



Promoting fair and
effective criminal justice

UN Human Rights Council

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Item 3: General Debate - Thematic reports of the Secretary-General

Statement of Penal Reform International On the Question of the Death Penalty

22 August 2013

Penal Reform International (PRI)¹ welcomes the report of the UN Secretary-General on the Question of the Death Penalty (A/HRC/21/29) covering the period June 2012 to May 2013.

We highly welcome the accession by Benin and Latvia to the Second Optional Protocol (OP2) to the International Covenant on Civil and Political Rights (ICCPR). We welcome the signature by Madagascar of OP2 and the steps taken by the Plurinational State of Bolivia and Armenia towards ratification, and we encourage these states to ratify as soon as possible. PRI calls on all states not party to OP2 to accede to this instrument and to abolish the death penalty in law and practice.

PRI was pleased to see the increased level of support for the UN General Assembly Resolution calling for a moratorium on the use of the death penalty (Resolution 67/176). We encourage all states that retain the death penalty to enact a moratorium on sentencing and executions, and to commute the sentences of all those currently awaiting execution.

PRI is concerned about changes to the law in some jurisdictions² that have expanded the use of the death penalty, particularly for offences related to drugs and terrorism. We remind states of the finding, highlighted in the Secretary-General's report, that there is no persuasive evidence that the death penalty contributes more than any other punishment to eradicating drug trafficking or any other drug-related offences. At the same time, drug-related offences do not reach the threshold of 'most serious crimes' that is required for application of the death penalty by retentionist states, particularly in recent interpretations of that criterion by UN

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 These include Bangladesh (for organised trafficking in human beings), Kenya (for various acts committed by military personnel), India (for rape in certain cases), Papua New Guinea (for sorcery, aggravated rape and robbery), Nigeria (for various acts of terrorism) and USA (Mississippi) (for acts of terrorism).

experts.³

PRI is also concerned about the increased use of the death penalty for terrorism-related offences, including many that do not involve intentional killing, and hence do not reach the threshold of 'most serious crimes'. We believe that debates about the death penalty following heinous acts [[of terrorism]] can be highly emotive, thereby making it difficult to hold the reasoned and rational debate that is essential to respond to such acts.

PRI would like to recall the position of the Human Rights Committee, mentioned in the Secretary-General's report, that states should provide convicted persons and their family members with advance notice of the date and time of execution. Further, states should allow family members, particularly children, a final visit to say goodbye; this visit should be private and allow physical contact between the convicted person and family members.

We call on all states that retain the death penalty to ensure that it is imposed in a manner fully consistent with the 1984 ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards).⁴ Given the seriousness and irreversible nature of execution as a punishment, it is essential that the highest standards are adhered to. At a minimum, the death penalty should not be imposed on those who were under the age of 18 at the time of the alleged offence⁵, on pregnant women or mothers of small children, or on those who have mental or intellectual disabilities⁶.

As well as international standards specifically focused on the death penalty, there are UN Rules and Guidelines on relevant aspects of criminal justice. PRI would like to highlight two in particular:

1. The Standard Minimum Rules for the Treatment of Prisoners (SMR)⁷ provide a framework to keep to a minimum the suffering of those in prison, including those under sentence of death, and to avoid any exacerbation of such suffering. Those on death row, or in substitute alternative conditions, may be subject to conditions that amount to torture or cruel, inhuman or degrading punishment, such as life imprisonment without the possibility of parole, solitary confinement for long and indeterminate periods of time, and inadequate basic physical or medical provisions. 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.

2. Principle 3 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice, adopted by the UN General Assembly in 2012, explicitly enshrines an entitlement to legal aid at all stages of the criminal justice process for those charged with a criminal offence punishable by the death penalty. They constitute the first international instrument exclusively dedicated to legal aid and recognise legal aid as an essential element of a fair, humane and

³ For more about drugs, the death penalty and criminal justice, see Penal Reform International (2013) The unintended negative consequences of the 'war on drugs': mass criminalisation and punitive sentencing policies, available at: <http://www.penalreform.org/resource/unintended-negative-consequences-war-drugs-mass-criminalisation-punitive/>

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Adopted in 1955 and approved by the UN Economic and Social Council in 1957.

efficient criminal justice system that is based on the rule of law. Moreover, they help enable the provision of legal aid suited to each country's circumstances.

Finally, we welcome the Secretary-General's reference to the issue of children of parents sentenced to death and the panel discussion at this session of the Human Rights Council dedicated to the rights of these children. Conditions on death row (or alternatives for those whose sentences are commuted) should take into account the situation and rights of any children who may be visiting their parent, as well as conforming to the SMRs and other standards. In particular, children should be allowed visits whose frequency and length are sufficient to maintain a positive relationship with the imprisoned parent, and they should be allowed physical contact with their parent when visiting. This is particularly important given the isolation in which death row prisoners are frequently held. The children can be mentally and emotionally distressed by the death of the parent at the hands of the state (including a permanent change in their relationship with and attitude towards state authority) and by seeing a deterioration in their parent's mental health if the parent experiences 'death row phenomenon' (mental ill health related to the conditions of imprisonment and knowledge of forthcoming execution).

In order to prevent these and other negative effects, the impact of potential sentences (including death sentences) on children should be taken into account when sentencing a parent, in accordance with Article 3 of the UN Convention on the Rights of the Child.⁸ There should be greater recognition and awareness given to all those whose lives are negatively affected by the passing of a death sentence or an execution, and in order to minimise this human suffering and [potential] abuse of the human rights of those affected, retentionist states should take steps to abolish the death penalty in law and practice.

End./

⁸ Article 3(1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.