

Return of Death Penalty Urged

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Prominent Iraqis call for US-led coalition to restore sentence to deter violence and punish Ba'athist crimes.

Barely six months after US administrator Paul Bremer suspended the use of the death penalty in Iraq, some influential Iraqis are calling to have it reinstated.

Those who support the use of capital punishment argue that without such a sentence, Ba'athist crimes will never be properly punished, nor endemic violence brought under control.

Bremer suspended the death penalty in June, pointing out that "... the former regime used certain provisions of the penal code as a means of oppression, in violation of internationally acknowledged human rights".

Certainly, state-sanctioned executions featured prominently in the Iraqi penal code under the Ba'athist regime. It was prescribed for over 79 violations, including theft and membership of an opposition political party, prompting Bremer to comment, "This decision was taken on behalf and in the interest of the Iraqi people."

Few would argue that such widespread application of the death penalty should be severely curtailed - Iraqis such as lawyer Jalal Talabani, current president of the Iraq Governing Council, would appear to be in a minority. "I signed the global declaration against capital punishment and I stand by that signature," he said.

Paul Bremer is himself a citizen of a country which does use the death penalty and his Iraqi critics argue that he has buckled under pressure from the coalition's European allies. They are signatories of the European Convention of Human Rights, which prohibits the sentence.

Another argument for suspension has been that the former regime corrupted the judiciary so extensively that its capacity to conduct fair trials was severely diminished, a matter of grave concern where a guilty verdict will be punishable by death.

However, Baghdad lawyer Tarek Mahdy argues that the Iraqi judiciary is currently undergoing a "purification campaign". Moreover, the country still boasts enough highly-qualified and experienced legal and juridical experts to enable the establishment of a new, independent judiciary which will not preside over miscarriages of justice or the use of the law as a political tool.

In his view, Bremer should have refined the application of capital punishment instead of removing it completely. "He could have repealed the former regime's use of the death penalty as a punishment for political crimes," he said.

Other influential Iraqis argue that the alternative sanction of life imprisonment does not function as a proper deterrent against serious crime. In October 2002, Saddam Hussein amnestied an estimated 100,000 criminals in the run-up to hostilities. These people are thought to be behind the high rate of murder, kidnapping and robbery over the past seven months.

"Only the death sentence can deter such people from committing crimes," commented Nehad Ali, a prosecutor in a court of appeal. "Now is not a good time to have suspended the death penalty."

Head of the al-Bayya' criminal court Mohamed Saheb Mohamed echoed his view, "In the absence of a serious deterrent, many of these criminals will continue their abuses. We will never achieve security this way."

Civil servant Ahmed Taha said, "The former regime released criminals and murderers who have committed most of the acts of looting and sabotage which followed the fall of Baghdad."

"These people should be punished both in this life and the afterlife," he added, reflecting a widespread view that the ultimate sanction should remain in place not only as a deterrent, but also as punishment.

Others cite the Koran in support of capital punishment. "Allah set the death sentence for anyone who fails to respect his commandments, peoples' lives and honour," said Sheikh Mohamed al-Janabi, a preacher in a Baghdad mosque. "It is fair that people like this should be executed."

There is resentment that members of the former regime should now be escaping the very sanction which they meted out so freely. "The death penalty should not be suspended in the punishment of massacres committed by the former regime," said public prosecutor Nehad Ali.

Veteran Iraqi human rights campaigner Bakhtyar Amin, of the International Alliance for Justice, has suggested a referendum to resolve an argument in which he believes there is right on both sides. "At this juncture, we need to find a compromise," he said. "The coalition has its international obligations, but the Iraqi peoples' wounds are still fresh because they are finding mass graves every day."

His comments touch on an ambivalence felt by many ordinary Iraqis, torn between their desire to adopt the practices of a more civil society and a visceral need to see massive crimes punished in a way they feel is appropriate.

"Those Ba'thists who committed crimes against the people in the (Kurdish) north and (Shi'a) south should not escape a death sentence," said Orouba Kamel, a school teacher. "But in the future, I think capital punishment could be limited or even removed."

Others would favour lifting the death penalty once security is established. "We need the death sentence for the time being," said lawyer Kadhim Khdhayer. "Once we have achieved stability, once an independent government has been elected, we can follow other modern societies by removing this form of punishment."

Criminal court public prosecutor Ali Abbas al-Yousof agreed, pointing out that a punishment must be appropriate to the time in question, as much as the crime. "Future circumstances may enable us to think differently," he said.

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