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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

Question of the death penalty

Report of the Secretary-General*

Summary

The Secretary-General submitted annual reports to the former Commission on Human Rights on the question of the death penalty, the most recent being pursuant to Commission resolution 2005/59. Pursuant to Human Rights Council decision 2/102, the Secretary-General submits this report on the question of the death penalty to update his previous reports, in particular his quinquennial reports to the Economic and Social Council. The present report contains information covering the period from June 2008 to July 2009, and draws attention to a number of phenomena, including the continuing trend towards abolition, the practice of engaging in a national debate on the death penalty, and the ongoing difficulties in gaining access to reliable information on executions.

* Late submission.

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I. INTRODUCTION

1. The Secretary-General submitted to the Commission on Human Rights an annual report on the question of the death penalty. These reports provided interim supplements to the Secretary-General's quinquennial reports to the Economic and Social Council on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Following Commission on Human Rights resolution 2005/59, a report was submitted to the Commission at its sixty-second session (E/CN.4/2006/83). The Human Rights Council in its decision 2/102 requested the Secretary-General to continue with the fulfilment of his activities, in accordance with all previous decisions adopted by the Commission on Human Rights, and to update relevant reports and studies. The present report is submitted in this context as an update of previous reports on the question of the death penalty, including the Secretary-General's latest quinquennial report of 2005 (E/2005/3 and Add.1 and Corr.1), and the previous reports to the Commission and Council (E/CN.4/2006/83, A/HRC/4/78 and A/HRC/8/11). The present report covers developments on the question of the death penalty from 1 June 2008 to 1 July 2009. Attention is also drawn to the report of the Secretary-General to the General Assembly at its sixty-third session entitled "Moratoriums on the use of the death penalty" (A/63/293 and Corr.1).

II. CHANGES AND PRACTICES

2. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international instruments that provide for the abolition of the death penalty. Changes in practice may cover non-legislative measures with a significant new approach regarding the use of the death penalty; for example, countries may, while retaining the death penalty, announce a moratorium on its application. Based on information collected from available sources, the following changes in law and practice can be reported for the period 1 June 2008 to 1 July 2009.

A. Countries which have abolished the death penalty for all crimes

3. April 2009 saw the introduction of a new Criminal Code in Burundi which abolished the death penalty for all crimes. In June 2009, Togo also abolished the death penalty for all crimes, the country having maintained a de facto moratorium on the application of the death penalty since 1978.

4. In March 2009 the State of New Mexico in the United States abolished the death penalty, substituting for it the punishment of life imprisonment without possibility of parole.

B. Countries which have abolished the death penalty for ordinary crimes

5. No countries abolished the death penalty for only ordinary crimes during the reporting period.

C. Countries which have restricted the scope of the death penalty or are limiting its use

6. In June 2008, the United States Supreme Court in *Kennedy v. Louisiana* held by majority that the death penalty could not be applied in the case of the crime of rape of a child where the

crime did not result, and was not intended to result, in the victim's death. The suit was brought by an individual sentenced to death for raping a child under a law in the State of Louisiana. The majority of the Court however indicated that its decision was limited to crimes against individual persons and not offences against the State, of which it gave the examples of treason, espionage, terrorism, and "drug kingpin activity".¹

7. A number of countries are considering reducing the number of offences which attract the death penalty. For example, such a process has been taking place in Viet Nam since 2008 and it was reported in July 2009 that the National Assembly of Viet Nam voted to abolish the death penalty for the crimes of rape, fraud for appropriating property, smuggling, making and trafficking in counterfeit money, using drugs, giving bribes, hijacking or piracy and destroying military weapons. The punishment will be maintained for drug trafficking.

8. In January 2009 the Supreme Court of Uganda, while upholding the constitutionality of the country's death penalty, found that execution by hanging was cruel punishment and recommended that Parliament consider another means of execution. The Court also held it unreasonable to keep convicts on death row for more than three years, and those held for longer should have their sentences commuted to life in prison.

9. It was reported in July 2009 that Kazakhstan had restricted the use of the death penalty to terrorist crimes involving the death of people and also for felonies committed in times of war.

10. The Special Rapporteur on extrajudicial, summary or arbitrary executions received information in December 2008 that the Parliament of Papua New Guinea was considering a draft juvenile justice act that would exclude the imposition of the death penalty for juvenile offenders (A/HRC/11/2, para. 41).

D. Countries which have ratified international instruments that provide for the abolition of the death penalty

11. There are one international and three regional instruments in force which commit States parties to abolishing the death penalty: the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR); Protocol No. 6 to the European Convention on Human Rights (ECHR); Protocol No. 13 to ECHR; and the Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty. Protocol No. 6 to ECHR concerns the abolition of the death penalty in peacetime. The Second Optional Protocol to ICCPR and the Protocol to ACHR provide for the total abolition of the death penalty, but allow States wishing to do so to retain the death penalty in wartime, if they make a reservation to that effect upon ratification. Protocol No. 13 concerns the abolition of the death penalty in all circumstances, including for acts committed in times of war and of imminent threat of war.

12. During the reporting period, two States acceded to the Second Optional Protocol to ICCPR, namely, Rwanda on 15 December 2008 and Uzbekistan on 23 December 2008. Three

¹ 128 S.Ct. 2641.

further States ratified the Optional Protocol, namely Argentina on 2 September 2008, Chile on 26 September 2008 and Nicaragua on 25 February 2009. Chile formulated a reservation authorized under article 2, paragraph 1, of the Optional Protocol such that it may apply the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. Argentina ratified without reservation.

13. There were no new ratifications or accessions to Protocol No. 6 to ECHR during the reporting period.

14. One State, Italy, ratified Protocol No. 13 to ECHR during the reporting period, it entering into force on 1 July 2009.

15. Argentina ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty on 18 June 2008, and Chile ratified the same protocol on 4 August 2008, the latter entering a reservation authorized under the Protocol to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.

E. Countries observing a moratorium on executions

16. No new moratoriums on the application of the death penalty in countries that retain the punishment were declared in the reporting period. A number of existing moratoriums were maintained. In Jamaica, which has maintained a moratorium since 1988, the Parliament voted to maintain the death penalty in November 2008 in the context of discussions around a new Charter of Rights and Freedoms Bill. No subsequent executions have been reported.

F. Countries which have reintroduced the use of the death penalty, extended its scope or resumed executions

17. In December 2008, Saint Kitts and Nevis carried out its first execution in 10 years.

18. In July 2008, the President of Liberia approved amendments to the country's Penal Law which named armed robbery, hijacking and terrorism as capital offences where death occurs during the commission of the crime. The amendments introduced the alternative sentence of life imprisonment without the possibility of parole, as well as removed the requirement for the execution to take place in public. Although the death penalty has remained on the statute books in Liberia, the country had acceded to the Second Optional Protocol to ICCPR on 16 September 2005 and thus committed itself not to execute anyone within its jurisdiction and additionally, to take all necessary measures to abolish the death penalty within its jurisdiction.

19. Although maintaining the death penalty, Papua New Guinea has not carried out an execution since the country's independence in 1975. According to recent reports, the Ministry of Justice has undertaken a process during the reporting period to draft guidelines allowing for the commencement of executions.

III. ENFORCEMENT OF THE DEATH PENALTY

20. As has been noted in previous reports of the Secretary-General, up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. This difficulty arises

from a lack of transparency on the part of many Governments in relation to numbers and characteristics of individuals executed. In some countries this information is designated as being a State secret. Figures of global executions in 2008 collected by non-governmental organizations range from 2,390 to 5,727, with provisos that the real figure could be significantly higher.² The number of those executed for offences committed while children is estimated at 20 for the period 1 January 2008 to 30 June 2009.³

21. The reporting period saw instances of large-scale commutations of death sentences. Thus, in January 2009 the President of Ghana commuted all remaining death sentences (around 500) to prison terms, while the President of Zambia commuted over 50 death sentences.

IV. INTERNATIONAL DEVELOPMENTS

22. On 18 December 2008, the General Assembly adopted resolution 63/168 entitled “Moratorium on the use of the death penalty”. In the resolution the Assembly welcomed the decisions taken by an increasing number of States to apply a moratorium on executions and follow the global trend towards the abolition of the death penalty. It further welcomed the report of the Secretary-General and the conclusions and recommendations contained therein. Under the terms of the resolution, the Secretary-General is to report to the Assembly at its sixty-fifth session on the resolution’s implementation. In a note verbale addressed to the Secretary-General dated 12 February 2009, the permanent missions to the United Nations of 53 Member States expressed, inter alia, their “persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law” (see A/63/716).

23. On 24 November 2008, the African Commission on Human and Peoples’ Rights adopted a resolution calling on States parties to the African Charter on Human and Peoples’ Rights that still retain the death penalty to (inter alia) ensure fair trial guarantees in capital trials and to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty.⁴

24. In July 2009 the Parliamentary Assembly of the Organization for Security and Cooperation in Europe adopted a resolution “on a moratorium on the death penalty and towards its abolition”.⁵

² Amnesty International, *The death penalty in 2008, Hands off Cain, 2008 Report on the Death Penalty Worldwide*.

³ Ibid.

⁴ ACHPR/Res.136 (XXXXIII).

⁵ “Resolution on a Moratorium on the Death Penalty and Towards its Abolition”, Resolutions Adopted at the Eighteenth Annual Session of the OSCE Parliamentary Assembly, Vilnius, 29 June-3 July 2009, AS (09) D 1 E.

25. In January 2009 the International Court of Justice found that the execution of a Mexican national in the United States in 2008 breached the United States' obligations under international law. The Court underlined that its 2004 judgment ordering the United States to review the death sentences of a number of Mexican nationals (in the light of possible failures to advise of a right to consular assistance) remains binding.⁶

26. The Human Rights Committee continues to address the question of the death penalty under ICCPR in both concluding observations following examination of State party reports and in considering individual communications under the Optional Protocol to the Covenant. In four cases,⁷ the Committee recalled its jurisprudence to the effect that the imposition of a death sentence after a trial which did not meet the requirements for a fair trial amounts also to a violation of article 6 of the Covenant.

27. During the reporting period, the Committee directly addressed the effect of a moratorium on the use of the death penalty under the provisions of the Covenant. The case⁸ involved the mandatory imposition of the death sentence for the crimes of committing and of abetting murder. The Committee recalled its jurisprudence that such mandatory sentencing is an arbitrary deprivation of life. The State party did not contest that the death sentence was mandatory for the offence of which the individual concerned was convicted, but argued that there had been a moratorium on the death penalty for nearly 30 years. The Committee recalled its jurisprudence that the automatic and mandatory imposition of the death penalty constituted an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.⁹ Thus, while observing the fact that the State party had imposed a moratorium on executions, the Committee found that the imposition of the death penalty itself, in the circumstances, violated the author's right to life under article 6, paragraph 1, of the Covenant.

⁶ Request for Interpretation of the Judgment of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*.

⁷ Communication No. 1163/2003, *Ms. Umsinai Isaeva v. Uzbekistan*, Views adopted on 20 March 2009; communication No. 1195/2003, *Mr. Vladimir Dunaev v. Tajikistan*, Views adopted on 30 March 2009; communication No. 1200/2003, *Mrs. Gulrakat Sattorova v. Tajikistan*, Views adopted on 30 March 2009; and communication No. 1276/2004, *Mrs. Zulfia Idieva v. Tajikistan*, Views adopted on 31 March 2009.

⁸ Communication No. 1406/2005, *Weerawansa v. Sri Lanka*, Views adopted on 17 March 2009.

⁹ See also communication No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 October 2000; communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002; and communication No. 1077/2002, *Carpo v. The Philippines*, Views adopted on 28 March 2003.

28. In welcoming the abolition of the death penalty in Rwanda, the Committee noted with concern that it had been replaced by life imprisonment in solitary confinement, which is treatment contrary to article 7 of the Covenant. The Committee recommended that the State party should put an end to the sentence of solitary confinement and ensure that persons sentenced to life imprisonment benefit from the safeguards of the United Nations Standard Minimum Rules for the Treatment of Prisoners (CCPR/C/RWA/CO/3, para. 14). The Committee against Torture welcomed the abolition of the death penalty in its consideration of the second periodic report of the Philippines under the Convention in May 2009 (CAT/C/PHL/CO/2, para. 5).

29. The treaty bodies also addressed concluding observations to States parties retaining the death penalty. In its concluding observations on the fourth periodic report of China in November 2008, the Committee against Torture recommended that the State party should review its legislation with a view to restricting the imposition of the death penalty, provide specific data on death penalty cases and ensure that all persons on death row are afforded the protection provided by the Convention (CAT/C/CHN/CO/4, para. 34).

30. A number of special procedures of the Council have also considered the question of the death penalty during the reporting period. In his report to the seventh session of the Council (A/HRC/10/44), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment devoted a significant discussion to the death penalty in the light of the prohibition of cruel, inhuman and degrading punishment. The Special Rapporteur highlighted the inconsistencies in the current practice of States and human rights monitoring bodies that allow for an exception for the death penalty in construing the right to personal integrity, but not for corporal punishment.

31. The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Council's eleventh session included a section entitled "Upholding the prohibition against the execution of juvenile offenders". In outlining the cases of death sentences and executions of juveniles sent to him, the Special Rapporteur reaffirmed that the execution of juvenile offenders is an affront to the fundamental principles of humane treatment and a blatant violation of international law (A/HRC/11/2, para. 42).

V. CONCLUSIONS

32. **Developments on the question of the death penalty outlined in this report suggest that while the trend towards abolition continues, some States are maintaining the punishment while gradually restricting its use. Furthermore, reported developments indicate that a number of States are engaging in a national debate on whether to lift existing moratoriums or to abolish the death penalty. Finally, any analysis of the application of the death penalty remains difficult in the light of a lack of transparency by States in providing information on individuals executed.**
