

EXAMINING THE DEATH PENALTY IN IRAQ: LEGAL FRAMEWORK VS. HUMAN RIGHTS PARAMETERS

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Executive Summary

The World Day Against the Death Penalty, which is observed annually on October 10th, unites the international abolitionist cause and encourages political leaders, public opinion, and other interested parties to advocate for the worldwide abolition of capital punishment.

This paper examines the overall validity of the death penalty as a mechanism of applying justice and its conflicting issues with human rights values. It also analyzes the role of death penalty in Iraq, as a country where its application reflects issues in the judicial system given the complex socio-political and ethnic landscape of Iraq.

Key Background

Iraq, the birthplace of the first legal execution during the Babylonian era,¹ has an increasingly high record of the application of capital punishment. Capital punishment, also known as the death penalty, remains a historical constant practiced in many countries across the globe regardless of the difference of historical context in its use, form and purpose.² Cases of multiple executions in one single day highlight the extreme Human Rights situation in Iraq where the stipulation of this ultimate punishment by Iraqi authorities has become a normal practice.

Due to the death penalty's irreversible nature of justice and its conflict with the unalienable right to life, the death sentence is still a hotly contested legal topic on the global legal scene. Legal experts and Human Rights Activists along with grassroots civil society organizations, such as the National Coalition to Abolish the Death Penalty,³ battle against governments who still carry out the death penalty.

The death penalty stands out as a morally unjustified practice failing to act as a deterrent to crime and representing an unacceptable denial of human dignity and integrity.⁴ While the

majority of arguments center around the abolition of the death penalty in its entirety, the methodology with which the death penalty is carried out is also disputed. With technological advancements, different methods of execution have evolved. Electrocutation, regarded as the most controversial method of execution, is supposed to cause unconsciousness and subsequent death in seconds. However, several cases of burns and facial bleeding are reported and sometimes when performed incorrectly, the process burns the offender alive.⁵

Fast forward to the 1970s, The Government of Iraq (GOI) introduced new legislation to link the death penalty to a broad spectrum of criminal and political offences. This happened before Saddam Hussein became president of the Republic of Iraq. As Hussein ascended to presidency, several wars and regional conflicts broke out which resulted in the introduction of the death penalty in the Iraqi armed forces. Under Saddam Hussein's government, hundreds and thousands were subjected to the horror of death penalty after sudden disappearances. No accurate approximation of the number of casualties can be made since the Baath regime kept its records confidential.⁶ After the US-led invasion of Iraq in 2003, the Coalition Provisional Authority (CPA) took control and suspended the death penalty. However, it was re-instated by the GOI in 2004 as negotiations for the drafting of the Iraqi Constitution were ongoing. Hassan al-Shemmari, Iraq's then Minister of justice stated that 690 executions were carried out from 2005 to 2007, ranking Iraq in third place for most recorded death penalty executions in the world.⁷

In this paper, the established worldwide standards that contradict with the use of death penalty is discussed, in addition to how international organizations and other countries perceive and evaluate the passing of the death penalty law by Iraq. The framework for the judicial proceedings and the legal weaknesses/gaps found in Iraqi legal system, and the justification of using the anti-terrorism law by the GOI for the subject matter, are also analyzed.

- In earlier days of executions, the authorities aimed at making a brutal example of the outlaw, to instill the fear of rebellion and defiance, as well as to end their lives. Nowadays deterring crime and enforcing justice is the justification for executions.
- The advancement of the death penalty methods called for more humane and painless executions but whether there is such a thing as humane execution remains speculative.
- Because of the unavoidable nature of human errors, it is not possible to fully ensure a smooth end for the executed; the mental stress and the fear of death for the person to be executed is non-minimizable.

Emergence of Death Penalty

Ancient History⁸

18th Century B.C.

The code of Hammurabi-earliest law of death penalty.

The death penalty law in the cuneiform tablets called the Hittite Code.

14th Century B.C

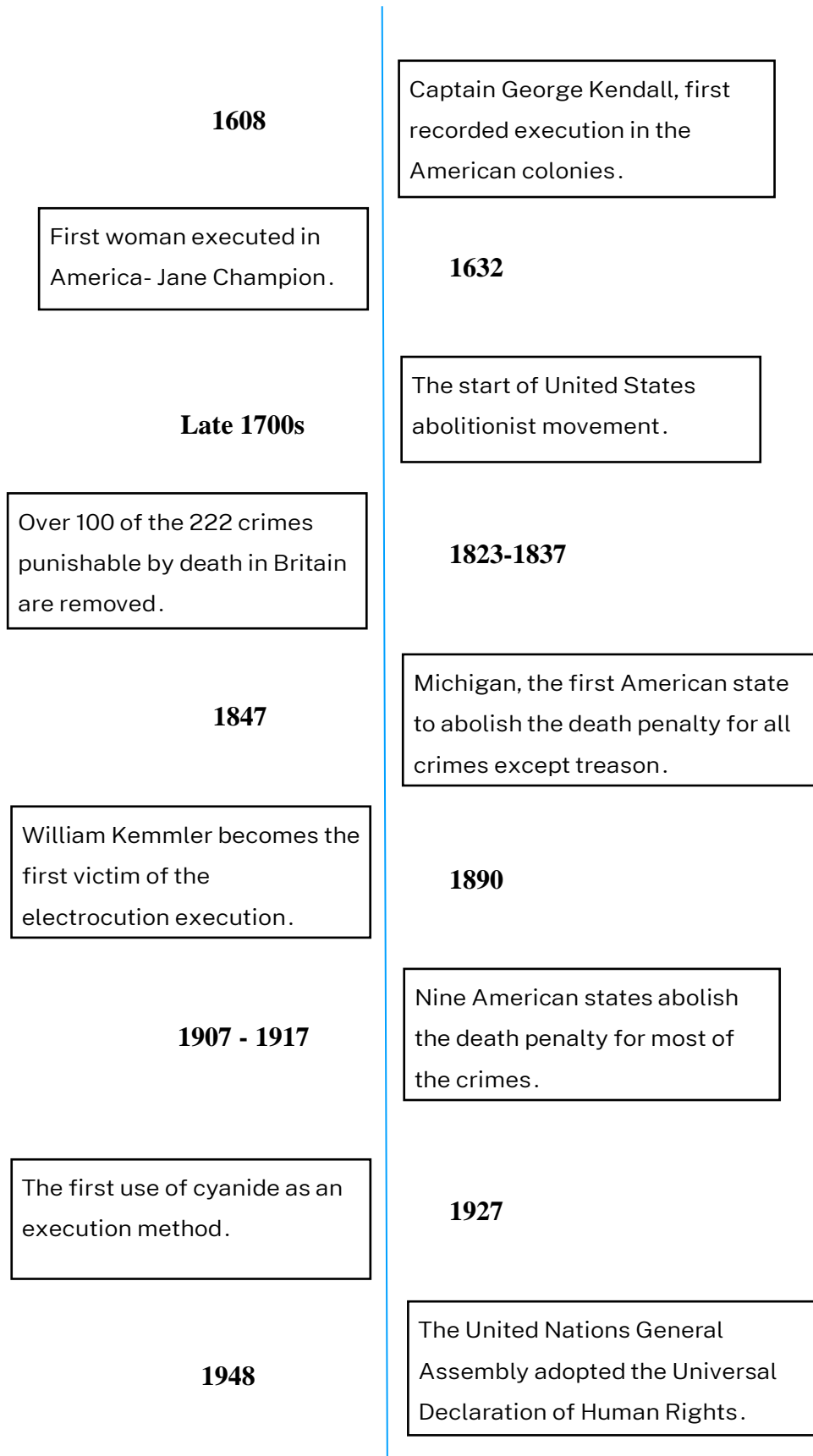
The Roman Law of the Twelve Tables containing the death penalty.

5th Century B.C.

William of Normandy ends hanging executions except in cases of murder.

11th Century A.D.

Modern Era⁹



De facto abolition emerges in western part of Europe.

1950 - 1980

1977

Oklahoma becomes the first state to adopt lethal injection execution.

U.N. Human Rights Commission Resolution Supporting Worldwide Moratorium on capital

1999

Death Penalty in the Modern World



Figure 1: Regional insight on capital punishment and executions Source: Amnesty International

The death penalty has always been a controversial issue in the judicial system of the modern world. Yet, corporal punishments that deal with inflicting physical pain are nearly abandoned.

The progression of the most industrialized countries led to the substitution of death penalty by life imprisonment for capital crimes, with the USA being an exception since some of the states and the federal government retained the right to exercise death penalty.¹⁰ Every year, a global report is published by the Amnesty International that summarizes the world-wide use of the death penalty. The data collection process includes official figures, information from representatives and families of the convicted, and media outlets and other societal organizations. According to the 2023 report published by Amnesty International, the highest number of executions (1153 executions) in the last decade is recorded however in fewer countries (16 countries). The increase in death penalty in 2023 mainly ascribes to the high projection of drug trafficking executions by Iran.¹¹ Different methods are employed for death penalty in retentionist countries, depending on the way each country addresses the issue of pain and torture in their practices. Commonly, those countries under heavy pressure from foreign or domestic political influence apply more gruesome execution means.

Beheading	Saudi Arabia						
Hanging	Bangladesh	Egypt	Iran	Iraq	Kuwait	Singapore	Syria
Lethal injection	China	USA	Viet Nam				
Shooting	Afghanistan	China	North Korea	Palestine (State of)	Somalia	Yemen	

Figure 2: Execution methods in 2023 **Source:**Amnesty International

The largest mass execution of this year, 2024, as reported by Agence France-Presse (AFP) on September 25, was the hanging of 21 inmates in Nasiriyah Province in Iraq on terrorism charges.¹² This mass execution triggered widespread backlash among civil society activists and foreign diplomatic representations and missions, especially the delegation of the

European Union (EU) to Iraq which has a special focus on Human Rights issues throughout Iraq. The EU delegation issued a statement following the mass execution expressing its concern for the recent expansion in the application of the death penalty in Iraq, reiterating the EU 's stance in opposing the capital punishment for all crimes.¹³ The EU devotes itself to preserving Human Rights through its global duel against capital punishment as part of the European Convention on Human Rights.¹⁴ The methods of applying pressure on governments come in various forms, such as tying trade policy compliance with issues related to compliance with human rights. This trade policy prevents the trading of tools used for execution and torture and helps organizations in the retentionist countries to raise awareness and monitor the conditions.¹⁵ In Iraq, despite the various voices of concern over the application of the death penalty, over 8 000 prisoners are reportedly on the death row, according to the EU delegation to Iraq.

International Standards on Death Penalty

Various international instruments and legal texts on Human Rights, including the Universal Declaration of Human Rights, recognize all forms of degrading punishment practiced in the modern world. The death penalty is considered the cruelest of all forms of punishment, given its severity in violating the inalienable right to life.¹⁶ Article Six of the International Covenant on Civil and Political Rights states that: "It is the human being's basic inherited right to live and experience life and must be lawfully protected free from any arbitrary denial."¹⁷ In countries that retained the death penalty, capital punishment must be ruled by a qualified court for earnest of crimes in accordance with the enforced law uncontradictory of the International Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁸ This means the death penalty is not totally ruled out by international laws as it is allowed by the International Covenant on Civil and Political Rights, reminiscent to the Post-

Second World War era and in the Nuremberg trials that witnessed the execution of 12 defendants of the defeated Nazi Party by the Allied Powers for the crimes and invasions committed during the war.¹⁹ In the year 2004, the United Nations Commission on Human Rights released a report explicitly stating that the death penalty is occasionally administered following unfair trials that do not adhere to international standards of justice, particularly when the perpetrator is a member of a national, religious, or ethnic minority.²⁰ Additionally, there are instances in which women are condemned pursuant to gender discriminatory legislations.

General Overview of Death Penalty in Iraq

Upon the formation of the interim government of Iraq in 2004, many of the foreign ministers of the EU urged the interim GOI through a draft statement disclosed in a press conference by Dutch Foreign Minister at that time Bernard Bot, to not restore the death sentence. This conference took place in the presence of former Iraqi Foreign Minister Hoshiyar Zebari, an oppositionist to death penalty himself. Zebari urged compliance with the EU request stating that Iraq was facing imminent security dangers and that Iraq needed EU's support in making arrangement of the upcoming elections.²¹ Despite the futile efforts of the EU to stop the GOI from reinstating the death penalty, EU still hoped for the abolishment of the death penalty by GOI after the execution of three nationals in 2005.²² The EU published a statement following the executions stating its recognition of GOI's sovereign right of self-judicial sentencing. However, it also highlighted the irreversible nature of the death penalty sentence and its consistent failure to fully deter crimes.²³ Additionally, the Kurdish leader and former President of Iraq Jalal Talabani announced his objection to death penalty and refused to pass it on the accused war criminal and dictator Saddam Hussein²⁴, and stated in 2005 that "I am

among the lawyers who signed an international petition against the death penalty in the world and it would be a problem for me if Iraqi courts issued death sentences.”²⁵

After the invasion of Iraq by the Islamic State in Iraq and Syria (ISIS), a large number of incidents emerged that led to the overuse of the death penalty law and mass executions of ISIS members which attracted international attention. A large degree of mass executions was due to the massacre of the Speicher Camp in Tikrit. In that terrorist act, ISIS killed more than one thousand Iraqi cadets. subsequently the Baghdad court in 2016 convicted 40 ISIS prisoners to death under anti-terrorism law for the mass murders.²⁶

Iraqi Minister of justice at the time Haidar al-Zamili confirmed on 21st August 2016, the execution of 36 of the convicted at the Nasiriyah prison in his presence.²⁷ Both the Geneva International Center for Justice and the United Nations expressed their fears that the executions were an act of retaliation rather than an act of justice. Their concerns were due to the fact that a lot of politicians (or political figures) and militias were involved in this case and the executed individuals were convicted based on confession obtained under torture; rendering an unfair trial.²⁸ Another ISIS-related incident is the bombing of Baghdad in 2016, which was the deadliest explosion since 2003, killing at least 200 Iraqi civilians.²⁹ Five prisoners were immediately executed as confirmed by the Ministry of Justice. In response to a statement by Amnesty International, the Ministry later rejected any discussion of human rights and refused any external or international intervention with the decision.³⁰



Figure 3: Iraqi forces escorting one of the 36 death row inmates **Source:** The New York Times

Discrepancies in Iraq’s Judicial System Regarding Death Penalty

In the years 2004-2006, the Iraqi government passed four laws regarding the death penalty, including: (1) Decree number three of 2004, (2) 2005’s enactment of the Supreme Iraqi Criminal Tribunal (SICT) of Law 10 and (3) Iraq and (4) Kurdistan law of anti-terrorism in 2005 and 2006 respectively.³¹ The Decree of 2004 calls for the reinstatement of the death penalty for the crimes mentioned in the Iraqi Penal Code (IPC), which include attack on the public and internal security and drug trafficking for the purpose of funding serious criminal activities to topple the government. The turning of “abduction crimes that does not lead to death” and “crimes committed against children under 18 years old” into capital offenses resulting in death penalty, distinguishes the Decree of 2004 from the IPC that applies life imprisonment for such crimes.³² In 2001, the UN publicly stated that capital offences exclude abduction not

leading to death under an article of the International Covenant on Civil and Political Rights (ICCPR), stating that the Decree of 2004 violates the ICCPR article.³³

The tenth resolution of the Law of the SICT was established to practice full jurisdiction over Iraqi and non-Iraqi residents of Iraq for the crimes introduced in the IPC including genocide and war crimes committed during the Ba'athists regime.³⁴ According to Article 24 section five, the crimes have no counterpart in any Iraqi law therefore the penalty for such crimes must be defined by the trial chambers while taking the seriousness of the crime, situation of the convicted and the international criminal law into consideration.³⁵ Article 27 section two clearly diminishes the president's authority through declaring the president's incapacity of granting a pardon or commuting the death penalty issued by this court which is to be enforced within 30 days of finalizing the sentence.³⁶ The UN and other international Human Rights organizations decided not to contribute any financial and technical help to the SICT due to its practice of the death penalty.³⁷

There are six articles in the Iraqi Anti-Terrorism law of 2005. Articles one and two provide a definition of terrorism and the crimes that are under the umbrella of terrorism.³⁸ These acts of crime include bombing of civilians, forming terrorist groups, vandalism and any assaults on others that lead to life endangerment. Any action that threatens the national and social security, coups and inciting armed rebellion are labeled as terrorist crimes against state security in Article three.³⁹ The offenders and partakers of these crimes are punishable by death according to Article four, except when an accused individual offers voluntary information that exposes terrorism plot (Article five). Finally, the seizure of any funds and equipment used in preparation for a terrorist act by the Iraqi government as per Article six of the law.⁴⁰

Based on Amnesty International's findings, the convictions under Iraq's Anti-Terrorism law are usually outcomes of unfair trials and torture-based confessions rushed to verdicts, placing the credibility and transparency of the Iraqi courts into question.⁴¹ Article 194 of the

IPC charges any person with life imprisonment that joins a terrorist group, without involvement in the group's activities,⁴² seemingly contradicting the SICT law in which this act is punishable with the death penalty. In July 2006, The Anti-Terrorism law was adopted by the Kurdistan National Assembly, effective in Kurdistan Regional Government's administrated provinces, with a high degree of similarity to the Iraqi Anti-Terrorism law in terms of defining and describing terrorism.⁴³ Similarly, the Kurdistan Anti-Terrorism law does not clearly contemplate the criteria for most serious crimes when the orders of such crimes are passed.

Death Penalty :Pros, Cons, and Alternatives

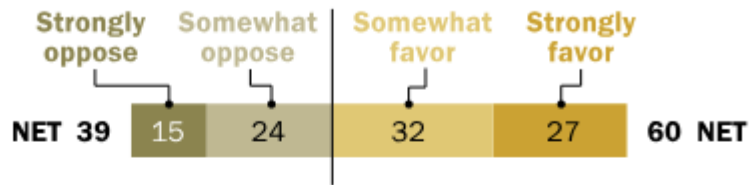
Death penalty is a polarizing issue, through having multiple arguments in favor and against it from different perspectives. On the 52nd session of the Human Rights Council in Geneva, the chief of UN Human Rights Volker Türk stated that a lot of evidence show the inability of the death penalty to deter crimes as the murder rates were unaffected in most of the retentionist countries. Furthermore, Türk emphasized that the death penalty clearly discriminates racial, ethnic and LGBTIQ+ communities.⁴⁴ Additionally, Richard Branson the founder of the Virgin Group, advocates for the total abolishment of the death penalty in the world. Branson argues that the capital punishment is an oppression tool that is intertwined with racism and colonialism, often victimizing the most vulnerable.⁴⁵ Similarly, the Equal Justice Initiative (EJI), which provides legal assistance for people facing the death penalty, states that the USA's death penalty system favors rich and guilty over poor and innocent in treatment.⁴⁶

In contradiction, several arguments exist that support the prevention of future crimes by the death penalty. For example, in 1966 Kenneth McDuff was sentenced to death for the killing of three teenagers however, the death penalty moratorium by the US Supreme Court lead to the release of McDuff on parole in 1989. Later, McDuff was arrested in 1992 for killing and raping at least six more victims. According to advocates, these murders would have been prevented

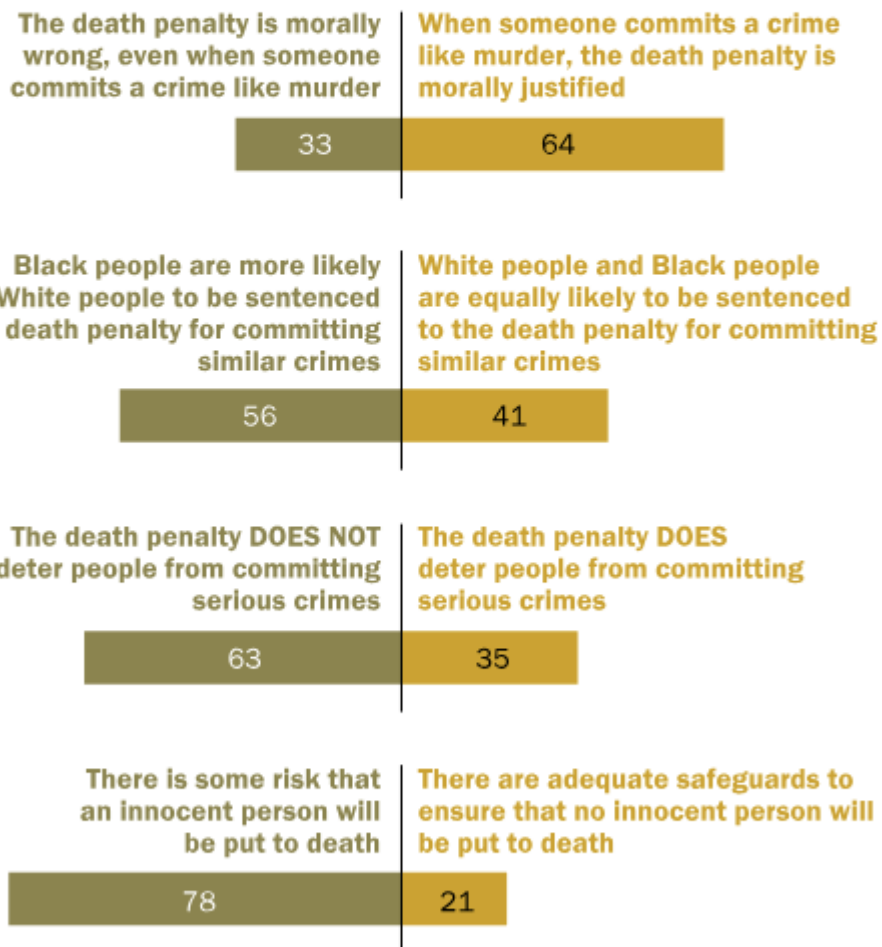
if McDuff were to be executed.⁴⁷ In an article by Britannica Encyclopedia, capital punishment brings justice and closure to the families of the victim as many families believe that death penalty is needed for their lives to move on.⁴⁸ Moreover, a survey was conducted by Pew Research Center among 5109 American adults in April 2021, to see the percentage of Americans favoring the death penalty and the findings were as following:

Majority of Americans favor death penalty, but nearly eight-in-ten see 'some risk' of executing the innocent

% who ___ the death penalty for persons convicted of murder



% who say ...



Note: No answer responses not shown.
Source: Survey of U.S. adults conducted April 5-11, 2021.

PEW RESEARCH CENTER

Figure 4: The results of the death penalty survey in the USA Source: Pew Research Center

The survey findings show that despite the gradual disappearance of the death penalty in the USA, the death sentence gained supporters among Americans, while there are some doubts and unfairness in its administration.⁴⁹ Amid the heating debate over eliminating capital

punishment, experts and policymakers seeked and considered alternatives. Modern arguments on alternatives to the death penalty should answer the question of how a punishment apart from death can express retribution according to experts.⁵⁰ Moreover, the alternatives should cohere with Human Rights standards such as Articles seven and ten of the International Covenant on Civil and Political Rights that call for rehabilitation and acceptable prison conditions.⁵¹ Some alternatives have been put into practice by the abolitionist countries and several US states which are: (1) preventive detention, long (2) determinate or (3) indeterminate sentences and (4) life without a parole (LWOP). Countries like Brazil, Croatia, Portugal do not impose life sentence, however the prison sentences can be longer than the terms served in other countries for people sentenced to life imprisonment. These countries refuse the LWOP sentence believing that prisoners can have mental and behavioral improvements in prisons.⁵² In indeterminate sentences, after imposing a certain period of sentence on the offender, the offender may be released or kept behind bars if they are still a threat, and the judge will make the decision. In the UK, many of such offenders will still be behind bars beyond serving their sentenced terms.

Once a culprit is sentenced to preventive detention in Norway, they serve a maximum sentence of 21 years. Afterwards, an analytical review is carried out every five years to assess whether the individual poses a danger to society. If the prisoner fails to pass this review, they might be imprisoned for life.⁵³ Eleven US states abolished the death penalty in 2007 and adopted LWOP as an alternative.⁵⁴ According to the incarcerated Brandon J. Baker who writes to make amends, the people who advocate for ending the death penalty often overlook the LWOP sentence, which Baker thinks is a death penalty of another sort.⁵⁵

Conclusion

The global shift toward the abolition of the death penalty is gaining momentum, with an increasing number of nations leaning towards abolishing it. In contrast, those that retain the practice have recently recorded a higher-than-average number of death sentences. Civil and Human Rights organizations are calling for a moratorium followed by total abolition, advocating for fair retrials of inmates in retentionist countries like Iraq, where political and legislative measures compromise the legal proceedings and the deliverance of justice.

Iraq, being a country that is slowly coming out of an era of multiple wars, with the most recent one being against the terrorist group ISIS, and with its prisons still filled with convicted terrorists, is grappling with the choices it is faced with when it comes to the death sentence. On the one hand, capital punishment is seen as a necessary tool for political parties in power and a cultural show of strength for the judicial system. On the other hand, the need for Iraq to comply with the international rules and regulations that allow for it to fit back into the international community. For Iraq to be able to get financial support, educational courses and training for the staff of the justice system and the security and law-enforcement apparatus, it is wiser for the country to adhere to and comply with the new international norms in the field of applying and administering justice.

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