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**Annual report of the United Nations High Commissioner
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High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

High-level panel discussion on the question of the death penalty

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolutions 26/2 and 36/17. It provides a summary of the high-level panel discussion on the question of the death penalty held on 26 February 2019 at the fortieth session of the Council. The panel discussion addressed human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality.



I. Introduction

1. Pursuant to its resolution 26/2, the Human Rights Council held its third biennial high-level panel discussion on the question of the death penalty on 26 February 2019, at its fortieth session. The aim of the panel discussion, as specified in resolution 36/17, was to address human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality.
2. The panel was chaired by the President of the Human Rights Council, Coly Seck. Opening statements were delivered by the High Commissioner for Human Rights, Michelle Bachelet, and the Deputy Prime Minister and Minister of Foreign Affairs and European Affairs, and of Defence in charge of Beliris and of the federal cultural institutions of Belgium, Didier Reynders. The panel was moderated by the Chair of the Human Rights Committee, Yuval Shany. The panellists were the Minister for Foreign Affairs of Nepal, Pradeep Kumar Gyawali; the Director of the Justice Institute Guyana, Melinda Janki; and lawyer and co-founder of the Mauritanian Human Rights Association, Fatimata M'Baye.

II. Opening remarks and statements

3. In his introductory remarks, Mr. Seck reminded the Council that the panel discussion was being held pursuant to its resolutions 26/2 and 36/17. Resolution 36/17 stipulated that the theme of the discussion would be violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality.
4. In her opening remarks, the High Commissioner stressed that the United Nations opposed the use of the death penalty everywhere and in all circumstances. The international trend was towards abolition, and some 170 States with a variety of legal systems, traditions, cultures and religions had either abolished the death penalty in law or did not carry out executions in practice. A record 121 States had voted in favour of General Assembly resolution 73/175 on a moratorium on the use of the death penalty in December 2018.
5. The High Commissioner noted that discrimination was never more evident than when one looked at the persons on death row. Prison visits conducted by her Office consistently revealed that death rows were disproportionately populated by the poor and economically vulnerable; members of ethnic minorities; persons with psychosocial or intellectual disabilities; foreign nationals; indigenous persons; and other marginalized members of society. Poverty, illiteracy and language barriers often resulted in non-respect of the right to effective legal representation of defendants facing the death penalty. Too often, foreign nationals were not promptly informed of their right to consular assistance. Any one of those breaches of due process rendered the application of this most severe and irreversible punishment arbitrary.
6. The High Commissioner noted that some persons were sentenced to death simply for having expressed an opinion, for membership of a political group, for exercising their freedom of religion, which included the freedom to leave a religion, or for being part of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community. Condemning a person to death for conduct that should not be criminalized was never compatible with a State's human rights obligations. Women faced gender discrimination in the application of the death penalty, and a recent report by the Cornell Center on the Death Penalty Worldwide showed that they were judged not only on the basis of their crime, but because they were perceived to have betrayed traditional gender roles.¹ Some women were sentenced to death for perceived moral transgressions, such as adultery, or even for witchcraft. Women sentenced to death for murdering their partners had often been victims of severe and repeated domestic abuse for years, and had lived in fear for their lives, but the law in their countries recognized self-defence as a legal defence only in the case of direct and imminent lethal threat.

¹ Cornell Center on the Death Penalty Worldwide, *Judged for More than Her Crime: A Global Overview of Women Facing the Death Penalty* (2018).

7. The High Commissioner concluded by noting that human rights developed as societies became more inclusive, integrating the voices and experiences of previously marginalized groups. That process brought to light past miscarriages of justice, often rooted in discrimination and stereotypes. It was unacceptable to continue to sentence persons to death knowing that there was a risk of a mistake. The High Commissioner encouraged all States to take a stand on the right side of history and join the international trend towards abolition.

8. In his opening remarks, Mr. Reynders, speaking on behalf of a group of co-sponsors of Human Rights Council resolution 36/17,² congratulated the Gambia for ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and welcomed the recent announcement that Malaysia would abolish the death penalty, joining the some 170 States which had either abolished the death penalty or imposed a moratorium on its use for more than 10 years. It was regrettable that the death penalty was still applied in a minority of countries, including for apostasy, blasphemy, adultery or consensual same-sex relations, which did not qualify as “most serious crimes” under international law. Such application of the death penalty was particularly discriminatory, targeting certain groups simply for exercising their fundamental rights, and should not exist in the twenty-first century.

9. Mr. Reynders drew attention to the inextricable link between poverty and the death penalty, noting that beyond legal expenses, every step of the judicial process incurred costs, whether for obtaining or photocopying documents, the appearance of witnesses or commissioning independent experts. Furthermore, the poorest often lacked social capital and knowledge of their rights in the judicial process or of how to obtain the assistance they needed. The death penalty was disproportionately applied against members of racial and ethnic minorities, foreign nationals, sexual minorities, and women. Sometimes that was a result of discriminatory or arbitrary application of the law, but too often the discrimination was structural and enshrined in law. For those reasons, the co-sponsors decided that this panel discussion should focus on the rights to non-discrimination and equality.

10. Mr. Reynders noted that the death penalty was a serious violation of human rights, notably the right to life. It was a cruel and irreversible punishment that violated human dignity and had serious repercussions on the enjoyment of a wide range of human rights of both the sentenced persons and their families. Abolition of the death penalty was not a question of culture, as human rights were universal. It was simply a question of political will. The States that had decided not to apply the death penalty represented a diversity of judicial systems, traditions, cultures and religions. The abolitionist movement included men and women of all political views, and from all sectors of society across the world, who together opposed capital punishment in all circumstances, whatever the crime or method of execution. Mr. Reynders highlighted that numerous scientific studies had demonstrated that the death penalty had no impact on crime rates, so the hypothesis that it made society safer was incorrect. He deplored the use of security arguments to justify the persistent and large-scale application of the death penalty, on the pretext of combating terrorism or drug trafficking.

11. Mr. Reynders concluded by noting that Belgium was to host the Seventh World Congress against the Death Penalty in Brussels in the days following the panel discussion, in partnership with the non-governmental organization Ensemble contre la peine de mort. Along with civil society, Belgium and the other co-sponsors would continue to work tirelessly towards abolition, and encouraged others to join those efforts.

III. Contribution of the panellists

12. In his introductory remarks, the moderator, Mr. Shany, noted that the Human Rights Council, in its resolution 36/17, had called upon States that had not yet abolished the death penalty to ensure that it was not applied on the basis of discriminatory laws or as a result of

² Belgium, Benin, Costa Rica, France, Mexico, Mongolia, Republic of Moldova and Switzerland.

discriminatory or arbitrary application of the law. It had further emphasized the need to ensure equal access to justice, in particular for poor and economically vulnerable persons. Those important elements of the resolution aimed at reducing the injustices associated with the application of the death penalty.

13. Mr. Shany drew the attention of the Council to another important normative development, namely the adoption by the Human Rights Committee of its general comment No. 36 (2018) on the right to life, which the Committee regarded as the supreme right. In its general comment, the Committee addressed the tension between the right to life articulated in paragraph 1 of article 6 of the International Covenant on Civil and Political Rights, and the regulation of the death penalty in paragraphs 2, 4 and 5 of the same article. He observed that part of the solution to that conundrum was found in paragraph 6, which reaffirmed the position that all States should be on an irrevocable path towards the complete abolition of the death penalty. The death penalty could not be reconciled with full respect for the right to life, and abolition of the death penalty was both desirable and necessary for the enhancement of human dignity and the progressive development of human rights. It was contrary to the object and purpose of article 6 for States parties to increase the application of the death penalty or to reduce the number of pardons and commutations they granted.

14. Mr. Shany noted that, in its general comment, the Committee underscored the need to narrowly construe the conditions under which the death penalty might be applied. It considered the “most serious crimes” only as serious crimes involving intentional killing, and emphasized that such crimes could never include offences whose very criminalization violated freedom of expression, freedom of religion and other civil and political freedoms. That was reflected in Council resolution 36/17, in which the Council urged States to ensure that the death penalty was not imposed as a sanction for specific forms of conduct such as apostasy, blasphemy, adultery and consensual same-sex relations. The Committee underscored that all international due process safeguards must be observed, and cruel, inhuman or degrading methods of execution were prohibited.

15. Mr. Shany quoted the general comment, which stipulated that the death penalty must not be imposed in a discriminatory manner contrary to the requirements of articles 2 (1) and 26 of the Covenant. It also stated that data suggesting that members of religious, racial or ethnic minorities, indigent persons or foreign nationals were more likely to face the death penalty might indicate an unequal application of the death penalty, which raised concerns related to article 2 (1), read in conjunction with article 6, and to article 26. Furthermore, factors related to age, parenthood, disability and past victimhood might mitigate against the application of the death penalty. The death penalty should not be imposed on individuals who faced special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial and intellectual disabilities impeded their effective defence, and persons who had limited moral culpability. Mr. Shany concluded his opening remarks by noting that the Human Rights Committee maintained an ongoing dialogue with retentionist States aimed at persuading them to abolish the death penalty and thereby fulfil the vision of the drafters of the Covenant.

16. In response to the moderator’s request that he explain the process that led to the complete abolition of the death penalty in Nepal, making it a leader in the Asian region, Mr. Gyawali began by noting that, in Nepal, the right to life was considered sacred and inviolable, and the basis of all other human rights. Respect for personal liberty, integrity, the dignity of human life and human rights lay at the core of the choice by Nepal to completely abolish the death penalty. It was a conscious national choice and a reflection of shared values. Mr. Gyawali noted that there was no consensus yet at the international level on the question of the death penalty, with arguments on both sides and national jurisprudence based on national perspectives.

17. Mr. Gyawali presented the background to abolition in Nepal. The first moratorium on the death penalty had come in 1931, with some exceptions related to the army and sedition. Even at times when the death penalty had not been abolished, it had been used only in the rarest of cases. Legal reforms following political changes in the country had always taken an abolitionist approach. The death penalty had been abolished in law by an amendment to the National Code in 1964, but remained for serious military crimes and crimes of sedition, which were governed by a separate law. There had been a setback in

progress towards abolition when the death penalty had been reintroduced for certain grave crimes in 1985, but that law had been repealed within five years. The Constitution of 1990 had explicitly prohibited capital punishment. Thus, it had taken almost 59 years for Nepal to reach full abolition of the death penalty. In 1998, Nepal had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. The Constitution of 2015 considered the right to life to be the bedrock of all human rights and prohibited the death penalty in all cases. Abolition had been possible due to a long and conscious effort of all stakeholders, including political leaders, civil society, human rights defenders, the media and faith leaders. The tradition, culture and social value system of Nepal valued human life and advanced a concept of justice that placed a high value on compassion, repentance and forgiveness. Those values, along with the principles of rehabilitation, reformism, reconciliation and transformation, guided the path towards full respect for the dignity of life.

18. In conclusion, Mr. Gyawali stressed that Nepal believed in the complete abolition of the death penalty. The death penalty removed any possibility of correction and reform of the individual. No study had ever proven that the death penalty reduced crime. Physical elimination of the individual was not the answer. Instead, States must focus on the root causes of crime, which included poverty, deprivation, destitution and marginalization. Abolition was a long and gradual, but sure, pathway. As States advanced the cause of the right to life, human rights and the values of human dignity, abolition became a necessity, and universal abolition would be achieved in due time.

19. In response to the moderator's question on the main manifestations of discrimination in the application of the death penalty in the English-speaking Caribbean and effective strategies towards abolition, Ms. Janki noted that only the former British colonies in the Caribbean retained the death penalty, which had been abolished by the rest of the Caribbean countries, with the exception of Cuba. The existence of the death penalty was itself a form of discrimination. Capital punishment had been essential to the machinery of slavery in the Caribbean, and enslaved Africans had been considered not as persons, but as property. Institutionalized inequality remained hardwired into Caribbean societies. Like slavery, the death penalty posited that some persons were less than others. The death penalty robbed convicted persons of their dignity as human beings. Convicted criminals should face punishment, including removal from society, and be rehabilitated for the protection of society. It was barbaric for a State to take the life of one of its own citizens.

20. Ms. Janki noted that there were around 36 persons on death row in Trinidad and Tobago, 35 in Guyana, 8 in Jamaica, 7 in Saint Kitts and Nevis, 4 in Barbados, and 3 in Saint Vincent and the Grenadines. However, data were hard to come by and more transparency was required. In the Caribbean, the death penalty was imposed only after a trial, but no criminal justice system was perfect, and even advanced judicial systems like that in the United States of America were now known for the number of innocent persons who had been sentenced to death.

21. Ms. Janki highlighted discrimination in the application of the death penalty. Noting the importance of quality legal representation and the nexus with poverty, she said that the rich and powerful could hire skilled lawyers to save them from the death penalty or obtain a not-guilty verdict, whereas the poor were often represented by inexperienced or mediocre lawyers, or no lawyer at all. It was the poor, the marginalized, the illiterate and those with psychosocial or intellectual disabilities who were sentenced to death. Persons with psychosocial or intellectual disabilities needed expert opinion to show why they should not be sentenced to death, but they did not have access to experts. The illiterate and undereducated were often terrified of the criminal justice system and unable to understand what was happening. In Guyana, some citizens did not speak English as a first language and needed an interpreter, but did not get one.

22. Ms. Janki noted that even if the criminal justice system were perfect and did not discriminate, the death penalty should be abolished, as it was barbaric. In her advocacy against the death penalty, she had found it invaluable to partner with organizations such as Greater Caribbean for Life, Amnesty International and the Death Penalty Project. High-level support was vital to success. Justice Institute Guyana had sent a memorandum on the death penalty that had been supported by a select group of highly influential lawyers

including former British and Caribbean judges to the President and ministers. Grass-roots support was also essential, and Justice Institute Guyana also mobilized a petition against the death penalty, reaching its target for signatures very quickly with the help of taxi drivers, farmers, domestic workers and persons from all walks of life. Ms. Janki concluded by noting that advocacy could lead to results, with Guyana for the first time abstaining rather than opposing the General Assembly resolution on a moratorium on the death penalty in December 2018.

23. The moderator asked Ms. M'Baye for her views on the impact on society when speech was designated as a crime entailing a death sentence, and what role the international community could play in individual cases of persons sentenced to death for conduct which should not be criminalized. He noted that Ms. M'Baye was the lawyer of Mohamed M'kheitir, a blogger who had been sentenced to death for peacefully exercising his freedom of conscience and expression, as well as of women accused of *zina* (adultery). Ms. M'Baye began by noting that Mauritania had had a moratorium on the death penalty since 1987, although courts continued to impose death sentences, in general for violent crimes. Mauritania had not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, and had abstained on resolutions of the General Assembly on a moratorium on the use of the death penalty.

24. Ms. M'Baye presented the case of Mr. M'kheitir as illustrative of the problems of imposing death sentences for conduct that should not be criminalized. Mr. M'kheitir had been charged with blasphemy in 2013 for writing an article on his Facebook page about discrimination and the caste system in Mauritania. The case had become politicized and had exacerbated existing divisions in Mauritanian society, with protests calling for his death held every Friday. In 2015, Mr. M'kheitir had been sentenced to death and this sentence had been confirmed by a court of appeal in 2016. The Supreme Court had subsequently ordered the case to be reheard by a differently constituted court of appeal, which had sentenced him to two years in prison in 2017, a sentence he had already served. Despite this, Ms. M'Baye stated that Mr. M'kheitir was still held in a secret prison without access to his lawyers or to medical care. The authorities asserted that that secret detention was for his own protection.

25. Mauritania applied two parallel legal systems: civil law and sharia. Ms. M'Baye noted that, under sharia, when an individual repented, he or she had the right to be reintegrated into society, yet Mr. M'kheitir had benefited neither from a presidential pardon nor from reintegration. The offence of *zina*, which carried the death penalty, was used almost exclusively against women, and three women were currently on death row for this offence in Mauritania.

26. Ms. M'Baye concluded by stating that the death penalty was a humiliating and degrading punishment. The United Nations and civil society had a vital role to play in advocating with States that still applied the death penalty to abandon it in the name of the right to life and human dignity. The death penalty had never been anything other than revenge by judicial means, and it merely reinforced discrimination and inequalities in society.

IV. Summary of the discussion

27. During the interactive phase of the panel discussion, the following delegations spoke: Argentina, Australia, Bangladesh, Brazil,³ Chile,⁴ Ecuador, Fiji, France, Greece, Iceland,⁵ India, Iran (Islamic Republic of), Iraq, Italy, Luxembourg, Malaysia, Mexico, Montenegro, New Zealand,⁶ Pakistan, Saudi Arabia, Singapore⁷ and Slovenia. The

³ On behalf of the Community of Portuguese-speaking Countries: Angola, Brazil, Cabo Verde, Equatorial Guinea, Guinea-Bissau, Mozambique, Portugal, Sao Tome and Principe, and Timor-Leste.

⁴ Also on behalf of Argentina, Brazil, Mexico, Panama, Paraguay and Uruguay.

⁵ Also on behalf of Denmark, Estonia, Finland, Latvia, Lithuania, Norway and Sweden.

⁶ Also on behalf of Australia, Liechtenstein and Switzerland.

following intergovernmental organizations, national human rights institutions and non-governmental organizations also took the floor: Center for Global Nonkilling, Commission on Human Rights of the Philippines, Ensemble contre la peine de mort, European Union, Friends World Committee for Consultation, International Federation of Action by Christians for the Abolition of Torture, and International Lesbian, Gay, Bisexual, Trans and Intersex Association.⁸

A. General remarks on the use of the death penalty

28. A majority of delegates, from States with a range of legal systems, traditions, cultures and religions, expressed their opposition to the use of the death penalty in all circumstances and at all times. Several delegates noted that the death penalty was incompatible with the right to life, with human dignity and with the possibility of rehabilitation of the offender, which was a fundamental purpose of criminal justice. A number of delegates welcomed the recent record vote at the General Assembly, and called upon all States to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

29. Many delegates highlighted that no judicial system was immune from error and the irreparable nature of the death penalty made clear the need to abolish the punishment. Several States that retained the death penalty outlined the judicial process followed at national level in death penalty cases.

30. A number of delegates underlined the incompatibility of the imposition of the death penalty with the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment. In this regard, delegates noted, in particular, the suffering caused by uncertainty regarding the date of execution, by solitary confinement, by conditions of detention on death row and by method of execution.

31. Some delegates asserted the sovereign right of States to choose their legal and criminal justice systems. They stated that many countries considered the death penalty to be a deterrent against what their societies regarded as the most serious crimes. Some delegates stated that public opinion supported the death penalty in their countries. A number of delegates representing States which retained the death penalty laid out in detail the due process guarantees and rights to appeal in their national legal systems. A number of delegates stated their position that there was no international consensus for or against the death penalty when imposed according to due process of law.

32. Several delegates stressed that there was no conflict between the principle of sovereignty and encouraging moratoriums with a view to the universal abolition of the death penalty, as reaffirmed in General Assembly resolution 73/175. A number of State delegates referred to the importance of advocacy towards abolition of the death penalty in their foreign policy.

33. A number of delegates expressed concern at the resumption of executions in some States, including in some cases for drug offences, which did not constitute “most serious crimes” under article 6 of the International Covenant on Civil and Political Rights. They encouraged authorities to prioritize evidence-based approaches to crime prevention instead,

⁷ Also on behalf of Afghanistan, the Bahamas, Bahrain, Bangladesh, Barbados, Botswana, Brunei Darussalam, China, the Democratic People’s Republic of Korea, Egypt, Ethiopia, Guyana, India, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, the Lao People’s Democratic Republic, Myanmar, Nigeria, Oman, Pakistan, the Philippines, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Uganda, the United Arab Emirates and Yemen.

⁸ Statements by the following delegations were not delivered due to a lack of time: Albania, Botswana, Canada, Ireland, Poland, Spain, United Kingdom of Great Britain and Northern Ireland, Uruguay, Amnesty International, Humanist Institute for Cooperation with Developing Countries, International Council Supporting Fair Trial and Human Rights, Verein Südwind Entwicklungspolitik and United Nations Watch. Statements received in electronic form are available for consultation from the secretariat of the Human Rights Council.

in conformity with international human rights law, and noted that States providing bilateral technical assistance to combat drug crimes must ensure that programmes to which they contributed did not result in violations of the right to life.

B. Discrimination against members of vulnerable or marginalized groups

34. Delegates expressed deep concern at the disproportionate application of the death penalty against members of ethnic, religious or sexual minorities, foreign nationals, the poor and economically vulnerable, members of the political opposition, human right defenders, persons with psychosocial or intellectual disabilities, and the socially marginalized.

35. Many delegates noted that gender bias in criminal legal systems could lead to women being sentenced to death not only for their crime, but due to perceived transgressions of gender norms. In this regard, it was noted that women's and girls' history as survivors of gender-based violence, child marriage and harmful traditional practices was often not taken into account as a mitigating factor.

36. A number of delegates called upon all States to respect the international prohibition on executing persons who were minors at the time of the crime, pregnant women, or persons with serious psychosocial or intellectual disabilities, as provided for in article 6 (5) of the International Covenant on Civil and Political Rights and in the Safeguards guaranteeing protection of the rights of those facing the death penalty.⁹

37. Some delegates drew attention to the impact of discrimination in the use of the death penalty on the children and families of persons sentenced to death, and the discrimination they faced due to the execution of their parent or family member. In this regard, reference was made to the call for an expert seminar on the rights of children of parents sentenced to the death penalty or executed, following the panel discussion held on the topic during the twenty-fourth session of the Human Rights Council (A/HRC/25/33, para. 31).

C. Unequal access to justice

38. Delegates emphasized that any imposition of the death penalty following a criminal trial that did not fully respect all substantive and procedural fair trial safeguards constituted arbitrary execution and violated the right to life. In particular, some delegates stressed that legal systems that were opaque or corrupt did not provide equal justice to all and increased the risk that a State might execute an innocent person.

39. Delegates observed that the death penalty was used almost exclusively against the poor, who had often not had equal access to justice or an adequate defence. Poor and marginalized populations were less likely to be aware of, or able to assert, their rights. Some defendants were not provided with free legal aid when they were unable to afford a lawyer. Many could not afford bail, which might limit their ability to actively participate in their defence.

40. Several delegates emphasized the importance of prompt consular notification and assistance to foreign nationals facing charges that might carry the death penalty. General Assembly resolution 73/257 on the Judgment of the International Court of Justice of 31 March 2004 concerning *Avena and Other Mexican Nationals*: need for immediate compliance was highlighted in this regard.

D. Discriminatory laws

41. Many delegates deplored the existence of laws imposing the death penalty for conduct that should not be criminalized, including behaviours classified as apostasy,

⁹ Economic and Social Council resolution 1984/50, annex.

blasphemy, adultery and consensual sexual relations between persons of the same sex, and called upon States to immediately repeal such laws. In this regard, delegates referred to the definition of “most serious crimes” in article 6 (2) of the International Covenant on Civil and Political Rights, general comment No. 36 of the Human Rights Committee and Human Rights Council resolution 36/17.

42. It was noted that the threat of the death penalty for consensual same-sex relations in some States, even where laws were not enforced, had a significant chilling effect, and often prevented the establishment and development of LGBTI organizations, the provision of services to LGBTI communities, as well as human rights advocacy.

E. Importance of data

43. A number of delegates pointed out that data on crime rates showed that there was no evidence that the death penalty was a more effective deterrent than long prison sentences. It was noted that a fall in support for the death penalty was observed when the public was presented with evidence-based information correcting the misconception that the death penalty deterred crime.

44. Several delegates stressed that transparency in how the death penalty was applied was vital to detecting possible discrimination and to ensuring that due process safeguards and other human rights standards were upheld. They called for all States that retained the death penalty to publish full and accurate data on persons sentenced to death and executed, disaggregated by gender, age, nationality, ethnicity and other relevant characteristics.

F. Importance of international cooperation and regional bodies

45. A number of delegates highlighted the important role of international cooperation and exchanges of experience towards abolition of the death penalty, including through initiatives such as the Alliance for Torture-Free Trade,¹⁰ World and Regional Congresses against the Death Penalty, and the World Coalition against the Death Penalty.¹¹

46. Several delegates welcomed the role of the Secretary-General and of the High Commissioner in calling for the universal abolition of the death penalty. Delegates drew the attention of the Council to the positive role played by regional bodies in the abolitionist movement, including the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights and the European Union. Delegates also highlighted the commitment of the Council of Ministers of the Community of Portuguese-speaking Countries to the universal abolition of the death penalty.

V. Conclusions

47. In its concluding remarks, the panel welcomed the broad recognition among States that ratifying international human rights instruments placed them on an irrevocable path towards abolition of the death penalty. The panel noted that several interventions focused on the incompatibility of the death penalty with the prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishment, and with human dignity, and referred participants to general comment No. 36 of the Human Rights Committee, which foresaw the possibility of future agreement among States that the death penalty was contrary to article 7 of the International Covenant on Civil and Political Rights under all circumstances.

48. The panel emphasized that the right to life was the cornerstone of all human rights and that human rights were universal values. Panellists noted comments from some States in support of the death penalty, citing the interests of victims of crime,

¹⁰ See www.torturefreetrade.org.

¹¹ See www.worldcoalition.org.

national sovereignty, cultural divergence and extreme circumstances. The panel recalled, however, that sovereignty resided in the people, and States had duties towards all individuals. It was fundamentally unjust for a State to decide who deserved to live and who did not. The death penalty was an act of revenge, not of justice, and the panel encouraged societies to seek reconciliation rather than meeting violence with violence by applying the death penalty.

49. The panel welcomed consensus among speakers that the death penalty, if applied, could be applied only for the most serious crimes, and reminded participants that the Human Rights Committee had clarified in its general comment No. 36 that the term “most serious crimes” must be read restrictively, and appertained only to crimes of extreme gravity involving intentional killing. The panel noted that no one should be put to death for whom they love. Consensual same-sex relations and other so-called crimes of conduct, such as *zina*, apostasy and blasphemy, should be struck from the statute books.

50. There was strong concern throughout the debate about discrimination in the application of the death penalty, including on the basis of poverty, economic vulnerability, political opinion, sexual orientation or gender identity, sex, psychosocial disability, and other grounds. The panel noted that a first step towards addressing bias and discrimination was to determine its extent, which required published, disaggregated, quantitative data as well as a continuous review of the impact and consequences of the death penalty. The panel observed that the availability of quality data showing how the death penalty was applied in practice was often associated with a sharp decline in public support for capital punishment.

51. Addressing discrimination also required training of judges, magistrates, police officers and social services to understand bias and reform processes that might discriminate. Legislation at national level should be adopted following a participatory approach, integrating the views of civil society. Due process safeguards must be scrupulously applied at all stages of the judicial process and indigent defendants should have access to legal aid. The international community should support those efforts.

52. The panel concluded by noting that it was nearly impossible to apply the death penalty without discrimination and so, to avoid irreversible miscarriages of justice and arbitrary killing, it should not be applied.
