

Death Penalty in Afghanistan



7th World congress against death penalty

Retentionist versus abolitionist

- Afghanistan remain a retentionist of dead penalty and :
- Practiced dead penalty in 2018 on 1 person, on 4 persons in 2017, 5 persons, 2017 and sentenced over
- has abolished dead penalty for ordinary crimes and retained dead penalty only for most serious crimes,
- has initiated a process to commute dead sentences to long term sentences
- Dead penalty cannot be applied to children, to persons aged bellow 20,
- Historically, dead penalty has not been applied to women and pregnant women,
- No provision to ban dead sentence on elderly people.

Shocking images from Afghanistan...



International laws and standards applicable to Afghanistan

- Afghanistan is party to ICCPR, but it is not signatory to its OP2
- “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

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- 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
- 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
- 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” (ICCPR, article 6)

Most Serious Crimes,

- International law,
- Development of safeguards, 1984
- Most serious crimes involve intentional crimes with lethal and extreme consequences
- It does not apply to the ordinary crimes such as:

UNCAT

- Afghanistan is party to UNCAT and OPCAT,
- For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (UNCAT, article 1, 1984)

Most serious crimes in International law

- "The Commission on Human Rights' 2005 resolution on the death penalty reinforced this interpretation, calling on States to refrain from extending capital offences beyond "intentional crimes with lethal or extremely grave consequences". In so doing it noted that this would not include non-violent activity such as expressions of conscience or religion, sexual conduct between consenting adults or financial crimes.
- This issue was again considered in the 2007 report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. In his report the Special Rapporteur stated that, following an analysis of the interpretations of international law and practice by the relevant UN bodies, the term 'most serious crime' can now only be apply to crimes where there is an intention to kill which results in loss of life." (APF handbook on Death Penalty, 2017)

Crimes that cannot be categorized under most Serious crimes.

- Abduction not resulting in death, adultery, apostasy, blasphemy, bribery, corruption, acts incompatible with chastity, corruption, drug possession, drug trafficking, drug-related offences, economic offences, expressing oneself, holding an opinion, homosexual acts, matters of sexual orientation, manifesting one's religion or beliefs, prostitution, organization of prostitution, participation in protests, premarital sex, singing songs inciting men to go to war, sodomy, speculation, "acts of treason, espionage and other vague terms. (APF, Handbook, 2017)

Afghanistan Constitution

Article 23 :

“Life is the gift of God as well as the natural right of human beings. No one shall be deprived of this except by legal provision.”

Penal Code

- Restricted the application of death penalty to most serious crimes:
- 5 categories of crimes, 17 counts of crimes
- To intentional crimes with lethal and extreme consequences

Death Penalty in Penal Code

- Article 170 of the new penal code has restricted death penalty to the following serious crimes:
 - International crimes ,e.g. Genocide, crimes against humanity, war crimes, aggression against the state, terror and explosion, abductions, Hostage taking, Highway Robbery, which would result to dead of person and or people.
 - Intentional or First degree murder
 - Crimes that territory of Afghanistan is placed under control of foreign state or the independence, sovereignty and territorial integrity of the country is damaged.
 - Gang rape against women
 - Gang rape against a man which results to dead of the victim.

Juvenile and death penalty

- International law prohibits Death Penalty for the age of 18 and below.
- Article 6 paragraph 5 of the ICCPR prohibits death penalty on a person below eighteen years of age.
- Safeguard 6 of the 'Safeguards guaranteeing protection of the right of those facing the death penalty'
- Article 37 of the CRC also prohibits Death Penalty by expressing:
A, No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (CRC,

- “Executing juveniles is also barred by regional treaties, including the African Charter on the Rights and Welfare of the Child (Art. 5(3)), and the American Convention on Human Rights.”
- “ The Inter-American Commission on Human Rights declared that the principle that the death penalty should not apply to juveniles had been established as a customary international rule.”(APF, Handbook,2017)

Penal Code on Juvenile

- Article 114:
 - Any person which has not completed 20 years of age shall not be sentenced to death penalty.
- Article 99:
 - A child shall not be sentenced to death penalty, imprisonment or financial fines.

These two articles have a very important implications and follow the international law provision, both the ICCPR and CRC.

Commuting death penalty to other sentences

- 670 sentenced to death penalty,
- All cases are under review to be commuted to long term sentences,
- A committee is assigned and working on the process,
- Some conditions are set,
- Possible under article 352 of Criminal Procedural Code
- Statutes of limitation 25 years, article 76.

Challenges and Lessons learned

- Afghanistan is moving toward stopping practice of death penalty,
- Penal code is an important forward steps to conform with the ICCPR
- Mandatory death penalty is still a violation of ICCPR
- Women and elderly should be excluded from the imposition of death penalty,
- Often public opinion is cited as a problem for abolishing or stopping practicing death penalty. In my view public opinion is important but could be changed throughout the time.
- Violence must be stopped by other means and not resorting to death penalty another form of violence.
- Academics, CSOs and and legal experts must do more awareness about death penalties and its implications.
- Justice must be ensured and people have access to justice through fair trails and due process.