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The impact of the resumption of the use of the death penalty on human rights

Amnesty International submission to the Office of the High Commissioner for Human Rights pursuant to Human Rights Council resolution 36/17

In this submission, Amnesty International highlights the impact of resumption of executions on human rights with regards to lack of transparency; arbitrariness; denial of safeguards and makes recommendations to States that are yet to abolish the death penalty. Additional information on developments in the global use of the death penalty in 2018 can be found in the report “Death Sentences and Executions 2018” (ACT 50/9870/2019), <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF>.

Amnesty International opposes the death penalty in all cases without exception because it is a violation of the right to life as proclaimed in the Universal Declaration of Human Rights. International law allows the use of the death penalty only for the ‘most serious crimes’ in countries that are yet to abolish the punishment;¹ however, this cannot be used to delay or prevent the abolition of the death penalty.² Also, the adoption and coming into force of the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty reinforced international law’s move towards the worldwide abolition of the punishment. The Human Rights Committee in General Comment no.36 notes: “It is contrary to the object and purpose of Article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty.”³ Therefore, Amnesty International submits that the resumption of executions by any country, after a hiatus or an official moratorium on executions, contradicts the object and purpose of Article 6 (6) ICCPR.

LACK OF TRANSPARENCY

Countries have a duty to be transparent about their use of the death penalty. Secrecy on the use of the death penalty is incompatible with the rights of people sentenced to death, their families and the public. Such secrecy violates the rights to a fair and public trial, the prohibition of cruel, inhuman and degrading treatment and the right to information.⁴ In particular, secret executions violate the rights of the convict and family members to prepare for death.⁵ Transparency is important for the public and the international community to know how the death penalty is

¹ Article 6 (2), International Covenant on Civil and Political Rights (ICCPR)

² Article 6(6) ICCPR 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”.

³ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018, para.50

⁴ See, UN General Assembly resolution 65/206, §3(b); UN Secretary General, UN Doc. A/65/280 (2010) §72; HRC: Concluding Observations: Botswana, UN Doc. CCPR/C/BWA/CO/1 (2008) §13, Japan, UN Doc. CCPR/C/79/Add.102 (1998) §21, *Kovaleva et al v Belarus*, UN Doc. CCPR/C/106/D/2120/2011 (2012) §11.10; Special Rapporteur on extrajudicial executions, UN Doc. E/CN.4/2006/53/Add.3 (2005) §37; *Bader and Kanbor v Sweden* (13284/04), European Court (2005) §46.

⁵ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/67/279 (2012) §40

being applied and to allow informed debate about its use.⁶ The lack of transparency around the resumption of execution, after a period when none had been carried out, has a serious impact on people sentenced to death, their families and lawyers. It denies them information about the date of execution; sufficient time to take any further recourse available at the national or international level; and the opportunity to prepare themselves for the death.⁷

Belarus resumed executions in April 2014, ending a 24-month hiatus, when it secretly executed Pavel Selyun, who had been sentenced to death in June 2013 for a double murder committed in 2012.⁸ Two others, Rygor Yuzepchuk and Alyksandr Haryunou were executed shortly after. Alyksandr Haryunou's relatives and lawyer were not informed of the date of the execution, nor were they given the opportunity to have a final meeting with him.

Thailand resumed executions in 2018 by putting a man to death by lethal injection in secret, its first execution since 2009.⁹ Theerasak Longji, who had been sentenced to death for murder, was executed at Bang Kwang Central Prison on 18 June 2018 and the Director General of the Department of Corrections of Thailand announced the execution after it had been carried out. His family told a national media outlet that they had not been notified in advance of the scheduled execution and were not given the chance of a last visit with their relative. Theerasak Longji was only allowed one phone call with his wife shortly before the execution was carried out.

ARBITRARINESS OF RESUMPTION OF EXECUTIONS

The resumption of executions has the effect of being arbitrary either in the justification for the implementation of death sentences or the way death row prisoners are selected for execution. In this context the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that: "Executions may be considered arbitrary if they are resumed owing to extraneous developments, unrelated to the crime or criminal in question. A current deterioration in the law and order situation of a particular State is not attributable to a convict on death row, who may have committed his or her crime years, or even decades, before. The execution of that convict in order to demonstrate strength in the criminal justice system is arbitrary."¹⁰ When executions have been suspended or not carried out for an extended period, the authorities often justify resumption or select specific prisoners on death row for execution arbitrarily.

On 21 December 2014, **Jordan** resumed executions after an eight-year hiatus.¹¹ The way executions resumed suddenly in the country is evident of its arbitrariness. Eleven men were executed at short notice at Swaqa Correctional and Rehabilitation Centre. All had been convicted and sentenced to death for murder prior to 2006; their sentences had been upheld by the Court of Cassation. The Jordanian media outlet *Ammon News* had quoted a government source as saying that the final decision to execute the 11 men was made by the authorities only on the night before. The executions followed the establishment, in November 2014, of a special committee of the Cabinet to look into lifting the suspension on executions, as a deterrent to murder and in response to public demand. The authorities did not make any public announcement about the formation of the special committee until the executions were carried out.

On 17 December 2014 **Pakistan** lifted a six-year moratorium on civilian executions for terrorism-related offences.¹² The decision was taken in response to an attack the day before on a school in Peshawar that left more than 149 people dead, including 132 children. Seven people¹³ on death row and previously convicted under the Anti-Terrorism Act, were executed one after the other within two weeks.

⁶ Special Rapporteur on extrajudicial executions, UN Doc. A/67/275 (2012) §§98-115, in particular §103

⁷ HRC: *Pratt and Morgan v Jamaica* (210/1986 and 225/1987), UN Doc. Supp. No. 40 (A/44/40) at 222 (1989) §13.7.

⁸ Amnesty International, *Death Sentences and Execution 2014* (Index: ACT 50/001/2015)

⁹ Amnesty International, *Death Sentences and Execution 2018* (Index: ACT 50/9870/2019)

¹⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/69/265, 6 August 2014, para. 103

¹¹ Amnesty International, *Death Sentences and Execution 2014* (Index: ACT 50/001/2015)

¹² *Ibid.* The military authorities executed a soldier in 2012.

¹³ Aqeel and Arshad Meherban were executed on 19 December 2014; Ikhlad Ahmed, Ghulam Sarwar, Rashid Mehmood and Zubair Ahmed were executed on 21 December;

In July 2018, the President of **Sri Lanka**, Maithripala Sirisena, announced that the implementation of death sentences will resume for drug-related offences, following reports that some death row prisoners and prison officials had been involved in illegal activities. The implementation of death sentences for drug-related offences constitutes a violation of Article 6(2) of the ICCPR which restricts the use of the death penalty to the 'most serious crimes'. In this regard, the Human Rights Committee has emphasized that: "Crimes not resulting directly and intentionally in death, such as... drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty."¹⁴ One woman and 19 men sentenced to death for drug-related offences were selected for execution.¹⁵ The fact that the circumstances of the selection of the cases appear to be unrelated to the specific offence for which the death sentence was imposed clearly confirms arbitrariness.

DENIAL OF SAFEGUARDS PROTECTING PEOPLE FACING THE DEATH PENALTY

The resumption of executions has denied people facing the death penalty safeguards guaranteed for their protection under international law. For instance, UN Safeguards prohibit the carrying out of the death penalty pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence;¹⁶ however, this is often not respected in many cases documented by Amnesty International.

The execution of Pavel Selyun in **Belarus**, mentioned above, was carried out even though the UN Human Rights Committee was considering his case and had requested a stay of execution pending the conclusion of the process. Such requests are binding on state parties to the First Optional Protocol to the ICCPR, which Belarus acceded to in 1992. Also, Alyaksandr Haryunou, before his execution, had a pending appeal before the Human Rights Committee which had specifically asked the Belarusian authorities to stay his execution until it had considered the case. Similarly, when Belarus resumed executions again in April 2016 after a 17-month hiatus; Syarhei Ivanou, the first person executed out of four that year, had a petition, arguing that his trial was unfair, pending before the Human Rights Committee.¹⁷ The Committee had yet again requested the Belarusian authorities not to carry out the execution while the case was under consideration.

Indonesia began executing people again in 2015 after a hiatus in 2014; 14 people were executed. All the executions were carried out for drug trafficking.¹⁸ Amnesty International documented specific human rights violations in the cases of the 14 individuals executed, including: violations of the right to a fair trial; executions carried out while legal appeals were still pending; the summary consideration and rejection of clemency petitions; and the execution of at least one person with a severe mental disability.¹⁹

Chad resumed executions on 29 August 2015 following a 12-year hiatus; 10 suspected Boko Haram members were executed by firing squad after being sentenced to death in a trial held behind closed doors the previous day. The execution of the men barely 24 hours after sentencing denied them the right of appeal and to seek clemency.

Recommendations

Amnesty International urges States that are yet to abolish the death penalty to abolish it for all crimes; pending full abolition to:

- Immediately establish an official moratorium on executions with a view to abolishing the death penalty, as

Nias Mohamm Nias Mohammad was executed on 31 December 2014.

¹⁴ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018, para.35

¹⁵ "List of inmates with death penalty sent to the President", News 1st, 17 December 2018, www.newsfirst.lk/2018/12/17/list-of-inmateswith-death-penalty-sent-to-the-president/

¹⁶ Safeguard 8, Safeguards guaranteeing protection of the rights of those facing the death penalty.

¹⁷ Amnesty International, *Death Sentences and Execution 2016* (Index: 50/5740/2017)

¹⁸ Amnesty International, *Death Sentences and Execution 2015* (Index: ACT 50/3487/2016)

¹⁹ Amnesty International, *Indonesia: Flawed Justice – Unfair trials and the Death Penalty in Indonesia* (ASA 21/2434/2015)

called for by UN General Assembly resolutions 73/175 and vote in favour of future resolutions;

- Stop all planned executions by all legal or other means available;
- Commute without delay all death sentences to terms of imprisonment, and remove prisoners from death row, where in existence;
- Ensure that trials for crimes carrying the death penalty must comply with the most rigorous internationally recognized standards for fair trial.