Transcript

The Death Penalty- A Global Trend Towards Abolition?

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Chair: Lord Hannay of Chiswick, Chairman, United Nations Association of the UK

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Kate Allen:

Thank you and thank you very much for the invitation to speak this evening on the death penalty. It's something that's very close to Amnesty's heart. Amnesty was founded in 1961 and from our inception we sent out appeals to stop the execution of prisoners of conscience.

Our opposition to the death penalty became a campaign in the 1970s and it's something that we have fought long and hard over, whether that's individuals in countries and have been absolutely a major player in the moratorium campaign that was so successful and which we are currently hoping to build on.

We believe, and our members worldwide, nearly three million of them, that the death penalty violates the right to life and the right not to be subject to cruel, inhuman and degrading punishment. We think that by prioritising retribution and by denying the possibility of rehabilitation or reconciliation, state killing rejects the humanity of the offender.

And we think it brutalises those involved in the punishment. When you have visited death row situations, when you have met people who work in prisons and institutions where the death penalty is applied, you readily see the way in which the people who are working in those systems are brutalised.

And we also consider that as long as human justice remains fallible, the risk of executing the innocent can never be eliminated. But our opposition to the death penalty is unconditional. It is not one related to the possibility of innocence.

In addition to the human rights violations inherent in the punishment itself, the conditions and lengthy detention of prisoners awaiting execution is often cruel and inhuman and degrading. Hakamada Iwao is believed to be the world's longest serving death row prisoner. He is in Japan. He has served forty-two years on death row, and he now unsurprisingly suffers from severe mental illness.

The death penalty is used disproportionately against poor minorities and members of racial and ethnic and religious communities. In the USA, racial disparities mean that 77 percent of executions have been of individuals convicted of killing white victims even though Afro-Americans make up about half of all homicide victims.

And around the world, we see in countries such as China, Iran and Saudi Arabia, the death penalty used to repress political dissent. We are seeing that in Iran at the moment.
International death penalty trends are absolutely unmistakeably going in our direction. When we began our campaign in 1977, only 18 countries in the world were abolitionist. And I'm not putting all the progress here down to Amnesty, but it has been part of our work as well as many others. We now are in situation where over two thirds of the world's nations have ended capital punishment in practice.

Since 1990, an average of three countries a year have abolished the death penalty. And last year, unfortunately not this year, where Belarus started to execute again, but last year it was the first complete year in modern times in which Europe was execution free. And we must continue our work to get Belarus to end that, something where Europe is permanently execution free.

We celebrated in addition abolition in Burundi and Togo. There were no executions in Afghanistan, Indonesia, Mongolia and Pakistan. Nonetheless, certain countries still absolutely buck the trend. And as Lord Hannay said, China, who execute more than the rest of the world put together, is a major area of campaigning and of future work.

Progress is also demonstrated in the now near global, not quite there yet, on the inhumanity and illegality of the execution of children and the mentally ill. Last year there was international outrage sparked by the execution of Delara Darabi, a 22-year old Iranian woman who was convicted after an unfair trial for a murder that took place when she was only 17 years of age.

Although the execution of juvenile offenders are few compared to the total number of executions in the world, their significance goes beyond number and calls into question the commitment of executing states to respect international law. Last year, both Saudi Arabia and Iran executed juvenile offenders.

The UN resolution on a global moratorium is an absolutely crucial step towards abolition. The resolution to be debated this year provides another opportunity for the global community to express its abhorrence of the death penalty. But we must put our reliance on it as the only way to achieve our goal.

Here, at Amnesty, we will be working with our new government here in the UK. Our government here in the UK have traditionally been strong supporters for the abolition of the death penalty. We want to ensure that its commitment to the universal abolition of the death penalty is raised with international partners.
In particular in the UK we want our government to raise its concerns with Japan, the USA and members of the Commonwealth. In 2008, all 12 English-speaking Commonwealth Caribbean nations voted against the UN resolution. And we need to exert as much influence as we can on them and on other Commonwealth countries.

We can’t tackle the death penalty globally without tackling it in America, which continues to be one of the top five executors in the world. Last year on average, they executed one person every week. Many retentionist countries justify the application of the death penalty by citing the example of the USA. And although rates of death sentences and executions are in decline and 15 states have abolished the death penalty, states such as Texas and Alabama continue to assert their right to execute.

Next week, we at Amnesty will be taking action for the World Day Against the Death Penalty.

And the day before that, one person on death row in Georgia, USA, Troy Davis, will celebrate his 42nd birthday. And this will be the 20th time that he has celebrated his birthday in a prison cell under sentence of death. He was convicted of murdering a police officer on the basis of nine witness testimonies but no physical evidence. He has always protested his innocence since his trial, and seven of the original nine witnesses have now recanted their testimonies.

They’ve not only implicated another suspect, but also made allegations of intimidation by the police. Despite this, the federal court in Savannah ruled in August this year that Troy would be put back on track for execution, despite this absolutely widespread persistent doubts about his guilt.

I think the thing that we often forget about the death penalty is the impact that that has on families. When you meet the mothers, the sisters, the wives, the children of people who have spent 20 years or longer on death row and have spent that time fighting for their loved ones, then you really see the widespread impact of that.

We’re also working to ensure that debates about the death penalty are good and effective ones. We’ve seen here in the UK Sakineh Mohammadi Ashtiani’s case, which recently sparked global outcry when the Iranian government said that she would be stoned to death. She, at the moment, the charges against her have increased from adultery to murder. The Iranian government said they won't stone her, but they haven't said they won't execute her.
She is not the only person in Iran. We also have Zeinab Jalalian, a 27 year old ethnic Kurdish political activist sentenced to death after being convicted of her alleged membership of a Kurdish armed opposition group. She tells us of torture and sexual abuse while being detained. We need that kind of international outcry for people like Jalalian as well as those for Ashtiani.

We can't have a method of execution determined completely when we see opposition to it and when we don't. And it's worth remembering that although stoning is an absolutely shocking and appalling way to kill people, and it overwhelms us in the fact of it and the idea that other human beings could behave in such a way, but all forms of execution are inhumane. We just need to think of Rommel Broom. In 2009, in Ohio, it took his executors 23 minutes to find a vein to inject the poison. So all forms of execution are inhumane.

Governments continue to use the issue of deterrence for support for their arguments. But I'm sure other speakers tonight will talk about how there is absolutely no evidence to show that is the case.

In many countries, progress towards abolition can only be made by having a really good public discussion about this. And these are issues that we at Amnesty are involved in in many parts of the world, where our work in terms of human rights education is at the forefront of creating a different base for our campaigning.

Everyone should be aware of what the death penalty is, how it is used, and how it affects them. And it is also very interesting to note that when you are in countries where the death penalty is used, and where it's used overwhelming against the poor... I've seen people campaigning in Uganda, for example, where there is real concern by many, many people because it is always the poor that are on the receiving end of the death penalty.

We at Amnesty are continuing our fight against the death penalty. For a moratorium, ultimately for abolition. And next week, on the World Day Against the Death Penalty, we'll be remembering those people on death row that we are currently and in the past have worked for. So Troy Davis, Sakineh Mohammadi Ashtiani, Zeinab Jalalian, Hakamada Iwao. They will be at the forefront of our thoughts next week. Thank you.

Ignacio Llanos:
Thank you. On 18 December 2008, the United Nations General Assembly adopted resolution 63/168 on the moratorium on the use of the death penalty, by a vote of 106 in favour, 246 against, with 34 abstentions.
The adoption of this second resolution on the moratorium which such a level of support was a truly remarkable moment that was unthinkable only a few years ago. And on a personal note, I am particularly proud that my country, Chile, made a contribution by co-facilitating this process with Gabon on behalf of 89 delegations.

In essence, this resolution reaffirmed the previous landmark resolution of ‘97, that for the first time the United Nations called upon states that maintained the death penalty to establish a moratorium on executions with a view to abolishing the death penalty. The resolution of 2008 welcomed the decisions taken by an increasing number of states to apply a moratorium on executions and the global trend towards the abolition of the death penalty.

It welcomed the report of the Secretary-General, and requested him to provide a report on progress made in implementation of both resolutions, and called upon member-states to provide the Secretary-General with information in this regard. It also provided the General Assembly to take up this issue again at its 65th session, which is already taking place.

My first point today is that there is global trend towards the abolition of the death penalty and that a strong majority in the United Nations favours the application of a moratorium on executions. These countries consider that the death penalty is inhumane and undermines human dignity. It does not have a deterrent value as compared with penal sanctions and that it is irreversible in cases of miscarriage of justice. In this context, a moratorium on executions is a contribution to the enhancement of human dignity and the progressive development of human rights.

The 89 co-sponsors of the resolution of 2008 came from every region of the world. It wasn't a European initiative, or an issue that the North wanted to impose on the South, as some countries tried to characterise it. It was a transnational initiative, set in quite a remarkable example for other initiatives at the United Nations.

However, there is a group of some 50 countries that still support the death penalty and voted against the resolution. They denied that the death penalty is a human rights issue, and consider that this is a matter that falls within their sovereignty and their criminal justice systems.

At present, all states that still maintain the death penalty should comply with the moratorium and provide the Secretary-General with the information relating to its use, as is called for by the resolutions of the General Assembly. They should respect obligations imposed by international law, including the international minimum standards contained in relevant ECOSOC resolutions.
And this brings me to my second point, which concerns the challenges ahead for the upcoming resolution of the General Assembly. Where shall we go from here? Should we leave our comfort zone and include new substantive elements in the resolution? Or should the co-sponsor stay on safer ground and stick to a procedural resolution?

This week in New York, the co-sponsor will begin their consultation at the United Nations and these are precisely the type of questions that they will have to address. For instance, the report of the UN Secretary-General, submitted in accordance with the 2008 resolutions, recently published, highlights the problem of secrecy in executions. The report states that this has been very difficult to establish the number of cases when the death penalty has been imposed since the adoption of the 2008 resolution.

It goes on to say that this is largely due to the fact that several of the retentionist states keep figures on executions secret, and they do not issue official statistics on capital punishment. Therefore, transparency in the information provided by states seems to be a good candidate for making its way into the resolution. Other co-sponsors might want to propose language concerning regional initiatives towards abolition or establishing for moratorium on the death penalty.

Another issue is the protection of the right of those facing the death penalty. The Secretary-General's report points out that those states which are still intent to implement the death penalty and are not willing to establish a moratorium should apply the death penalty only in the case of the most serious crimes. Here, some co-sponsors consider that what is needed is an objective determination as to what constitutes such a serious crime.

The Secretary-General indicates in his report that states have an obligation not to practice discrimination in the application of the death penalty. The question that then arises is should the new resolution address the issue of non-discrimination? If yes, should it do it in a general way, or should it make specific reference to the groups mentioned in the report? Such as members of minority religious groups, or those condemned for consensual same-sex practices?

The response to these and other issues is not black and white. On new issues, and although I will not be participating in the upcoming organisations, I think that the co-sponsor needs to strike a delicate balance between drafting a resolution that could garner critical support, and at the same time advance the issue forward. In this process, co-sponsors should not aim at a perfect resolution, but at a workable one.
With regard to other issues, one would need to make a case by case assessment, looking at the precise wording of the proposal, the arguments put forward by the proponent, as well as reactions, both within the group of co-sponsors and the UN membership at large. Arguments of a strategic nature would also come into play. On the other side, it would face contributions that increased numbers of co-sponsors without defeating the object and purpose of the resolution should be incorporated into the text.

A democratic process was the hallmark of the preparatory work that led to the adoption of the General Assembly resolution in 2008. When it comes to this type of issue at the UN, process can be as important as substance. This should be kept in the drafting process within the group of co-sponsors and vis-a-vis the membership at large. Anyhow, the important thing is that this is a collective exercise of like-minded group of countries, which no doubt, at the end of the day, will present a consensual resolution to the UN membership.

My second point relates to measures to be taken outside the framework of the resolution on the moratorium. The UN General Assembly should continue to condemn collective or public executions, in thematic or in country-specific resolutions, as well as the use of the death penalty against pregnant women and minors which are prohibited in international law. The Human Rights Council should in turn continue to address the death penalty in its universal periodic review.

Moving on to treaty law. At present, the second optional protocol to the ICCPR, aiming at the abolition of the death penalty has 72 parties only. There is a significant gap to be filled between this number and the 106 vote the resolution on the moratorium got in 2008.

A number of the state parties to the ICCPR and to its second option on protocol have made relevant reservations there, too. Withdrawal of relevant reservations is also one of the pending tasks which should be addressed in the understanding that this type of measure takes time.

Another challenge is to work with public opinion and NGOs. No society is completely free from violent crime, and sometimes awful crimes are committed, such as those against children, which sometimes are followed by causing to reinstate the death penalty. And this call should be resisted.

Let me conclude by saying that the movement towards the abolition of the death penalty is irreversible. We have a moratorium on its use and incrementally this state of affairs could reach a point where it could become a legal norm if customary law, irrespective of any treaty obligation... This could take a number of years. But establishment of a moratorium has proved to be
a useful first step towards banning a given type of conduct carried out by states.

We have gone a long way to arrive at this point. But this should not be a time for complacency. There is a hard core of supporters of the death penalty that maintain their position. However, they should remain engaged in the upcoming negotiations.

Unity and resolve are key when it comes to promoting and defending human rights issues. And the moratorium on the use of the death penalty with a view to its abolition is no exception to this.

We are experiencing an unprecedented opportunity for making a significant change in international human rights law. No doubt, international human rights law is evolving towards a world free from the death penalty. Thank you.

**Peter Hodgkinson:**

Hello. It was my intention to be sitting where you are, but Caroline... But I'd like to pay tribute to Roger and Caroline. If you're going to buy any single text on the death penalty from an authoritative source, then it is definitely *The Death Penalty* by Hood and Hoyle.

It provides exhaustive, accurate data across a whole range of issues related to the death penalty. And the new edition, as I think as a sop to me, as Caroline would say, introduce for the first time an evaluation of issues such as victims and of alternatives, both of areas that we in the Centre for Capital Punishment Studies have been working with for many years and are generally absent from the abolitionist movement.

The Centre is an evidence-based group. And we inform the death penalty from the evidence. In addition to that, we have developed over time a number of humane advocacy projects. We have developed projects around public reassurance, around the victims, the families of homicide victims and the families of the condemned.

And also promote a proper debate about alternatives to the death penalty. I've never found it particularly understandable that you can campaign to abolish something without giving serious thought to that which is going to take its place.

Another comment that I'd like to make is about assumptions, I think mistaken assumptions. And that is that the, I was going to say simple but it's not simple
abolishing the death penalty, but by abolishing the death penalty, there is I believe the mistaken assumption that coming along with that abolition are all the changes. The improvements in a society that has been underpinning the administration of the implementation of the death penalty.

They don't flow. And there's ample evidence. I've been working as so-called Council of Europe expert on the death penalty since about 1995. And we've sort of set up our tent in numerous countries within the Council of Europe member-states.

It's always been my disagreement with the Council that if they have got that persuasive power, and they have had that persuasive power, all but Belarus is in that camp of abolition. And all but Russia has actually ratified the sixth protocol to the European Convention on Human Rights. So it's a particularly spectacular achievement.

However, if you travel to many of those countries, as we have done, after abolition the aftermath is less pleasing. In most cases, little or nothing has been done to improve the status of the law of the social and moral perspectives on capital punishment.

I always think about Albania as an illustration for this. Much missed is the Norman wisdom in Albania today. I just remember the sort of pitching the tent and getting everybody to sign up to something. And in truth, the Albanians, like any emerging democracies, would sign anything in order to get to the golden globe of the European Union.

I don't think that if I was to stop 100 Albanian citizens, that any of them would have the first damned idea whether there was or wasn't a death penalty. they would be more concerned about education, employment, housing, the generality of rights that should flow from a modern democracy.

So the Centre takes a very holistic view in its approach to capital punishment and its replacement. That includes the need to ensure that between having the death penalty and replacing it, that a whole infrastructure reformation takes place. There has to be interim measures in place in the transition towards abolition. Otherwise you get abolition with no debate on alternatives and you're left with the same position in your society. I think that's a bit of a Pyrrhic victory.

Research on the death penalty. The most problematic and time consuming pieces of research that I've done are around the issue of deterrence. Those who support and those who oppose the death penalty constantly spent time defending the literature as supportive of their position.
And the problem in the United States, where much of this research evidence is produced, is that those are academics who are not sort of temporary or interim abolitionists, they are whole-hearted abolitionists. I'll return to that comment in a moment.

They are so fed up with the time consuming task of having to re-evaluate the principles and the methodology of the assessment that the death penalty stops 16 homicides, five homicides, 10 homicides. Any damn number you like to choose, these are the sorts of claims that are being made.

The problem is, that if that information is just left out there, without it being rebutted, then that's the fodder for the retentionist industry. That very vocal and very... Just drop onto the site for Justice for All. A Houston-based organisation which is venomous, absolutely venomous. And entirely inaccurate in pretty much all that it claims as the benefits of capital punishment. Just drop off onto it and see.

All these claims by academics here, there and everywhere, in the United States, will be sitting on their websites until such time as busy thoughtful academics opposed to the death penalty re-analyse the data and find that it is just a fairy tale. But that takes time.

I've always thought that Roger Hood's phrase best puts the picture about the value of deterrence, and that is that the death penalty is no more a deterrent than other sentences available to the courts. That's not saying that the death penalty is not a deterrent. But you need to sort of carry on from that statement, as Hood does, that one thing about the death penalty that differs from the other effective deterrent sentences available is that it carries with it a catalogue of errors in its implementation.

And the one thing that I, the only thing that I look to the United States for in terms of data nowadays is that annual data that demonstrates that the death penalty continues to be implemented in a profoundly flawed manner. Across race, poverty, geography, ineffective assistance of counsel, prosecutorial bias, judicial bias, jury bias.

Every year, there is evidence through the cases that that is happening again and again and again. And in the country work that we do, I always say to our hosts that when you can do what the United States does and spend inordinate time and energy and resources in trying to fix the problem of the implementation of capital punishment.

But just ask yourself, here is a country that is the most richly resourced in the entire world. It has more lawyers than bacteria. And yet it continues to make
these mistakes. Far better than you put the death penalty on one side, start again, and look at what the problem in your country is. And then start to design a new appeal, policy and practice to address those, not mythological issues, but the real issues. That's the way we work with and in the countries that we do work.

Research has a lot to offer. But I wonder just how much of an impression it has on changing the direction of people's governments minds. It is such a political penalty still in 2010. Roger Hood did a fantastic piece of work in Trinidad and Tobago. He's just done another research project there. But he looked at policing and homicide.

In short, there were a number of quite disturbing findings. But the one that I thought was linked directly to the issue of deterrence is that they, in all their research, identified that in 80 percent of homicides, no suspect was ever identified.

There's an inextricable link between deterrence and detection. And if you don't think for one tiny moment, and you're very correct to assume that in Trinidad and Tobago's policing, that you're not going to get caught, then the deterrence of the death penalty is rather moot.

I think I'll stop there if i might. I'm sure I haven't covered a quarter of what I wanted, but thank you.