Putting capital punishment to rest

A qualitative study of capital punishment and human rights in China and the Philippines

Author: Micha Widerberg Serák
Supervisor: Ludwig Gelot
Semester: Spring 2018
Course code: 2FU33E
# Table of Contents

Table of Contents ................................................................. 1  
Abstract .................................................................................. 3  
1. Introduction ........................................................................... 4  
   1.1 Research problem and relevance ........................................ 4  
   1.2 Analytical Framework ...................................................... 6  
   1.3 Objective and research question ........................................ 8  
   1.4 Methodology .................................................................... 8  
   1.5 Limitations and delimitations ............................................. 9  
   1.6 Structure of the thesis ...................................................... 10  
2. Analytical Framework .......................................................... 12  
   2.1 Literature Overview ......................................................... 12  
   2.2 Concept of Legitimacy ...................................................... 14  
      2.2.1 Definitions of Legitimacy ........................................... 16  
      2.2.2 Legitimacy and Human Rights ................................... 17  
      2.2.3 Norms of Legitimacy ................................................. 18  
      2.2.4 Crises of Legitimacy .................................................. 20  
      2.2.5 Summarize of analytical framework ............................. 21  
3. Methodological Framework .................................................... 22  
   3.1 Sources and Validity ........................................................ 25  
4. The People's Republic of China .............................................. 26  
   4.1 Background ...................................................................... 26  
   4.2 Findings .......................................................................... 29  
      4.2.1 Suspended sentences and a new approach on human rights .............................................................. 29  
      4.2.2 Changed opinions ..................................................... 30  
      4.2.3 The implementation of Western ideas ......................... 30  
5. The Philippines ...................................................................... 32  
   5.1 Background ...................................................................... 32  
   5.2 Findings .......................................................................... 34  
      5.2.1 The war on drugs and the support of capital punishment ................................................................. 34  
      5.2.2 Lowering the minimum age of criminal responsibility ........................................................................ 35  
      5.2.3 Anti-drug campaigns .................................................. 35  
      5.2.4 Violation of human rights ............................................ 36  
      5.2.5 The reach for abolition ................................................. 37
5.3 Additional findings ………………………………………………………………………………………………37
5.3.1 Asian Values ……………………………………………………………………………………………………37

6. Analysis ………………………………………………………………………………………………………………39

6.1 The People’s Republic of China ………………………………………………………………………………39
  6.1.1 Morality and human rights issues related to capital punishment …………………………………………39
  6.1.2 Legality and human rights issues related to capital punishment …………………………………………40
  6.1.3 Constitutionality and human rights issues related to capital punishment …………………………………41

6.2 The Philippines ……………………………………………………………………………………………………42
  6.2.1 Morality and human rights issues related to capital punishment …………………………………………42
  6.2.2 Legality and human rights issues related to capital punishment …………………………………………43
  6.2.3 Constitutionality and human rights issues related to capital punishment …………………………………44

7. Conclusion ……………………………………………………………………………………………………………45

8. References …………………………………………………………………………………………………………46
Abstract

The situation of the influence of human rights issues related to capital punishment has for long been a matter of debate, especially regarding the retention and abolition of the death penalty. Various countries have, during the 20th century, changed their laws and approach on capital punishment with the implementation and adoption of human rights conventions. Opinions and actions taken from international actors like the United Nations and Amnesty International will be analyzed in this thesis as these could contribute in the understanding of the human rights movement which, during the last century, has changed many countries strict retentionist approach on capital punishment to an abolitionist view.

The People’s Republic of China and the Philippines will be implemented as case studies in this thesis which aims to investigate if and how human rights issues are influencing capital punishment in these two countries. The concept of legitimacy will be used as theoretical framework in order to identify changes within three sub-concepts of legitimacy namely morality, legality, and constitutionality. These concepts will, with the help of legitimacy, offer an explanation of how the case studies have handled human rights issues in relation to the death penalty. The arguments behind the decision making of laws, regulations and policies in China and the Philippines will also be of interest in the answering of the research question as these arguments could act as changes within legality and constitutionality. Regarding the moral stand behind the practice of capital punishment, the concept of morality will assist this thesis in the explaining and understanding of the ethics behind the choice of the death penalty.

The findings of this thesis demonstrate that social structures such as history, culture, politics, and norms are important aspects in the decision- and law making of capital punishment in China and the Philippines. Obstacles identified are linked to the approach on the death penalty from the governments which, in both case studies, have a history of neglecting human rights issues. However, as China has started to reconsider their stand on capital punishment, the Philippine regime has implemented an even stricter approach on the death penalty which demonstrates that the matter of human rights issues regarding capital punishment, in the two case studies, is a complicated battle between retention and abolition and the contest of legitimacy.

Keywords: capital punishment, human rights issues, legitimacy, China, The Philippines
1. Introduction

1.1 Research problem and relevance

The impact of social factors on capital punishment, such as human rights, has long been a complicated debate with strong opinions from abolishers and retentionists (Mathias, 2013:1246). The practice of capital punishment violates the Universal Declaration of Human Rights (UDHR), established on December 10, 1948, which states that [...]everyone has the right to life and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Schabas, 1998:797). International non-governmental organizations (INGOs) have advocated global movements to end the death penalty and have put international pressure on states and politicians to address this issue (Mathias, 2013:1247). The UN Commission on Human Rights has stated that: “abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights” (Hood, 2001:340). To challenge popular opinions about the death penalty, Amnesty International has declared that capital punishment is an extreme denial of human rights and that there is nothing noble with this inhumane treatment of human beings; not even in the name of justice (Mathias, 2013:1247). Today the practice is widely considered inhumane and has been abolished by a large number of states despite it having a strong grip especially in Asian and Middle Eastern countries (Hood 2001:334). With at least 10,000 executions per year since 2006 the People's Republic of China scores highest of all the retentionist states globally (Hood and Hoyle, 2015:100).

Despite the strong hold of capital punishment in Asian countries, the abolitionist movement is not a new phenomenon and has been around since the end of the eighteenth century, originating in Europe (Hood and Hoyle, 2015:10). Yet, the worldwide trend of abolition did not take place until the second half of the 20th century. The history of human rights and capital punishment demonstrates divided opinions concerning moral and the right of the individual, which still today are widely discussed topics in the death penalty debate (Mathias, 2013: 1247). Regardless of the statements from human rights actors and the global movement to implement a complete abolition of capital punishment, many states continue a frequent practice of the death penalty with Asia as the leading continent when it comes to executions. 95 % of the Asian residents live in countries who practice capital punishment. Of the 13 Asian nations which still are retentionists, only four of them (China, North Korea, Singapore,
and Vietnam) use the death penalty regularly. Three of these nations are (or have been) communist states. It is estimated that China has executed about 15,000 people every year between 1998 and 2001. Considering Singapore, this state is also running a strict capital punishment system, where judges are forced to call on the death penalty for all people convicted of murder and drug trafficking offences (Johnson, 2010:338ff). In Southeast Asia, capital punishment is widely supported considering its supposed preventative effects in crime rates (Hood, 2001:334), which could explain why only three (Philippines, Cambodia, and Timor-Leste) of the eleven countries in this region have abolished capital punishment. The Philippines has an exceptional history in the matter of capital punishment since the Philippine government abolished the death penalty 1987, only to reinstate it in 1993 to again abolish it in 2006. Human rights INGOs have played a vital role into inspiring the Philippine government to abolish capital punishment through, for instance, legislative lobbying (Dongwook, 2016:606).

Although an extensive amount of research on capital punishment already exists, a limited amount of studies on the states in Asia that have abolished capital punishment, have been carried out (Hood and Hoyle, 2015:99). The relevance of this topic relies on the fact that capital punishment goes against universal human rights which states that everyone has the right to life. This right is demonstrated through the endless fight for complete abolition of the death penalty by various human rights organizations and councils concerning human rights such as the United Nations (UN) and the Council of Europe (Dongwook, 2016:604). The fact that various countries in Asia still practice capital punishment although it breaches universal human rights creates a research gap which this thesis will aim to answer.

The research problem of this thesis concerns the human rights issue on capital punishment. The retention and abolition of capital punishment in China and the Philippines: two countries that are on different stands concerning the death penalty, will act as a tool for understanding the different ways of thinking when it comes to capital punishment, such as the question of moral and justice (Clark, 2005:19). As previously stated, China has a dark history in the issue of capital punishment and still very much conducts executions and as already stated, the Philippines’s stand towards capital punishment is somewhat ambiguous (Zhonglin, 2009:153). A comparison of these states will contribute to a greater understanding of hidden factors in the issue of capital punishment, since these countries both have a dark and complicated history of capital punishment and have been in the center of attention by media,
various INGOs and human rights organizations. Hidden factors within the comparison of these states could be aspects such as: political regimes, state sovereignty, culture, religion, or different structures of power (Gui, 2017:).

This research has potential to offer an enlightened view of the mechanisms behind the debate about capital punishment and the law-making decisions behind it. Dongwook (2016:598) argues that existing studies regarding the death penalty, has mainly focused on organizations stationed in Europe, for example the Council of Europe, which exclusively deal with matters concerning European countries. This visible exclusion of Asia legitimates research regarding the death penalty in this region since it has been highly deprioritized in modern research (Dongwook, 2010: 598). The result of this thesis will hopefully contribute to the work of researchers within the human rights, democracy, and development field.

Nonetheless, the entire continent of Asia has experienced a significant change in the number of executions over time. Johnson and Zimring (2009:2) clarify this argument by stating that the number of countries that committed executions every year in the 1990s reduced to one-third by 2006, with South Korea and Taiwan as the main contributors to the reduction. Evidence show that China and Singapore are experiencing a downward trend in executions. Still, Asia holds the title of the leading continent regarding capital punishment (Johnson and Zimring, 2009:19).

By analyzing the situation of capital punishment and human rights issues in China and the Philippines, explanations of their approach on capital punishment like political, social, and economic structures could be provided and used in the understanding of human rights issues related to the death penalty.

1.2 Analytical Framework

As analytical framework for the issue of the influence of human rights on capital punishment the concept of legitimacy has been identified from the literature review. According to Ian Clark, legitimacy is the result of political brokerage or ‘legitimacy contest’. This means that behaviors or decisions which are taken are considered acceptable or legal, despite the opposition from other actors in example the issue of abolition or retention of capital
punishment. Clark identifies three levels of legitimacy. Morality - which is based on normative principles and is accepted by members of society. Legality - a concept connected to legitimacy and which depends on obedience to the law. And last, constitutionality which is linked to legitimacy in the form of norms and practices of society (Clark, 2005:209).

The main justification of why legitimacy matters is that it highlights the role of norms within society, which shapes the behavior of a state. It can also be applied in a variety of social situations (Reus-Smit, 2007:158). Reus-Smit (2007:44) argues that legitimacy embraces the capacity and right to act and control, which he associates with authoritative legislation or other decision-making units which require the consent from subjects. Legitimacy also offers evidence of historical transformations that have taken place in a society and can assist in the understanding of state authority (Clark, 2005, 12ff).

Legitimacy and illegitimacy are both visible in the issue of capital punishment as abolitionists regard the practice illegitimate as it violates universal human rights, while retentionists find it legitimate because it liberates the society from criminals (Kim et al, 2017:420). By studying changes in legitimacy and opinions about capital punishment, one could find out how capital punishment may lose its legitimacy. Studying legitimacy and its changes can help understand the dynamics and capital punishment in China and the Philippines and therefore promote human rights (Clark, 2005:208).

Concerning the research question of this thesis, the concept of legitimacy will contribute to this research by analyzing the behavior and law-making decisions concerning capital punishment in the two case studies and identify potential patterns and correlations. The aim of bringing in the concept of legitimacy is to identify if and why capital punishment is considered a legitimate or illegitimate act in China and the Philippines, thus coming one step closer to the influence of human rights on capital punishment.
1.3 Objective and research question

With a qualitative approach, this thesis will investigate the legitimacy of capital punishment in two case studies in Asia: China and the Philippines, which will be compared parallel to each other in order to analyze the dynamics and contest towards abolition or retention. Focus will be emphasized on a human rights perspective on capital punishment in an attempt to analyze how human rights have impacted the decision-making law in China and the Philippines as in the area of morality, legality, and constitutionality. The reaction from international actors such as the United Nations (UN) is an interesting perspective which could bring light into the debate of retentionist and abolitionist countries. The aim of this study is to develop a greater understanding of the effects human rights issues bring in the matter of capital punishment in Asia. The research question is:

- **In terms of morality, legality, and constitutionality, how have the contest regarding legitimacy of capital punishment played out in China and the Philippines with the influence of human rights issues?**

1.4 Methodology

The methodological framework of this thesis will be structured as an abductive, comparative desk study with a qualitative approach and with the aim to explain elements of capital punishment from a human rights perspective. Bryman states that qualitative research is concerned with words rather than numbers and that it is broadly inductivist, constructivist and interpretivist. As this study will examine the approach on human rights issues in two selected countries and attempt to identify how human rights issues have influenced capital punishment in these states, a qualitative approach was considered suitable due to the possibility of analysis it provides (Bryman, 2016:375).

An abductive method was considered applicable as it provides analytical structure which is required when conducting a study of the influence of human rights on capital punishment. It will be a study that encompasses two case studies which are two countries in Asia that either are retentionist or abolitionist states. Due to its approach on the death penalty, China will represent the retentionist country and the Philippines was chosen as the abolitionist state because of its abolitionist stance (Johnson and Zimring, 2009:27). The fact that the
Philippines moved back and forth between retention and abolition is expected to yield interesting insights into the dynamics of political brokerage and legitimacy contest on the issue of capital punishment. This thesis aims to define the logic behind certain countries decisions to abolish or withhold capital punishment and deeper analysis is thus needed. The concept of legitimacy presented in the analytical framework will be used to analyze findings and confidently provide the thesis with empirical evidence in the legitimacy of capital punishment in China and the Philippines.

A comparative design will be used, as it enables the study of two different cases using nearly the same methods. By comparing two or more cases a clearer picture of social development could emerge and thus assist in the understanding of the research question (Bryman, 2016:64).

Regarding the data collection of this thesis, secondary sources will be used as well as statements and documents (articles, journals, publications) provided by scholars of the field, international actors like the UN and human rights organizations like Amnesty International. The data has been carefully chosen to the extent that it contributes with knowledge and insight to the issue of human rights and capital punishment.

1.5 Limitations and delimitations

General fact about retentionist and abolitionist countries of capital punishment in Asia can be found without difficulties. However, one limitation of this thesis is that reliable data on capital punishment in Asian countries could be hard to access since states like China consider execution rates as a state secret which gives reason to doubt the legitimacy of the existing data (Johnson and Zimring, 2009:27). Language is another limitation which needs to be taken into account as various document concerning the status of capital punishment in China and the Philippines are written in Mandarin, Cantonese or Filipino and not all of them are translated into English. The data collected for carrying out research in this thesis will accordingly originate from sources written in the English language.

There are several delimitations on this thesis and they are put to narrow down the focus of the research. Conducting deep research concerning capital punishment in Asia without a certain
definition could easily result in a large-scale study that only touches the surface of the research problem. By selecting two case studies to compare to each other and by focusing on a few research questions, this thesis will positively try to answer the research problem by narrowing down the research by not including all the countries within the continent of Asia.

1.6 Structure of the thesis

The purpose of this study is to investigate the influence of human rights on the matter of capital punishment with the aim to develop a greater understanding of this phenomenon. In order to tackle this aspect on an issue like the death penalty, this thesis will be structured into seven chapters.

The first chapter, the Introduction, is the opening chapter which presents the research problem and relevance, the research topic and the research questions and the objective. It briefly touches the analytical framework and methodology of the thesis and concludes with identifying limitations and delimitations of the study.

The second chapter, Analytical Framework, starts by presenting a literature overview which contributes to the thesis by providing previous, detailed research needed when conducting a qualitative study. Further, the chapter explores the concept of legitimacy and identifies three sub concepts of the approach: legality, morality, and constitutionality. These concepts are used in the thesis to analyze the research questions.

Chapter three, Methodological Framework, presents the method and methodology of this thesis and also brings out what kind of sources that are used.

In the fourth chapter, The People's Republic of China, background information about China and the country's human rights approach on capital punishment is provided. Focus is put on how the political regime of China have handled the human rights approach on the death penalty. Findings of the research will also be presented in this chapter.

In the fifth chapter, The Philippines, background information about the Philippines and the country's human rights approach on capital punishment is provided. Focus is put on how the
political regime of the Philippines have handled the human rights approach on the death penalty. Findings of the research will also be presented in this chapter.

In *Analysis*, which is the sixth chapter of the thesis, the findings presented in the previous chapters will be analyzed by using the concept of legitimacy.

The last chapter *Conclusion* offers a summary of the thesis in relation to the research problem and the research questions.
2. Analytical Framework

This chapter will start by providing a literature overview of existing literature and research on the topic of capital punishment in Asia. Reviewing the existing literature related to the research topic is a crucial step when conducting research, as it enables the establishing of what is already known and what needs to be identified in the research topic (Bryman, 2016:90). This review of the literature will point out the most important and effective sources which are used to bring empirical data to this thesis. It will also act as a background information and justification of this research.

This chapter will explain the theoretical framework chosen for this study, namely the concept of legitimacy. Literature by Ian Clark, Peter Stillman, Christian Reus-Smit and Kate Nash will provide the thesis with precise information about the concept. Aspects such as legality, morality, and constitutionality, which could assist in the understanding of the influence of human rights on capital punishment in China and the Philippines will be presented in this chapter.

2.1 Literature Overview

Regarding capital punishment in the continent of Asia, existing literature is to be found without difficulties. This includes books, reports and studies focusing on various Asian countries, stretching over different time frames. The authors in this research field all originates from different backgrounds and some of them from different culture. They are often working for world-known universities and their professional backgrounds are diverse. However, sources which alone focus on Asian countries without mentioning western countries are rare.

David T. Johnson and Franklin E. Zimring (2009, Passim) have contributed to the topic of capital punishment by pointing out that the huge human population and unrecorded executions, are dominant factors of why Asia is the leading continent of legally justified executions. “The Next Frontier: National Development, Political Change and the Death Penalty in Asia” opens the issue of capital punishment for people who have limited knowledge about Asia, with the use of case studies including the Philippines and the People’s
Republic of China. The authors stress a diversity within Asia and mentions the concept of *Asian unity*: a concept created by the West as an attempt to understand the Asian cultures and their way of thinking regarding morality, human rights, and the death penalty. Considering that China has a tendency of hidden statistics, the authors mostly clarify what society does not know about capital punishment in Asia and not what is actually taking place (Johnson and Zimring, 2009:18f). Johnson and Zimring offers an excellent source of background information about the history of the practice of capital punishment and violation of human rights in China and the Philippines.

For a global view on capital punishment Roger Hood and Carolyn Hoyle (2015: Passim), contribute with their research through a general perspective and brings up the question of capital punishment in law and practice. The authors explore the ethics behind the death penalty and the exclusion of the vulnerable, such as minors and pregnant women (Hood and Hoyle, 2015:148). Hood and Hoyle’s publication is relevant for this thesis since it provides an aspect from the law-making procedures. The publication also offers a more updated perspective of the death penalty and human rights in China and the Philippines, which accordingly provides important aspects useful when conducting this research. One concept which Hood and Hoyle discusses is *Asian Values*, which very much like *Asian unity*, puts a label on the moral values of Asian countries. This concept claims that Asian countries have a different approach on human rights and the value of a life and is relevant to this thesis as it questions western countries approach on Asian countries regarding their stands in human rights (Hood and Hoyle, 2015:121). The concept of Asian values will be fully presented in the Findings chapter.

Various publications and articles focusing on the human rights perspective on capital punishment will be of considerable use when conducting this thesis as they pinpoint and bring light into the research questions. William A. Schabas (1998:799) article “*International Law and Abolition of the Death Penalty*” mentions the important factor of international law and the United Nations Human Rights System. Schabas (1998:799) discusses various, essential documents for the study and notices a trend in international laws towards the abolition of capital punishment. The issue of human rights violations becomes an important aspect in this article and is therefore useful in conducting this thesis as it provides with human rights policies, which could assist in the research of human rights violations in China and the Philippines (Schabas, 1998:799).
Dongwook (2016: *Passim*) and Mathias (2013: *Passim*) adds the condition of how capital punishment can be understood from the viewpoint of INGOs and how the abolition of the death penalty can be approached in Asian countries. Kim Dongwook's (2016:606) approach on the abolition of capital punishment in the Philippines adds a vital clue to this thesis as Dongwook (2016:606) examines the history of the Philippines and the country's mixed feelings regarding the death penalty. In the article “The Sacralization of the Individual: Human Rights and the Abolition of the Death Penalty”, Matthew Mathias (2013: *Passim*) investigates what sources have caused the trend of abolition of the death penalty in Asia and connects this to that the majority of the countries which have implemented abolition are democracies. Mathias (2013:1248) demonstrates that this parallel could be a consequence of the rise of human rights movements and organizations, which touches the research questions of this thesis. His articles are thus important for this research because it contributes to the issue of capital punishment from a human rights approach.

Authors like Ian Clark (2005: *Passim*) add the concept of *legitimacy* to this thesis. This concept encompasses the right to act or rule and is powerful in political contexts. According to Clark (2005:12) definitions of legitimacy are not vital for the understanding of the concept. At the same time Clark (2005:12) argues that definitions are not necessarily bad because the approach on legitimacy differs between countries which makes definitions a helpful tool for the understanding of legitimacy. Clark (2005:12) also mentions that legitimacy has strong bonds to political brokerage and that legitimacy contests are common within the political arena. In contrast, Peter Stillman (1974:38) presents different definitions which can ‘measure’ the amount of legitimacy of an actor. Stillman’s definition stresses that it is the results of an actor which needs to be considered and not the intentions. This thesis will apply Stillman's definition of legitimacy as it contributes with the understanding of structures and norms within the case studies which is needed to answer the research questions.

### 2.2 Concept of Legitimacy

“The language of legitimacy is employed to describe not just the capacity to act, but the right or entitlement to act” (Reus-Smit, 2007:158). This citation from Christian Reus-Smit is an attempt to describe the core concept of legitimacy, which circulates around the right to act.
However, various authors which mention legitimacy stresses the influence of norms and power over legitimacy. Some of these authors are Ian Clark, Peter Stillman, Christian Reus-Smit and Kate Nash which all focus on legitimacy in society. The correlation between legitimacy and human rights which are also expressed in some of these articles and publications, provides the possibility of analyzing the legitimacy of the use of capital punishment in the case studies. These sources will also be of use in the theory chapter as the literature explains the essential use and behavior of legitimacy in society and from a human rights approach. In “Legitimacy in International Society”, Clark (2005:19) argues that legitimacy both consists, and constraints of power and he presents three sub-concepts: legality, morality, and constitutionality which he puts into context with states governments or ruler of law. Research by Clark (2005:19) provides this thesis with a possible approach on the issue of legal, moral, and constitutional laws and decisions taken within the matter of capital punishments which in turn will assist in answering the research questions of this thesis.

To identify the cause of the influence of human rights on capital punishment, the concept of legitimacy will act as a tool to explain these potential aspects. By examining the social and political structures of a state, such as laws, regulations and policies, legitimacy could assist in the understanding of the issue of human rights and the death penalty as these are matters which are exercised at a state, regional and international level (Clark, 2005:13). Through defining the concept of legitimacy, its definitions, its correlation to human rights and power, its norms, and crisis of legitimacy, this chapter aims to identify the core principles of legitimacy to later apply them on the research questions.

Legitimacy can be identified as a condition which actors assign other actors or to an institutions norms and rules due to their identity and interests (Reus-Smit, 2007:162). In our case, the legitimacy of capital punishment is our chief concern. Legitimacy thus refers to the entitlement to control in the political realm, with the requirement that people comply with the actor or a set of rules. Lack of consent or social sanction denies actors from legitimacy since it is a highly social concept. The language of legitimacy does not exclusively refer to actors behaving as agents but also includes institutions and social systems such as the UN and the World Trade Organization (WTO). As institutions generally are defined as sets of norms, rules, and principles, they create social relations by controlling the behavior of actors. The actions carried out by an organization can be interpreted as legitimate or illegitimate, but it is
not their right to act that is considered, rather the ethics of the norms, rules and principles established by the organization. An actor or organization can thus claim to value legitimate actions but if these actions are not accepted by society then the actors or organizations are not considered legitimate; they become illegitimate. Actors or practices such as capital punishment which have been labeled as illegitimate will struggle with the task of ridding themselves this classification to the extent that they will set up laws within the assembly handling the issue of legitimacy (Reus-Smit, 2007:158f).

2.2.1 Definitions of Legitimacy

The study of legitimacy should, according to Clark (2005:13), not be considered as concrete principles but instead as the norms of the society. Legitimacy becomes a concept of interpretation since definitions are not thought necessary. However, Clark counter argues that legitimacy can benefit of some definitions since the perception of the concept differs between states which can easily result in confusion (Clark, 2005:14).

In contrast to Clark, Stillman (1974:37) presents an outline of legitimacy which all definitions of legitimacy follow and in which any common interpretation of legitimacy can be implanted. He states that the act of ruling is legitimate if:

1. it is based on the beliefs of [...] 
   a) other nations, states or persons  
   b) the people unanimous  
   c) a majority of the people  
   d) a majority of some portion of the people  
   e) the king, dictator, etc.  
   f) tradition, ancestors, prescription, etc.  
   g) God  
   h) other  
   i) none or irrelevant

2. it has [...] 
   a) possession of a certain quality (or qualities)  
   b) pursuit of certain value (or set of values)  
   c) none or irrelevant

(Stillman, 1974:37)
According to Stillman (1974:38) this outline provides the tools of ‘measuring’ if an actor or practice such as capital punishment can be considered as legitimate or not. Further, Stillman argues that people of the twentieth century are no longer concerned with the power and legitimacy of monarchs and other historical notions and Stillman thereby goes against his own outline, stating that the consensus of democracy have such strong impact on the daily lives of people today that definitions of legitimacy concerning democracy should be accepted in today’s society. He bases this argument on the idea that very few people today would expect governments to address their legitimacy in the hands of kings and queens (Stillman, 1974:38).

Additionally, Stillman (1974:39) suggest a new definition of legitimacy as he argues that current definitions are not universal in practice and that they are weak in theory. Stillman suggests that: “a government is legitimate if and only if the results of governmental output are compatible with the value pattern of the society” (Stillman, 1974:39). “The value pattern of the society” is the specification which all societies strive for in a reality where everything that can be esteemed has a price. It is also the standards for evaluation in a society and could be associated with the value pattern of an individual. “Governmental output” Stillman (1974:40) refers to for example: dictatorships, declarations of war or suppression of demonstrations or any other action by the government that has an impact on society. However, actions and laws which are so outdated that they are unsuited to exist within the value pattern of society, does not have any effect and therefore does not alter the legitimacy of that society. In the end it is the results that needs to be put into consideration in this matter and not the intention or the actual output itself. One also needs to acknowledge that the definition of legitimacy varies between states and that the elemental nature of a government's authority may be an important aspect in legitimacy. In this case, Stillman (1974:41) draws an example that a government established by a coup d’état might be considered legitimate in countries with an authoritarian military while this would hardly be considered as legitimate in countries which practice democracy. These statements are central to legitimacy, since they encourage the preservation of society (Stillman, 1972:41).

2.2.2 Legitimacy and Human Rights

Regarding this thesis, the interaction between human rights and legitimacy is an important aspect in order to analyze the findings. The human rights approach within legitimacy started to attract attention after the Cold War when a policy of “good governance” was preferred. In exchange for enjoying the privileges associated with legitimacy, an approach on human rights
was a required condition for an actor or institution. Scholars argue that human rights are fundamental in legitimacy as they encourage just, humane, and civilized behavior, which are all desirable with a legitimate actor. It is only when an actor has engaged in these issues and fully embraced the approach on human rights that the actor can be regarded as legitimate (Clark, 2005:27).

The language of human rights has, the last couple of years, been omnipresent around the world. Circumstances where states, authorities and other rulers of law have violated human rights have received attention from human rights organizations and international actors like the UN. Despite human rights conventions like the Universal Declaration of Human Rights, which emphasizes that the right to life is for everyone, scholars express disagreement about the nature of universal human rights. Some argue that human rights are characterized as the core of universal morality while others claim human rights to be: “[...] a minimum standard of well-ordered politician institutions for all peoples” (Benhabib, 2008:94). This controversy raises the question of what exactly should count as human rights (Benhabib, 2008:94).

According to Clark (2007:132), the relationship between legitimacy and human rights is based on norms and how these norms gain authority and interact with state and non-state actors. Some scholars claim that NGOs build and shape the norms within society, which are translated into human rights, while others suggest that NGOs are simply variables in the activity of the state (Clark, 2007:132).

Human rights approaches are vital in international society as they assist in the regulation of rules regarding the well-being of the people within the state (Clark, 2005:160). The fact that human rights laws are considered legitimate again brings up the question of what defines an actor or institution as legitimate. From the previous paragraph which focuses on the discussion of definitions, it is clear that most societies would consider human rights laws as legitimate since they follow the definitions, many of which are typical values in modern societies.

2.2.3 Norms of Legitimacy

The three concepts of legality, morality and constitutionality offer the possibility to examine social, legal, and principled aspects in the Chinese and Philippine society. The discussion of legitimacy in international relations often suggests legitimacy to be divided into three sub-
concepts: *legality* which deals with rule of law, *morality* which focuses on normative principles and *constitutionality* consisting of the conventions and understandings of a political constitution. Some scholars argue that legitimacy is the result of legality, morality and constitutionality combined, while others claim these sub-concepts to be tools for the practice of legitimacy (Clark, 2005:207f).

Clark (2005:209) argues that legitimacy does not carry its own standard where actions can be measured, but instead comprises both procedural and substantive norms. The distinction between legitimacy and legality is often misplaced in society as legality takes the position of what is legitimate and what is permitted by international law. This means that actions regarded as legitimate are those which comply with the legal directions of the state. Regarding the influence of morality, it is commonly accepted that the law of a state may be unjust, corrupt or violate moral principles. This puts legitimacy on the edge as some states legitimize unjust actions because they are ‘lawful’ according to certain policies of particular conventions (Clark, 2005:213). As legality and morality pull in different directions, scholars argue that legitimacy should be put somewhere in between these concepts since legitimacy consists of a combination of values and can represent balance amongst the concepts. To fully capture the structure of legitimacy, constitutionality is needed as it refers to the mutual political confidence which is not addressed in legal rules. It is common to refer constitutionality as a norm dependent on political pressure when it is in fact influenced by legal and moral actions. When a crisis of legitimacy has erupted within the international society, it has arguably been caused by a collapse in the norm of constitutionality and not due to disruption within legality and morality, which the common perception supports. (Clark, 2005:208f). Additionally, Clark (2005:19) argues that state conduct is often measured against the approach of constitutionality, since constitutionality is based upon the sense of what is politically appropriate, which is entrenched in expectations rather than in rules and laws. In addition, Clark (2005:19f) stresses that legitimacy can be explained as an area marked out by the barriers of legality, morality and constitutionality and that legitimacy is constrained by conceptions of these three concepts. When actors reach for tolerable consensus to reach legitimacy they are practicing on how these concepts and norms are to be accommodated and applied in their case (Clark, 2005:19f).

Since the state is the supreme law-making actor and is responsible for setting the rules which manages all other power related actions in a society, the importance of legitimacy and its sub-
concepts becomes clear as the state is responsible for legitimizing these actions by granting them legal validity (Beetham, 2013:121f).

Nash (2012:798f) argues that constitutionality is especially relevant regarding human rights issues because it theorizes the spread of human rights as legitimate, as a result of a global human rights movement instead of imperialist military power. Another argument would be that it responds to the needs of human beings and is thus considered a legitimate concept (Nash, 2012:799). Regarding this thesis and the research questions, an interesting approach would be to study the contest of legality, morality, and constitutionality of death penalty. This could provide with understanding of the government’s or ruler of law’s decisions making process, and how legality, morality and constitutionality are practiced with legitimacy. These sub-concepts could also assist in demonstrating how the case studies have handled the issue of human rights and capital punishment from a legal, moral, and constitutional view and might present a possible cause of this issue (Nash, 2012:800). Additionally, the concepts will relate to the case studies in the form of providing insight in social structures in the society of China and the Philippines.

2.2.4 Crises of Legitimacy

The concept of crises of legitimacy brings an interesting aspect to this thesis as it can help in the understanding of how and why certain actors are considered legitimate or illegitimate, as it centers around the decisions and norms of an actor. Further, crises of legitimacy could be. But in order to understand how this is taking place one must first identify the term.

A crisis of legitimacy can be described as a crisis shaped by inadequate or declining legitimacy (Reus-Smit, 2007:161). By stating that an actor or institution suffer a crisis of legitimacy, the consequent is that a turning point of events has created the possibility of collapse, powerlessness, death, disempowerment or irrelevance for that actor or institution. The legitimacy of the actor or institution has thus reached a critical climax. To compensate through adaptation the actor can then recreate the social structures of its legitimacy by adjusting its identity, purpose, and norms. The usage of material sources of power to recoup is also a solution which could be considered in the matter of crises of legitimacy. Since international crises are often grounded in social processes, these solutions will in turn improve the social structure within the institution. The crisis of legitimacy thus forces adaptation as
that is the only way of escaping the critical culmination which a crisis of legitimacy constitutes (Reus-Smit, 2007:167f).

Crises of legitimacy are usually divided into two categories. The **chronic** category encompasses crises that are extended and stretch over a long period. Here legitimacy falls short but momentarily solutions can be implemented to avoid disempowerment and at the same time not compromising the social bases of legitimacy. The **acute** category handles urgent crises which cannot be solved through material encouragement (since they have been exploited to the point that they are exhausted or do not exists) and where disempowerment is inevitable if not the social structures of the legitimacy of the actor is reestablished. Corruption and the use of bribery could momentarily calm a crisis of legitimacy but hardly solve it. However, actors and institutions suffering a crisis can benefit from voluntarism which actively works for effective support and the decrease of opposition which will lower the cost of corruption and bribery. This will in turn contribute to a secure set of rule since voluntarism emanates from the actor’s perception of social norms (Reus-Smit, 2007:168f).

### 2.2.5 Summarize of analytical framework

Existing research recognizes a gap in the study of how human rights issues have influenced capital punishment in China and the Philippines. Research which can be accessed shows that pressure from human rights organizations and INGOs to abolish capital punishment have led to reconsiderations by the Chinese and Filipino government regarding the practice of capital punishment. The concept of legitimacy can explain the language of structural norms and values within the case studies which will assist in the understanding of these states approach on the death penalty. Definitions of legitimacy by Stillman (1974:37) will create a clear direction in which legitimacy will be implemented. Aspects of legitimacy, like how the concept is related to power and human rights will be of importance as it touches the research questions. The subchapter ‘Crises of legitimacy’ can help understand an actor’s course to complete absence of legitimacy and explain how this event occurred and what actors can do to regain legitimacy (Reus-Smit, 161f). Norms of legitimacy: morality, legality and constitutionality will be implemented in the analysis of this thesis as they could explain the social, political, and historical structures of the Chinese and Filipino society and government. In turn, these structures could contribute to the understanding of human rights issues and capital punishment in the case studies (Clark, 2005:209).
3. Methodological Framework

This thesis is designed to be a qualitative study with an abductive approach, which through comparative design will investigate how capital punishment have been and is currently practiced in China and the Philippines and what social and political influences human rights issues have brought to the matter.

Bryman (2016:374) states that qualitative research is: “[...] a research that usually emphasizes words rather than quantification in the collection and analysis of data [...] and is broadly inductivist, constructivist, and interpretivist [...]” (Bryman, 2016:374). Qualitative research thus becomes more contentious than quantitative research, since the former displays less codification of the research process. One possible obstacle with qualitative research is that it is discussed in terms of how it differs from quantitative research, which does not bring any new source of information to the qualitative approach, but rather focuses on what qualitative research is not. Still, qualitative research is seen as a strategy for bringing out the possibility to conduct deep analysis (Bryman, 2016:375) which this thesis requires.

An abductive approach was chosen for this thesis, as the main aim is to establish an understanding of the social and political influences of human rights issues on the matter of capital punishment and abductive reasoning can assist in translating the language, meanings, and perspectives of the data to reach a theoretical understanding. This approach is based on the understanding of the world from the researcher’s perspective and the scientific account of the world observed from that angle. What distinguishes abduction from other approaches is that the theoretical outline is presented and interpreted in the view of the researcher. It is an approach which displays inductive tendencies but relies on the explanation and understanding of the worldview of participants (Bryman, 2016:394). Other approaches in qualitative research are deduction, which focuses on the relationship between theory and research in order to reach a hypothesis, and induction where theory is generated by research. Abduction shares strong ties with induction, but abduction puts more focus on perspectives and meanings of the social world (Bryman, 2016:21f).
The study will cover two case studies which are countries that have a complicated history within the topic of capital punishment: China and the Philippines. A case study is appropriate for this research as it encompasses the detailed analysis of two countries, (Bryman, 2016:60) which is what this thesis aims to investigate. The case studies of this thesis were considered suitable since their political regimes have had strong opinions concerning the death penalty, touching the issue of justice and human rights (Gui, 2017:138), which has gained a lot of attention globally and within international actors, such as governments, politicians, INGOs, councils and human rights organizations (Johnson and Zimring, 2009:136). Both countries have been victims of dictatorships and martial law which has supported the retention of capital punishment (Gui, 2017:118).

Two case studies were chosen due to the possibility of managing a comparative design, which could bring light into the human rights debate related to the death penalty in these countries. As China and the Philippines are states which have or still are exercising capital punishment and because they have displayed a disreputable approach on the death penalty, the social, political, and historical structures of these states could assist in answering the research questions. The case studies will be compared in their approach on capital punishment as a human rights issue and in statements from governments, local NGOs, and human rights organizations. The pursuit of answering the research questions will be closer at hand by identifying social, political, and historical structures within the case studies as these lay the ground for the decision making of a state (Clark, 2005:19).

The comparative design was chosen as it offers the opportunity to study two contrasting cases using nearly identical methods. It implies that a clearer picture of social phenomena will emerge when comparing two or more cases or situations in relation to each other (Bryman, 2016:64f). When applied to qualitative research, the comparative design is a multiple-case study, which occurs when the number of cases studied are more than one. A multiple-case study improves the structure of theory by comparing two or more cases which puts the researcher in a better position to investigate if the theory will hold for the research. The comparison may also bring about new concepts which are relevant to the theory (Bryman, 2016:67f). A comparative design will benefit this thesis in the form of analyzing social, cultural, and economic structures and norms in China and in the Philippines, thus contributing with knowledge and understanding of how these norms and structures are performed within these states.
One methodological tool used for this research will be *text analysis*, as it enables the understanding of the situation of capital punishment and human rights in the case studies, through analyzing the text of the sources and identify potential obstacles that have caused and are currently causing the situation. A text analysis is appropriate as it can help provide an understanding of the communication between the text and the discourse of the source. Through analyzing the sources with an approach on the meaning of the text, aspects such as arguments, messages and missions of the source will be revealed. *Narrative analysis* will be used as an object to the text analysis, as the research questions targets actual events that have or are taking place in the political and social structures of China and the Philippines (Nord, 2005:1f). The time frame of this thesis displays the current situation of capital punishment and human rights issues in the two case studies and background information of the countries will be presented to provide important insight in the historical process of the death penalty related to human rights issues. Statements and policies from INGOs, governments and human rights organizations will contribute to this research by analyzing the discourse of capital punishment in the case studies. Comparison of the case studies will be done through investigating the situation of capital punishment and how human rights issues have influenced the matter from approximately the second half of the 20th century until today. Focus will be put on identifying similar patterns in the decision making and practice of judicial laws which could contribute to the practice of capital punishment (Dongwook, 2016:600).

Since the aim of this study is to investigate the influence of human right issues on capital punishment the theoretical framework of *legitimacy* was chosen due to the possibility of identifying the legality, morality, and constitutionality behind a state's choice to keep, reinstate or abolish capital punishment (Clark, 2005:19). By examining these concepts, this study will investigate if there is a connection between the concept of legitimacy and the Chinese and Philippine approach on capital punishment from a human rights perspective. Information that needs to be accessed in this thesis is data concerning the approach on capital punishment and the recognition of human rights issues. This can be found through studying peer reviewed sources and other empirical data which will be useful in the writing of this thesis, as it will provide with the possibility of analyzing the research questions.
3.1 Sources and Validity

The primary sources consist of peer reviewed research in the form of publications, articles, and reports which all relate to the topic of human rights and capital punishment. The validity of the sources is considered high as they have been peer reviewed and accessed through legitimate search engines such as One Search and Jstor. A selection of sources was conducted to establish a thesis which is based on reliable data. The aim of collecting these sources is to establish an understanding of the matter of capital punishment as a human rights issue and to provide with social and developing answers to the research questions.
4. The People's Republic of China

4.1 Background

The issue of capital punishment has long been a discussed matter in China. With an extensive history of dictatorships, the culture of China developed into applying strict rules and regulations, especially in the matter of the death penalty. Opportunities and conditions for a democratic society to evolve have not been present due to the suppression by communist influences, which has made China notorious for their government's standpoint on capital punishment (Gui, 2017:118).

In the Mao Zedong era, 1949-1976, a negative attitude was expressed towards human rights as they were considered a western slogan which were “lefties” thoughts. In a quote from Mao, the communist leader states that: “China cannot and should not abolish the death penalty, and yet should try to reduce its use.” (Gui, 2017:130). Chinese scholars have long been interested in the approach on human rights related to capital punishment in the Mao era and approaches Mao’s thinking from two different perspectives: positivism and negativism. The latter states that Mao ignored the human rights approach because the country was, prior to the Mao era, stuck in an anarchic approach on human rights and Mao did not predict an outcome where a human rights approach would benefit him in any way. Yet, most scholars emphasize that the positivist approach is more likely, since it encompasses the fact that instead of using the term ‘human rights’, Mao created a new concept called ‘citizens right’ which critically diversified the Western idea of human rights. By implementing citizens’ rights, Mao presented a new way of thinking which highlighted the acknowledgement of class as well as collectivism and non-elitism. Mao was quick to explain that these rights did not come from some divine god but from the people itself and that the rights of the citizens was the first priority. Nonetheless, even though these rights were incorporated in the legislation, they were not taken into consideration or were neglected during Mao’s rule. Additionally, the state did not consider it their responsible to put the rights into action, even though these rules were implemented in the Constitution. Citizens’ rights were considered as political aims, rather than set out rules and rights. Thus, the citizens’ rights existed in words only and not in practice (Gui, 2017:124ff).

Regarding the death penalty during the Mao era, it was considered that state legislation and human rights protection did not have any connection. Mao’s approach on the death penalty
was strict, even though he suggested that the killing was to be put into certain proportions. A person guilty of a crime was either to be dismissed from office, punished, and reformed through labor or to be shot (Hood and Hoyle, 2015:117).

After Mao’s death in 1976, Deng Xiaoping mantled the role as communist leader in China and together with the Communist Party of China (CPC), which is the founding and ruling party of China, introduced the human rights concept. Deng demonstrated a different approach on human rights issues where individual human rights should not be put in contrast to the right of the people: the sacrificing of individuals had to be made in order to protect the society. Dictatorship had to be exercised over a small number of criminals to reduce the crime rate and scare off potential criminals. Deng also stated that capital punishment was a humanitarian act since it protected the majority of the people from being exposed to crime (Gui, 2017:133). Deng stated that: “[...] people who value human rights should not forget the rights of the state. When they talk about human dignity, they should not forget national dignity” (Gui, 2017:134). It can be interpreted that Deng believed that the sovereignty of the state was of greater importance than human rights. Many Chinese scholars argue that Deng’s approach on human rights was modern for its time and is critical to China since it provides instructions in how to respect and develop human rights. This human rights approach has had a major influence both in the Deng and post-Deng era (Gui, 2017:134ff).

After reforms were applied in 1978, China experienced an opening-up were political control became more tolerant and the society grew less repressive. However, the social standards were declining which made public security and criminality increase. Surprisingly, between 1978-1983 when the CPC implemented a strict anti-crime campaign, the criminal cases in China increased. To tackle this problem, Deng advocated an even stricter approach on capital punishment and stated that criminals were the enemy of the people. Based on this statement, the CPC launched a campaign called ‘Decision on Cracking down Severely on Crimes’ where they argued that the only way to stop the wave of crimes was through execution. This campaign led to the death sentence of approximately 24,000 convicts in 1984 (Gui, 2017:136).

The different approaches on capital punishment by Mao and Deng is critiqued by Chinese scholars. While Mao applied the death penalty with some sort of restriction, Deng did not consider regulations on the number of people executed to be of importance. In 1981, 25
Special Criminal Laws were implemented which increased the number of crimes punishable by death. In 1979, as much as 80 crimes were punishable by death and some laws put the death penalty as mandatory in certain crimes committed. This was not changed until the current criminal law was passed in 1997, where only 68 crimes were punishable by death. However, this reduction did not result in fewer executions since the condition of carrying out the execution was changed from 'the most heinous crimes' in the 1979 Criminal Laws to 'extremely serious crimes' in the 1997 laws. This resulted in the broadening of the conditions of executions, letting the Chinese government execute more people than before and although crimes punishable by death had decreased, the same number of people were executed due to the change of the conditions for execution (Gui, 2017:138ff).

Jiang and Wang (2008:25) argue that the Chinese government has used deterrence as a mean to reach public support for the death penalty. Since studies regarding capital punishment in China, are highly inconsequent, Jiang and Wang (2008:25) support the statement by Chinese scholars, that it is nearly impossible to identify the Chinese society’s genuine opinion of the death penalty. Scholars instead suggest the testing of important variables of the attitude of capital punishment. These variables could for example include retribution and rehabilitation. By studying these influences and their impact on the Chinese society, researchers could identify social structures and political views, which are of vital importance when conducting research about a state phenomenon like capital punishment (Jiang and Wang, 2008:25).

In today's China, the CPC is the authoritarian regime and is practicing a strong control over the political realm of the country. However, the situation for the Chinese people has improved since the Mao and Deng era (Gui, 2017:141). China has already completed the transformation from totalitarianism to post-totalitarianism, although the CPC still practice the ultimate authority. The transformation has led to the strengthening of freedom of personal movement and to that citizens no longer believe in political and ideological indoctrination. Trust in politics and the government has weakened significantly the last 20 years and civil disorder have occurred more frequently, like demonstrations on capital punishment (Gui, 2017:142). Scholars argue that the civil disorder is caused by dissatisfaction with a certain leader which then gradually changes to disapproval of the whole state regime. These reasons prompted the CPC to reconsider their political reform on human rights issues as they received more attention from international actors, which condemned China for human rights violations. This
pressure led to the CPC acknowledging and accepting various international human rights initiatives for example the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. China also began to participate in international organizations like the UN Commission on Human Rights and these activities required the CPC to fulfill its international responsibilities (Gui, 2017:143).

To summarize the background on China and the history of capital punishment: social, political, and cultural structures have influenced the issue which consequences have led to a country ruled by dictators and communism. A common factor in the history of China has been the strict and authoritarian view on capital punishment which has been demonstrated through an extensive execution rate (Hood and Hoyle, 2015:117). In the last 20 years, considerations regarding human rights have been taken by the CPC after receiving pressure from international organizations and China has begun to participate in international organizations to accomplish responsibility of human rights issues (Gui, 2017:142).

4.2 Findings

4.2.1 Suspended sentences and a new approach on human rights

The exact number of people that have been executed in China is data that is not available for anyone outside the CPC, since it is classified as a state secret. However, available information suggests that China has carried out more executions that the rest of the world put together. China has been the main point of criticism from international actors regarding China’s stand on human rights issues related to capital punishment. Although China has, and still is, one of the countries in spotlight for violating human rights, a cautious optimism regarding both the criminal process and the outlook of the death penalty in law, have begun to emerge. Roughly 10 years ago, at the UN Human Rights Council, China’s representative Mr. La Yifan stated that: “[...] the final aim of the review of the death penalty scope in China is abolition” (Hood and Hoyle, 2015:117), which is fully in line with UN resolutions. This statement seems to have had some effect since 13 non-violent capital offences were removed from the criminal law in 2011, contributing to less people receiving the death penalty ever since (Eder et al, 2018:3).

Still, capital punishment in China remains a political instrument used by the government, though its function has changed from ‘strike hard campaigns’ to the strengthening of the
legitimacy of the party-state. The increasing use of Sihuan has led to the reduction of executions. Sihuan offers convicted persons a period of two years to prove that they have been reformed and that they regret their actions. This system was put into law by the Supreme People's Court (SPC) to reduce the number of executions and offer people innocent of crime a way out. Yet, there is no reliable data of how many people that have escaped execution due to Sihuan since the number of death sentences is a state secret in China (Hood and Hoyle, 2015:117ff).

4.2.2 Changed opinions
At a seminar organized by the UN Office in 2011 it was declared that the execution rates had dropped with approximately 50 % since the SPC had gotten the final review power over the death penalty in 2007. According to Hood and Hoyle (2015:119), capital punishment is still viewed as a fundamental preventative order to ensure stability, security, and justice. It is also used to repel anti-socialistic influences and is a symbol of China's assurance to reach legitimacy within the masses. Capital punishment has long been argued to be favored by the Chinese people, although recent research shows the opposite (Hood and Hoyle, 2015:120). Public opinions from three provinces in China illustrates that support for capital punishment has declined the last couple of years and that people are backing the idea of abolition. Further, Eder et al (2018:3ff) argues that compared to polls from other Asian countries the support for capital punishment is not higher in China than in the remaining countries in Asia. If the CPC wishes to continue its strict policy on capital punishment with the ‘killing less and killing cautiously’, changing public opinions should not be of concern since most people do not have a strong opinion of the death penalty. The practical use of the death penalty in China is a matter of priorities from the government and not something that is expressed through public norms (Eder et al, 2018:4).

4.2.3 The implementation of Western ideas
The state of China has displayed a distinct change in the willingness to discuss the death penalty from a human rights approach. Cases of innocent persons sentences to death have been uncovered and sparked a debate about the practice of the death penalty in China. This has gradually opened up the subject to research and the question which the CPC are facing is “How can abolition be achieved and what can be learned when viewing the abolition in other
countries?”. However, the CPC still oppose abolition and defend capital punishment as a necessary mean for fighting crime and the CPC are ‘greatly concerned’ with the ‘Western values’ that slowly are making its way into the state of China. According to the CPC, a country with a population of 1.3 billion people, like China, will not benefit from abolition of the death penalty in the same way as for example a European country with significantly less inhabitants (Hood and Hoyle, 2015:20). A removal of capital punishment would, in the eyes of the CPC, thus create more harm to the social order in the country due to a rise in crimes and instability, although research show that there is no connection between the abolition of capital punishment and the increase of crimes. Regarding human rights issues, the CPC does not consider capital punishment to be a crime against human rights since the death penalty ‘liberates the public from serious offenders’ (Hood and Hoyle, 2015:20).

Scholars argue that abolition of capital punishment is expected to occur in China as this is a current development trend in the international community. For the moment, it is more likely that the CPC will put restrictions and reductions on the use of the death penalty instead of implementing abolition since the CPC do not support the abolitionist movement. Reforming needs to be dealt with cautiously as the concern among the public about the distribution of wealth and power between elites and non-elites (and how this power takes place in the criminal process as well as who is sentenced to death and who escapes the death penalty) is currently strong within the republic of China. Economic development and increasing public security has contributed to a more equitable approach on capital punishment in China as well as recognition that the judicial process exists to protect people who are charged for serious crimes (Gui, 2017:148).
5. The Philippines

5.1 Background

The approach on capital punishment in the Philippines has a complicated history with abolition and retention replacing each other constantly (Dongwook, 2016:22). When President Ferdinand Marcos was in power between 1965 and 1986 the main method of achieving a decline in crimes was through deterrence, which is still implemented in the Philippine society. Marcos stated that crime was out of control and that deterrence was a necessary mean to fight crime (Dongwook, 2016:22). To justify the actions of capital punishment, Marcos later stated that the people committing crimes were lawless and that they needed to be cured by the martial law (Johnson and Zimring, 2009:109ff).

The Philippines received criticism when Marcos ordered the electrocution of three convicts to be broadcast on television and radio stations, despite that the Revised Penal Code of the country strictly prohibited public executions. The executions were performed as planned and remain the only executions during Marcos rule that took place publicly. When pressure from neighboring countries and international actors to apply human rights laws on capital punishment became too obvious, Marcos implemented a change of politics in law and order and removed the death penalty as a sanction but kept it as a law. This policy resulted in fewer judicial executions and only 12 executions were carried out between 1972 and 1981. In contrast, Marcos applied stricter rules concerning capital crimes and crimes that had previously not been associated with the death penalty were now punishable by death. These crimes included: unlawful possessions of firearms, drug-related crimes, illegal fishing, and cattle rustling (Johnson and Zimring, 2009:110ff).

In 1987, after the fall of Marcos, the Philippines became the first country in Asia to abolish capital punishment for all crimes, when a new constitution was created after the country's passage from military dictatorship to democracy. However, it was an abolition full of contradictions which led to the continuation of the mixed feelings regarding capital punishment which at that time characterized the country. Still, the new law on capital punishment left the door open for the reinstatement of the death penalty for ‘compelling reasons involving heinous crimes’. A rise of crimes such as murder, rape, and kidnapping, put pressure on the government to reinstate capital punishment. Only six months after the
abolition, a bill to restore the death penalty was presented. That the support for capital punishment was thus still active. These events eventually led to the reintroduction of the death penalty which was established in 1993 but the Philippine government did not resume executions until 1999 (Dongwook, 2016:22). In the Criminal Laws of 1993, 13 offences were punishable by death and these included the most heinous crimes such as murder, rape, and kidnapping, but also less serious crimes like arson and bribery. People under the age of 18 and over 70 when the crime was committed could not be sentenced to death, which just like during Marcos rule was carried out through electrocution (Johnson and Zimring, 2009:119).

When Gloria Macapagal Arroyo became president in 2001, she lifted the question about capital punishment. In took her five years to get the bill of abolition passed and no persons were executed during these years even though over 100 inmates were on death row (Dongwook, 2016:598). In June 2006, Arroyo signed the bill of abolition of the death penalty and abolished the practice for the second time in 20 years. The 280 persons that were on death row were commuted. As a devoted Catholic, the president justified the abolition by stressing that God believes in high moral and therefore the right thing to do is to walk away from capital punishment. However, Arroyo was clear on the point that she was not ‘soft on crimes’ and that criminals were still to be punished and that justice would still be served. Scholars argue that Arroyos approval of the abolition law is more motivated by religion than by human rights. Some opponents even accuse Arroyo to have passed the bill just to please the pope (Johnson and Zimring, 2009:131ff).

Regarding the human rights approach, various local NGOs like the Free Legal Assistance Group (FLAG) have opposed the death penalty. FLAG was founded in 1974 by a few liberal lawyers and focused on the abolition of capital punishment after the restoration of the practice in 1993. The NGO has received hundreds of thousands of dollars as aid from the European Union (EU) to support the abolition process. This promoted FLAG to become the foremost information source on capital punishment in the Philippines and sparked the debate about capital punishment from a human rights approach (Johnson and Zimring, 2009:136).

To conclude the background on the Philippines and its relation to capital punishment and human rights, the country has been a subject of grueling regimes which have pushed the issue of capital punishment to the attention of human rights organizations and international actors. Although the Philippines is still a country without capital punishment, they have abolished the
death penalty two times in less than 20 years which demonstrates a segregation that seems to divide the country in two groups: the abolitionists and the retentionists of capital punishment.

5.2 Findings

5.2.1 The war on drugs and the support of capital punishment

Since Rodrigo Duterte came to power as president of the Philippines in 2016, a strict war on drugs has been implemented as an attempt to control the increasing drug crimes. Duterte has ‘promised’ to restore law and order by reintroducing the death penalty for drug related crimes. This brutal approach has attracted the attention from human rights organizations like Amnesty International who compare Duterte's acts with those of the late former president Ferdinand Marcos regime (McCall, 2017:21).

Because of the strictly enforced approach on drug related crimes, an estimate of 2000 suspected drug users were shot dead within the first three months of this new enforcement (Macarayan et al, 2016:2870). The minimum sentence of 12 years in prison for drug related crimes and the harsh approach from the Duterte-government has degenerated the drug wars in the Philippines. Since the cost of the incarceration of one inmate per year is approximately US$1500, Duterte has commented that it would be a big step in the economy of the country to reinstate the practice since the cost of housing the inmates would be eliminated. This has been met with strong opposition from human rights organizations (Macarayan et al, 2016:2870) since it violates universal human rights who recognizes that everyone has the right to life (Dongwook, 2016:604).

Critics claim that Duterte's approach on capital punishment was one of the leading factors to his success in the election in May 2016, since this was a time of public anger against the rising rate of crime. However, this strict approach has not led to the increase of crime, rather the opposite. This is a result of the increased war on drugs, which limits the access of drugs and forces desperate drug addicts to pay the sharply increased prices for drugs, which they finance through stealing money, thus leading to a rise of crime (McCall, 2017:22).
5.2.2 Lowering the minimum age of criminal responsibility

To further strengthen his campaign against drugs, Duterte has prioritized two house bills which are being addressed by the government. These bills would lower the minimum age of criminal responsibility from 15 years old to nine years old, due to the many young children involved in drug related crimes. If these bills were to be accepted, they would violate the Convention on the Rights of the Child which the Philippines has ratified, thus putting children in danger of receiving the death sentence. However, a scenario where a child would be put to death by the government is highly unlikely since the pressure from international actors and human rights organizations, would be too strenuous for the Philippine government to deal with and because they would lose trust and legitimacy from the rest of the world (Amnesty International Ltd, 2018:300f). Some congressional representatives stand against the proposal of lowering the minimum age as children are often used as drug runners and should not be held liable for a crime (Kim et al, 2017:418).

5.2.3 Anti-drug campaigns

In his election campaign, Duterte emphasized the importance of capital punishment as a mean to ‘ensure peace and progress’. The implementation of the ‘Oplan: Double Barrel’ campaign by the Philippine National Police, has resulted in the deaths of over 7000 people from July 2016 to January 2017. It is responsible for the targeting and killing of civilians related to drug crimes, which often are exercised through illegal measures such as planted evidence, non-legitimate arrests, and killings on the open street. Critics argue that Duterte's campaign is misused as a tool to eradicate any person linked to drug related crimes, with no concern of the innocent people for example children, who are killed in cold blood just because they happen to be at the wrong place at the wrong time. Still, the current administration of the Philippines states that drugs are a threat to public security and that the most effective way of addressing this is through these killing-raids. Duterte has stated that he wants to: “slaughter these idiots [drug addicts] for destroying my country”. Critics claim that these hate speeches are a deliberate move by Duterte to create segregation and hate towards drug addicts (Kim et al, 2017:419f).
5.2.4 Violation of human rights

Kim et al. (2017:420) argues that the war on drugs in the Philippines violates human rights issues. Actors like the UN, Amnesty International and the EU, claim that Duterte's campaign has turned into a political program which has led to the death of thousands of innocent people (Kim et al, 2017:420). In a report from Amnesty International, the scope of the killings has led to growing pressure for the investigation on an international level. The government’s acts on civilians is a crime against humanity and Amnesty International wants a complete cease of the killings and threatening. Local human rights groups have expressed their concern with the increased numbers of unjustified arrests which often result with imprisonment. Additionally, law enforcement agencies have been paying others for killing drug addicts, even though authorities continue to deny any unlawful deaths (Amnesty International Ltd, 2018:299f).

Scholars argue that the legitimacy of these acts is lacking and that no matter what power the Philippines regime has within its state, their violations of human rights issues will never be regarded as legitimate from international organizations and councils, as they clearly breach the UDHR (Kim et al, 2017:421).

Since Duterte came to power, there has been an increase in the number of killings of human rights defenders and Duterte has openly accused these people for being responsible for the ongoing drug war, since they protect the addicts. According to Duterte, they are also considered a hinder in the ‘success’ of his regime. As human rights defenders in the Philippines are being threatened and killed, the question of who protects them from the threats of security, still remain (Kim et al, 2017:420f). Kim et al (2017:420f) states that if human rights defenders cannot secure their own position it is unlikely that they can protect other victims. Nevertheless, human rights defenders receive protection through many forms from actors such as the UN Human Rights Defenders Protection Regime and different organizations working with human rights issues like Front Line Defenders and Forum Asia. The protection come in the form of grants for relocation both within and outside the country, but the most common form is through advocacy which should put pressure on the state to act cautiously when responding to human rights defenders (Kim et al, 2017:420f).
5.2.5 The reach for abolition
With a turbulent history of retention and abolition of capital punishment within just 20 years, Dongwook (2016:606) argues that the Philippines’s standpoint on the death penalty is run by mixed feelings. Certain presidents like Gloria Arroyo has expressed concern of the importance of complete abolition of capital punishment. When Arroyo signed the bill of abolition in 2006, it was met with diverse response and scholars argue that the opinion on capital punishment in the Philippines still varies within regions (Dongwook, 2016:606). Evidentially, prior to Rodrigo Duterte's regime, the approach on capital punishment looked like it was embracing human rights issues and a collaboration with international organizations had started to transpire (Dongwook, 2016:607).

5.3 Additional findings

5.3.1 Asian Values
The concept of ‘Asian values’ has been advanced by advocates for capital punishments in Asian countries and its hypothesis tells that Asian culture and society has a different approach on the rights of life than Western culture. According Hood and Hoyle (2015:121), this concept is especially visible regarding the rights of the individual, since the Asian values are more focused on the right of society. Some Asian countries support this concept by stating that in their society there exists cultural, traditional, and religious beliefs which justify the use of capital punishment (Hood and Hoyle, 2015:121). The question of genetics has been mentioned as a possible explanation to the difference in approaching the issue of capital punishment. When genetics and history interact, they are faced with social challenges. Jenco (2013:250) argues that Western countries interest of human rights issues is in no way linked to humanitarianism but rather with their drive to dominate other states (Jenco, 2013:250). Scholars argue that some Asian states prefer to highlight the importance of local cultures and that the Western ideas of universal human rights, interfere these states in keeping their culture alive. All states will have different values and understandings of the practice of human rights issues and this can be derived from their history, social and political systems, cultural traditions, and economic development. One common conception within Asian values is that Asian countries value the community and social harmony greater than the individual. This is carried by the explanation that a country can only afford the luxury of civil and political freedom once it has reached a certain level of economic development (Hood and Hoyle, 2015:121ff).
In China, the concept of Asian values is supported by Confucianism, which emphasizes justice and retaliation. Capital punishment is thus thought of as a necessary mean to control crime and to create justice. Asian values favor the death penalty as retribution even if it does not contribute with any functional purpose and even if it would lead to the death of an innocent person (Jenco, 2013:250).

However, not all are satisfied with the validity of the concept of Asian values. Amnesty International has stressed that the approach on human dignity, compassion to others and the right to life is a fundamental and recurring theme in all cultures and religions. The concept of Asian values may only reflect past experiences in Asian history, like authority, dictatorship, and communism, and does not necessarily mirror the actual beliefs and values in Asian societies today. Hood and Hoyle (2015:122) presents four possible explanations for the difference in the European and Asian approach concerning capital punishment. These explanations are: cultural values, political and governmental structures, public opinion, and narrow outlook. Analysis by scholars support the idea that Asian states which have authoritarian or communist governments with strict limits on state power, have significant higher executions rates than those who practice democracy (Hood and Hoyle, 2015:122f).
6. Analysis

This chapter will analyze the influence of human rights issues on capital punishment in the case studies presented in the Findings chapter. The concept of legitimacy will be used for the understanding of social, political, and historical structures within China and the Philippines. Focus will be put on identifying changes within the discourse of capital punishment and human rights, which will be analyzed through the concepts of morality, legality, and constitutionality. This will contribute with the understanding of legitimacy in the matter of human rights issues linked to capital punishment. The case studies will be analyzed separately to distinguish certain structures and aspects which may appear.

6.1 The People’s Republic of China

6.1.1 Morality and human rights issues related to capital punishment

As presented in the Findings chapter, the situation of capital punishment in China is a complicated matter. Factors such as history, traditions and cultural norms are strong within the Chinese government which is processing a strict policy on keeping the death penalty as a practice. China displays a strong favor of the death penalty, and as they value the security and order of the state over the protection of the individual this shows an immoral approach on human life. With international actors like the United Nations condemning the practice of capital punishment, the Chinese government is finally on the verge of opening the discussion of the use and practice of the death penalty (Hood and Hoyle, 2015:117).

A practice which lawfully kills a human being, is in the eyes of human rights organizations like Amnesty International, considered an immoral act. The fact that the CPC does not acknowledge capital punishment as a violation on human rights, suggests a restricted view on moral and ethical thinking. It is evident that China’s approach on the value of life, differs from the Western society, where focus is largely put on the protection of the individual from the state. The CPC’s persistence in protecting the state, instead of looking at the society as a whole, could contribute to this approach (Hood and Hoyle, 2015:20). The concept of Asian values could play a role in this matter, as the central message of Asian values encompasses the beliefs which the CPC are expressing. The conception that values in Asian countries
would diverge so far from values found in Western countries, that it would require a unique concept could be viewed as a racist point of view, as it enables the alienation of the Chinese culture. Nonetheless, the concept of Asian values has been suggested by scholars and researchers as it can assist in the understanding of Asian countries human rights approach on capital punishment (Hood and Hoyle, 2015:121).

As a new human rights approach on capital punishment has slowly found its way to China, laws supporting the right of the individual, like the Sihuan law, has emerged. The implementation of Sihuan, is a sign of moral behavior from the CPC, as this law offers the possibility of a convicted person to avoid the death penalty. This would, in a society where the individual has very restricted rights, like in China, been seen as an act of moral, but for human rights organizations and international actors, the Sihuan law could be considered as an attempt of escaping the watchful eyes of human rights defenders, and not to empower the rights of the individual. Nonetheless, the Sihuan law can be viewed as the result of the CPCs attempt to implement a more ethical and moral stand on capital punishment (Hood and Hoyle, 2015:117ff).

6.1.2 Legality and human rights issues related to capital punishment

As a state which have been under the rule of numerous dictators, human rights issues have not been prioritized or even considered in China before the 20th century. Pressure from human rights organizations and western values, has led to the implementation of human rights approaches, but under a limited scale. Because one of the main arguments by the CPC, of keeping the practice of death penalty is that it protects the state from criminals, a strong concern of the management and security of the state can be observed in the Chinese society (Eder et al, 2018:4f).

China has had a history of neglecting the rights of the individual, especially visible in Mao’s concept of citizens’ rights. Capital punishment has thus been used as a political and legal instrument which has created a debate about the legality of the death penalty. According to the UDHR, every person has the right to life, and the practice of capital punishment violates this right. However, as rules, laws and legal regulations varies between countries, the values found within the UDHR cannot be implemented on a worldwide scale as it does not break any national legal actions in certain states, for example China. What is illegal in the UDHR does not necessarily have to break any laws in China. This puts the matter of human rights issues
related to capital punishment on a difficult path (Schabas, 1998:797). The implementation of the Sihuan law could be interpreted as a way of the Chinese government to meet ‘halfway’, as it changes the perception other states have of China because it touches the issue of human rights but keeps the practice of capital punishment which is in favor of the CPC. This benefits the public opinions of Chinese society in a positive matter. Thus, the legality of capital punishment rises both within and outside the state and generates a form of abstract legitimacy. The use of Sihuan could therefore grant China a more legitimate status in the international realm (Hood and Hoyle, 2015:117f).

6.1.3 Constitutionality and human rights issues related to capital punishment

One of the expectations Chinese scholars have on the matter of human rights issues related to capital punishment is that a total abolition will eventually take place. As a representative from China stated at the UN Human Rights Council, the final aim is abolition (Hood and Hoyle, 2015:117). To accomplish this, the Chinese government would first have to reach consciousness about their actions and how these have and are affecting the individual (Reus-Smit, 2007:169). In a crisis of legitimacy, China would belong to the chronic category, as the issue of capital punishment and violations on human rights is a matter that has been exercised over a long period of time (Reus-Smit, 2007:168). Chinese scholars argue that there might be a connection of crises of legitimacy and Asian values, as states within Asia have had or are currently facing a problem with crises of legitimacy and that Asian values could have triggered crises within legitimacy as they focus on the society and not the individual, which is of great concern in the matter of capital punishment (Hood and Hoyle, 2015:118).

It is interesting to look at the constitutionality of China's decision to exercise capital punishment. With the majority of the countries in world having abolished the death penalty, and with human rights issues gaining more attention, China's strict approach on capital punishment encompasses more than just the right to execute criminals. The CPCs draconian view on the death penalty could be a tool for controlling political, social, and cultural values and opinions in China. The UN's attempt to influence the CPC to decrease the execution rate and implement fundamental rights for the individual, has been proven unsuccessful, with the exception of the Sihuan law. The constitutions of Chinese law-making decisions, therefore do not emphasize human rights issues as a matter that needs to be concerned (Hood and Hoyle, 2015:20).
One of the main aspects in the issue of changes in legitimacy in China is that China no longer is a practitioner of totalitarianism, which has strengthened the freedom of the individual. In the Mao and Deng, era the individual did not have any rights, except for Mao’s implementation of ‘citizens rights’ which were never used in practice (Gui, 2017:133). Political support for the citizens’ rights was shown but the legal support for the death penalty was stronger. Not until the last 20 years has the situation of human rights issues changed in China and the political push from international actors to reconsider the death penalty has had a great influence which has led to a decrease in the number of executions (Gui, 2017:142). This is a change in the constitutionality of capital punishment as the death penalty is not used as often as it ‘should’, according to law (Gui, 2017:143).

6.2 The Philippines

6.2.1 Morality and human rights issues related to capital punishment

As a state with a history of dictatorships and absence of human rights issues, the Philippines has been in the spotlight of criticism from human rights organizations and the UN, condemning the countries ‘killing campaigns’. Extensive violations of human rights are taking place in the Philippines, and these violations contribute to labeling the actions carried out by the country as illegal. Actions such as killing campaigns, the suggestion of lowering of the minimum age of crime responsibility and the targeting and killings of human rights defenders, all demonstrate a major lack of morality and value of human life. Duterte's draconian approach on drug addicts is highly immoral as it encourages the killings of large numbers of people, without providing them with the possibility to stand in front of a judge (Kim et al, 2017:419f). The president’s suggestion to reinstate the death penalty for drug related crimes, displays a desire to reach control over political structures which could strengthen the state power (McCall, 2017:21). One of Duterte's main arguments for reinstating the death penalty emphasizes the need to lower the crime rate, as it has increased rapidly the last decade. These actions which purposely expose people to pain, suffering and death has led to the Philippines being labeled as an illegitimate state (Kim et al, 2017:420).

The matter of Asian values could possibly be linked to this issue. Scholars agree that Asian values should not be foreseen, and still not expected (Hood and Hoyle, 2015:121). The situation in the Philippines today, encompasses a harsh view on drug addicts and target
human rights defenders, as these work for the rights of every person, including drug users. From a western perspective, it is easy to blame these actions on a ‘different view on the value of human life’ and portray the Philippines an alien state. However, as the public opinion of capital punishment in the Philippines varies greatly, the actions committed by Duterte and his military does not reflect the values of the Filipino people (Kim et al, 2017:419). Nonetheless, to reach legitimacy the Philippines must implement a rapid turnaround of their laws and policies regarding human rights and capital punishment and the killing campaigns must be terminated (Kim et al, 2017:419).

6.2.2 Legality and human rights issues related to capital punishment

Duterte most likely won the president election in 2016, because people were upset of the rise of crime and wanted a president with a strict approach on law making decisions. This puts the matter of human rights issues of capital punishment in the Philippines on a dark pathway. Despite attempts of intervention from international actors like the UN and Amnesty International, the killing and alienation of drug users still takes place within Duterte's regime. New policies, such as the 12-year prison sentence for drug using, have fueled the discussion if capital punishment really is necessary to control the growing business of drug dealing (Macarayan et al, 2016:2870). While human rights organizations work for improving the living standard in prisons, Duterte wants to see a complete execution of all the convicts (McCall, 2017:21).

As the killing campaigns have eliminated drug users, the legality of these actions is considered low. However, as the human rights approach in the Philippines differs from that of the majority of western countries, these actions do not have to be considered an illegal act since they assist in the securing of the state and protection from criminals and drug addicts. The fact that these public killings violate a number of other laws, especially related to human rights issues, is not widely discussed in the political arena of the Philippines. In the contrary, on an international scale the issue of the violations on human rights in the Philippines are considered a priority and the legitimacy of Duterte's regime becomes nonexistent. The legality of these actions related to capital punishment could therefore be viewed as legal within Duterte's regime, but highly illegal in an international context (Kim et al, 2017:419).
A contest for legitimacy is demonstrated in the Philippine regime as their actions are regarded legal within the state but illegal on an international scale (Kim et al, 2017:419). The Philippine regime is fighting to bring back the death penalty by putting all the blame on one specific group of people within the society. This action would, in international terms, be classified as exceedingly immoral and thus label the Philippines as an illegitimate state (Clark, 2005:213). Scholars argue that the second abolition of capital punishment was a by-product of a minor shift in politics and was merely a ‘coincidence’ rather than the actual will of the regime. It was an easy way for the Philippine regime to reach international consent in the contest of legitimacy (Johnson and Zimring, 2009:297).

6.2.3 Constitutionality and human rights issues related to capital punishment

Following the brutal violations on human rights, which are taking place in the Philippines, the UN has called for immediate international action, as the killings often target not just drug users but also their families, which in some cases has led to the killings of children. International actors like the UN and Amnesty International are concerned on the constitutions in which these actions are taking place (Amnesty International Ltd, 2018:299f). The fact that these actions heavily breach the UDHR, which applies on all states worldwide, displays an ignorant approach on international policies and treaties and a will to strengthen the power of the state (Kim et al, 2017:420).

The Philippines could be categorized as a state of acute crisis of legitimacy, as their stand on capital punishment has been modified multiple times in a short time span and as their current approach on the issue has led to an illegitimate label from international actors and organizations (Reus-Smit, 2007:168f). One reason to why the Philippines still have not reinstated the death penalty, despite countless efforts from Duterte, could be explained through the immense critics on human rights issues the country has received after Duterte came to power. International actors argue that the constitutions of the country need to address this issue, and by doing that reopen the discussion of human rights issues on the matter of capital punishment (Kim et al, 2017:419).
7. Conclusion

The aim of this thesis has been to explore how capital punishment have been and is currently practiced in China and the Philippines and what social and political influences human rights issues have contributed with. A qualitative research method has been applied to the case studies and identified findings, related to the research questions. These findings demonstrate that both China and the Philippines have a history of strict practicing of capital punishment which originates from the draconian view on human rights issues in the dictatorships which the countries have experienced.

Further, the influence from international actors and human rights organizations like the UN and Amnesty International has proven successful in the implementation of human rights issues. The Sihuan law, which enables a person with a death sentence a two-year trial period, put into law by the CPC, could be a consequence of the pressure from international actors. Changes in morality, legality, and constitutionality, which contributes to changes in legitimacy can be explained through several social and cultural aspects such as a decrease in the number of executions, stricter ‘surveillance’ from international actors and a change in attitudes of capital punishment. Regarding crises of legitimacy, China and the Philippines belong to different categories with the former as a chronic crisis and the later as an acute crisis. This means that the legitimacy of human rights issues in China has for long been lacking and that it is deeply rooted in the Chinese culture. In the Philippines, the lack of legitimacy has expanded dramatically over a short period of time which indicates that the matter of human rights issues related to capital punishment is entrenched in the political arena of the state.

Although scholars agree that total abolition of capital punishment will eventually take place in both China and the Philippines the countries still have a long way to go in order to reach full legitimacy in the matter of human rights issues related to capital punishment.
8. References


