

Abstracts of Keynote Address and Panel Interventions

Keynote Address

- **Carolyn Hoyle**

The closing decade of the twentieth century witnessed a shift in discourse on the death penalty. Formerly an issue of penal policy to be decided by each state according to their experiences of crime and political imperatives, the death penalty became a matter of human rights. The dynamo for the new wave of abolition was the development of international human rights law in the aftermath of the Second World War, linked to the emergence of countries from totalitarian imperialism and colonialism.

While some states continue to assert their sovereign right to determine what actions and behaviours should be prohibited by the criminal law and what punishments are appropriate for those who breach those laws, the past decades have witnessed growing international consensus on the limits of state punishment. Though human rights, especially the right to life, drive an abolitionist agenda, they also frame progressive restriction in the use and scope of the death penalty and fair trial procedures for states that retain the death penalty. Notwithstanding international human rights principles and instruments advocating the protection of citizens from the power of the state, it is clear that treaties cannot realize their full potential without political will.

Panel 1: **Institutional efforts aimed at preventing and stopping the death penalty**

- **Hanne Sophie Greve**

The intervention will address the interconnectedness between the Rule of law and Abolition – both State responsibilities; and the work of the International Commission against the Death Penalty (ICDP). The ICDP engages in particular in dialogues with State actors in their search for ways and means to attain abolishment and to arrange for moratoriums. Hereunder the ICDP assists governments engaged in preparing the public for such changes. The ICDP uses its good office as well to intervene with States when threats of executions are imminent. In the face of new challenges to State authority, the ICDP also focuses on good governance as such and provides examples of how States – under very different circumstances – have been able to abolish the death penalty successfully.

- **Todung Mulia Lubis**

Human rights in Indonesia have strived especially within the past two decades after reformation in 1998. However, the development of the abolishment of death penalty is still facing hurdles at legal

and political will level. Indonesia has been widely criticized nationally and internationally but death penalty remains due to heavy support by most of Indonesians who believe death penalty will deter crime. Statistically there were 44 prisoners executed due to various criminal offences since 1998, but the latest execution took place in 2016 in which five years have passed. This situation may indicate the reluctance of the government at implementation level even though legally death penalty remains. The debate is still on going up until now, some sort of compromise or alternative have to be found. In 2015, a new Indonesia Criminal Code has been drafted and in waiting for the parliament to pass the bill. Whether the government follows the global trend to abolish or not, the heavy support from fellow Indonesians to abolish death penalty should be as heavy as the ones who support it. There is still a light of hope, but it may take times since law evolves and develops, as it follows human development.

- **Wera Helstrøm**

Her intervention will be a presentation of Norway's international efforts towards the universal abolition of capital punishment. Norway opposes the death penalty in all circumstances as a matter of principle, and the goal is to ensure that all countries abolish the death penalty by law or introduce a moratorium on executions, and join an international ban of the use of the death penalty. Norway, together with a broad alliance of countries, has ensured extensive and increasing support for the UN resolution urging all states to introduce a moratorium on the use of the death penalty as a step towards full abolition. We work to maintain the political pressure for the abolition of the death penalty through the UN, as well as the Council of Europe and the OSCE. Norway supports the World Congress Against the Death Penalty – which we hosted in 2016, and provide financial support to interventions towards the abolition of capital punishment in countries in Northern and Central Africa and in the Middle East.

- **John Peder Egenæs**

During his intervention, Mr. Egenæs' will discuss the efforts by non-governmental organizations towards the global abolition of the death penalty, with a particular focus on the work of Amnesty International.

Amnesty International opposes the death penalty in all cases without exception – regardless of who is accused, the nature or circumstances of the crime, guilt or innocence or method of execution. For more than 40 years, Amnesty International has fought against the capital punishment by, among other things, conducting investigations, publishing reports and trends analysis, and leading advocacy efforts throughout the world. In Norway, in particular, Amnesty International is in constant dialogue with local authorities to encourage them to raise the issue of the death penalty at international forums. Likewise, Amnesty Norway applies pressure on cases that face imminent execution, using tools such as social media and SMS-campaigns.

When Amnesty started its work in 1977, only 16 countries had totally abolished the death penalty. Today, that number has risen to 108 – more than half the world's countries. More than two-thirds are abolitionist in law or practice. In fact, 2020 saw the lowest number of executions (483) carried across the world since 1979, when Amnesty International started reporting statistics. This number is on a steady decrease, hopefully meaning that the death penalty is on its way to the 'dustbin' of history.

Panel 2: Perspectives from various human rights mechanisms and international law aspects concerning the death penalty

- **Yuval Shany**

The International Covenant on Civil and Political Rights (ICCPR) was negotiated between 1950-1966, at a time in which most states were not yet abolitionist. As a result, article 6 of the ICCPR only operated to limit – not ban – the application of the death penalty by retentionist states. These restrictions are very important though in that they are aimed at reducing the injustice and abuse associated with the death penalty and in subjecting retentionist states to review by the Committee. The fact that the Covenant explicitly regulates the death penalty complicates the possibility of arguing that the death penalty is legally prohibited for retentionist states who did not ratify the second optional protocol to the ICCPR on the basis of the claim that the penalty constitutes in and of itself an arbitrary taking of life or a cruel, inhuman and degrading form of punishment prohibited by article 7 of the Covenant. Still, in General Comment 36, the Committee made an effort to minimize even further the application of the death penalty – including by raising the problem of discriminatory application – and to encourage states to abolish it by virtue of the pro-abolitionist spirit of the Covenant and the fundamental contradiction between the importance assigned to the right to life and the application of the death penalty.

- **Malene Alleyne**

The Inter-American human rights system, through its various mechanisms, has played a critical role in promoting the abolition of the death penalty in member states of the Organization of American States (OAS). The Inter-American Court of Human Rights has affirmed that the ultimate goal of the American Convention on Human Rights is the eventual eradication of capital punishment. The Inter-American Commission on Human Rights, for its part, has urged retentionist States to abolish the death penalty or to impose a moratorium on its use as a step towards abolishing it. Yet, while most OAS member states have abolished capital punishment, it continues to exist in a substantial minority of these states. This presentation takes a comparative look at efforts by the Inter-American system towards ensuring abolition of the death penalty and explores opportunities for strengthening the applicable normative framework

- **Solomon Dersso**

Despite the slow pace of progress to achieve the abolition of the death penalty in law, the African human rights system continues to use various approaches in the journey towards ending death penalty. In terms of norm development, the African Commission continues to advocate for the consideration and adoption of a protocol on the abolition of the death penalty it initiated. The campaign for ending the death penalty or the adoption of a moratorium on the death penalty pending the abolition of the death penalty also forms an important part of the promotion work of the Commission. Jurisprudentially, key major developments have also been registered. In a

landmark judgement it rendered in November 2019, the African Court on Human and Peoples' Rights declared mandatory imposition of the death penalty as unfair and contrary to due process of the law. The Court also held that hanging as a method of execution amounts to torture and cruel, inhuman and degrading treatment because of the inherent suffering involved. Apart from examining these multi-pronged approach to wards the abolition of death penalty and the status of the death penalty in Africa, in my intervention, I also hope to explore current challenges to and future trajectory of the march towards the adoption of a protocol on the abolition of death penalty. In practice, while the number of abolitionist countries in Africa is on the rise and there are significant number of countries that maintain de jure or de facto moratorium of the death penalty, political support towards a continental abolition of death penalty is not as strong. There remain very vocal opposition to the death penalty within the membership of the African Union. How the institutions of the African human rights system address these challenges will determine how far progress will be made in the journey for the abolition of the death penalty in Africa.

- **William A. Schabas**

Capital punishment has been a major human rights theme within the United Nations as well as the regional human rights bodies. As early as 1948, the General Assembly debated abolition of the death penalty in the context of article 3 of the Universal Declaration of Human Rights. Limitations on the use of capital punishment were imposed by the major treaties. Subsequently, abolitionist protocols were adopted that have now been ratified by about 100 countries. For retentionist states, the restrictions are also imposed by customary international law. Litigation relying upon international law sources has been effective in many jurisdictions and contributed to de facto moratoriums. The direction of travel from the standpoint of international human rights law is clearly towards universal abolition. The main contemporary issues concern the prohibition of capital punishment except for the 'most serious crimes', which some states interpret much too broadly, as well as fair trial requirements such as the access to competent counsel.