Death Penalty: from Moratorium towards complete Abolition?

The Law and Society Trust acknowledges and appreciates that Sri Lanka has redefined its position with regards to the reintroduction of the death penalty. The Justice Minister Dr. Wijeydasa Rajapakshe stated in Parliament on 6 October 2015, that Sri Lanka will not implement the death penalty temporarily as the country has decided to vote in favour of the UN General Assembly Resolution on “Moratorium on the Use of Death Penalty” in 2015¹.

Although in 2012 Sri Lanka abstained from voting on the afore-mentioned UN General Assembly Resolution, in the years 2007, 2008 and 2010 Sri Lanka had voted in favour of a moratorium on the use of the death penalty² and LST appreciates this stance taken even amidst mounting public favour towards reimplementation due to the increased crime rate and the resultant general public perception of the death penalty as a deterrent to crime³.

² Ibid.
The Death Penalty is the ultimate violation of an individual’s most basic rights and in practice is often carried out in a discriminatory and arbitrary fashion with the potential to cause irreparable loss in a flawed criminal justice system. We only have to look at the recent case of the rape and brutal murder of the five year old girl to highlight that our criminal justice system is simply incapable of carrying out investigations and prosecuting offenders. Public outrage and the media too contributed to this. The enraged public response to catch the perpetrators and the call for “revenge” put significant pressure on the law enforcement authorities whose investigation techniques are questionable right from the start as evinced by the “confessions” of several offenders, and the treatment of the 17 year old boy suspected of having committed the act. To date the real perpetrator has not been apprehended. In these circumstances since no system, even an advanced legal system, can ever be hundred percent accurate we really must seek to completely abolish this brutal practice given that even in the situation of a moratorium the decision ultimately always lies at the whims of a policy maker.

In light of this we encourage the government to take a step further and abolish the practice once and for all given that the practice has no place in the 21st Century. We also encourage the government to take steps to ratify the second optional protocol to the ICCPR which calls for the abolition of death penalty.

Currently over 82% have either introduced moratoria by law or in practice or have abolished it. Over the past 12 months alone, Fiji, Madagascar, Suriname, and the state of Nebraska in the United States have abolished the practice of putting people to death. In Burkina Faso and the Republic of Korea, new abolition laws have been submitted to

6 Article 1 & 2, Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty
parliament. Togo has ratified the second optional protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty. China has removed the death penalty for several categories of crimes. Legal bodies in India and Ghana have recommended abolition. Authorities in Afghanistan, Malaysia, Thailand and the United States have announced reviews of the fairness and accuracy of the processes that convict and execute people⁷.

These moves by Nations across the globe and in Asia goes on to show that the global practice is indeed towards abolition. Justice is not about vengeance and we as civilized societies must move towards a form of justice system which seeks real and genuine recognition by the offenders for their wrongdoings.

It is not the increase in the severity of the punishment but the certainty of punishment which prevents potential offenders from committing crimes. The deterrent theory also assumes that all human beings are rational creatures who first engage in a process of weighing the pros and cons before acting out. This is not often the case as most crimes are committed under the influence of alcohol or in certain incidences by people with diminished capacities. The Justice Minister had also gone on to state that an interactive dialogue should be held to find out the root causes of crimes and that Parliament should focus attention on strengthening the laws to prevent crimes⁸. This is by no means an easy task and there is a need for a massive overhaul of the system and action must be taken structurally to address the issue at hand with participation at all levels. There is also the need for massive public education be it related to crimes, related laws, sanction risks and consequences, sentencing policies and modifications to it etc.

In the meantime one cannot forget the rights of victims and their families in seeing through effective investigations and proper retribution for crimes and the right to demand redress for the harm suffered through expeditious, responsive, fair, and accessible judicial and administrative mechanisms. A life of dignity for all includes the dignity of victims and their

---

families, who must be acknowledged by all law enforcement and judicial personnel with full compassion and respect with paramount significance given to secure the safety of victims, their families and witnesses from intimidation and reprisal.