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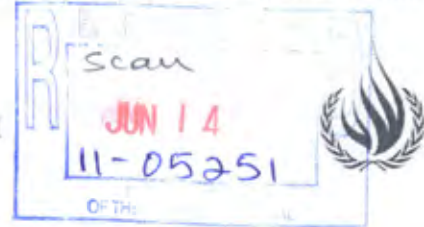


UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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MEMORANDUM



ATO: Mr. Vijay Nambiar
Chef de cabinet
Executive Office of the Secretary-General

ZM/DP-1/2011

REF:

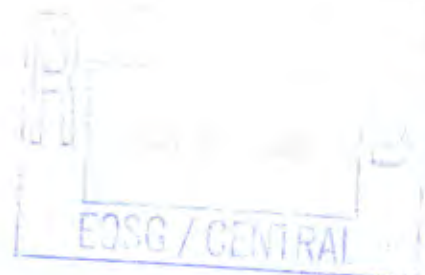
DE/FROM: Navanethem Pillay
High Commissioner for Human Rights

DATE: 8 June 2011

OBJET: Report of the Secretary-General to the Human Rights Council on the question of
SUBJECT: the death penalty (A/HRC/18/20)

1. Please find attached, for your information, the report of the Secretary General on the question of the death penalty prepared pursuant to Human Council Decision 2/102 and Commission on Human Rights Resolution 2005/59.
2. The report follows the format of the previous annual reports of the Secretary-General to the Human Rights Council on the question of the death penalty. The present report contains information covering the period from July 2010 to June 2011, and draws attention to a number of phenomena, including the continuing trend towards abolition, the ongoing difficulties in gaining access to reliable information on executions, and various international efforts towards the universal abolition of the death penalty.
3. While the issue of the death penalty remains highly divisive in UN political fora, the present report does not contain anything specifically sensitive or controversial. It recounts factual events in a format that has been accepted by the Council over a number of years. The conclusions echo the analysis in the Secretary-General's report (A/65/280) to the General Assembly in 2010, as well as the analysis contained in last year's report (A/HRC/15/19) to the HRC.
4. The report is submitted to the Executive Office of the Secretary-General for information only.

cc : Ivan Šimonović, Assistant Secretary-General for Human Rights



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General Assembly

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Human Rights Council

Eighteenth session

Agenda item 2

**Annual report of the United Nations High Commissioner for
human rights and reports of the office of the 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**

Question of the death penalty

Report of the Secretary-General

Summary

The present report contains information covering the period from July 2010 to June 2011, and draws attention to a number of phenomena, including the continuing trend towards abolition, the ongoing difficulties in gaining access to reliable information on executions, and various international efforts towards the universal abolition of the death penalty.

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I. Introduction

1. Since 2006, pursuant to Commission on Human Rights resolution 2005/59, the Secretary-General submitted to the Commission on Human Rights annual reports on the question of the death penalty. The Human Rights Council, in its decision 2/102, requested the Secretary-General to continue with the fulfilment of his activities, in accordance with all previous decisions adopted by the Commission on Human Rights, and to update relevant reports and studies. The present report is submitted in this context as an update of previous reports on the question of the death penalty, and mostly covers developments on the question of the death penalty from July 2010 to June 2011.¹

2. This report has been prepared on the basis of information received from member States;² and on the basis of information collected from available sources, including information from United Nations Agencies, international and regional bodies, and non-governmental organizations.

II. Changes in Law and Practice

3. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice mostly cover non-legislative measures reflecting a new approach regarding the use of the death penalty, including the decision to observe a moratorium, or to maintain a *de facto* moratorium.

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

4. Around 140 of the 192 UN Member States are believed to have abolished the death penalty or introduced a moratorium either legally, or in practice. However, only 73 States ratified the Optional Protocol to ICCPR.

5. Gabon abolished the death penalty for all crimes in February 2010.³ According to the new law, the death penalty is substituted by life imprisonment with the possibility of pardon or amnesty, conditional freedom or alternative means, only after having served at least thirty years of imprisonment. In April 2010, the Parliament of Djibouti also adopted an amendment to the constitution abolishing the death penalty.

¹ This report also includes information with regard to developments that occurred during the period January-June 2010 and which were not included in the previous report (A/HRC/15/19).

² Algeria, Argentina, Belarus, Bosnia and Herzegovina, Canada, Cuba, Egypt, Georgia, Guatemala, Jamaica, Lao DPR, Moldova, Slovak Republic, Spain, Switzerland, Tunisia, Turkey, Uzbekistan.

³ Law 3/2010, which abolishes the death penalty in Gabon was approved by the Parliament in January 2010 and promulgated on 15 February 2010 (Information received in February 2011).

6. In the United States of America (USA), in March 2011, the State of Illinois adopted a law abolishing the death penalty, becoming the sixteenth State in the USA to abolish the death penalty. In his statement concurrent with the signing of the bill, the Governor of the State of Illinois stated that "I have found no credible evidence that the death penalty has a deterrent effect on the crime of murder" and "the enormous sums expended by the state in maintaining a death penalty system would be better spent on preventing crime and assisting victims' families in overcoming their pain and grief."⁴

7. In 2010, the Ministry of Justice of Lebanon submitted to the National Assembly a draft bill to abolish the death penalty, but it did not find majority approval.⁵ Bills abolishing the death penalty have been pending in the parliaments of Mali, Mongolia and South Korea since 2010.⁶ In January 2011, the Government of Guatemala presented a bill to the Congress to reform the Criminal Code, the Criminal Procedure Code and the Anti Narcotic Law aiming to abolish the death penalty.⁷

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

8. No new country abolished the death penalty for ordinary crimes during the reporting period.

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

9. Even in countries where the application of the death penalty remains, some noticeable steps towards restricting its use were recorded during the reporting period. In particular, judicial, legislative and administrative developments were recorded in several countries with regard to the mandatory imposition of the death penalty and the procedural aspects of its implementation.

10. The mandatory imposition of the death penalty with no consideration of the defendant's personal circumstances or the circumstances of the particular offence was declared unconstitutional in Bangladesh. In its judgment, the High Court Division of the Supreme Court of Bangladesh stated that "any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court's discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law".⁸ The Court of Appeal of Kenya ruled in July 2010 that the mandatory imposition of the death penalty for murder violated the protections against arbitrariness and inhumane treatment and was "inconsistent with the spirit and letter of the constitution".⁹

⁴ Bill 3539 signed by the Governor in 9 March and will be effective from 1 July 2011, State of Illinois Press Release 09 March 2011.

⁵ A/HRC/16/2-41, Draft Report of the Human Rights Council on its Sixteenth Session, Paragraph 586.

⁶ Death Sentences and Executions 2010, Amnesty International, AI Index: Act 50/001/2011, March 2011, page 7.

⁷ Note Verbale of Guatemala dated 4 May 2011.

⁸ *Bangladesh Legal Aid and Services Trust Vs. Government of the People's Republic of Bangladesh*, Writ Petition No. 8283 of 2005; Judgment issued in 2010.

⁹ *Mutiso Vs. Republic of Kenya*, Criminal Appeal No. 17 of 2008, paragraph 28, 33-34, 36-38, Court of Appeal at Mombasa, July 30, 2010.

11. In October 2010, the Parliament of Guyana adopted a bill abolishing the mandatory imposition of the death penalty against individuals convicted of murder. The death penalty, however, remains applicable for certain categories of murder. During the Universal Periodic Review conducted by the Human Rights Council in May 2010, Guyana committed to continue to consider and consult on the abolition of the death penalty and to report to the Human Rights Council in two years.¹⁰

12. China continued to apply the death penalty in a large number of cases.¹¹ However, in July 2010, new regulations were jointly issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministries of Public Security, State Security and Justice. These regulations strengthen the prohibition of the use of illegal evidence in criminal cases, including coerced confession and other evidence obtained through torture and other ill-treatment, and enhance legal procedures regarding the collection, examination, verification and determination of the legality of evidence in cases which may lead to the imposition of the death penalty. In February 2011, the National People's Congress in China also passed a law removing the death penalty for thirteen non violent economic crimes.¹²

13. In April 2011, the Parliament of Gambia abolished the death penalty for drug offences, observing that it had overlooked the constitutional prohibition against the death penalty for offences not resulting in death when adopting legislation in 2010 introducing the death penalty for drug offences.¹³

D. Countries which have ratified international and regional instruments providing for the abolition of the death penalty

14. On 6 December 2010, Kyrgyzstan acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty, thus becoming the seventy-third State party to the protocol.

15. A draft law providing for the ratification of the Second Optional Protocol to ICCPR has been under consideration in the Mongolian Parliament since 2010.

16. On 1 February 2011, the Council of Ministers of the transition government in Tunisia announced that it would ratify various international human rights instruments, including the Second Optional Protocol to ICCPR.

17. There were no new ratifications of or accessions to the American Convention on Human Rights to Abolish the Death Penalty and to Protocol No. 6 to the European Convention of Human Rights during the reporting period.

¹⁰ A/HRC/15/14/Add.1, paragraph 52, see also paragraphs 32-36 on the universal periodic review and the death penalty.

¹¹ AI Index: Act 50/001/2011, March 2011; see also para. 23.

¹² Chinese Government's Official Web Portal, China Exempts 13 Crimes from Death Penalty, http://english.gov.cn/2011-02/25/content_1810870.htm, Feb. 25, 2011.

¹³ The death penalty for drug offences was introduced through the adoption of the Drug Control Amendment Act 2010.

E. Countries which have introduced a moratorium on executions

18. No new country introduced a moratorium on executions during the reporting period.

F. Countries which have reintroduced the use of the death penalty, extended its scope, or resumed executions

19. In 2010, the scope of the death penalty was expanded in Gambia. Three bills¹⁴ were adopted by the National Assembly to make human trafficking, rape, violent robbery and possession of more than 250g of heroin or cocaine an offence punishable by the death penalty.¹⁵

20. A new Anti-Narcotics law was passed in December 2010 and came into force on 4 January 2011 in Iran. Article 18 of the new law provides for the death penalty for drug traffickers and traders.¹⁶

21. In February 2011, China introduced the death penalty for forced organ removal from juveniles resulting in death.¹⁷

II. Enforcement of the death penalty

22. As has been noted in previous reports of the Secretary-General, up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. This difficulty arises from a lack of transparency on the part of many States in relation to numbers and characteristics of individuals executed. In some States, this information is considered a State secret or to be an issue of national criminal justice system which should not be interfered with. Publishing figures on the use of the death penalty is prohibited by law in one State.

23. In 2010, the global number of executions (excluding China) estimated by human rights organizations is 527, with the proviso that the actual figure may be significantly higher.¹⁸ It was further reported that at least 2024 new death sentences were known to have been imposed in 67 countries in 2010.¹⁹ While there is no accurate information on the total number of executions in China, Amnesty International reported that in 2010, China continued to use the death penalty

¹⁴ The Drug Control Amendment Act 2010, the Trafficking in Persons Amendment Act 2010 and the Criminal Code Amendment Act 2010.

¹⁵ In April 2011, however, the Parliament of Gambia abolished the death penalty for drug offences. See paragraph 13 above.

¹⁶ Report of the Secretary General on the Human Rights Situation in Iran, A/HRC/16/75, paragraph 12.

¹⁷ Chinese Government's Official Web Portal, China Exempts 13 Crimes from Death Penalty, http://english.gov.cn/2011-02/25/content_1810870.htm, Feb. 25, 2011.

¹⁸ Death Sentences and Executions 2010, Amnesty International, AI Index: Act 50/001/2011, page 5; See also *Facts and Figures about the Death Penalty 2010*, Hands off Cain, May 2011 (draft report).

¹⁹ *Supra* note 17, page 5.

extensively and executed thousands of people for a wide range of crimes that included non-violence offences.²⁰

24. Amnesty International reported that in most countries where support for the death penalty is still strong, capital punishment continues to be reportedly imposed after unfair trials and often based on confessions extracted through torture. In most countries, the death penalty is used disproportionately against the poor, members of minority racial, ethnic and religious communities and other minorities. In some countries death sentences are handed down for non-violent crimes that do not meet the threshold of "most serious crimes" - such as economic crimes, sorcery, apostasy and drug related offences²¹ or sexual relations between consenting adults.²²

25. Reports also indicate that various methods of execution, including beheading, electrocution, hanging, lethal injection, shooting or stoning were used during the reporting period.²³ Public executions were reportedly carried out in some States,²⁴ while in other States, death row inmates were not informed of their forthcoming execution, nor their families or lawyer.²⁵

26. In some cases, lethal chemicals or equipments were reportedly traded from abolitionist States to retentionist States and used for the implementation of the death penalty. In January 2011, thirteen civil society organizations signed a submission appealing to the European Commission to control the exportation, from Europe, of the drugs that are used in executions in the USA. The submission seeks to add sodium thiopental to Annex III of EU Council Regulation 1236/2005 which makes it illegal to "trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment".²⁶ In April 2011, fourteen member States of the European Union (EU), including Spain, urged the European Union to impose an export ban on a drug used for lethal injections in several US states.²⁷

27. The application of the death penalty for drug offences remains one of the major challenges. Harm Reduction International reported that in 2010 there were 32 countries or territories that prescribed the death penalty for drug-related offences; and hundreds of people were known to have been executed for drug-related offences. According to various sources, more than 150 people were executed for a drug offence in Iran in 2010. In China, at least 59 people were executed in the week around 26 June 2010 to mark the International Day Against Drug Abuse and Illicit Trafficking, added to an unknown number of people who have been put to death for drug-related offences throughout the year. Saudi Arabia is known to have beheaded one person for smuggling hashish. In 2010, death sentences for drug-related offences were also passed in Egypt, Kuwait, Laos People's Democratic Republic, Malaysia, Pakistan, Singapore, Taiwan, United Arab Emirates and Vietnam.

²⁰ Id.

²¹ See following paragraphs 28 and 29 for further information on the application of the death penalty for drug related offences.

²² Death Sentences and Executions 2010, Amnesty International, AI Index: Act 50/001/2011, March 2011, page 5-6; See also www.deathpenaltyworldwide.org

²³ See www.deathpenaltyworldwide.org

²⁴ *Supra* Note 21, pages 6, 30; See also *supra* note 16, paragraph 17 and The Death Penalty World Wide 2011 (Draft Report), Hands Off Cain, May 16, 2011, page 8-9, 24

²⁵ *Supra* Note 21, pages 6, 24

²⁶ http://www.penalreform.org/files/Joint_NGO_Submission_on_EU_Torture_Reg_sodium_thiopental%5B1%5D.doc

²⁷ Note Verbale of Spain, dated 28 April 2011,

Reportedly, at least 58 drug offenders are on death row in Indonesia and 339 (including 68 women) in Thailand.

28. Several countries, including Iran, Nigeria, Pakistan, Saudi Arabia, United Arab Emirates and Yemen imposed death sentences against juvenile offenders during the reporting period.²⁸ According to a UNICEF report published in 2011, 14 juveniles were executed in the last five years in Yemen; 11 juveniles are now on death row; and 84 are at risk of the death penalty.²⁹

IV. International Developments

29. The international community continued its efforts toward the abolition of the death penalty during the reporting period. At the United Nations, the General Assembly and the Human Rights Council addressed the question of the death penalty. Human rights treaty bodies also continued to address this issue while examining State Party reports and individual communications. United Nations agencies, offices, programs and funds also continued to address the question of the death penalty in their programs and activities. Inter-governmental regional bodies and non-government organizations also initiated several programs towards abolishing the death penalty worldwide.

A General Assembly

30. On 21 December 2010, the UN General Assembly adopted a third resolution (65/206) on the moratorium on the use of the death penalty, which reaffirms previous UN General Assembly resolutions 62/149 and 63/168 and calls upon all States to respect the international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty. The resolution also requests States to: provide the Secretary-General with information in this regard; make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates; progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed, and establish a moratorium on executions with a view to abolishing the death penalty. The resolution also calls upon States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard. Finally, it requests the Secretary-General to report to the General Assembly at its sixty-seventh session in 2012 on the implementation of the calls contained in the resolution.³⁰

31. The General Assembly also addressed the question of the death penalty in Iran and in December 2010 passed resolution 65/226 which expressed deep concern at "the continuing high incidence of and dramatic increase in death sentences carried out in the absence of internationally recognized safeguards"; and called upon Iran "to abolish, in law and in practice, public executions

²⁸ *Supra* note 21, Amnesty International Report, page 13; *supra* note 23, Hands Off Cain Report, pages 7, 17; See also following paragraphs 31-32 for a discussion on the Committee on the Rights of the Child and the death penalty.

²⁹ http://www.crin.org/email/crinmail_detail_popup.asp?crinmailID=3467

³⁰ In a note verbale addressed to the Secretary-General dated 11 March 2011, 53 States Members of the United Nations expressed, *inter alia*, their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law". (A/65/779)

and other executions carried out in the absence of respect for internationally recognized safeguards".³¹

B. Universal Periodic Review

32. The United Nations Human Rights Council continued to address the question of the death penalty in the context of the Universal Periodic Review. During its eighth session of the Universal Periodic Review held in May 2010, the Human Rights Council addressed the question of the death penalty in Belarus, Granada, Guinea, Guyana and Lao People's Democratic Republic. Guyana committed to consult and report to the Human Rights Council in two years time on the abolition of the death penalty.³² It further informed the Council that it had tabled an amendment to the Criminal Law (Offences) Act providing for varied sentences for different categories of murder, including life imprisonment and lesser sentences of imprisonment, as well as access to parole.³³ Belarus informed the Council that following Europe's trend to abolish the death penalty, it would continue its efforts to mould public opinion in favour of abolition and actively cooperate with international and regional organizations. However, Belarus did not accept the Council's recommendation to abolish the death penalty.³⁴

33. Regarding the abolition of the death penalty or the adoption of a moratorium, the Minister of Justice of Guinea, while expressing views of his country at the Human Rights Council, highlighted that following high level consultations, Guinea had decided that it was premature to include this question in the national debate, especially during the delicate transitional phase. In this regard, the Minister of Justice further stated that "the solution would be to have a *de facto* moratorium".³⁵ Lao PDR noted that "the death penalty was maintained only to deter the most serious crimes, in particular drug trafficking", and that at present it was not ready to consider ratifying the 2nd Optional Protocol to ICCPR.³⁶ Similarly, the recommendation to ratify the 2nd Optional Protocol to ICCPR did not meet the support of the Government of Lesotho. However, it highlighted that there has been no capital punishment carried out since 1995.³⁷ Grenada rejected recommendations in relation to the abolition of the death penalty and establishing a formal moratorium on executions. In this respect, it further noted that while it remains in the laws, the death penalty has not been applied for decades on its territory.³⁸

34. During the ninth session of the Universal Periodic Review held in November 2010, the Human Rights Council addressed the question of the death penalty in Jamaica, Lebanon, Liberia, Libyan Arab Jamahiriya, Mongolia, Maldives, Malawi and the United States of America. Regarding recommendations to repeal its Death Penalty Law, Liberia stated that it was aware of existing concerns and ensuing recommendations which emanated from its obligations under the Second Optional Protocol to the ICCPR, to which it acceded in 2005. It informed the Council that high criminal rates had required the reintroduction of the death penalty and that the abrogation of the law allowing for the death penalty would need more time and understanding by the Liberian people with

³¹ General Assembly Resolution 65/226 of 21 December 2010

³² A/HRC/15/L.10, Report of the Human Rights Council on its fifteenth session, paragraph 569

³³ *ibid.*, paragraph 569.

³⁴ *ibid.*, paragraph 641.

³⁵ A/HRC/15/L.10, Report of the Human Rights Council on its fifteenth session, paragraph 300.

³⁶ *ibid.*, paragraph 300.

³⁷ *ibid.*, paragraph 387.

³⁸ *ibid.*, paragraph 504.

whom consultations had been initiated.³⁹ The recommendations to consider issuing a moratorium on the execution of death penalty sentences were examined by the Libyan Arab Jamahiriya and enjoyed its support.⁴⁰

35. Mongolia accepted the recommendations with regard to its accession to the Second Optional Protocol to the ICCPR. It further reported on its plans to declassify information on death penalty sentences imposed in the past and to abolish classification in the future following the approval of a Bill, as well as on other measures towards the abolition of the death penalty.⁴¹ Mauritania rejected the recommendation to abolish the death penalty, but reaffirmed its de facto abolitionist position, noting that in 17 years, no death sentence had been carried out on its territory.⁴² The United States of America indicated that the recommendation to end capital punishment did not enjoy its support and that it supported both recommendations with respect to executions regarding minors and persons with certain intellectual disabilities, but not regarding all persons with any mental illness.⁴³

36. During the eleventh session of the Universal Periodic Review held in May 2011, Latvia reported on the preparation by the Government of the draft legislative amendments on the abolition of the death penalty in time of war and on the signature of Protocol No.13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty in all circumstances and preparation for its ratification. Latvia also reported that this initiative had not gained support in the parliament, but that discussions on this issue would continue.⁴⁴

C. Special Procedures of the Human Rights Council-

37. Special procedures of the Human Rights Council also continued to address the question of the death penalty within their respective mandates. In February 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions, jointly with the Special Rapporteur on the independence of judges and lawyers, warned in a public statement of a dramatic surge in death sentences in Iran which were carried out in the absence of internationally recognized safeguards, despite numerous calls by the United Nations to immediately halt executions. The experts noted that under international law, the death penalty is regarded as an extreme form of punishment which, if it is used at all, should only be imposed for the most serious crimes, after a fair trial has been granted to the accused. They called on the Iranian Government to immediately declare a moratorium on the death penalty in view of the gravity of the situation and the regular disregard of due process guarantees.⁴⁵ The Special Rapporteur on the right of everyone to the enjoyment of the highest

³⁹ Paragraphs 351, 352, A/HRC/16/L.41 Draft report of the Human Rights Council on its sixteenth session.

⁴⁰ Paragraph 93.33, A/HRC/16/15, Report of the Working Group on the Universal Periodic Review-Libyan Arab Jamahiriya.

⁴¹ Paragraph 420, supra note 44.

⁴² Paragraph 711, ibid.

⁴³ Paragraph 8, Report of the Working Group on the Universal Periodic Review-United States of America, Addendum, A/HRC/16/11/Add.1.

⁴⁴ Paragraph, 128, A/HRC/WG.6/11/LVA/1.

⁴⁵ OHCHR Press Release, UN experts call for a moratorium on death penalty in the Islamic Republic of Iran, 02 February 2011, Geneva.

attainable standard of physical and mental health also affirmed that the death penalty for drug-related offences violates international human rights law.⁴⁶

38. In his progress report, the Special Rapporteur on the situation of human rights in Myanmar, while commending the Government for the effective moratorium on the use of death penalty, regretted that lower courts continue to hand down death sentences.⁴⁷ The independent expert on the situation of human rights in Sudan recommended that the Government of National Unity of Sudan refrain from applying the death penalty against minors and that Sudan institute a moratorium on the imposition of the death penalty, as called for by the General Assembly in its resolution 62/149.⁴⁸

D. Human Rights Treaty Bodies

39. The United Nations human rights treaty bodies also continued to address the question of the death penalty in concluding observations adopted following the examination of State party reports and when considering individual communications. The Human Rights Committee made reference to the death penalty with respect to the examination of six States parties during the period under review: Belgium, Cameroon, Estonia, Jordan, Mongolia and Poland. The Human Rights Committee welcomed Estonia's ratification of the Second Optional Protocol to ICCPR, aimed at abolishing the death penalty, which entered into force in 2004.⁴⁹ It also encouraged Cameroon,⁵⁰ Jordan⁵¹ and Poland⁵² to ratify the Second Optional Protocol. It welcomed the adoption of a constitutional provision enshrining the principle of the abolition of the death penalty in Belgium⁵³ and encouraged Cameroon to abolish the death penalty, or at least to formalize the *de facto* moratorium on the death penalty.⁵⁴ It continued to welcome the *de facto* moratorium on the death penalty in place in Jordan since April 2007;⁵⁵ and expressed its concern that the death penalty has yet to be abolished *de jure* in Mongolia although it welcomed the moratorium on the execution of death sentences.⁵⁶

40. In two recent individual cases,⁵⁷ the Human Rights Committee reiterated that the imposition of a death sentence after a trial that did not meet the fair trial requirements amounted to a violation of article 6 of ICCPR. In another case involving the refusal by the authorities of Kyrgyzstan to provide information on the number of individuals sentenced to death in the country,⁵⁸ the Committee reiterated that the specific information sought by the author, i.e. the number of individuals sentenced to death, was considered to be of public interest.⁵⁹ The Human Rights Committee considered that the

⁴⁶ Report submitted of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/65/255, paragraph 17.

⁴⁷ Progress report of the Special Rapporteur on the situation of human rights in Myanmar A/HRC/13/48, paragraph 40.

⁴⁸ Report of the independent expert on the situation of human rights in the Sudan A/HRC/14/41, paragraph, 82.

⁴⁹ CCPR/C/EST/CO/3, paragraph 3.

⁵⁰ CCPR/C/CMR/CO/4, paragraph 14.

⁵¹ CCPR/C/JOR/CO/4, paragraph 20.

⁵² CCPR/C/POL/CO/6, paragraph 11.

⁵³ CCPR/C/BEL/CO/5, paragraph 4.

⁵⁴ CCPR/C/CMR/CO/4, paragraph 14.

⁵⁵ CCPR/C/JOR/CO/4, paragraph 3.

⁵⁶ CCPR/C/MNG/CO/5, paragraph 6.

⁵⁷ Communication No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011; and Communication No. 1503/2006, *Akhadov v. Kyrgyzstan*, Views adopted on 25 March 2011.

⁵⁸ Communication No. 1470/2006, *Toktakinov v. Kyrgyzstan*, Views adopted on 28 March 2011.

⁵⁹ In accordance with resolutions Nos. 2003/67 and 2004/60 of the Commission on Human Rights

general public has a legitimate interest in having access to information on the use of the death penalty and that the State party (Kyrgyzstan) had failed to justify the restrictions imposed on the exercise of the author's right to access information on the application to the death penalty held by public bodies. The Committee found, therefore, a violation of article 19, paragraph 2, of the Covenant.

41. The Committee on the Rights of the Child also made reference to the death penalty with regard to four States parties during the period under review: Belarus; Guatemala; Lao PDR and Sudan (under both the CRC and the Optional Protocol to the CRC on the involvement of children in armed conflict). The Committee recommended that Belarus⁶⁰ and Guatemala⁶¹ ratify the Second Optional Protocol to ICCPR. In its concluding observations on the report of Sudan, the Committee on the Rights of the Child expressed serious concerns that, despite the adoption of the Child Act (2010), which prohibits the passing of the death sentence on children, under article 36 of the Sudan Interim Constitution, the death penalty might be imposed on persons below the age of 18 in cases of retribution or *hudud*.⁶² The Committee was also concerned at recent reports that the death penalty continues to be carried out on children. The Committee reminded Sudan that the application of the death penalty to children is a grave violation of articles 6 and 37 (a) of the Convention on the Rights of the Child, and urged Sudan to ensure that the death penalty is not carried out on children, including in cases of retribution or *hudud*, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.

42. The Committee on the Rights of the Child also expressed concern that the death penalty is not explicitly prohibited for children in the Lao People's Democratic Republic.⁶³ While noting with satisfaction that the death penalty is prohibited by law in the Child Rights Act, the Committee is seriously concerned at reports related to an estimated forty prisoners reportedly on death row for crimes committed when they were below the age of 18. It reiterated the strong concern expressed by the African Committee on the Rights and Welfare of the Child concerning the mandatory death penalty for offences in Sharia Penal Codes (including Hadd punishments) which, given the absence of definition of the child as a person under the age of 18 and that in certain states children are defined by puberty, could be imposed on children under Sharia jurisdiction.⁶⁴ The Committee on the Rights of the Child recommended that Nigeria take the opportunity of its ongoing constitutional review to expressly prohibit the application of the death penalty to persons under 18 years of age. It also urged Nigeria to review the files of all prisoners on death row for crimes committed before the age of 18; and to prohibit the death penalty for all persons under the age of 18 in domestic legislation.⁶⁵

on the question of the death penalty, and in accordance with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (29 June 1990).

⁶⁰ CRC/C/BLR/CO/3-4, paragraph 74.

⁶¹ CRC/C/GTM/CO/3-4 paragraph 103.

⁶² Article 36 (2) of the Interim national Constitution of the Republic of Sudan 2005 states: "The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or *hudud*".

⁶³ CRC/C/LAO/CO/2, paragraph 71.

⁶⁴ CRC/C/NGA/CO/3-4, paragraph 32.

⁶⁵ *Ibid*, paragraph 33.

43. The Committee against Torture also continued to welcome the abolition of the death penalty, or the moratorium on executions observed in some countries as well as to recommend the ratification of the Second Optional Protocol to ICCPR. In addition, considering that information on death sentences, including data, is not made public by some States parties, the Committee requested this information to be systematically provided. In its concluding observations on Ethiopia, the Committee recommended that the State party consider ratifying the Second Optional Protocol to ICCPR, extending its *de facto* moratorium on the execution of the death penalty and commuting sentences for prisoners on death row. The Committee also requested Ethiopia to indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence.⁶⁶ In the consideration of Mongolia's initial report, the Committee encouraged Mongolia to continue efforts towards abolition and called on the state to declassify information on the death penalty.⁶⁷

E. United Nations Offices, Agencies, Funds and Programs

44. The United Nations High Commissioner for Human Rights (OHCHR) continued to address the question of the death penalty under her mandate to promote and protect the enjoyment and full realization, by all people, of all human rights. The High Commissioner for Human Rights also sent official communications to the relevant authorities and issued public press releases addressing the question of the death penalty. In February 2011, the High Commissioner publicly expressed alarm at the dramatic increase in executions since the beginning of 2011 in Iran and called upon to institute a moratorium on executions with a view to abolishing the death penalty.⁶⁸ In May 2011, the High Commissioner issued a press release expressing deep concern regarding the deteriorating human rights situation in Bahrain, including the sentencing to death of four pro-democracy protestors after a closed-door military trial.⁶⁹

45. In 2010, the United Nations Office on Drugs and Crimes (UNODC) submitted a report⁷⁰ entitled 'Drug control, crime prevention and criminal justice: a human rights perspective' to the UN Commission on Narcotic Drugs and the UN Commission Crime Prevention and Criminal Justice. The report reaffirmed that the International Covenant on Civil and Political Rights specified that in countries which had not abolished the death penalty, the sentence of death may be imposed only for the "most serious crimes". The concept of "most serious crimes" is limited to those where it can be shown that there was an intention to kill which resulted in the loss of life. The weight of opinion indicates that drug offences (such as possession and trafficking) and those of a purely economic nature do not meet this threshold. Moreover, States that have abolished the death penalty are prohibited from extraditing any person to another country where he or she might face capital punishment.

46. The UNODC further reported that despite such prohibitions, a considerable number of the 47 retentionist States that continue to use capital punishment have carried out executions for drug offences in recent years. In some of these countries, drug offenders constitute a significant

⁶⁶ CAT/C/ETH/CO.1, paragraph 24

⁶⁷ CAT/C/MNG/CO.1/CRP.1, paragraph 6(f)

⁶⁸ OHCHR Press Release, *Iran: UN Human Rights chief concerned about recent spate of executions*, February 2011, Geneva.

⁶⁹ UN Human Rights Chief voices deep concerns about Bahrain crackdown, UN News Centre Press Release, 5 May 2011 (<http://www.un.org/apps/news/story.asp?NewsID=38279&Cr=Bahrain&Cr1>)

⁷⁰ E/CN.7/2010/CRP.6-E/CN.15/2010/CRP.1, 2010

proportion of total executions. The report emphasized that as an entity of the United Nations system, UNODC advocates the abolition of the death penalty and called upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.

47. The Special Representative of the UN Secretary General on Violence against Children extended her support for a campaign launched by the Child Rights Information Network (CRIN) in October 2010 to end all inhuman sentencing of children, including the death penalty. In her statement, the Special Representative stated that in some states, children may receive sentences of extreme violence including flogging, stoning, amputations, life sentences and executions and condemned the many grave injustices against children perpetrated under some penal codes.⁷¹

F. International Commission against the Death Penalty

48. Other international developments during the reporting period includes the establishment of the International Commission against the Death Penalty in October 2010, with the aim of strengthening the fight against the death penalty in all regions of the world. The establishment of the Commission was an inter-governmental initiative led by Spain and supported by Algeria, Argentina, the Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey. The International Commission is composed of 12 members of high authority and international prestige, with complete independence in their decision-making and broad geographical representation.

G. Regional Bodies

49. Regional bodies also continued to support the world's effort towards the abolition of the death penalty. In June 2010, the African Commission on Human and Peoples' Rights issued an interim injunction preventing the state governors of Nigeria from resuming executions in the country, pending consideration of a petition filed by more than 800 death row inmates.

50. In November 2010, the Working Group on the Death Penalty in Africa, established by the African Commission on Human and Peoples' Rights (ACHPR), reported that it had examined a draft Resolution on the Abolition of the Death Penalty. It considered that it was important that the African Commission envisage the adoption of such a resolution to move towards the abolition of the death penalty. Furthermore, the Working Group also prepared a document on the 'Question of the Death Penalty in Africa' which reflected the current situation in Africa, and was presented to the ACHPR in May 2011. The Document envisaged the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.⁷² The Working Group also sent letters of appeal to the relevant authorities on the situation of the death penalty in Nigeria, Sudan and

⁷¹ <http://www.crin.org/violence/search/closeup.asp?infoID=23332>

⁷² Progress Report of the African Commission on Human and Peoples' Rights Working Group on the Death Penalty in Africa, November 2010.

Gambia.⁷³ In a statement issued by the Chair of the Working Group, States parties to the African Charter were reminded that capital punishment is cruel and therefore morally unjustifiable, unnecessary, irreversible, illogical, and represents a most grave violation of fundamental human rights, in particular the right to life under Article 4 of the African Charter.⁷⁴

51. The European Parliament adopted a resolution on the death penalty on the occasion of the World Day against the Death Penalty in October 2010. In its resolution, the European Parliament reiterated its long-standing opposition to the death penalty in all cases and under all circumstances and emphasised once again that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights. It urged the European Union (EU) to use all tools of diplomacy and cooperation assistance available to it to work towards the universal abolition of the death penalty.⁷⁵

52. In July 2010, the European Union convened an annual forum of European institutions and non government organisations in Brussels, which discussed four issues, including EU instruments in the Fight against the Death Penalty. The EU-NGO Annual Forum affirmed that the global abolition of the death penalty ranks among the main objectives of EU human rights policy.⁷⁶ On 10 October 2010, the European Union issued a statement to mark the World and European Day against the Death Penalty, reiterating that the death penalty is a cruel and inhuman punishment which represents an unacceptable denial of human dignity and integrity. The statement also recalled that the EU uses all available means – including diplomatic channels and raising public awareness – in working towards the goal of abolishing the death penalty throughout the world, and that it encourages public debate, strengthening public opposition and putting pressure on retentions countries to abolish the death penalty, or at least introduce a moratorium as a first step.⁷⁷

53. The Parliamentary Assembly of the Organization for Security and Co-Operation in Europe (OSCE) adopted a resolution on the death penalty in July 2010. The Resolution called upon participating OSCE States applying the death penalty to declare an immediate moratorium on executions. In particular, it called upon Belarus and the United States of America to take immediate steps towards abolition of the death penalty. It also called upon Latvia to amend its Criminal Code in order to abolish the death penalty for murder with aggravating circumstances if committed during wartime.⁷⁸

54. The Inter-American human rights mechanisms also continued to address the question of the death penalty during the reporting period. In October 2010, the Inter-American Commission on Human Rights (IACHR) urged the United States to suspend the judicial execution of Jeffrey

⁷³ Combined Activity Report of Commissioner of the African Commission on Human and People's Rights and the Chairperson of the Working Group on the Death Penalty in Africa, 49th Ordinary Session of the African Commission on Human and People's Rights, 28 April - 12 May 2011, Banjul, Gambia.

⁷⁴ *Ibid.*, paragraph 14.

⁷⁵ European Resolution on the World Day Against the Death Penalty, P7_TA (2010)0351 of 7 October 2010.

⁷⁶ Recommendations of the Forum on "EU Human Rights Instruments and the Lisbon Treaty: State of Play and Way Forward", 12-13 July 2010, Brussels.

⁷⁷ EU continues efforts to achieve universal abolition of death penalty, EU Press Release IP/10/1306 of 08/10/2010.

⁷⁸ <http://www.osce.org/home/71711>.

Timothy Landrigan, a beneficiary of precautionary measures granted by the IACHR in 2004.⁷⁹ In 2010, with regard to a petition regarding an extradition of a petitioner from Peru to China,⁸⁰ the IACHR considered that the allegations regarding inadequate evaluation by the Peruvian authorities of the guarantees provided by the People's Republic of China that it would not impose the death penalty on the petitioner and the possibility that he would be subjected to torture and cruel and inhumane treatment could characterize a failure to comply with the obligations arising from Articles 4 and 5 of the American Convention on Human Rights. In May 2010, IACHR also ordered the Peruvian State to refrain from extraditing the beneficiary and in November extended the provisional measures until March 31, 2011.⁸¹ During the reporting period, IACHR also declared several petitions related to the question of the death penalty admissible. In March 2011, 14 petitions were filed at IAHRC in which it was alleged that the United States of America violated the rights of the alleged victims who were sentenced to death in six states of the United States (North Carolina, South Carolina, Georgia, Missouri, Texas and Utah) and thereafter executed. All alleged victims were beneficiaries of earlier precautionary measures requested by the Commission.⁸²

55. While examining the human rights situation in Cuba in 2010, the Inter-American Commission urged Cuba to adopt the legislative and other measures necessary for ensuring that the death penalty is not imposed in violation of the principles of due process and a fair trial before a competent, independent, and impartial court previously established by law.⁸³

H. Other initiatives

56. During the reporting period, non-government organisations strengthened their efforts for the abolition of the death penalty. In September 2010, a regional conference on the death penalty was jointly organised in Alexandria (Egypt) by Penal Reform International (PRI), the Swedish Institute-Alexandria and the Arab Centre for the Independence of the Judiciary and Legal Profession, with the participation of civil society organizations, and regional and international bodies, including the European Union, Arab League, ACHPR and OHCHR. Subsequently, as an outcome of the conference, a toolkit entitled "the death penalty in the Middle East and North Africa: tools, techniques, tactics and strategies for abolition"⁸⁴ was published in December 2010. The toolkit includes practical suggestions to develop appropriate advocacy strategies, identify methodologies and provide guidance to influence change at a national, regional and international level.

⁷⁹ Despite the IAHRC's request of an immediate suspension of the execution, Jeffrey Timothy Landrigan was executed on October 26. The IACHR deplored the execution and concluded that his basic rights to due process had been violated. The Commission condemned the repeated failure on the part of the United States to comply with its decisions, especially in cases related to the death penalty. The Commission further urged the United States to implement all precautionary measures and decisions issued by the IACHR and demanded that it fully and properly respects its international human rights obligations, especially those derived from the American Declaration.

⁸⁰ Report No. 151/10, Petition 366-09 Wong Ho Wing Vs. Peru November 1, 2010.

⁸¹ The texts of the orders (in Spanish) are available at the following links:

http://www.corteidh.or.cr/docs/medidas/wong_se_02.pdf

⁸² Report No. 60/11 March 24, 2011, IAHRC

⁸³ Annual Report of the Inter-American Commission of Human Rights 2010, OEA/Ser.L/V/III, Doc.5, Rev.1, 7 March 2011

⁸⁴ *The death penalty in the Middle East and North Africa: tools, techniques, tactics and strategies for abolition* by Mervat Rishmawi and Taleb al-Saqqaf, December 2010

57. In February 2011, several human rights NGOs established an informal alliance to intensify a campaign against the death penalty in Thailand. At a side event during the UPR session of the UN Human Rights Council in May 2011, the World Coalition against the Death Penalty and the Center for International Human Rights at Northwestern University School of Law (Chicago, USA) launched a new international database of the laws and practices of states that retain the death penalty.⁸⁵

V. CONCLUSION

58. Recent developments on the question of the death penalty outlined in this report suggest that the effort to abolish the death penalty continues. With the adoption of the third resolution (65/206) on a moratorium on the death penalty, the UN General Assembly reiterated its call for a world-wide moratorium on the use of the death penalty, aiming to abolish it. The General Assembly has emphasized that the death penalty undermines human dignity. This sentiment finds echoes in every region of the world. To mark the twentieth anniversary of the entry into force of the 2nd Optional Protocol in July 2011, States should multiply their efforts to secure increased ratification of this international human rights instrument.

59. Abolishing the death penalty is a long process for many countries, which often only comes to closure after a period of difficult and even acrimonious national debate. States should make the relevant information on the death penalty available to the people to make such debates meaningful. Until the death penalty is abolished, Member States who still intend to impose the death penalty should either introduce a moratorium on the death penalty or only apply the death penalty 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 standards.

60. The continued efforts of the Human Rights Council, including through its universal periodic review and special procedures; and those of human rights treaty bodies are crucial in monitoring the recent trends towards the abolition of the death penalty and to provide appropriate guidance to States in this matter. UN agencies, inter-governmental regional bodies and non-government organisations should continue to support States in abolishing the death penalty through their advocacy, monitoring and technical cooperation activities.

61. The Office of the United Nations High Commissioner for Human Rights (OHCHR) had initially interpreted decision 2/102 as extending previous reports of the Commission of Human Rights and providing for an annual reporting cycle. Until recently, this interpretation had been deemed to have received the tacit approval of member States. However, an objection was placed on the record in 2010, albeit in the context of another report which equally used decision 2/102 as the basis for its annual reporting. OHCHR has thus further reviewed the said decision, and concluded that the Human Rights Council sought to fill a technical gap by ensuring that reports which were deemed to be submitted to the sixty-second session of the Human Rights Commission would be extended by one year and transferred to the subsequent substantive session of the Human Rights Council. With this transition period over, and the objection now on record with regard to the initial interpretation of annual reporting cycles, if the Human Rights Council wishes such reporting to be continued, a new Human Rights Council resolution or decision on the matter should be tabled.

⁸⁵ Visit www.deathpenaltyworldwide.org

Report of the Secretary-General to the Human Rights Council on the question of the death penalty (A/HRC/18/20)

Danielle Daou to: SGCentral

14/06/2011 09:48 AM

Ivan Simonovic, Linnea Arvidsson, Astrid Melchner, Kayoko Gotoh,
Cc: Nathalie Prouvez, Zaved Mahmood, Jan Hessbruegge, Shahrzad
Tadjbakhsh

Please find attached, for information, the report of the Secretary-General to the Human Rights Council on the question of the death penalty (A/HRC/18/20), for the EOSG.



Memo to Mr. Nambiar 18 June 2011.pdf Death Penalty A_HRC_18_20.pdf

Thank you for your attention

Danielle Daou
Office of the High Commissioner for Human Rights