



Off the Cuff

By guest columnist Paul Whittaker*

International treaties and conventions uphold the universality of human rights and transcend the sovereignty of individual states. They also uphold the right to life and discourage the use of the death penalty because it is cruel and inhumane. Yet despite a global trend toward abolition of the death penalty, the United States - a powerful force in aspects of economics, politics and diplomacy - continues to impose capital punishment in 38 of its States. Therein arises a serious conflict between international standards of human rights protection and domestic law.

Amnesty International unconditionally opposes the death penalty. It is the ultimate form of cruel and degrading punishment. Each execution is a violation of the most fundamental human right, the right to life itself. Amnesty International recognises that many of the people on death row have been responsible for brutal crimes with tragic ramifications. As an organisation dedicated to the victims of human rights violations, Amnesty International would never seek to excuse these crimes. But human rights are the basic rights to which all human beings are entitled, no matter who they are or what they may have done. It is interesting to note that the International Criminal Court, which often presides over extremely grave criminal cases, including genocide, excludes the death penalty as a punishment.

The ramifications of the use of the death penalty in the US go far beyond its borders. Officials in different countries have suggested that it is a factor in, or a justification for, their own countries to retain the punishment. It is this misguided example to other nations that makes the issue a pressing concern. When it comes to human rights, the US lacks leadership.

The US has a poor record in international law in not having signed the Convention of the Rights of the

Child (CROC) or the Convention on the Elimination of Discrimination against Women. It was only in 1992, after 109 other states, that the US ratified the International Covenant on Civil and Political Rights (ICCPR), 26 years after its adoption by the United Nations General Assembly. The ICCPR is one of two principal treaties protecting human rights as enshrined in the Universal Declaration of Human Rights. The other, the International Covenant on Economic, Social and Cultural Rights, has still not been ratified by the US, although it was signed by the US in 1977.

More than 100 countries have now abolished the death penalty in law or practice. In April last year the UN Commission on Human Rights called on all member states still using the death penalty to establish a moratorium on executions with a view to abolishing the death penalty altogether. Against the global trend towards abolition, however, the US has relentlessly increased its rate of executions and the number of crimes punishable by death. The US has the highest known death row population in the world; with more than 3,300 people currently awaiting their deaths. Amnesty International has consistently found the application of the death penalty to be racist, arbitrary and unfair.

Clear failure of the death penalty to deter crime any more effectively than other punishments has meant that deterrence is no longer considered a serious argument. Relatives of murder victims often report that the execution of the murderer does not help them come to terms with their loss; indeed the lengthy judicial proceedings and media coverage may only serve to prolong their suffering. A small but growing number of relatives of murder victims in the US are speaking out against the death penalty, arguing that it offers no solution to their personal tragedies. In Canada, between the abolition of the death penalty for murder in 1976 and the end of 1995, the murder rate dropped by over a third.

Grief, anger and fear are rational responses to violent crime, but the law must remain impartial and consistent with international standards. Race, the killing of juvenile offenders, the mentally disabled, the innocent and those without proper legal representation highlights significant areas where the US fails to meet international human rights standards.

Race continues to play a prominent role in virtually all aspects of the application of the death penalty in the US. In Virginia, for example, between 1908 and 1962, all those executed for rape were black, although only 55 per cent of those imprisoned for rape were black. Since the reintroduction of the death penalty in Pennsylvania in 1978, the authorities have sentenced to death more than eight times as many blacks as whites. Not only is it the race of the defendant that matters, that of the victim appears to be a major factor. Blacks and whites in the US are the victims of murder in almost equal numbers yet 82 per cent of prisoners executed since 1977 were convicted of the murder of a white person. In Kentucky, every death sentence up to March 1996 was for the murder of a white victim despite more than 1,000 homicide victims being black.

International standards state that where the death penalty is retained its scope must be strictly limited. They prohibit the use of capital punishment against those who were under 18 at the time of the crime. Article 6(5) of the ICCPR states that a death sentence should not be imposed for crimes committed by persons below 18 years of age. This is deemed such a fundamental safeguard that it may never be suspended, even in times of war or internal conflict.

When the US ratified the ICCPR it entered a reservation to this, insisting on its right to execute juvenile offenders. Since 1990 only five other countries (Iran, Nigeria, Pakistan, Saudi Arabia and Yemen) are known to have carried out executions of child offenders - totalling between them the same number as the US alone. Of the three known executions of juvenile offenders in the world in 1998, the US carried out them all. In February this year the US executed a prisoner who had committed a crime whilst 16 years of age.

International human rights standards also ban the use of the death penalty against the insane and recommend that it be eliminated for people suffering from mental retardation or extremely limited mental competence.

In 1989 the US Supreme Court ruled that it was not unconstitutional for the death penalty to be used against mentally retarded defendants. Some 30 prisoners suffering from mental disabilities have been executed since then. When President Bill Clinton was campaigning for the US Presidency in April 1992, he interrupted the campaign to return to Arkansas where he refused clemency for a black, mentally retarded death row inmate. Ricky Ray Rector's comprehension of his imminent execution was so limited that he left the dessert of his final meal as he wanted to "save it for later".

About one per cent of those sentenced to death since 1972 have later been found to be innocent. Many have come within hours of execution. No one knows how many prisoners have been executed in the US for crimes they did not commit. At least 75 wrongly convicted people have been released from death row since 1973. Amnesty International has documented numerous cases of people who went to their deaths despite serious doubts about their guilt. No criminal justice system is immune from mistakes, especially where legal representation is inadequate or punishment is driven by a desire for retribution, or distorted by racial prejudice.

Although opinion polls indicate that more than 70 per cent of the US public support the death penalty, that support drops dramatically when alternatives, such as imprisonment without parole, are offered. Political leaders should not pander to public fears with inflammatory or false claims about the death penalty, but should instead encourage informed public debate. If only as much time and effort had been put into this rather than the Monica Lewinsky affair, President Clinton could have been remembered and thanked by the American people for bringing the US into line with international human rights standards and protection.

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Amnesty International is campaigning worldwide for human rights protection in the US. For further information phone: 1800 808 157.



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