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**Human Rights Council**
**Fifty-fourth session**
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Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

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

 High-level panel discussion on the question of the death penalty

 Report of the Office of the United Nations High Commissioner for Human Rights[[1]](#footnote-2)\*

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|  *Summary* |
|  The present report, submitted pursuant to Human Rights Council resolutions 26/2 and 48/9, contains a summary of the high-level panel discussion on the question of the death penalty held on 28 February 2023 at the fifty-second session of the Council. The panel discussion addressed the human rights violations related to the use of the death penalty, in particular with respect to limiting the death penalty to the most serious crimes. |
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 I. Introduction

1. Pursuant to its resolutions 26/2 and 48/9, the Human Rights Council held its fifth biennial high-level panel discussion on the question of the death penalty on 28 February 2023, at its fifty-second session.

2. The panel was chaired by the President of the Human Rights Council, Václav Bálek. An opening statement was delivered by the United Nations High Commissioner for Human Rights. Another opening statement was delivered by the Chair of the Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa of the African Commission on Human and Peoples’ Rights, Idrissa Sow. The panellists were the Minister of Law and Institutional Reform of Malaysia, Azalina Othman Said; a member of the Human Rights Committee, José Manuel Santos Pais; Associate Professor at the Faculty of Law at Monash University, Director of Eleos Justice and Deputy Director of CrimeInfo, Mai Sato; and Executive Director of Justice Project Pakistan, Sarah Belal.

 II. Opening remarks and statements

3. In his introductory remarks, the President of the Human Rights Council recalled that the panel discussion was being held pursuant to its resolutions 26/2 and 48/9. In resolution 48/9, the Council had decided that the discussion would address violations related to the use of the death penalty, in particular with respect to limiting the death penalty to the most serious crimes.

4. In his opening remarks, the High Commissioner for Human Rights began by stressing that the United Nations had opposed the death penalty for many years, a position that affirmed the promise of the Charter of the United Nations to uphold the highest standards of protection of all human beings. The death penalty, as the most severe and irreversible of punishments, was profoundly difficult to reconcile with human dignity and the fundamental right to life. The death penalty also led to innocent people being killed because no justice system was perfect.

5. The High Commissioner stressed that the death penalty could be turned to improper purposes, such as instilling fear, repressing opposition and quashing the legitimate exercise of freedoms. The death penalty also discriminated in practice, condemning to death persons on society’s sidelines, including the LGBTQI+ community and racial, ethnic, linguistic and religious minorities. It had also been used with chilling effect on political opponents and protesters, notably young persons.

6. The High Commissioner referred to evidence strongly suggesting that the death penalty had little or no effect on deterring or reducing crime. A number of studies had revealed that nations that had abolished the death penalty had seen their murder rates unchanged and, in some cases, decline. Other studies clearly demonstrated that policymakers should focus on the inevitability of punishment because it was a more powerful deterrent than the severity of a penalty.

7. The High Commissioner emphasized that the Human Rights Committee had clearly stated that retentionist States could only apply the death penalty for crimes of extreme gravity that involved intentional killing. He expressed deep concern that the death penalty would continue to be used for crimes that did not meet the “most serious crimes” threshold, including drug-related offences, espionage, economic crimes, blasphemy, apostasy, same‑sex relations and adultery, as well as to punish the legitimate exercise of civil liberties. The mandatory imposition of the death penalty was irreconcilable with fair trial standards.

8. The High Commissioner addressed arguments made by proponents of the death penalty, including the assertion that abolition overlooked the rights of victims and claims that retribution was the best response to a crime. In reply, he underscored the advice of criminal justice experts who believed that the proper response to criminality lay in controlling and preventing crimes. To that end, it was essential to build functioning, human rights-based criminal justice systems, afford victims and survivors access to justice, redress and dignity, and hold perpetrators to account.

9. The High Commissioner concluded by highlighting that, until every nation had abolished the death penalty, the road to defending human dignity would never be fully complete. He called upon States that had not yet abolished the death penalty to restrict its use, establish moratoriums and work towards abolition. He also urged Governments to collect, analyse and make available public data on the use of the death penalty. He applauded the landmark General Assembly resolution of December 2022 for which a record 125 nations had voted in favour of a global moratorium on the use of the death penalty with a view towards its ultimate abolition.

10. In his opening remarks, Mr. Sow highlighted current trends in the abolitionist movement in Africa. He also highlighted that Zambia had recently adopted a law abolishing the death penalty for all crimes. That positive reform followed similar initiatives recently implemented by the Central African Republic and Equatorial Guinea. An abolitionist trend was clearly progressing across the African continent, where 26 States had fully abolished the death penalty and 14 were considering a moratorium on its implementation.

11. Mr. Sow stressed that the African Commission on Human and Peoples’ Rights needed to increase its efforts towards abolition of the death penalty, including through partnerships with other international institutions. The Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa had initiated major programmes and projects seeking to consolidate progress and further protect the rights of all persons not to be arbitrarily deprived of life. Those initiatives included the plan to revise the Commission’s 2011 study on the death penalty to include analyses of essential death penalty issues, such as security challenges, violent extremism and religious or cultural norms.

12. Mr. Sow continued by emphasizing that the Commission interacted strategically with States that had chosen to retain the death penalty. The Commission urged retentionist States in Africa to limit their application of the death penalty to the most serious crimes and to consider establishing a moratorium on executions as they progressed towards abolishing the death penalty. The Commission had also interpreted the notion of most serious crimes in the most restrictive manner to focus on cases in which the crime was intentional and led to fatal consequences or extremely grave consequences.

13. Mr. Sow concluded by emphasizing that, given the weakened nature of the judicial system in many countries, efforts needed to be pooled by all stakeholders to ensure increased protection for the right to life. States that still implemented the death penalty must limit its application to the most serious crimes. The Commission was prepared to cooperate with the Office of the United Nations High Commissioner for Human Rights (OHCHR) to promote and protect human rights across the continent.

 III. Contributions of the panellists

14. In her intervention, Ms. Othman Said indicated that Malaysia was moving towards abolishing the mandatory death penalty for all offences. Malaysia had taken steps towards a more restrictive use of the death penalty, including by abolishing the mandatory death penalty for drug trafficking offences in 2017. In June 2022, following an overall review of the country’s sentencing policy, the Government had announced its intent to replace the mandatory death penalty with alternative sentences in relation to 11 crimes.[[2]](#footnote-3) The Government was also looking into the possibility of reviewing the sentences of 1,320 death row convicts. In the meantime, Malaysia was abiding by a moratorium on the use of the death penalty, which had been in force since 2018.

15. Ms. Othman Said stressed that those reforms had resulted from engagement with a wide variety of stakeholders, including victims’ families, death row convicts, civil society organizations and non-governmental organizations, religious bodies, ministries, government departments and the general public. The reforms proposed by the Government considered the proportionality principle, which ensured that changes in sentencing policy remained proportionate to the offences. The reforms also enhanced the principles of restorative justice in Malaysia, since the offenders who would have received the death penalty would now have the opportunity to improve themselves in prison. As inmates in the country’s prisons, they would acquire positive traits through religious education, counselling and fostering of positive values. Those reforms to its death penalty policy demonstrated that Malaysia supported and upheld the principles of human rights.

16. Ms. Othman Said stated that the abolition of the mandatory death penalty was a balance between what was right and wrong. The mandatory death penalty had disproportionately harmed the most marginalized and disenfranchized members of society and had not served to deter crime. Continued use of the mandatory death penalty had impeded fair justice.

17. Ms. Othman Said also underscored arguments in support of the death penalty, including the assertion that it deterred criminals. The death penalty could also be seen as appeasing victims’ families who suffered the anguish of losing a loved one. According to a government study, most Malaysians supported the death penalty, indicating that the abolition of the death penalty was not favoured in Malaysia.

18. Mr. Santos Pais began by noting that the question of the death penalty was addressed in the International Covenant on Civil and Political Rights under the right to life. The right to life had attracted the attention of the Human Rights Committee for several years, resulting in three general comments on the subject. The last of those comments had been published in 2019 and provided crucial guidance on the strict requirements for the imposition of the death penalty.

19. Mr. Santos Pais stressed that retentionist States were only permitted to apply the death penalty for the most serious crimes and subject to several strict conditions. The prohibition of arbitrary deprivation of life contained in the Covenant further limited how States parties imposed the death penalty. An execution that lacked a legal basis or was otherwise inconsistent with life-protecting laws and procedures was arbitrary.

20. Mr. Santos Pais underscored that a death sentence was unlawful and arbitrary if it was issued by a court lacking independence or impartiality that did not respect fair trial guarantees. It was also unlawful and arbitrary if the guilt of the accused had not been established beyond reasonable doubt. States parties to the Covenant that had abolished the death penalty were barred from reintroducing it. Therefore, abolition of the death penalty was legally irrevocable.

21. Mr. Santos Pais stated that the expression “the most serious crimes” must be read restrictively and only concerned crimes of extreme gravity involving intentional killing. Crimes not resulting directly and intentionally in death, such as corruption and other economic and political crimes, drug and sexual offences, although serious in nature, could never be sanctioned by the death penalty. Moreover, the death penalty could never be applied as a sanction against conduct the very criminalization of which violated the Covenant, such as adultery, homosexuality, apostasy, establishing political opposition groups or offending a Head of State.

22. Mr. Santos Pais asserted that mandatory death sentences were arbitrary in nature. The death penalty could not be imposed on pregnant women or for crimes committed by persons below the age of 18 at the time of the offence. Furthermore, States parties must refrain from imposing the death penalty on individuals who faced special barriers in defending themselves, persons with serious psychosocial disabilities and persons with serious intellectual disabilities, and on persons whose execution would be exceptionally cruel. States parties were also prohibited from imposing the death penalty on persons of advanced age and parents of very young or dependent children.

23. Mr. Santos Pais concluded by stating that there was a clear international trend towards the abolition of the death penalty. A growing number of States had abolished the death penalty. Other States had established a moratorium on executions or suspended executions for more than 10 years. States forming part of the trend towards abolition came from all regions and had different legal systems, traditions, cultures and religious backgrounds.

24. In her intervention, Ms. Sato asserted that the death penalty was unnecessary for any crime, including intentional killing. Of the 79 countries that retained the death penalty under law, only two – Jamaica and Saint Vincent and the Grenadines – followed the international standard of restricting the death penalty to the most serious crimes, which was defined as intentional killing. In the remaining 77 countries, the death penalty was permitted for an array of offences, including victimless crimes, terrorism, sexual offences and economic crimes. Those laws might be old laws that had never been repealed, or laws that were intended to serve a symbolic function to denounce a wrong.

25. Ms. Sato noted that many acts designated as capital offences should not be criminalized at all. The criminalization of adultery, same-sex sexual acts, blasphemy and apostasy, let alone the imposition of the death penalty for those acts, was not only contrary to the right to life but was contrary to women's rights, the right to equality before the law without discrimination and freedom of religion. The improper application of the death penalty for those acts also had a trickle-down effect within the community, legitimizing vigilantism and honour killings. In at least 38 countries, rape was a capital offence, often justified by the objective of “protecting” women. Capital rape laws used the language of women’s rights to violate the right to life.

26. Ms. Sato emphasized that executions were regularly carried out for drug-related offences, which clearly failed to meet the “most serious” standard. Drug offences could be punishable by death in 35 countries. Between 2010 and 2020, more than 4,000 persons had been executed for drug offences. Instead of disrupting drug cartels, capital drug laws ended up punishing drug mules, who were typically recruited from marginalized groups with intersecting vulnerabilities.

27. Ms. Sato asserted that retentionist countries might cite religion, public support or deterrence as barriers for moving away from the death penalty. However, religious countries could embrace religious freedom. For example, there were countries in which Islam was the State religion, but the death penalty was not prescribed for religious offences. Whether the death penalty deterred offenders more than other punishments was an empirical question. The answer did not depend on whether the public believed that the death penalty had a deterrent effect.

28. Ms. Sato claimed that surveys claiming strong public support for the death penalty had not explored the considerable public acceptance that abolition would have if Governments took leadership on the matter.

28. Ms. Sato concluded by stating that the death penalty was a symbol of a State’s lethal control over its citizens and an acknowledgement that killing formed a part of its justice system. All retentionist States must take active steps to further restrict the death penalty and implement the “most serious crimes” standard.

29. Ms. Belal began by underscoring that the “most serious crimes” standard was a powerful advocacy tool because it was intrinsically related to the principles of life and dignity. In the Muslim world, for example, the Qur’anic standard for imposing the death penalty matched the “most serious crimes” threshold. When attempting to engage with Governments in order for them to comply with the “most serious crimes” standard, individuals must have a deep understanding of the contextual landscape within which executions had historically taken place. Experience showed that Governments were far more likely to reign in their use of capital punishment when they were provided with technical arguments backed by in-depth data and research, rather than normative arguments.

30. Ms. Belal recalled that, in 2018, Justice Project Pakistan, in collaboration with the Ministry of Human Rights of Pakistan, had conducted a detailed analysis of the country’s capital crimes, which had revealed that Pakistan had never imposed death sentences or carried out executions for most non-serious offences. As a result, the Parliament of Pakistan had eliminated the death penalty for the offence of railway sabotage in October 2022. The removal of that offence was proof that the use of the death penalty could be brought into line with international standards without public backlash if the issue were approached strategically. Validation from the international community also played a vital role in driving domestic reform against the death penalty.

31. Ms. Belal emphasized that judiciaries could improve compliance with the “most serious crimes” threshold by applying the rights contained in international conventions. For example, Justice Project Pakistan had launched a project to improve implementation of international human rights law in the courts of Pakistan that had resulted in a threefold increase in the number of Superior Court judgments quoting international human rights law.

32. Ms. Belal mentioned that it was well established that drug offences fell short of the “most serious crimes” threshold, despite 35 States maintaining the death penalty for those crimes. Any strategy to combat the death penalty for drug offences must be interwoven with systemic reform of drug policies. As a result of strong sentencing guidelines, for example, there had been no executions for that offence since 2010 in Pakistan. Since 2020, there had been a 15 per cent decrease in the number of Pakistanis imprisoned abroad, brought about through strategic litigation, prisoner transfer agreements and increased diplomatic efforts.

33. Ms. Belal concluded that those results were a testament to what was achievable through strategic engagement. Member States, such as Pakistan, could be encouraged to comply with the “most serious crimes” standard. Those results also highlighted the importance of appreciating the incremental steps taken by Member States in their journey on the path to abolition.

 IV. Summary of the discussion

34. During the interactive phase of the panel discussion, the following delegations spoke: Belgium,[[3]](#footnote-4) Portugal, Australia,[[4]](#footnote-5) Costa Rica,[[5]](#footnote-6) South Africa, Spain, Burkina Faso, Italy, Singapore,[[6]](#footnote-7) Switzerland,[[7]](#footnote-8) Argentina,[[8]](#footnote-9) Angola,[[9]](#footnote-10) Oman,[[10]](#footnote-11) Finland,[[11]](#footnote-12) Sierra Leone, Togo, Zambia, France, Cameroon, Iraq, Egypt and Libya.

35. One regional organization, the European Union, took the floor. The following non‑governmental organizations also took the floor: Ensemble contre la peine de mort, the International Federation of Action by Christians for the Abolition of Torture (ACAT), the Center for Global Nonkilling, the International Harm Reduction Association (IHRA), the International Lesbian and Gay Association and the International Bar Association.

 A. General remarks on the use of the death penalty

36. Many delegates from States with a range of legal systems, traditions, cultures and religions expressed their opposition to the use of the death penalty in all circumstances and at all times. Delegates welcomed the trend towards the universal abolition of the death penalty and commended the States that had recently ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. They called upon other countries to follow suit.

37. Many delegates applauded the global trend towards abolition of the death penalty and the growing support for the General Assembly resolution on a moratorium on the death penalty. Several delegates expressed appreciation for the recent abolition of the death penalty in Kazakhstan, Equatorial Guinea and Zambia. One delegate congratulated Chad for having amended its death penalty legislation to align it with the abolitionist commitment. Another delegate asserted that abolition was a growing trend, noting that 26 out of the 55 African Union member States had now abolished the death penalty.

38. Many delegates stressed that there was no conclusive evidence that the death penalty had a deterrent effect on crime. While deterrence was the most common rationale for retaining the death penalty in retentionist countries, many delegates expressed a firm view that the rule of law and certainty of punishment, instead of severity, was what deterred crime.

39. A minority of delegates disagreed, claiming that the death penalty did have a deterrent effect on crime. One delegate stated that the right of defendants must be weighed against the rights of society and victims to live in peace. That delegate also insisted that every State had a sovereign right to choose its legal and criminal justice systems without interference from others. Another delegate insisted that States had the right to enact appropriate penalties for crimes falling within their jurisdiction, claiming that there was no international legal obligation to abolish the death penalty. Another delegate stated that it was up to States to abolish the death penalty, remaining mindful of their national circumstances, cultures, traditions and religions.

40. Several delegates expressed concern that the death penalty was being used to obstruct the enjoyment of the rights to freedom of assembly and expression. One delegate indicated that the death penalty disproportionately affected persons living in poverty, those with drug or mental health conditions, Indigenous Peoples, minorities, and persons with diverse sexual orientations and gender identities.

41. Many delegates stated that the death penalty constituted cruel, inhuman or degrading treatment or punishment.

42. One delegate suggested that more technical assistance tools on applying moratoriums or abolishing the death penalty should be made available to States. States could use those tools in participatory processes aimed at moratoriums or abolition, which involved civil society, national human rights institutions and parliaments.

43. Another delegate, speaking on behalf of 54 States, expressed concern over the use of the death penalty in the Islamic Republic of Iran, referring to reports indicating that it had executed several hundred persons in 2022, including juvenile offenders. The delegate decried the speed of the trials along with credible reports that the defendants had not had proper access to lawyers of their own choosing and had been subjected to torture or ill-treatment. The delegate called upon the Islamic Republic of Iran to respect the lives of its people, impose a moratorium on the death penalty and halt all executions. One delegate condemned the increase in executions in the Islamic Republic of Iran and the Democratic Republic of the Congo. Another delegate asserted that the Islamic Republic of Iran was responsible for most known executions worldwide.

44. Many delegates expressed alarm at the lack of transparency surrounding the implementation of the death penalty. They called upon States to provide public disaggregated data on death sentences. Only a fraction of retentionist States made official figures on the death penalty available, and those were not disaggregated. That obstructed an assessment of the death penalty phenomenon.

 B. Limiting the death penalty to the most serious crimes

45. Delegates expressed concern that death sentences continued to be imposed in a way that violated the obligation of retentionist States to impose the death penalty only for the most serious crimes. That had consistently been interpreted as referring to crimes of extreme gravity involving an intentional killing. One delegate therefore called upon all States that still applied the death penalty to reduce the list of offences for which the death penalty could be applied. Another delegate underscored that it had been well established by United Nations mechanisms that drug offences did not meet the definition of most serious crimes. Nevertheless, 35 countries and territories retained the death penalty for drug offences. The same delegate claimed an increase of more than 100 per cent in drug-related executions and a 25 per cent increase in death sentences in 2022.

46. A delegate spoke on behalf of 54 States and stated that, in light of the discussion surrounding the obligation for retentionist States to limit the application of the death penalty to the most serious crimes, the group was concerned that the Islamic Republic of Iran had sought to impose the death penalty against thousands of individuals arrested in connection with protests following the death of Mahsa Amini. Several delegates concurred, expressing concern that the death penalty was being instrumentalized to punish individuals participating in protests and intimidate dissenters and opposition figures. Persons were being executed for merely expressing an opinion or exercising their right to peaceful assembly.

47. A number of delegates condemned the use of the death penalty as a punishment for acts that should not be criminalized under international human rights law, such as adultery, blasphemy, apostasy and homosexuality. That misuse of the death penalty clearly violated the requirement for retentionist States to limit the death penalty to the most serious crimes. One delegate asserted that people were being executed because they were members of the community of lesbian, gay, bisexual, transgender, questioning and intersex persons.

48. Another delegate expressed concern that several States had adopted vague and overly broad counter-terrorism legislation, which set forth capital crimes that did not amount to the most serious crimes under the International Covenant on Civil and Political Rights. That lack of legal certainty was resulting in arbitrary executions.

49. Some delegates disagreed, claiming that there was no international consensus on what constituted the most serious crimes and that that concept was not defined explicitly under international law.

 V. Concluding remarks

50. **Ms. Othman Said emphasized that the global trend towards abolition remained unstoppable. Addressing issues that served as the root cause of crime would further bolster the global trend towards universal abolition and contribute to the enhancement and development of human rights.**

52. **Mr. Santos Pais emphasized that the question of the death penalty was addressed in the International Covenant on Civil and Political Rights under the right to life. The Human Rights Committee, in its general comment No. 36 (2018), had provided crucial guidance on the strict requirements for the imposition of the death penalty. Retentionist States were only permitted to apply the death penalty for the most serious crimes and subject to several strict conditions. The expression “the most serious crimes” must be read restrictively and only concerned crimes of extreme gravity involving intentional killing. Crimes not resulting directly and intentionally in death, such as corruption and other economic and political crimes, drug and sexual offences, although serious in nature, could never be sanctioned by the death penalty. Moreover, the death penalty could never be applied as a sanction against conduct the very criminalization of which violated the Covenant, such as adultery, homosexuality, apostasy, establishing political opposition groups or offending a Head of State.**

53. **Ms. Belal noted that a deep understanding of the contextual landscape within which executions had historically taken place was necessary when attempting to engage with Governments in order for them to comply with the “most serious crimes” standard. Experience showed that Governments were far more likely to reign in their use of capital punishment when they were presented with technical arguments backed by in-depth data and research, rather than normative arguments. Validation from the international community also played a vital role in driving domestic reform against the death penalty.**

53. **Ms. Othman Said and Mr. Santos Pais noted that mandatory death sentences were arbitrary in nature.** **Ms. Sato emphasized that mandatory death sentences had disproportionately harmed the most marginalized and disenfranchized members of society and had not served to deter crime. Their continued use had impeded fair justice.**

54. **Mr. Santos Pais reiterated that an execution that lacked a legal basis or was otherwise inconsistent with life-protecting laws and procedures was arbitrary. A death sentence was also unlawful and arbitrary if it was issued by a court lacking independence or impartiality that did not respect fair trial guarantees, or if the guilt of the accused had not been established beyond reasonable doubt.**

53. **Ms. Sato indicated that there was no evidence to support the proposition that the death penalty had a deterrent effect on crime. Ms. Othman Said, however, indicated that some held the view that the death penalty served as a deterrent to criminals. She also shared the view that the death penalty could also be seen as appeasing victims’ families who suffered the anguish of losing a loved one.**

1. \* The present report was submitted after the deadline in order to reflect recent developments. [↑](#footnote-ref-2)
2. Malaysia has since replaced the mandatory death penalty with alternative sentences in relation to 11 crimes, including murder and terrorism, and given judges discretion to consider mitigating circumstances and commuting sentences for these offences. See OHCHR, “Malaysia: UN experts hail parliamentary decision to end mandatory death penalty”, 11 April 2023. [↑](#footnote-ref-3)
3. Also on behalf of France and a group of countries. [↑](#footnote-ref-4)
4. Also on behalf a group of countries. [↑](#footnote-ref-5)
5. Also on behalf of a group of 53 countries. [↑](#footnote-ref-6)
6. Also on behalf of a group of countries. [↑](#footnote-ref-7)
7. Also on behalf of a group of countries. [↑](#footnote-ref-8)
8. Also on behalf of Brazil, Chile, Uruguay and a group of countries. [↑](#footnote-ref-9)
9. On behalf of the Community of Portuguese-speaking Countries. [↑](#footnote-ref-10)
10. On behalf of the Gulf Cooperation Council Group. [↑](#footnote-ref-11)
11. Also on behalf of the group of Nordic and Baltic countries. [↑](#footnote-ref-12)