

## Concept note

### Capital defense lawyers training in Arusha, Tanzania

Monday, 25 October 2018

#### 1. Introduction

Africa, the death penalty remains largely in force: though 21 African countries have formally abolished it at law in part or whole, as many as 23 practice abolition only on a de facto basis, and calls to revive the practice have been issued in many of those countries. At least 10 countries retaining the death penalty have executed someone in the past 10 years.

Though the death penalty does not receive significant attention as a popular or political issue in Tanzania, the execution of those sentenced to death sentences has been exceptional rather than the rule. According to the Law Reform Commission Report, there were no executions in Tanzania between the early 1970s and 1987, nor have any executions been carried out since 1994 to date. Nevertheless, individuals are still regularly sentenced to death. In August 2007, all death sentences in Tanzania (estimated at about 400 at the time) were commuted to life imprisonment by the president. Since that date, however, approximately 500 Tanzanians have been sentenced to death and are currently serving sentences in Tanzanian prisons across the country.

#### 2. Justification

##### a. Legal aid

Under the laws governing legal aid in Tanzania, every person facing capital offense who cannot afford legal services is entitled to legal representation provided by the government. However, there is no dedicated legal aid department or bureau in Tanzania. The Registrar of the High Court assigns legal aid cases to private counsel. In assigning these briefs, the Registrar does not take into consideration expertise, years or areas of practice, or even the experience of the lawyer. Moreover, the stipend provided by the government is insufficient to cover basic elements of quality capital defence.

As a result, accused persons often receive poor legal representation either because of lack of legal competence or lack of interest on the part of lawyer. Moreover, such cases rarely are given to counsel before the day of trial. In my experience I have seen defense counsel assigned through compulsory legal aid scheme receiving briefs from their clients on the dock. This delay in meeting the client compounds the problem of lack of funding, because counsel who would already find it financially difficult to go to the prison to interview their client are entirely prevented from doing any preparation whatsoever.

In view of these trends in capital legal representation, it is the high time to train lawyers on how to conduct defence in capital cases. Though training cannot mitigate the problem of

resources, it can at least provide lawyers with 1) technical knowledge of how to handle capital cases, 2) promote interest in representing clients in capital cases and 3) offer creative ways to circumvent challenges such as lack of resources, including, among other things, seeking technical support from the community of international capital defenders and allies.

#### **b. Regional mechanisms**

Tanzania is home to two key regional mechanisms for cases involving individuals who have been sentenced to death: the East African Court of Justice and the African Court on Human and Peoples' Rights. While these bodies serve different functions and have different requirements for jurisdiction, they each are capable of providing relief to death-sentenced individuals. As a result, lawyers working on capital cases in the region should be aware of these courts and should include them as options in strategizing how to assist death-sentenced clients.

The East African Court of Justice permits applications from individuals prior to exhaustion of domestic remedies. This offers an excellent alternative for clients with cases that fall within the mandate of the EACJ to seek adjudication by an international body on an accelerated timeline. This is just one of many factors that East African capital defence lawyers should consider in determining whether a case might be brought before the EACJ.

At the moment, the majority of cases before the African Court on Human and Peoples' Rights are from Tanzanian prisoners who have filed applications on their own behalf. These cases are currently being adjudicated, and already some have been decided, creating helpful jurisprudence for other death-sentenced applicants. Well-drafted petitions to this court have a chance of creating ground-breaking jurisprudence on a number of issues surrounding the application of the death penalty in the region.

These two international bodies are relatively new to the region, and their rules and procedures are not nearly as well known and understood as their domestic counterparts. As a result, they may be underutilized by capital defence lawyers. Training on the procedures and best practices before international bodies will assist Tanzanian capital defence lawyers in creating more robust strategies for defence, including appeals to international mechanisms.

### **3. Support**

To conduct specialized training on capital defence before domestic and international courts, Cornell University's Center on the Death Penalty Worldwide and Reprieve, U.K., a legal charity focusing on death penalty work, will provide trainers, materials and venue to hold a training on 25<sup>th</sup> October in Arusha, Tanzania.

Local partners, including the Pan African Lawyers Union, the East African Law Society, and the Legal and Human Rights Centre will provide critical support in training and sharing expertise.

#### 4. Invitees

Representatives of local partners organizations, including the Pan African Lawyers Union, the East African Law Society, and the Legal and Human Rights Centre will be invited to attend.

Additionally, **15 members** of the Tanganyika Law Society are invited to attend, and will be welcome to use this training for CLE credit, if so approved by the TLS. These members should be advocates who have worked or are currently working as defence counsel in capital cases. They must have interest in capital defence work before both regional and international bodies. Those who do not frequently take on criminal defence work should not apply to attend.

#### 5. Topics

Proposed topics include:

- Working with prisoners on death row
- The process of bringing a case to one of the regional mechanisms
- Using amicus briefs
- Interviewing skills, especially fact finding of client's story and seeking information to mitigate against death sentence
- Mental illness as mitigation
- Human rights violations under the Charter and other relevant instruments
- Trial Advocacy
- Incorporating regional and international jurisprudence into capital defence