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

Written statement* submitted by Mouvement contre le racisme et pour l'amitié entre les peuples, a non- governmental organization on the roster

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

[2 August 2013]

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

Death penalty in the United States of America (USA): The case of mentally ill or retarded people

The Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP) considers the Right to Life¹ as a supreme right and the *condicio sine qua non* for the enjoyment of all rights of all human beings.

Every State has the moral and legal obligation to protect the Right to Life of its citizens; moreover, every state has the particular duty to protect its most vulnerable people such as those with mental illnesses or disorders.

In the USA the situation is particularly worrying, not only for the great number of executions but especially because people with mental illnesses or disorders are persistently and systematically executed: the use of the death penalty – particularly against the mentally disadvantaged – is a human rights issue involving international law which challenges the morality and legality of this practice.

Legally this practice disregards the Right to a Fair Trial, the Right to Due Process of Law, the Right to Liberty and Personal Security and the Right to Physical Integrity, all of which are recognised by international treaties and instruments to which the United States is party and with which it must comply.

Since 1976, when the Supreme Court of the USA reinstated the death penalty, almost 1'500 people have been executed in the country². This practice is against the Eighth Amendment of the US Constitution, which states that 'excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted'.

This custom appears to be even in contradiction with the United States Declaration of Independence of 1776, which declared that all human beings shall enjoy their inalienable rights, 'among these are life, liberty and the pursuit of happiness'. In 2002 the Supreme Court said that the execution of mentally retarded people is a 'cruel and unusual punishment'³. Moreover the USA Constitution states that defendants must be competent and show rational understanding to stand trial, with respect to due process. Despite these requirements, people with mental illnesses or disorders continue to be executed in many states of the US. In the past 30 years, this inhuman, immoral and illegal – under international law – practice has resulted in death sentences for over 60 mentally ill or retarded people. The leading advocacy Mental Health America estimates that 5% of all prisoners on death row suffer from mental illness or disorders⁴.

Among many other cases, David Leisure was convicted of murder and sentenced to death in 1987 in the State of Missouri. Leisure was known to be mentally unstable, thus not eligible to be executed from a legal or moral perspective. In this case the petitioners alleged that article 1 of the American Declaration of the Rights and Duties of Man (ADRDM) on the Right to Life, Liberty and Personal Security was violated. These same rights are protected

¹ Article 6 (1) of the International Covenant on Civil and Political Rights, Article 1 of the American Declaration of the Rights and Duties of Man – and consequently of the American Convention of Human Rights – and the Universal Declaration of Human Rights recognize the Right to Life of every human being.

² Amnesty International, Death Penalty Facts, May 2012, (<http://www.amnestyusa.org/pdfs/DeathPenaltyFactsMay2012.pdf>)

³ Supreme Court of the United States, *Atkins v. Virginia*, 536 U.S 304, 2002

⁴ Mental Health America, Death Penalty and People with Mental Illness, (www.mentalhealthamerica.net/go/position-statement/54)

under the UDHR and under Article 6 of the ICCPR. In the court case of David Leisure there was also poor legal representation due to the fact that his lawyer was unqualified, and his right to appeal and introduce new evidence was denied by the court. These facts constitute a violation of the Right to a Fair Trial guaranteed by article 18 of the ADRDM⁵, by article 14 of the ICCPR⁶, as well as a violation of the Right to Due Process of Law guaranteed by Article 26 of the ADRDM⁷. The US is obliged to ensure adequate defense representation for every person facing criminal proceedings.

James Brown was sentenced to death in 1990 in the State of Georgia while suffering from paranoid schizophrenia. In 1988 Georgia banned the execution of mentally handicapped prisoners. The petitioner alleged that the defense counsel was ineffective in proving his mental disability to the court, which indicates that his Right to a Fair Trial and to Due Process of Law were violated⁸.

Jaime Elizalde Jr. was convicted of murder in Texas and sentenced to death in 1997 while suffering from severe mental disorders. His judicial process should be seen as irregular and his defense counsel incompetent as there were clear mistakes in the translation of the testimony and a failure to explore obvious new leads. The petitioner also alleged that the method of execution by lethal injection causes excessive suffering, or torture or inhuman and degrading treatment or punishment under international law.

Angel Maturino Resendiz, a Mexican citizen, was sentenced to death in 2000 in the State of Texas while suffering, since his childhood, from mental disorders and schizophrenia. During his time in prison he used to auto-mutilate. Nevertheless the prison psychiatrist gave him no anti-psychotic drugs and no mention of his mental problems was made during the trial. Mr. Resendiz was not informed by the Court of his Right to Consular Assistance, protected by article 36 of the Vienna Declaration on Consular Relations⁹.

The Vietnam War veteran Manuel Pina Babbitt was executed by the State of California in 1999. He suffered from post-traumatic stress disorder as a result of his military career. Marvin Lee Wilson was executed in 2012 in the state of Texas. He was mentally retarded, with an I.Q of 61. Warren Hill was executed in the state of Georgia in July 2013. A State Court recognized his mental retardation, with an I.Q of 70.

These examples testify the link between the people's Right to Life and the Right to a Fair Trial and to Due Process of Law. In all these cases, the fact that the Right to a Fair Trial and to Due Process of Law were systematically denied, implied the death sentence of the convicted persons, thus - a posteriori - the violation of their Right to Life. This ineffectiveness of the US judiciary and appeal system is also the main cause of the so-called "death row syndrome", which, is comparable to torture or cruel, inhuman and degrading

⁵ "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

⁶ "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligation in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by the law."

⁷ "Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment."

⁸ It was further proved that the convicted was severely beaten by police officers before the trial. This constitutes inhuman and degrading treatment or punishment, prohibited by articles 1 and 26 of the ADRDM, by the UN Convention against Torture and by article 7 and 10 of the ICCPR.

⁹ The case only came to the attention of the Mexican State after the death sentence had been carried out.

treatment or punishment, hence against international human rights law. Each condemned prisoner waits an average of 9 years on death row, but there are many cases where the defendants waited many more years on death row before being executed¹⁰.

Furthermore, the prison conditions on death row are usually very bad in the USA and may constitute torture or cruel, inhuman and degrading treatment or punishment forbidden by International Law¹¹.

The European Court of Human Rights has taken sides in the debate, saying that the extradition to the USA of a German citizen would be against the article 3 of the European Convention on Human Rights since “the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death”.

Even the impartiality and neutrality of the US courts seem to be open to question. Many past sentences appear to have been sexually oriented and racially biased, in contravention of the Right to a Fair Trial and to Equality before the law.

In the case of Edward Hartman¹², the sexual orientation bias in the final verdict seemed to be evident. For the Court, the repeated sexual abuse of Mr. Hartman by his uncle when he was 8 years old, did not count in determining the final sentence, since the victim was homosexual. This racial and ethnic bias has been denounced in a report¹³ conducted in the 29 States where the death penalty is still applied. In 26 of them, a defendant was more likely to receive a death sentence if the victim was white rather than black¹⁴.

Other international human rights bodies have aligned themselves firmly against the execution of mentally ill people, adding new elements and safeguards to the abolitionist thesis and to the international law jurisprudence¹⁵.

¹⁰ Clarence Allen Lackey was sentenced to death in 1978 and executed 20 years later; Troy Albert Kunkle was sentenced to death in 1985 and waited 19 years until his execution; Robert Karl Hicks, sentenced in 1986, waited on death row for 18 years; Angel Maturino Resendiz waited 7 years on death row; Marvin Lee Wilson, sentenced to death in 1992 and executed in 2012, waited on death row for 20 years.

¹¹ See articles 6, 7, 10 and 14 of the ICCPR, articles 1 and 2 of the UN Convention against Torture and article 26 of the ADRDM.

¹² A homosexual and mentally unstable prisoner sentenced to death in 1994 and executed in 2003.

¹³ D.Baldus, Racial Discrimination and the Death Penalty in the Post-Furman Era : An Empirical and Legal Overview, with Recent Findings from Philadelphia, 83 Cornell Law Rev. 1638, 1661 (1998)

¹⁴ On 3 July 2012 in New York, the UN High Commissioner for Human Rights, Ms Navi Pillay, affirmed that “death sentence is often imposed on less privileged individuals who do not have sufficient access to effective legal representation. Membership of a minority has often been identified as a significant factor in the decision that led to the sentence of death and execution.” (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12320&LangID=E>)

¹⁵ In the report E/CN.4/1997/60 of December 1996, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions said that those governments that continue to use the death penalty against mentally ill are “particularly called upon to bring their domestic legislation into conformity with international legal standards”. In his report E/CN.4/2002/74 he added that the execution of “persons suffering from mental illness or handicap or those with extremely limited mental competence face the death penalty” is not tolerable. In resolution E/CN.4/RES/1999/61 of April 1999, the UN Commission of Human Rights affirmed that states which still maintain the death penalty are urged “not to impose it on a person suffering from any form of mental disorder; not to execute any such person.” In 1995, the Human Rights Committee – in *Francis v. Jamaica* (No. 606/1994) - CCPR/C/54/D/606/1995 – affirmed that “the execution of mentally incompetent person is a violation of the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

The Inter-American Commission of Human Rights should request the USA to adopt precautionary measures, as well as to litigate the case of mentally ill or retarded people executed to the Inter-American Court of Human Rights.

MRAP calls upon the United States of America:

- to ratify immediately the American Convention on Human Rights;
- to respect and apply the international law principles, the allegations made by the international law bodies and the provisions of international treaties signed and ratified by the country;
- to respect and ensure the Right to a Fair Trial, to Due Process of Law and to Equality in front of the Law of each citizen, without discrimination of any kind;
- to respect and ensure the Right to Life, the Right to Liberty and Physical Security and the Right to Physical Integrity of each citizen, without discrimination of any kind.

MRAP calls upon the Human Rights Council:

- to condemn in the strongest terms the use of the death penalty in the USA, to require an immediate moratorium on this practice and to provide reparations and compensation for the people affected (and their families);
 - to ensure that the USA stops immediately – if necessary by reviewing the law - the immoral and illegal execution of mentally ill or retarded people;
 - to ensure that the USA warrant that every citizen has proper and effective legal representation.
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