



HIGH-LEVEL PANEL DISCUSSION ON THE QUESTION OF THE DEATH PENALTY: THE DEATH PENALTY AND THE PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Amnesty International's written statement to the 34th session of the UN Human Rights Council (27 February- 24 March 2017)

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are clearly and unequivocally prohibited under international human rights and humanitarian law, and can never be justified. This prohibition is absolute and non-derogable, even in time of public emergency.

The prohibition of torture and other ill-treatment is reinforced and complemented by, and sometimes overlaps with, aspects of other rights protected under human rights law and standards. In recent years, two Special Rapporteurs on torture, among others, have questioned whether there is an “evolving standard” that the death penalty itself violates the prohibition of torture and other ill-treatment, independent of special practices, conditions or methods of executions.¹ While this view is not yet universally shared, it is undisputable that any violation of the prohibition of torture and other ill-treatment that results in the death penalty also constitutes a violation of the right to life.² By the same token, at the very least, the application of the death penalty in violation of the relevant international law safeguards³ removes any claim that the death penalty should be exempted from the prohibition of torture and other ill-treatment as a “lawful sanction”.⁴

Amnesty International opposes the death penalty absolutely, in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the State to carry out the execution. Amnesty International is of the view that the death penalty always violates the right to life, and is the ultimate cruel, inhuman and degrading punishment.

Imposition of the death penalty following unfair trials, in particular based on coerced “confessions”

A violation of the prohibition against torture and other ill-treatment can result in the unlawful deprivation of life if the death penalty is applied. Despite the absolute nature of this prohibition under international law, Amnesty International has documented cases of people being sentenced to death or executed after grossly unfair trials, including based on “confessions” extracted through torture or other ill-treatment.

While international law often does not distinguish as to what the exact parameters of cruel, inhuman or degrading treatment or punishment are, UN and regional mechanisms have recognized that some aspects of the use of the death penalty amount to a violation of this overall category of behaviour of cruel, inhuman and degrading

¹ Reports of the Special Rapporteur on torture: UN.Doc. A/HRC/10/44 (2009) §34-38; UN.Doc. A/67/279(2012) §§53,56,65-72; Interim Report of the Special Rapporteur on torture, UN.Doc. A/67/279(2012)§72. See also *Chitat Ng v Canada*, HRC, UN.Doc. CCPR/C/49/D/469/1991 (1994), dissenting opinions of F.Pocar and F.J.Aguilar Urbina.

² See Amnesty International, *Combatting torture and other ill-treatment: A manual for action* (Index: POL 30/4036/2016), chapter 2.6, available at <https://www.amnesty.org/en/documents/pol30/4036/2016/en/>.

³ See, among others, ICCPR, Art.6, Arab Charter, Art.6, American Convention, Art.4, European Convention, Art.2

⁴ Convention against Torture, Art.1, para.1; see also Report of the Special Rapporteur on torture, UN.Doc. A/67/279(2012) §58.

treatment or punishment, particularly in relation to: the mandatory death penalty; conditions of detention and the anguish of being on death row; the secrecy surrounding the use of the death penalty affecting both death row inmates and their families; and the method of execution.

Mandatory death penalty: International judicial bodies and national courts around the world have ruled that mandatory death sentences violate human rights, including the prohibition of torture and other ill-treatment, or equivalent provisions under domestic law.⁵ The Special Rapporteur on extrajudicial executions and the Special Rapporteur on torture consider the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment, and to constitute inhumane treatment.⁶

Conditions of detention on death row: Examples of cruel, inhuman or degrading treatment or punishment in detention include confinement in a dark cell, overcrowding, solitary confinement in death row, the use of manacles as a restraint and denial of basic needs to the detainees. The UN Human Rights Committee has expressed concern about poor living conditions of death row inmates, including undue restrictions on visits and correspondence,⁷ small cell size and lack of proper food and exercise,⁸ extreme temperatures, lack of ventilation, cells infested with insects, and inadequate time spent outside cells,⁹ and has called on states to improve these conditions in line with the requirements of, among other provisions, Article 7 and 10 of the ICCPR. The Committee against Torture has also stated that prisoners under sentence of death may not be detained in isolation, kept handcuffed or shackled, or denied adequate food.

Amnesty International is of the view that the anguish of waiting to be executed is another aspect of the cruelty of the death penalty. In addition, some international, regional and national courts and bodies have stated that being on “death row” for an extended period of time and under stringent conditions, can amount to cruel, inhuman or degrading treatment, while recognizing the right of a prisoner under sentence of death to make the maximum use of the judicial process available.¹⁰ The judicial guarantees are fundamental to highlight whenever raising the issue of physical and psychological conditions of prisoners on death row, as several governments have attempted to expedite executions. Such action would undermine procedural safeguards and the right to an effective remedy.

The death penalty and secrecy: Surrounding the actual execution with secrecy, including to fail to give reasonable notice to death row inmates and their families of the date of the execution, or to allow a last visit or communication with the prisoners or to return their remains to the families for burial or to indicate where the grave is located can all constitute forms of cruel, inhuman or degrading treatment of the condemned individual, and of the family.

The Special Rapporteur on extrajudicial executions has stated that “to conceal from someone the facts of their preordained fate will constitute inhuman or degrading treatment or punishment.”¹¹ The use of the death penalty is shrouded in secrecy in many countries. Death row inmates in countries such as Belarus, Botswana, Nigeria, China, Egypt, Iran and Japan, are often not informed of their forthcoming execution, nor are the families or their lawyers.

Methods of execution: Amnesty International opposes the death penalty in all circumstances regardless of the method used by the state to carry out the execution. However, international bodies have already explicitly declared some execution methods such as stoning and gas asphyxiation as violating human rights, including the prohibition of torture and other ill-treatment.¹² In addition, carrying out executions in public has been declared a violation of the prohibition against cruel, inhuman or degrading treatment or punishment.¹³ Amnesty International

⁵ *Supra*, footnote 2, pp 99-100.

⁶ Reports of the Special Rapporteur on extrajudicial executions: UN.Doc. A/HRC/4/20,p.2§4; UN.Doc. E/CN.4/2005/7(2004) §80; UN.Doc. E/CN.4/1999/39,(1999) §§63,82; Report of the Special Rapporteur on torture, UN.Doc. A/67/279(2012)§59.

⁷ Concluding observations (CO) of the Human Rights Committee: Japan, UN.Doc CCPR/C/79/Add.102, 19 November 1998, para.21.

⁸ CO of the Human Rights Committee: Uzbekistan, UN.Doc CCPR/CO/71/UZB, 26 April 2001, para.10.

⁹ *Safarmo Kurbanova v. Tajikistan*, Views of the Human Rights Committee, Communication No. 1096/2002, UN.Doc CCPR/C/79/D/1096/2002,12 November 2003, para.7.8.

¹⁰ CO of the Committee against Torture: Armenia, UN.Doc A/56/44, 17 November 2000, para.39(g); *Earl Pratt and Ivan Morgan v. Jamaica*; Views of the Human Rights Committee, Communication No. 210/1986, UN.Doc CCPR/C/35/D/210/1986, 7 April 1989; CO of the Human Rights Committee: Japan, UN.Doc CCPR/C/JPN/CO/5, 18 December 2008.

¹¹ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN.Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para 26.

¹² E.g., Commission on Human Rights resolution, The Question of the Death Penalty, UN.Doc. E/CN.4/RES/2005/59(2005) §7(i); Human Rights Committee, *Chitat Ng v Canada*, HRC, UN.Doc. CCPR/C/49/D/469/1991(1994) §16.3; Special Rapporteur on torture, UN.Doc. A/HRC/7/3(2008)§40; *Jabari v Turkey* (40035/98),European Court(2000)§§41-2.

¹³ UN General Assembly resolution, UN.Doc. A/RES/65/225(2010) §1(a)(i); Commission on Human Rights, UN.Doc. E/CN.4/RES/2005/59, §7(i); Special Rapporteur on extrajudicial executions, UN.Doc. E/CN.4/2006/53/Add.3(2006) §43.

has concerns about attempts to make executions more “humane” through a change of method or protocol, because of the inescapability of serious mental suffering associated with any execution, and of the risk of diverting attention from the inherent cruelty of all executions.

Pending full abolition of the death penalty, Amnesty International urges the Human Rights Council, its members and observer states to urge all countries that retain the death penalty to:

- Establish an official moratorium on executions with a view to abolishing the death penalty, as called for by six resolutions adopted by the UN General Assembly resolutions, including most recently 71/187 of 19 December 2016;
- Commute without delay all death sentences;
- Immediately remove all provisions and end practices in national law that are in breach of international human rights law, in particular by abolishing all provisions that violate the absolute prohibition of torture and other ill-treatment;
- Ensure rigorous compliance in all death penalty cases with international standards for fair trials; and
- Ensure, in law, policy and in practice, that any allegations of torture or other ill-treatment are promptly, impartially and effectively investigated by an independent body.