"> • More pre-trial time... • More experts... • Twice as many attorneys... • Two trials instead of one will be conducted: one for guilt and one for punishment. • And then will come a series of appeals during which the inmates are held in the high security of death row.¹⁶
<p>7. Race</p>	
<p>The fact that blacks and Hispanics are charged with capital crimes out of proportion to their numbers in the general population may simply mean that blacks and Hispanics commit capital crimes out of proportion to their numbers. Capital criminals don't look like America... No one is surprised to find more men than women in this class. Nor is it a shock to find that this group contains more twenty-year-olds than septuagenarians. And if — as the left tirelessly maintains — poverty breeds crime, and if — as it tiresomely maintains — the poor are disproportionately minority, then it must follow — as the left entirely denies — that minorities will be 'overrepresented' among criminals.¹⁷</p>	<p>Despite the fact that African Americans make up only 13 percent of the nation's population, almost 50 percent of those currently on the federal death row are African American. And even though only three people have been executed under the federal death penalty in the modern era, two of them have been racial minorities. Furthermore, all six of the next scheduled executions are African Americans. The U.S. Department of Justice's own figures reveal that between 2001 and 2006, 48 percent of defendants in federal cases in which the death penalty was sought were African Americans... the biggest argument against the death penalty is that it is handed out in a biased, racially disparate manner.¹⁸</p>
<p>8. Income level</p>	
<p>The next urban legend is that of the threadbare but plucky public defender fighting against all odds against a team of sleek, heavily-funded prosecutors with limitless resources. The reality in the 21st century is startlingly different... the past few decades have seen the establishment of public defender systems that in many cases rival some of the best lawyers retained privately... Many giant silk-stocking law firms in large cities across America not only provide pro-bono counsel in capital cases, but also offer partnerships to lawyers whose sole job is to promote indigent capital defense.¹⁹</p>	<p>Who pays the ultimate penalty for crimes? The poor. Who gets the death penalty? The poor. After all the rhetoric that goes on in legislative assemblies, in the end, when the net is cast out, it is the poor who are selected to die in this country. And why do poor people get the death penalty? It has everything to do with the kind of defense they get. Money gets you good defense. That's why you'll never see an O.J. Simpson on death row. As the saying goes: "Capital punishment means them without the capital get the punishment."²⁰</p>
<p>9. Attorney quality</p>	
<p>Defense attorneys... routinely file all manner of motions and objections to protect their clients from conviction. Attorneys know their trial tactics will be thoroughly scrutinized on appeal, so every effort is made to avoid error, ensuring yet another level of protection for the defendant. They (death penalty opponents)... have painted a picture of incompetent</p>	<p>Shocking two out of three death penalty convictions have been overturned on appeal because of police and prosecutorial misconduct, as well as serious errors by incompetent court-appointed defense attorneys with little experience in trying capital cases. How can we contend that we provide equal justice under the law when we do not</p>

¹⁵ http://debatepedia.idebate.org/en/index.php/Argument:_Executions_are_no_more_costly_than_life_in_prison

¹⁶ <http://www.deathpenaltyinfo.org/COcosttestimony.pdf>

¹⁷ <https://prezi.com/lmmneehxpbrm/death-penalty/>

¹⁸ <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg47297/html/CHRG-110shrg47297.htm>

¹⁹

<http://ic.galegroup.com/ic/ovic/ViewpointsDetailsPage/DocumentToolsPortletWindow?displayGroupName=Viewpoints&jsid=c1c9ea993e7ea4bfbf2beb3980f5b393&action=2&catId=&documentId=GALE%7CEJ3010036283&u=tecu26050&zid=80c843836286857ac335fa29862e83a4>

²⁰ <http://deathpenalty.procon.org/view.resource.php?resourceID=002000>

<p>defense lawyers, sleeping throughout the trial, or innocent men being executed. Their accusations receive wide media coverage, resulting in a near-daily onslaught on the death penalty. Yet, through all the hysteria, jurors continue to perform their responsibilities and return death sentences.</p>	<p>provide adequate representation to the poor in cases where a life hangs in the balance? We, the Congress, must bear our share of responsibility for this deplorable situation. In short, while others, like Governor Ryan in Illinois, have recognized the flaws in the death penalty, the Congress still just doesn't get it. This system is broken.</p>
<p>10. Physicians at Executions</p>	
<p>Accepting capital punishment in principle means accepting it in practice, whether by the hand of a physician or anyone else... If one finds the practice too brutal, one must either reject it in principle or seek to mitigate its brutality. If one chooses the latter option, then the participation of physicians seems more humane than delegating the deed to prison wardens, for by condoning the participation of untrained people who could inflict needless suffering that we physicians might have prevented, we are just as responsible as if we had inflicted the suffering ourselves. The AMA (American Medical Association) position should be changed either to permit physician participation or to advocate the abolition of capital punishment. The hypocritical attitude of 'My hands are clean — let the spectacle proceed' only leads to needless human suffering.</p>	<p>The American Medical Association's policy is clear and unambiguous... requiring physicians to participate in executions violates their oath to protect lives and erodes public confidence in the medical profession. A physician is a member of a profession dedicated to preserving life... The use of a physician's clinical skill and judgment for purposes other than promoting an individual's health and welfare undermines a basic ethical foundation of medicine — first, do no harm. The guidelines in the AMA Code of Medical Ethics address physician participation in executions involving lethal injection. The ethical opinion explicitly prohibits selecting injection sites for executions by lethal injection, starting intravenous lines, prescribing, administering, or supervising the use of lethal drugs, monitoring vital signs, on site or remotely, and declaring death.</p>

Measures taken by the UN

Over the last several years, the United Nations General Assembly has adopted three different resolutions calling on all member States to establish moratoria on executions “with a view to abolishing the death penalty.” In 2007, the death penalty moratorium resolution garnered a majority vote in the General Assembly for the first time, with 104 votes in favor, 54 votes against, and 29 abstentions. The resolution’s text emphasized “that the use of the death penalty undermines human dignity” and that a moratorium would contribute “to the enhancement and progressive development of human rights.”

In 2008, the General Assembly adopted a resolution that reaffirmed the previous moratorium resolution and welcomed decisions by an increasing number of States to apply moratoria on executions. This second resolution passed with 106 votes in favor, 47 votes against, and 33 abstentions.

The General Assembly in 2010 again passed a resolution reaffirming the two previous moratorium resolutions, noting ongoing national debates on the death penalty and welcoming steps taken by some countries to reduce the number of offenses for which the death penalty may be imposed. The final vote tally included 108 votes in favor, 41 votes against, and 36 abstentions. Thus, over time, there has

been a gradual but noticeable increase in the number of votes in favor and decrease in the number of votes against.

While 58 countries signed the note verbale to the 2007 resolution expressing their objection “to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law,” that number dropped to 53 for the 2008 and 2010 resolutions. All three notes verbales restated the principal arguments made by opponents of the resolutions during the UN General Assembly debates. Among other things, opponents argued that the death penalty was a domestic criminal justice issue and not a human rights issue, that there was no consensus on the issue of the death penalty and no side of the debate was more “right” than the other, and that Article 6 of the ICCPR allowed countries that had not already abolished the death penalty to impose the sentence for “the most serious crimes” and in accordance with law in existence at the time of the crime.²¹

United Nations General Assembly Resolutions

U.N.G.A., Resolution adopted by the General Assembly on 18 December 2007, Moratorium on the use of the death penalty, U.N. Doc. A/RES/62/149, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/472/71/PDF/N0747271.pdf?OpenElement>, Feb. 26, 2008.

U.N.G.A., Resolution adopted by the General Assembly on 18 December 2008, Moratorium on the use of the death penalty, U.N. Doc. A/RES/63/168, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/480/87/PDF/N0848087.pdf?OpenElement>, Feb. 13, 2009.

U.N.G.A., Resolution adopted by the General Assembly on 21 December 2010, Moratorium on the use of the death penalty, U.N. Doc. A/RES/65/206, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/524/90/PDF/N1052490.pdf?OpenElement>, Mar. 28, 2011.

U.N.G.A., Resolution adopted by the General Assembly on 20 December 2012, Moratorium on the use of the death penalty, U.N. Doc. A/RES/67/176, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/489/16/PDF/N1248916.pdf?OpenElement>, Mar. 20, 2013.

U.N.G.A., Resolution adopted by the General Assembly on 18 December 2014, Moratorium on the use of the death penalty, U.N. Doc. A/RES/69/186,

²¹ <http://www.deathpenaltyworldwide.org/moratoria.cfm>

"<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/708/68/PDF/N1470868.pdf?OpenElement>, Feb. 4, 2015.

Aspects to think about

1. Under which circumstances, if any, should capital punishment be exercised?
2. Do we fully follow the Declaration of Human Rights if death penalty exist?
3. What further actions need to be taken to build on the foundation of death penalty abolition?
4. If execution is unacceptable, what is the alternative?
5. Can it be considered as infringement of the National Constitution if countries who practice capital punishments are pressed to abolish it?

Further reading

1. <http://www.icomdp.org/>
2. <http://www.deathpenaltyinfo.org/>
3. <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8159&lang=en>
4. <http://www.deathpenaltyworldwide.org/>
5. <http://www.handsoffcain.info/>
6. <http://www.infoplease.com/ipa/A0777460.html>

Topic B: Alternatives to Imprisonment

Topic Introduction

Imprisonment is the act of depriving a person of his liberty by restricting his freedom of movement and confining him within a particular defined locality, where he is under the direct and constant supervision of the confining authority. This form of restraint on individual liberty is sometimes referred to as arrest or detention and sometimes as imprisonment. The most frequent cases of imprisonment are:

1. arrest of a person suspected of having committed a criminal offense in order to ensure his arraignment and presence at the trial or to prevent him from interfering with the course of inquiries;
2. detention of a person convicted and sentenced to death or banishment, pending execution of the sentence;
3. imprisonment without trial by virtue of an administrative order of the government, issued against a political background;
4. imprisonment aimed at compelling compliance with the instruction of a judicial tribunal;
5. imprisonment imposed as a punishment for the commission of an offense.²²

Overview

Prisons are found in every country of the world. Policy-makers and administrators may therefore simply come to regard them as a given and not try actively to find alternatives to them. Yet imprisonment should not be taken for granted as the natural form of punishment. In many countries the use of imprisonment as a form of punishment is relatively recent. Further, imprisonment has been shown to be counterproductive in the rehabilitation and reintegration of those charged with minor crimes, as well as for certain vulnerable populations.

Yet, in practice, the overall use of imprisonment is rising throughout the world, while there is little evidence that its increasing use is improving public safety. There are now more than nine million prisoners worldwide and that number is growing. The reality is that the growing numbers of prisoners are leading to often severe overcrowding in prisons. This is resulting in prison conditions that breach United Nations and other standards that require that all prisoners be treated with the respect due to their inherent dignity and value as human beings.²³

²² https://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0009_0_09513.html

²³

https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf

There are several important reasons for the primary focus to be upon alternatives that reduce the number of people in prison and for imprisonment to be used only as a last resort:

1. There is **little research evidence to suggest that prison is a deterrent**. The opposite is often true: once someone has served a sentence of imprisonment, they are more likely to re-offend. The likelihood of being caught is a more effective deterrent than the prospect of a long prison sentence.
2. The **re-offending rate for people given non-custodial sentences is usually lower** than those given prison sentences. It is difficult to make direct comparisons because the profile of those sentenced to prison tends to be different from that of offenders given alternative sentences. However, research in the UK indicates that the re-offending rate for former prisoners is significantly higher than those given court orders for non-custodial sentences.
3. Prison populations grew in 78 per cent of countries between 2008 and 2011. In the last 15 years (1998-2013), the world prison rate has risen by 6% from 136 per 100,000 to the current rate of 144 (World Prison Brief). On the whole, increasing rates of imprisonment means that **prisons are increasingly outgrowing their capacity**.
4. The **range of alternatives is wide** and should be tailored to suit the individual needs of each case. Alternatives include fines, drug treatment and supervision orders, electronic monitoring with conditions and supervision, restorative justice measures involving the victim and community, specific programs to deal with the causes of crime (e.g. treatment programs), probation orders, community service, and conditional and suspended sentences.
5. Most **offenders re-enter society no better equipped to avoid a life of crime than when they were first arrested**. Most have poor education, limited employment experience and dysfunctional families. They often suffer from alcohol or drug addiction. After a prison sentence, they experience social stigma, have no money and find it hard to find a job or somewhere to live. Alternatives to prison can provide solutions to at least some of these problems. For example, they may require attendance at detoxification and dependency treatment programs. Non-custodial sentences also help offenders to keep the support networks they have in the community.
6. The **cost of imprisoning someone is generally far higher than the costs of a non-custodial sentence**. Spending on an ever-growing prison population diverts funds from essential social, economic and healthcare services.
7. People in pre-trial detention are **legally presumed innocent** until proven guilty. However, at the pre-trial stage of the criminal justice process, detainees are particularly vulnerable to violence, abuse and intimidation by interrogators. Alternatives, such as bail, reporting or curfews, help to avoid the risk of potential physical and mental harm, preserve the presumption of innocence, and give the defendant a better chance of preparing for and receiving a fair trial.

8. A **prison sentence often punishes families and children as well as the offender**. It is estimated that millions of children worldwide have a parent in prison and tens of thousands are living in prison with their parent, most often their mother. Where the family member in prison is the breadwinner, families outside often face serious financial hardship, if not destitution.²⁴

Alternatives may be more effective

Several social objectives are claimed for imprisonment. It keeps persons suspected of having committed a crime under secure control until a court determines their culpability. Equally importantly, it punishes convicted offenders by depriving them of their liberty after they have been convicted of an offence, keeps them from committing further crime while they are in prison, and, in theory, allows them to be rehabilitated during their period of imprisonment. Finally, imprisonment may be thought to be acceptable for detaining people who are not suspected or convicted of having committed a crime, but whose detention is justified for some other reason.

Given that imprisonment inevitably infringes upon at least some human rights and that it is expensive, is it nevertheless such an effective way of achieving these objectives that its use can be justified? The reality is that most of the objectives of imprisonment can be met more effectively in other ways. Alternatives may both infringe less on the human rights of persons who would otherwise be detained and may be less expensive. Measured against the standards of human rights protection and expense, the argument against imprisonment, except as a last resort, is very powerful.

Types of Alternative Programs

Prison alternatives are aimed at turning offenders into lawful citizens. Many options are more intense and carry stricter conditions than probation alone. Probation is the suspension of a prison sentence, subject to someone following conditions. Probation can be part of an alternative prison program, however.

A sentence can consist of one alternative or a combination of two or more methods.

Fines and Restitution

Payment of money is an option to prison, and this option is often seen for those convicted of financial crimes. Fines are paid to the government, while restitution is paid to victims for their losses.

Community Sentencing or Control

²⁴ <http://www.penalreform.org/priorities/alternatives-to-imprisonment/key-facts-2/>

Community sentencing or community control refers to placing an offender in some form of highly controlled custody within a community. Conditions are much more restrictive than probation. Programs are tailored for the goals and needs of each offender. Plans may include:

- Intense and frequent supervision by program officers, who have limited caseloads
- Drug treatment or mental health program participation
- Education and vocational training, including behavioral classes
- Residential placement in a non-institutional or home setting

Having served their sentences in the community, offenders stand the best chance to stay on the right side of the law.

Mental Health, Sex Offender and Drug Treatment Programs

Treatment programs for mental health, sex offender (including chemical castration in a few states) and drug abuse conditions are designed for rehabilitation. Treatment is paired with probation, inpatient treatment or community sentencing.

There are incentives for success, and penalties for program violations.

Electronic Monitoring and Home Confinement

Electronic monitoring, such as ankle bracelet transmitters, with home confinement (house arrest) is another way to enforce a sentence, save money and allow an offender to work towards being a lawful and productive citizen. Other electronic devices include car ignition locks for DUI/DWI offenses. Conditions include:

- Strict terms on leaving home, including time, purpose and destination
- Frequent check-ins, through a monitoring device and/or the phone
- Daily contact with a probation officers
- Frequent and random drug testing

Violating sentence conditions can send someone to jail or prison.

Other Alternative Sentences

Other alternative sentences can include methods such as boot camps, community service and public shaming. In boot camp, offenders complete a strict program of exercise, education and counseling, and can qualify for probation. Paid and unpaid community service work can be a punishment itself or combined with other measures. Shaming may be used for minor offenses, and involves publicizing an offense on a billboard or making someone wear a sign or placard.²⁵

²⁵ <http://criminal.lawyers.com/criminal-law-basics/crime-punishment-and-prison-alternatives.html>

Measures taken by the UN

Given that imprisonment is a restriction, if not an infringement, of fundamental human rights of the prisoner, it is not surprising that that major United Nations treaties limit carefully the circumstances under which imprisonment is justified. The International Covenant on Civil and Political Rights (ICCPR) is perhaps the most important of these multilateral treaties. Other multilateral instruments, such as the United Nations Convention on the Rights of the Child, contain stricter limitations applicable to specific categories of potential prisoners.

Since the mid-1950s, the United Nations has developed and promoted standards and norms to encourage the development of criminal justice systems that meet fundamental human rights standards. These standards and norms represent a collective vision of how to structure a criminal justice system. Although non-binding, they have helped to significantly promote more effective and criminal justice systems and action. Nations use these standards and norms to provide the framework for and to foster indepth assessments that may lead to needed reforms. They have also helped countries to develop sub-regional and regional strategies. Globally and internationally, they delineate “best practices” and assist countries to adapt them to their specific needs.

The earliest of these, the United Nations Standard Minimum Rules for the Treatment of Prisoners, deals only with imprisonment. While imprisonment has remained an important aspect of the standards and norms, the range of instruments has increased to cover all aspects of the criminal justice system and crime prevention. Today, the standards and norms cover a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victims’ protection and violence against women.

Of particular importance, as far as alternatives to imprisonment are concerned, are the United Nations Standard Minimum Rules for NonCustodial Measures (the Tokyo Rules), which were adopted in 1986. These Rules have as one of their fundamental aims the reduction of the use of imprisonment. The specific proposals that the Tokyo Rules make for alternative, non-custodial measures form the basis for a reductionist criminal justice policy. The development of non-custodial measures goes together with a call on States to “rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender”. At the same time the fundamental aims of the Rules recognize that States have considerable flexibility in deciding how to implement the Rules. They emphasize that States should “endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims and the concern of society for public safety and crime prevention”.

The Tokyo Rules are not the only United Nations instruments that are directly applicable to alternatives to imprisonment. Others include:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

In specialist areas, considerable attention has been given to alternatives to imprisonment for:

- Juveniles: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);
- Drug users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations;
- The mentally ill: the United Nations Principles for the Protection of Persons with Mental Illness; and
- Women: the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders.

In addition, the United Nations has published practical guides. The Criminal Justice Assessment Toolkit, for example, contains a tool on alternatives called Alternatives to Incarceration as well as the cross-cutting issues tool, Juvenile Justice. There are also handbooks, such as the Handbook on Victims, that deal in passing with the issue of alternatives to imprisonment.²⁶

Aspects to think about

1. Are there any alternative ways to imprisonment in your country?
2. Should taxpayers carry the burden of running the prisons?
3. Will people commit more crimes if the threat of imprisonment disappears?
4. What kind of crimes should be excluded from Criminal Code and incorporated into Administrative Code?

Further reading

1. <http://www.un.org/documents/ga/res/45/a45r110.htm>
2. <http://criminal.lawyers.com/criminal-law-basics/crime-punishment-and-prison-alternatives.html>
3. https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf

²⁶

https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf

4. https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf
5. <http://www.penalreform.org/priorities/alternatives-to-imprisonment/>
6. <http://www.justice.govt.nz/publications/publications-archived/1998/the-use-of-imprisonment-in-new-zealand/8.-alternatives-to-imprisonment>

Topic C: Juvenile Crime Prevention

Topic introduction

Juvenile delinquency, also known as juvenile offending, or youth crime, is participation in illegal behaviour by minors (juveniles, individuals younger than the statutory age of majority). Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers, and courts. A juvenile delinquent is a person who is typically under the age of 18 and commits an act that otherwise would have been charged as a crime if they were an adult. Depending on the type and severity of the offense committed, it is possible for persons under 18 to be charged and tried as adults.²⁷

Overview

The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.²⁸

Typically, juvenile delinquency follows a trajectory similar to that of normal adolescent development. In other words, children and youth tend to follow a path toward delinquent and criminal behavior rather than engaging randomly.

Research has shown that there are two types of delinquents,

- those in whom the onset of severe antisocial behavior begins in early childhood, and
- those in whom this onset coincides with entry into adolescence.

In either case, these developmental paths give families, communities, and systems the opportunity to intervene and prevent the onset of antisocial behaviors and justice system involvement.²⁹

Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.³⁰

²⁷ http://www.bethany.ro/youth/Aspect_about_Juvenile_delinquency.pdf

²⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

²⁹ <http://youth.gov/youth-topics/juvenile-justice/prevention-and-early-intervention#sthash.cONYV78h.dpuf>

³⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

The restructuring of the labour market, the extension of the maturity gap (the period of dependence of young adults on the family) and, arguably, the more limited opportunities to become an independent adult are all changes influencing relationships with family and friends, educational opportunities and choices, labour market participation, leisure activities and lifestyles. It is not only developed countries that are facing this situation; in developing countries as well there are new pressures on young people undergoing the transition from childhood to independence. Rapid population growth, the unavailability of housing and support services, poverty, unemployment and underemployment among youth, the decline in the authority of local communities, overcrowding in poor urban areas, the disintegration of the family, and ineffective educational systems are some of the pressures young people must deal with.

Youth nowadays, regardless of gender, social origin or country of residence, are subject to individual risks but are also being presented with new individual opportunities—some beneficial and some potentially harmful. Quite often, advantage is being taken of illegal opportunities as young people commit various offences, become addicted to drugs, and use violence against their peers.

Statistical data indicate that in virtually all parts of the world, with the exception of the United States, rates of youth crime rose in the 1990s. In Western Europe, one of the few regions for which data are available, arrests of juvenile delinquents and under-age offenders increased by an average of around 50 per cent between the mid- 1980s and the late 1990s. The countries in transition have also witnessed a dramatic rise in delinquency rates; since 1995, juvenile crime levels in many countries in Eastern Europe and the Commonwealth of Independent States have increased by more than 30 per cent. Many of the criminal offences are related to drug abuse and excessive alcohol use.³¹

Young people who are at risk of becoming delinquent often live in difficult circumstances. Children who for various reasons—including parental alcoholism, poverty, breakdown of the family, overcrowding, abusive conditions in the home, the growing HIV/AIDS scourge, or the death of parents during armed conflicts—are orphans or unaccompanied and are without the means of subsistence, housing and other basic necessities are at greatest risk of falling into juvenile delinquency.

The most effective way to prevent juvenile delinquency has indisputably been to assist children and their families early on. Numerous state programs attempt early intervention, and federal funding for community initiatives has allowed independent groups to tackle the problem in new ways. The most effective programs share the following key components:

³¹ <http://www.un.org/esa/socdev/unyin/documents/ch07.pdf>

Education

Model programs have assisted families and children by providing them with information. Some programs inform parents on how to raise healthy children; some teach children about the effects of drugs, gangs, sex, and weapons; and others aim to express to youth the innate worth they and all others have. All of these programs provide youths with the awareness that their actions have consequences. This is particularly important in an era where youth are barraged with sexual and violent images. Educational programs have the underlying intent of encouraging hope and opening up opportunities for young people.

Recreation

One of the immediate benefits of recreational activities is that they fill unsupervised after-school hours. The Department of Education has reported that youths are most likely to commit crimes between 2 p.m. and 8 p.m., with crime rates peaking at 3 p.m. Recreation programs allow youths to connect with other adults and children in the community. Such positive friendships may assist children in later years. Youth programs are designed to fit the personalities and skills of different children and may include sports, dancing, music, rock climbing, drama, karate, bowling, art, and other activities.

Community Involvement

Girl scouts, boy scouts, church youth groups, and volunteer groups all involve youth within a community. Involvement in community groups provide youth with an opportunity to interact in a safe social environment.

Prenatal and Infancy Home Visitation by Nurses

Nurses involved in the "Prenatal and Infancy Home Visitation by Nurses" program pay visits to low income, single mothers between their third trimester and the second year of their child's life. During these visits, nurses focus on the health of the mother and child, the support relationships in the mother's life, and the enrollment of the mother and child in Health and Human Services programs. A 15-year follow-up study found that mothers and children involved in the program had had a 79 percent lower child abuse rate, a 56 percent lower child runaway rate, and a 56 percent lower child arrest rate. Maternal behavior problems also dropped significantly in the studied group.

Bullying Prevention Program

The Bullying Prevention Program is put into place in elementary and junior high school settings. An anonymous student questionnaire fills teachers and administrators in as to who is doing the bullying, which kids are most frequently victimized, and where bullying occurs on campus. Once teachers and

administrators have learned about how and where bullying occurs at their school, they set up class rules and facilitate discussions that address the problem. Individual bullies and victims receive independent counseling. The program succeeds in creating a safer, less hostile environment for students at minimal cost. up on their education, provide them with job training, give them the experience of living in a safe, stable environment, and provide them with assistance to break harmful habits.

Ending Repeat Offenses

Once out of detention, youths face the challenge of readjusting to "free" life. For many, youth detainment places a halt in a pattern of destructive behavior. Once out of prison, the youth must create a pattern of life separate from criminal activity. To assist in this process, courts have attempted to implement helpful social services for former inmates and their families. Some of these are job placement, school follow-up, extended counseling, and extended drug rehab.³²

Measures taken by the UN

The 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (United Nations, 1985) and the 1990 Guidelines for the Prevention of Juvenile Delinquency (also referred to as "The Riyadh Guidelines") (United Nations, 1990) established basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In 1989, the focus on safeguarding the human rights of children and young people was strengthened by the Convention on the Rights of the Child (CRC) (United Nations, 1989), which entered into force in 1990.

In 1995, the United Nations adopted the World Programme of Action for Youth (WPAY) (United Nations, 1995), providing a policy framework and practical guidelines for national action and international support to improve the situation of young people. Through the WPAY, the United Nations puts forth policy actions specifically tailored to young people between 15 and 24 years of age. The World Programme of Action for Youth aims at fostering conditions and mechanisms to promote improved well-being and livelihoods among young people. As such, it requires that Governments take effective action against violations of all human rights and fundamental freedoms and promote non-discrimination, tolerance and respect for diversity as well as religious and ethical values. The WPAY focuses on 15 priority areas, among which is juvenile delinquency. Under that priority area, it

³² <http://www.lawyershop.com/practice-areas/criminal-law/juvenile-law/prevention>

details proposals for action towards preventing juvenile delinquency and rehabilitating young people who have engaged in criminal activity.

In 1997, the United Nations adopted resolution 1997/30 on the administration of juvenile justice (United Nations Economic and Social Council, 1997), which requests the Secretary-General to consider the creation of a “coordination panel on technical advice and assistance in juvenile justice”. Annexed to the resolution are the “Guidelines for Action on Children in the Criminal Justice System,” which lay out measures required to establish an effective system of juvenile justice administration. The Guidelines refer to “the goal of ensuring that: (a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system”. The United Nations Office on Drugs and Crime (UNODC) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) work to assist Member States in their struggle to fight illicit drugs, crime and terrorism and to pursue peace, development and social stability. In addition, the United Nations Interagency Panel on Juvenile Justice (IPJJ), works to facilitate and enhance the coordination of technical assistance in juvenile justice reform.³³

Aspects to think about

1. How should parents and family members protect their children’s world perception from threatening sources such as mass media and peer groups?
2. Do you think it’s necessary to increase rigidity of censorship in mass media?
3. How should the government take care of children from troubled families?
4. Do you consider the out-of-class activities (dance, music, art, etc.) as a way to prevent children from unacceptable behavior?
5. How should the government prevent bullying at school?

Further reading

1. https://www.unodc.org/pdf/criminal_justice/UN_Guidelines_for_the_Prevention_of_Juvenile_Delinquency_Riyadh_Guidelines.pdf
2. <http://www.oijj.org/en>
3. <http://www.un.org/esa/socdev/unyin/documents/ch07.pdf>

³³ <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>

4. <http://www.psychiatrictimes.com/articles/youth-aggression-economic-impact-causes-prevention-and-treatment>
5. <http://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>
6. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>
7. <https://www.crin.org/en/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf>
8. http://www.unicri.it/topics/juvenile_justice/