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**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**

Question of the death penalty

Report of the Secretary-General

Summary

The present report contains information mostly covering the period from July 2011 to June 2012. Although the international community as a whole is moving towards abolition of the death penalty in law or in practice, some Member States have continued to use the death penalty during the reporting period. In some instances, international standards guaranteeing the protection of the rights of those facing the death penalty were not fully respected. In this regard, the report draws attention to a number of phenomena, including the ongoing difficulties in gaining access to reliable information regarding executions, the continued use of the death penalty in violation of international safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the use of the death penalty for crimes, such as drug offences, which could not be considered as “most serious crimes”, and its use against children under 18 at the time of the alleged offence and members of vulnerable groups, in particular individuals belonging to racial, religious, national, ethnic and sexual minorities. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on moratorium on the use of the death penalty, which will highlight, inter alia, national and international efforts made towards the universal abolition of the death penalty.

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I. Introduction

1. In its decision 18/117 adopted on 28 September 2011, the Human Rights Council requested the Secretary-General to continue to submit to the Human Rights Council, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence, on pregnant women and on persons with mental or intellectual disabilities.

2. The present report is submitted to update previous reports on the question of the death penalty, including the most recent quinquennial report of the Secretary-General (E/2010/10 and Corr.1 and 2) and previous reports submitted to the Council (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19 and A/HRC/18/20). Attention is also drawn to the forthcoming report of the Secretary-General to the Assembly on moratorium on the use of the death penalty, which will outline national and international efforts made towards the universal abolition of the death penalty. The present report has been prepared on the basis of information received from States and other available sources, including United Nations agencies, international and regional bodies and non-governmental organizations.

II. Changes in law and practice

3. Changes in law include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice cover mainly non-legislative measures reflecting a new approach regarding the use of the death penalty.

A. Countries that have abolished the death penalty for all crimes

4. Approximately 150 of the 193 Member States of the United Nations have abolished the death penalty or introduced a moratorium, either in law or in practice. Reportedly, 175 of the 193 Member States of the United Nations were execution-free in 2011.¹

5. In December 2011, the Parliament of Latvia adopted amendments to several laws in order to abolish the death penalty in all circumstances. In the United States of America, in March 2012, the State of Connecticut adopted a law abolishing the death penalty, becoming the seventeenth state in the country to do so. On 6 November 2012, California will hold a referendum on whether to replace the death penalty with life imprisonment.

B. Countries that have restricted the scope of the death penalty or are limiting its use

6. Even in countries where the application of the death penalty remains, some noticeable steps towards restricting its use were recorded during the reporting period. In particular, there were judicial, legislative and administrative developments in several

¹ Amnesty International, *Death Sentences and Executions in 2011* (London, 2012), p. 5.

countries with regard to the mandatory imposition of the death penalty and the procedural aspects of its implementation.

7. In some States, constitutional debates and reform processes addressed the question of the death penalty. The Republika Srpska introduced an amendment for the removal of provision for the death penalty in its Constitution.² The Transitional Constitution of South Sudan, which came into force on 9 July 2011, provides for the inherent right to life, dignity and the integrity of his or her person which shall be protected by law. Furthermore, article 21 of the Transitional Constitution places a restriction on the death penalty, providing that “no death penalty shall be imposed, save as punishment for extremely serious offences in accordance with the law”. It also precludes the imposition of the death sentence on a person under 18 or a person who has attained the age of 70. It further states that “no death penalty shall be executed upon a pregnant and lactating woman save after two years of lactation”.³

8. In January 2012, the parliament of the Islamic Republic of Iran (Majlis) adopted the new Islamic Penal Code. According to article 90 of the new Islamic Penal Code, juveniles below 18 who commit offences under categories of *Hodoud* and *Qisas* (retribution in kind) will not be sentenced to death if the court decides, through forensic reports or any other appropriate means, that the offender did not have adequate mental maturity and ability to reason. Alternatively, the offender will be sentenced to one of the punishments under the category of *Ta'zir*, appropriate to her or his age. Although the amendment of the Islamic Penal Code does not end executions of juveniles in the country, it establishes new measures to limit sentencing to death.

9. In March 2012, China amended its Criminal Procedure Law to include enhanced procedures for suspects and defendants in capital cases, and provided some clarification regarding the role of lawyers in the final review process.⁴

C. Countries that have ratified or committed to ratifying international and regional instruments providing for the abolition of the death penalty

10. In March 2012, Mongolia became the seventy-fourth State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

11. In August 2011, the National Assembly of Benin approved a bill for the ratification of the Second Optional Protocol. On 28 February 2012, the President of Benin signed the documents ratifying the Protocol.

12. During the recent universal periodic review of the Human Rights Council Nigeria, Nauru, Sierra Leone, Somalia, Surinam, Samoa, Sao Tome & Principe, Tajikistan, Togo, Tunisia and Zimbabwe expressed their intention to ratify the Second Optional Protocol.

13. In 2011, Honduras and Dominican Republic acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; and Latvia ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty.

² Written submission of Bosnia and Herzegovina, 28 March 2012.

³ Available from www.unhcr.org/refworld/docid/4e269a3e2.html (accessed 31 May 2012).

⁴ “China’s New Criminal Procedure Law: Death Penalty Procedures”, *Dui Hai Human Rights Law Journal*, 3 April 2012. Available from www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death_03.html.

D. Countries that have introduced a moratorium on executions

14. In September 2011, Sierra Leone established an official moratorium on the use of the death penalty. The Nigerian Attorney General and Minister of Justice reported in October 2011 that the country's Government had introduced an official moratorium on executions.⁵

15. In January 2012, the President of Mongolia announced a moratorium on the use of the death penalty.⁶

16. In the United States of America, on 22 November 2011, Governor John Kitzhaber announced a moratorium on executions in the State of Oregon.

E. Countries that have reintroduced the use of the death penalty, extended its scope or resumed executions

17. Some States have introduced the death penalty for crimes related to terrorism. In Nigeria, the National Assembly passed the Terrorism (Prevention) Act, 2011, which states that "where death results from any terrorist act, the penalty shall be death sentence" (sect. 4, para. 2).⁷ In February 2012, the Anti-Terrorism (Amendment) Act 2012 was adopted by Bangladesh's national assembly (Jatiya Sangsad), which includes provision for death sentence as the maximum punishment.

18. Although, as noted in paragraph 8 above, the new Islamic Penal Code in the Islamic Republic of Iran establishes new measures to limit the sentencing to death of children, it has retained the death penalty in almost all instances that were punishable under the previous code and has expanded its scope in some cases.⁸ The new Penal Code still provides the death penalty for people charged with "action against national security", *Moharebeh* (enmity against God), *Mofsid-Fil-Arz* (corruption on earth), drug trafficking, rape, *Qisas* (retribution in kind) and certain other *hudud* crimes. In his report on the country (A/HRC/19/82, para. 8), the Secretary-General regretted that the new Islamic Penal Code failed to fully abolish the death penalty or restrict its imposition to only the "most serious crimes", as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

19. Article 111 of the Penal Code of Kuwait prohibits defamation of religion and currently provides for up to one year's imprisonment and a fine. In April 2012, the National Parliament of Kuwait voted to amend the Penal Code to make blasphemy a crime punishable by death. This is despite an earlier call, in November 2011, from the Human Rights Committee to Kuwait to "revise its legislation on blasphemy and related laws ... to ensure their strict compliance" with the International Covenant on Civil and Political Rights to which Kuwait is a State party (CCPR/C/KWT/CO/2, para. 24).

20. During the reporting period, the mandatory death penalty continued to be imposed in some States, including India, the Islamic Republic of Iran, Malaysia, Pakistan, Singapore, Trinidad and Tobago and Zambia. However, some positive developments have been

⁵ Information from www.amnesty.org/en/annual-report/2012/africa; however, no official gazette is available to confirm this information.

⁶ See "UN human rights chief welcomes Mongolia's decision to suspend death penalty". Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9721&LangID=E.

⁷ Available from <http://easylawonline.files.wordpress.com/2011/09/terrorism-done.pdf>.

⁸ Joint submission on the death penalty in the Islamic Republic of Iran of the International Federation for Human Rights Leagues and Iranian League for the Defence of Human Rights, April 2012.

registered. In October 2011, the Attorney-General of Barbados announced that it would abolish the mandatory imposition of the death penalty in accordance with the decision of the Inter-American Court of Human Rights in the *Boyce v. Barbados* case.⁹ In September 2011, the Bombay High Court of India declared “unconstitutional” section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985, which imposed a mandatory death sentence for drug trafficking.¹⁰ On 1 February 2012, also in India, the Supreme Court declared the mandatory imposition of the death penalty under the Arms Act 1959 unconstitutional.¹¹

III. Enforcement of the death penalty

21. Although the international community as a whole is moving towards abolition of the death penalty in law or in practice, some States continue to use the death penalty. Furthermore, as noted by the Secretary-General in previous reports,¹² up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. This difficulty arises from a lack of transparency on the part of many Governments in relation to the number and characteristics of individuals executed. Official figures on the use of the death penalty in 2011 were available only in a small number of countries. The data on the use of the death penalty continues to be classified as a State secret in some States. Furthermore, in some States, convicted inmates were not informed of their forthcoming execution, nor were their families and lawyers; and bodies of the executed inmates were not returned to the families.

22. According to non-governmental organizations, at least 18,750 people remained under death sentence at the end of 2011 and at least 680 people were executed worldwide during that year, excluding China. The exact number of executions carried out in a number of countries, including China, the Democratic People’s Republic of Korea, Egypt, the Islamic Republic of Iran and Viet Nam, was not available.¹³ In the first half of 2012, the use of the death penalty has continued or may have even increased in some countries. According to some reports, Iraq executed 65 people in first 40 days of 2012.¹⁴ In May 2012, the Iranian authorities confirmed that 35 executions had taken place.¹⁵ According to the Ministry of Justice of Japan, three prisoners were executed on 29 March 2012; these executions were the first to take place since July 2010.¹⁶

⁹ *Boyce v. Barbados*, paras. 62–64, 74, 80, Inter-American Court of Human Rights, 20 November 2007; American Convention on Human Rights, art. 2.

¹⁰ *Indian Harm Reduction Network v. The Union of India*, in the High Court of Judicature at Bombay in its criminal jurisdiction under article 226 of the Constitution of India, June 2010, para. 57.

¹¹ *State of Punjab v. Dalbir Singh*, section 27(3) of the Arms Act of 1959 (as amended in 1988).

¹² A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19 and A/HRC/18/20.

¹³ *Death Sentences and Executions*, p. 8.

¹⁴ Human Rights Watch, “Iraq: 65 Executions in First 40 Days of 2012”, 9 February 2012. Available from www.hrw.org/news/2012/02/09/iraq-65-executions-first-40-days-2012. See also “Pillay condemns Iraq’s execution of 34 individuals in a single day”. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11774&LangID=E.

¹⁵ Spokesperson of High Representative Catherine Ashton, statement on the use of the death penalty in the Islamic Republic of Iran, Brussels, 30 May 2012. Available from www.consilium.europa.eu.

¹⁶ See International Commission against the Death Penalty, statement on Japan’s first executions since July 2010, Geneva, 29 March 2012. Available from www.icomdp.org/cms/wp-content/uploads/2012/03/ICDP-Statement-on-Japan-29-March-2012.pdf.

IV. Application of the safeguards guaranteeing protection of the rights of those facing the death penalty

23. The standards that seek to protect the rights of those facing the death penalty are set out in international human rights law, in particular in article 6 of the Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child. Furthermore, in an annex to its resolution 1984/50, the Economic and Social Council set out the minimum international standards that provide safeguards for guaranteeing protection of the rights of those facing the death penalty. The Economic and Social Council, in its resolution 1996/15, called upon Member States in which the death penalty had not been abolished to effectively apply these safeguards guaranteeing protection of the rights of those facing the death penalty. The Commission on Human Rights, in its resolution 2005/59, reaffirmed the importance of the safeguards, as did the General Assembly in its resolutions 62/149, 63/168 and 65/206.

A. Restriction of use of the death penalty to “most serious crimes”

24. In accordance with article 6, paragraph 2, of the Covenant on Civil and Political Rights, in States that have not abolished the death penalty, it may only be imposed for the “most serious crimes” (A/63/293, para. 32; and for discussion on “most serious crimes”), that is, intentional crimes with lethal or other extremely grave consequences. The application of this safeguard in recent years has focused on the use of the death penalty for crimes that are not intentional and that do not have lethal or other extremely grave consequences. In particular, imposing the death penalty for drug-related offences is in violation of article 6, paragraph 2, and the safeguards guaranteeing protection of the rights of those facing the death penalty.¹⁷

25. Harm Reduction International reported that there are currently 32 States or territories that prescribe the death penalty for drug-related offences.¹⁸ It further reported that hundreds of people are known to have been executed for drug-related offences in 2011 and early 2012. In the Islamic Republic of Iran, a new anti-narcotics law came into force in 2011, which expands the application of the death penalty to new drug-related offences, including through increasing the range of prohibited substances. In a press statement on 22 September 2011, a number of special rapporteurs of the Human Rights Council condemned the continuing execution of persons charged with drug-related offences, stressing that these do not amount to the most serious crimes for which the death penalty may be applied under international law.¹⁹ The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has reported that there were 670 executions in Iran in 2011, of which 81 per cent were of drug offenders, including people believed to be children under 18 at the time the offence was committed (A/HRC/19/66, paras. 20–21).²⁰ A total of 51 alleged drug

¹⁷ See Human Rights Committee, concluding observations: Thailand, CCPR/CO/84/THA, para. 14; concluding observations: Sudan, CCPR/C/SDN/CO/3, para. 19. See also Economic and Social Council resolution 1984/50; General Assembly (resolution 39/118).

¹⁸ Harm Reduction International, supplementary submission on the question of the death penalty to the Office of the High Commissioner for Human Rights, 28 March 2012.

¹⁹ Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

²⁰ Also written updated submission of Harm Reduction International, May 2012; see also Amnesty International, *Addicted to death: Executions for drugs offences in Iran* (London, 2011).

offenders were executed in the first six weeks of 2012.²¹ There are around 4,000 Afghan refugees on death row for drug-related offences in the Islamic Republic of Iran.²² In Indonesia, 50 of 87 individuals on death row have been convicted of drug-related offences, although no execution has been carried out since 2008.²³ Singapore has reportedly executed 326 drug offenders since 1991, including two that were executed in 2011.²⁴ An unknown number of people have been put to death in China and the Democratic People's Republic of Korea for drug-related offences and at least 27 people were sentenced to death in 2011 in Viet Nam for smuggling drugs.²⁵ Nine death sentences for drugs-related offences were handed down in Thailand in 2011²⁶ and as of early 2012 there were at least 245 people on death row for drug offences there.²⁷ In this regard, a reported amendment to the Narcotics Act of Viet Nam, which would shorten appeals times and expedite executions, is of significant concern because of the number of people on death row and the drug offenders among them.

26. Nearly every State in the world has become a party to treaties²⁸ that include obligations to take steps to reduce supply of, and demand for, controlled drugs through the imposition of sanctions; confiscation of proceeds; provision of mutual legal assistance in investigations, prosecutions and judicial proceedings and other forms of cooperation and training. However, as 32 countries or territories prescribe the death penalty for drug-related offences, cooperative assistance – such as technical or financial aid, provision of materials, intelligence-sharing and mutual legal assistance – could facilitate the apprehension of alleged drug offenders, who may be subject to the death penalty in violation of international human rights law. There has been developing recognition of the need to systematize international law enforcement efforts to ensure that cross-border cooperation does not lead to penalties that would violate international human rights law.

27. Donor States and international organizations that provide support to drugs-control projects in retentionist States need to ensure that such assistance does not facilitate and legitimize the use of the death penalty in cases that would not be acceptable in accordance with international standards and safeguards. In this regard, in May 2012, the United Nations Office on Drugs and Crimes (UNODC) published a paper to articulate its position on the promotion and protection of human rights as part of its work. Taking note of applicable international standards, the paper noted that if “a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position *vis-à-vis* its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system”. It further noted that “at the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political

²¹ Written updated submission of Harm Reduction International, May 2012.

²² *Death Sentences and Executions*, p. 36.

²³ See Anti-Death Penalty Asia Network, *When Justice Fails: Thousands executed in Asia after unfair trials* (London, Amnesty International, 2011), p. 27.

²⁴ “Trending Down: The number of people hanged in Singapore”, figures attributed to Ministry of Home Affairs, *Straits Times*, 29 February 2012. Available from www.straitstimes.com/STI/STIMEDIA/pdf/20120229/ST_IMAGES_VANEWDEATH.pdf.

²⁵ Le Nga, “Viet Nam: Five Sentenced to Death for Trading Heroin”, 30 December 2011. Available from www.thanhniennews.com/index/pages/20111230-five-sentenced-to-death-for-trading-heroin.aspx.

²⁶ *Death Sentences and Executions*, p. 27.

²⁷ Harm Redaction International submission.

²⁸ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Convention on Psychotropic Substances and United Nations Convention against Transnational Organized Crime.

intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support”.²⁹

28. The use of the death penalty for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults that may not constitute “most serious crimes” under international human rights law is also a particular concern.³⁰ For instance, in February 2012, a district court in Pakistan confirmed the death sentence of a Pakistani national, who is resident in the United States of America, for blasphemy crimes under its penal law.

29. In Saudi Arabia, the death penalty is applied in respect of a wide range of offences that cannot be considered “most serious crimes”, including apostasy and sorcery. Reportedly, in 2011, two individuals were executed for sorcery. In February 2012, a Saudi national was forcibly returned to Saudi Arabia from Malaysia, after he had left the country amid death threats for information posted on the social medium Twitter. He was accused of apostasy, punishable by the death penalty, for his statements on Twitter.³¹

30. According to some reports, the death sentence against an Iranian national residing in Canada for “insulting and desecrating Islam” was confirmed by the Supreme Court of the Islamic Republic of Iran on 17 January 2012.³² On 28 February 2012, the Amnesty and Clemency Commission of the Islamic Republic of Iran rejected a request for pardon for a death sentence against a Persian literature lecturer at the Payam-e Nour University for crimes of *Moharebeh* (fighter against God) for his alleged links with a banned opposition group.³³

B. Fair trial guarantees

31. The death penalty may be carried out only pursuant to a final judgment rendered by a competent court after a process which gives all possible fair trial safeguards, at least equal to those contained in article 14 of the Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

32. During the reporting period, human rights treaty bodies continued to address issues of fair trial standards relating to the death penalty in their dialogues with State parties during the consideration of their periodic reports. For instance, while acknowledging the de facto moratorium on the death penalty in Ethiopia, the Human Rights Committee stated that it remained concerned that death sentences were still imposed by Ethiopian courts for crimes which appear to have a political dimension, as well as following in absentia trials

²⁹ UNODC, “UNODC and the Promotion and Protection of Human Rights”, p. 10. Available from www.unodc.org/documents/justice-and-prison-reform/UNODC_HR_position_paper.pdf

³⁰ Commission on Human Rights resolution 2005/59 on the question of death penalty called on States to ensure that that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

³¹ Amnesty International, “Death penalty fear for Tweeter facing forcible return to Saudi Arabia from Malaysia”, 10 February 2012. Available from www.amnesty.org/en/for-media/press-releases/death-penalty-fear-tweeter-facing-forcible-return-saudi-arabia-malaysia-201.

³² Amnesty International, “Web programmer at risk of execution in Iran”, 17 February 2012. Available from www.amnesty.org.

³³ Amnesty International, “Clemency denied for Iranian man on death row”, 23 March 2012. Available from www.amnesty.org.

without adequate legal safeguards under articles 6 and 14 of the Covenant on Civil and Political Rights (CCPR/C/ETH/CO/1, para. 19). With regard to the situation in Belarus, the Committee against Torture stated its deep concern at reports that some death row prisoners were not provided with fundamental legal safeguards (CAT/C/BLR/CO/4, para. 27). In the light of the continued existence of the death penalty in Saint Vincent and the Grenadines, the Human Rights Committee recommended that, in relation to all persons accused of capital offences, the State party should ensure that every article 6 requirement was strictly complied with and that the assistance of counsel, through legal aid as necessary, be provided immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases concerning offences carrying the death penalty (CCPR/C/VCT/CO/2, para. 6).

33. The United Nations High Commissioner for Human Rights has expressed concerns with regard to the lack of a fair trial in death penalty cases in a number of States. For instance, in January 2012, the High Commissioner expressed her concerns at reports that 34 individuals, including two women, were executed in Iraq on 19 January following their conviction for various crimes. She expressed particular concern regarding “the lack of transparency in court proceedings, major concerns about due process and fairness of trials, and the very wide range of offences for which the death penalty can be imposed in Iraq”.³⁴ In April 2012, the Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed serious concerns that the de facto authorities in Gaza in the Occupied Palestinian Territory continued to issue death sentences and carry out executions, especially since many of the death sentences were handed down by military courts against civilians, and the use of military tribunals to try civilians in Gaza seriously undermined fair trial guarantees.³⁵

34. In April 2012, United States officials announced that Khalid Sheik Mohammed and his four co-defendants would face the death penalty for their alleged role in planning the 9/11 attacks. The American Civil Liberties Union commented that the United States Federal Government’s decision to seek the death penalty in military commissions at Guantánamo Bay against numerous defendants accused of terrorism rather than in federal courts raised concerns under international law.³⁶

35. In Bahrain, the Court of Cassation, in a decision adopted on 9 January 2012, overturned the death sentences of the people who were convicted for alleged killings during the protests in February and March 2011. Reportedly, these sentences had been imposed after grossly unfair trials before a military court – the National Safety Court – set up under emergency rule.³⁷

36. The Anti-Death Penalty Asia Network reported that in many countries in Asia, specifically in death penalty cases, the right to a fair trial was impeded by laws which denied due process. Even in countries where due process safeguards existed in principle, including in specific laws, they often did not apply in practice.³⁸ The International Commission against the Death Penalty also expressed its concerns regarding the imposition

³⁴ “Pillay condemns Iraq’s execution of 34 individuals in a single day”.

³⁵ “Press briefing notes on Gaza and Belarus”, 20 April 2012. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12071&LangID=E.

³⁶ See Devon Chaffee, “Report from Guantánamo Hearings: When Due Process is a Matter of Life and Death”, 19 January 2012. Available from www.aclu.org/blog/national-security/report-guantanamo-hearings-when-due-process-matter-life-and-death.

³⁷ Report of the Bahrain Independent Commission of Inquiry, para. 985. Available from www.bici.org.bh/BICReportEN.pdf.

³⁸ See Anti-Death Penalty Asia Network, *When Justice Fails*.

of the death penalty in violations of international human rights standards in Belarus, the Islamic Republic of Iran, Japan and the United States of America.³⁹

C. Access to consular services for foreign nationals

37. Access to consular services for foreign nationals is also an important aspect of the protection of those facing the death penalty. All States should take every possible action to ensure reciprocal compliance with this safeguard, in line with the relevant provision on the right to seek consular service under the Vienna Convention on Consular Relations.

38. In 2011, at least 79 people were reportedly executed in Saudi Arabia. Among them, many were migrant workers,⁴⁰ deprived of protection under the Vienna Convention and sentenced to death without respect of fair trial standards. Several human rights and migrant organizations reported that the information of the beheading of an Indonesian migrants worker on 18 June 2011 had not been known by the Indonesian Consulate General and related institutions, and that she had been tried without a defence lawyer.⁴¹ In July 2011, the President of Indonesia formed a taskforce to defend Indonesian migrant workers that are facing the death penalty abroad.

39. Amnesty International reported that foreign nationals continued to be sentenced to death in China.⁴² A Pakistani man was executed by lethal injection on 21 September 2011 after the Supreme People's Court in Beijing had approved his death sentence for drug trafficking. Reportedly, he had not received adequate consular assistance during his trial and detention.

40. In July 2012, Humberto García Leal, a Mexican citizen, was executed by the State of Texas in the United States, despite a ruling of the International Court of Justice in 2005 that the United States had violated article 36 of the Vienna Convention on Consular Relations in the case of 51 Mexican men, including Humberto García Leal, who had been sentenced to death in that country. The International Court of Justice ordered the United States to provide judicial "review and reconsideration" of the convictions and sentences to determine if these individuals had been put to trial and sentenced without being granted access to consular services.⁴³ The Inter-American Commission on Human Rights also condemned the judicial execution by the United States of Humberto Leal García in defiance of precautionary measures granted in his favour and without having complied with the recommendations issued by the Commission in the Merits Report on the Humberto case.⁴⁴

41. On 2 November 2011, a petition was submitted to the Inter-American Commission on Human Rights, against the United States, on behalf of Ivan Teleguz, who was on death row in the State of Virginia. It was alleged that Mr. Teleguz did not receive an effective and adequate defence, that his due process rights were not respected and that he was arrested, tried and sentenced to death without having been informed of his right to contact Ukrainian consular officers, as provided for in the Vienna Convention on Consular Relations. On 22 December 2011, the Inter-American Commission notified the United States that

³⁹ Relevant statements available from www.icomdp.org/statements.

⁴⁰ OHCHR Press Briefing, October 2011 and January 2012.

⁴¹ Joint written submission of KONTRAS and Migrant CARE, March 2012.

⁴² *Death Sentences and Executions*, p. 20.

⁴³ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12.

⁴⁴ Inter-American Commission on Human Rights, "IACHR Condemns Execution of Humberto Leal García in the United States", 8 July 2011. Available from www.cidh.oas.org/Comunicados/English/2011/67-11eng.htm.

precautionary measures had been granted on behalf of the alleged victim, and requested a stay of execution until such time as it should pronounce on the merits of the petition.⁴⁵

D. Pardon or commutation

42. Amnesty International recorded pardons or commutations of death sentences in 33 States.⁴⁶ This practice could be seen as a sign that: a growing number of States accept that in some cases death sentences or executions are inappropriate for the crimes allegedly committed, or the legal process that led to the conviction is not consistent with international standards; and that by avoiding executions, they wish to undertake steps to protect the right to life in line with national law and their obligations under international law.

43. In April 2011, on the occasion of the fiftieth anniversary of independence, the Government of Sierra Leone pardoned at least four death row prisoners, including one woman, and commuted all other death sentences to life imprisonment, except one.⁴⁷ On 27 April 2011, the President of Sierra Leone commuted all death sentences to life imprisonment and three death-row prisoners were granted pardon (A/HRC/18/10, para. 29). In Myanmar, on 2 January 2012, the death sentences of all 33 inmates on death row were commuted to life imprisonment by Presidential Order. In April 2012, King Mohammed of Morocco commuted five death sentences to terms of imprisonment.⁴⁸ On 14 February 2012, a presidential amnesty was introduced in Tunisia, which led to commuting death sentences of 122 convicts to life imprisonment (A/HRC/WG.6/13/TUN/1, para. 63).

44. In some cases, death sentences against children who were under 18 at the time of the offences were commuted or pardoned by the judiciary or the executive authorities. For instance, on 2 April 2012, the Constitutional Court of Sudan issued a decision rejecting the death penalty imposed on a person under 18 in the Red Sea State. After continuous advocacy and psychosocial and legal aid provided by the United Nations Children's Fund (UNICEF), OHCHR and other international organizations, the death sentence pronounced against three juveniles was commuted by the Appeal Court in Mauritania in December 2011 to 12 years' imprisonment, the maximum penalty for minors under national law.

E. Methods of execution

45. In its resolution 1996/15, paragraph 7, the Economic and Social Council urged States to effectively apply the Standard Minimum Rules for the Treatment of Prisoners in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

46. During the reference period, executions were reportedly carried out publicly in the Islamic Republic of Iran, the Democratic People's Republic of Korea, Saudi Arabia and Somalia.⁴⁹ Contrary to previous years, no execution by stoning was recorded during the reporting period. In the Islamic Republic of Iran, the new Islamic Penal Code, passed by its parliament in January 2012, does not provide provision for punishment by stoning. The

⁴⁵ Inter-American Commission on Human Rights, report No. 16/12 on petition P-1528-11, Admissibility, *Ivan Teleguz v. United States*, 20 March 2012.

⁴⁶ *Death Sentences and Executions*, p. 6.

⁴⁷ *Ibid.*, p. 50.

⁴⁸ *Death Sentences and Executions*, pp. 41–42; see also submission to the Committee against Torture by the Advocates for Human Rights, in collaboration with the World Coalition against the Death Penalty. Available from <http://www2.ohchr.org/english/bodies/cat/cats47.htm>.

⁴⁹ *Death Sentences and Executions*, p. 8.

Secretary-General, in his report on the situation of human rights in the Islamic Republic of Iran, welcomed the omission of punishment of stoning and details of this method of execution in the Code (A/HRC/19/82, para. 8).

V. Use of the death penalty on children, persons with mental or intellectual disabilities and other vulnerable groups

A. Children

47. Article 37 (a) of the Convention of the Rights of the Child, which is in force in 193 States, reaffirms the internationally accepted standard⁵⁰ that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age, and stresses that “life imprisonment without possibility of release shall [not] be imposed” for such persons.

48. On 23 March 2012, the Human Rights Council adopted resolution 19/37 on the rights of the child. The resolution includes safeguards with regard to the right of juvenile offenders not to be sentenced to death and to be removed from death row; a rebuttable presumption of age in favour of juvenile offenders; and access of children of parents incarcerated on death row to their parents and to information concerning their parents’ status.

49. Despite the clear prohibition under international human rights law, some States continue to use the death penalty against persons below the age of 18 at the time of the alleged offence. The full overview of actual cases of executions of children, children on death row and children at high risk of receiving death penalty is not available due to the lack of available information and the lack of monitoring capacity of various actors. However, reportedly, executions of juveniles were carried out in the Islamic Republic of Iran, Saudi Arabia and Yemen during the reporting period. A boy, 17 years old at the time of execution, was publicly hanged on 21 September 2011 in the Islamic Republic of Iran. This was the third officially acknowledged execution of a juvenile offender, after two juvenile offenders had been executed in the southern port of Bandar Abbas in April 2011. In Saudi Arabia, Bandar bin Juza’ bin Rumaithan al-Luhaibi was executed on 10 October 2011. He was identified in a Ministry of Interior statement as a “juvenile”, but there is no indication of his age at the time of the alleged offence or the execution. In January 2012, the Attorney General in Yemen rejected final appeals against the death sentences for Fuad Ahmed Ali Abdulla and Muhammed Taher Thabet Samoum, both of whom possibly were under 18 years old when they allegedly committed their crimes in 1999 and 2004, respectively. Fuad Ahmed Ali Abdulla was executed in January 2012.

50. Sentencing of juveniles to death also continued in some States. In Sudan, two juvenile prisoners under 18 at the time of the alleged crimes were sentenced to death under the 2005 Terrorism Act and the Sudanese Criminal Act, and the sentences were subsequently upheld by the Special Criminal Court in North Darfur on 29 November 2011. In November 2011, the Supreme Court of the Islamic Republic of Iran approved the death penalty for a boy, who was only 16 when he committed alleged crimes of murder and robbery.

51. In her work, the Special Representative of the Secretary-General on Violence against Children promotes the implementation of the recommendations of the United

⁵⁰ See for example article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

Nations study on violence against children, which called upon States to ensure that no person below 18 at the time of the alleged offence was subjected to the death penalty, to immediately suspend the execution of all persons sentenced to death for crimes committed before they were 18, and to ensure the abolition of the death penalty as a sentence as a matter of highest priority (A/61/299, para. 97). The Special Representative conducted a global progress survey to assess follow-up ensured to the recommendations of the study on violence against children, which contained queries on capital punishment imposed for offences committed by persons below the age of 18 years. The information received from States and other partners confirm that the large majority of countries have outlawed the death penalty, as well as life imprisonment and other forms of inhuman sentencing and punishment for children.

52. During the past year, the Special Representative also continued her support to the campaign to end all inhuman sentencing of children, including the death penalty, launched with the Child Rights Information Network. As a result of her efforts, special emphasis was placed on the adoption of national legislation in many States, banning all forms of violence against children, including capital punishment, and on the implementation of international human rights standards within the justice system, with priority attention given to the abolition of death penalty and the suspension of execution of death penalty sentences imposed for offences committed by persons under 18. In close collaboration with her partners, the Special Representative will continue to pursue advocacy efforts at the global, regional and national levels to achieve the universal abolition of death penalty, and to protect all persons below the age of 18 at the time of the alleged offence from the imposition of inhuman sentencing and of any other form of violence.

53. On 30 September 2011, the Committee on the Right of the Child devoted its day of general discussion to the topic of “Children of incarcerated parents” and sought to raise awareness about and explore child rights issues related to children of incarcerated parents. The main points of discussion addressed included the impact on children of a parent’s involvement with all stages of the criminal justice process, including coping with a parent in cases involving capital punishment. Several civil society and human rights provided submissions focusing on these issues.⁵¹

B. Persons with mental or intellectual disabilities

54. In accordance to Economic and Social Council resolution 1984/64, paragraph 1 (d), States should eliminate the death penalty “for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution”. This was reiterated by the Commission on Human Rights through resolution 2005/59.

55. Human rights organizations reported that, despite a significant national ruling providing that the execution of death row inmates with “mental retardation” violated the Eighth Amendment,⁵² the United States had continued to execute severely mentally ill persons. For instance, in February 2012, Edwin Turner was executed in Mississippi. He had been released from a mental hospital just weeks before the murder for which he was convicted. Despite the constitutional prohibition, the United States also continued to execute intellectually disabled individuals during the reporting period. In February 2012, Robert Moorman was executed in Arizona, despite the fact he had been diagnosed with mental retardation and attended special education classes as a child. He was first admitted to a mental health hospital at 13 years old. The United States Supreme Court recently

⁵¹ Available from http://www2.ohchr.org/english/bodies/crc/discussion2011_submissions.htm.

⁵² *Atkins v. Virginia*, United States Supreme Court, 2002.

granted review in two cases dealing with this issue.⁵³ The Inter-American Commission on Human Rights is currently considering two claims against the United States with respect to the imposition of the death penalty against persons with mental or intellectual disabilities.⁵⁴

C. Discrimination in the imposition of the death penalty

56. Discrimination continues to have a distorting effect in various aspects of private and public life, including in criminal justice. In particular, instances have been recorded of individuals for whom membership of a minority constituted a significant factor in the decision that led to their sentence to death and execution. In the Islamic Republic of Iran, members of Ahwazi Arab, Baluoch and Kurdish and minorities were reportedly targeted and the death penalty imposed against them (A/HRC/19/66, paras. 62–66). In May 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions drew the attention of the authorities in Iran to two members of the Kurdish minority at risk of imminent execution. Both individuals were accused of *Moharebeh* (fighting against God), had their death sentences upheld by the Supreme Court for the second time in 2011 and their files were subsequently sent for implementation of the sentence. In December 2011, the commutation of the death sentence of another Kurdish activist to lifetime imprisonment was reported. The accused was sentenced to death on charges of *Moharebeh* for her alleged membership in an opposition group, defined as a terrorist group in Iran (A/HRC/19/82, para. 63). In March 2012, Amnesty International reported that five members of the Iranian Ahwazi Arab minority were at imminent risk of execution in public after their death sentences had been upheld by the Supreme Court.⁵⁵

57. The Human Rights Committee expressed concern about discrimination against members of the Christian minority in the Islamic Republic of Iran, including arrests based on charges of proselytizing and a ban on conducting Christian services in Farsi. The Committee also noted with concern that individuals who have converted from Islam have been arrested and that article 225 of the Penal Code was aimed at making the death penalty mandatory for convicted male apostates (see CCPR/C/IRN/CO/3).

58. The High Commissioner for Human Rights reported that, in at least five countries, the death penalty may be applied to sexual minorities, in particular those found guilty of offences relating to consensual, adult homosexual conduct (A/HRC/19/41, para. 45). In November 2011, the Human Rights Committee expressed concern that members of the lesbian, gay, bisexual, and transgender community in the Islamic Republic of Iran face harassment, persecution, cruel punishment and even the death penalty (CCPR/C/IRN/CO/3). The country's new Islamic Penal Code, adopted in January 2012, provides for the death sentence for sodomy (art. 235) and for the non-Muslim party in same-sex relations not involving penetration (art. 233). In Liberia, in February 2012, a bill was reportedly tabled to amend section 2.3 of the Domestic Relations Law to prohibit same-sex relations and make such relations punishable by penalties ranging from one year's imprisonment to death.

⁵³ *Ryan v. Gonzales*, United States Supreme Court, 19 March 2012; *Tibbals v. Carter*, United States Supreme Court, 19 March 2012).

⁵⁴ Inter-American Commission on Human Rights, reports No. 63/12 on admissibility petition 1762-11, *Virgilio Maldonado Rodríguez v. United States*, 29 March 2012; No. 132/11 on admissibility petition No. 194-04, *Gregory Thompson v. United States*, 19 October 2011. Available from www.oas.org/en/iachr/decisions/admissibilities.asp.

⁵⁵ Amnesty International, "Five Arab men at imminent risk of execution". Available from http://ua.amnesty.ch/urgent-actions/2012/03/077-12?ua_language=en.

59. In the United States, the North Carolina Racial Justice Act 2009 allows defendants in death penalty cases, for the first time, to use statistical evidence to show systemic bias in the imposition of the death penalty. If a defendant successfully proves that race was a significant factor in decisions to seek or impose the death penalty at the time of his or her trial, the court is required to convert that sentence to life in prison. In April 2012, a North Carolina judge found statistical evidence of racial bias in a death penalty case, commuting the death sentence of Marcus Robinson to life without parole. The Court concluded that “race was a materially, practically and statistically significant factor” in the decision to exercise peremptory challenges during jury selection” and “in the decision of prosecutors” at various stages of the trial of Mr. Robinson from 1990 to 2010.⁵⁶

VI. Conclusions and recommendations

60. **Developments in the practice of States with respect to the death penalty clearly indicate a growing trend towards abolition. Over the past few decades, the balance has shifted between a substantial majority of States that maintained the death penalty to these States becoming a minority. Furthermore, it may be noted that States that have abolished the death penalty or are moving towards abolition represent different legal systems, traditions, cultures and religious backgrounds.**

61. **The development of international legal standards and jurisprudence in relation to the death penalty has also continued. International and regional human rights instruments strictly limit the application of the death penalty or aims to abolish it. While article 6 of the International Covenant on Civil and Political Rights permits the use of the death penalty in limited circumstances, it also provides that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant” (para. 6). The Second Optional Protocol to the Covenant aiming to abolish the death penalty was adopted in 1989. In the international criminal law context, the statutes of international and hybrid criminal tribunals established or supported by the United Nations for the former Yugoslavia, Rwanda, Sierra Leone, Cambodia and Lebanon all exclude the death penalty as a possible sentence for relevant crimes. Similarly, in accordance with the Rome Statute of the International Criminal Court the death penalty shall not be imposed by the Court, a fact that is often cited as evidence of a trend towards universal abolition of capital punishment.**

62. **Some States, however, still retain the death penalty in law. A smaller number thereof continue to impose it, and thousands of individuals are still executed each year. In some cases, children under 18 at the time of the alleged offence and individuals belonging to vulnerable groups, including racial, national, religious, ethnic and sexual minorities, are executed in violation of international human rights law.**

63. **For States that maintain the death penalty, the standards to safeguard the rights of those sentenced to death are of crucial importance in ensuring that the punishment is carried out in a manner consistent with their international legal obligations.**

⁵⁶ *State v. Robinson*, Order granting motion for appropriate relief, in the General Court of Justice, Superior Court Division, 20 April 2012.