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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 covering the period from July 2010 to June 2011, and draws attention to a number of phenomena, including the continuing trend towards abolition, the ongoing difficulties in gaining access to reliable information on executions, and various international efforts towards the universal abolition of the death penalty.

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I. Introduction

1. Prior to 2006, the Secretary-General submitted to the Commission on Human Rights annual reports on the question of the death penalty. In accordance with Commission resolution 2005/59, a report was also submitted to the Commission at its sixty-second session in 2006 (E/CN.4/2006/83). The Human Rights Council, in its decision 2/102, requested the Secretary-General to continue with the fulfilment of his activities, in accordance with all previous decisions adopted by the Commission on Human Rights, and to update the relevant reports and studies. The present report is submitted in this context as an update of previous reports on the question of the death penalty, and covers primarily developments on the question of the death penalty from July 2010 to June 2011.¹

2. The present report has been prepared on the basis of information received from Member States² and on the basis of information collected from available sources, including information from United Nations agencies, international and regional bodies, and non-governmental organizations (NGOs).

II. Changes in law and practice

3. Changes in law may 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, including the decision to observe a moratorium, or to maintain a de facto moratorium.

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

4. About 140 of the 192 States Members of the United Nations are believed to have abolished the death penalty or introduced a moratorium either legally, or in practice. However, only 73 States have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights.

5. Gabon abolished the death penalty for all crimes in February 2010.³ According to the new law, the death penalty is substituted by life imprisonment with the possibility of pardon or amnesty, conditional freedom or alternative means, only after having served at least 30 years of imprisonment. In April 2010, the Parliament of Djibouti also adopted an amendment to the Constitution abolishing the death penalty.

6. In the United States of America, in March 2011, the State of Illinois adopted a law abolishing the death penalty, becoming the sixteenth state in the country to do so. When the bill was signed, the Governor of Illinois released a statement indicating that: "I have found no credible evidence that the death penalty has a deterrent effect on the crime of murder"

¹ The present report also includes information with regard to developments that occurred during the period January-June 2010 and which were not included in the previous report (A/HRC/15/19).

² Algeria, Argentina, Belarus, Bosnia and Herzegovina, Canada, Cuba, Egypt, Georgia, Guatemala, Jamaica, Lao People's Democratic Republic, Republic of Moldova, Slovakia, Spain, Switzerland, Tunisia, Turkey, Uzbekistan.

³ Law 3/2010, which abolishes the death penalty in Gabon, was approved by the Parliament in January 2010 and promulgated on 15 February 2010 (information received in February 2011).

and “the enormous sums expended by the state in maintaining a death penalty system would be better spent on preventing crime and assisting victims’ families in overcoming their pain and grief.”⁴

7. In 2010, the Ministry of Justice of Lebanon submitted to the National Assembly a draft bill to abolish the death penalty, but it did not find majority approval.⁵ Bills abolishing the death penalty have been pending in the parliaments of Mali, Mongolia and the Republic of Korea since 2010.⁶ In January 2011, the Government of Guatemala presented a bill to the Congress to reform the Criminal Code, the Criminal Procedure Code and the Anti-Narcotic Law aiming to abolish the death penalty.⁷

B. Countries that have abolished the death penalty for ordinary crimes

8. No new country abolished the death penalty for ordinary crimes during the reporting period.

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

9. 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, judicial, legislative and administrative developments were recorded in several countries with regard to the mandatory imposition of the death penalty and the procedural aspects of its implementation.

10. The mandatory imposition of the death penalty with no consideration of the defendant’s personal circumstances or the circumstances of the particular offence was declared unconstitutional in Bangladesh. In its judgment, the High Court Division of the Supreme Court of Bangladesh stated that “any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court’s discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law”.⁸ The Court of Appeal of Kenya ruled in July 2010 that the mandatory imposition of the death penalty for murder violated the protections against arbitrariness and inhumane treatment and was “inconsistent with the letter and spirit of the constitution”.⁹

11. In October 2010, the Parliament of Guyana adopted a bill abolishing the mandatory imposition of the death penalty against individuals convicted of murder. The death penalty, however, remains applicable for certain categories of murder. During its consideration under the universal periodic review mechanism in May 2010, Guyana committed to

⁴ Statement from Governor Pat Quinn on Senate Bill 3539, State of Illinois press release, 9 March 2011. The Bill was signed by the Governor on 9 March and will be effective from 1 July 2011.

⁵ Draft report of the Human Rights Council on its sixteenth session (A/HRC/16/L.41), para. 586.

⁶ Amnesty International, *Death Sentences and Executions 2010* (London, 2011), p. 7.

⁷ Note verbale of Guatemala dated 4 May 2011.

⁸ *Bangladesh Legal Aid and Services Trust and another vs. Bangladesh*, Writ Petition No. 8283 of 2005, judgement issued in 2010, p. 34.

⁹ *Mutiso v. Republic of Kenya*, Criminal Appeal No. 17 of 2008, paras. 28, 33-34 and 36-38, Court of Appeal at Mombasa, 30 July 2010.

continue to consider and consult on the abolition of the death penalty and to report to the Human Rights Council in two years.¹⁰

12. China continued to apply the death penalty in a large number of cases.¹¹ However, in July 2010, new regulations were jointly issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministries of Public Security, State Security and Justice. These regulations strengthen the prohibition of the use of illegal evidence in criminal cases, including coerced confession and other evidence obtained through torture and other ill-treatment, and enhance legal procedures regarding the collection, examination, verification and determination of the legality of evidence in cases that may lead to the imposition of the death penalty.¹² In February 2011, the National People's Congress in China also passed a law removing the death penalty for 13 non-violent economic crimes.¹³

13. In April 2011, the Parliament of Gambia abolished the death penalty for drug offences, which had been introduced in the Drug Control Amendment Act of 2010, observing that it had overlooked the constitutional prohibition against the death penalty for offences not resulting in death when adopting that piece of legislation.

D. Countries that have ratified international and regional instruments providing for the abolition of the death penalty

14. On 6 December 2010, Kyrgyzstan became, through accession, the seventy-third State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

15. A draft law providing for the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights has been under consideration in the Parliament of Mongolia since 2010.

16. On 1 February 2011, the Council of Ministers of the transitional Government in Tunisia announced that it would ratify various international human rights instruments, including the Second Optional Protocol to the International Covenant on Civil and Political Rights.

17. There were no new ratifications of or accessions to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty or to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty during the reporting period.

E. Countries that have introduced a moratorium on executions

18. No new country introduced a moratorium on executions during the reporting period.

¹⁰ Views on conclusions and/or recommendations, voluntary commitments and replies presented by Guyana in the context of the universal periodic review (A/HRC/15/14/Add.1), para. 52. See also paras. 31-34.

¹¹ Amnesty International, *Death Sentences* (note 6 above), p. 17; see also para. 23 below.

¹² Amnesty International, *Death Sentences*, p. 19.

¹³ China, "China exempts 13 crimes from death penalty". Available from http://english.gov.cn/2011-02/25/content_1810870.htm, Feb. 25, 2011.

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

19. In 2010, the scope of the death penalty was expanded in Gambia. Three laws¹⁴ were adopted by the National Assembly to make human trafficking, rape, violent robbery and possession of more than 250 grams of heroin or cocaine offences punishable by the death penalty.¹⁵

20. A new anti-narcotics law was passed in December 2010 and came into force on 4 January 2011 in the Islamic Republic of Iran. Article 18 of the new law provides for the death penalty for drug traffickers and traders.¹⁶

21. In February 2011, China introduced the death penalty for forced organ removal from juveniles resulting in death.¹⁷

III. Enforcement of the death penalty

22. As has been noted in previous reports of the Secretary-General, 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 States in relation to the numbers and characteristics of individuals executed. In some countries, this information is considered a State secret or an issue of national criminal justice system which should not be interfered with. Publishing figures on the use of the death penalty is prohibited by law in one State.

23. In 2010, the global number of executions (excluding China) estimated by human rights organizations was 527, with the proviso that the actual figure may be significantly higher.¹⁸ It was further reported that at least 2,024 new death sentences were known to have been imposed in 67 countries in 2010.¹⁹ While there is no accurate information on the total number of executions in China, Amnesty International reported that in 2010 China continued to use the death penalty extensively and executed thousands of people for a wide range of crimes that included non-violent offences.²⁰

24. Amnesty International reported that in most countries where support for the death penalty is still strong, capital punishment reportedly continues to be imposed after unfair trials and is often based on confessions extracted through torture. In most countries, the death penalty is used disproportionately against the poor, members of minority racial, ethnic and religious communities and other minorities. In some countries death sentences are handed down for non-violent crimes that do not meet the threshold of “most serious

¹⁴ The Drug Control Amendment Act 2010, the Trafficking in Persons Amendment Act 2010 and the Criminal Code Amendment Act 2010.

¹⁵ In April 2011, however, the Parliament of Gambia abolished the death penalty for drug offences. See para. 13 above.

¹⁶ Interim report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/HRC/16/75), para. 11.

¹⁷ China, “China exempts 13 crimes” (note 13 above).

¹⁸ Amnesty International, *Death Sentences* (note 6 above), p. 5. See also World Coalition against the Death Penalty, *Facts and Figures about the Death Penalty 2010*, available from www.worldcoalition.org/modules/wfdownloads/singlefile.php?cid=34&lid=342, and Hands off Cain, *draft death penalty worldwide report 2011* (forthcoming), p. 3.

¹⁹ Amnesty International, *Death Sentences*, p. 5.

²⁰ *Ibid.*, p. 19.

crimes”²¹ – such as economic crimes, sorcery, apostasy and drug-related offences²² or sexual relations between consenting adults.

25. Reports also indicate that various methods of execution, including beheading, electrocution, hanging, lethal injection, shooting or stoning were used during the reporting period.²³ Public executions were reportedly carried out in some States,²⁴ while in other States, death-row inmates were not informed of their forthcoming execution, nor were their families or lawyers.²⁵

26. In some cases, lethal chemicals or equipment were reportedly traded from abolitionist States to retentionist States and used for the implementation of the death penalty. In January 2011, 13 civil society organizations signed an appeal to the European Commission to control the exportation, from Europe, of the drugs that are used in executions in the United States.²⁶ The submission seeks to add sodium thiopental to annex III of Council Regulation (EC) No. 1236/2005, which imposes restrictions and controls on trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment. In April 2011, 14 member States of the European Union, including Spain, urged the European Union to impose an export ban on a drug used for lethal injections in several states of the United States.²⁷

27. The application of the death penalty for drug offences remains one of the major challenges. Harm Reduction International reported that in 2010 there were 32 countries or territories that prescribed the death penalty for drug-related offences; and hundreds of people were known to have been executed for drug-related offences. According to various sources, more than 150 people were executed for drug offences in the Islamic Republic of Iran in 2010. In China, at least 59 people were executed in the week around 26 June 2010 to mark the International Day against Drug Abuse and Illicit Trafficking, added to an unknown number of people who have been put to death for drug-related offences throughout the year. Saudi Arabia is known to have beheaded one person for smuggling hashish. In 2010, death sentences for drug-related offences were also passed in Egypt, Kuwait, Lao People’s Democratic Republic, Malaysia, Pakistan, Singapore, United Arab Emirates and Viet Nam, as well as in Taiwan Province of China. Reportedly, at least 58 drug offenders are on death row in Indonesia and 339 (including 68 women) in Thailand.

28. During the reporting period several countries, including the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, United Arab Emirates and Yemen, imposed death sentences against offenders who were under 18 years of age at the time of the offense.²⁸ According to a report by the United Nations Children’s Fund (UNICEF) published in 2011,

²¹ Amnesty International, *Death Sentences* (note 6 above), p. 3. See also www.deathpenaltyworldwide.org/most-serious-crimes.cfm.

²² See para. 27 below for further information on the application of the death penalty for drug-related offences.

²³ Amnesty International, *Death Sentences*, p. 6.

²⁴ *Ibid.*, p. 30. See also A/HRC/16/75, para. 16, and Hands Off Cain, draft report (note 18 above), pp. 8-9 and 24.

²⁵ Amnesty International, *Death Sentences*, p. 6.

²⁶ Submission to the European Commission on amending Council Regulation (EC) No. 1236/2005 to include drugs used in the ‘automatic drug injection systems for the purpose of execution of human beings by the administration of a lethal chemical substance’. Available from www.penalreform.org/files/Joint_NGO_Submission_on_EU_Torture_Reg_sodium_thiopental%5B1%5D.doc

²⁷ Note verbale of Spain, dated 28 April 2011.

²⁸ Amnesty International, *Death Sentences* (note 6 above), p. 13; Hands Off Cain (note 18 above), pp. 7 and 17. See also paras. 41-42 below for a discussion on the Committee on the Rights of the Child and the death penalty.

14 juveniles were executed in the last five years in Yemen, 11 juveniles are now on death row and 84 are at risk of the death penalty.²⁹

IV. International developments

29. The international community continued its efforts toward the abolition of the death penalty during the reporting period. At the United Nations, the General Assembly and the Human Rights Council addressed the question of the death penalty. Human rights treaty bodies also continued to address this issue while examining State party reports and individual communications. United Nations agencies, offices, programmes and funds also continued to address the question of the death penalty in their programmes and activities. Intergovernmental regional bodies and NGOs also initiated several programmes towards abolishing the death penalty worldwide.

A. General Assembly

30. On 21 December 2010, the General Assembly adopted resolution 65/206, its third on the question of a moratorium on the use of the death penalty, reaffirming previous Assembly resolutions 62/149 and 63/168. In the resolution, the General Assembly calls upon all States to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, and requests States to provide the Secretary-General with information in that regard. It also request States to make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates; to progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed; and to establish a moratorium on executions with a view to abolishing the death penalty. The General Assembly also calls upon States that have abolished the death penalty not to reintroduce it, and encourages them to share their experience in that regard. Finally, it requests the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the resolution.³⁰

31. The General Assembly also addressed the question of the death penalty in the Islamic Republic of Iran. In its resolution 65/226, the Assembly expressed deep concern at the continuing high incidence of and dramatic increase in death sentences carried out in the absence of internationally recognized safeguards; and called upon the Islamic Republic of Iran to abolish, in law and in practice, public executions and other executions carried out in the absence of respect for internationally recognized safeguards.

B. Universal periodic review

32. The Human Rights Council continued to address the question of the death penalty in the context of the universal periodic review. During its eighth session, the Working Group on the Universal Periodic Review addressed the question of the death penalty in Belarus, Grenada, Guinea, Guyana and the Lao People's Democratic Republic. Guyana committed

²⁹ As cited in Child Rights Information Network, CRINMAIL 1209. Available from www.crin.org/email/crinmail_detail_popup.asp?crinmailID=3467.

³⁰ In a note verbale addressed to the Secretary-General dated 11 March 2011, 53 States Members of the United Nations expressed, inter alia, their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law" (A/65/779).

to consult and report to the Human Rights Council in two years time on the abolition of the death penalty.³¹ It further reported that it had tabled an amendment to the Criminal Law (Offences) Act providing for varied sentences for different categories of murder, including life imprisonment and lesser sentences of imprisonment, as well as access to parole (A/HRC/15/L.10, para. 575). Belarus reported that, following the trend in Europe to abolish the death penalty, it would continue its efforts to mould public opinion in favour of abolition and actively cooperate with international and regional organizations. However, Belarus did not accept the Working Group's recommendation to abolish the death penalty (ibid., para. 641).

33. Regarding the abolition of the death penalty or the adoption of a moratorium, the Minister of Justice of Guinea, while expressing the views of his country at the fifteenth session of the Human Rights Council, emphasized that following high-level consultations, Guinea had decided that it was premature to include this question in the national debate, especially during the delicate transitional phase. In this regard, the Minister of Justice further stated that "the solution would be to have a de facto moratorium" (ibid., para. 300). The Lao People's Democratic Republic noted that "the death penalty was maintained only to deter the most serious crimes, in particular drug trafficking", and that currently it was not ready to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (ibid., para. 324). Similarly, the recommendation to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights did not meet the support of the Government of Lesotho. However, it highlighted that there had been no capital punishment carried out since 1995 (ibid., para. 387). Grenada rejected recommendations in relation to the abolition of the death penalty and establishing a formal moratorium on executions. In this respect, it further noted that while it remained in the laws, the death penalty had not been applied for decades on its territory (ibid., para. 504).

34. During its ninth session, the Working Group on the Universal Periodic Review addressed the question of the death penalty in Jamaica, Lebanon, Liberia, the Libyan Arab Jamahiriya, Mongolia, Maldives, Malawi and the United States. Regarding recommendations to repeal its Death Penalty Law, Liberia stated that it was aware of existing concerns and ensuing recommendations which emanated from its obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, to which it acceded in 2005. It informed the Council that high crime rates had required the reintroduction of the death penalty and that the abrogation of the law allowing for the death penalty would need more time and understanding by the Liberian people, with whom consultations had been initiated.³² The recommendations to consider issuing a moratorium on the execution of death penalty sentences were examined by the Libyan Arab Jamahiriya and enjoyed its support.³³

35. Mongolia accepted the recommendations with regard to its accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights. It further reported on its plans to declassify information on death penalty sentences imposed in the past and to abolish classification in the future following the approval of a bill and after other measures towards the abolition of the death penalty (A/HRC/16/L.41, para. 420). Mauritania rejected the recommendation to abolish the death penalty, but reaffirmed its de facto abolitionist position, noting that in 17 years, no death sentence had been carried out on its territory (ibid., para. 711). The United States indicated that the recommendation to end capital punishment did not enjoy its support and that it supported both

³¹ Report of the Human Rights Council on its fifteenth session (A/HRC/15/L.10), para. 569.

³² Report of the Human Rights Council on its sixteenth session (A/HRC/16/L.41), paras. 351-352.

³³ Report of the Working Group on the Universal Periodic Review on the Libyan Arab Jamahiriya (A/HRC/16/15), para. 93.34.

recommendations with respect to executions regarding minors and persons with certain intellectual disabilities, but not regarding all persons with any mental illness.³⁴

36. During the eleventh session of the Working Group on the Universal Periodic Review, Latvia reported on the preparation by the Government of the draft legislative amendments on the abolition of the death penalty in time of war and on the signature of Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty in all circumstances and preparation for its ratification. Latvia also reported that this initiative had not gained support in the Parliament, but that discussions on this issue would continue.³⁵

C. Special procedures of the Human Rights Council

37. Special procedures of the Human Rights Council also continued to address the question of the death penalty within their respective mandates. In February 2011, the Special Rapporteur on extrajudicial, summary or arbitrary executions, jointly with the Special Rapporteur on the independence of judges and lawyers, warned in a public statement of a dramatic surge in death sentences in the Islamic Republic of Iran that were carried out in the absence of internationally recognized safeguards, despite numerous calls by the United Nations to immediately halt executions. The experts noted that under international law the death penalty is regarded as an extreme form of punishment which, if it is used at all, should only be imposed for the most serious crimes, after a fair trial has been granted to the accused. They called on the Government of the Islamic Republic of Iran to immediately declare a moratorium on the death penalty in view of the gravity of the situation and the regular disregard of due process guarantees.³⁶ In a 2010 report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health also affirmed that the death penalty for drug-related offences violates international human rights law (A/65/255, para. 17).

38. In his progress report, the Special Rapporteur on the situation of human rights in Myanmar, while commending the Government for the effective moratorium on the use of death penalty, regretted that lower courts continue to hand down death sentences (A/HRC/13/48, para. 40). In 2010, the independent expert on the situation of human rights in the Sudan recommended that the Government of National Unity of Sudan refrain from applying the death penalty against minors and that Sudan institute a moratorium on the imposition of the death penalty, as called for by the General Assembly in its resolution 62/149 (A/HRC/14/41, para. 82 (a)).

D. Human Rights Treaty Bodies

39. The United Nations human rights treaty bodies also continued to address the question of the death penalty in concluding observations adopted following the examination of State party reports and when considering individual communications. The Human Rights Committee made reference to the death penalty with respect to the examination of six States parties during the period under review: Belgium, Cameroon, Estonia, Jordan,

³⁴ Views on conclusions and/or recommendations, voluntary commitments and replies presented by the United States in the context of the universal periodic review (A/HRC/16/11/Add.1), para. 8.

³⁵ National report of Latvia submitted to the Working Group on the Universal Periodic Review (A/HRC/WG.6/11/LVA/1), para. 128.

³⁶ Office of the High Commissioner for Human Rights, “UN experts call for a moratorium on death penalty in the Islamic Republic of Iran”, press release, 2 February 2011.

Mongolia and Poland. The Human Rights Committee welcomed the ratification of Estonia of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which entered into force in 2004 (CCPR/C/EST/CO/3, para. 4). It also encouraged Cameroon, Jordan and Poland to ratify the Second Optional Protocol.³⁷ The Committee welcomed the adoption of a constitutional provision enshrining the principle of the abolition of the death penalty in Belgium (CCPR/C/BEL/CO/5, para. 4) and encouraged Cameroon to abolish the death penalty, or at least to formalize the de facto moratorium on the death penalty (CCPR/C/CMR/CO/4, para. 14). It continued to welcome the de facto moratorium on the death penalty in place in Jordan since April 2007 (CCPR/C/JOR/CO/4, para. 3) and expressed its concern that the death penalty had yet to be abolished de jure in Mongolia, although it welcomed the moratorium on the execution of death sentences (CCPR/C/MNG/CO/5, para. 6).

40. In two recent individual cases, the Human Rights Committee reiterated that the imposition of a death sentence after a trial that did not meet the fair trial requirements amounted to a violation of article 6 of the International Covenant on Civil and Political Rights.³⁸ In another case, involving the refusal by the authorities of Kyrgyzstan to provide information on the number of individuals sentenced to death in the country, the Committee reiterated that the specific information sought by the author, that is, the number of individuals sentenced to death, was considered to be of public interest.³⁹ The Human Rights Committee considered that the general public has a legitimate interest in having access to information on the use of the death penalty and that the State party (Kyrgyzstan) had failed to justify the restrictions imposed on the exercise of the author's right to have access to information on the application to the death penalty held by public bodies. The Committee found, therefore, a violation of article 19, paragraph 2, of the Covenant.

41. The Committee on the Rights of the Child also made reference to the death penalty with regard to four States parties during the period under review: Belarus, Guatemala, the Lao People's Democratic Republic and Sudan (under both the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict). The Committee recommended that Belarus and Guatemala ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.⁴⁰ In its concluding observations on the report of Sudan, the Committee on the Rights of the Child expressed serious concerns that, despite the adoption of the Child Act (2010), which prohibits the passing of the death sentence on children, under article 36 of the interim Constitution of Sudan, the death penalty might be imposed on persons below the age of 18 in cases of retribution or *hudud*.⁴¹ The Committee was also concerned at recent reports that the death penalty continues to be carried out on children. It reminded Sudan that the application of the death penalty to children is a grave violation of articles 6 and 37 (a) of the Convention on the Rights of the Child, and urged Sudan to ensure that the death penalty is not carried out on

³⁷ CCPR/C/CMR/CO/4, para. 14; CCPR/C/JOR/CO/4, para. 20; CCPR/C/POL/CO/6, para. 11.

³⁸ See communications No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011; and No. 1503/2006, *Akhadov v. Kyrgyzstan*, Views adopted on 25 March 2011.

³⁹ In accordance with resolutions 2003/67 and 2004/67 of the Commission on Human Rights on the question of the death penalty, and in accordance with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (29 June 1990). See communication No. 1470/2006, *Toktakunov v. Kyrgyzstan*, Views adopted on 28 March 2011.

⁴⁰ CRC/C/BLR/CO/3-4, para. 74; CRC/C/GTM/CO/3-4 para. 103.

⁴¹ CRC/C/SDN/CO/3-4, para. 35. Article 36, paragraph 2 of the Interim National Constitution of the Republic of Sudan 2005 states : "The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or *hudud*".

children, including in cases of retribution or hudud, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.

42. The Committee on the Rights of the Child also expressed concern that the death penalty is not explicitly prohibited for children in the Lao People's Democratic Republic (CRC/C/LAO/CO/2, para. 71). With respect to Nigeria, while noting with satisfaction that the death penalty is prohibited by law in the Child Rights Act, the Committee is seriously concerned at reports related to an estimated 40 prisoners reportedly on death row for crimes committed when they were under the age of 18. It reiterated the strong concern expressed by the African Committee on the Rights and Welfare of the Child concerning the mandatory death penalty for offences in sharia penal codes (including Hadd punishments) which, given the absence of a definition of the child as a person under the age of 18 and that in certain states children are defined by puberty, could be imposed on children under sharia jurisdiction (CRC/C/NGA/CO/3-4, para. 32). The Committee on the Rights of the Child recommended that Nigeria take the opportunity of its ongoing constitutional review to expressly prohibit the application of the death penalty to persons under 18 years of age. It also urged Nigeria to review the files of all prisoners on death row for crimes committed before the age of 18, and to prohibit the death penalty for all persons under the age of 18 in domestic legislation (*ibid.*, para. 33).

43. The Committee against Torture also continued to welcome the abolition of the death penalty and the moratorium on executions observed in some countries, as well as to recommend the ratification of the Second Optional Protocol to the International Convention on Civil and Political Rights. In addition, considering that information on death sentences, including data, is not made public by some States parties, the Committee requested this information to be provided systematically. In its concluding observations on Ethiopia, the Committee recommended that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, extending its *de facto* moratorium on the execution of the death penalty and commuting sentences for prisoners on death row. The Committee also requested Ethiopia to indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence (CAT/C/ETH/CO/1, para. 24). In the consideration of the initial report submitted by Mongolia, the Committee encouraged Mongolia to continue efforts towards abolition and called on the State to declassify information on the death penalty (CAT/C/MNG/CO/1, para. 19).

E. United Nations offices, agencies, funds and programmes

44. The United Nations High Commissioner for Human Rights continued to address the question of the death penalty under her mandate to promote and protect the enjoyment and full realization, by all people, of all human rights. The High Commissioner also sent official communications to the relevant authorities and issued public press releases addressing the question of the death penalty. In February 2011, she publicly expressed alarm at the dramatic increase in executions since the beginning of 2011 in the Islamic Republic of Iran and called upon the State to institute a moratorium on executions with a view to abolishing the death penalty.⁴² In May 2011, the High Commissioner issued a press release expressing deep concern regarding the deteriorating human rights situation in Bahrain, including the sentencing to death of four pro-democracy protestors after a closed-door military trial.⁴³

⁴² Office of the United Nations High Commissioner for Human Rights, "UN human rights chief concerned about recent spate of executions", press release, February 2011.

⁴³ UN News Centre, "UN human rights chief voices deep concerns about Bahrain crackdown", 5 May 2011. Available from www.un.org/apps/news/story.asp?NewsID=38279&Cr=Bahrain&Cr1.

45. In 2010, the United Nations Office on Drugs and Crime (UNODC) submitted a report entitled “Drug control, crime prevention and criminal justice: a human rights perspective”⁴⁴ to the Commission on Narcotic Drugs and to the Commission on Crime Prevention and Criminal Justice. The report recalled that the International Covenant on Civil and Political Rights specified that in countries that had not abolished the death penalty, the sentence of death may be imposed only for the “most serious crimes”. The concept of “most serious crimes” is limited to those where it can be shown that there was an intention to kill which resulted in the loss of life. The weight of opinion indicates that drug offences (such as possession and trafficking) and those of a purely economic nature do not meet this threshold. Moreover, States that have abolished the death penalty are prohibited from extraditing any person to another country where he or she might face capital punishment.⁴⁵

46. UNODC further reported that despite such prohibitions, a considerable number of the 47 retentionist States that continue to use capital punishment have carried out executions for drug offences in recent years. In some of these countries, drug offenders constitute a significant proportion of total executions. The report emphasized that as an entity of the United Nations system, UNODC advocated the abolition of the death penalty and called upon Member States to follow international standards concerning the prohibition of the death penalty for offences of a drug-related or purely economic nature.⁴⁶

47. The Special Representative of the Secretary-General on violence against children extended her support for a campaign launched by the Child Rights Information Network in October 2010 to end all inhuman sentencing of children, including the death penalty. In her statement, the Special Representative observed that in some States, children may receive sentences of extreme violence, including flogging, stoning, amputations, life sentences and executions, and condemned the many grave injustices against children perpetrated under some penal codes.⁴⁷

F. International Commission against the Death Penalty

48. Other international developments during the reporting period include the establishment of the International Commission against the Death Penalty in October 2010, with the aim of strengthening the fight against the death penalty in all regions of the world. The establishment of the Commission was an intergovernmental initiative led by Spain and supported by Algeria, Argentina, the Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, the Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey. The Commission is composed of 12 members of high authority and international prestige, with complete independence in their decision-making and broad geographical representation.

G. Regional bodies

49. Regional bodies also continued to support the world’s effort towards the abolition of the death penalty. In June 2010, the African Commission on Human and Peoples’ Rights issued an interim injunction preventing the state governors of Nigeria from resuming

⁴⁴ E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1

⁴⁵ Ibid., para. 25.

⁴⁶ Ibid., para. 26.

⁴⁷ See www.crin.org/violence/search/closeup.asp?infoID=23332.

executions in the country, pending consideration of a petition filed by more than 800 death-row inmates.

50. In November 2010, the Working Group on the Death Penalty in Africa, established by the African Commission on Human and Peoples' Rights, reported that it had examined a draft resolution on the abolition of the death penalty. It considered that it was important that the African Commission envisage the adoption of such a resolution to move towards the abolition of the death Penalty.⁴⁸ Furthermore, the Working Group prepared a document on the question of the death penalty in Africa, indicating that it would update the document to reflect the current situation in Africa and present it to the African Commission in May 2011,⁴⁹ and envisaged the drafting of a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa.⁵⁰ The Working Group also sent letters of appeal to the relevant authorities on the situation of the death penalty in the Gambia, Nigeria and Sudan.⁵¹ The Commissioner of the African Commission reminded States parties to the African Charter that capital punishment was cruel and therefore morally unjustifiable, unnecessary, irreversible, illogical, and represented a most grave violation of fundamental human rights, in particular the right to life under article 4 of the African Charter.⁵²

51. The European Parliament adopted a resolution on the death penalty on 7 October 2010, on the occasion of the World Day against the Death Penalty. In the resolution, the European Parliament reiterated its long-standing opposition to the death penalty in all cases and under all circumstances and emphasized once again that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights (para. 1). It urged the European Union to use all tools of diplomacy and cooperation assistance available to it to work towards the universal abolition of the death penalty (para. 3).

52. In July 2010, the European Union convened an annual forum of European institutions and NGOs in Brussels, at which participants discussed four issues, including European Union instruments in the fight against the death penalty. Participants affirmed that the global abolition of the death penalty ranks among the main objectives of European Union human rights policy.⁵³ On 10 October 2010, the European Union issued a statement to mark the World and European Day against the Death Penalty, reiterating that the death penalty is a cruel and inhuman punishment that represents an unacceptable denial of human dignity and integrity. The statement also recalled that the European Union uses all available means – including diplomatic channels and raising public awareness – in working towards the goal of abolishing the death penalty throughout the world, and that it encourages public

⁴⁸ Progress report of the African Commission on Human and Peoples' Rights Working Group on the Death Penalty in Africa, November 2010, para. 18.

⁴⁹ Ibid., para. 16.

⁵⁰ Ibid., para. 18.

⁵¹ Combined activity report of the Commissioner of the African Commission on Human and Peoples' Rights and the Chairperson of the Working Group on the Death Penalty in Africa, 49th ordinary session of the Commission, 28 April-12 May 2011, Banjul, Gambia.

⁵² Ibid., para. 14.

⁵³ Recommendations of the forum on the theme of "EU human rights instruments and the Lisbon Treaty: state of play and way forward", held on 12 and 13 July 2010, Brussels, p. 1. Available from http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201009/20100913_ngoforumrecomms_en.pdf.

debate, strengthening public opposition and putting pressure on retentionist countries to abolish the death penalty, or at least introduce a moratorium as a first step.⁵⁴

53. The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a resolution on the death penalty in July 2010.⁵⁵ In the resolution, the Assembly called upon participating OSCE States applying the death penalty to declare an immediate moratorium on executions (para. 46). In particular, it called upon Belarus and the United States to take immediate steps towards abolition of the death penalty (paras. 49 and 50). It also called upon Latvia to amend its Criminal Code in order to abolish the death penalty for murder with aggravating circumstances if committed during wartime (para. 51).

54. The inter-American human rights mechanisms also continued to address the question of the death penalty during the reporting period. In October 2010, the Inter-American Commission on Human Rights urged the United States to suspend the judicial execution of Jeffrey Timothy Landrigan, a beneficiary of precautionary measures granted by the Commission in 2004.⁵⁶ In 2010, with regard to a petition regarding an extradition of a petitioner from Peru to China, the Commission considered that the allegations regarding inadequate evaluation by the Peruvian authorities of the guarantees provided by China that it would not impose the death penalty on the petitioner and the possibility that he would be subjected to torture and cruel and inhumane treatment could characterize a failure to comply with the obligations arising from articles 4 and 5 of the American Convention on Human Rights.⁵⁷ In May 2010, the Inter-American Court of Human Rights ordered the State of Peru to refrain from extraditing the beneficiary and in November extended the provisional measures until 31 March 2011.⁵⁸

55. During the reporting period, the Commission also declared several petitions related to the question of the death penalty admissible. In March 2011, the Inter-American Commission on Human Rights received 14 petitions in which it was alleged that the United States violated the rights of the alleged victims who were sentenced to death in six states (North Carolina, South Carolina, Georgia, Missouri, Texas and Utah) and thereafter executed. All alleged victims were beneficiaries of earlier precautionary measures requested by the Commission.⁵⁹

56. While examining the human rights situation in Cuba in 2010, the Inter-American Commission on Human Rights urged the State to adopt the legislative and other measures necessary for ensuring that the death penalty is not imposed in violation of the principles of

⁵⁴ European Union, “EU continues efforts to achieve universal abolition of death penalty”, press release, 8 October 2010.

⁵⁵ Available from www.osce.org/home/71711.

⁵⁶ Despite the Commission’s request of an immediate suspension of the execution, Jeffrey Timothy Landrigan was executed on October 26. The Commission deplored the execution and concluded that his basic rights to due process had been violated. It condemned the repeated failure on the part of the United States to comply with its decisions, especially in cases related to the death penalty. The Commission further urged the United States to implement all precautionary measures and decisions issued by the Commission and demanded that it fully and properly respect its international human rights obligations, especially those derived from the American Declaration of the Rights and Duties of Man.

⁵⁷ Inter-American Commission on Human Rights, Report No. 151/10, Petition 366-09, *Wong Ho Wing vs. Peru*, 1 November 2010, para. 46.

⁵⁸ The texts of the orders (in Spanish) are available from the following links:
www.corteidh.or.cr/docs/medidas/wong_se_02.pdf and
www.corteidh.or.cr/docs/medidas/wong_se_03.doc.

⁵⁹ See Inter-American Commission on Human Rights, report No. 60/11, 24 March 2011.

due process and a fair trial before a competent, independent and impartial court previously established by law.⁶⁰

H. Other initiatives

57. During the reporting period, NGOs strengthened their efforts towards the abolition of the death penalty. In September 2010, a regional conference on the death penalty was jointly organized in Alexandria, Egypt by Penal Reform International, the Swedish Institute Alexandria and the Arab Center for the Independence of the Judiciary and the Legal Profession, with the participation of civil society organizations, and regional and international bodies, including the European Union, the League of Arab States, the African Commission on Human and Peoples' Rights and the Office of the United Nations High Commissioner for Human Rights. As an outcome of the conference, a toolkit was published in December 2010.⁶¹ The toolkit includes practical suggestions to develop appropriate advocacy strategies, identify methodologies and provide guidance to influence change at national, regional and international levels.

58. In February 2011, several human rights NGOs established an informal alliance to intensify a campaign against the death penalty in Thailand. At a side event during the eleventh session of the Working Group on the Universal Periodic Review, the World Coalition against the Death Penalty and the Center for International Human Rights at Northwestern University School of Law in Chicago launched a new international database of the laws and practices of States that retain the death penalty.⁶²

V. Conclusions

59. Recent developments on the question of the death penalty outlined in the present report suggest that the effort to abolish the death penalty continues. With the adoption of its third resolution (65/206) on a moratorium on the death penalty, the General Assembly reiterated its call for a worldwide moratorium on the use of the death penalty, aiming to abolish it. The General Assembly has emphasized that the death penalty undermines human dignity. This sentiment finds echoes in every region of the world. To mark the twentieth anniversary of the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights in July 2011, States should multiply their efforts to secure increased ratification of this international human rights instrument.

60. Abolishing the death penalty is a long process for many countries, which often comes to closure only after a period of difficult and even acrimonious national debate. States should make the relevant information on the death penalty available to the people to make such debates meaningful. Until the death penalty is abolished, States Members of the United Nations who still intend to impose the death penalty should either introduce a moratorium on the death penalty or apply the death penalty only in the cases of the most serious crimes. The protection of the rights of those facing the death penalty should be ensured, pursuant to the relevant international standards.

⁶⁰ Annual report of the Inter-American Commission on Human Rights 2010 (OEA/Ser.L/V/III, Doc.5, Rev.1), 7 March 2011, para. 413.

⁶¹ Mervat Rishmawi and Taleb al-Saqqaf, *The Death Penalty in the Middle East and North Africa: Tools, Techniques, Tactics and Strategies for Abolition* (Penal Reform International, 2010).

⁶² See www.deathpenaltyworldwide.org.

61. The continued efforts of the Human Rights Council, including through its universal periodic review mechanism and special procedures, as well as those of human rights treaty bodies, are crucial in monitoring the recent trends towards the abolition of the death penalty and to providing appropriate guidance to States in this matter. United Nations agencies, intergovernmental regional bodies and NGOs should continue to support States in abolishing the death penalty through their advocacy, monitoring and technical cooperation activities.

62. The Office of the United Nations High Commissioner for Human Rights (OHCHR) had initially interpreted decision 2/102 as extending previous reports of the Commission of Human Rights and providing for an annual reporting cycle. Until recently, this interpretation had been deemed to have received the tacit approval of member States. However, an objection was placed on the record in 2010, albeit in the context of another report which also referred to decision 2/102 as the basis for its annual reporting. OHCHR has thus reviewed the said decision, and concluded that the Human Rights Council sought to fill a technical gap by ensuring that reports which were deemed to be submitted to the Human Rights Commission at its sixty-second session would be extended by one year and transferred to the subsequent substantive session of the Human Rights Council. With this transition period over, and an objection now on record with regard to the initial interpretation of annual reporting cycles, if the Human Rights Council wishes such reporting to be continued, a new Human Rights Council resolution or decision on the matter should be tabled.
