

Revisiting Capital Punishment: Unraveling the Kenneth Smith Case

The controversial execution of Kenneth Smith underscores the imperative to reevaluate the present state of the death penalty, shedding light on apprehensions regarding methods and practices on both national and international fronts.

By **Caroline Lauk** & **Mariona Noguerras Piferrer**

All eyes are on Alabama this week: Kenneth Smith, a 58-year-old man was convicted in 1988 for the murder-for-hire of Elizabeth Senett. In November 2022, his scheduled execution by lethal injection was halted as the execution team struggled to connect intravenous lines in time before the expiration of the death warrant issued by Alabama's Supreme Court.

In a federal lawsuit, Smith sought to block a second attempt at lethal injection, claiming it would subject him to cruel and unusual punishment. Allegedly, during the unsuccessful attempt, Smith was strapped to a gurney and poked with needles for several hours, an experience he deemed inhumane. State officials informed the federal court that they would not pursue another lethal injection but instead set a date for a **nitrogen hypoxia execution**, a method approved in 2018 but yet to be utilized by any state.

Nitrogen hypoxia involves inhaling pure nitrogen gas to the point of causing asphyxiation. Whilst it is authorized in three states: Alabama, being the most recent one, Mississippi, and Oklahoma, it has been heavily criticized due to its ineffectiveness. Concerns include the alleged non-airtight nature of the mask, allowing oxygen seepage that could lead to a prolonged execution, potentially



Source: *The Guardian*



leaving the condemned in a vegetative state. A doctor stated that the low-oxygen environment could induce nausea, leading to choking on vomit.

The UN's High Commissioner for Human Rights expressed reservations, stating that this **untested method** could amount to torture or other cruel, inhuman, or degrading treatment, calling for a halt. A group of UN consultants also voiced concerns, asserting that nitrogen hypoxia could result in a painful and humiliating death. Ravina Shamdasani, spokesperson for Volker Türk, the UN High Commissioner for Human Rights, warned that execution by nitrogen asphyxiation "*could amount to torture or other cruel, inhuman or degrading treatment or punishment under international human rights law.*"

Smith's legal team accuses the State of Alabama of using him as a "test subject" for a lethal experiment. An appeal ruling is pending. Smith is scheduled to be executed on Thursday after a federal court rejected his lawyers' request for an injunction.

WHAT IS CAPITAL PUNISHMENT? - Kenneth Smith's case is just one example of the numerous instances of capital punishment that still exist worldwide. The Death Penalty Information Center and Amnesty International have stated that in 2022,

there were at least 883 executions in 20 countries. This marks a **significant 53% increase from the 2021** figure of 579 executions in 18 countries and represents the highest total since 2017.

Capital Punishment or death penalty, consists of the execution of an offender sentenced to death after conviction by a court of law of a criminal offense.

In many countries, the death penalty is typically reserved for offenses such as: murder, terrorism, war crimes, espionage, treason, or military justice. In others, it is the punishment for sexual offenses such as rape, adultery, incest, sodomy, and bestiality. Under Islamic Law, death penalty is mandated for religious crimes such as unlawful sexual intercourse, known as *Zina*, and for retributive justice, known as *Qisas*. Lastly, the death penalty is also used as punishment for apostasy, blasphemy, hirabah - aggravated robbery -, and witchcraft.

Additionally, in many Asian countries where the death penalty is in use, drug trafficking, and often even drug possession, are considered capital offenses, such as Singapore. Laws in Singapore permit the death penalty for people convicted of trafficking more than 15 grams of heroin, 30 grams of cocaine, 250 grams of meth, or 500 grams of cannabis. China imposes the death



penalty for human trafficking, serious cases of corruption, and financial crimes.

Within global military contexts, courts-martial have handed down death sentences for offenses such as cowardice, desertion, insubordination, and mutiny.

As per the U.S., the Supreme Court decision in *Kennedy v. Louisiana*, the death penalty can only be applied for crimes against an individual resulting in death. However, state legislatures retain the authority to determine the specific circumstances that render a murder eligible for the death sentence, which often include crimes against the government. Furthermore, numerous states in the US permit the charging of all individuals involved in a felony that resulted in death with murder, potentially subjecting them to the death penalty even if they did not directly cause the death. Given that the death penalty is intended for the "worst of the worst" cases, there's a suggestion that legislatures or the courts could restrict its application to those directly involved in the killing of the victim. In addition, prisoners have raised concerns about the overly broad nature of the aggravating circumstances that qualify a crime for the death penalty as some state death penalty laws are criticized for encompassing nearly all

murders instead of reserving this severe punishment for a limited subset of the most heinous offenses.

When exploring the crimes subject to the death penalty, it is important to take note of the execution methods commonly employed in the U.S: hanging, electrocution, gas chamber, fire squad and lethal injection. Historically, **hanging** was authorized by New Hampshire, although they later abolished the death penalty, and it has been used in only three executions since 1976. **Electrocution**, authorized in eight states, has been employed in 163 executions during the same period. The **gas chamber**, an alternative to lethal injection authorized in seven states, and used in 11 executions since 1976. **Firing squad**, permitted in five states, has been utilized in three executions since 1976. **Lethal injection**, the most prevalent method, is authorized in 28 states and has been employed in 1,402 executions since 1976.

Due to resistance from drug manufacturers to provide the substances typically used in lethal injections, some states are increasingly allowing the use of alternative methods if lethal injection cannot be administered, as is the case in Kenneth's situation.



**CAPITAL PUNISHMENT IN
WORLDWIDE NUMBERS** - In 2022, the recorded global total of executions reached 883, with a particular focus on the United States. However, it is crucial to note that China holds the position of the world's leading executioner, although the exact figures remain unknown due to the country treating its execution data as a state secret. Similar opacity surrounds execution data in North Korea, Vietnam, Syria, and Afghanistan, making it challenging to ascertain accurate totals. For numerous countries, restrictive state practices result in limited or no available information. **The figures reported on the use of the death penalty in these cases represent minimum values, and the actual numbers are likely higher.**

The majority of known executions in 2022 occurred in China, followed by Iran, Saudi Arabia, Egypt, and the United States. Russia, although retaining the death penalty in law, has not executed anyone in at least a decade.

The global increase in executions in 2022 was driven primarily by a 59% surge in the Middle East and North Africa Region, where 93% of known executions took place. Iran accounted for 70% of executions in the region, with Saudi Arabia responsible for 24%. The

top five countries in terms of executions were China (unknown, estimated in the thousands), Iran (at least 576 executions), Saudi Arabia (196 executions), Egypt (24 executions), and the U.S. (18 executions). Compared to the previous year, executions in Iran rose by 83%, and executions in Saudi Arabia tripled.

Although precise figures cannot be determined, organizations estimate that across 52 countries, there were at least 2,016 death sentences in 2022. This is an increase from 2021, which resulted in 2,052 deaths in 56 countries in 2021. Some countries, including Bahrain, Comoros, Laos, Niger, and South Korea, imposed death sentences after a hiatus. Meanwhile, Belarus, Cameroon, Japan, Malawi, Morocco/Western Sahara, Oman, Sierra Leone, Uganda, and Zimbabwe had executions but no new death sentences in 2022. At the year's end, at least 28,282 individuals were known to be under sentence of death. Notably, Kazakhstan, Papua New Guinea, Sierra Leone, and the Central African Republic abolished the death penalty in 2022.

Furthermore, since 1990, at least 11 countries —namely, China, Democratic Republic of Congo, Iran, Nigeria, Pakistan, North Korea, Saudi Arabia, South Sudan, Sudan, the United States, and Yemen — have carried out



executions of individuals who were under the age of 18 or 21 at the time the crime was committed. This action constitutes a violation of Article 37(a) of the UN Convention on the Rights of the Child which has been ratified by all countries except the United States. However, they did ratify the International Covenant on Civil and Political Rights, and by executing children or pregnant women, constitutes a breach of article 6(5) of the ICCPR. Moreover, the UN human rights Committee has referred to this article as a rule of customary international law, which may not be subject of a reservation made by a state which becomes a party to that Covenant.

In relation to Europe, it is important to emphasize that the union maintains a firm stance against the death penalty, considering its abolition as a key goal in the union's human rights policy and a prerequisite for entering the EU. Nevertheless, despite this position, Belarus persists in actively employing capital punishment. Strikingly, this stance doesn't appear to impact its engagement in bilateral relations with the bloc or its participation in the Baku Initiative, centered on energy and transport cooperation between the EU, Turkey, and the former Soviet republics.

UN'S PERSPECTIVE ON CAPITAL PUNISHMENT - The approaching date

has led to an increase in international voices urging U.S. authorities to intervene before it becomes irreversible, as recently done by the Vatican. However, Alabama authorities continue to assert that the chosen method for Kenneth's execution "will be the most painless and humane known to man," a statement questioned by the United Nations High Commissioner for Human Rights, Ravina Shamdasani. Shamdasani expressed her concern about the method and called on authorities not only to halt this operation but also to refrain from carrying out other executions in the same manner.

The practice of the death penalty contradicts the right to life. The UN High Commissioner for Human Rights, Volker Türk, stated during a roundtable on human rights violations related to the death penalty in February 2023, "The state's imposition of the death penalty, the most severe and irreversible punishment, is profoundly difficult to reconcile with human dignity and the fundamental right to life." Türk emphasized that the death penalty also discriminates, disproportionately affecting individuals from racial, ethnic, linguistic, religious minorities, as well as LGBTQI+ community members. The death penalty is not just a criminal justice issue but a human rights issue, disproportionately impacting people in poverty, with diverse sexual and gender



orientations, indigenous communities, and other minorities.

It is essential to highlight that the Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1989, advocates for the definitive abolition of the death penalty.

Furthermore, as repeatedly mentioned, nitrogen asphyxiation could constitute a violation of the prohibition of torture and cruel, inhuman, or degrading treatment, a fundamental principle enshrined in various international human rights instruments such as the Universal Declaration of Human Rights or the Convention against Torture. The UN Committee against Torture has pointed out that the uncertainty of many individuals on death row in a country where the death penalty is in the process of abolition "amounts to cruel and inhuman treatment in violation of Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Additionally, in Resolution 1253 (2001), adopted on June 25, 2001, the Parliamentary Assembly of the Council of Europe stated that the application of the death penalty "*constitutes torture and inhuman or degrading punishment within the meaning of Article 3 of the European Convention on Human Rights.*"

CONCLUSION - The scheduled and confirmed execution for today by the Alabama Supreme Court on this Thursday, January 25, 2024, has intensified criticism from opponents of the death penalty. They argue that Alabama prison officials are using Mr. Smith as a guinea pig for an untested and potentially macabre experiment. Although state officials claim that death by nitrogen hypoxia is painless due to its rapid induction of unconsciousness, critics argue that this claim lacks certainty.

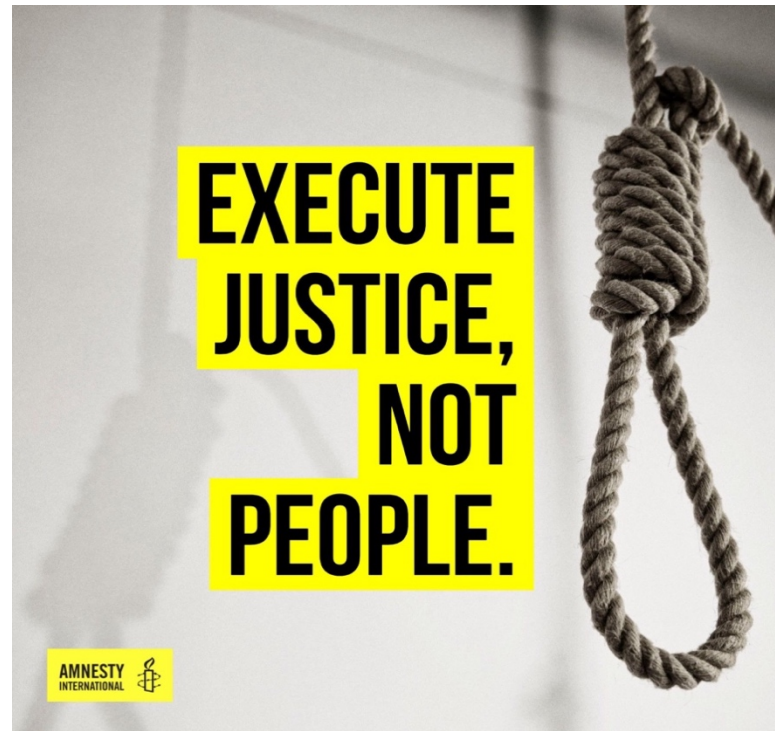
Regarding the path we are following in terms of 108 states having abolished the death penalty for all crimes, seven have abolished it for ordinary crimes, and 29 maintain a moratorium on executions. The abolition of the death penalty has gained momentum in several states in recent years, reflecting a shift in public perception and a growing awareness of the ethical implications involved. However, addressing the lack of consensus and resistance in some places remains necessary.

In a broader context, it is imperative to reconsider the fundamental question: not whether someone deserves to die for a crime, but whether as a society, we deserve the power to take a life. The ethical implications and uncertainties surrounding alternative methods, such as nitrogen hypoxia, underscore the



need for a reflective and critical examination of the principles guiding our approach to the death penalty.

"The world cannot afford to be killed in such a barbaric way," used *"to kill pigs"* and causing great suffering to the condemned, denounces Mario Marazziti, co-founder of the World Coalition Against the Death Penalty. UN experts point out that nitrogen hypoxia can be very painful, even veterinarians do not want this method to be used to kill animals, according to Marazziti. These critiques highlight the need for a comprehensive and ethical review of current practices related to the death penalty. In a broader context, it urges us to reconsider the fundamental question: **not whether someone deserves to die for a crime, but whether as a society, we deserve the power to take a life**



Source: Amnesty International



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