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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND THE SECRETARY-GENERAL**

Question of the death penalty

Report of the Secretary-General*

Summary

The Secretary-General submitted annual reports to the 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.

The present report contains information covering the period from January 2006 to May 2008. The report indicates that the trend towards abolition of the death penalty continues; this is illustrated, inter alia, by the increase in the number of countries that are completely abolitionist and by the increase in ratifications of international instruments that provide for the abolition of this form of punishment.

* The present report is submitted late so as to include as much up-to-date information as possible.

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Introduction

1. The Secretary-General has 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 General Assembly 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 session¹ 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. As such it updates the Secretary-General's latest quinquennial report of 2005,² and the final report of the Secretary-General to the Commission on Human Rights.³ The present report covers developments on the question of the death penalty since 1 January 2006.

2. Following the practice adopted in quinquennial reports, countries are classified in the present report as completely abolitionist, abolitionist for ordinary crimes, de facto abolitionist, or "retentionist". Countries that are abolitionist for all crimes, whether in peacetime or in wartime, are regarded as completely abolitionist. Countries that are regarded as abolitionist for ordinary crimes are those that abolished the death penalty for all ordinary offences committed in time of peace. In such countries, the death penalty is retained only for exceptional circumstances, such as those which may apply in time of war for military offences, or for crimes against the State, such as treason or armed insurrection. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more are considered abolitionist de facto. All other countries are defined as retentionist, meaning that the death penalty is in force and executions do take place, although in many retentionist countries such executions might be quite rare.

I. CHANGES AND PRACTICES

3. 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 the information received and collected from available sources, the following changes in law and practice can be reported since 1 January 2006.

¹ E/CN.4/2006/83.

² E/2005/3.

³ E/CN.4/2006/83.

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

4. In June 2006 the Philippines abolished the death penalty for all crimes, after having reinstated it in 1994. In 2007 the Cook Islands, Rwanda and Kyrgyzstan abolished the death penalty for all crimes. In 2007, Albania ratified Protocol No. 13 to the European Convention on Human Rights, abolishing the death penalty in all circumstances. In 2000 it had ratified Protocol No. 6 to the European Convention, abolishing the death penalty for peacetime offences. Uzbekistan abolished the death penalty for all crimes effective from 1 January 2008. In addition, in 2006 both Georgia and Moldova removed from their constitutions provisions allowing for the application of the death penalty.

5. In December 2006 the Constitutional Court of South Africa ruled that the process of substituting all death sentences in the country with alternative sentences had been completed.

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

6. 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

7. An amendment of 21 May 2007 to the Constitution of the Republic of Kazakhstan abolished the death penalty in all cases save for acts of terrorism entailing loss of life and for especially grave crimes committed in wartime. In August 2006, draft legislation was prepared in Jordan which will reduce the number of crimes that carry the death sentence, including drug-related offences, possession of illegal firearms and explosives. In May 2006 the Judicial Committee of the Privy Council in the United Kingdom decided in the case of *Forrester Bowe v. The Queen* that the mandatory imposition of the death sentence in the Bahamas was in breach of international human rights guarantees. In November 2006 the Caribbean Court of Justice found illegal the decision by Barbados to issue execution warrants while a review by the Inter-American Commission for Human Rights was pending.

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

8. 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 the ECHR; and the Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty. Protocol No. 6 to the ECHR concerns the abolition of the death penalty in peacetime. The Second Optional Protocol to the ICCPR and the Protocol to the 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.

9. During the reporting period, five States acceded to the Second Optional Protocol to the ICCPR, namely, Albania on 17 October 2007, France on 2 October 2007, Mexico on 26 September 2007, Moldova on 20 September 2006, and Ukraine on 25 July 2007. Three States ratified the Optional Protocol, namely Andorra on 22 September 2006, Honduras on 1 April 2008, Turkey on 2 March 2006 and the Philippines, which had signed it on 20 September 2006 before ratifying on 20 November 2007. Argentina signed the Optional Protocol on 20 December 2006. Turkey signed the Second Optional Protocol to the ICCPR on 6 April 2004. Following its declaration of independence in June 2006, Montenegro ratified the Optional Protocol on 23 October 2006.

10. On 6 June 2006 Protocol No. 6 to the ECHR entered into force for the newly independent Montenegro.

11. Six States ratified Protocol No. 13 to the ECHR, namely, Albania on 6 February 2007, France on 10 October 2007, Luxembourg on 21 March 2006, Moldova on 18 October 2006, the Netherlands on 10 February 2006, and Turkey on 20 February 2006. Armenia signed the Protocol on 19 May 2006. Protocol No. 13 entered into force for the newly independent Montenegro on 6 June 2006.

12. Mexico ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty on 20 August 2007. Argentina had signed this protocol in 2006.

E. Countries observing a moratorium on executions

13. Prior to abolishing the death penalty for all crimes in 2007, Kyrgyzstan had renewed a moratorium on its application in 2006. A de facto moratorium in place in the Russian Federation since August 1996 continued to be observed. In the United States of America, following the decision of the Supreme Court to consider the constitutionality of lethal injections in *Baze et al. v. Rees, Commissioner, Kentucky Department of Corrections, et al.*, a de facto moratorium of executions occurred from September 2007 until the Court rejected the petitioners' arguments in April 2008. A further execution took place in May 2008 in the state of Georgia.

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

14. In December 2006 Bahrain carried out its first execution in 10 years. In September 2006, the Military Commissions Act of the United States Congress allowed for the imposition of the death penalty on "alien unlawful enemy combatants". In January 2008 the Islamic Republic of Iran extended the death penalty for certain offences related to the production of pornographic materials.

II. ENFORCEMENT OF THE DEATH PENALTY

15. According to the available figures, at least 7,208 persons were sentenced to death and at least 2,843 prisoners were executed during 2006 and 2007.⁴

III. INTERNATIONAL DEVELOPMENTS

16. On 18 December 2007, the General Assembly adopted resolution 62/149 entitled “Moratorium on the use of the death penalty”. In the resolution, the Assembly inter alia called on “all States that still maintain the death penalty ... to establish a moratorium on executions with a view to abolishing the death penalty”. In doing so, it recalled “the important results accomplished by the former Commission on Human Rights on the question of the death penalty” and envisaged “that the Human Rights Council could continue to work on this issue”. Under the terms of the resolution, the Secretary-General is to report to the Assembly at its sixty-third session on the resolution’s implementation. In a note verbale addressed to the Secretary-General dated 2 February 2008, the Permanent Missions to the United Nations in New York of 58 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”.⁵

17. In his report to the sixty-second session of the Commission on Human Rights in March 2006,⁶ the Special Rapporteur on extrajudicial, summary or arbitrary executions again considered the issue of lack of transparency in relation to the death penalty, and its impact on those facing the death penalty, their families, public debate and effective monitoring. In his report to the fifth session of the Human Rights Council in March 2008,⁷ the Special Rapporteur addressed two aspects of the application of the death penalty. The first was the requirement of human rights law that the death penalty should be imposed only for the “most serious crimes”, on which the Special Rapporteur concluded that “the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life”. The second aspect was the mandatory imposition of the death penalty, on which the Special Rapporteur concluded that such a practice risks cruel, inhuman or degrading punishment and the arbitrary deprivation of life.

18. The Human Rights Committee continues to address the question of the death penalty under the ICCPR in both concluding observations following examination of State party reports and in considering individual communications under the First Optional Protocol to the Covenant. In its

⁴ Amnesty International, “The death penalty worldwide: developments in 2006” (ACT 50/005/2007), p. 6 and “The death penalty worldwide: developments in 2007” (ACT 50/002/2008), p. 13.

⁵ A/62/658.

⁶ E/CN.4/2006/53 and E/CN.4/2006/53/Add.3.

⁷ A/HRC/4/20.

concluding observations adopted during the relevant period, the Committee expressed its concern to one State party that its Criminal Code listed a large number of crimes punishable by death, including stealing cattle, but took assurance in the fact that in practice the sentences imposed are automatically commuted to life imprisonment.⁸ It welcomed the abolition of the death penalty in two State parties.⁹ It expressed its concern to one State party about a law which permits limitation of the length of time granted to condemned prisoners, including those sentenced to death, to appeal to, or to consult external bodies (such as the Committee itself). In addition, while taking note that the death penalty had not been applied for 24 years, it remained concerned about the mandatory nature of the death penalty in respect of certain crimes.¹⁰ To one State party, the Committee noted with appreciation the de facto moratorium on executions and the commutation to imprisonment of many death sentences, but remained concerned at the high level of persons remaining on death row. It also reiterated its view that aggravated robbery with the use of a firearm, is not a most serious crime under article 6, paragraph 2, for which the death penalty may be imposed.¹¹ The Committee stated that the death penalty for embezzlement by officials, robbery with violence and drug trafficking, as well as practices which should not be criminalized, such as committing a homosexual act and illicit sex, is incompatible with article 6. It also expressed its concern that the death penalty can be imposed on minors.¹²

19. The Committee expressed its concern that under the current legislation of one State party the death penalty can be applied for offences which are vague and broadly defined and which cannot necessarily be characterized as the most serious crimes under article 6, paragraph 2.¹³ It noted with satisfaction the progress that two State parties had made towards the abolition of the death penalty, in one case, by reducing the number of crimes punishable by death and in both cases by commuting the sentences of some prisoners. However, it also expressed its concern that some individuals do not automatically benefit from commutation and that in the latter case the authorities take into account the length of time a convict has spent on death row in taking a decision on commutation.¹⁴ It expressed its regret to one State party that it intended to retain the death penalty, as well as its concern with the practice of the secrecy of execution dates, and the

⁸ CCPR/C/MDG/CO/3, Madagascar, 23 March 2007.

⁹ CCPR/C/CHL/CO/5, Chile, 26 March 2007 and CCPR/C/CRI/CO/5, Costa Rica, 1 November 2007.

¹⁰ CCPR/C/BRB/CO/3, Barbados, 29 March 2007.

¹¹ CCPR/C/ZMB/CO/3, Zambia, 20 July 2007.

¹² CCPR/C/SDN/CO/3, Sudan, 26 July 2007.

¹³ CCPR/C/LBY/CO/4, Libyan Arab Jamahiriya, 30 October 2007.

¹⁴ CCPR/C/DZA/CO/3, Algeria, 12 December 2007, and CCPR/C/TUN/CO/5, Tunisia, 28 March 2008.

fact that the body of the executed person is not returned to the family for burial.¹⁵ The Committee noted its satisfaction to one State party that a de facto moratorium on the death penalty is in force.¹⁶

20. The Human Rights Committee also continued the examination of individual cases involving capital punishment under the ICCPR. In several cases adopted during 2007,¹⁷ the Committee recalled that the imposition of a death sentence upon conclusion of a trial, in which the provisions of the Covenant have not been respected, constitutes a violation of article 6. In these particular cases, the death sentence was pronounced without the requirements for a fair trial set out in article 14 having been met. The Committee therefore concluded that the right protected under article 6 had also been violated.

21. In July 2007 the Committee adopted General Comment 32 on article 14 of the Covenant (Right to equality before courts and tribunals and to fair trial).¹⁸ In the general comment, the Committee surveyed the extent of States' obligations under article 14 of the Covenant, including the relationship between this article and other articles of the Covenant such as articles 4 (derogations during a state of emergency) and 6 (the right to life). The Committee made a number of observations relevant to the application of the death penalty. It reaffirmed the position that scrupulous respect of the guarantees of fair trial is particularly important in trials leading to the imposition of the death penalty, and thus that the imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 have not been respected, constitutes a violation of the right to life (article 6 of the Covenant).¹⁹ Further, it affirmed that this consequence would not change during a declared public emergency under article 4 of the Covenant, because the right to life is non-derogable under that article.²⁰ The Committee also affirmed the position that those accused of capital offences must be effectively assisted by a lawyer at all stages of the proceedings (including on appeal), and misbehaviour or incompetence on Counsel's part (for example the withdrawal of an appeal without consultation or the absence during the hearing of a witness in such cases) may entail the responsibility of the State concerned

¹⁵ CCPR/C/BWA/CO/1, Botswana, 28 March 2008.

¹⁶ CCPR/C/GRD/CO/1, Grenada, 25 July 2007.

¹⁷ Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007; Communication No. 1108/2002 and 1121/2002, *Karimov and Nursatov v. Tajikistan*, Views adopted on 27 March 2007; Communication No. 1041/2001, *Tulyaganova v. Uzbekistan*, Views adopted on 20 July 2007; Communication No. 1017/2001 and 1066/2002, *Strakhov and Fayzullaev*, Views adopted on 20 July 2007; Communication No. 1140/2002, *Khudayberganov v. Uzbekistan*, Views adopted on 24 July 2007; Communication No. 1150/2003, *Uteeva v. Uzbekistan*, Views adopted on 26 October 2007.

¹⁸ CCPR/C/GC/32.

¹⁹ *Ibid.*, para. 59.

²⁰ *Ibid.*, para. 6.

for a violation of article 14, provided that it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.²¹ Where a person sentenced to death seeks available constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the costs of legal assistance in order to pursue such remedy, the State would be obliged to provide free legal aid.²²

22. On 10 October 2005 and 2006, the World Coalition against the Death Penalty organized the fourth and fifth World Day against the Death Penalty respectively.

IV. SUMMARY OF THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 7 MAY 2008

23. Based on the information provided in the latest quinquennial report as updated, the following table provides a summary of the status of the death penalty worldwide as of May 2008.

Table 1

Summary of the status of the death penalty worldwide as of 7 May 2008

Number of retentionist countries	60
Number of completely abolitionist countries	93
Number of countries abolitionist for ordinary crimes only	10
Number of countries that can be considered de facto abolitionist	34

V. CONCLUSIONS

24. **The trend towards abolition continues. The number of countries that are completely abolitionist has risen from 85 to 93. The overall number of retentionist countries decreased from 65 to 60. There was also a significant increase in the number of countries which have ratified international instruments providing for the abolition of the death penalty.**

²¹ Ibid., para. 38.

²² Ibid., para. 10.