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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

The question of the death penalty

Report of the Secretary-General*

* This document is submitted late so as to include the most up-to-date information possible.

Summary

In its decision 2/102, the Human Rights Council requested the Secretary-General and the High Commissioner for Human Rights to continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update relevant reports and studies. In its last resolution on the death penalty (2005/59), the Commission on Human Rights had requested the Secretary-General to submit a yearly supplement to his quinquennial report on capital punishment.

The present report contains information covering developments during 2006. 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 have abolished the death penalty and by the increase in ratifications of international instruments that provide for the abolition of this form of punishment.

I. INTRODUCTION

1. The Human Rights Council, by decision 2/102, requested the High Commissioner for Human Rights to “continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies”. On the current issue of the death penalty, a comprehensive annual report (E/CN.4/2006/83) was submitted to the Commission on Human Rights at its sixty-second session pursuant to resolution 2005/59. The information in the report remains relevant. The Office of the High Commissioner for Human Rights (OHCHR) understands decision 2/102 to preserve the previous annual reporting cycle in respect of this issue until otherwise decided by the Council. The current report to the Council accordingly addresses developments in respect of the death penalty over the last year.

2. The present supplemental report prepared by OHCHR pursuant to Human Rights Council decision 2/102 covers selected developments at the international level and is based on information available in the public domain from intergovernmental organizations and non-governmental organizations.

3. Following the practice adopted in the quinquennial reports of the Secretary-General, 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.

II. CHANGES IN LAW AND PRACTICE

4. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, or amending the legal process applicable to death penalty cases as well as ratifications of international instruments that provide for the abolition or restriction in the application 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. Such changes might also include measures to commute death sentences.

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

5. In November 2006, Kyrgyzstan adopted a new Constitution in which the death penalty was abolished. In June 2006, Moldova abolished the death penalty by amending its Constitution which provided for the death penalty in exceptional cases. In June 2006, the Philippines repealed legislation that allowed for the death penalty and abolished it for all crimes.

During 2006, Luxembourg, Moldova, the Netherlands and Turkey ratified Protocol No. 13 to the European Convention on Human Rights (ECHR), abolishing the death penalty in all circumstances. In May 2006, Armenia signed Protocol No. 13. In December 2006, Argentina signed the Protocol to the American Convention on Human Rights (ACHR) to abolish the death penalty.

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

6. During the reporting period, no country abolished the death penalty for ordinary crimes only.

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

7. In March 2006, the Judicial Committee of the Privy Council, the highest court of appeal for many Caribbean countries, ruled that the practice of mandatory death sentence was not consistent with the Constitution of the Bahamas. It held that section 312 of the Constitution should be construed as imposing a discretionary and not a mandatory sentence of death.¹

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) aiming at the abolition of the death penalty; Protocol No. 6 to ECHR; Protocol No. 13 to ECHR; and the Protocol to 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. ICCPR and various regional human rights treaties contain provisions that restrict the application of the death penalty.

9. During the reporting period, four States acceded to the Second Optional Protocol to ICCPR, namely, Andorra on 22 September 2006, Moldova on 20 September 2006, Montenegro on 23 October 2006 and Turkey on 2 March 2006. The Philippines signed the Second Optional Protocol to ICCPR on 20 September 2006. Four States ratified Protocol No. 13 to ECHR, namely, Luxembourg on 21 March 2006, Moldova on 18 October 2006, the Netherlands on 2 February 2006, and Turkey on 20 February 2006. Armenia signed Protocol No. 13 on 19 May 2006. In December 2006, Argentina signed the Protocol to ACHR to abolish the death penalty.

¹ *Forrester Bowe Junior and Trono Davis v. The Queen*, judgement of the Lords of the Juridical Committee of the Privy Council, 8 March 2006, Privy Council Appeal No. 44 of 2005, at para. 43.

10. Six countries became parties to ICCPR during 2006: Andorra and Kazakhstan ratified the Covenant on 22 September 2006 and 24 January 2006, respectively; Bahrain, Maldives and Indonesia acceded to the Covenant on 20 September 2006, 19 September 2006, and 23 February 2006, respectively; and Montenegro became a party as successor to Serbia and Montenegro on 23 October 2006.

E. Countries observing a moratorium on executions

11. Pursuant to a Presidential Decree of August 2005, Uzbekistan will abolish the death penalty starting on 1 January 2008. By Presidential Order of 29 June 2006, a working group was established to review, advise on and elaborate legislation, including amendments to the Criminal Code and Criminal Procedures Code, with a view to preparing the legal and justice systems for the full implementation of abolition on the foreseen date.

12. In April 2006, President Arroyo of the Philippines commuted over 1,200 death sentences to life imprisonment ahead of the approval of legislation abolishing the death penalty in June. The move was reported as the largest mass commutation to date in the world.

III. INTERNATIONAL DEVELOPMENTS

13. The Human Rights Committee continued the examination of cases involving the death penalty under ICCPR. In Views of 21 March 2006 on a communication submitted under the Second Optional Protocol to the Covenant,² the Committee recalled its jurisprudence that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offence (CCPR/C/86/D/812/1998, para. 7.2). The Committee came to a similar conclusion in Views adopted on 24 July 2006 (CCPR/C/87/D/1421/2005),³ although it noted at the same time that the State party had adopted Republic Act No. 9346 in June 2006 abolishing the death penalty in the Philippines.

14. In Views of 30 March 2006,⁴ the Human Rights 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 if no further appeal against the death sentence is possible. In the particular case, 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 (CCPR/C/86/D/915/2000, para. 7.6). The Committee came to a similar conclusion in Views adopted on 14 July 2007 (CCPR/C/87/D/959/2000) and 17 March 2006 (CCPR/C/86/D/1044/2002).⁵ In Views

² Communication No. 812/1998, *Persaud v. Guyana*.

³ Communication No. 1421/2005, *Larrañaga v. The Philippines*.

⁴ Communication No. 915/2000, *Ruzmetov v. Uzbekistan*.

⁵ Communication No. 959/2000, *Bazarov v. Uzbekistan* and communication No. 1044/2002, *Shukurova v. Tajikistan*.

adopted on 20 October 2006,⁶ the Committee did not find a violation of article 6, despite finding a violation of article 14, as the Supreme Court had already commuted the author's death sentence prior to the submission of the case to the Committee. For this reason, the Committee considered the issue of the violation of the author's son's right to life moot (CCPR/C/88/D/1057/2002, para. 7.3).

IV. IMPLEMENTATION OF SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY, PAYING SPECIAL ATTENTION TO THE IMPOSITION OF THE DEATH PENALTY ON PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME OF THE OFFENCE

15. The safeguards guaranteeing protection of the rights of those facing the death penalty establish that, inter alia: (a) capital punishment may be imposed only for the most serious crimes; (b) the right to benefit from a lighter penalty if, subsequent to the commission of the crime, provision is made by law to this effect; (c) persons below 18 years of age at the time they committed the crime should not be sentenced to death and the death sentence should not be carried out on pregnant women, new mothers, or persons who have become insane; (d) capital punishment may be imposed only when guilt is based upon clear and convincing evidence leaving no room for an alternative explanation of facts; (e) the death sentence may be carried out only pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right of a defendant to adequate legal assistance; (f) the right to appeal against the death sentence to a court of higher jurisdiction must be granted; (g) the right to seek pardon or commutation of sentence must be granted; (h) capital punishment shall not be carried out pending any appeal or other recourse procedure; and (i) when capital punishment occurs, it shall be carried out so as to inflict minimum suffering.

16. In China, under legislation adopted during 2006 which comes into effect on 1 January 2007, all death penalties handed down by provincial courts must be reviewed and ratified by the Supreme People's Court.⁷

17. The Commission on Human Rights and the Human Rights Council requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment. The Special Rapporteur has continued to take action in situations where there was concern that internationally recognized standards were being violated and where the application of the death penalty may have amounted to a violation of the right to life. With a view to establishing a constructive dialogue with Governments, communications were sent, inter alia, in cases in which defendants were reportedly sentenced to death following the application of laws or trial proceedings falling short of international fair trial standards; when

⁶ Communication No. 1057/2002, *Kornetov v. Uzbekistan*.

⁷ "China: Review of death penalty by Supreme Court welcome, but abolition needed", 31 October 2006, Amnesty International, press release.

capital punishment was imposed for crimes that did not appear to fall within the category of the most serious crimes; and when the death penalty was imposed by special courts and under special legislation which failed to provide due process of law.

18. In the period under review, the Special Rapporteur has paid special attention to the issue of transparency and the imposition of the death penalty. He dedicated a full report to the issue (E/CN.4/2006/53/Add.3) in which he analyses in detail the legal basis of the obligation to be transparent in such matters. In particular, the Special Rapporteur observed that in a “considerable number of countries information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families” (E/CN.4/2005/7, para. 57). He observed that such secrecy is incompatible with human rights standards in various respects, and concluded that “countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty” (ibid., para. 59).

19. During 2006, the Committee on the Rights of the Child continued its discussion, during the consideration of States parties’ reports, about the abolition of the death penalty for crimes committed by persons under the age of 18 years. In its concluding observations on the report of Saudi Arabia, the Committee expressed its deep concern that judges presiding over criminal cases involving children in Saudi Arabia are given the discretion to determine that children have reached majority before 18 years. The Committee saw this as a serious violation of the fundamental rights under article 37 of the Convention. The Committee urged the State party to abolish as a matter of the highest priority the death penalty as a sentence imposed on persons for crimes committed before the age of 18 (see CRC/C/SAU/CO/2, paras. 32-33). In its concluding observations on the report of the United States of America, the Human Rights Committee regretted the lack of information and recommended that the State party review federal and state legislation with a view to restricting the number of offences carrying the death penalty. Expressing concern at the outcome of certain studies, the Committee recommended that the State party assess the extent to which the death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem. In the meantime, it was recommended that the State party put a moratorium on capital sentences, bearing in mind the desirability of abolishing the death penalty (see CCPR/C/USA/CO/3, para. 29).

V. CONCLUSION

20. The trend towards abolition and restriction in the application of the death penalty has continued since the last report prepared on this subject. During 2006 the number of abolitionist countries for all crimes has increased. Four States ratified the Second Optional Protocol to ICCPR and four others ratified Protocol No. 13 to ECHR providing for the abolition of the death penalty in all circumstances. Six additional States became parties to ICCPR.
