



Critical analysis on the effects of non-execution of death penalty in Zanzibar

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Abstract

This study made critical analysis of non-execution of death penalty and increasing of homicide crime rate in Zanzibar. The study sampled a total of 75 respondents using sampling techniques. Data were collected using Interviews, Questionnaires and Documentary Check. The data analysis was done in descriptive way. The research found inter-alia that homicide cases are increasing day to day in Zanzibar and sentence the pronounced sentence is not executed, punishment is considered cruel, inhuman and degrading one taking into accounts its nature and character, there is no relationship between increasing rate of homicide cases and non-execution of death penalty in Zanzibar. The research was successfully analyzed in relying with the objectives. The study recommended on amendment of Zanzibar Penal Policy, amendment of the Penal Act No.6 of 2018, amendment of the Criminal Procedure Act No.7 of 2018 and ascertaining the fate of persons waiting execution of death penalty.

Keywords: Non-execution, Zanzibar, Questionnaires, death penalty

Introduction

The death penalty is one of the sanctions imposed in the penal system of several jurisdictions in the world. It follows the distributive or retributive theory that the offender should be completely incapable of repeating the crime by removing him from the world. The punishment is given against the perpetrators of the most serious crimes like murder and treason. The death penalty is the state-sanctioned punishment of executing an individual for a specific crime. Crimes that are punishable by death are known as capital crimes, capital offences, or capital felonies, and vary depending on the jurisdiction, but commonly include serious crimes against a person, such as assassination, mass murder, aggravated rape (often child sexual abuse), terrorism, aircraft hijacking, war crimes, crimes against humanity, and genocide, along with crimes against the state such as attempting to overthrow government, treason, espionage, sedition, and piracy. For thousands of years the death penalty was the keystone of all penal systems and the exemplary punishment par excellence. This form of punishment was justified on the ground that society needed to be purged of incorrigible, dangerous and undesirable persons. For ages, therefore, the idea of death penalty was universally accepted without any question. It involves the execution of an offender and a permanent incapacity to commit that particular or other of punishment has been since earliest times.

The first established laws of the death penalty date back to the eighteenth-century BC in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. The death penalty was also part of the Hittite Code of the Fourteenth Century B.C, the Athenian Code of Torture of the Seventh Century BC, which made death the only punishment for all crimes, and Roman law of the Fifth Century BC. The death penalty was justified on the grounds of retribution, deterrence and incapacitation.

Historically, Zanzibar has had a complex legal system influenced by various factors, including its colonial past and Islamic traditions. The death penalty has been a part of

Zanzibar's legal system, and executions were carried out for certain crimes. The exact history and details of the death penalty in Zanzibar would involve an examination of legal and judicial changes over the years. The coming into force of the Universal Declaration of Human Rights in 1948, the world community was advised to impose penal sanctions which maintain human dignity. The punishments which states impose against criminal offenders were advised to be not inhuman, degrading or torturing in nature. The Declaration was enforced by two international Covenants which are International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights both of 1966. The Second Optional Protocol to the International Covenant on Civil and Political Rights abolished death penalty. It considered it against right to life and thus it is inhumane, degrading and torturing punishment.

The protocol required countries which would like to continue imposing death penalty, to impose it in the most serious crimes, as last resort and with care of preventing prejudice to the life of a person. Abolition of death penalty remains as discretion of state concerned. Some states consider it relevant while others not. There are those which support the philosophy of second optional protocol and those which are against such philosophy. Tanzania is one among the countries which still have death penalty in their penal laws. But Tanzania for a longtime has not executed such penalty though it is imposed by courts. Thus, this study examines if non-execution of such penalty has relationship with increase of homicide offences which experienced to be punishable by such penalty.

1. Background of the Problem

In Zanzibar, before Revolution the colonial regime was establishing various laws in their statutes so as to ensure the government and society of Zanzibar at large live in a peace and tranquility against those who abuse the laws. The followings are some of the laws and the offences punishable by death penalty established by the colonialism, penal

decree which established three offences punishable by death penalty which are; Treason, Instigates invasion, Murder. The colonial law clearly stated that anyone who commits such crime is punishable by death penalty. The Penal Decree states

‘Any person who compasses, imagines, invents, devises or intends any act matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, inventing, devising, or intending by publishing and printing or writing or by any overact, or does any act which, if it done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of an offence termed treason and shall be liable to suffer death.’

Apart from that, Penal decree states that:

“An instigates invasion is a crime whereby the criminal is liable to death sentence. ‘Any person who instigates any foreigner to invade the Protectorate with an armed force is guilty of treason and is liable to the punishment of death.’”

Meanwhile, section 180 of the Penal Decree before Revolution explains the offence of murder as stated:

‘Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder’. However, section 181 of the Penal Decree provides punishment of criminal committing murder offence, states ‘Any person convicted of murder shall be sentenced to death’.

Apart from that, Criminal Procedure law acknowledges the death penalty in the book. Immediately after the Revolution of 12/1/1964, colonial laws continued to be used along with various laws enacted by the first President of Zanzibar Hon. Abeid Amani Karume, which were known as the Presidential Decree were used until 1984 when the House of Representatives passed a new law, number 6 of 1984. In that law it was clearly stated that the crime of murder is punishable by death sentence, so anyone who convicted of the offence of murder shall be hanged to death.

Article 179 of the Law of Revolutionary Government of Zanzibar said:

‘A person who of malice aforethought causes the death of another an unlawful act or omission, is guilty of murder’.

Also, article 180 was given the sentence of the suspect who was convicted for the crime of murder, and he will have to be hanged to death:

“A person convicted of murder shall be sentenced to death”.

Zanzibar became independent on December 19, 1963. The Independence Constitution was drafted at a Constitutional Conference in Lancaster House following negotiations between the colonial powers and the two major political parties: The Zanzibar Nationalist Party (ZNP)—which represented the Arab population and the Afro-Shirazi Party

(ASP) which represented the African population. Like Tanganyika, Zanzibar’s independence Constitution established a constitutional monarchy, though its constitution included a bill of rights and proclaimed the Sultan of Zanzibar the ceremonial Head of State.

On January 12, 1964, the ASP led a revolution, ousting the Zanzibar Arabs from power and abolishing the Sultanate. They also repealed the constitution and replaced it with a series of presidential decrees. Under this system, the president exercised all executive and legislative authority on behalf of the Revolutionary Council. To consolidate its position and avert a counter revolution, the ASP formed a union with Tanganyika in April 1964.

A new interim Constitution was passed in 1964, recognizing all the changes brought by the Union and proposals made by a One-Party Commission. The interim Constitution placed fundamental rights and freedoms in the preamble and established a two -tier government consisting of a national government and the semi-autonomous government of Zanzibar. In 1979, Zanzibar adopted a new constitution, almost identical to the national Tanzania constitution. The new Constitution provided the same organization of government as the national constitution and endorsed all its provisions. This constitution did not include a bill of rights.

In 1983, new constitutional debates started in Tanzania with the ruling CCM setting the agenda for change. The three main areas for analysis and possible reform were: executive powers, supremacy of parliament, and participatory democracy. In 1984, the Constitution was amended to include a bill of rights. However, for the entire period of both regimes that is before the Revolution and after the Revolution the death penalty has been difficult to implement, as can be read in the chart below.

Table 1: The statistical data of death penalty imposition before revolution and after revolution.

Before revolution			After revolution		
Male	Female	Total	Male	Female	Total
9	0	9	53	0	53

In 1991, countries were called to sign Second Optional Protocol to abolish death penalty, Tanzania did not sign. It means that death penalty is still a penalty which is imposed in Tanzania. The Penal Act of Zanzibar imposes death penalty for several offences including murder which is the most common offence punishable by death in Zanzibar. The procedure for execution of this penalty is that after the Court to inflict it against the accused, the report is sent to the President of Zanzibar in order to sign it. It is a longtime now; Zanzibar has not witnessed presidential approval to execute death penalty. It ends with judicial decisions only. When debates are called to discuss abolition of death penalty in Zanzibar, people divide themselves into two groups. There are those who support abolition and those who oppose it. Those who support abolition maintain that the punishment is against the right to life as it is inhuman, degrading and torturing. Those who oppose abolition are of the view that it is revenge against those who kill others and removing it may increase homicide offences in Zanzibar.

Generally, the penalty is not canceled but not enforced. Several questions arise in such a situation. For example, why presidents do not sign the implementation of this punishment, what is the need to have it in the law, or must it be in the law to prevent people from committing crimes that

attract this punishment? These questions at large make the non-implementation of the death penalty in Zanzibar a debate that required research to answer some of these questions.

Statement of the Problem

Since Independence Zanzibar has not executed death penalty to persons sentenced to death and the persons awaiting execution on death row are reportedly being kept under terrible and torturous conditions in prisons. However, the Penal Act of Zanzibar provides that a person convicted of murder “shall be sentenced to death”. December 10th1948 has been designated as the day the death penalty is internationally recommended to be abolished worldwide. The Zanzibar Legal Services Center often officiates the said day in Zanzibar. They had a debate in their previous anniversary about whether the death penalty should be abolished because it is not used. To reduce the number of violations requiring penalties, some members said that it should be removed, while others said that it should remain in place. The research problem depends on the question of what is the relationship between the death penalty and the magnitude of the crimes that are punished by that punishment. It means that when the death penalty is implemented, what effect it has on the number of such crimes. Is there any relationship between the current magnitude of crimes that attract the death penalty and the non-implementation of that penalty?

The world has set each December 10th of the year as a day of pressure to end the death penalty in the world. For Zanzibar, the said day is usually managed by the Zanzibar Legal Services Centre. At their last anniversary, they held a debate on whether the death penalty should be abolished as it is not carried out. Some members said that it should be abolished while others said that it should continue to exist in order to reduce the offenses that attract the punishment. Understanding the relationship between the lack of executions and the rise in homicide rates is essential for policymakers, legal authorities, and the public to inform evidence-based decisions and potential reforms in the criminal justice system. The research therefore aims at making critical analysis on non- execution of Death Penalty in Zanzibar and whether it reduces crime or not with a view of recommending the best methods of dealing with capital offences.

Research Methodology

The study used qualitative style of study. Qualitative method offered a dynamic approach to this research, whereby the researcher had an opportunity to follow up on answers given by respondents in real time, generating valuable conversation on the researched topic. Thus, Dissertation have used qualitative method as so as to produce rich, detailed and valid process data based on the participant's, rather than the researcher's perspectives and interpretations.

Research Design

The study used interview design to explain the position of law and views of respondents.

Study Area

The study was conducted in Unguja and Pemba in Urban West Region, Central District at South Region of Unguja

and Wete District at North Region of Pemba. The selected study areas are highly populated hence easy to collect data.

Population Size

The population which was involved in the study were lawyers, religious people, human rights activists and ordinary members of society. This population involved gave a researcher a wide range of collection of data from the people involved in making laws and the general society who are directly affected by this research topic.

Number of respondents involved in the study in the following order:

Table 2

s/no	Respondents	Number of respondents
1	Lawyers/Advocates	25
2	Religious leaders	15
3	Human rights activists	15
4	Ordinary members of society	20
	Total	75

Data Collection Methods

Data were collected by using questionnaires and interviews in indicated population. The questionnaires were used because part of prospective respondents was available through such method. The questionnaires were supplied to them and to be collected sometimes later. The questionnaires were used in order to facilitate giving of information from respondents. The questionnaires consisted of both open and close ended questions to make respondents comfortable in giving data.

Interviews

The face-to-face interview was used during data collection. There was interview check list consist questions in English language that respondents were requested to reply to. If the respondents were unable to be accessed for face-to-face interview, the researcher made arrangements for telephone interview in order to make it possible to collect data from respective respondents. It was found proper to use this method for data collection as it was quick method for collecting data and that there were some respondents who were accessed effectively through this method and data to be collected accordingly.

Library Method

The last method which was used was library method. The nature of the topic attracted using this method as several legal instruments and publications both domestic and international or regional ones needed to be consulted. The method helped in getting knowledge on the nature and character of death penalty and legal guidelines on how such penalty should be carried out.

Scope of the Study

The study bases on the laws of Zanzibar governing death penalty. The data were collected from both the islands of Unguja and Pemba in the respective districts. The reason behind collecting data from some districts of Zanzibar is that the topic attracts opinion of several people hence it is important to get such opinion from different areas in order to get representatives from fully Zanzibar. On the time limit, the study was conducted within the time frame of Zanzibar University master research timeline in order to make sure that it is completed within allowed time.

Summary of Findings

This study examined the relationship between non-execution of death penalty and increase of homicide cases in Zanzibar. It was found from the idea that homicide cases are increasing day to day in Zanzibar. It may be due to the fact that death penalty is not executed in Zanzibar. The courts are just pronouncing such sentence but when coming to practice, the pronounced sentence is not executed. The study had four questions that were being dealt with. The first question based on the reasons for inclusion of death as one among the punishments that courts can inflict in Zanzibar. The second question asked the reasons for non-execution of death penalty, the third one tested the relationship between death penalty non-execution and increase of homicide cases and the last question wanted to know the recommendations. Those questions originated from specific objectives that were set after considering the general objective of the study. The study has found that there are several reasons for inclusion of death in the penal system of the country. Among them are to deter members of society from committing crimes that attract death penalty such as treason and murder. Another one is to revenge from what was committed by the offender. The life should be revenged by life and not otherwise as offences involving death penalty normally cause loss of life of other persons. Thus inclusion of death as one among the punishments in the penal system of Zanzibar is justifiable taking into account such a fact. The study has found further that there are some reasons as to why death penalty is not executed in Zanzibar. They include the fact that such punishment is considered cruel, inhuman and degrading one taking into accounts its nature and character. Also, there is fear of mistake in its execution that a convicted person may be wrongly convicted hence his or her life to be alienated wrongly and no one is deterred when such punishment is inflicted against the offender. On the relationship the study has found that there is no relationship between increasing rate of homicide cases and non-execution of death penalty in Zanzibar. Though there was tough completion between those who contended that there is relationship and those who contended otherwise but the majority of respondents were of the view that there is no relationship. The crime of homicide increases independent of non-execution of death penalty in the society. Therefore, some recommendations will be given in this study following such findings.

Recommendations

Following the above findings, the following recommendations are given in this study:

Amendment of Zanzibar Penal Policy

The current penal policy of Zanzibar shows that the aim of penal policy is to rehabilitate the offenders. It is to change their behaviors so that they will become useful members of society. Considering this fact, it is observed that death penalty cannot make a person useful member of society as he is eternally removed from such society. The penal policy should not include death as among the punishments that will correct the behavior of offenders. When the offender is killed, then the discussion on his behavior comes to an end and becomes no longer the issue in the society. Therefore, the penal policy should be immediately amended to consider such proposition.

Amendment of the Penal Act No.6 of 2018

The Penal Act should be amended in the two aspects. The first one is the aspect of punishments. The death as punishment should be removed in the list of punishments that courts in Zanzibar can inflict against the offenders. The second aspect is the punishments of murder whereby death penalty should be removed as punishment and to be replaced by life imprisonment because it is impliedly noted that in Zanzibar there is not death penalty in the practice but rather life imprisonment.

Amendment of the Criminal Procedure Act No.7 of 2018

The Criminal Procedure Act should also be amended in the aspect of list of punishments that courts in Zanzibar can inflict against the offenders. It should also be amended in the aspect of the process of executing death penalty whereby the Presidents should be removed. The process should end with judicial decision as such penalty is supposed to be replaced by life imprisonment.

Ascertaining the Fate of Persons Waiting Execution of Death Penalty

There are numerous persons waiting death penalty to be executed against them. They are not sure on the fate of their life on whether they will be executed or not. This keeps them in the state of being more punished than it appears. When such persons notice that doors of their rooms are opened, they believe that the time of execution is ready. Therefore, they are seriously tortured by the situation. Their position should be ascertained on whether they should serve life imprisonment or they will be executed before amendment procedures of policies and laws to take effect. However, the decision to execute them should be well considered and evaluated because in the practice there are indicators that the there is no intention for them to be executed.

Conclusion

The death penalty has been a debate in the world for a long time especially after the coming into force of human rights legal instruments. There have been human rights concerns and constitutional concerns on its execution. The world has divided into two groups as far as death penalty is concerned. There are abolitionists and retentionists. The former wants the penalty to be abolished while the later want to continue being carried out in the world.

Various reasons are advanced on having death penalty or abolish it. One idea that is advanced is that it is deterrent hence the society can refrain from committing offences that attract such kind of such punishment. Such idea is strongly opposed by other persons on the ground that the punishments are useless as far as criminal behavior is concerned in the society. For whatever group the country stands, it should implement its legal position. When the country allows it in its laws but it does not implement it practically, it is better to abolish.

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