

Pros and cons side of the international and domestic legislation on the death pen...

[Law](#), [Death Penalty](#)



The debate over the death penalty has been one that has been around for decades but despite this, it is still frequently carried out in developed countries such as The United States and in Middle Eastern countries. There have been legislations put in place –both internationally and domestically- to address its use and arguments have been made on both sides of divide, as it relates to the efficacy of the death penalty. Moreover, there have been an increasing number of instruments who are in favour of the abolition of the death penalty. In addressing these issues, an overview of the international and domestic legislation will be given, followed by the arguments for and against the death penalty and recommendations will be made.

According to The International Bar Association (IBA), one of the most important treaty provision governing the death penalty is the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a multilateral treaty which was adopted by the United Nations General Assembly in 1966. With reference to Article 6 of the ICCPR, there is no motion against the use of the death penalty but there are rules laid down in regards to its administration. According to the ICCPR, the death penalty should only be limited to the most serious of crimes, according to the law at the time of the commission of the crime. During the 45th plenary meeting of the United Nations Economic and Social Council, it stipulated that the most serious crimes applies to international crimes with lethal or otherwise extremely grave consequences. The ICCPR also emphasised that a fair trial should be conducted before the administration of the death penalty.

Article 14 of the ICCPR defines a fair trial as; the presumption of innocence before guilt; to be informed of the charges in a language that the person can understand; to choose their own council or be assigned council and not pay for it, if the person on trial cannot afford it; to be given time and facilities to prepare his defense; to examine witnesses against him; to have free access to an interpreter, if needed; not being compelled to confess; the right to an appeal and the right not to be tried again for the same crime. In addition to these tenants of a fair trial, the basic principles on the independence of the judiciary, the role of lawyers, the role of prosecutors, the protection of all persons under any form of detention or imprisonment and the standard minimum rules for the treatment of prisoner as according to the United Nations should also be taken into account.

If after all these factors are taken into account, it should be noted that the person who has convicted to death should have to right to seek pardon or have his sentence commuted. The death penalty also cannot be given to someone whose rights under the ICCPR have been breached. This can include torment that results from waiting long periods before an execution is to be carried or the execution method, such as a gas chamber, which constitutes cruel and unusual punishment. It should also be noted that no one below the age of 18 or a pregnant woman should be given the death penalty.

Under domestic law, as according to the Jamaica offense against the person act in 2005, aggravated murder may be punishable by death. Murders committed during the course of or furtherance of another crime, repeated

murderers or murder for hire may also be punishable by death. The method of execution is hanging however, according to section 90 of the Jamaican constitution, the Governor-General may commute the sentence of death to a lesser one. There have however been major changes to the death penalty in Jamaica over the years.

In the 2010 ruling of *Peter Douglas v R*, the Privy Council ruled that the Jamaican courts should follow the ruling of the *Trimmingham v The Queen* case from St Vincent and the Grenadines. It stated that for the death penalty to be imposed, the crime must be “ the most extreme and exceptional”, “ the worst of the worst”, or “ the rarest of the rare” and that there should be no possibility of reform for the offender. If the offender is caught then there was a time where if he spent more than five years on death row; he could not be executed as according to the *Pratt & Morgan v. Jamaica* case in 1993. This case was later reinforced by *Lewis v. Attorney General of Jamaica* in 2000, which ruled that Jamaica should allow the completion of all appeals including those to international tribunals. However, in 2011, the Charter of Fundamental Rights and Freedoms was passed which replaced part 3 of the Jamaican constitution and it voided the *Pratt v. Morgan* ruling by explicitly not stating the duration of those on death row. It also voided the *Lewis v. Attorney General of Jamaica* ruling by requiring the Governor General to provide a notice of no less than 18 months to a death row inmate that all appeals including those to international tribunals should be concluded. The constitutional provision also specifies that the Governor General is not obligated to consider any publication by external bodies after this date. This

is supposedly an effort to speed up future death row cases but if Jamaica is to sentence someone to death, there are some pros and cons to be considered.

Retribution is probably one of the main reasons as to why people support the death penalty. According to Immanuel Kant in his *Metaphysics of Morals*, he argues that retribution is the best course of action that a court can take. He states the criminals should be punished because they inflict harm on others and this punishment should be proportionate to what they did but over-punishment or revenge should not happen. Due process should still be followed to establish that the person is punishable. Kant argued that an injustice would be done if a person is not proportionally punished according to what they did. As Kant puts it, "Whoever has committed a murder must die". However, this view is challenged.

Special advisor to the United Nation's Secretary General, Ivan Simonovic noted that no one can blame individuals wanting to avenge their loss through the death penalty. However, the law exists to prevent people from seeking vengeance therefore, it should not carry out vengeance on the behalf of the individuals. Doing so will only turn the individuals into what they hate the most - a murderer. Additionally, from the retributive standpoint, giving someone the death penalty does not benefit the society. The loved ones are not brought back and the loved ones might never really feel a sense of closure.

Another argument in favour of the death penalty is that it provides deterrence. According to Siegel (2007), deterrence theory holds that if punishment is swift, certain and severe, it will prevent others from doing the same crime. Proponents of the death penalty such as Muhlhausen (2014) pointed out that because some crimes are so heinous, the death penalty needs to be used to prevent others from doing the same but as pointed out by Donohue (2015), Siegel (2007) and AmestyUSA, there is no statistical evidence to suggest a link between deterrence and the death penalty. This is so because the death penalty lacks the swiftness and certainty needed for it to be a deterrent. There is often a disconnect between the crime and the punishment of the death penalty because it takes years for the offender to exhaust all their appeal opportunities; therefore, it does not serve as a deterrent to society. Radelet & Lacock (2009) also found that the murder rates in states that do not have the death penalty was lower than in those states that had the death penalty - further strengthening the view that the death penalty does not serve as a deterrent.

Perhaps the most compelling arguments against the death penalty is the fact that there is the potential for innocent people to sentence to death. Gross, O'Brien, Hu & Kennedy (2014) found that 117 death row inmates out of 7,482 from the period of 1973 to 2004 were exonerated. This is a shocking number and it leaves the room open to justified speculations that some innocent people were wrongly executed. Take for example Ricky Jackson, a death row inmate, who was exonerated after 39 years in prison. The due

process model would tell us that just one person being wrongly convicted is too much.

Another argument for the death penalty is that it is moral. Phillips (2013) pointed out that the shared collective sentiments or what Durkheim would call mechanical solidarity was subdued but not dead and the rise of crime in the 1970s allowed all members to collectively agree that it is moral to punish someone that upsets the moral fabric of society and preserve what little mechanical solidarity was left. Phillips (2013) made reference to an example in 1976 where a death row inmate in Utah had attempted suicide and was rushed to the hospital to be saved. The following day, he was executed by the Utah's state firing squad. The act of saving the inmate's life from his attempted suicide was not to save his life but to save him for his execution. The goal was to preserve the sanctity of the death penalty which is the glue that holds together the sense of mechanical solidarity and it is for this reason that I am in support of the death penalty.

Just like the ruling *Trimmingham v The Queen* case from St Vincent and the Grenadines, I too agree that the death penalty should only be used in the worst case possible; however, if Jamaica is going to apply the death penalty, then there needs to be some changes. It is recommended that Jamaica complies fully with the International Covenant on Civil and Political Rights (ICCPR). A provision that the Covenant makes is to allow death row inmates to appeal their sentences but the Charter of Fundamental Rights and Freedoms which replaces part three of the Jamaican constitution restricts the

appeal process for death row inmates by insisting that all complaints made to external bodies be done within 18 months.

Given the length of time these cases can take, this is impractical and in *Lewis v. Attorney General of Jamaica*, the Privy Council had rejected the 18 month period on the grounds that it was too short of a time to allow for appeals to the Inter-American Commission on Human Rights (IACHR). Considering that only the most heinous criminals would be on death row as according to the *Trimmingham* case (The standard set by this ruling for a person to be sentence to death is extremely high to say the least), they should be given the time needed to complete their appeal process, unburdened by time constraints.

Another recommendation is that in death row cases, the jurors would be have to determine that there is no doubt. This is different from “beyond a reasonable doubt” as it requires a higher standard, which is needed, considering that the State is going to implement the most severe punishment. In accordance with the jurors trying to determine that there is no doubt, there should be more emphasis on the use of scientific techniques during death row trials. There needs to be uncorrupted DNA evidence, corroboration of murder weapon to the victim, forensic and surveillance evidence or other scientific techniques.

In accordance to the use of scientific evidence, there also needs to be a scientific board established to review the quality of scientific evidence collected, the laboratories and the methods used in cases that are

considering the use of the death sentence. Considering that only the most heinous crimes will be considered for the death penalty, it is highly plausible to think that the government will be able to pay for such a board, considering that it will not be a regular occurrence.

There should also be a system in place to provide only the best defense attorneys to cases where the death sentence is to be considered. If an individual cannot afford a lawyer, he should not be burdened by being provided a lawyer who might not have his best interest. Since only the most heinous crimes will be considered for the death sentence, it is highly plausible to think that the government will be able to pay for high quality defense, considering that this will not be a regular occurrence.

Finally, there also needs to be a review committee established to consider claims of errors during the trial. With all these recommendations, it can be argued that it would probably be best to abolish the death penalty, as it would probably be cheaper than to implement them. However, it is important to note that at all times, one should consider all the options that are available to them, however unlikely one is to use those options. In the event that there is a person convicted of a crime that is “ the most extreme and exceptional”, “ the worst of the worst”, or “ the rarest of the rare”, then that person needs to be sentenced to death in order to promote mechanical solidarity.