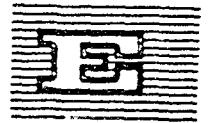


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HUMAN RIGHTS QUESTIONS

Capital punishment

Report of the Secretary-General

Addendum

1. Additional responses from nine Member States to the 1979 inquiry of the Secretary-General on capital punishment have been received by the Secretariat. Of those countries, eight are retentionist: Guatemala, Lebanon, Madagascar, Mozambique, New Zealand, 1/ Philippines, Thailand and Yugoslavia; and one - Australia 2/ - is divided on the issue. This brings the total number of responses from 62 to 71, of which 44 are "retentionist", 16 "abolitionist", 10 "abolitionist for ordinary crimes only", and one "divided" on the issue.
2. As regards the regional distribution of additional replies, one was received from North Africa and the Middle East, two from Africa south of the Sahara, two from Asia and the Pacific, one from Eastern Europe, one from Latin America and the Caribbean and two from the region of Western Europe and North America. 3/ The total number of regional responses from Member States, thus, is the following: 9 from North Africa and the Middle East, 11 from Africa south of the Sahara, 11 from

1/ The status of the Government of New Zealand on capital punishment has been changed from "abolitionist for ordinary crimes only" to "retentionist" on the basis of its reply (see E/1980/9, annex).

2/ The Commonwealth of Australia is "divided" on the issue of capital punishment; an Act of 1973 abolished the death penalty for offences against the laws of the Commonwealth and its Territories. The States of New South Wales and Western Australia are "retentionist", while Victoria, Queensland, South Australia and Tasmania are "abolitionist".

3/ North Africa and the Middle East: Lebanon; Africa south of the Sahara: Madagascar, Mozambique; Asia and the Pacific: the Philippines, Thailand; Eastern Europe: Yugoslavia; Latin America and the Caribbean: Guatemala; Western Europe and North America: Australia and New Zealand.

Asia and the Pacific, 4 from Eastern Europe, 15 from Latin America and the Caribbean and 21 from the region of Western Europe and North America (including Australia and New Zealand).

3. Legal changes for the period 1974-1978 were reported by Australia, where capital punishment was abolished in Victoria by the Crimes Act of 1975, and in South Australia by the Statute Amendment Act of 1976. Guatemala reported that, under the new Penal Code, which has been in effect since January 1974, the application of the death penalty has been extended to include offences against victims under the age of 10, and cases of kidnapping or abduction. In the Philippines, the number of crimes punishable by death was increased by virtue of several presidential decrees promulgated during the period under review. It was also reported that a Bill was introduced providing for the abolition of capital punishment. In Yugoslavia, the new criminal law of 1977, following constitutional changes of 1974, contains a provision whereby capital punishment cannot be imposed as the sole and principal penalty for specific criminal acts, and may be pronounced only for the gravest cases of serious crimes.

4. As reported by Member States, the following offences are subject to the penalty of death:

- Australia: Offences against the person, that is, wilful murder; offences against the State, including cases of piracy and treason (Western Australia and New South Wales);
- Lebanon: Premeditated offences against the person, offences against the State;
- Madagascar: Offences against the person including parricide, assassination, poisoning, aggravated homicide, crimes involving torture or barbarous acts, castration followed by death, treason, espionage, theft of beef accompanied or followed by death; offences against property, such as aggravated robbery involving arms; offences against the internal security of the State, and "other" offences;
- Mozambique: Offences against the security of the people, the nation and the State; attempts against the lives of party leaders and the Head of State; crimes against international peace and against humanity;
- New Zealand: Treason
- Philippines: Offences against the person, such as parricide, murder and rape; property offences, including robbery; offences against the State, including piracy, sedition, rebellion and disloyalty; "other" offences, including: illegal possession of firearms; the illegal manufacture of drugs; the sale, administration, delivery, distribution and transportation of prohibited drugs resulting

in death; illegal fishing and dealing in illegally-caught fish or aquatic products, where explosives are used and death results; attempts against the life of the Head of State; cattle-rustling involving serious personal injury or death; highway robbery, involving murder or rape, kidnapping for ransom or extortion, and cases of kidnapping and detention of persons;

Thailand: Homicide, offences against the security of the Royal Family and against the internal and external security of the Kingdom; and the illegal manufacturing and smuggling of drugs;

Yugoslavia: Aggravated forms of homicide; grave offences against property; offences against the State, such as recognition or acknowledgement of capitulation or of occupation, grave forms of counter-revolutionary acts endangering the social order, endangering the territorial integrity or the independence of the State; obstructing the struggle against or assisting the enemy, service in the army of the enemy; undermining the military and defence capacity of the State, acts of violence resulting in homicide, armed rebellion, terrorism, destruction of important economic establishments, sabotage, and espionage; offences against humanity and international law, that is, genocide, war crimes against the civilian population, the wounded and the sick or prisoners of war, the unlawful killing and wounding of the enemy, and employing unauthorized means of combat; criminal acts against the armed forces, and criminal acts against the security of the flight of aircraft.

5. There were 335 capital sentences and 57 executions reported by Governments for the five-year period under review. Of those sentenced to death, 325 were males over 18, one was male and one was female under 18, and the age and sex of eight were not indicated. Of those executed, all were reported to have been males over 18.

6. A country-by-country account of the reported figures is set forth below:

(a) In Australia, 18 persons, of whom nine were males over 18, one was female under 18, and the sex and age of eight were not indicated, were sentenced to death for crimes against the person, and no executions were reported;

(b) In Guatemala, six males over 18 were sentenced and executed for crimes against the person;

(c) In Madagascar, seven males over 18 were sentenced to death for crimes against the person, and no executions were reported for the period under review;

(d) In the Philippines, 276 males, of whom one was under 18, were sentenced to death, and 11 males over 18 were executed for crimes against the person, property, and "other" offences;

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(e) In Thailand, 18 males over 18 were executed for crimes against the person and "other" offences;

(f) In Yugoslavia, 28 males over 18 were sentenced to death for offences against the person, and 22 were executed;

(g) There were no capital sentences or executions reported by Lebanon or New Zealand for this period.

7. For the entire period under review, with previous replies taken into account, 2,699 persons were sentenced to death and 770 were executed. Of those sentenced to death, 2,478 were male - two under 18, 10 were female - one under 18, and the sex and age of 211 persons were not indicated. Of those executed, 702 were males over 18, and the age and sex of the remaining 68 were not reported. There was no clear indication whether those executed were female or under 18 years of age.

8. In total, including previous replies, convictions for crimes against the person and against the State provided the most prevalent occasion for the imposition of capital punishment.

9. The two prevailing modes of execution of persons condemned to death were by hanging and by shooting. In one country, the death penalty was imposed by electrocution or by shooting, in four by shooting, in two by hanging and in one by hanging or by shooting. With the exception of one country, executions do not take place in public.

10. Taking all responses into account, the total numbers of reported sentences and of executions by region were: North Africa and the Middle East: 151 capital sentences were reported by seven States and 29 executions were reported by five States; Africa south of the Sahara: 1,286 sentences were reported by eight States and 224 executions by six States; Eastern Europe: 134 capital sentences were reported by four States and 47 executions were reported by three States; Asia and the Pacific: 989 capital sentences were reported by eight States and 452 executions by nine States; Latin America and the Caribbean: 36 sentences were reported by three States and eight executions were reported by two States; Western Europe and North America: 103 sentences were reported by six States and 10 executions were reported by two States. 4/

11. Most responses indicated that executions were prevented on grounds of age, pregnancy or mental illness.

(a) In Australia, the capital sentence is not passed on persons under the age of 18 (New South Wales), and the Governor may commute the penalty to one of

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4/ As regards the region of Asia and the Pacific, the Government of Thailand did not report any capital sentences passed during the period under review, but reported 18 executions.

life imprisonment or detention (Western Australia). In cases of pregnancy, execution is postponed until childbirth. The alternative sanction for those capital offenders found not guilty for reasons of mental illness or unfit to plead is detention.

(b) In Guatemala, capital punishment cannot be imposed on women and men over the age of 70.

(c) In Lebanon, capital offenders under 18 are not sentenced to death.

(d) In Madagascar, capital offenders under 18 years of age, those who are pregnant and those who are mentally ill are not subject to capital punishment.

(e) In New Zealand, pregnant women cannot be executed, and offenders under 18 cannot be sentenced to death.

(f) In the Philippines, the execution of female capital offenders is postponed for three years after the sentence, and is postponed in cases of pregnancy. The death penalty is commuted to life imprisonment in the cases of offenders over the age of 70.

(g) In Thailand, the execution of condemned persons is postponed until delivery in cases of pregnancy and the execution of mentally ill offenders is suspended until recovery.

(h) In Yugoslavia, there are no specific legal provisions which bar the execution of capital offenders for extraneous reasons, such as age, sex, mental illness and pregnancy. These factors are taken into account, however, by the legislature during the course of regular criminal proceedings, in those instituted for the extraordinary mitigation of the sentence and in those for the granting of amnesty. At the same time, the Government reports that pregnant offenders and those under 18 are not executed.

12. Legal safeguards against the penalty of death include cassation in Lebanon; appeal on indictment in all cases in Australia and New Zealand; cassation and review in Madagascar; appeal in Mozambique; appeal and review in New Zealand and the Philippines; and appeal, review, request for protection of legality, and request for extraordinary mitigation of the penalty in Yugoslavia. Appeals extend to questions of fact and law in Madagascar and of fact, law and sentence in the Philippines, Thailand and Yugoslavia. Appeal is not automatic in New Zealand, Australia and Yugoslavia, but the process is an automatic one in the Philippines in some cases. There is a mandatory waiting period between sentencing and execution in Australia (21 days in Western Australia and 10 days in New South Wales), Thailand (60 days) and in the Philippines (three years for women and a waiting period covering pregnancy). There is no mandatory waiting period in New Zealand, where the executions take place after appeals have been exhausted. In Madagascar, no waiting period exists, but the death sentence cannot be executed until pardon has been refused. A condemned person has the right to petition for

pardon, commutation or reprieve in all cases in Thailand (to the Royal Family), in Lebanon and Madagascar (to the Head of State) and in Yugoslavia. In Australia, the Governor exercises the power to extend Royal Mercy and to commute the death sentence. In Guatemala, the power of pardon and commutation, applicable in some cases, is held by the Executive. In New Zealand, the Governor-General has the authority to grant pardon and amnesty, and to commute the death penalty. In Mozambique, the death penalty must be confirmed by the Supreme People's Court. In Yugoslavia, the death sentence can be commuted to one of 20 years of imprisonment.

13. As regards research and studies undertaken in Member States during the period under review, the Philippines reported that the University of the Philippines Law Centre, a governmental institution, had conducted research on the question of capital punishment, and New Zealand reported that the Department of Justice had published an historical study of the abolition of capital punishment.

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