



General Assembly

Distr.: General
22 September 2017

English only

Human Rights Council

Thirty-sixth session

11-29 September 2017

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 The Death Penalty Project Limited, 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.

[21 September 2017]

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

GE.17-16674(E)



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The Human Rights Council must act to ensure Commonwealth countries respect their international obligations in relation to capital punishment

The Death Penalty Project welcomes the Secretary General's yearly supplement to the quinquennial report on capital punishment, which emphasises the need for equal protection of the law, especially for individuals who are vulnerable by reason of their low-income status, mental or intellectual disability or by virtue of being a foreign national.

The Death Penalty Project is also concerned about the use of the death penalty in a number of Commonwealth states and wishes to draw the attention of the Human Rights Council to those member states who still retain capital punishment, and those who still impose mandatory death sentences in violation of international human rights law.

The Death Penalty in the Commonwealth

The global decline in the use of the death penalty and the increasing number of abolitionist countries is well documented. A total of 104 countries have abolished the death penalty for all crimes with a further eight countries that are abolitionist for ordinary crimes. This leaves 86 countries that have not committed themselves to abolition, yet 49 of these retentionist countries have not carried out an execution for at least a decade and are thus classified by the United Nations as 'abolitionist *de facto*'. Thirty of these countries are regarded as 'abolitionist in practice' by Amnesty International, meaning that there is a settled practice not to carry out executions. In total, 141 countries have forsaken the death penalty in law and practice (72%) and a further 19 have not carried out an execution for at least 10 years.

However, countries in the Commonwealth, taken as a whole, lag well behind the worldwide movement towards abolition of the death penalty. Whilst the general trend towards the decreasing frequency of executions parallels that of the rest of the world, only 37% of Commonwealth countries have abolished the death penalty *de jure*, compared with 57% of the rest of the world's nations. The lack of political will towards abolition of the death penalty in retentionist Commonwealth countries is further reflected in the voting records of countries at the United Nations General Assembly in December 2016, calling for a worldwide moratorium on executions with a view to abolishing the death penalty. Twenty (50%) of the 40 countries that voted against the resolution were members of the Commonwealth. Thus, 38% of the 53 Commonwealth countries rejected the underlying universal human rights message of the resolution by voting against it.

International Legal Obligations

Almost all countries that still enforce the death penalty, as well as those that have yet to abolish it in law and are classified as abolitionist in practice, have ratified the International Covenant on Civil and Political Rights (ICCPR). As far as the right to life is concerned, all state parties have an obligation to abide by the terms of the treaty in light of the evolving interpretation of Article 6 by the United Nations Human Rights Committee and the Human Rights Council.

Only five retentionist Commonwealth countries¹ have not signed nor ratified the ICCPR, yet all countries are expected to abide by the *Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty*. The obligation of states that have ratified the ICCPR must be interpreted in light of the intention of the drafters of the Covenant, namely to move towards full abolition. This is made clear in Article 6(6) which states that: '*Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant.*' All countries that are party to the ICCPR have an international obligation to move away from the death penalty and should be on an irrevocable path towards complete abolition of the death penalty *de facto* and *de jure*.

¹ Antigua and Barbuda, Brunei Darussalam, Malaysia, Singapore, and Saint Kitts and Nevis.

The mandatory death penalty

There is an overwhelming consensus that the mandatory death penalty, where death sentences are imposed automatically on conviction of certain offences, is cruel and inhuman and also amounts to an arbitrary deprivation of the right to life. This outdated practice has been increasingly found to be an unconstitutional form of punishment and the United Nations Human Rights Committee has declared that it is a violation of Article 6(1) of the ICCPR because it is an arbitrary deprivation of life to treat different circumstances and different individuals as if their actions were all worthy of the same punishment.

The Death Penalty Project is concerned that the mandatory death penalty remains in force and is still imposed in a number of retentionist Commonwealth countries including Malaysia (for murder, drug trafficking and certain firearm offences), Singapore (for intentional murder), Nigeria (for murder and in states applying Sharia law for a wider range of crimes), Ghana (for murder), Trinidad and Tobago (for murder) and Barbados (for murder).

Evidence has emerged from empirical research conducted in Singapore², Malaysia³ and Trinidad and Tobago⁴ that, even in countries where, according to opinion polls, the support of the public for capital punishment remains high, most respondents to polls conducted do not favour its mandatory infliction when confronted with examples of capital cases, thus depriving the mandatory death penalty of any legitimacy.

The death penalty and the inevitability of arbitrariness

The abolition of the mandatory death penalty and the introduction of judicial discretion has drastically reduced the number of death sentences imposed. The Death Penalty Project regards the abolition of the mandatory death penalty to be a step in the right direction towards the United Nations' policy of restricting the use of the death penalty, but even the introduction of judicial discretion cannot eliminate arbitrariness. It has been convincingly shown that no system for administering a discretionary death penalty can be devised, however restrictive the guidelines may be, that would be able to eliminate arbitrary judgments of who among the convicted should be selected for the death penalty.⁵

Whether the death penalty is mandatory or discretionary, ultimately there is no known way for it to be administered without the inevitability of arbitrariness occurring. A discretionary system is certainly preferable to a mandatory scheme, which is a clear violation of the ICCPR, but experience has shown, for example in India,⁶ that even a discretionary system creates victims of arbitrariness.

Conclusion

A disproportionate number of Commonwealth countries still retain the death penalty and some continue to impose mandatory death sentences contrary to the ICCPR and general principles of international law. The Commonwealth has a stated commitment and mandate to support and promote human rights within its 53 member states. The Commonwealth Secretariat should be strongly encouraged to take the lead in establishing abolition of the death penalty as a fundamental human rights issue to which all its member states should adhere.

² W.C. Chan and Ors, *Singapore Survey on Public Opinion on the Death Penalty*, Singapore: National University of Singapore (Faculty of Law), 2016. Available at: <https://maruah.org/2016/12/14/singapore-survey-on-public-opinion-on-the-death-penalty/>

³ Roger Hood, *The Death Penalty in Malaysia. Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences*, London: The Death Penalty Project, 2013. Available at: <http://www.deathpenaltyproject.org/legal-resources/research-publications/the-death-penalty-in-malaysia/>

⁴ Roger Hood and Florence Seemungal, *Public Opinion on the Mandatory Death Penalty in Trinidad*, London: The Death Penalty Project, 2011. Available at: <http://www.deathpenaltyproject.org/legal-resources/research-publications/death-penalty-survey-trinidad/>

⁵ See S. Lehrsfreund and R. Hood, *The inevitability of Arbitrariness: Another Aspect of Victimisation in Capital Punishment Laws*, in *Death Penalty and Victims*, New York: United Nations, 2016, 140-153.

⁶ The Law Commission of India, *The Death Penalty*, Report No 262, August 2015.

We urge the Human Rights Council to call for the immediate abolition of the mandatory death penalty, and for the countries that still retain this inhumane punishment to take this irrevocable step along the path towards the complete abolition of capital punishment.
