



General Assembly

Distr.: General
4 September 2012

English only

Human Rights Council

Twenty-first session

Agenda item 3

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

Written statement* submitted by Penal Reform International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2012]

* This written statement is issued, unedited, in the language received from the submitting non-governmental organization.

Statement of Penal Reform International on the question of the death penalty

Penal Reform International (PRI)¹ would like to congratulate the UN Secretary-General on his report on the Question of the Death Penalty (A/HRC/21/29) covering the period July 2011 to June 2012.

We highly welcome the Secretary-General's recognition of the development of international legal standards and jurisprudence in relation to the death penalty, and call on all states that retain the death penalty to ensure that it is not imposed on those who were under the age of 18 at the time of the alleged offence,² or those who have mental or intellectual disabilities.³

We call on all States that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and as a first step, to implement UN General Assembly Resolution 65/206 which calls for a moratorium on the use of the death penalty. We also call on all states to support and co-sponsor the moratorium resolution tabled at the forthcoming UN General Assembly.

We would like to reiterate the focus attributed by the Secretary-General in his report on the importance of the Standard Minimum Rules for the Treatment of Prisoners.⁴

Many countries that still retain the death penalty do not create humane conditions for prisoners on 'death row'. Even though the UN Standard Minimum Rules for the Treatment of Prisoners and other standards on detention are fully applicable to all prisoners, including those on 'death row', in practice not only do these inmates spend an enormous amount of time anticipating their own execution, they do often so in conditions worse than those for the rest of the prison population.

Such conditions, amounting to torture or cruel, inhuman or degrading punishment as prohibited under Article 7 of the International Covenant on Civil and Political Rights include:

- Solitary confinement for up to 23 hours a day in small, cramped, airless cells, often under extreme temperatures.
- Inadequate nutrition and sanitation arrangements.

¹ Penal Reform International (PRI) is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment, for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

² See Article 6(5) of the International Covenant on Civil and Political Rights, Article 37(a) of the UN Convention on the Rights of the Child, and Safeguard 3 of the Safeguards guaranteeing protection of the rights of those facing the death penalty.

³ See Safeguard 3 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, and UN Economic and Social Council Resolution 1989/64, adopted on 24 May 1989.

⁴ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

- Limited contact with family members and/or lawyers.
- Excessive use of handcuffing or other types of shackles or restraints.
- Physical or verbal abuse and generally not being treated with respect for human dignity.
- Lack of appropriate health care (physical and mental).
- Being denied access to books, newspapers, exercise, education, employment, or any other type of prison activities.

We call on all States that retain the death penalty to implement the Standard Minimum Rules for the Treatment of Prisoners in order to keep to a minimum the suffering of those under sentence of death and to avoid any exacerbation of such suffering. At a minimum, we call on states to abolish the use of prolonged or indefinite solitary confinement for death row prisoners by virtue of their sentence.

We welcome the reference made by the Secretary-General to the requirement that legal aid is a necessity for ensuring that Article 6 of the International Covenant on Civil and Political Rights is strictly complied with.

In this context, we would like to highlight the recent adoption of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice at the twenty-first session of United Nations Commission on Crime Prevention and Criminal Justice. The Guidelines are a crucial step forward in setting out guidance as to how such a system can be adapted to suit each country's circumstances.

This set of principles constitutes the first international instrument exclusively dedicated to legal aid and recognises legal aid as an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law.

It is the foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

It complements Safeguard 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty⁵ which provides that the death penalty can not be imposed if adequate legal assistance has not been provided at all stages of the proceedings.

The Legal Aid Guidelines are aimed at ensuring that anyone who is arrested, detained or prosecuted for a crime punishable by a term of imprisonment or the death penalty receives legal assistance and that such legal aid is free of charge if the person cannot afford it, at all stages of the criminal justice process, including post-trial proceedings.

We call upon all States that retain the death penalty to put in place a comprehensive legal aid system that is accessible and effective, has a nationwide reach and is available to all without discrimination.

Finally, we welcome the Secretary-General's reference to the issue of children of incarcerated parents as discussed by the Committee on the Right of the Child in its Day of General Discussion on 30 September 2011. PRI welcomes the attention to the situation of children of offenders while noting that in practice they are the unintended victims of their parents' incarceration.

⁵ Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by UN Economic and Social Council resolution 1984/50 of 25 May 1984.

Children of those sentenced to death are in an even more traumatising situation than children of incarcerated parents in general.⁶ The date of the execution is routinely not known, and as death row prisoners are usually under a stricter regime, often these children they have less contact and are banned from touching their parent when they can visit. Details of the execution, including information about the remains of an executed parent, are withheld from the family (and sometimes lawyers) in some countries.

Failure ‘to provide the death row inmate, their families and children with information such as the date of the prisoner’s execution, or to allow a last visit or communication with the prisoner, the secrecy surrounding the actual execution, and the refusal to return the body to the family for burial or to indicate where the body is located, could all constitute forms of cruel, inhuman or degrading treatment for the family, including children, which is prohibited under Articles 37(a) and 9(4) of the Convention on the Rights of the Child.

The impact of a death sentence or execution on the children of the condemned should be considered and steps taken to ensure their rights and best interests are met. This should include providing children of those accused or convicted of offences carrying the death penalty with access to their incarcerated relatives and to be allowed to have regular and private meetings with the prisoner. Following execution, families should be permitted to have the prisoner’s body for burial and receive all personal effects.

What is more, retentionist states should take into account that the death penalty generates victims beyond the convicted parent, affecting multiple generations and take steps abolish the death penalty in law for all crimes.

⁶ Children of parents sentenced to death, Quaker United Nations Office, February 2012, <http://www.quano.org/geneva/pdf/humanrights/women-in-prison/ChildrenOfParentsSentencedToDeath.pdf>.