



"RESPECT FOR MINIMUM STANDARDS IN APPLYING THE DEATH PENALTY"

"EGYPT: THE CASE OF APPLICATION"

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Introduction :

Although the international and regional covenants and conventions approved some of principles , in the purpose of narrowing the scope of the application of the death penalty or eliminating it completely, but we in the Arab world retreat a steps behind the global trend is not merely the maintenance of the sentence in the legislation, but that further non-compliance with the minimum standards required for the application of the penalty .

It is regrettable to see the practice of justice systems in some Arab countries, an expansion of the scope of application and the issuance of a collective death sentences in certain crimes, and more, we find some of members of legislative and religious bodies claims in applying a public execution on television, which is a real apostasy behind the World in this regard.

We will discuss in this paper (the death penalty in international law), (and the minimum standards to be available for the application of death penalty by focusing on three standards the first, the most serious crimes, the second, the availability of guarantees of a fair trial and the third, prohibiting the application of the penalty for minors and pregnant women, and Applying this standards in Egyptian legislation, which is an important reference for many Arabic legislation) and finally, (the conditions of death penalty in Egypt, 2009).

First: the death penalty in international law

Preface :

International human rights law does not expressly on prohibiting the death penalty. But limits the categories of persons who are sentenced to death and the situations in which death penalty may be imposed or carried out, and other international instruments and formal conventions of the abolition of the death penalty in certain international treaties, binding on all counties which become parties to those instruments and conventions, and others may not be binding to all countries, such as the decisions taken by the United Nations and intergovernmental organizations and other bodies, as well as statements by officials of the United Nations special rapporteurs, or judgments and recommendations of the expert bodies established to follow up the implementation of human rights treaties such as the Human Rights Commission, Commission against Torture.

All the main international treaties on Human Rights ensure that the right to life. The Universal Declaration of Human Rights and other international human rights instruments adopted since 1948 to prohibit all forms of "treatment or cruel, inhuman or degrading." Whatever the reason given by the Governments of the execution of prisoners, whatever the method used, the death penalty constitutes a violation of basic human rights.

During the sixty-second session of the General Assembly of the United Nations, the UN plenary meeting of the General Assembly Third Committee's resolution(62/149) to stop the death penalty . In this resolution, the General Assembly call upon all Retentionist States to: -

- respect for international standards that provide safeguards guaranteeing the protection of the rights of those sentenced to death, In particular the minimum standards.
- gradual reduction of the use of the death penalty and reduce the number of crimes that can be applied in their situation.
- stop the executions, in order to abolition of the death penalty.

It will address the following are the main international instruments and texts concerning the death penalty: -

1- The Universal Declaration of Human Rights:

Article 3 confirmed that " Everyone has the right to life, liberty and security of person " .

2- International Covenant on Civil and Political Rights:

Article (6) of the Covenant submit a detailed wider than ever before to defend the right to life, and the emphasis on compulsory.

3- Instruments for the abolition of the penalty:

The international community has adopted four international treaties providing for the abolition of the death penalty. One of them is global in scope and the other three are regional, namely:

- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Protocol has involved eleventh articles did not allow the reservation to any of the articles of the Protocol by the States for ratification only one reservation states that "the application of the death penalty in time of war, according to a conviction in a particularly serious crime, and of a military nature, committed in time of war."

- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

Includes nine articles rescind the sentence with the possibility of use in respect of acts committed in time of war or of imminent threat of war.

- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the abolition of the death penalty in all circumstances

States that the abolition of the death penalty in all circumstances, including in times of war or imminent threat of war.

- Protocol to the American convention on Human Rights to abolish the death penalty

The Protocol contained an Introduction and four articles emphasized on the obligation of States to ratify the non-application of the death penalty in their territory or under their jurisdiction, with the possibility of applying the penalty in time of war only, in extremely serious crimes of a military nature.

4- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions:

Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989

These principles provide us with references to other international concern to limit the application of the death penalty, and then by 20 paragraph has been included under the three axes (preventive action; investigation; and legal proceedings) to provide a range of preventive and legal principles, which obliges States which continue to apply this Punishment of the prevention of extrajudicial or arbitrary executions, which may occur in the course of the investigation, or detention in prisons , police stations or places of detention used by the authorities.

It is also the perpetrator of murder for political reasons and the authority has interest of arbitrary executions, these principles are also required States to prevent the executions without trial and even demanding that the local law to consider all crimes punishable by activating these sanctions, as called for States to establish strict control of what is in this scope of work, also underlines the need to investigate thoroughly investigate the issues and actions that may carry the death penalty.

Despite the universality of these principles and the coverage of a wide range of circumstances and conditions associated with the application of the arbitrary executions or application outside the scope of the law, as well as its emphasis on a number of principles and steps to uncover the crimes of death in this way and prosecution of the right of victims and their families in obtaining appropriate compensation, but we have a Several observations in this regard, notably:

- 1- **there are still a large gap between the text and the application in respect of these principles.**
- 2- **these principles do not carry, any formula that obliges Parties States in the United Nations to commit them.**
- 3- **There are no effective mechanisms - with the exception of the Special Rapporteur on the death penalty - based on the maintenance of these principles and control of the extent of compliance.**
- 4- **the Statute of the International Criminal Court**

Under the Basic Law of the International Criminal Court, the death penalty is excluded from the penalties that the powers of the Court would allow to impose.

Second: the minimum standards in the application of the death penalty

The Economic and Social Council of the United Nations in its resolution No. 50/1984 dated May 25, 1984 take a decision guarantees that many of the safeguards guaranteeing protection of the rights of individuals facing the death penalty,

We in the light of this resolution and in the light of the international instruments already discussed to identify the most important of these safeguards are as follows:

- 1- In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
- 2- Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- 3- Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
- 4- Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
- 5- Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
- 6- Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
- 7- Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
- 8- Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
- 9- Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

We can get out of these various guarantees with three key standards are the minimum standards for application of the death penalty, and these standards are the first is most serious crimes, and the second is a fair trial with all contents, and the third is the exception of minors and pregnant women

from the application of punishment, and will address each of these standards in details and the extent to respect of the Egyptian legislation which impose the capital punishment.

First : the standard of the most serious crimes

A . the standard of the most serious crimes in international law

According to this standard , in countries which have not abolished the death penalty, capital punishment may be imposed only in the most serious crimes on the understanding that its scope should not go beyond intentional crimes with lethal or other extremely grave consequences, and this is the guarantee provided by Article (6) of the International Covenant on Civil and Political Rights in the second paragraph, as well as the highlight of this guarantee in the suspension of the (UN Human Rights Committee) and in reviews conducted by the UN Human Rights council, and the Secretary General of the United Nations and various United Nations special rapporteurs on the Human Rights in the interpretation of the "most serious crimes", as highlighted in the crimes defined by the International Criminal Court.

B. The standard of the most serious crimes in Egyptian legislation:

Egypt considers the most dangerous crimes are murder, rape and threat to state security issues Islamic Sharia call it the limits of banditry and drug issues but those most serious crimes had increased and rose to 105 crimes which are punishable by death.

There are five legal articles punishing to death such as drug crimes the crime which the United Nations refused to interpret as one of the most serious crimes, the most important crimes which we believe to be contrary to the standard of the most serious crimes however, punishable by death are the following:

- 1- The crime of working on the prejudice to the independence of the country or its territorial integrity (article no. 77 from Penal Code)
- 2- The crime of criminal conspiracy and incitement. (article 82 from Penal code)
- 3- The crime of the drug use in non-authorized purpose use. (article 34 of the Law on Drug Control)
- 4- The crime of running or create place for drug to give in money in return.(article 34 of the Law on Drug Control)
- 5- Crime of refrain from reporting offenses.(article 132 of military law)
- 6- The crime of not obeying orders. (article 151 of military law)

Second : Standard of fair trial

The fair trial should be ruled by two conditions :

First: Obligate to conduct the trial from beginning to end according to the criteria set out in international conventions on human rights.

Second: It is essential that the judicial system to be independent and impartial authority.

In addition there are special guarantees in the event of the death penalty and those guarantees are:

- 1- May not be the application of the death penalty only under a final rule.
- 2- The right of every person sentenced to death to seek for release or commutation of sentence.
- 3- Death penalty may be imposed only when the guilt is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.

In addition to these various rights and principles the independence of the judiciary remains one of the essential guarantees for fair trial.

A. Standard of a fair trial in international law:

The right to a fair trial is one of the applicable principles in various parts of the world recognized by the Universal Declaration of Human Rights and since 1948 this became a legal reality obligation for all countries as part of customary international law.

Universal Declaration of Human Rights in its tenth article stated that " Everyone is entitled in full equality with others to consider his case before an independent and impartial tribunal fairly and in public to determine his rights and obligations and of any criminal charge against him"

And in its eleventh article " Every person accused of a crime is presumed innocent until proved guilty according to law a public trial where it provides guarantees necessary for his defense", " any person as a result of the performance of an act or refrain from performing an act won't be convicted only if it is deemed a crime in accordance with national or international law in the time of commission, and won't be exposed to punishment more severe than those that may be imposed when the crime was committed".

The text of fair trial in the following international instruments:

- 1- International Covenant on Civil and Political Rights (article 14)
- 2- Convention against Torture and Other Cruel or Inhuman or Degrading Punishment(article 10,11)
- 3- Convention on the Rights of the Child(article 37)
- 4- Convention on the Elimination of All Forms of Discrimination against Women (articles from 2 to 15)
- 5- Convention on the Elimination of All Forms of Racial Discrimination (article 5)
- 6- Laws of armed conflict
- 7- United Nations Basic Principles on the Independence of the Judiciary. The fifth Principle
- 8- African Charter on Human and Peoples Rights.(article 7)
- 9- Arab Charter on Human Rights.(article 12)

In addition to the above guarantees approved by the international legislation for the trial in general including the trial, which may lead to the execution of the accused, the death penalty in particular in the previous trials and before applying it for States that have not abolish it to be more stringent on the part of these legislations, which was endorsed by the international instruments in this regard.

And from that the safeguards adopted by the United Nations to ensure the protection of the rights of persons facing the death penalty, and were adopted by the Economic and Social Council and ratified by the General Assembly of the United Nations in 1984, and it restricts the use of the death penalty in countries which have not abolished until now.

Among the preventive measures offered, it does not permit the application of the death penalty only after a trial of the accused provide all the judicial guarantees possible and to ensure that the availability of a fair trial, or at least, those guarantees contained in article 14 of the International Covenant on Civil and Political Rights, including the right of any suspected person or charged with a crime punishable by death to receive adequate legal assistance at all stages of the proceedings.

International mechanisms for the protection and promotion of fair trial guarantees:

From important international mechanisms for the protection and promotion of the right to a fair trial the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on Extrajudicial Executions or execution without trial or forced death penalty.

B. Fair trial standards in the Egyptian legislation:

There are many constitutional texts provide guarantees of a fair trial in the Egyptian legislation, but the law remains on the level of these safeguards are not sufficient in the case of the death penalty and one of the most important constitutional provisions that provide safeguards for fair trial the following:

- 1- (article 67) The accused is innocent until proven guilty in a court of law ensure in it the guarantees have to defend himself, and every person accused of a felony must have a lawyer to defend him.
- 2- (article 68) the right to litigate is guaranteed to all people, and every citizen has the right to resort to its normal judge, the State guarantees the court places to the litigants is close to them and the rapid disposition of cases, it is prohibited to text in the law to exempt any administrative action or decision from judicial control.
- 3- (article 166) Judges are independent and judging only under law and may not be of any power to intervene in cases or in the administration of justice.

Criminal justice and fair trial guarantees in the crimes that may lead to death penalty:

There are some texts in the Egyptian Code of Criminal Procedure which gives some assurance of a fair trial in the criminal offenses that may lead to death like (article No.381) which do not permit the Criminal Court to issue death sentences only by the unanimous views of its members. it must take the view of the Mufti of the Republic before issued the provision.

These articles do not provide sufficient guarantees of fair trial, as the opinion of the Mufti as a non-legally binding, it may not appeal the death sentences issued by criminal courts only through the request for reconsideration of the case or appeal to the Court of Cassation. However, the reasons may be appeal based on are limited and must be limited to points of law and not on the facts of the case.

Article 30 of Act 57 of 1959 as amended by Act 106 of 1962 said that" May appeal against the death sentences before the Court of Cassation on the basis of specific reasons, as defined in Article 441 of the Code of Criminal Procedure five cases of a request for reconsideration of the provisions, it is mainly related to exceptional circumstances.

Military courts and guarantees of fair trial for crimes punishable by death:

Military courts have been established in Egypt under (Act No. 25 of 1966). the Act was amended in April 2007. But the amendments did not overlooking irregularities within it which allows the trial of civilians before military courts and the most important guarantees of fair trial which are routinely violated in the provision of civilians to military courts the following:

- 1- The right to a public trial before an independent and impartial tribunal.
- 2- The right to contact a lawyer fast.
- 3- Right to prepare an adequate defense.
- 4- The right to appeal.

Third : Standard of stop the application of the death penalty for juveniles and pregnant women:

A. Standard of stop or prohibit the application of punishment in international law:

- Stop or prohibit the application of the penalty on the juveniles in international law:

The ban on juvenile execution is an absolute prohibition in customary and international law and applies even in times of war. and prohibited by the Convention on the Rights of the Child, this prohibition is also

in three other treaties. Namely the International Covenant on Civil and Political Rights and the American Convention on Human Rights; and the African Charter on the Rights and Welfare of the Child.

It is also the Arab Charter for Human Rights approved in 2004 is unique among regional treaties dealing with the death penalty, as the ban of the application of death penalty on the juvenile was not an absolute, The Arab Charter of Human Rights came after all the other regional human rights treaties, and ratified by 10 countries among the 22 member states of the League of Arab States, in Article 7 the first paragraph said that " May not be sentenced to death to persons below eighteen years unless the legislation in force at the time of the offense otherwise unless the legislation in force at the time of the offense otherwise".

- **Moratorium on the use of punishment or ban it on pregnant women in international law:**

For the execution of pregnant mother the text to prohibit the application of the punishment on her mentioned in paragraph (5) of Article (6) of the International Covenant on Civil and Political Rights and Article (7) of the Arab Charter for Human Rights.

A) Standard suspension of sentence or banning it in Egyptian legislation:

- Moratorium on the use of punishment on juveniles in the Egyptian legislation:

The new Egyptian Children's Act relieved children under the age of eighteen of the application of the death penalty According to the article (111).

- Stop the application of the death penalty for pregnant women in the Egyptian legislation:

Article -476 - of the Egyptian Penal Code said that stop the execution of the death penalty on pregnant and after two months of their childbirth.

Third : The death penalty in Egypt in 2009

A) **Manifestations of the death penalty in Egypt in 2009:**

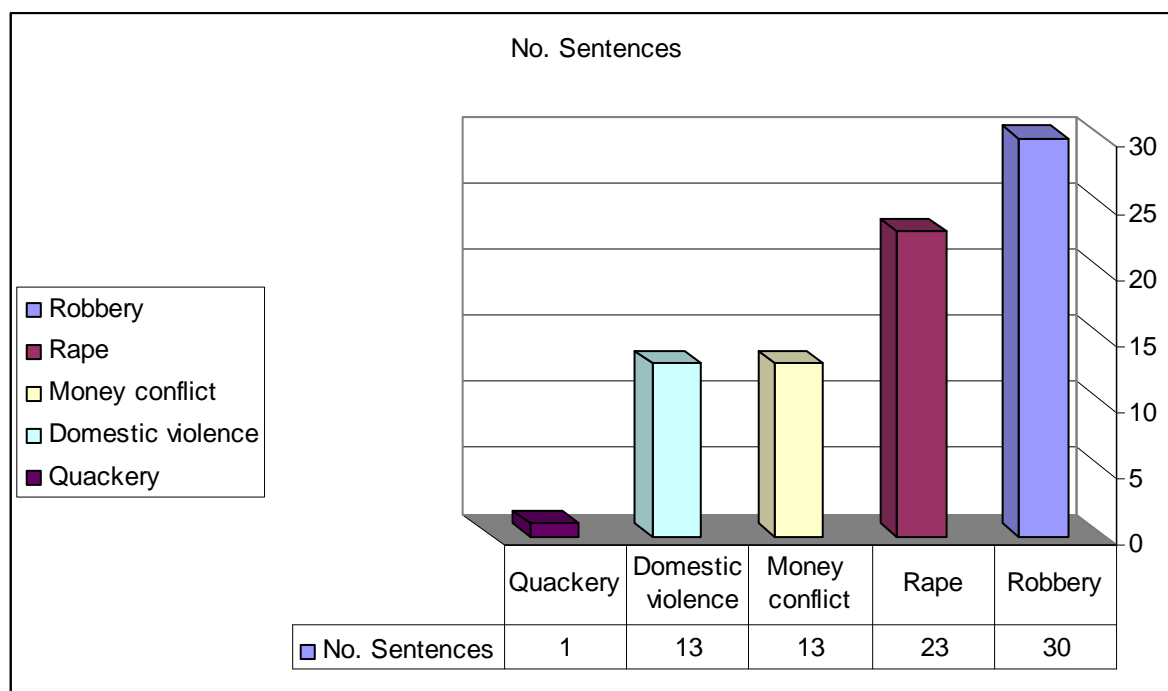
- 1 - First: the provisions of the collective death punishment of crimes in the Egyptian courts.
- 2 - Second: claims of making executions in public.
- 3 – Third: Claims the transfer of human organs from death row.
- 4- Fourth: Media attention the case is now more than the past years.
- 5 – Fifth: Claims the postponement of the death penalty in Egypt on pregnant women for two years after birth.

B. **Statistics on the death penalty in Egypt in 2009:**

Egypt witnessed a clear increase in the death penalty provisions in the recent period, we may find it difficult to count cases and death sentences, but it is clear increase in the rates of death sentence from previous years while at death sentences in the whole past year was 87 sentence, we find that during the first half of 2009 there were 80 death sentence. These sentences included 30 cases of a robbery and 22 rape case and 13 money conflict and 13 domestic violence case and 1 Quackery, Cairo came in first rank in the scope of these crimes by the fact of 22 death sentence, followed by Upper Egypt by 14 death sentence, and Kafr El Sheikh by 12 sentence, Qalubia 9 sentences, Alexandria 8, and Zagazig 6 and the rest of the sentences divided on Lower Egypt and the northern coast.

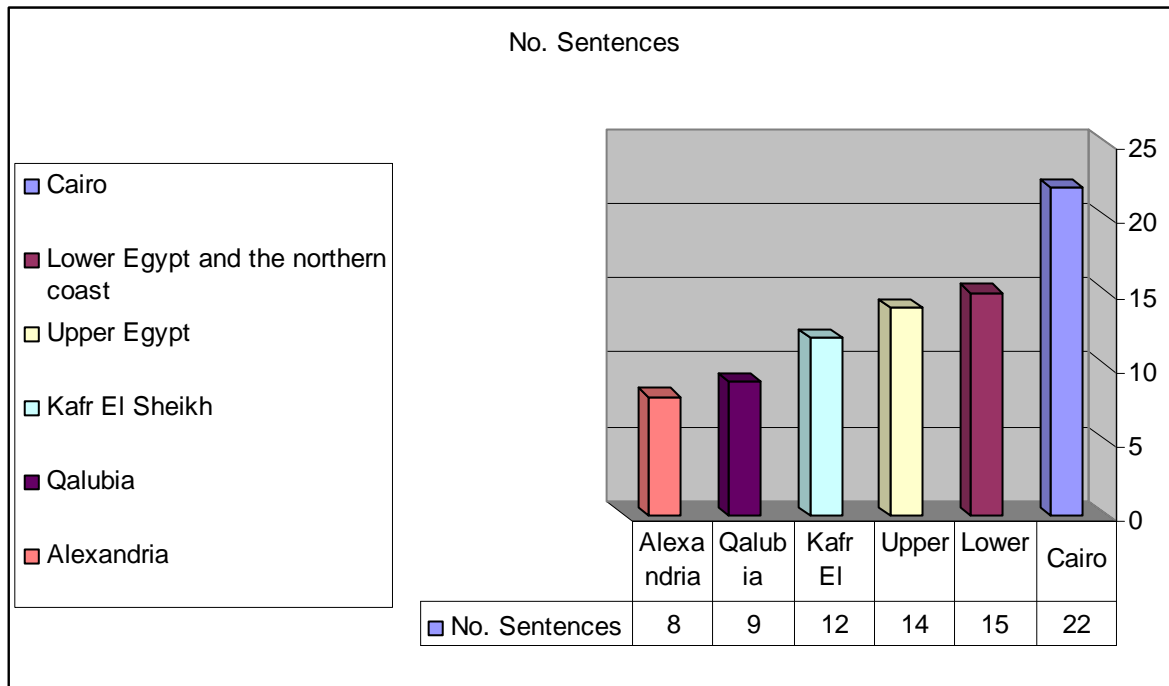
The quality of the crimes punishable by death

No. Sentences	The quality of the crimes punishable by death
30	Robbery
23	Rape
13	Money conflict
13	Domestic violence
1	Quackery
80	Total



The distribution of crimes on the governorates

No. Sentences	Governorates which were issued by the death sentences
22	Cairo
15	Lower Egypt and the northern coast
14	Upper Egypt
12	Kafr El Sheikh
9	Qalubia
8	Alexandria
80	Total



Recommendations

1 - The Arab civil society organizations to organize lobbying campaigns and the opening of community dialogues to push the Arab countries to reconsider their positions on international and regional instruments that have not acceded to it yet, especially those relating to the abolition of the death penalty such as the II optional protocol to the International Covenant on Civil and Political Rights or which provides for guarantees and standards for the application of the penalty such as the Arab Charter of Human Rights and the Convention on the Rights of the Child.

2- The need to formulate minimum standards and guarantees due to the application of the death penalty, serve as a code of conduct for the Arab States to take into account in its legislative and executive procedures when adopting Death penalty, the Code could be formulated by the Committee of Governmental Experts emanating from the regular Committee on Human Rights in League of Arab States.

3 - The need for the mechanisms of the United Nations to define the scope of the most serious crimes and to define it so as not to be an opportunity for interpretation and explanation in broadening the scope of these crimes.

4 - The legislative bodies in the Arab world to join hands with civil society organizations working in the human rights and legal field for the formulation and adoption of penal legislation compatible with the international and regional instruments with regard to the application of the death penalty.

5 - Stop trials civilians to military courts and trial of each individual in front of its natural judge, as well as the amendment of the military laws and its provisions to allow the multi-degrees of litigation so have the guarantees of fair trial.