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Discriminatory use of the death penalty against minorities, foreign nationals and people with mental disabilities

Amnesty International's submission to the Office of the High Commissioner for Human Rights pursuant to Human Rights Council resolution 30/5

In its resolution 30/5, adopted on 1 October 2015, the Human Rights Council requested “the Secretary-General to dedicate the 2017 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of the persons facing the death penalty and other affected persons, **paying specific attention to the right to equality and non-discrimination, including on foreign nationals**, and to present it to the Human Rights Council at its thirty-sixth session”.

In this submission, Amnesty International highlights cases of the discriminatory use of the death penalty against minorities, foreign nationals and people with mental disabilities. Additional information on developments in the global use of the death penalty in 2016 can be found in the report “Death Sentences and Executions 2016” (ACT 50/5740/2017), which Amnesty International published on 11 April 2017. The report is available at: <https://www.amnesty.org/en/documents/act50/5740/2017/en/>.

CASES OF THE USE OF THE DEATH PENALTY AGAINST MINORITIES

Amnesty International believes that the death penalty has been used against members of the Uighur minority in **China** as part of the authorities’ “Strike Hard” campaign, targeting “violent terrorism and religious extremism”. For example three people from the Uighur minority were executed in Yunnan province on 24 March 2015. They had been convicted of murder and leading a “terrorist” organization for their alleged association with five people involved in a 2014 attack at the Kunming train station that resulted in the death of 31 people. In addition, recent research by Amnesty International points to a troubling pattern that — in line with what research on death penalty worldwide has identified — the death penalty in China seems to be meted out disproportionately to members of racial, ethnic or religious minorities.¹

In **Iran** the death penalty is often used to target Sunni minorities and Amnesty International has documented several cases of this practice. For instance, on 2 August 2016, Iran executed 25 Sunni men, 22 of whom were from Iran’s Kurdish minority, who had been convicted on the vaguely worded charge of “enmity against God” (moharebeh) in connection with a number of armed activities.² The mass execution was carried out without prior notice to the men’s families. All the Sunni men were denied access to a lawyer from the time of arrest and during the investigation period, which spanned over many months and, in some cases, over two years. During this period, the men were mostly held in solitary confinement in Ministry of Intelligence detention centres. They reported being tortured to “confess” and incriminate themselves. Their trials were generally limited to one or two sessions and relied on torture-tainted “confessions” to secure convictions. The men were denied the right to communicate and

¹ For further information see Amnesty International; China’s Deadly Secrets, 10 April 2017, available at <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>

² For further information see Amnesty International; Broadcasting Injustice, Boasting of Mass Killing: A Case Study of the August 2016 Execution of 25 Sunni men in Iran, available at <https://www.amnesty.org/en/documents/mde13/5079/2016/en/>

consult with their lawyers, and only allowed to meet them for the first time shortly before or at their trials. Many of them were denied the right to have a meaningful review of their convictions and sentences as Iran's Supreme Court failed to examine the admissibility and sufficiency of the evidence submitted at trial. Nor did the court address the violations of their rights to a fair trial throughout the judicial proceedings.

In **Saudi Arabia** the death penalty is often used to target members of the country's Shi'a minority. While Saudi Arabians in the Kingdom's predominantly Shi'a Eastern Province have been calling for reforms long before 2011, these calls intensified after the "Arab Spring" that year. The Saudi Arabian authorities responded by cracking down on those suspected of taking part in or supporting protests or expressing views critical of the state. Members of the Shi'a community have often been arrested and had the death penalty used against them. In May and June 2014 at least five Shi'a Muslims detained in connection with the 2011 and 2012 protests were sentenced to death on trumped-up charges related to their activism. They include Ali al-Nimr, Abdullah al-Zaher and Dawood Hussein al-Maroon, all of whom were under 18 at the time of their arrest. All three remain at imminent risk of execution, after being convicted in deeply unfair trials. In one prominent case, Sheikh al-Nimr, who was the Imam of al-Awamiyya mosque in al-Qatif, eastern Saudi Arabia, was executed on 2 January 2016. Sheikh Nimr al-Nimr had been a vocal critic of the Saudi Arabian government and, after a grossly unfair trial, was sentenced to death for "disobeying the ruler", "inciting sectarian strife" and "encouraging, leading and participating in demonstrations".

THE USE OF THE DEATH PENALTY AGAINST FOREIGN NATIONALS

In **Indonesia** a significant number of death row prisoners are foreign nationals, particularly those convicted of drug-related offences.³ Twelve out of 14 executions in 2015 (as of September 2015) were of foreign nationals. Amnesty International has recorded several death penalty cases involving foreign nationals in which the Indonesian authorities failed to correctly identify or verify the identity and nationality of the defendants, with the result that those defendants were not able to exercise their right to seek assistance from the consular authorities of their states of origin.⁴ In other cases, where the nationality of the individuals concerned was known, defendants in death penalty cases have been denied the right to contact their embassy or contact has been delayed.⁵ In Indonesia, the Criminal Procedure Code guarantees that a suspect or defendant has a right to a competent and qualified interpreter during both the investigation and trial proceedings. Most of the foreign nationals whose cases were investigated by Amnesty International did not however receive any language assistance.

Indonesian law is discriminatory against foreign nationals. Article 51(1) of Law No. 24/2003 on the Constitutional Court stipulates that an application for a constitutional review of any provisions in a law can only be made by an Indonesian national. This has resulted in the Constitutional Court rejecting applications for constitutional reviews submitted by foreign nationals regarding Law No. 22/1997 on Narcotics 162 and Law No. 5/2010 on Clemency. These applications related to the impact of these laws on the human rights, specifically the right to life, of individuals under Indonesian jurisdiction facing the death penalty as a result of the application of Indonesian law. It is unclear why a constitutional remedy should be limited to nationals to the detriment of non-nationals, especially when the issue at stake is a human right guaranteed to all persons under Indonesia's jurisdiction as a state party to the International Covenant on Civil and Political Rights (ICCPR), such as the right to life. As a state party to the ICCPR, Indonesia has the obligation to ensure an effective remedy without distinction of any kind and to ensure equality before the law and equal protection of the law without discrimination, including on the basis of nationality.⁶ When an application for a constitutional review of legislation relates to the detrimental impact of that legislation on the human rights of the individual concerned, and is a recourse that is available to Indonesian nationals, the denial of that recourse to non-nationals violates these obligations.

³ According to the Ministry of Law and Human Rights' death penalty data, there are 34 foreign nationals out of 52 prisoners on death row for drug crimes as of April 2015.

⁴ For further information see Amnesty International; Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, 15 October 2015, available at <https://www.amnesty.org/en/documents/asa21/2434/2015/en/>

⁵ For examples of these cases see page 42 of Amnesty International; Flawed Justice: Unfair Trials and the Death Penalty in Indonesia, 15 October 2015, available at <https://www.amnesty.org/en/documents/asa21/2434/2015/en/>

⁶ Articles 2 and 26 of the ICCPR.

In **Saudi Arabia** the death penalty is used disproportionately against foreign nationals, the majority of whom are migrant workers with no knowledge of Arabic, the language in which they are questioned while in detention and in which trial proceedings are carried out. Their countries' embassies and consulates are not promptly informed of their arrest, or even of their executions. In some cases their families are neither notified in advance of the execution nor are their bodies returned to them to be buried.

International human rights law guarantees the right of everyone charged with a criminal offence, including in capital cases, with the assistance of an interpreter, free of charge, if he or she does not understand or speak the language used in court.⁷ Interpretation services must be made available to non-Arabic speaking defendants in Saudi Arabia if they are to exercise effectively their rights at all stages of the judicial process. However, the Law of Criminal Procedure in Saudi Arabia does not appear to recognize this necessity. It only makes provisions for such services at the trial stage, under Article 172. Given the secrecy that shrouds interrogations, adequate and independent interpretation facilities at this stage can virtually spell life or death for those facing death penalty charges. Principle 14 of the Basic Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that a person who does not understand or speak the language used by the authorities responsible for their arrest, detention or imprisonment must promptly receive information that they can understand about their rights, including the right to be informed of the reasons for arrest and any charges against them.⁸

Amnesty International's research indicates that of the 2,208 executions recorded between January 1985 and June 2015, at least 1,072 (48.5%) were of foreign nationals, who are often migrant workers from disadvantaged economic backgrounds. In other words, almost half of all executions recorded by Amnesty International in Saudi Arabia in this period were of foreign nationals. Data from 2016 indicates that the use of the death penalty against foreign nationals has continued.⁹

Foreign nationals are much less likely to receive a pardon. According to Shari'a law as practised in Saudi Arabia, anyone under sentence of death for a conviction of murder may appeal to the heirs of the victim for pardon and reconciliation and avoid execution. In practice, only those able to influence the victim's relatives – through power or money (or a combination of both), kinship, friendship or good fortune – succeed in obtaining a pardon. Migrant workers typically lack relationships and resources that could facilitate the issuing of a pardon, and are therefore in the great majority of cases unable to obtain one. This conclusion is partly based on a previous Amnesty International analysis of 104 cases of prisoners who benefited from pardon between 2000 and 2008.¹⁰

THE USE OF THE DEATH PENALTY AGAINST PEOPLE WITH MENTAL DISABILITIES

International law and standards on the use of the death penalty clearly state that the death penalty should not be imposed or carried out on people with mental or intellectual disabilities.¹¹ This applies whether the disability was relevant at the time of the crime or developed after the person was sentenced to death. Nevertheless, Amnesty International has documented the use of the death penalty against people with mental or intellectual disabilities in

⁷ Including under Article 14(3) of the International Covenant on Civil and Political Rights and Article 40(2) of the Convention on the Rights of the Child.

⁸ See UN Doc. A/RES/43/173, "Body of Principles for the protection of all persons under any form of detention or imprisonment", 9 December 1988.

⁹ Thirty-six out of 154 executions, recorded by Amnesty International in 2016, were of foreign nationals.

¹⁰ For further information on Amnesty International's research on the death penalty and foreign nationals in Saudi Arabia see Amnesty International; 'Killing in the name of Justice': The Death Penalty in Saudi Arabia, 25 August 2015, available at <https://www.amnesty.org/en/documents/mde23/2092/2015/en/>; Amnesty International; Affront to Justice: The Death Penalty in Saudi Arabia, 14 October 2008, available at <https://www.amnesty.org/en/documents/MDE23/027/2008/en/>

¹¹ Paragraph 3 of the UN Death Penalty Safeguards, supra note No. 45; the UN Human Rights Commission resolution 2005/59 on the question of the death penalty, 20 April 2005, UN Doc. E/CN.4/RES/2005/59; Human Rights Committee Concluding Observation: USA, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) para 7, Japan, UN Doc. CCPR/C/JPN/CO/5 (2008) para 16; *Sahadath v Trinidad and Tobago*, UN Doc. CCPR/C/78/D/684/1996 (2002) para 7.2; Special Rapporteur on extrajudicial executions, UN Doc. A/51/457 (1996) paras 115-116.

several countries.

In **Indonesia**, in April 2015, Rodrigo Gularte, a Brazilian national who had been diagnosed with paranoid schizophrenia and bipolar disorder was executed. The psychiatrist appointed by the head of his prison authority recommended that Rodrigo be admitted to a psychiatric hospital for intensive medical treatment. Rodrigo had had a mental disability since he was young and had been treated at psychiatric hospitals before he came to Indonesia. This medical diagnosis was used by his lawyers and the Brazilian Embassy as grounds to ask for a stay of execution to enable the mental health issues to be examined, and to call for the commutation of his death sentence. Rodrigo's medical condition had been raised by his lawyers during the first trial, but the court did not take it into consideration; nor did it examine his mental disability.

In **Pakistan**, Mohammad Asghar, who had been diagnosed with paranoid schizophrenia in the UK in 2010 and who then moved to Pakistan, was convicted of blasphemy in 2014 and sentenced to death. Despite his diagnosis in the UK, the trial court ruled that Asghar was sane.¹²

In **Saudi Arabia**, Hajras al-Qurey was executed on 22 September 2014 after being found guilty of drug trafficking and sentenced to death by the General Court in Najran on 16 January 2014. He and his son Muhammad al-Qurey were arrested on 7 January 2012 at the al-Khadra crossing with Yemen, when customs officers suspected them of carrying drugs in their car. According to the court documents, Hajras al-Qurey tried to drive away at speed to escape from the border police, who gave chase and caught them.¹³ The General Court in Najran ignored evidence from an assessment it had commissioned that found Hajras al-Qurey had a mental disorder that might have impaired his judgment.¹⁴

In the **United States of America**, Askari Abdullah Muhammad was executed in Florida on 7 January 2014 for a prison murder committed in 1980. He had a long history of serious mental illness, including diagnoses of paranoid schizophrenia. On 9 April 2014 Mexican national Ramiro Hernandez Llanas was executed in Texas despite evidence that his intellectual disability, as assessed in six different IQ tests over the previous decade, rendered his death sentence unconstitutional. Bruce Ward, who had been on death row for nearly 25 years and was due to be put to death on 17 April 2017 in Arkansas, received a stay of execution on 14 April 2017 from the Arkansas Supreme Court.¹⁵ In another case in Arkansas, Jack Jones, who was aged 52, was executed on 24 April 2017 for a murder committed in 1995 after 20 years on death row, despite a history of serious mental disability.¹⁶ The jurors who sentenced him to death did not know he had been diagnosed with bipolar disorder shortly before the crime.¹⁷ What the jury did not hear was that a few months before the crime, Jack Jones voluntarily committed himself to hospital where he was diagnosed with bipolar disorder (formerly known as manic depressive illness), a serious mental disability. The assessment noted that he was experiencing "a lot of suicidal ideation, imagining many different ways that he could harm himself". Then, on 8 May 1995, less than a month before the crime, he was again diagnosed with bipolar disorder, with the evaluation noting that he had been diagnosed as "extremely Bipolar". Four years earlier, he had been involuntarily committed to a psychiatric facility after a suicide attempt in Ohio. At that time, he was diagnosed as schizoaffective with depression.

RECOMMENDATIONS

Amnesty International urges the UN to call on all States that still retain the death penalty to immediately establish

¹² For further information see Amnesty International; 2014 World Day Against the Death Penalty: Protecting people with mental and intellectual disabilities from the use of the death penalty, 10 October 2014, available at <https://www.amnesty.org/en/documents/ACT51/005/2014/en/>

¹³ Ministry of Justice, Court Verdict 3455723, 16 January 2013, p. 2

¹⁴ Amnesty International urgent action, Hajras al-Qurey executed, UA 201/14 (Index: MDE 23/024/2014), 22 September 2014.

¹⁵ <https://www.amnesty.org/en/documents/amr51/6080/2017/en/>.

¹⁶ <https://www.amnesty.org/en/documents/amr51/6116/2017/en/>.

¹⁷ <https://www.amnesty.org/en/documents/amr51/5976/2017/en/>.

a moratorium on executions with a view to full abolition and, pending full abolition, to:

- Ensure that all people facing the death penalty are treated equally without discrimination and in line with international human rights law and standards;
- Stop using the death penalty on individuals with, or suspected of having, mental or intellectual disabilities;
- Ensure that foreign nationals have adequate access to consular and interpretation services;
- Ensure that defendants receive a fair trial in proceedings that ensure the most rigorous compliance with international standards for fair trial, at least equal to Article 14 of the ICCPR and without resort to the death penalty.