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Agenda item 2

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

Agenda item 3

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

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

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

[28 August 2012]

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

The question of the death penalty: Amnesty International's information complementary to Secretary General's report

In this statement Amnesty International provides information complementary to the Secretary-General's report on the "Question of the death penalty" to the 21st session of the UN Human Rights Council (A/HRC/21/29). It addresses additional recent developments relating to the death penalty that have occurred principally in the period from March 2012 to mid-August 2012.

As the Secretary-General concludes: "[d]evelopments in the practice of States with respect to the death penalty clearly indicate a growing trend towards abolition" and "States that have abolished the death penalty or are moving towards abolition represent different legal systems, traditions, cultures and religious backgrounds".¹

Amnesty International believes that the Human Rights Council has a key role to play in *complementing* action by the General Assembly towards universal abolition. The consensual adoption of the "Rights of the child" resolution 19/37 on 23 March 2012, which includes key provisions on the death penalty,² is a laudable step in the right direction. Council members and observers must take further steps to address concerns such as those highlighted in the Secretary General's report, including:

- ongoing difficulties in gaining access to reliable information regarding the use of the death penalty and the secrecy surrounding executions in some countries;
- the use of the death penalty for persons under 18 at the time of the alleged offence, for people with mental or intellectual disabilities and for members of other vulnerable groups;
- the expansion of the application of the death penalty in certain countries, including to vaguely-defined "terrorist" and "religious" crimes, as well as to drugs offences;
- imposition of death sentences in violation of fair trial standards, including by military courts or in violation of rules guaranteeing access to consular services.

Amnesty International urges Human Rights Council members and observers to raise these concerns in the Council debate and in bilateral relations with countries concerned and to use the full range of the Council's procedures, including the Universal Periodic Review, to promote abolition of the death penalty. It also urges them to support the upcoming General Assembly resolution on a moratorium on executions.

Positive developments

Africa

Following approval by the parliament and the President, on 5 July 2012 Benin became the 75th state worldwide, and the 10th in Africa, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty.³

¹ A/HRC/21/29, paragraph 60.

² See section on Children and the administration of justice.

³ <http://www.amnesty.org/en/library/asset/AFR14/001/2012/en/753e8d08-81d4-4600-9819-61ebda5f3142/afr140012012en.pdf>.

In June 2012, the government of Ghana accepted the recommendation of the Constitution Review Commission to abolish the death penalty in the new constitution.

In a judgment of 27 July 2012, the South African Constitutional Court in *Minister of Home Affairs and Others v Tsebe and Others*⁴ confirmed and expanded its own previous jurisprudence that, in light of South Africa's own abolitionist stance, the deportation, extradition or other removal of persons to a retentionist state, without having previously obtained diplomatic assurances that such persons would not be executed, would be unconstitutional and unlawful.

Middle East and Northern Africa

In June 2012 in Egypt, former president Hosni Mubarak was sentenced to prison, although the prosecution had called for a death sentence. The judgment shows that it is possible to address past serious human rights violations without recourse to the death penalty.⁵

Negative developments

Africa

In August 2012, the President of Gambia made the deeply troubling statement that all 47 inmates on death row would be executed by mid-September.⁶ On 27 August, the Minister of Interior confirmed the executions of nine persons by firing squad,⁷ the first in the country in 27 years.⁸ The organization is deeply concerned about the systemic flaws in the criminal justice system and is urging the government to immediately review all death sentences.

In May 2012 in Sudan, a 20-year old woman was sentenced to death by stoning on charges of adultery.⁹ The charges were dropped on appeal in July, but the same month a second woman was sentenced to death by stoning.¹⁰

Americas

As noted in the Secretary General's report, the USA continues to execute persons where strong indications of mental or intellectual disability exist. Such executions were carried out, for example, in Texas and Arizona in July and August 2012.¹¹ However, stays in executions or commutations due to doubts over mental competency were granted in Delaware, Ohio, and Texas, reflecting an increased national debate on this issue.¹² In early

⁴ Cases CCT 110/11 & 126/11 [2012] ZACC16.

⁵ <http://www.amnesty.org/en/news/egypt-mubarak-2012-06-02>.

⁶ <http://www.amnesty.org/en/news/gambia-president-jammeh-must-retract-call-execution-death-row-inmates-2012-08-21>; see also AI index: AFR 27/005/2012

⁷ Dawda Bojang, Malang Sonko, Lamin Jarjou, Aliou Bah, Lamin F. Jammeh, Tabara Samba, Buba Yarboe, Lamin B S Darboe, and Gebe Bah.

⁸ Amnesty International has reclassified The Gambia, previously abolitionist in practice, as retentionist.

⁹ Intisar Sharif Abdallah (<http://www.amnesty.org/en/library/info/AFR54/024/2012/en>).

¹⁰ Layla Ibrahim Issa Jumul (<http://www.amnesty.org/en/library/info/AFR54/035/2012/en>).

¹¹ Texas: Yokamon Laneal Hearn, executed on 18 July, and Marvin Wilson, executed on 7 August; Arizona: Daniel Cook, executed on 8 August; see AI Index: AMR 51/066/2012; AMR 51/073/2012; and AMR 51/072/2012.

¹² In January 2012, the Governor of Delaware commuted the death sentence of Robert Gattis to life imprisonment, due to an abusive childhood and certain circumstances of his conviction. The Governor of Ohio in June stayed the execution of Lebanese national Abdul Hamin, and in July commuted the death sentence of John Jeffrey Eley to life in prison without the possibility of parole. In Texas, in August the execution of Marcus Druery was stayed by the Texas Court of Criminal Appeals

July, the North Carolina Racial Justice Act 2009, which allows defendants in death penalty cases to use statistical evidence to show systemic bias in the imposition of the death penalty, was severely curtailed by the state legislature, just months after a state judge had applied the Act and commuted a death sentence.¹³

Asia

There were two executions in Japan in August in addition to the ones recorded in the Secretary General's report, bringing the total for the country for 2012 to date to five.¹⁴ There is an imminent risk of further executions, exacerbated by the policy of the Japanese government to carry out executions in secret and without prior notice to the family of the convicted person.

Europe and Central Asia

Belarus continues to be the only country in Europe to still apply the death penalty. Two men were executed, probably between 14 and 16 of March 2012; both had been sentenced to death after unfair trials in 2011 for carrying out a metro bombing in Minsk.¹⁵

Middle East and Northern Africa

A high level of executions persists in Iran, especially for drug-related crimes,¹⁶ along with the politicized use of death sentences against members of minorities and opponents of the government, following trials in violation of fair trial standards (including forced confessions), and for crimes that are not "most serious". At least four of the five members of Iran's Ahwazi Arab minority reported by the Secretary General to be under sentence of death are believed to have been executed in June 2012;¹⁷ in July, five further members of the Ahwazi minority were sentenced to death.¹⁸ Also in June, Iran's Supreme Court upheld death sentences for two men found guilty of drinking alcohol for a third time.¹⁹ In the same month, Iran complained about executions of Iranian nationals in Saudi Arabia in violation of rules on fair trials and consular assistance, and the Iranian news agency's headline reported that "Execution of Iranian citizens in Saudi Arabia was a medieval act".²⁰

An increase of executions has been recorded in Iraq, the Hamas-controlled Gaza Strip in the Occupied Palestinian Territories, and in Saudi Arabia for drug offences.

As of July 2012, at least 70 persons had been executed this year in Iraq; that is more than the known total for 2011 (at least 68).²¹ Six men had been executed by the Hamas authorities in Gaza this year.²² Also as of July, in Saudi Arabia more than a third of the at

to consider whether a hearing is needed to determine his mental competency. See AI Index: AMR 51/007/2012; AMR 51/039/2012; AMR 51/061/2012; and AMR 51/070/2012.

¹³ See paragraph 59 of A/HRC/21/29 on the commutation of the death sentence of Marcus Robinson to life without parole.

¹⁴ AI Index: ASA 22/013/2012.

¹⁵ <http://www.amnesty.org/en/news/belarus-must-release-bodies-convicts-executed-over-minsk-metro-bombing-2012-03-19>.

¹⁶ <http://www.amnesty.org/en/news/iran-overturn-death-sentence-drugs-offence-2012-08-07>.

¹⁷ AI Index: MDE 13/042/2012. See also paragraph 15 of the Secretary General report.

¹⁸ AI Index: MDE 13/049/2012.

¹⁹ AI Index: PRE01/310/2012.

²⁰ http://livewire.amnesty.org/2012/06/15/iran-saudi-arabia-%E2%80%93-and-the-unfair-trials-for-%E2%80%93-drugs-offenders%E2%80%93/langswitch_lang/es/.

²¹ AI Index: PRE01/363/2012.

²² <http://www.amnesty.org/en/news/gaza-executions-flout-legal-process-2012-07-18>.

least 50 persons executed so far this year were alleged drugs offenders; this is a steep rise in comparison to 2011, when only three out of 82 persons were executed for drugs offences.

Ongoing developments at the national level

Africa

In July 2012, a second draft of the new constitution of Zimbabwe contained welcome restrictions on the application of the death penalty; however, it does not go far enough towards full abolition. Amnesty International continues to urge Zimbabwe to remove the death penalty entirely from the new constitution.²³ This would be in line with Zimbabwe's expressed intentions, following its acceptance of UPR recommendations by Romania and Brazil in March 2012, to ratify the Second Optional Protocol to the ICCPR and to take measures to abolish the death penalty.²⁴

Asia

In addition to the two drug offenders mentioned in the Secretary General's report, two further people were executed for murder in Singapore in 2011.²⁵ In a welcome development, on 9 July 2012, Singapore announced plans to limit the application of the mandatory death penalty in some cases, including some low-level drug offences. However, retaining any form of the penalty for drugs offences and any form of mandatory death penalty still violates international minimum standards.²⁶ Singapore also announced that nobody would be executed until the changes were implemented, including for existing death sentences.

Developments in regional organizations

The African Commission on Human and Peoples' Rights published in April 2012 a "Study on the question of the death penalty in Africa".²⁷ Among other things, the Study recommends the adoption of a "Protocol to the African Charter on Human and Peoples' Rights on the Abolition of Death Penalty under any circumstances" and makes a number of recommendations to States that still retain the death penalty on a moratorium and the commutation of sentences.

In August 2012, the Inter-American Commission on Human Rights called for a moratorium on the application of the death penalty on the occasion of the publication of the report "The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition."²⁸

²³ <http://www.amnesty.org/en/library/info/AFR46/010/2012/en>.

²⁴ See A/HRC/19/2, paragraph 706.

²⁵ Therefore Singapore was among the 21 countries that carried out death sentences in 2011.

²⁶ AI Index: ASA 36/006/2012.

²⁷ http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf.

²⁸ http://www.oas.org/en/iachr/media_center/PReleases/2012/100.asp.