



CENTRE FOR CAPITAL PUNISHMENT STUDIES



WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW

The Capital Punishment and Human Rights

Training Project

Funding Proposal

2010

Peter Hodgkinson, OBE [Director]
Ms. Lina Gyllensetn LLB, LLM [Research Associate]
Mr. Barrie Sander, LLB, LLM [Project Coordinator]
Mr. Adam Weatherley, LLB [Project Coordinator]
Centre for Capital Punishment Studies
Westminster University Law School
London, WIW 7UW

Work telephone: +44 [0]207.911.5000 [2501] or [2553]
Home telephone: +44 [0]1243 829230
Mobile: +44 [0]7966 276352
Email: hodgkip2003@yahoo.co.uk
bjs360@gmail.com
adam1186@hotmail.com

UNIVERSITY OF WESTMINSTER



BACKGROUND

The punishment of death is the war of a nation against a citizen whose destruction it judges to be necessary or useful.

Cesare Beccaria, *On Crimes and Punishments*, 1764

Over the past 50 years there has been a growing international trend towards the abolition of the death penalty.¹ This trend is exemplified by: the various protocols to regional human rights treaties that have called for the prohibition of capital punishment; the fact that, even for the most heinous international crimes, including war crimes, genocide and crimes against humanity, international criminal law does not allow for the death penalty; and the fact that over one hundred countries voted in favour of resolutions on the “Moratorium on the use of the death penalty” at the UN General Assembly in December 2007 and 2008 which called upon all States that maintained the death penalty to progressively restrict its use, to reduce the number of offences for which it may be imposed, and to establish a moratorium on executions with a view to abolishing the death penalty.²

Despite the encouraging trend, a large number of executions are still being carried out and many countries retain death penalty de facto or in their legislation. There are numerous laws, policies and practices that are incompatible with international standards, such as safeguards guaranteeing the protection of the rights of those facing the death penalty.

The death penalty is imposed disproportionately on the society’s ‘other’, such as the poor, indigenous people, ethnic, sexual and religious minorities, and other vulnerable groups such as those with mental health problems or learning disabilities.

Prisoners on death row are often detained in conditions that far worse than those of other prisoners, including isolation for long and indeterminate periods of time, inactivity and inadequate basic physical provisions.

Against this background, the Capital Punishment and Human Rights Training Project (CPHRTP) aims to educate key stakeholders on policy issues relating to the abolition of the death penalty and to provide practical training in all aspects of capital punishment litigation specific to the particular country or region where the training takes place.

¹ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment*, A/HRC/10/44, Human Rights Council 7th Session (“Report of the Special Rapporteur on Torture”), 14 January 2009, at para. 32.

² UN General Assembly, Third Committee, Resolution 62/149, 18 December 2007 (104 votes in favour, 54 against and 29 abstentions). Resolution 62/149 was reaffirmed in December 2008 with a slightly stronger majority (105 votes in favour, 48 against and 31 abstentions).

MISSION, VISION, OBJECTIVES

1. Mission

To assist governments, NGOs and civil society by providing a range of services such as our Humane Advocacy Programme, the Internship Programme, the Senior Management Course, Seminar Series, Occasional Paper Series, and an abundance of evidence-based information on death penalty issues through individual meetings and roundtables.

2. Vision

To undertake numerous pioneering activities within the field of death penalty and penal research, with the overall aim of informing and supporting governmental moves to replace capital punishment with more humane alternatives and to give support for families of homicide victims and the condemned.

3. Objectives

- (a) To inform governments and other key stakeholders of the human rights implications of retaining the death penalty as a legitimate form of punishment in society;
- (b) To train lawyers in all aspects of the capital litigation process, including in particular preparation for mitigation hearings;
- (c) To train forensic psychiatrists who are able to assist in the capital litigation process;
- (d) To sensitise judges about human rights issues relating to the capital litigation process;
- (e) To train correctional officers in human rights so that they are better able to provide support for prisoners on death row in terms of education, health and justice;
- (f) To improve access to justice for death row prisoners by informing key stakeholders of the capital litigation process so they are better able to provide fair and timely trials.

ORGANISATIONAL STRUCTURE

The CPHRTP is principally run by the Centre for Capital Punishment Studies (CCPS) with the operational support of various external organisations and institutions:

Director: Peter Hodgkinson OBE

Project Coordinators: Lina Gyllensten LLB, LLM
Barrie Sander LLB, LLM
Adam Weatherley LLB, LLM

Operational Support: Speedy Rice, Professor of Law, W&L School of Law
Dr. Sita, Director, United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI)

PAST / PRESENT CPHRTP PROGRAMMES

1. Humane Advocacy Programme

From the experience I gathered from the programme, I am now able to deal with forensic psychiatric cases much better than before. Not only that, I am now helping the Independent Jamaican Council for Human Rights to further educate lawyers, resident magistrates and probation officers around the island by conducting forensic seminars to sensitise the importance of psychiatric defences in criminal justice, as well as to narrow the gap of misunderstanding and to gain further cooperation.

Dr Myo Kyaw Oo MBBS, DPM, DM Psych. (edited testimony)
Consultant Psychiatrist, Bellevue Hospital and Department of Correctional Services
Program Manager, Drug Court Program, Jamaica

This project combines advocacy training of new legal practitioners and teacher training of more experienced legal practitioners, with parallel training in forensic expertise for psychiatrists involved in capital trials.

CCPS' experience worldwide demonstrates that there is a lack of trained psychiatrists in the majority of countries where the death penalty is implemented. Where psychiatrists are available, they lack the resources to become trained in the forensic skills that are essential to the fairness of the capital process. This includes the evaluation of mental disorder before and after the trial, and expert witness testimony during trials. Our successful pilot project in Jamaica shows that this problem can be alleviated by basic forensic training in these areas.

The training is delivered by UK consultant forensic psychiatrists who are partnered with local psychiatrists and mental health practitioners in order to ensure that the local context is appreciated. Where possible, the forensic training will also be directed at a range of non-clinical mental health practitioners such as psychiatric nurses and social workers, as well as a range of criminal justice professionals including judges and representatives of the police, probation and prison services. This ensures that those working throughout the criminal justice system are made aware of issues relating to the role of mental health throughout the capital process.

The legal training, provided by Gray's Inn Advocacy Department, consists of teaching substantive issues in combination with advocacy skills, including:

- Litigation and advocacy strategies with regard to the mandatory imposition of the death penalty
- Issuing challenges using relevant constitutional provisions on the right to life
- Making applications to regional and international human rights bodies
- Exposure to guidelines that inform sentencing discretion and to inform on effective, humane and proportionate alternatives to death sentencing as a response to crime.

Built into this project is the capacity to ensure that the skills training can be refreshed before leading to the training of trainers. This ensures that the skills acquired are sustainable, not overly reliant on outside trainers in the long-term, and can be more widely disseminated in the local and regional context.

The Humane Advocacy Programme has been further developed to strengthen civil society working on capital and criminal justice issues in the target countries, and to promote effective intra-community dialogue on the issues, including within the media. To this end, politicians, NGOs, the media and other representatives of civil society are exposed to authoritative data about capital punishment.

I would say that the Humane Advocacy Programme has had an extremely positive impact on Jamaica. It has increased awareness among the legal profession, those at the criminal bar in particular, of the complex issues relating to the death penalty. The Norman Manley Law School has recently introduced tutorials in its advocacy training programme and most of the tutors are persons who were trained as teachers of advocacy. The impact on quality of advocacy is undeniable.

Justice Bryan Sykes
Judge of the Supreme Court of Jamaica

2. Senior Management Course

The Senior Management Course is designed to inform practitioners, administrators and legislators of the many practical issues to be addressed in preparing for abolition and its aftermath.

Country representatives on the Senior Management Course will ideally be key individuals of the relevant sectors who are in a position to inform and influence the debate and penal policy in their home countries. The course, staged in London will usually last five full working days; to include lectures, workshops and site visits to prisons housing life-sentenced prisoners.

The CCPS has significant experience in staging information roundtables for government officials and representatives of NGOs that address in greater detail capital punishment scholarship, prisons management, the parole system, litigation issues, alternatives to the death sentence, medical involvement, crime victims, families of the victim and the offender and issues of public information and reassurance. The Centre also staged an international conference in June 2005 on “Managing Effective Alternatives to Capital Punishment”. The conference aimed to inform the debate and penal policy in countries that retain capital punishment and those which have replaced the death penalty or are considering doing so.

3. Seminar Series

The CCPS stages a seminar series which continues to attract eminent death penalty scholars as speakers and is an important vehicle for informing all shades of opinion. Our intention is to support and develop scholarship and experience about the death penalty in those parts of the world about which too little is known.

Examples of seminars undertaken as part of this series include:

- "Reflections on Miscarriages of Justice" with death row exonerees Sunny Jacobs and Peter Pringle
- “A Rare and Arbitrary Fate: Facing the Mandatory Death Penalty in Trinidad & Tobago” Professor Roger Hood and Dr. Florence Seemungal

PROPOSED NEW CPHRTP PROGRAMME
THE CAPITAL PUNISHMENT AND HUMAN RIGHTS SUMMER SCHOOL

1. Programme Background

Ending a challenge against capital punishment brought in 1999 by over 400 condemned inmates, in January 2009 the Supreme Court of Uganda affirmed the constitutionality of the death penalty. This verdict was tempered by the Supreme Court's progressive decision to abolish the mandatory death penalty.

Crimes that attracted a mandatory death sentence, under ordinary law, included murder, aggravated robbery, treason and terrorism. On Uganda's death row, 99% of prisoners are serving mandatory death sentences. As a consequence of the progressive decision to abolish the mandatory death penalty, people accused of crimes previously attracting the mandatory death penalty will now be given the opportunity to raise a plea in mitigation at the sentencing stage.

The mitigation pleas will be compiled with international and regional human rights standards in mind. Mitigation presents an opportunity for judges to exercise discretion in the application of the death penalty due to certain issues particular to the defendant. Gender issues such as domestic violence and infant dependency and other issues particular to marginalised members of society, such as mental illness, will be brought to the fore in mitigation.

Not only does the introduction of mitigation pleas at sentencing add to lawyers' heavy workload, it also requires lawyers to learn additional skills in order for them to compile effective mitigation pleas. Currently, lawyers in Uganda have no experience or working knowledge of mitigation in serious capital cases. There is a need for the capacity of lawyers' to be built in order for them to compile and present adequate mitigation pleas in capital cases.

Due to the constitutional case challenging the validity of the death penalty, there was a moratorium on executions until a decision had been reached as to the death penalty's validity. Now that the Supreme Court has validated the use of the death penalty, the case is concluded and the moratorium on executions has been lifted. The imminent resumption of executions emphasizes the immediate need to provide effective representation in capital cases.

2. Programme Description

The Capital Punishment and Human Rights Summer School is a two-week summer training course divided between international and domestic programmes:

- **Week 1: *International Programme***

The international programme will target key stakeholders in the capital punishment process including government officials, NGOs, correctional officers, advocates and judges from across East Africa. This programme will focus on policy issues relating to capital punishment with a clear focus on East Africa:

- **Introduction to the Capital Punishment Debate: Retention vs. Abolition**

The lecture will introduce students to the debate concerning capital punishment including arguments that are put forward for retention and abolition. In particular, the lecture will look at the aims of a penal system and whether the death penalty fits into such a system. The tutorial will develop these ideas and stimulate a debate on purported justifications for retention and methods of abolition.

- **Victim Policies, Politics and the Death Penalty**

The lecture and tutorial will discuss the role played by victim policies within capital punishment. Students will assess the various stages at which politics penetrates capital punishment and gain an understanding of the interaction between victim policies and politics.

- **Vulnerable Groups and the Death Penalty**

The lecture and tutorial will discuss particularly vulnerable groups in society who are the target of the death penalty, including homosexuals, the mentally ill, women, and ethnic minorities.

- **Mental Illness and the Death Penalty**

The lecture and tutorial will gain an insight into the position of mentally ill and mentally retarded persons within the capital punishment arena. Students will gain an understanding of the differences between the classification of mentally ill and mentally retarded persons. Students will be exposed to the different standards applied to mentally ill and mentally retarded persons within the capital punishment arena.

- **Execution Methods and the Death Penalty**

The lecture and tutorial will discuss different execution methods involved in capital punishment, the problems inherent in some methods and the evolution of execution methods within different jurisdictions.

- **Innocence and the Death Penalty**

The lecture and tutorial will provide an insight into the danger of wrongful conviction and consequent wrongful execution of the innocent. Students will be exposed to the root causes behind wrongful conviction and discuss whether such problems are inherent in any system of capital punishment.

- **Alternatives and the Death Penalty**

The lecture and tutorial will discuss the different alternatives to the death penalty. Students will be exposed to abolitionist strategies and how they relate to different alternatives to the death penalty. The relative merits of various alternatives to the death penalty will be discussed.

- **Public Opinion and the Death Penalty**

This lecture and tutorial will provide an insight into the role of public opinion in death penalty policy. Students will be exposed to different research regarding public opinion and how governments use public opinion in determining death penalty policy.

- **International Law and the Death Penalty**

This lecture and tutorial will introduce students to alternative jurisdictional attitudes towards the death penalty. Students will be exposed to various international human rights protections and compare and contrast the protections offered by alternative jurisdictions.

- **Week 2: Domestic Programme**

The domestic programme will be targeted aimed at Ugandan advocates, government officials and correctional officers. This programme will focus on the capital punishment litigation process, including the following:

- **The Ugandan Constitution and the Death Penalty**

This lecture and tutorial will discuss Ugandan Constitutional provisions which relate to the continued retention of capital punishment in Uganda. It will also discuss the *Susan Kigula* judgement of the Supreme Court which held that the death penalty *per se* is constitutional, but the mandatory imposition of the death penalty is unconstitutional.

- **Categorical Exclusions from The Death Penalty**

This lecture and tutorial will discuss categorical exclusions from the death penalty e.g. classes of crimes, classes of defendants.

- **Death Penalty Eligibility**

This lecture will discuss categories of crime for which the death penalty applies in Uganda including murder, aggravated robbery, treason and terrorism. The Anti-Homosexuality Bill will also be discussed. The tutorial will discuss the “most serious crimes” concept and whether this international threshold is met by the crimes currently subject to the death penalty in Uganda.

- **Death Penalty Trial Process**

A set of training sessions will be offered in relation to various aspects of the death penalty trial process including: preparation of pleas in mitigation; mental health and the death penalty; and the relevant standard for making a decision on death or life.

- **Methods of Execution**

This lecture will discuss the different methods of execution used in Uganda. It will discuss whether they can be considered cruel, inhuman or degrading treatment and the impact that execution can have on executioners.

- **Conditions on Death Row**

This lecture will use Luzira prison as a case-study to illustrate the harsh prison conditions currently suffered by death row prisoners in Uganda. The tutorial will focus on creatively formulating sustainable project proposals that can improve the conditions of prisoners so as to make their stay on death row more manageable.

- **Death Penalty and International Law**

This lecture will discuss the use of foreign and international law within a domestic Ugandan trial; the status of international law on the death penalty and information about what other countries are doing with it; and the role of regional and international bodies.

3. Programme Lecturers

The programme aims to achieve a balance in the type of lecturers that will attend with a preference for African and global input. Lecturers will be chosen by topic and by expertise with the majority of input by and about Africa with relevant global lessons.

4. Programme Participants

The programme will target East African and Ugandan government officials, advocates, judges, and correctional officers. These professionals are most likely to benefit from the course and are best placed to influence change within the East African criminal justice systems.

5. Location

The summer school will be hosted at UNAFRI's headquarters in Kampala Uganda. UNAFRI has one large lecture room which can hold up to 120 participants and 4 seminar rooms which are capable of holding up to 25 participants in each.

6. Objectives

By the end of capital punishment and human rights summer school, the participants should:

- i. Have a thorough understanding of the policy issues that the death penalty raises including academic, political and emotional dimensions;
- ii. Be able to appreciate the impact that the death penalty has on both victims and offenders, and to assess whether there is any synthesis of theory and practice in the delivery of justice;
- iii. Be knowledgeable about the process of criminal justice in relation to the death penalty and have developed an appreciation of the experiences that victims, offenders, the mentally ill, women, and ethnic minorities, have on the criminal justice system;
- iv. Have a thorough practical training in capital punishment litigation including preparation of pleas in mitigation and trial advocacy;
- v. Have formed an understanding of the relationship between international law on the death penalty and domestic criminal justice systems; and
- vi. Have developed an understanding of capital punishment issues particularly pertinent to Uganda and East Africa in general.

7. Project Outcome / Impact

Direct Beneficiaries

- i. **Government officials:** government officials will gain a better understanding of the human rights impact of the continued retention of the death penalty in society; policy-makers will be able to engage in discussions on the merits of the death penalty as a form of punishment and whether it still has a place in the criminal justice systems of East Africa. By engaging policy-makers through active discussion, it is hoped that a human rights culture will begin to develop in the region.
- ii. **Capital litigation advocates:** advocates will be trained in all aspects of the capital litigation process as well as the importance of the process for individual prisoners. This will ensure that prisoners receive more informed representation during their trials, and will help put pressure on commercial advocates to provide a better service for their clients.
- iii. **Capital litigation judges:** judges will be sensitised to the human rights issues and procedural standards involved in capital mitigation. Since capital mitigation is a new area of law in Uganda, the summer school offers a real opportunity to educate those who will be handing down judgements in the near future.
- iv. **Correctional officers:** correctional officers will discuss the treatment and conditions of prisoners on death row and discuss ways to improve the daily lives of the inmates.

Indirect Beneficiaries

- i. **Prisoners on death row in East Africa:** by approaching policy stakeholders, legal stakeholders and correctional officers, the summer school will ensure that the daily issues confronted by prisoners on death row are given the attention they demand. The summer school will help raise awareness of capital punishment issues in East Africa, help ensure access to justice for death row inmates, and provide the impetus for the eventual abolition of the death penalty in the region.

8. Future Sustainability of Programme

The capital punishment and human rights summer school will provide a template for similar schools to be set up in other regions of Africa, the Caribbean and Middle East where the retention of the death penalty raises serious human rights issues. The unique involvement of European, US and African institutions ensures that a diversity of input and expertise that can be transferred to different contexts.

9. Partners

(a) Washington & Lee University Transnational Law Institute

Background

The Transnational Law Institute supports and coordinates teaching innovations, externships, internships, a speaker series, and visiting faculty to help prepare students for the increasing globalization of legal practice. The Institute, which was established in 2006, is committed to the integrated study of international and comparative law, as well as those aspects of U.S. law that involve cross-border issues.

Mark A. Drumbl, the Class of 1975 Alumni Professor of Law, serves as the Institute's Director. The Institute is supported by an interdisciplinary Board of Advisers.

Key Contact

Professor Speedy Rice, Professor of Practice, Transnational Law Institute (SR@jcsrlaw.net)

(b) Makerere University, Faculty of Law and Human Rights and Peace Centre (HURIPEC)

Background

The Human Rights and Peace Centre (HURIPEC) is an autonomous Centre in the Faculty of Law at Makerere University. HURIPEC was set up to provide a focused intellectual and activist space to spearhead the promotion and protection of human rights and peace through a combination of teaching, research, documentation, public debate, seminars, and outreach programmes.

The Centre draws on the vast expertise of the Law Faculty and other units at the University in a bid to foster an interdisciplinary approach to human rights research and teaching. HURIPEC collaborates with related institutions and civil society groups. It pursues activities that have global appeal, while sensitive to the specific needs within Uganda and the Great Lakes Region at large.

Key Contact

Mr. Robert Kirunda, Law Academic, Makerere University Law Faculty (robert.kirunda@gmail.com)

Dr. Chris Mbazira, Law Academic, Makerere University Law Faculty (cmbazira@law.mak.ac.ug)

(c) United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI)

Background

Pursuant to various resolutions of the United Nations General Assembly, the Organization of African Unity, the Conference of Ministers of the United Nations Economic Commission for Africa (UNECA), between 1980 and 1989 and the supportive decisions by the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, the idea of founding the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) was realized.

The Statute for its establishment was adopted in April, 1989 by the Conference of Ministers of ECA. The establishment of UNAFRI with specified statutory objectives arose out of the recognized urgent need to start servicing, on continuous basis the increasing crime prevention and control problem in the African region.

The justification for its establishment remains the need to endeavor to prevent the problem of crime and delinquency from subverting development and gains of development of the countries of Africa. The establishment of UNAFRI was in fact long overdue considering in the first instance, that comparable Institutes had been established for Asia and Far-East (UNAFEI) in 1961, Latin America (ILANUD) in 1975, European countries (HEUNI) in 1982, and the effects of their work underline the suitability/appropriateness of the regional approach to problems of crime prevention and criminal justice.

Consequently, UNAFRI is a useful mechanism in the African region for promoting the active cooperation of Governments, academic institutions and experts in the field, in addition to assisting the countries in mobilizing their human and administrative potential, and deploying efforts for harmonious growth with a view to promoting self reliance and sustained development, while responding at the same time, to the crime problem with dynamic programs

Key Contact

Dr. Masamba Sita, Director of UNAFRI (masamba_sita@yahoo.com)

APPLICATION FOR FUNDING

1. Detailed Budget

(a) Travel

Lecturers

4 x UK Lecturers (e.g. Professor Peter Hodgkinson) – London to Entebbe return flights
4 x £700 = £2,800

2 x US Lecturers (e.g. Prof. Speedy Rice, Sandra Babcock) – US to Entebbe return flights
2 x £1,400 = £2,800

4 x South African Lecturers (e.g. Pius Langa CJ) – South Africa to Entebbe return flights
4 x £650 = £2,600

3 x East African Lecturers (e.g. from the African Commission on Human and African Peoples' Rights – The Gambia, or lecturers from other East African Universities, e.g. Nairobi) – Internal African Flights, for example from Nairobi to Entebbe return
3 x £170 = £510

4 x Ugandan University Lecturers (e.g. Makerere University)
N/A

Dr Masamba Sita (UNAFRI) Guest Lecture
N/A

(b) Accommodation

UNAFRI Lecturer Guest House for 14 nights - £2240

(c) Conference Room Hire

UNAFRI Conference Rooms for 10 days - £900

(d) Coordinator Expenses

2 x Coordinator Stipend
2 x £570 = £1140

(e) Printing Materials

10 lectures x 100 participants = 1,000 Lecture Handouts x 3 sides of A4 = 3,000 printed A4 pages.

20 seminars x 100 participants = 2,000 Seminar Handouts x 3 sides of A4 = 6,000 printed A4 pages.

9,000 A4 pages x 50 UG shillings per page = 450,000 UG Sh / £150.

2. Summary Budget

Item	Quantity	Cost (per item – £)	Total
<i>Flights</i>			
UK Lecturer Flights	4	700	2800
US Lecturer Flights	2	1400	2800
SA Lecturer Flights	4	650	2600
African Lecturer Flights	3	170	510
<i>Accommodation</i>			
UNAFRI Guest House	14 nights	2240	2240
<i>Conference Rooms</i>			
UNAFRI Conference Rooms	10 days	900	900
<i>Coordinator Expenses</i>			
Coordinator Stipend	2	570	1140
<i>Printing Materials</i>			
Printing Materials	9000 A4 Pages	50 UG Sh. / 1.66 pence per page	150
Total:			13,140

3. Amount Requested

Total Cost of Summer School Programme:	£13,140
Contribution from UNAFRI:	£3140
Amount Requested:	£10,000

FOLLOW UP

Thank you for taking the time to consider this proposal for funding. Should you have any questions concerning any of the information contained in the proposal, please do not hesitate to contact us.

Human rights education is much more than a lesson in schools or a theme for a day; it is a process to equip people with the tools they need to live lives of security and dignity. Let us continue to work together to develop and nurture in future generations a culture of human rights to promote freedom, security and peace in all nations.

Kofi Annan, Former UN Secretary General
Message to Mark International Human Rights Day 2nd December 2004