

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
OL LKA 3/2018

30 August 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/15, 33/9 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the possible decision to resume the death penalty in Sri Lanka for drug-related offences.

We note that Sri Lanka has maintained a moratorium on capital punishment since 1976, with death sentences automatically commuted to life in prison. We recall that all measures of abolition of the death penalty should be considered as a progress in the enjoyment of the right to life (see Human Rights Committee, [General comment no. 6](#)). This means that, conversely, any resumption of executions leads to less protection of the right to life (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, [A/69/265](#)), as guaranteed by Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Sri Lanka in 1980.

When executions have been suspended for an extended period of time, it is unlikely that their resumption may be justified by objective reasons. If the timing of an execution, for instance, is essentially decided upon at random, those executions are rendered arbitrary. Likewise, if executions are resumed owing to developments unrelated to the crime or criminal in question, such as a deterioration in the law and order situation in the country, they are similarly arbitrary ([A/69/265](#)). In this regard, we stress that there exists no evidence that the death penalty has a deterrent effect against crime.

We also recall that convicts and family members have a right to prepare for death (see Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [A/67/279](#)). This implies that, when a Government changes its position concerning executions, sufficient notice must be given not only for prisoners and family members to adapt, but also in order to allow lawyers to explore all available legal options. This corresponds with a more general obligation of States to practice the death penalty transparently ([A/69/265](#)).

Against this background, we consider that resuming executions would be incompatible with Sri Lanka's international commitments, as expressed, for instance, in the country's vote in favour of a moratorium on the death penalty at the General Assembly, most recently in 2017, as well as during the 6th World Congress against the Death Penalty in 2016. It would also run counter to the international trend towards the reduction and the eventual abolition of the death penalty (see Report of the Secretary-General, Question of the death penalty, [A/HRC/27/23](#)).

Moreover, we recall that the death penalty can only be imposed, in countries that have yet to abolish it, for the "most serious crimes", which are considered to be those involving intentional killing. Drug-related offences do not meet this threshold. Capital punishment for drug-related offences does not comply with Article 6 of the ICCPR. Executions for such crimes amount to a violation of international law and constitute unlawful killings. We acknowledge the need for States to tackle drug-related offences. However, we stress that the focus of crime prevention should be on strengthening the justice system and making it more effective. Related to this, we also recall that responses to drug use and dependence should be based on the right to health, as guaranteed by Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In particular, drug dependence, as distinct from drug use, should be treated as a medical condition requiring appropriate, evidence-based treatment. We would like to also recall that treating persons who use drugs as criminals is counterproductive from a right to health perspective (see Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, [A/HRC/32/32](#), [A/65/255](#), and [A/64/272](#)).

Furthermore, any trial which could lead to the imposition of the death penalty, including all stages before the trial and the consideration of appeals on matter of fact and law after the trial, must rigorously comply with the guarantees set out in Article 14 of the ICCPR. In the absence of a fair trial, the imposition of a death sentence constitutes a violation of the right to life.

In this regard, we recall the preliminary findings of the Working Group on Arbitrary Detention following its recent visit to Sri Lanka in December 2017, particularly with regard to the length of court proceedings, the full respect of the principles of the presumption of innocence and due process, as well as the use of torture and forced confessions of detainees (see [Working Group on Arbitrary Detention: preliminary findings from its visit to Sri Lanka](#)). We are therefore concerned that the criminal justice system of Sri Lanka may have lacked in the past, and may now fail to provide the necessary safeguards to ensure compliance with fair trial standards to those who have been sentenced or may be sentenced to death in future. We therefore reiterate the Working Group's view that serious consideration should be given to abolishing the death penalty in Sri Lanka.

Moreover, the circumstances surrounding the imposition or execution of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. As such, the harshness of the death penalty goes beyond the execution itself.

Physical or mental torture or other cruel, inhuman or degrading treatment or punishment. Particularly the so-called death row syndrome may inflict pain and suffering on convicts and their relatives which may well amount to torture or other cruel, inhuman or degrading treatment or punishment (see Report of the Special Rapporteur on Torture, [A/67/279](#), para. 75).

Lastly, we recall that, during the Universal Periodic Review of November 2017, Sri Lanka received specific recommendations to ratify the Second Optional Protocol to the ICCPR, aiming at the definitive abolition of the death penalty. Sri Lanka only noted such recommendations. We therefore call on Your Excellency's Government to reconsider its position, renew its commitments and abolish the death penalty from its legal system for all crimes. Pending full abolition, we call on Your Excellency's Government to not reverse the existing moratorium on executions and to comprehensively review all relevant national legislation with a view to definitively repealing the death penalty and substituting it with life imprisonment or other appropriate penalties.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the abovementioned matters. While awaiting a reply, we urge relevant authorities in Sri Lanka to take all necessary measures to ensure full compliance of domestic legislation with international human rights norms and standards, particularly as they are referred above.

We would like to inform your Excellency's Government that this communication, as a comment on legislation, regulations or policies that may, in the future, be adopted, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions: <https://www.ohchr.org/en/issues/executions/pages/srexecutionsindex.aspx>.

Your Excellency's Government's reply will be made available on the same webpage, as well as in a report to the Human Rights Council for their consideration.

Please accept, Excellency, the assurances of our highest consideration.

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