

Research Assessment Exercise 2020

Impact Case Study

University: City University of Hong Kong

Unit of Assessment (UoA): 19 - Law

Title of case study: Informing international policy and practice towards the death penalty

(1) Summary of the impact

Dr Pascoe has used his research into the death penalty in the Asia-Pacific region and beyond to influence policy and practice in this area of law. Recommendations from his submission to an Australian parliamentary inquiry were adopted into the country's policy on advocating for an end to the death penalty worldwide; reports he wrote for UK-based charity Reprieve have informed their litigation strategy and decisions on casework; and his presentations at practitioner conferences in Thailand and Vietnam have informed discussions among national and international policy makers and practitioners in the fields of law and human rights.

(2) Underpinning research

Dr Pascoe's research into the death penalty, with a particular focus on the use of executive clemency provisions to mitigate it, began with his DPhil thesis, completed at Oxford in 2013. His fluency in the Indonesian language (which is closely related enough to Malay to make it understandable to native speakers of either tongue) made it logical to conduct his fieldwork principally in Indonesia and Malaysia, and two neighbouring retentionist countries (Thailand and Singapore) where English is widely spoken. The result is a piece of empirical research examining statistical data and contemporary reports around the application of clemency in death penalty cases in these four countries from 1975 to 2009 [R3].

While conducting fieldwork for his thesis, Dr Pascoe became interested in Australia's position as an influential voice and key trading partner in the Asia-Pacific region. With Southeast Asia looming much larger in Australia's foreign policy than in that of other Western nations, Dr Pascoe was interested to understand how Australia could and did influence the use of the death penalty and clemency in the region.

His interest in this issue continued after he took up his current post at City University of Hong Kong School of Law. He used his internal start-up research grant to conduct the project '*Investigating Clemency in Southeast Asian Death Penalty Cases 1975-2015*' [R3]. He followed this in 2017 and 2018 by securing funding for three further research projects.

The first, funded by an Early Career Scheme Grant from Hong Kong University's Grants Council, is conducted jointly with Dr Andrew Novak of George Mason University, USA. This research focuses on '*New Comparative and Empirical Approaches to Clemency*', with Dr Novak focusing on the African context and Dr Pascoe on East and Southeast Asia.

The second, '*Is China Exporting the Suspended Death Sentence to Southeast Asia?*', was funded by a City University School of Law Strategic Research Grant and examines legislative changes in the regulation of the death penalty in Indonesia and Vietnam [R4].

The third, *'Idiosyncratic Voting in the UNGA Death Penalty Moratorium Resolutions'*, funded by a City University School of Law Matching Grant, examines UN members states' voting practices in UN General Assembly resolutions on the death penalty.

Dr Pascoe's scholarship has examined differences in the practice of the death penalty and death row clemency across specific geographical regions, most notably East and Southeast Asia [R2][R3][R5][R6]. However, his research has also analysed the application of the death penalty in Muslim-majority countries, predominantly of the Middle East, in particular as to how the Islamic Law doctrine of *diya* (compensation paid to the family of the deceased by their killer) has been codified into the positive criminal laws of different Muslim-majority countries [R1][R2].

(3) References to the research

R1: 'Is Diya a Form of Clemency' (2016) 34(1) Boston University International Law Journal 149-179

R2: 'Victim-Perpetrator Reconciliation Agreements: What Can Muslim-Majority Jurisdictions and the PRC Learn from Each Other?' (2017) 66(4) International & Comparative Law Quarterly 963 (with Michelle Miao)

R3: *Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases* (Monograph, Oxford University Press, March 2019)

R4: 'Su'ud Rusli's Constitutional Court Challenge: Overhauling Clemency in Indonesian Death Penalty Cases?' (2019) 19(2) Australian Journal of Asian Law 1-18

R5: 'Explaining Death Penalty Clemency in the Socialist Republic of Vietnam from 1986 to 2015' (2016) 10(2) Vienna Journal on International Constitutional Law 165-198

R6: 'Researching the Death Penalty in Closed or Partially Closed Criminal Justice Systems' in Mary Bosworth, Carolyn Hoyle and Lucia Zedner (eds), *Changing Contours of Criminal Justice* (Oxford University Press 2016)

(4) Details of the impact

Dr Pascoe has contributed his expertise to Australian national policy through his written [C1] and oral [C3] testimony to the Inquiry (launched by the Minister for Foreign Affairs in April 2015) into *'Australia's Advocacy for the Abolition of the Death Penalty'*. The inquiry's Chair (and former Special Envoy on Human Rights) explains "*the inquiry was conducted at a time when many parliamentarians and government officials were looking for greater clarity in how to address the death penalty in conversations with overseas counterparts, and the report provides exactly that advice. It recommends to parliamentarians (and the officials who brief them) how best to advocate against the death penalty when they represent Australia on delegations abroad, highlighting how Australia can play a bigger role on this issue and encouraging delegates to include it in official conversations with their counterparts to try and find ways to work together towards global abolition. The report is also of practical use in preparing for conversations around extraditions and consular issues.*" The inquiry's Chair also confirms that he has used the report's recommendations to good effect in his own conversations with officials from retentionist countries such as Vietnam, Uganda and El Salvador. [C2]

Dr Pascoe was one of only six academic experts to submit evidence to the Inquiry. His written submission is a comprehensive overview of human rights-based abolition strategies drawing extensively on his research. During oral evidence, he was also asked about Islamic Law's position on the death penalty and he was able to answer based on the prior research he had completed on Islamic Law. As the Inquiry Secretariat confirms, "*It is clear from an examination of the report that Dr Pascoe's evidence was of considerable value to the Sub-Committee in their deliberations on the abolition of the death penalty as his evidence is referred to and quoted on a number of occasions*" [C6]. It was, in fact, cited 15 times in the Committee's final report [C4] and some of his suggestions align directly with the Committee's 13 eventual recommendations, 11 of which were agreed by the Australian Government in its March 2017 response [C5] and implemented as part of a 'whole of government strategy' published in June 2018.

Dr Pascoe has informed the discussions of international practitioners and policy makers through his contribution to two key events within the RAE period. The first, in March 2017 at Ho Chi Min City University, Vietnam, was attended by 160 people. According to the conference organiser, one of the event's primary aims was "*to inform the death penalty debate in Vietnam about developments in Asia, ensuring that those attending the conference came from diverse sectors, including universities, practitioners and policy makers. [...] This comparative conference enabled detailed discussion of the ways in which death penalty discretions are used and how death penalty decisions are made regionally. Through sharing regional views on death penalty policies, regulation and practices, an invaluable contribution to Vietnamese policy and law debates took place. This was the first conference in Vietnam that took up the issue of death penalty practice comparatively. It was pioneering in opening the debate to new influences. [...] We benefitted from Dr Pascoe's insightful contribution*". [C7]

The second event in Bangkok, Thailand, in February 2018 was convened and chaired by the UN Assistant Secretary-General for Human Rights. It aimed to "*examine the human rights dimensions of the criminal justice response to the drug problem in Southeast Asia, including the application of the death penalty*"[C8]. Dr Pascoe spoke on clemency litigation strategies to regional experts, government and legal professionals, human rights specialists, academics, and representatives from the UN Office of Drugs and Crime. [C8]

Dr Pascoe has also drawn on his research to support the work of NGOs seeking to contest or abolish the death penalty. A spokesperson for UK NGO Reprieve describes Dr Pascoe's contribution to their work between 2014 and 2017 as follows: "*Daniel has always been extremely helpful and engaged with our work, including [...] monitoring local and international media for developments in the death penalty landscape which could impact on our work in South East Asia. Daniel assisted with in depth legal analysis to support litigation strategies in complex death penalty cases in Indonesia [...]. He provided detailed and extremely helpful research into questions relating to legal procedure and practice in South East Asia. [...] Daniel's extensive experience of and comparative law research into clemency procedures in South East Asia meant he was uniquely well placed to help us prepare petitions on behalf of those facing the death penalty*". [C9]

(5) Sources to corroborate the impact

C1. Dr Pascoe's submission to the Inquiry into Australia's Advocacy for the Abolition of the Death Penalty, October 2015

C2. Email from the Chair of the Inquiry confirming purpose and outputs of Inquiry

C3. Transcript of Dr Pascoe's oral testimony to the inquiry, November 2015:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommjnt%2F6d075ddc-1b56-4595-b2e4-be633d80fdb1%2F0009;query=Id%3A%22committees%2Fcommjnt%2F6d075ddc-1b56-4595-b2e4-be633d80fdb1%2F0001%22>

C4. Report of the Inquiry citing Dr Pascoe's work

C5. Government response to the report

C6. Email from the Secretariat of the Inquiry confirming citation of Dr Pascoe's testimony and adoption of recommendations by the government

C7. Letter from the organiser of conference in Ho Chi Minh City

C8. Letter of invitation, participant list and agenda of Bangkok conference

C9. Email from Reprieve UK