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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratoriums on the use of the death penalty

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to General Assembly resolution 63/168. The report confirms the global trend towards abolition of the death penalty. It also recommends that Member States introduce a moratorium on the death penalty. Those States which still intend to implement the death penalty and are not willing to establish a moratorium should apply the death penalty only in the case of the most serious crimes. The protection of the rights of those facing the death penalty should be ensured, pursuant to the relevant international laws. Furthermore, in that regard, States have an obligation not to practise the death penalty in secrecy, nor to practice discrimination in its application.



Contents

	<i>Page</i>
I. Introduction	3
II. Global use of the death penalty	4
A. Developments since the adoption of General Assembly resolutions 62/149 and 63/168	4
B. Trends in the implementation of the death penalty	6
III. Views reported on the death penalty	8
A. Reasons for abolition or establishment of a moratorium	8
B. Reasons for retaining the death penalty	9
C. Promoting the universal abolishment of the death penalty	10
D. Extradition law and the death penalty	11
E. Discrimination and the death penalty	12
F. Cooperation	12
IV. Regional initiatives towards abolition or establishment of a moratorium on the death penalty	13
A. Regional initiatives in Africa	13
B. Regional initiatives in the Americas	14
C. Regional initiatives in Europe	15
V. Protection of the rights of those facing the death penalty	17
VI. Conclusion and recommendations	18

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 63/168 of 18 December 2008 on the moratorium on the use of the death penalty, in which the Assembly requested the Secretary-General to provide a report on progress made in the implementation of resolutions 62/149 and 63/138, for consideration during its sixty-fifth session.

2. The report has been prepared on the basis of information received from the following Member States: Algeria, Andorra, Australia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Costa Rica, Cyprus, Cuba, Denmark, the Dominican Republic, Egypt, Finland, Greece, Guatemala, Italy, Ireland, the Islamic Republic of Iran, Iraq, Jamaica, Jordan, Kazakhstan, Latvia, Liechtenstein, Luxembourg, Madagascar, Mali, Montenegro, the Netherlands, Norway, Portugal, San Marino, the Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkmenistan, Tunisia, Turkey, Uruguay, Uzbekistan and Zambia. Information was also received from the European Union, the Inter-American Commission on Human Rights, and the funds, programmes and specialized agencies of the United Nations. Non-governmental organizations also contributed to the preparation of this report.¹

3. In submitting this report, the Secretary-General draws the attention of the Assembly to additional relevant information presented in his reports on the death penalty to the fifteenth session of the Human Rights Council² and the recent quinquennial report to the Economic and Social Council on capital punishment.³

4. In resolution 62/149 of 18 December 2007, the Assembly expressed its deep concern about the continued application of the death penalty, and called on all States that still maintain the death penalty: (a) to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50; (b) to provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty; (c) to restrict progressively the use of the death penalty and reduce the number of offences for which it may be imposed; and (d) to establish a moratorium on executions with a view to abolishing the death penalty. The Assembly also called on States that had abolished the death penalty not to reintroduce it. Pursuant to resolution 62/149, the Secretary-General submitted a report on the matter to the thirty-third session of the General Assembly (A/63/293 and Corr.1).

5. In resolution 63/168, the Assembly welcomed the decisions taken by an increasing number of States to apply a moratorium on executions and the global trend towards the abolition of the death penalty. It also welcomed the report of the Secretary-General on the implementation of resolution 62/149 (Ibid.), and the conclusions and recommendations contained therein; and requested the Secretary-General to provide a report on progress made in the implementation of resolutions

¹ Amnesty International, Hands Off Cain, the International Harm Reduction Association and the American Civil Liberties Union.

² A/HRC/15/19.

³ E/2010/10.

62/149 and 63/168, for consideration during its sixty-fifth session, and called upon Member States to provide the Secretary-General with information in that regard.

6. The first section of the report reviews the situation regarding the global use of the death penalty; in particular it discusses trends towards the abolition of the death penalty and a moratorium on executions. The second section of the report discusses reasons as stated by Member States in favour of the abolition of the death penalty or the establishment of a moratorium on the death penalty, including views of the process towards abolition of the death penalty. This section also describes Member States' initiatives for the promotion of the universal abolishment of the death penalty and the impact of the extradition laws and policies of Member States on the implementation of the death penalty. The third section of the report covers regional initiatives towards the abolition of the death penalty. The fourth section of the report deals with the application of minimum standards relating to the protection of the rights of those facing the death penalty.

II. Global use of the death penalty

A. Developments since the adoption of General Assembly resolutions 62/149 and 63/168

7. There have been a number of developments in the use of the death penalty since the adoption by the General Assembly of resolutions 62/149 and 63/168. The present report mainly covers developments reported by Member States and other sources since the adoption of the resolutions.

8. Turkmenistan reported that it adopted a new constitution in 2008 which abolished the death penalty. In April 2009, Burundi adopted a new penal code abolishing the death penalty. Italy ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on 3 March 2009. In July 2009, Kazakhstan adopted a new law reducing the number of provisions that imposed the death penalty, and Togo's parliament voted unanimously to abolish the death penalty.

9. In the United States of America, the state of New Mexico abolished the death penalty on 18 March 2009. Bosnia and Herzegovina reported that also in March 2009 the Constitution of Republic of Srpska, one of the entities of Bosnia and Herzegovina, was amended to abolish the provisions on the death penalty.

10. The Russian Federation reported that the penalty for persons sentenced to death was commuted to life imprisonment or deprivation of liberty for 25 years by a presidential decree on 3 June 1999. The Constitutional Court of the Russian Federation imposed a ban on death sentences by Judgement No. 3-P of 2 February 1999 until jury trials had been instituted throughout the entire country. Jury trials took effect in the Chechen Republic on 1 January 2010. The prospect of establishing jury trials countrywide at the beginning of this year made the lifting of the Constitutional Court ban on death sentences possible. The Supreme Court of the Russian Federation submitted an enquiry to the Constitutional Court on this matter

in November 2009. According to the Constitutional Court,⁴ its Judgement of 2 February 1999, as it pertains to the introduction of juries throughout the Russian Federation, precludes the use of the death penalty, including in the case of a conviction by jury verdict. The Constitutional Court stated in its ruling that the right to a jury trial in a court of law afforded to a person accused of an offence punishable by the death penalty as an exceptional punitive measure (pending its abolition) must be exercised with due regard for the universal principles and rules of international law and the international agreements to which the Russian Federation is a party. The Constitutional Court noted the steady trend in international legal standards towards abolition of the death penalty. The Russian President also reported that bills on the abolition of the death penalty and the ratification of Protocol No. 6 to the European Convention, respectively, have been introduced to the Duma (Parliament). Those bills have not been withdrawn and are currently pending before the Duma.

11. The Dominican Republic, which prohibited the death penalty in 1924, adopted a new constitution in January 2010 which guarantees the right to life and reconfirms the prohibition of the death penalty. In January 2010, the President of Mongolia announced a moratorium on the death penalty. In Australia, the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 entered into effect on 14 April 2010. It amends the Death Penalty Abolition Act 1973 and extends the application of the current prohibition on the death penalty to State laws. Jordan reported that in 2010 a draft amendment law to reduce the death penalty would be introduced, replacing it with life imprisonment with compulsory labour for a number of crimes.

12. There have been also some significant political and administrative steps towards the abolition of the death penalty. In June 2009, the Ministry of Justice in Lebanon launched a nationwide campaign to rally public support for the abolition of the death penalty. In 2009, the Government of Latvia approved a strategy on policy on criminal sanctions, which, inter alia, reaffirmed its intention fully to remove the death penalty from national legislation. In October 2009, 12 Portuguese cities joined an initiative of Amnesty International and carried out symbolic acts with the objective of raising awareness in favour of the abolition of the death penalty. In early 2010, the National Assembly of Belarus established a working group to examine the death penalty as a penal instrument applied in the country.

13. In December 2009, the international community observed the twentieth anniversary of the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. As of June 2010, a total of 72 States had ratified or acceded to the Protocol. In 2009, Brazil acceded to the Protocol, with an express reservation to article 2; and Nicaragua ratified the Protocol without any reservation. In February 2010, a law on accession to the Protocol was approved by the parliament and President of Kyrgyzstan.

14. The General Assembly, in paragraph 3 of resolution 62/149, called upon States which have abolished the death penalty not to reintroduce it. In their replies, Montenegro and Slovenia confirmed that they do not intend to reintroduce the death penalty. Australia introduced amendments to the relevant law to ensure the death penalty could not be reintroduced anywhere in Australia.

⁴ Ruling No. 1344-O-R of 19 November 2009 of the Constitutional Court of the Russian Federation.

B. Trends in the implementation of the death penalty

15. Trends concerning the application of the death penalty can be gleaned from the quinquennial report of the Secretary-General submitted to the Economic and Social Council on 18 December 2009⁵ and also from discussions and interactive dialogues that were held at the Human Rights Council in the course of the universal periodic review process. One of the major trends is that some retentionist States have indicated support for a moratorium or for the abolition of the death penalty. For instance, the recommendations to abolish the death penalty that were formulated during the interactive dialogue at the twelfth session of the universal periodic review of the Human Rights Council enjoyed the support of the Democratic Republic of the Congo.⁶ Burkina Faso also indicated it would consider imposing a moratorium on the death penalty.⁷

16. A few retentionist States made public statements in the Human Rights Council in the course of the universal periodic review process, explaining their views. In 2009, Cameroon noted that the international community would like it to drop the death penalty but it cannot do so without carefully looking at all the parameters involved, particularly because of the public's feelings towards certain offences.⁸ However, there has been a moratorium on the implementation of the death penalty for over 20 years in Cameroon. In addition, in 2009, the delegation of the Government of China noted that current circumstances do not allow for abolition of the death penalty.⁹ Kuwait reported that it, as an Islamic State, applies the death penalty, among other punishments. It is applied in the most restrained and restricted manner and only for the most heinous and dangerous crimes.¹⁰ The delegation of Iraq stressed that, owing to the exceptional circumstances in Iraq and the prevalence of terrorist crimes targeting the right-to-life, the death penalty has been maintained as a means of deterrence and to provide justice to the families of victims.¹¹

17. Furthermore, in 2009 Cuba mentioned that although provided for in Cuban legislation, imposition of the death penalty is very exceptional. Cuba has been constrained, in legitimate defence of national security, to pass and apply severe legislation against terrorist activity aimed at destroying the Cuban State or killing its citizens. This has been framed with the strictest adherence to due process and observance of judicial guarantees.¹² The Gambia stated that capital punishment is an exceptional measure, applied in cases involving murder and treason, that was reintroduced in 1995 to combat a spate of criminality, and that it is likely to remain in force for some time. However, the country is exercising a moratorium, and no execution has been carried out during the current Administration.¹³

⁵ See E/2010/10, paras. 15-30.

⁶ A/HRC/12/6, para. 79, recommendation 9.

⁷ A/HRC/10/80 and Corr.1, para. 98, recommendation 9.

⁸ A/HRC/11/21, para. 38.

⁹ A/HRC/11/25, para. 117 (see recommendation, para. 27 (b)).

¹⁰ A/HRC/WG.6/8/L.14, para. 39.

¹¹ A/HRC/14/14, para. 11.

¹² A/HRC/12/22, para. 126.

¹³ A/HRC/14/06, para. 56.

18. In February 2009, Malaysia stated that, as a democratic State, the Government's policy must take into consideration the views of the majority of the electorate and that the death penalty is seen as the ultimate deterrent.¹⁴

19. In recent years, there has been a trend in some retentionist States to reduce the crimes for which the death penalty can be imposed.¹⁵ At the Human Rights Council in 2009, Malaysia stated that it was considering further reductions in the number of crimes for which capital punishment could be imposed, including proposed amendments to existing anti-drug-trafficking legislation to reduce the maximum sentence to life imprisonment.¹⁶ There were also reports that Viet Nam is reducing the number of crimes subject to the death penalty. In July 2009, its National Assembly voted to abolish the death penalty for the crimes of rape, fraud for appropriating property, smuggling, making and trafficking in counterfeit money, drug use, bribery, hijacking or piracy and destruction of military weapons. Capital punishment would be maintained for drug trafficking.¹⁷ Jordan has also taken such initiatives.¹⁸

20. In 2009, some States resumed executions after a few years of de facto moratoriums. In August 2009, it was reported that Thailand had resumed executions, after about six years of a de facto moratorium. In April 2009, in the Occupied Palestinian Territory the local authority in the Gaza Strip took it upon itself to resume executions after a de facto moratorium that had lasted five years. In April 2009, Taiwan Province of China implemented the death penalty after a five-year suspension.¹⁹

21. It is very difficult to establish the number of cases in which the death penalty has been imposed and subsequently implemented since the adoption of resolution 63/168 in December 2008. Reportedly, it is largely due to the fact that several of the retentionist States keep figures on executions secret. They do not issue official statistics on capital punishment.²⁰

22. Different sources reported different figures of the cases of the death penalty. For instance, Hands off Cain, a non-governmental organization, reported that in 2009 at least 5,679 executions were carried out in 18 States.²¹ Amnesty International reported that in 2009, as in previous years, the majority of the world's executions occurred in two regions: Asia and the Middle East and North Africa. Eighteen countries were known to have carried out executions, killing a total of 714 people; however, that figure does not include the thousands of executions that were likely to have taken place in China. It also reported that at least 2,001 people were sentenced to death in 56 countries in 2009. While there were fewer executions in 2009 than in the previous year, Amnesty International remained concerned about the increasingly politicized use of the death penalty.²² The American Civil Liberties Union reported that a total of 52 people were executed in 2009, and that 33 have

¹⁴ A/HRC/11/30, para. 55.

¹⁵ See E/2010/10, para. 30.

¹⁶ A/HRC/11/30/Add.1, response to recommendation 10.

¹⁷ A/HRC/12/45, para. 7.

¹⁸ See para. 11.

¹⁹ Hands off Cain, *2010 Report on the Death Penalty Worldwide* (Rome), p. 68.

²⁰ See E/2010/10, para. 129.

²¹ Ibid.

²² Amnesty International, *Death Sentences and Executions in 2009* (London, 2010).

been executed so far in 2010 in the United States. As of October 2009, the number of people awaiting execution across the country exceeded 3,300.²³

23. In its recent report on the death penalty for drug offences, published in 2010, the International Harm Reduction Association reported that the number of States carrying out death sentences for drug offences prescribed in law appears to be declining in recent years, while a number of others are observing moratoriums on executions. Despite those positive developments, the Association reported that the States responsible for the highest proportion of executions of drug offenders have continued to carry out executions, and in some cases have intensified the practice. According to its 2010 report, the Association was able to document hundreds of executions for drug offences annually; nevertheless, the actual figure likely exceeds one thousand.²⁴

III. Views reported on the death penalty

24. The replies received from Member States contained a significant amount of information outlining various States' positions in respect of the abolition or retention of the death penalty.

A. Reasons for abolition or establishment of a moratorium

25. Bulgaria considered that the death penalty is an extreme form of disrespect and denial of the right of life inherent to every individual. It is an extreme form of physical and psychological violence upon human beings and as such constitutes, in the utmost degree, a cruel, inhumane and degrading treatment or punishment.

26. Cyprus considered that capital punishment, while violating the right to life, has no utility in the fight against crime as it fails to deter criminal behaviour and is irreversible in the case of miscarriage of justice, which is inevitable in any legal system.

27. Denmark is aware of the suffering of victims of violent crime and their families, but is also firmly convinced that the death penalty is brutal, inhumane and an affront to human integrity and human dignity, no matter how cruel the offence. Denmark considered that the death penalty is unnecessary, and its added deterrent effect compared to other penal sanctions has not been demonstrated. Denmark also asserted that no legal system is immune from miscarriages of justice, but the death penalty constitutes an irreversible loss of life. Any miscarriage of justice would be perpetuated, and the most tragic miscarriages of justice could never be redressed. For Denmark, rehabilitation is the cornerstone of modern criminal justice systems. The death penalty denies the possibility of rehabilitation and resocialization, core notions in modern justice systems.

²³ American Civil Liberties Union, "Capital punishment in the United States" (New York, 2010). Submission to the Office of the United Nations High Commissioner for Human Rights pursuant to resolutions 62/149 and 63/168.

²⁴ International Harm Reduction Association, *The Death Penalty for Drug Offences: Global Overview 2010* (London, 2010).

28. Liechtenstein also noted that there is no evidence of a deterrent value of the death penalty. It asserted that no significant change in the crime rate could be noticed after its abolition. In regard to the international legal framework governing the use of the death penalty, Liechtenstein considered that any interpretation of the term “most serious crimes” to which the application of capital punishment has to be restricted pursuant to article 6(2) of the International Covenant on Civil and Political Rights must be based on objective grounds, taking into account the relevant comments of the Human Rights Committee. Liechtenstein expressed the view that a subjective interpretation of this term by individual States parties which includes other categories of crime undermines the legal standing of the whole Covenant and its application of the basis of the principle of equality of States parties.

B. Reasons for retaining the death penalty

29. On 10 February 2009, the permanent missions of 53 States Members of the United Nations submitted a note verbale²⁵ referring to resolution 63/168, and placed on record that they were in persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention to existing stipulations under international law. The note verbale stated that there was no international consensus that the death penalty should be abolished and referred to article 6 of the International Covenant on Civil and Political Rights, as well as to previous statements on the issue.²⁶

30. In their separate notes, Cuba, Egypt, the Islamic Republic of Iran and Jamaica provided similar arguments and opined that the international law does not prohibit the death penalty.

31. The list of reasons for the retention of the death penalty that are affirmed by some Member States also include public opinion, national security, and crimes of terrorism and aggression. Belarus reported that according to the 1996 referendum, more than 80 per cent of Belarusians were in favour of retaining the death penalty. Kazakhstan reported that in 2008, the Ministry of Culture and Information of Kazakhstan conducted a survey in relation to the attitudes of people towards abolition of the death penalty. The survey showed a high level of awareness among respondents, but they had different views on the State policy on the death penalty. Kenya has been committed to abolition of the death penalty, but there is widespread public support for its retention, as has recently been observed during the

²⁵ See note verbale dated 10 February 2009 from the Permanent Missions to the United Nations of Afghanistan, Bahamas, Bahrain, Bangladesh, Barbados, Botswana, Brunei Darussalam, Central African Republic, Chad, China, the Comoros, Democratic People’s Republic of Korea, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Grenada, Guinea, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, Lao People’s Democratic Republic, Libyan Arab Jamahiriya, Malaysia, Maldives, Mongolia, Myanmar, Niger, Nigeria, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, Sudan, Swaziland, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, United Arab Emirates, Yemen and Zimbabwe (A/63/716).

²⁶ See A/62/658; and E/1997/106, E/CN.4/1998/156 and Add.1, E/1998/95, E/1999/113, E/CN.4/2000/162, E/CN.4/2001/161 and Corr.1, E/CN.4/2003/G/84, E/CN.4/2004/G/54 and E/CN.4/2005/G/40.

constitutional review. Kenya is working with the Kenya National Commission on Human Rights to create public support for abolition.²⁷

32. Cuba asserted that the death penalty is the last resort for Cuba to defend its national security, and defend itself against aggression and terrorism. It is necessary to punish those who are involved in such activities with the death penalty. However, Cuba does not exclude the possibility of abolition of the death penalty in the future when conditions change and there are no external threats. Similarly, Iraq asserted that it cannot restrict the implementation of the death penalty for the most serious crimes owing to an increase in crimes of terrorism in the last six years.

33. Some Member States continue to refer to the sharia law in respect of the retention of the death penalty. For instance, in 2009 the representative of Afghanistan at the Human Rights Council said that Afghanistan's criminal law recognizes the death penalty as do the laws of other Islamic countries.²⁸

C. Promoting the universal abolishment of the death penalty

34. For a number of States, the universal abolition of the death penalty is a key or principle foreign policy objective. Brazil reported that its human rights foreign policy favours abolition of the death penalty. Canada reported that it has joined other countries in taking steps towards abolition of the death penalty around the world. Denmark reported that it in no way wishes to interfere with the democratic process of other countries, but the concern for human integrity and human dignity, which inspired Denmark to abolish the death penalty, applies to all human beings. Denmark therefore pursues an active policy against the death penalty everywhere and the adoption of moratoriums as an important step towards universal abolition.

35. Finland reported that it promotes the universal abolition of the death penalty through international cooperation with the European Union, the Council of Europe and the Organization for Security and Cooperation as well as with the United Nations. Similarly, Italy reported that at the international level, Italy continues to be actively committed, both nationally and as a member of the European Union, in promoting abolition of the death penalty through political action. To mark the seventh World Day and third European Day against the Death Penalty on 10 October 2009, the Minister for Foreign Affairs of Ireland issued a statement in which he reaffirmed Ireland's strong and long-standing policy of opposing the use of the death penalty, and called on all countries which still retain the death penalty to embrace its abolition in all circumstances.

36. Luxembourg is committed to all efforts to press for universal abolition of the death penalty, in the context of both its bilateral contacts and its statements in multilateral settings. Luxembourg took part in the fourth World Congress against the Death Penalty, held in Geneva on 24 February 2010. In its bilateral relations with retentionist countries, Luxembourg has regularly raised the issue of the death penalty and called for a moratorium on its use, in anticipation of its complete abolition.

²⁷ A/HRC/WG.6/8/L.7, para. 49.

²⁸ A/HRC/12/9, para. 84.

37. The Netherlands reported that systematic lobbying and dialogue is vital to engender support for global abolition and to reduce the polarization that exists in the United Nations over the issue. The Netherlands also played an active role in the implementation of the European Union's current efforts against the death penalty.

38. Norway reported that it had pledged to work systematically and impartially to fight the death penalty in its relations with all States. Norway has issued practical guidelines to all Norwegian embassies and the relevant sections in the Ministry of Foreign Affairs to strengthen efforts against the death penalty. The Norwegian policy against the death penalty has been made public. Further, Norway is working against the death penalty through its human rights dialogues with China, Indonesia and Viet Nam.

39. In its national capacity, Sweden has worked towards universal abolition of the death penalty for several years. Abolition of the death penalty is one of the eight thematic human rights priorities of Swedish foreign policy. As part of its efforts, Sweden has raised the issue of the death penalty in discussion with States in which the penalty continues to be applied or to exist in name. In addition to calling for abolition, Sweden urges relevant States to apply the death penalty in accordance with internationally recognized minimum standards.

D. Extradition law and the death penalty

40. Several Member States prohibit the extradition of a person who may be faced with the death penalty. For instance, Costa Rica has several provisions in its domestic law on extradition that forbid the extradition of a person who may be deprived of life for crimes committed. Denmark also refuses extradition or any other form of transfer to States where the death penalty may be imposed, unless reliable assurances are given that the death penalty will not be applied. Applying the Canadian Charter of Rights and Freedoms in extradition proceedings, the Supreme Court of Canada held that in all but exceptional cases the Government of Canada is obliged to seek assurances that the death penalty will not be carried out.

41. In December 2009, the Attorney General and the Minister for Home Affairs in Australia announced a new policy to govern law enforcement cooperation with countries that may apply the death penalty. New Australian Federal Police guidelines governing police-to-police assistance in possible death penalty cases took effect on 18 December 2009. The new guidelines require senior management of the Australian Federal Police to consider a set of prescribed factors before providing assistance in matters with possible death penalty implications. In addition, the guidelines require ministerial approval in any case in which a person has been arrested, detained, charged with or convicted of, an offence which carries the death penalty. Recently, the Inter-American Commission on Human Rights has asked for precautionary measures in Peru to prevent the extradition to China of a Chinese national accused of crimes that could carry a death sentence in his country.

E. Discrimination and the death penalty

42. Reportedly, in 2009 and during the first months of 2010, a few Member States imposed the death penalty against individual members of minority religious groups and spiritual movements that were not recognized by authorities.²⁹ The United Nations High Commissioner for Human Rights reported that at least 10 countries maintained the death penalty for consensual same-sex practices. As a result, men, women and transgender persons have been sentenced to death.³⁰

43. Switzerland observed that the question of the link between the death penalty and discrimination should be addressed. Switzerland stated that a number of studies demonstrate the persistence of unfair discrimination, especially racial discrimination, in the imposition of the death penalty; social status is also a discriminatory factor. Such discrimination exists to a varying degree in all continents. In that regard, Switzerland recommended that it would be useful to include statistical information on the different forms of discrimination that could have affected the imposition of the death penalty or the social circumstances of persons under sentence of death.

F. Cooperation

44. Some Member States reported that they had initiated or supported various technical cooperation projects towards universal abolition of the death penalty.

45. For instance, the Netherlands supports projects for education and public debate on the death penalty in various countries. The Netherlands also supports projects in several countries to provide lawyers with in-depth information on international human rights law relevant to the death penalty, linked to an analysis of the specific legal, social and political backgrounds of the death penalty in the countries concerned. Currently, the Netherlands is supporting a multi-annual project of the International Justice Project, which is studying the most effective way of supporting lawyers in a number of countries, including Indonesia, Malaysia and Thailand. The Netherlands is looking into the possibility of expanding such activities over the next few years. In addition, the Netherlands reported that its embassy in the United States is facilitating a project by the coalition to abolish the death penalty, which aims to provide information and training, and in some cases support, for lawyers and other practitioners working on capital punishment cases involving mental illness or a learning disability.

46. Under the leadership of the Netherlands, the European Union group on the death penalty analysed the background to the death penalty in Japan and organized a seminar. It became clear at the seminar that the retention of the death penalty by Japan could not be explained by Asian culture, and that public acceptance of abolishing the death penalty was possible in Asia. The embassy of the Netherlands in Tokyo also investigated the reasons for the secrecy surrounding executions in Japan.

²⁹ Hands off Cain, *2010 Report on the Death Penalty Worldwide* (Rome), note 21, pp. 145-150.

³⁰ Statement of the United Nations High Commissioner for Human Rights, High-Level Panel on Human Rights, Sexual Orientation and Gender Identity, 12 June 2010, Palais des Nations, Geneva.

47. On 25 September 2009, during the sixty-fourth session of the General Assembly, the Swedish Presidency of the European Union, in cooperation with Chile, the Philippines, Rwanda and Amnesty International, hosted an interregional panel discussion on the topic, “Debating the death penalty: experiences from different regions”. The purpose of the event was to learn about the experience of countries and regions where the death penalty has recently been abolished, or where abolition is presently considered.

48. Norway reported that it funds research on the historical roots of specific countries, the rationale and the effects of death penalty. Norway argued that when the knowledge is on the table, abolition will be the natural choice for States.

49. A seminar on the death penalty in the Arab world took place in Spain in July 2009. The participants adopted the Madrid Declaration, which encourages the Governments of Arab States to comply with resolutions 62/149 and 63/168. Spain also supported the International Colloquium on the Universal Abolition of the Death Penalty, organized in Madrid in December 2009. Spain has also initiated a process for the establishment of an international commission against the death penalty, comprising representatives from around the world.

50. The abolition of the death penalty is one of the thematic priorities under the European Instrument for Democracy and Human Rights. Building on a solid record in previous years, the European Instrument for Democracy and Human Rights allocated in 2009 over 8 million euros to 16 abolitionist projects around the world. The projects monitor conditions under which the death penalty is used and the application of international minimum standards. They also provide assistance for prisoners, support legal and constitutional reform to restrict or abolish the death penalty and promote the signature, ratification and implementation of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (or similar regional instruments). In addition, they provide training, conduct research and studies, provide advocacy to the public, organize awareness-raising campaigns, build capacity and develop scientific approaches to expose miscarriages of justice.

IV. Regional initiatives towards abolition or establishment of a moratorium on the death penalty

A. Regional initiatives in Africa

51. Current statistics on the application of the death penalty on the African continent show that about 15 African States have abolished the death penalty in their penal system; about 23 other States have de facto abolished it by not carrying out executions in the past 10 or more years; and 2 of the death penalty retentionist States are observing a formal moratorium on executions.³¹

52. The African Union, through its specialized human rights organ, the African Commission on Human and Peoples’ Rights, has taken decisive steps in addressing the issue of the death penalty. Nearly ten years after the adoption of Commission

³¹ Jean Ping, Introduction, *2010 Report on the Death Penalty Worldwide* (Rome, Hands Off Cain), para. 3.

resolution 42 (XXVI) (ACHPR/Res 42 (XXVI)) of 15 November 1999,³² the Commission adopted resolution 136 (XXXXIII) (ACHPR/Res 136 (XXXXIII)) of 24 November 2008, which expressed concern that some States parties to the African Charter on Human and Peoples' Rights apply the death penalty under conditions not respectful of the right to a fair trial guaranteed under that Charter and other relevant international legal instruments. The 2008 resolution further urged States parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with resolution ACHPR/Res 42 (XXVI) of the African Commission and General Assembly resolution 62/149.

53. In addition to the above-mentioned efforts, the African Commission on Human and Peoples' Rights set up a working group which met in September 2009 to discuss the prospect of an additional protocol to the African Charter of Human and Peoples' Rights on abolition of the death penalty. In September 2009, the African Commission on Human and Peoples' Rights also organized a subregional conference in Kigali to discuss the abolition of the death penalty in Central, East and Southern Africa. The Conference brought together representatives from States parties, national human rights institutions, non-governmental organizations and other stakeholders from East, Southern and Central Africa. The Conference adopted a document entitled "Framework document on the abolition of the death penalty in Africa".³³ In April 2010, the death penalty working group of the African Commission on Human and Peoples' Rights organized a second regional meeting in Cotonou, Benin.

B. Regional initiatives in the Americas

54. The Inter-American Commission on Human Rights reported that the member States of the Organization of American States that retain the death penalty for ordinary crimes include all English-speaking Caribbean countries as well as Cuba, Guatemala and the United States.

55. The Inter-American Commission on Human Rights reported that from its earliest days, it had developed the practice of issuing "precautionary" measures in death penalty cases. Principally, the purpose of such measures has been to preserve the subject matter of the complaint until such time as the Commission is able to issue its decision on whether there is a human rights violation attributable to the State in the case. On 14 June 2010, the Commission granted two precautionary measures for two individuals awaiting the death penalty in the United States. The precautionary measures were issued in the context of petitions alleging that the violation of rights enshrined in the American Declaration of the Rights and Duties of Man, the irregularities in the criminal proceedings, the lack of due process and the lengthy incarceration on death row constituted cruel and inhuman punishment. Subsequently, both individuals were executed. On 21 June 2010, the Commission

³² It called upon African Union Member States that still maintained the death penalty to, inter alia, consider a moratorium on executions of the death penalty and reflect on the possibility of abolishing the death penalty. This decision was subsequently endorsed by the Assembly of Heads of State and Government of the Organization of African Unity (now the African Union).

³³ Twenty-seventh activity report of the African Commission on Human and Peoples' Rights, June-November 2009, para. 160.

condemned the judicial executions by the United States, in defiance of the precautionary measures the Commission had granted in the petitioners' favour.

56. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have clearly ruled that the application of a death penalty violates the American Convention on Human Rights and the American Declaration. Those opinions are reflected in the Inter-American Court's recent decision in the case of *Boyce et al. v. Barbados* (20 November 2007),³⁴ and the decision of the Commission in the case of *Dexter Lendore v. Trinidad and Tobago* (2009).³⁵ In the case of *Boyce et al.*, the Court came to a similar conclusion, ruling that the Barbados legal regime of a mandatory death penalty also offended against articles 4 (1) and 4 (2) of the American Convention. The Inter-American Commission on Human Rights reported that as a result of that ruling, the Government of Barbados, in May 2009, announced that the mandatory death penalty would be abolished under Barbados law.

C. Regional initiatives in Europe

57. The European Union submitted a joint contribution to the present report. The European Union stated that it holds a strong and principled position against the death penalty and is a key actor in the fight against the death penalty worldwide. The European Union considers that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights. It considers capital punishment to be cruel and inhuman, failing to provide deterrence to criminal behaviour and representing an unacceptable denial of human dignity and integrity. Any miscarriage of justice — which is inevitable in any legal system — is irreversible. The abolition of the death penalty worldwide represents one of the main objectives of the European Union's human rights policy. The European Union's main aim in this field is to work towards universal abolition of the death penalty, if necessary with the immediate establishment of a moratorium on the use of the death penalty with a view to abolition as a first step. Where the death penalty still exists, the European Union calls for its use to be progressively restricted and insists that it be carried out according to international minimum standards. The European Union's objectives are thus fully in line with resolutions 62/149 and 63/168 on a moratorium on the use of the death penalty.

58. The European Union uses all its available tools of diplomacy and cooperation to work towards the abolition of the death penalty. The 1998 European Union guidelines on the death penalty,³⁶ which were revised in 2008, set out its objectives, policy and parameters for systematic action towards non-European Union countries. They foresee five main areas for action: general measures, individual cases, human

³⁴ See also *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* (2002). The decision of *Hilaire, Constantine and Benjamin et al.* was the first in which the Inter-American Court ruled that a mandatory death penalty violates articles 4 (1) and 4 (2) of the American Convention. At para. 100 of its Judgement, the Inter-American Court concluded that because the Offences Against the Person Act of Trinidad submitted all persons charged with murder to a judicial process in which the individual circumstances of the accused and the crime were not considered, the aforementioned Act violated the prohibition against the arbitrary deprivation of life, in contravention of articles 4 (1) and 4 (2) of the American Convention.

³⁵ See also *Chad Roger Goodman v. The Bahamas* (2007).

³⁶ Available from <http://www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf>.

rights reporting, action in multilateral forums and other initiatives. The European Union is also the first regional body in the world to have adopted rules prohibiting the trade in goods used for capital punishment, torture and ill-treatment, as well as the supply of technical assistance related to such goods. Furthermore, the European Union continues to be the lead donor to the efforts of civil society organizations around the world to abolish the death penalty.

59. With the entry into force of the Treaty of Lisbon in December 2009, the European Union recognized the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union which now has the same legal value as other treaties. Article 2 of the Charter states that “no one shall be condemned to the death penalty, or executed”, and article 19 states that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhumane or degrading treatment or punishment”.

60. The issue of the death penalty was systematically raised in numerous dialogues and consultations on human rights that the European Union holds with third countries. The European Union gave particular consideration to countries in which the policy on the death penalty is in flux, that is, where an official or de facto moratorium on the death penalty is to be ended, or where the death penalty is to be reintroduced in its legislation. The European Union tried to provide additional momentum to the global trend towards abolition ahead of renewed consideration of the death penalty at the sixty-fifth session of the General Assembly, by, for instance, carrying out initiatives covering 14 countries during the second semester of 2009. Further activities are planned. Furthermore, the European Union publicly deplored the continuing extensive use of the death penalty in a range of countries, while reaffirming its intention to continue its efforts to encourage retentionist countries to abolish capital punishment. In that sense, for example, the European Union expressed regret at the resumption of executions in the United States following the April 2008 ruling by the Supreme Court of the United States in the case of *Baze et al v. Rees* and has since systematically intervened each time an existing de facto moratorium has been broken in one of the states. On 21 July 2009, it issued a statement on the 1,000th execution carried out by lethal injection in the United States since 1976.

61. Activities were carried out by the European Union in a significant number of countries, based on the minimum standards defined by international law and the European Union Guidelines on the Death Penalty. In a large number of interventions, the European Union expressed concern about executions in Belarus, China, the Islamic Republic of Iran, Iraq, Japan, Saudi Arabia and the United States. The European Union also continued to raise the issue in all relevant forums, in particular at the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). The European Union takes a strong stand against the death penalty at the Implementation Meetings on Human Dimension Issues of OSCE and initiatives on individual cases are followed up by interventions at the OSCE Permanent Council.

62. On the World Day against the Death Penalty, 10 October 2009, the European Union once again commemorated, together with the Council of Europe, the European Day against the Death Penalty. On 2 December 2009, the Swedish Presidency of the European Union and the European Union delegation in Tokyo

co-hosted a symposium on the death penalty in cooperation with Japanese partners at Waseda University. The European Union closely followed and was represented at the fourth World Congress against the Death Penalty, held in Geneva from 24-26 February 2010.

63. A resolution on a moratorium on the death penalty and towards its abolition was adopted during the annual session of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, held from 29 June to 3 July, 2009 in Vilnius. The resolution specifically urges OSCE participating States Belarus and the United States to adopt an immediate moratorium on executions, and calls on Kazakhstan and Latvia to amend provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances.³⁷

V. Protection of the rights of those facing the death penalty

64. The standards that must be met before the death penalty can be appropriately applied are set out in international human rights law. In particular, article 6 of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child establish the relevant standards which seek to protect the rights of those facing the death penalty. In an annex to its resolution 1984/50, the Economic and Social Council set out the minimum international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty. The Council elaborated upon the standards in its subsequent resolutions 1989/64 and 1996/15. In its resolution 62/149, the General Assembly called upon all States that still maintain the death penalty to respect those standards and to provide the Secretary-General with information relating to their observance.

65. The previous report of the Secretary-General on moratoriums on the use of the death penalty considered various issues related to the protection of the rights of those facing the death penalty. The issues include (a) use of the death penalty only for the most serious crimes; (b) the principle of legality; (c) the protection of specific groups, in particular persons below 18 years of age at the time of the commission of crimes; (d) clear and convincing evidence; (e) use pursuant to a final judgement and a fair trial; (f) the right of appeal; (g) the right to seek pardon or commutation of sentence; (h) stay of execution pending appeal or pardon; and (i) minimum suffering.³⁸

66. Since September 1993 Algeria has been observing a moratorium on the application of the death penalty. Algeria reported that, however, a person convicted of an offence carrying the death penalty enjoys all the safeguards of a fair trial in accordance with the constitutional and legislative provisions in force. Those safeguards concern, for instance, the legality of the offences and penalties, the presumption of innocence, the non-retroactivity of criminal law, except where it has become more lenient, the right to a fair hearing, the right to appeal to a higher court and the right to apply for pardon.

³⁷ HDIM.OSCE.PA/0164/09, 1 October 2009.

³⁸ A/63/293, paras. 31-68.

67. The Islamic Republic of Iran reported that there are legal proceedings for the death penalty and that the ruling by the court of appeals has to be confirmed by the Supreme Court. The Islamic Republic of Iran considered that for those reasons, death sentences passed by the lower courts are difficult to get confirmed. The rulings issued by criminal courts are established in accordance with the Constitution and on the basis of the amended Law on the establishment of General and Revolutionary Courts of 2002, and are appealable in the Supreme Court. Iran further stated that for the purpose of ensuring the rights of the defendant, there is also provision for receiving the approval of the Valieh Amr before the final ruling and its implementation. The rights of the defendants include the possibility to request commutation, or stay the execution owing to illness or pregnancy. Moreover, there are also provisions for medical examinations, performance of religious ceremonies, meetings with relatives, and the writing of wills, among others. Similarly, Egypt, Jordan and Tunisia claimed that the rights of those facing the death penalty were protected in their countries.

68. Madagascar reported that under existing legislation, the international safeguards guaranteeing protection of the rights of those facing the death penalty are already more or less observed. In Madagascar, the death penalty may be imposed only for intentional crimes with grave consequences, and persons who have become insane may not be sentenced to death or executed. The use of the death penalty against pregnant women and persons under 18 years is prohibited, and it may be imposed only when the guilt of the person charged is based on clear and convincing evidence, leaving no room for an alternative explanation of the facts. The national law in Madagascar also provides for adequate legal assistance at all stages of the proceedings and the right to appeal to a court of higher jurisdiction. The granting of a pardon to any person sentenced to death falls within the exclusive jurisdiction of the Head of State.

69. Switzerland considered that the norms governing respect for the rights of persons under sentence of death are of crucial importance to ensure that executions are conducted in accordance with States' international obligations. Switzerland therefore supports the idea of at least working for a more restrictive use of the death penalty by prohibiting its applicability to persons who commit a crime before they have reached the age of 18 (*jus cogens*, which is reflected in article 6.2 of the International Covenant on Civil and Political Rights) and the execution of pregnant women (*Ibid.*) and of persons suffering from a mental disability. Switzerland also considers that all forms of torture and other cruel, inhuman or degrading treatment during the detention of persons under sentence of death (for example, prolonged solitary confinement) and at the time of their execution (for example, stoning) should be strictly prohibited.

VI. Conclusion and recommendations

70. Member States that have taken a position in favour of abolition of the death penalty represent different legal systems, traditions, cultures and religious backgrounds. Some Member States that opposed the abolition of the death penalty in the recent past have moved to abolish it. Some Member States have taken steps towards the abolition of the death penalty or imposed a moratorium. Over the lifetime of the United Nations, the balance has shifted between a substantial

majority of States Members that maintained the death penalty to, nowadays, a minority, and the tendency seems likely to continue over time.

71. In particular, there have been significant developments towards the universal abolition of the death penalty in recent times. Since the adoption of resolution 62/149, the total number of Member States which abolished the death penalty or which established de jure or de facto moratoriums on the death penalty has increased. Currently, more than two thirds of the States Members of the United Nations have either abolished the death penalty or do not practise it. Among these, a total of 72 States have ratified the Optional Protocol. States parties to this international treaty are under an obligation not to execute anyone who has been sentenced to death; to take all necessary steps to definitively abolish the death penalty; and to report to that effect. In addition, they must not extradite individuals to a country where they may face the death penalty, nor can they reintroduce it in their own. Ratification of the Optional Protocol and of similar regional instruments in Europe and in the Americas thus draws a firm line under the use of the death penalty.

72. While waiting for universal abolition, Member States should introduce a moratorium on the death penalty. Those States which still intend to implement the death penalty and are not willing to establish a moratorium should apply the death penalty only in the case of the most serious crimes. The protection of the rights of those facing the death penalty should be ensured, pursuant to the relevant international laws. Furthermore, in that regard, States have an obligation not to practise the death penalty in secrecy, nor to practise discrimination in its application.