

Roundtable on Death Penalty in East Africa: Challenges, Strategies and Comparative Jurisprudence

24-27 July, 2011: Silver Springs Hotel, Nairobi, Kenya

Organised by Foundation for Human Rights Initiative (FHRI), Penal Reform International (PRI), the International Commission of Jurists – Kenya Section (ICJ), and the Judicial Studies Institute (JSI), and with the financial support of the European Union.

RECOMMENDATIONS

On 27 July, 2011, participants at the “Roundtable on Death Penalty in East Africa” considered the following recommendations in an open and collaborative forum, which identified the challenges, strategies and comparative jurisprudence on the progressive steps taken towards abolition in the East African region.

Conference delegates included members of the Supreme Court of Kenya and Uganda, retired Chief Justice of Tanzania, members of the Constitutional Court of Kenya, members of the Court of Appeal of Uganda, members of the High Court of Kenya and Uganda, magistrates, Prison Commissioners of Kenya and Uganda, lawyers and law associations, academics, members of civil society from Kenya, Uganda, Tanzania and Rwanda, the media, and members of development partners (the European Union and the Foreign & Commonwealth Office).

All conference participants agree to take every step possible to implement, promote and disseminate these recommendations using their good offices, where possible.

These recommendations are based on best practices from across the region and the evolving standards of decency that mark the progress of the maturing East African society:

1. In recognition of the inherent right to life, as provided for in Article 3 of the Universal Declaration of Human Rights, and mindful that offenders must take responsibility for their actions, all stakeholders in the East African region should take steps necessary to progressively reduce death penalty applicable crimes to only the ‘most serious crimes’, and only where intentional loss of life is involved in brutal and gruesome circumstances, such as aggravated homicide.
2. In recognition of the right to a fair trial and the importance of judicial discretion, states that have not already done so should endeavour to abolish mandatory death sentences. The Court should take into account the nature of the offence and the circumstances of the case, including the characteristics of the accused, in order to arrive at a fair and proportionate sentence.
3. In recognition of the severity of the death penalty, and in recognition of the right that all persons shall be equal before the courts, all states in the East African region should consider developing national sentencing guidelines to harmonise sentencing in capital cases. Such guidelines should not be prescriptive or fetter judicial discretion, but should aim to streamline sentencing practices. Sentencing guidelines should aim to incorporate examples of best practice from across the East Africa region, and elsewhere. Consultative processes on establishing sentencing guidelines should

include all relevant key stakeholders, including judges, lawyers, prosecutors and civil society. Once approved, full training for judges, magistrates and any other judicial officers on the newly established sentencing guidelines and mitigation hearings should be carried out.

4. In recognition of the suffering of victims of violent crime and their loved ones, the justice systems of East Africa should ensure that all victims be treated with dignity, respect and equality throughout the criminal process in recognition of our traditional restorative values of justice. States should establish a victims' compensation fund, and address the rights of victims to reconciliation or mitigation with the offender where appropriate, and any other psycho-social support.
5. In recognition of the importance of public opinion, all stakeholders across the region should engage in massive civic education to inform the public on the effect and efficacy of the death penalty in practice, and on alternative sanctions to the death penalty. The issue of maintaining the death penalty should be regularly reviewed through national and public debates and dialogue to discover whether the views of the people have changed. Awareness-raising campaigns should also attempt to increase public trust in the justice system.
6. In recognition of the role of the legislature as the legislative arm of the state, strong political will should be demonstrated by enacting into law the progressive steps taken by the judiciary towards reducing and restricting the application of the death penalty. In the interests of consistency, clarity and certainty in the justice system, the legislatures should also provide a clear definition of 'life' imprisonment, which takes into consideration the primary aim of incarceration, including implementation of justice, the rights of the victim, and the rehabilitation and social reformation of the offender. The legislature should undertake further debates on the issue of the death penalty and alternative sanctions with a view to introducing appropriate amendments to the Constitution and other enabling laws.
7. In recognition of the overcrowding of prisons in the East African region, stakeholders should aim to reduce the use of long sentences, include time spent on remand into consideration at the sentencing stage, make use of alternatives to imprisonment including community service orders, restorative justice based on customary African law, and better use of the prerogative of mercy, and to improve prison infrastructure and facilities.
8. In recognition that prisoners are entitled to basic human rights, stakeholders should take steps towards implementing international minimum standards, and to take into consideration the special needs of vulnerable prisoners, including women and mothers of young children, and juveniles. States should consider excluding from life/long-term imprisonment special groups such as mothers and juveniles.

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