



## The Death Penalty: Transforming Law into a Means of Revenge

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On behalf of the International Commission Against the Death Penalty, I wish to welcome all of you to this event. Our Commission was established on October 7, 2010, at the initiative of Spain and is supported by 18 countries<sup>1</sup> and an efficient secretariat. It consists of 15 members<sup>2</sup>, including an honorary member, who are well known for their work on human rights. It is chaired by Federico Mayor, former Director-General of UNESCO. Its objectives are to promote the abolition *de jure* of the death penalty and, until this is achieved, to promote the establishment of a global moratorium.

To this end, the Commission calls for the suspension of executions, undertakes missions to select countries, makes statements and appeals related to the death penalty, participates in relevant meetings like the present meeting, and thus tries to contribute to the cause.

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<sup>1</sup> Algeria, Argentina, Belgium, Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Norway, Philippines, Portugal, South Africa, Spain, Switzerland, Togo, Turkey, and the United Kingdom.

<sup>2</sup> 2 former Presidents (Dreifuss, Macapagal-Arroyo)

2 former Prime Ministers (Amato, Duvivier)

3 former Ministers (Badinter, Bedjoui, Najjar)

1 former UN High Commissioner for Human Rights (Arbour)

1 internationally recognised academic in Philosophy/Human Rights (Kucuradi)

1 Deputy State Secretary of Human Rights (Matarollo)

1 advocate of Pakistani Supreme Court/President of Human Rights Commission (Jahangir)

1 former US Governor (Richardson)

If from the right to life is understood the demand “not to touch or violate the physical and mental integrity of a person”, then it is not difficult to see that both the death penalty and torture violate this right.

Yet, if we look at our main human rights instruments, we are faced with a strange fact: A state that applies the death penalty violates the right to life, but not article 6 of the Covenant on Civil and Political Rights, which, after stating that “every human being has the inherent right to life ...” adds that “no one shall be a r b i t r a r i l y deprived of his life” and continues as follows: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes and in accordance with the law in force ...” This is an obvious bargaining on the right to life and is in discordance with the following article 7 on torture, which states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or p u n i s h m e n t by any State Party to the present Covenant”. In this article there is no compromise. The death penalty is an i n h u m a n punishment. This is perhaps the reason why the attempt is made to connect the death penalty to torture. This is legal acrobatics in the fight for the abolition of the death penalty.

We have to go to the core of the matter and make obvious why the death penalty is the most serious violation of the right to life, which cannot be justified in any way by positive law — i.e., by laws formulated not by taking as their base human rights, but other, mostly cultural, norms and considerations. The Charter of Fundamental Rights of the European Union, adopted in the year 2000, in spite of the fact that it repeats various problematic points of the previous instruments, can constitute a legal basis for further developments. (Article 1 of this Charter states that “Human dignity is inviolable. It must be respected and protected” and article 2, on the right to life, states that “Everyone has the right to life. No one shall be condemned to the death penalty or executed.”)

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In light of these considerations, I shall briefly give one or two reasons why the death penalty should be globally abolished, and subsequently I shall try to answer the questions in the “draft proposal” of our meeting.

The death penalty is mostly imposed on criminals who have committed a murder, i.e., certain human beings are condemned to death because they caused the death of other human beings, because they killed other human beings. If this is the case, to condemn someone to death is to commit exactly the same act which we consider to be a crime. Is this not transforming law into a means of revenge?

Presently, in many states we often see enforced laws which are in discordance with human rights. Human rights are first of all ethical principles, and for this reason they have to constitute the basis of all law. Otherwise it is possible to violate human rights without violating the relevant law. It is even possible to commit a crime by using law, as is the case with the death penalty.

Thus in connection with the first question in the draft proposal, which this panel is expected to address, i.e., “whether a state violates international commitments relating to the right to life and prohibition on torture when it continues to apply the death penalty”, I would say the following: A state which continues to apply the death penalty does not violate article 6 of the Covenant on Civil and Political Rights, yet it violates article 7 of the same Covenant which states that “No one shall be subjected to torture (death row is obviously a mental torture) or to cruel, inhuman or degrading treatment or punishment”. The death penalty is indeed an inhuman punishment.

A state that continues to apply the death penalty also violates article 2 of the Charter of Fundamental Rights of the European Union.

Concerning the second question, “whether it is possible to impose the death penalty without causing severe and physical pain or suffering”: I would say that whatever answer is given to this question, even a positive answer, has to do with the way of

implementing the death penalty — which is, of course, also important — but not with the death penalty itself. If it is possible to impose the death penalty without causing severe physical pain, should we retain it?

As for the third question, “whether the death penalty is respectful of the inherent dignity of the human person”, I would say the following: Those who torture or are in favour of torture, those who defend the death penalty or who sign the decision to put someone to death, and those who use their vote in favour of using the death penalty against a criminal, for different justifications, are not respectful of human dignity, yet of their own human dignity which they share with the criminal. We protect or give damage to human dignity — our own human dignity — by what we do and not by what we suffer.

This is why my suggestions will be

a) to revise our relevant instruments —they are not holy scripts— so as to close the door to the possibility of defending the death penalty as an issue of domestic criminal law, as certain states claim;

and b) to better promote the ethical education of human rights in general and, within this framework, the abolishment of the death penalty, at all levels of education and in the media, especially in countries that still retain the death penalty.