

OSCAR FOUNDATION FREE LEGAL AID CLINIC-
KENYA (OFFLACK)
CAMPAIGN AND ADVOCACY FOR THE ABOLITION OF
THE DEATH PENALTY FROM THE KENYAN STATUTES
& LAWS

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1.0 PROJECT SUMMARY

Despite Kenya abolishing the Death Penalty in 1985, it is being upheld in the statute and practiced in its criminal system in all capital offences with our penal institution still hosting an estimated over 3,200 inmates on death row awaiting execution. The number of criminal suspects still committed to death sentence continues to drastically increase as the crime situation in Kenya escalates. Furthermore, the under age and women continue to be subjected to the death sentence hence contravening the International human right instruments that Kenya has ratified. Kenya has ratified a number of International Conventions that provide guarantees to the right to life and that seek to abolish the use of death sentence. In 1987, it became among the 28 countries that abolished the use of death sentence. Indeed when President Kibaki came to power, he subsequently suspended the hanging of inmates who had been sentenced to death and pardoned over 200 inmates on death row and committed to life imprisonment more that 149 inmates previously facing the death penalty.

Among the instrument Kenya has ratified is the United Nations Conventions Against Torture (UNCAT). In 1989, the UN General Assembly adopted the second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) whose goal is the abolition of the death penalty. However, to date, Kenya has not appended its signature on the document. Therefore, Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), as the sponsor and implementer of this project intends to carry out advocacy and campaigns to appeal to the Kenyan Government to sign this document by 26th June 2008 when celebrating the next International Day against Torture and also domesticate the United Nation Charter Against Torture. Additionally, organize countrywide peaceful demonstrations as a way of appealing to the Government to abolish the death penalty. This will however depend on the outcome of the case HCCC No. 682 of 2007 currently in Court petitioning the Government to abolish the death penalty, in which OFFLACK is the Plaintiff on behalf of the over 3,000 inmates and the Attorney General is the Respondent/Defendant on behalf of the Government. Therefore, OFFLACK is concerned with the plight of both convicts and potential convicts who are condemned to death thus violating their basic rights to life as secured by sections 70 and 71 of the Constitution. The design of Oscar Foundation Free Legal Aid Clinic Kenya is therefore focused on abolition of the death penalty and it has adopted campaigns, advocacy and lobbying approach to fulfill its mission. The case in court is part of that approach.

Oscar Foundation Free Legal Aid Clinic Kenya which was registered under the Societies Act in the Year 2002 and operates from China Centre on Ngong Road in Nairobi has a broad objective of advocating for the right of the vulnerable groups in the society of which campaigns for the total scrapping of the death sentence by removing it from the statutes is one of the objectives. The Foundation has an organizational structure comprising of the Board of Trustees and an efficient staff to be relied upon for implementation of the project. It has an Executive Director who is a trained Lawyer and Human Rights Activist. Advocacy and Mobilization is headed by a trained Journalist, Finance is headed by a Professional Accountant who has a Bachelor of Commerce Degree. Others include a social scientist who is a consultant with wide experience in research, project planning and management gained while working with Kenya! Nordic Programmes, DANIDA, ICIPE and the Government of Kenya. Besides there are over 150 Lawyers and paralegals spread around the country.

2.0 PROJECT LOCATION

The project is managed from the Oscar Foundation Free Legal Aid Clinic Kenya, Head office in Nairobi located on the Ground Floor of China Centre along Ngong Road.

3.0 STATEMENT ON PROBLEM ADDRESSED

Kenya still holds a total of 3,200 inmates on death row of which 10% are commuted to life imprisonment while the rest await execution. This legally means that Kenya has upheld the suspension of the death penalty for the past twenty two years. Many other prisoners still await trial for capital offence for which they are likely to be granted death sentences. Available reports indicate that from 1963 to 1983 alone 280 people out of 3,584 sentenced to death had been executed. Another 135 prisoners had benefited from the presidential prerogative of mercy and had their sentences commuted to life imprisonment. Reports from Prison Headquarters records as at 2006 indicate them 3,741 people had been sentenced to death between 2001 and 2005 and to date most of them are still in prison since the last execution was carried out in 1987.

The death penalty in Kenya begin with the enactment of Section 296(2) of the Penal Code, Cap 63 Laws of Kenya creating the offence of Robbery with Violence under which the death row convicts are charged and convicted which is in contradiction to section 74[1] and the constitution of Kenya which gives the convict rights to non-inhuman and non degrading punishment. Therefore, section 296[2] of the penal code deny the basic humanity of death row

convicts and constitute such in human treatment. According to OFFLACK, 65 percent of those sentenced to death are for violent robberies, while 20 percent are for murder charges and when they are sentenced, sometimes they are done so arbitrary, biased and unfairly. This is because of inept prosecution leading to reversals in High Courts during Appeals. In fact in 2004, at least 12 appeals against death sentence that had been contested were successful. Therefore death penalty is simply cruel and an inhuman punishment. In fact, the African Charter on Human and People's Rights Article 4 states that human beings shall be entitled to respect for his life and the integrity of his person and no one may be arbitrarily deprived of this right. Though the same sentiments are held by the Kenyan Constitution Section 71(1), it nevertheless gives exceptions to the extent that the right is not guaranteed where a sentence is being executed.

The torture of criminal start when being arrested by police, they are mishandled tortured, killed instead of being arrested and maimed by the dreaded flying squad or rhino squad and many others.

In 2006, a study commissioned by the Oscar Foundation to investigate the deaths occasioned by Law enforcement officials, 24 were documented from the City Mortuary of which 70% were males aged 15-17 years who were criminal suspects, something which has replaced the actual execution of the offenders by the Courts. The deaths of inmates in prisons is also alarming.

In Kenya the poor bear the brunt of the death penalty as they can seldom afford to hire lawyers to represent them in Court nor have they resources to manipulate the judicial process, hence due to ignorance of the law, they find themselves sentenced to death. This discrimination against the poor and women is indeed well established and they constitute a huge number of those awaiting appeals against their sentences. Where fairness is practiced there must be competent legal representation, qualified and competent prosecution but lack of these has resulted in many innocent victims being sentenced to death. The absence of this, therefore, makes many wrongly sentenced to death and it is because of this that many appeals succeed. For instance, between year 2000 to 2006, 76% of the appeals of the death sentence were eventually reversed while 6% were released. The reversal of these appeal are as a result of sentencing and prosecutorial errors. This means that in Kenya the common factor of death row inmates is poverty, lack of good social background and lack of adequate and competent legal representation at trial or during appeals.

More than half of the countries in the world have done away with the death penalty. Instead they apply life imprisonment for serious crimes and many of them have prohibited the death penalty in their constitutions. However Kenya appears to be dragging its feet in this matter. Shockingly,

during the recent Constitutional Review Conference at Bomas of Kenya, the delegates voted by 80% to retain the death penalty and if the constitution were to be approved then all inmates on death row would have been executed. This is besides Kenya participating and agreeing to many U.N Charters which include the Universal Declaration on Human Rights; International Covenant on Civil and Political Rights; Article 6 and 7 of the U.N safe guards guaranteeing protection of the human rights of those facing the death sentence endorsed by the UN General Assembly; Second Optional Protocol adopted by the same assembly which to date Kenya has not officially signed; UN Commission on Human Rights.

4.0 JUSTIFICATION

The legitimacy of the death penalty deprives the accused person the right to life. It is unusual and cruel form of punishment which violates his/her rights and causes mental anguish, psychological torture and diminishes his/her dignity and worth as a human being. This sentencing discretion is used, as it too often has been, to punish the poor, the uneducated and the despised thus becoming cruel, inhuman and degrading treatment or punishment.

Most of the prisons where the inmates are kept are unhygienic and lacking basic facilities. They lack clean water and food, a situation created by wardens who sell food leading to an artificial shortage. Besides, the administrative management is riddled with incompetence and lethargy.

The worst impact the death penalty has on the Government is the economic one. The Government spends a lot of money annually looking after the inmates on death row and yet they do not participate in any economic activity. Death row inmates are not allowed to do anything while waiting for execution unlike those on life imprisonment who participate in activities in the prison industries. Therefore, if the Government commits these people to life imprisonment they will be helpful economically.

The worst human disaster facing the death row inmates is lack of clean drinking water and rampant sale of food. Available water for consumption and general use is contaminated with human waste. Prisoners also wash their human waste in the collection pool and at the same time collect the same water for their domestic use and for drinking. They are forced to consume this dirty and untreated water because of helplessness. As a result many of them suffer acute waterborne diseases and TB.

Most inmates condemned to die are actually innocent. The Former Commissioner of Prisons Mr. Abraham Kamakil on supporting the abolition of the death sentence concurred that upto 20% of

the convicts are innocent. This innocent convicts found themselves in that predicament due to incompetent investigations by incompetent police officers. Most investigating officers are drawn from the police force and are mandated to prosecute offences as stipulated in the Police Act and the Constitution. However the moral and humanitarian ability of the police to investigate crimes has been characterized by ineptness and negligence. They conduct un-quality work which is often not conclusive.

The scenario clearly shows that Kenya still subject inmates on death row to psychological torture, health problems, inhuman and degrading conditions despite ratifying the United Nations Convention Against Torture (UNCAT).

It is because of this unwillingness of the Kenyan Government to Act that Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK) advocates for the absolute abolition of death penalty form the statutes and in all cases that prescribe the issuance of the death penalty. To do this, the Foundation needs enormous resources from Donors and it needs to partner with other organization to address this issue.

5.0 OBJECTIVES OF THE PROJECT

5.1 Broad Objective

- The broad objective of this project is to advocate and campaign through various means including through the Courts, for the absolute abolition of the death penalty in Kenya which is contained in Section (296) of the Penal Code, Cap 63 Laws of Kenya..

5.2 Specific Objectives

- Mobilise, organize and sensitize various stakeholders including the public and the Government officials and judicial officers on the need to completely abolish the death sentence as a way of punishing criminals.
- Petition the Government of Kenya to adhere to and sign the Second Optional Protocol of the United Nations Convention Against Torture (UNCAT) and return it to the United nations Assembly.

6.0 PLANNED ACTIVITIES

- Participate in filing a case in Court to compel the Attorney General to show Cause why the death penalty is still practiced in Kenya. Already Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK) has filed a case (Petition) No. 682 of 2007 where the Plaintiff is OFFLACK on behalf of the over 3,000 inmates on death row and the Attorney General is the Defendant on behalf of the Government. As a first step in its activities on this matter, OFFLACK hopes that the case will be done expeditiously and be determined favourably.
- Carry out campaigns throughout the country to obtain over one million signatures which will be used as a bargaining point to petition the Government to domesticate and sign the second optional protocol of UNCAT by 26 June 2008, which is the International Day Against Torture.
- Carry out advocacy and campaigns by creating forums to debate and give views on the abolition of death sentence. This will be done through use of both electronic and print media, posters, songs and barazas (public meetings).
- Visitations to all maximum penal institutions where capital offenders are incarcerated to counsel and give them moral support and material support. Additionally, counsel and sensitize the prison staff on the importance of the abolition of the death sentence and humanely treating all inmates.
- Depending on the determination of the case before Court, the Foundation will organize peaceful demonstrations throughout the country to force the Government to abolish the death sentence.

7.0 METHODOLOGY (STRATEGIES)

- Use the Court proceedings to advocate for abolition of the penalty.
- Design and print forms where those willing can write their names and append their signatures across the country. These forms will be forwarded to the OFFLACK secretariat to compile the list of One Million Signatures.
- Print posters and banners to be distributed all over the country with appropriate messages on the abolition of the death penalty.

- Broadcast through radios and television to campaign for the abolition of the death penalty
Advertisements on the local dailies will also be used.
- Conducting and participating in campaigns.

8.0 TARGET GROUPS

- a) Death row inmates: The indefinite and perpetual confinement and incarceration of over 3,200 death row convicts under unrelenting but unexecuted death sentences with no indication as to whether or when the sentence shall be effected amount to torturous, cruel , inhuman or degrading punishment. Therefore, OFFLACK intends to intervene on their behalf
- b) Potential Convicts: Although Kenya abolished the death penalty in 1987, the penalty is still upheld in the statutes and since investigations and procedures are influenced to serve a dual function in criminal jurisprudence and judgment is at the discretion of the Magistrate's coupled with the suspects inability to be represented, many of the suspects will find themselves in death row sentences. With the removal of the death penalty from the statutes, these people will be safe from being sentenced to death.
- c) Human Rights Activists, General Public and the Government: The work of advocacy and campaigns against abolition of the death sentence cannot succeed unless we involve human rights groups/individuals and the public in general. The one million signatures will also need to come from these people, among others hence their involvement. Judicial officers will also be targeted for possible sensitization and eventual agreement on the best way to remove the death sentence from the statutes.

9.0 IMPLEMENTATION MECHANISM

The implementation will be carried out by Oscar Foundation Free Legal Aid Clinic Kenya and will follow the outlined activities and methodologies, target group and the budget lines. However it will require the involvement of other stakeholders who champion the human rights of the death penalty convicts. But as aforesaid, Oscar Foundation shall spearhead the overall implementation, Monitoring and Evaluation and Review in addition to mobilizing resources necessary for the implementation. The implementation will be done in Four Phases:-

Phase 1: Filing a Case in Court:

The first step is for OFFLACK to file a case in Court in the matter of enforcing The Bill of Rights under the Kenyan Constitution Section 3, 74(1), which is in contradiction with Sections 296 (2) of the Penal Code which sanctions the death penalty. In fact Oscar Foundation has filed such a case which was done on 26th June 2007 to commemorate the International Day Against Torture. This petition HCCC No. 682 of 2007 seeks to compel the Government to stop sentencing criminals to death and instead sentence them to life imprisonment. In this matter a Lead Counsel has been identified and will be assisted by the Oscar Foundation Lawyers. Therefore this phase has already taken off while awaiting the response of the Attorney General on behalf of the Government.

Phase II: Designing and Printing Forms for Signatures:

The second phase involve designing and printing standard forms which will be circulated throughout the country so that willing and informed Kenyans will indicate their names and signatures to give Oscar Foundation the mandate to petition the Government to abolish the death penalty. As said before, we are targeting one million Kenyans across the country.

Phase III: Print Posters, Brochures and Banners

Posters, Brochures and Banners with appropriate messages about effects of death penalty will be designed and printed then distributed to the public in general.

Phase IV: Conducting Advocacy, Campaigns and Seminars/Workshops

The actual work of participating in advocacy and campaigns commences and this will be done through radio and TV Broadcasts; at barazas throughout the country; through appropriate songs and cultural shows; and advertisements in the local dailies. Seminars and/or workshops will be organized to target specific groups like judicial officers, prison officers, probation officers and other relevant Government authorities. These campaigns will be done for one year and concluded on 26 June 2008.

10.0 MONITORING AND EVALUATION

Oscar Foundation will carry out continuous/periodical review and surveillance at every level of implementation of these activities to ensure that input, deliverable, work schedules, target groups and other required actions proceed according to plan- The purpose of this will be to achieve efficient and effective project performance by providing feedback to enable the Management to take timely corrective action in case of shortfalls and constraints. Besides, evaluation will be done to determine systematically and objectively the relevance, effectiveness and impact of these campaigns and advocacy in the light of the Foundations objectives.

11.0 BUDGET

Item	ONE-YEAR PERIOD		
	No. of items	Unit Cost	Total Cost
1. Court Expenses.	---	---	300,000.00
2. Advocacy and Campaigns			
i. Seminars and Workshops	10	100,000.00	1,000,000.00
ii. Prison Visits	10	10,000.00	100,000.00
iii. Mass Media			1,000,000.00
iv. Printing Posters			600,000.00
v. Overheads			1,000,000.00
TOTAL IN KSHS.			4,000,000.00

TOTAL REQUESTED FOR THE ONE YEAR PERIOD IN KSHS. **4,000,000/=**