



New South Wales
Council for
Civil Liberties

New South Wales Council for Civil Liberties Inc

149 St Johns Road
Glebe NSW 2037
Australia
www.nswccl.org.au

Ph 61 2 9660 7582
Fax 61 2 9566 4162
Email office@nswccl.org.au
DX 1111 Sydney

Correspondence to:
PO Box 201
Glebe NSW 2037
Australia

Wednesday, 6 September 2006

Mr Philip Jeyaretnam SC
President
Law Society of Singapore
39 South Bridge Road
Singapore 058673

Dear Mr Jeyaretnam,

Submission to the Law Society's review of Singapore's use of the death penalty

The New South Wales Council for Civil Liberties ('CCL') is a non-government organisation based in Sydney Australia. CCL is a community-based human rights organisation which actively opposes the death penalty.

CCL respectfully makes the following observations about capital punishment for the Law Society's consideration. These observations are based on the experience of the law and practice of foreign countries, including Australia. We hope that this submission proves useful to your review.

Recommendation

1. The Law Society of Singapore should encourage Prime Minister Lee's government to establish a moratorium on the death penalty and to consider the ratification of the *International Covenant on Civil and Political Rights* and the *Second Optional Protocol* attached thereto.

Miscarriages of justice

2. Perhaps the most compelling argument against the death penalty is that the finality of the sentence makes it impossible to remedy miscarriages of justice. No legal system is perfect and miscarriages of justice occur. Australian High Court judge, Mr Justice Ian Callinan, has pointed out that DNA technology has been used to show that some convicted people are in fact innocent.¹
3. In the United States of America, for example, there are over one hundred well-documented cases of people on death row being acquitted when new evidence arises – and DNA has played a major role in exonerating many of them.² As recently as February this year, a Florida man on death row was released.³ There have also been cases of people being wrongfully executed, including the celebrated case of Ms Lena Baker who was pardoned sixty years after her execution.⁴
4. Australian experience has shown that miscarriages of justice can extend beyond the executed prisoner. In 1959, Mr Daryl Beamish was convicted of murder. His death sentence was commuted and he served 15 years in prison. In 1963, Mr John Button was tried and convicted for the manslaughter of his girlfriend. Ten of his twelve jurors wanted him to hang.⁵ Mr Button spent five years in prison. Both men are factually innocent and they have been belatedly acquitted.⁶ The cruellest twist in their stories is that the last man hanged in Western Australia, Mr Eric Edgar Cooke, confessed to these murders and could have exonerated Beamish and Button.⁷ Mr Cooke, had he not been executed, could have given evidence in the retrials or review of these tragic miscarriages of justice.
5. While these observations about miscarriages of justice are obvious, it is nevertheless a strong point and worthy of closer study. CCL encourages the Law Society to consult with its members to determine whether miscarriages of justice in capital cases have occurred in Singapore. Experience in foreign jurisdictions demonstrates that no legal system is perfect and only close objective scrutiny can lead to improvement.

International law

6. CCL notes that Singapore has not signed or ratified the *International Covenant on Civil and Political Rights* ('ICCPR') or the *Second Optional Protocol* attached thereto.
7. The Law Society should consider recommending to the Singaporean government that it sign these important international human rights instruments. The ICCPR is widely ratified internationally. Indonesia is one of the most recent parties to the Covenant.⁸ The ICCPR does not require a signatory state to abolish the death penalty, but it does set down minimum standards for its use.

8. Article 6 of the Covenant prohibits the execution of minors and pregnant women. It also implicitly prohibits the mandatory death sentence. In *Thompson v St Vincent & The Grenadines*, the majority of the UN Human Rights Committee concluded that mandatory capital punishment constitutes an *arbitrary* deprivation of life. The fettering of judicial discretion was the basis of this decision:⁹

The Committee notes that the mandatory imposition of the death penalty under the laws of the State party is based solely upon the category of crime for which the offender is found guilty, without regard to the defendant's personal circumstances or the circumstances of the particular offense. ... The Committee considers that such a system of mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case. The existence of a right to seek pardon or commutation, as required by article 6, paragraph 4, of the Covenant, does not secure adequate protection to the right to life, as these discretionary measures by the executive are subject to a wide range of other considerations compared to appropriate judicial review of all aspects of a criminal case. The Committee finds that the carrying out of the death penalty in the author's case would constitute an arbitrary deprivation of his life in violation of article 6, paragraph 1, of the Covenant.

9. In *Watson v The Queen*, the Privy Council ruled that Jamaica's mandatory death penalty is unconstitutional.¹⁰ In striking down a Jamaican law that imposed a mandatory death sentence for certain crimes, the Privy Council confirmed that such sentencing laws amount to inhuman punishment.¹¹ In delivering their judgment, the Law Lords said that:¹²

To condemn a man to die without giving him the opportunity to persuade the court that this would in his case be disproportionate and inappropriate is to treat him in a way that no human being should be treated.

10. Article 6 of the ICCPR also restricts the use of capital punishment to 'the most serious crimes'. The UN Human Rights Committee has commented that 'the death penalty should be a quite exceptional measure'.¹³ The United Nations Economic and Social Council ('ECOSOC') has resolved that the scope of the death penalty 'should not go beyond intentional crimes with lethal or other extremely grave consequences'.¹⁴ The jurisprudence of the UN Human Rights Committee on this point is worthy of closer study.¹⁵ In particular, it has been suggested that drug-related offences do not fall into this category. CCL encourages the Law Society to examine Singapore's harsh drug laws in the light of this jurisprudence.
11. In 1984, ECOSOC passed the *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*.¹⁶ ECOSOC has also called on all retentionist nations to adopt these minimum standards.¹⁷ The Law Society should review these Safeguards to ensure that Singaporean law provides these minimum protections.

No deterrent

12. The death penalty is not a deterrent in terms of sentencing effects. A *New York Times* survey in September 2000 found that during the past 20 years the homicide rates in states with the death penalty has been 48% to 101% higher than in states without the death penalty.¹⁸ Further, data from the US Federal Bureau of Investigation shows that 10 of the 12 states without the death penalty have homicide rates *below* the national average.
13. Even more strikingly, compare the murder rates in Canada (abolitionist) and the United States (retentionist): 2.1 versus 7.4 (per 100,000) respectively in 1996.¹⁹ Nor did the abolition of capital punishment lead to an increase of homicides in Canada. In fact, the trend continued to follow that of the United States, which retained the death penalty.²⁰

Worldwide movement toward abolition

14. Around 124 countries have abolished the death penalty in law or practice. The clear identifiable trend is towards the abolition of capital punishment. Most recently, the Philippines abolished the death penalty in June this year.²¹ Hong Kong, Cambodia, East Timor, Australia and New Zealand have all abolished the death penalty. Taiwan, Japan and South Korea are also seriously considering abolishing capital punishment. Many of Singapore's trading partners have abolished the death penalty, including all the countries of the European Union.

CCL hopes that this submission is of use to the Law Society. If CCL can elaborate on any point or help the Law Society in anyway, please do not hesitate to contact us.

Yours sincerely,

Michael Walton (convenor)
on behalf of Mr Howard Bell and the subcommittee against the death penalty.

Endnotes

¹ Hon. I.D.F. Callinan, *Capital Punishment* (speech delivered at Law Asia Conference, Brisbane, 22 March 2005, <<http://www.nswcccl.org.au/docs/pdf/speech%20callinan%202005.pdf>>.

² see Death Penalty Information Centre, *Innocence and Death Penalty*, <<http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>>. See also: American Civil Liberties Union, *Death Penalty: Innocence*, <<http://www.aclu.org/capital/innocence/index.html>>.

³ Death Penalty Information Centre, *Cases of Innocence: 1973-present*, <<http://www.deathpenaltyinfo.org/article.php?scid=6&did=109>>.

⁴ Kathy Lohr, “Georgia Woman Pardoned 60 Years After Her Execution”, *National Public Radio* (Washington DC), 26 August 2005, <<http://www.npr.org/templates/story/story.php?storyId=4818124>>.

⁵ Australian Broadcasting Corporation Radio, ‘Death Penalty Debate in WA’, *PM* (16 March 2000) <<http://www.abc.net.au/pm/stories/s111121.htm>>.

⁶ see *Button v The Queen* [2002] WASCA 35 (25 February 2002) <<http://www.austlii.edu.au/au/cases/wa/WASCA/2002/35.html>>; and, *Beamish v The Queen* [2005] WASCA 62 (1 April 2005) <<http://www.austlii.edu.au/au/cases/wa/WASCA/2005/62.html>>.

⁷ Estelle Blackburn, *Broken Lives* (2001) Hardie Grant Books, Melbourne..

⁸ ratified 23 February 2006, taking legal effect on 23 May 2006.

⁹ *Thompson v St Vincent & The Grenadines* (2000) UN Doc. CCPR/C/70/D/806/1998, [8.2].

¹⁰ *Watson v R (Jamaica)* [2004] UKPC 34 (07 July 2004) <<http://www.bailii.org/uk/cases/UKPC/2004/34.html>>.

¹¹ *Watson v R (Jamaica)* [2004] UKPC 34, n.10, [35].

¹² *Watson v R (Jamaica)* [2004] UKPC 34, n.10, [33].

¹³ UN Human Rights Committee, *General Comment 6: the right to life* (1982) [7] <<http://www.ohchr.org/english/bodies/hrc/comments.htm>>.

¹⁴ ECOSOC, Safeguards guaranteeing protection of the rights of those facing the death penalty (25 May 1984), UN Doc. E/RES/1984/50, <<http://www.ohchr.org/english/law/protection.htm>>.

¹⁵ see Sarah Joseph, Jenny Schultz & Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2nd ed, 2004) [8.21]-[8.22].

¹⁶ ECOSOC, *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty* (1984) UN Doc E/RES/1984/50.

¹⁷ ECOSOC, *Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty* (1989) UN Doc E/RES/1989/64.

¹⁸ Raymond Bonner & Ford Fessenden, ‘States With No Death Penalty Share Lower Homicide Rates’, *New York Times*, 22 September 2000, <<http://www.deathpenaltyinfo.org/article.php?scid=17&did=437>>.

¹⁹ figures from: Ben Best, *Death by Murder*, <<http://www.benbest.com/lifeext/murder.html>>.

<[http://bpp.wharton.upenn.edu/jwolfers/Papers/DeathPenalty\(SLR\).pdf](http://bpp.wharton.upenn.edu/jwolfers/Papers/DeathPenalty(SLR).pdf)>.

²⁰ John J. Donohue and Justin Wolfers, ‘Uses and Abuses of Empirical Evidence in the Death Penalty Debate’ (2005) 56 *Stanford Law Review* 791, 798,

<[http://bpp.wharton.upenn.edu/jwolfers/Papers/DeathPenalty\(SLR\).pdf](http://bpp.wharton.upenn.edu/jwolfers/Papers/DeathPenalty(SLR).pdf)>.

²¹ ‘GMA signs law scrapping death penalty’ *Manila Times* (25 June 2006).