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الدورة الثانية والستون

البند ١١(ب) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسألتا حالات الاختفاء والإعدام بإجراءات موجزة

حالات الإعدام خارج نطاق القضاء أو بإجراءات موجزة أو تعسفاً

تقرير المقرر الخاص، السيد فيليب ألستون* **

الشفافية وفرض عقوبة الإعدام

* يُعمم ملخص هذا التقرير بجميع اللغات الرسمية. ويرد التقرير نفسه في مرفق الملخص ويُعمم كما ورد باللغة التي قُدم بها فقط.

** قُدم هذا التقرير في وقت متأخر لكي يعكس أحدث المعلومات.

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ملخص

هذا التقرير المقدم من المقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً يحلل أحد المجالات الهامة من مجالات عدم الامتثال للضمانات القانونية التي وضعت لحماية الحق في الحياة. ويرتكز على الاقتراح الذي مفاده أن "القانون الدولي لا يمنع البلدان التي أبقت على عقوبة الإعدام من أن تختار ذلك، ولكن على هذه البلدان التزاماً واضحاً بأن تكشف تفاصيل تطبيقها لهذه العقوبة" (E/CN.4/2005/7، الفقرة ٥٩). ويحلل التقرير الأساس القانوني للالتزام بالشفافية ويدرس حالات إفرادية تجسد المشاكل الرئيسية في هذا المجال.

وتُعد الشفافية من الضمانات الأساسية للمحاكمة حسب الأصول التي تمنع الحرمان التعسفي من الحياة. وكما ينص الإعلان العالمي لحقوق الإنسان والعهد الدولي الخاص بالحقوق المدنية والسياسية، فإن لكل إنسان الحق في أن يُفصل علناً في التهم الجنائية الموجّهة ضده. ويتناول هذا التقرير بالتفصيل الفقرة ١ من المادة ١٤ من العهد التي تجعل نطاق سريّة المحاكمة ضيقاً وتنص على شرط قوي يتعلق بالشفافية فيما بعد. كما تُقيَّد نطاق السريّة خلال عملية ما بعد الإدانة بفرض التزامات على الدولة تقتضي كفالة حقوق المحاكمة حسب الأصول ومراعاة الحق في عدم التعرض للمعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة.

ويخلص هذا التحليل إلى استنتاجين رئيسيين. أولاً، لا يستطيع الجمهور إجراء تقييم قائم على المعلومات لعقوبة الإعدام من دون توفر المعلومات الأساسية. وعلى وجه الخصوص، يجب إجراء أي حوار عام هادف في ضوء المعلومات المفصلة التي تكشفها الدولة فيما يتعلق بالآتي: (أ) عدد المحكومين بالإعدام؛ (ب) وعدد الأحكام التي نُفّذت بالفعل؛ (ج) وعدد أحكام الإعدام التي أُبطلت أو خففت بعد الاستئناف؛ (د) وعدد الحالات التي مُنحت فيها الرأفة؛ (هـ) وعدد الأشخاص المتبقين من المحكوم عليهم بالإعدام؛ (و) وتصنيف المعلومات في كل من تلك البنود بحسب الجريمة التي أُدين بها الشخص المحكوم. وعلى الرغم من الدور الهام لهذه المعلومات في أي عملية اتخاذ قرار مستندة إلى المعلومات، فإن العديد من الدول تفضل السريّة على الشفافية، لكنها تزعم مع ذلك أن سبب الإبقاء على عقوبة الإعدام يعود في جانب منه إلى الدعم الواسع الذي تلقاه لدى الجمهور.

ثانياً، ينبغي أن يحصل المحكومون وأسرهم ومحاموهم في الوقت المناسب على معلومات موثوقة عن إجراءات وتوقيت الاستئناف، وطلبات التماس الرأفة، وتنفيذ الحكم. وتبيّن التجربة أن القيام بخلاف ذلك يرجّح إلى حد كبير وقوع انتهاكات للحق في المحاكمة حسب الأصول ويؤدي إلى المعاملة اللاإنسانية والمهينة.

وتبين دراسات الحالات الإفرادية أن عدم الامتثال لتلك الالتزامات المتعلقة بالشفافية له آثار عملية هامة. وعلى الرغم من أن القانون الدولي لا يحظر عقوبة الإعدام، فإن اللجوء إليها قد لا يتسق مع احترام الحق في الحياة إذا أحيطت بالسريّة.

Annex

TRANSPARENCY AND THE IMPOSITION OF THE DEATH PENALTY: REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL SUMMARY OR ARBITRARY EXECUTIONS, PHILIP ALSTON

CONTENTS

I. INTRODUCTION

1. In the previous report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Commission on Human Rights at its sixty-first session, the Special Rapporteur noted that there is a widespread lack of compliance with the obligation to administer the death penalty in a transparent manner:

> "secrecy prevents any informed public debate about capital punishment within the relevant society … Countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty. For a Government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied is unacceptable. The Commission should, as a matter of priority, insist that every country that uses capital punishment undertake full and accurate reporting of all instances thereof, and should publish a consolidated report prepared on at least an annual basis"[1]

2. The present follow-up report explores that problem in greater detail, discussing the legal framework underpinning transparency obligations and providing case studies that may clarify the issues. Information on actual practices undermining transparency is required to assess both the dimensions of the problem and the range of reform options. A preliminary observation is that countries do not fall neatly into "transparent" and "opaque" categories. While there are countries in which the entire process of capital punishment from trial to execution is cloaked in secrecy, more often some aspects are secret while others are public. For example, in Japan the public is provided no information regarding individual executions, but detailed aggregate statistics are provided. In contrast, in China, at least some executions are widely publicized, but all aggregate information is held in secrecy. This diversity of legal and institutional obstacles to transparency demonstrates that there is no single path to transparency.

3. It should be noted that one consequence of the lack of transparency in the administration of capital punishment is that reports like this draw on a poor factual base. Today, it would be impossible to survey current practices in a comprehensive manner; for that reason, the Special Rapporteur chose to focus on representative incidents and practices. The Special Rapporteur drew on information he had received from various sources. Notes verbales were sent on 24 August 2005 to those States which seemed to be most pertinent to the inquiry with a request for their views. Of those, Belarus, China, Democratic People's Republic of Korea, Egypt, India, Saudi Arabia, Singapore, and Viet Nam responded. The Special Rapporteur appreciates the cooperation these Governments have extended and the cases studies in the present report build on information received by the Special Rapporteur, combined with responses by the Governments concerned to a preliminary statement of the current situation. The Special Rapporteur regrets that the Governments of Afghanistan, the Islamic Republic of Iran, Japan, and the Syrian Arab Republic did not respond. The Special Rapporteur is very grateful to the secretariat of the Office of the United Nations High Commissioner for Human Rights for its assistance in obtaining material for this report and to Katrina Gustafson and William Abresch for superb research and analysis.

4. The case studies that follow will analyse some of the reasons given for non-disclosure of information on the death penalty, but it is worthwhile to first highlight one key point: the failure to comply with transparency obligations lacks any basis related to crime control or the traditional purposes of punishment.[2] It is, for example, widely believed that the death penalty is a necessary deterrent. Putting aside the empirical debate on whether capital punishment serves as a deterrent, is it plausible that secrecy could enhance such a deterrent effect? It could be argued that prospective criminals would, lacking information, assume the worst. However, even if we were to impute this species of fear of uncertainty to criminals, the facts are that secrecy is not actually utilized by Governments in a way that would exaggerate the use of the death penalty. Instead, secrecy seems to be universally relied on so as to downplay the actual numbers of death sentences and executions that take place; thus, secrecy would tend to undermine any deterrence effect of capital punishment.

5. Secrecy is also incompatible with a retributive rationale for the death penalty. The general public and the families of victims alike are provided with a sense of retribution by punishments that are known not by punishments that are secret. Indeed, any retributive effect that might result from the knowledge that the criminal has been put to death will be reduced as secrecy reduces knowledge of the death sentence and execution.

6. That secret executions and confidential statistics in no way advance crime control and the traditional purposes of punishment should itself raise serious questions about these practices.

II. THE OBLIGATION TO MAKE PUBLIC INFORMATION ON THE USE OF THE DEATH PENALTY

A. Legal framework of public transparency obligations

7. Transparency is fundamental to the administration of justice; indeed, in the succinct statement of the right to due process included in the Universal Declaration of Human Rights, the requirement of a public hearing follows only that of a fair hearing.[3] The prominence of the requirement is no accident: transparency is the surest safeguard of fairness. Why? Over time punishment imposed by Governments has come to replace private acts of retribution. This has rationalized the disposition of justice, yet it has also introduced the possibility of more systematic arbitrariness. The extraordinary power conferred on the State - to take a person's life using a firing squad, hanging, lethal injection, or some other means of killing - poses a dangerous risk of abuse. This power may be safely held in check only by public oversight of public punishment. It is a commonplace that due process serves to protect defendants. However, due process is also the mechanism through which society ensures that the punishments inflicted in its name are just and fair. As the Human Rights Committee has observed with respect to the International Covenant on Civil and Political Rights, transparency "is a duty upon the State that is not dependent on any request, by the interested party".[4]

8. The transparency safeguard for the due process of law is guaranteed by article 14, paragraph 1 of the International Covenant on Civil and Political Rights.[5] That provision lays down the general rule that everyone shall be entitled to a public hearing. It then clarifies this general rule with a limitation clause in two parts. The first part of the limitation clause provides that the public may be excluded for one of several reasons: the general interest of a democratic society in morals, public order, and national security, the privacy interests of the parties, and the interests of justice. These are thresholds not triggers: that a trial implicates a national security interest does not automatically justify a wholly secret trial; instead, the courts may exclude the public "from all

or part of a trial" as required by the particular rationale by which publicity would imperil national security in the case at hand.

9. The second part of the limitation clause of article 14, paragraph 1, sharply limits the scope of the first part, specifying that secrecy may never extend beyond the hearing itself: "any judgement rendered in a criminal case or in a suit at law shall be made public". To this requirement there is only the narrowest of exceptions (for a few family law matters). No limitation whatsoever is permitted for interests of public order, national security, or justice. The reason for this nearly absolute transparency obligation is not, of course, that the drafters and States parties lost sight of these legitimate interests between the penultimate and last clauses of article 14, paragraph 1; rather, the rule is absolute because it is never the case that a democratic society has an interest in concealing from the public even this final trace of the judicial process.

10. In its resolution 1989/64 intended to ensure the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, the Economic and Social Council urged Member States "to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law".[6] It is impossible to oversee compliance with the human rights law on capital punishment without this information.

11. Even during a state of emergency, derogation from transparency rights is never permitted in death penalty cases. It might be noted that the permissible scope of derogation from due process rights is always tightly circumscribed. While article 14, paragraph 1 is not listed among the so-called "non-derogable rights" (art. 4, para. 2), measures taken in derogation must always be limited "to the extent strictly required by the exigencies of the situation" (art. 4, para. 1). Moreover, derogations from due process may never go so far as to eviscerate the rule of law, because to permit such derogation would be to defeat the very purpose of the article 4 derogation regime: to prohibit states of exception subject solely to executive discretion by accommodating states of emergency subject to the rule of law.[7] It is not necessary, however, to speculate here on whether any species of emergency might strictly require derogation from the transparency requirements of article 14, paragraph 1. With respect to transparency and the death penalty, it is sufficient to quote the Human Rights Committee's cogent analysis: "The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights … . Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15."[8]

12. The purpose underpinning article 14, paragraph 1 explains why publicity must be more than formal. In order for every organ of government and every member of the public to have at least the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner, the administration of justice must be transparent. It defeats the purpose of the publicity element of due process for judgements to be "made public" by filing them away in courthouses where they can, in theory, be paged through by citizens. Obscurity can be as harmful to due process as secrecy. Indeed, some of the questions that must be asked - that citizens must be able to ask - about the application of the death penalty cannot be answered without a comprehensive view of the decisions and the sentences that have been made throughout the country. The kind of informed public debate about capital punishment that is contemplated by human rights law is undermined if Governments choose not to inform the public. It is for this reason that a full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.

13. Neither is the general public alone in having a legitimate interest in comprehensive and reliable information on the use of the death penalty. At the national level, it might be noted that the human rights law obligation not to impose capital punishment in an arbitrary or discriminatory manner does not reside solely in the national executive. Organs in every branch of government - including the executive, the judicial and the legislative - and at every level, from the national to the local, will incur international legal responsibility on the State insofar as its acts lead to arbitrary or discriminatory executions.[9] Without aggregate information on capital punishment, it is, for example, impossible for any court to evaluate questions of discrimination. At the international level, States "have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms ".[10] In recognition of this duty, the Economic and Social Council has, for example, requested that the Secretary-General survey Member States at five-year intervals on their use of capital punishment, including on the offences for which the death penalty may be imposed and on the total number of executions.

B. Case studies on secrecy and its impact on public oversight and debate

14. Capital punishment policies and practices are often justified with reference to the state of public opinion. Thus, the Government of China observed in a reply to the Special Rapporteur in 2003 that "each country should decide whether to retain or abolish the death sentence on the basis of its own actual circumstances and the aspirations of its people" and the role of public opinion was also emphasized in a reply to the Special Rapporteur in 2005.[11] The Government of Japan responded to a survey by the Secretary-General that "the majority of people in Japan recognize the death penalty as a necessary punishment for grievous crimes. Considering the number of serious crimes … it is inevitable to impose the death penalty on offenders who commit such crimes".[12] In many countries, however, non-compliance with transparency obligations means that the public lacks the information necessary to make these determinations.

15. The public is unable to determine the necessary scope of capital punishment without key pieces of information. In particular, public opinion must be informed by annual information on: (a) the number of persons sentenced to death; (b) the number of executions actually carried out;

(c) the number of death sentences reversed or commuted on appeal; (d) the number of instances in which clemency has been granted; (e) the number of persons remaining under sentence of death; and (f) each of the above broken down by the offence for which the person was convicted. Many States, however, choose secrecy over transparency, leaving the public without the requisite information.

16. The decision of many States not to respond to the Secretary-General's survey on capital punishment is indicative. The Economic and Social Council has requested that the Secretary-General conduct this survey of Member States at five-year intervals since 1973.[13] The response rate has been very low, leading the Council to ask the Secretary-General to "draw on all available data" in future reports, rather than relying solely on Government responses.[14] The Secretary-General's most recent report shows that retentionist countries are especially unlikely to respond. Of the 62 countries that were retentionist at the time of the survey, 87 per cent did not respond at all, and only 4 - Bahrain, Japan, Trinidad and Tobago, and the United States of America - reported on the offences for which the death penalty may be imposed and on the total number of executions.[15]

17. In some instances, no reason is given for the lack of transparency. Belarus does not publish annual statistics relevant to the death penalty, nor does it provide the names or case details of individuals who have already been executed. There has been great inconsistency in the information on the death penalty that has been provided by the Government. For example, on 5 October 2004, chief of the Belarusian Ministry of the Interior's Department of Corrections Vladimir Kovchur reportedly told Interfax that "there have been no executions this year, and nobody is even on death row".[16] However, on 19 November 2004, the Belarusian newspaper *Sovetskaya Belorussiya* reported that the Interior Minister, Uladzimir Navumaw, had stated that there were then 104 people on death row and that in 2004, 5 people had been sentenced to death and executed.[17]

18. In a note verbale to the Special Rapporteur, the Government stated that two persons were sentenced to death in 2004; the note verbale did not comment on the size of death row or on the number of persons executed.[18]

19. Singapore does not normally publish statistics on death sentences passed or executions carried out, and executions are not announced ahead of time and are rarely reported. However, the Government occasionally makes information available in response to questions from journalists or Parliament. A significant level of information on death sentences and executions was also released in response to Amnesty International's January 2004 report on the death penalty in Singapore (Singapore, the death penalty: a hidden toll of executions). In response to the claim by Amnesty International that the Government kept death penalty statistics secret, the Government issued a response stating that all trials and appeals are conducted in public, that Amnesty International itself has monitored certain trials and that the more newsworthy trials are reported in the media.[19] The Government response also revealed that "as you have requested for the figures, 19 Singaporeans and foreigners were executed in 2003. Between January and September 2004, six persons were executed".[20] In connection with Amnesty International's estimate that 400 people had been executed in Singapore since 1991, the Government did not provide a precise figure, but the Prisons Department said that this was a "fair estimation".[21]

20. A lack of transparency undermines public discourse on death penalty policy, and sometimes this may be its purpose. Measures taken by the Government of Singapore suggest an attempt to suppress public debate about the death penalty in the country. For example, in April 2005, the Government denied a permit to an Amnesty International official to speak at a conference on the death penalty organized by political opposition leaders and human rights activists. The reason for the restriction, as stated by the Government, was that a high degree of control over public debate and the media was necessary in order to maintain law and order. In another recent example, the Government banned the use of photographs of Shanmugam Murugesu, who was executed on 13 May 2005, in all publicity and information relating to a concert organized to protest the death penalty. Posters advertising the concert had included photographs of Shanmugam Murugesu's face. The reason stated for the ban was a concern that the concert organizers were "glorifying" an ex-convict and executed person.

21. Informed public debate about capital punishment is possible only with transparency regarding its administration. There is an obvious inconsistency when a State invokes public opinion on the one hand, while on the other hand deliberately withholding relevant information on the use of the death penalty from the public. How can the public be said to favour a practice about which it knows next to nothing? If public opinion really is an important consideration for a country, then it would seem that the Government should facilitate access to the relevant information so as to make this opinion as informed as possible. It is unacceptable for a Government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied.

C. Case studies on the use of "national security" as a basis for withholding statistics on death sentences and executions

22. The most frequently cited rationale for not disclosing information on the death penalty is that such information is a "State secret" that would imperil national security were it made public. Thus, for example, in January 2004 the Government of Vietnam declared reports and statistics on the use of the death penalty to be "State secrets".[22] Article 1, paragraph 1, of the decision states: "The list of State top secrets of the People's Court includes: Documents related to the trial on national security crimes, reports and statistics on death penalty, clandestine trials that should not be published under the law." In the past, the Government has issued annual statistics on death sentences and executions, but this practice has been discontinued.[23] Today, the courts do not publish their proceedings, and the Government refuses to disclose any statistical information on capital punishment.

23. It is also on "State secret" grounds that the Government of China refuses to disclose statistics on death sentences and executions.[24] (Likewise, the Government does not consistently publicize death sentences in individual cases.) This official opacity has opened for debate even the basic facts regarding the death penalty in China. In March 2004, Chen Zhonglin, director of the law academy at Southwestern University of Politics and Law and a senior national legislative delegate, stated that China executes "nearly 10,000" people every year. When this was reported in the media, Chen Zhonglin clarified that this number was not an official figure, but merely an

estimate based upon the work of scholars and other senior legislators. The Ministry for Foreign Affairs has declined to explain why China did not release statistics on the number of people executed each year,[25] and China did not respond to the survey carried out in connection with the report of the Secretary-General to the Economic and Social Council on capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty.[26]

24. India has moved towards greater transparency, but significant gaps in information on past and present death sentences and executions remain. With respect to the present, since 1995 the National Crime Records Bureau has published tables listing the total number, but not the names or details, of persons executed each year. The situation with respect to pre-1995 executions is more complex. The Home Ministry had claimed that the 2004 execution of Dhananjoy Chatterjee was the fifty-fifth execution in India since independence. However, the Indian non-governmental organization (NGO) People's Union for Democratic Rights (PUDR) subsequently discovered information indicating that in the 10-year period between 1953 and 1963, 1,422 people had been executed in India. This information was found in an appendix to the thirty-fifth Report of the Law Commission of India (1965), which listed the number of executions carried out in this period in 16 Indian states. To follow up on this information, PUDR filed requests under local government right to information acts, seeking details of all persons who had been executed since 1947 in both Delhi and Maharashtra. The Maharashtra state authorities disclosed the data. In contrast, the Delhi authorities refused. In his response, the Deputy Inspector General (Prisons) stated that "the information sought would not serve any public interest" and that "some of the persons who have been executed had been convicted for various offences having prejudicial effect on the sovereignty and integrity of India and security of NCT (National Capital Territory) of Delhi and international relations and could lead to incitement of an offence".[27]

25. The national security and public order concerns that underpin State secret classifications of death penalty information lack legal justification. As discussed above, article 14, paragraph 1, of the Covenant permits secrecy on these grounds only at the trial stage, and no derogation from this rule whatsoever is permitted in death penalty cases. This "black-letter" legal conclusion is not hard to understand. Even restrictions on transparency at the trial stage must be justified by "reasons of morals, public order (ordre public) or national security in a democratic society".[28] Basic information on the administration of justice should never be considered a threat to public order or national security.

III. THE OBLIGATION TO PROVIDE POST-CONVICTION TRANSPARENCY FOR CONVICTS AND THEIR FAMILIES

A. Legal framework

26. A lack of transparency regarding the post-conviction process and timetable for execution implicates two sets of rights. The first is that the failure to provide notice to the accused of the timing of his own execution may undermine due process rights. Due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death. Most notably, the death row prisoner has "the right to his conviction and

sentence being reviewed by a higher tribunal" (article 14, paragraph 5, of the Covenant) and "the right to seek pardon or commutation of the sentence" (article 6, paragraph 4, of the Covenant). The uncertainty and seclusion inflicted by opaque processes place due process rights at risk, and there have, unfortunately, been cases in which secrecy in the post-conviction process has led to a miscarriage of justice. In addition, and regardless of the actual due process consequences, to conceal from someone the facts of their preordained fate will constitute inhuman or degrading treatment or punishment. There are, of course, legitimate interests in security and privacy that necessarily limit access to death row and the publicity accorded to some information. However, these interests can and must be accommodated without violating rights.

27. For the prisoner and for his or her family, the other issue is that a lack of transparency in what is already a harrowing experience - waiting for one's execution - can result in "inhuman or degrading treatment or punishment" within the meaning of article 7 of the International Covenant on Civil and Political Rights. The views of the Human Rights Committee in two cases illustrate the scope of this right. In a recent decision that responded to an individual complaint of the mother of an executed Belarusian prisoner, the Committee found that "The complete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress." This amounted to inhuman treatment in violation of article 7 of the Covenant.[29] In *Pratt and Morgan v. Jamaica*, the Committee found that a delay of approximately 20 hours before communicating a reprieve to the accused just 45 minutes prior to his scheduled execution constituted a violation of Article 7.[30] States do not have any interest that justifies keeping persons on death row and their families in the dark regarding their fate.

B. Case studies on how secret executions undermine due process safeguards and lead to the inhuman or degrading treatment or punishment of prisoners and their families

28. While convicted persons remain on death row, a number of States withhold from them and their family members basic information concerning the post-conviction process.

29. In an example from the Islamic Republic of Iran, Afshen Razvany and Meryme Sotodeh were reportedly arrested on 9 July 2003, sentenced to death shortly afterwards and executed on 23 January 2004 without a court order and without prior notice being given to their families.[31] (In response to these allegations, the Government asserted that it had no record of these individuals being detained in July 2003.[32])

30. The case of Dong Wei illustrates the risks that post-conviction opacity poses to respect for human rights. Dong Wei was a farmer who was sentenced to death on 21 December 2001 for killing a man during a fight outside a dance hall in Yan'an City, Shaanxi Province, China. His lawyer appealed against the sentence, claiming that Dong had killed the man in self-defence. Shaanxi Province High People's Court reviewed its own decision, rejected the appeal in a closed session, and, on 22 April 2002, issued an order for Dong to be executed seven days later. Dong's lawyer was not informed of the decision, and only found out on 27 April - just two days before the execution was scheduled - because he happened to visit the high court to ask about the progress of the appeal. The lawyer then travelled to Beijing at his own expense to appeal the case at the

Supreme People's Court, but he was refused entry and turned away. On the morning of the execution, the lawyer managed to gain access to the Supreme People's Court under false pretences and convinced a judge to review the case. The judge agreed with the lawyer that Dong's case needed further review, and the execution was only stopped when the judge contacted the execution ground with a borrowed mobile phone, reportedly just four minutes before the execution was scheduled. (After a further review of the case by Shaanxi Province High People's Court on the orders of the Supreme People's Court, Dong was executed on 5 September 2002.) Transparency would have prevented this near violation of the right to life.

31. In many cases, the due process consequences of opacity in the post-conviction process will remain unknown; however, the consequences of the dignity of the individual and his or her family are clear.

32. Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation. In the most extreme instances, prisoners have learned of their impending executions only moments before dying, and families have been informed only later, sometimes by coincidence rather than design. These practices are inhuman and degrading and undermine the procedural safeguards surrounding the right to life.

33. In Saudi Arabia, there have been cases in which foreign prisoners were unaware that they were under sentence of death. This has been due, at least in part, to the failure of the Government to provide translators for defendants who did not speak Arabic. In one instance, it has been credibly alleged that six Somali nationals spent six years in prison before learning that they were under sentence of death.[33] When they spoke to their families by telephone on the morning of 4 April 2005, they remained unaware that they were to be executed. Later that day they were beheaded.

34. Incidents in which the family has not been informed have occurred in China. In one case, the families of two Nepalese citizens sentenced to death in Tibet had not heard from the defendants for four months and read about their death sentences in a Kathmandu newspaper.[34] (The Government of China has informed me that their death sentences were subsequently commuted and that regular contact had been maintained with the Nepalese consulate during the trial proceedings.[35]) More generally, the ability of family and lawyers to visit death-row prisoners is sometimes very limited, and there are many reports of relatives being denied access to condemned prisoners, or of executions being carried out without relatives being informed of the failure of final appeals. However, there are encouraging signs of reform. For example, the Beijing Municipality High People's Court announced in September 2003 that it was urging all intermediate-level courts in the municipality to set aside rooms for condemned prisoners to meet for a final time with their family.[36]

35. It is more often information about the date and time of execution that is withheld than information about the death sentence itself. In some cases notice is provided, but only belatedly. Thus, in Singapore prisoners and their families are typically given one week's notice, in Egypt they are typically provided two to three days' notice, and in Japan it appears that they are provided even less time. In other cases, no advance notice has been provided at all. The execution of Sasan Al-e Kena'n provides an example. He was executed at 4 in the morning on 19 February 2003 in

Kordestan province, Islamic Republic of Iran. Later that day, his mother arrived at the prison to visit her son and was told to go the judiciary's local offices. Only then was she informed that Sasan Al-e Kena'n had been executed earlier that morning. She was told not to make a "fuss" and to bury him quickly.

36. As noted above, the unlawful character of such practices has been previously established in the case of Belarus. There it has been found that the Government does not provide full information to the relatives of executed prisoners about the dates and places of execution and burial; does not ensure that relatives of a prisoner under sentence of death are informed of the prisoner's place of imprisonment; does not permit regular and private meetings with the prisoner, not even to say goodbye if the petition for clemency is rejected; and, does not allow family members to collect the executed prisoner's remains or personal effects.[37] In a 2003 decision, the Human Rights Committee found that these practices had put the mother of a condemned prisoner in a state of anguish and mental stress amounting to inhuman treatment in violation of article 7 of the International Covenant on Civil and Political Rights.[38]

37. There is no justification for post-conviction secrecy, and these case studies have illustrated how a lack of transparency both undermines due process rights and constitutes inhuman and degrading treatment or punishment. Persons sentenced to death, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions.

C. Evaluating the privacy rationale for secret executions

38. Policies and practices of secret execution are often concealed and denied. However, the secrecy that Japan maintains around its death row and executions is a matter of official policy that is openly held and the legality of which is expressly defended. Thus, for example, in 2004 two people were executed in Japan without advance notice being given to their families or lawyers. The prisoners themselves were informed only a few hours before the executions. And the Government has refused to confirm or deny the execution of any particular person.

39. The Government of Japan has defended these practices by arguing that executions must be kept secret in order to protect the privacy of the prisoner as well as that of his or her family. The refusal to disclose the names of executed individuals is justified by the stigma of the death penalty: their names had already been made public during their trials; the further public announcement of their names on the day of execution would be cruel.[39]

40. There is, of course, a point at which individual rights to dignity and privacy do outweigh transparency obligations.[40] This point has, for example, already been passed when a person is executed before the general public. As the Human Rights Committee has observed, carrying out executions before the public is a practice that is "incompatible with human dignity". The experience of some countries with public executions clearly illustrates the fundamental difference between revealing the information needed for the public to make informed decisions about the death penalty and the use of death as a public spectacle. Indeed, exhibitions of bloodletting are not necessarily informative, and information need not be accompanied by violent displays.

41. In China, the Supreme Court has stated that public parading and other actions that humiliate the person being executed are forbidden. This has not, however, stopped all such practices. Especially in connection with trials involving drugs, gangs and corruption, condemned prisoners have been lined up in front of the court's public gallery to hear their sentence, sometimes with photographers and television cameras focused on their faces to capture their expression as sentence is passed. Following sentencing, prisoners may be paraded in an open truck through the streets to the execution ground, with a placard around their neck bearing their name crossed out in red. However, the Government has informed the Special Rapporteur that, "on 24 July 1986 and again on 1 June 1988, the ministries responsible for law, the People's Procuratorates, public security and justice jointly issued a circular strictly forbidding the public display of condemned persons, and the pertinent authorities have since then treated this issue with the utmost gravity. In recent years, the phenomenon has thus been effectively prohibited".[41] It had also been credibly alleged that executions are carried out in public stadiums or squares in front of large crowds, but this allegation was denied by the Government.

42. Public executions are also carried out in a number of other countries. In the Democratic People's Republic of Korea, there have been many reports of public executions in front of large crowds drawn from schools, businesses, and farms that were notified in advance. Some prisoners have reportedly even been executed in front of their families.[42] In Viet Nam, also, many executions are carried out publicly and the general public is encouraged to attend these events. And in Saudi Arabia, executions are generally carried out outside crowded mosques after Friday prayer services.

43. It is, thus, only superficially difficult to reconcile the prohibition on secret executions with the prohibition on public executions. On the one hand, it is inhuman treatment to give a prisoner only moments to prepare for his fate, and it is inhuman treatment to surprise a mother with news of her child's execution. But these practices can be avoided with advance notification of the date, time and place of execution, permitting final visits and final personal preparation. And the due process rights of persons sentenced to death can be protected so long as such notifications are made public. There is no legitimate interest served, however, by making executions public spectacles, and this is itself a most inhuman form of punishment.

44. The limitations on transparency imposed by, for example, Japan go beyond what is necessary to protect individual rights to privacy and human dignity and undermine the safeguards publicity provides. Some outside access to death row is essential to ensuring the rights of death-row prisoners. It is problematic, for instance, that in 2002 the international NGO International Federation for Human Rights (FIDH) visited Japan in order to investigate detention conditions of death-row inmates and was refused access to inmates, death-row cells, the execution chamber or any of the secure area of the detention house grounds. It becomes impossible to justify such practices inasmuch as information on death-row prisoners is withheld regardless of the prisoner's own appreciation of his or her privacy interests. When members of the Human Rights Commission of the Council of Europe visited Japan in early 2001, they were not permitted to contact a convict on death row even though the convict had, with the help of his wife, given his consent. When death-row inmate Masakatsu Nishikawa requested that a photographer be permitted to take a photograph of him that could be displayed at his funeral, his request was denied. An Osaka Regional Correction Headquarters official said that in considering whether to allow such a photo to be taken, they had to consider "the manner in which it would be distributed as well as the effect of the photograph on the defendant, his family and the bereaved family members of the victims".[43]

45. This lack of transparency has grave consequences for the adequacy of public oversight. The survey carried out in connection with the Secretary-General's 2005 report on capital punishment (E/2005/3) requested that Japan explain why it had not abolished the death penalty for ordinary crimes. The response of the Government was that "the majority of people in Japan recognize the death penalty as a necessary punishment for grievous crimes. Considering the number of serious crimes … it is inevitable to impose death penalty to the offenders who commit such crimes".[44] However, report of the Secretary-General also takes note of the view of the Japanese Federation of Bar Associations (JFBA) that one of the main reasons why capital punishment has not been abolished in Japan is the extraordinary secrecy surrounding the death penalty system and the consequent lack of proper information to discuss abolition.[45] Thus far, even parliamentary oversight has been limited. In 2003, two Diet members were allowed to tour an execution chamber but this was the first time they had been allowed to do so since 1973. JFBA has recently proposed a bill that would: (a) set up parliamentary study panels on the death penalty; (b) suspend executions while the study is underway; and (c) require the Government to disclose information about the death penalty so the panels can conduct full research.

46. Two logical limits to the privacy argument against transparency are apparent. The first such logical limit is that ensuring the right to privacy does not justify the denial of information to the very person whose privacy rights are being invoked. Thus, the argument that secrecy protects the privacy of death-row prisoners cannot explain or justify a refusal to reveal the timing and other details of executions to death-row prisoners themselves or to their families. Indeed, privacy protections would, if anything, support the claim that a death-row prisoner and his or her family should be fully informed of the prisoner's fate. It undermines rather than promotes privacy to forbid families and prisoners the most basic information about the prisoner's own death.

47. The second such logical limit is that respect for privacy cannot offset transparency obligations when the prisoner does not desire his experience on death row or the fact of his execution to be private. "Privacy", in this context, is merely a by-product of enforced secrecy. Because prisoners are not aware of when they will die, they have no opportunity to make this fact public (or alternatively maintain their privacy). Moreover, while on death row they are prohibited from contacting the media or politicians and any contact they do have with permitted visitors is strictly controlled and monitored. By stripping death-row inmates of control over their communications and knowledge of the most crucial aspect of their lives, i.e. the timing of their own death, the Japanese system undermines rather than protects the privacy of death-row prisoners.

IV. CONCLUSION

48. The widespread pattern of non-compliance with transparency obligations that the present report has documented is disappointing. It is reassuring, however, that with the will to reform the administration of capital punishment, the problems in most countries could be resolved with little technical difficulty. It is hoped that this report will lead to continued constructive dialogue on the measures required to ensure full transparency in the administration of the death penalty.

Notes

[1] E/CN.4/2005/7, paras. 58-59.

[2] For instance, in a note verbale to the Special Rapporteur, dated 11 October 2005, the Government of China stated that "the application of the death penalty for crimes of this order has salutary deterrent and preventative effects".

[3] The Universal Declaration of Human Rights, art. 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

[4] *Van Meurs v. the Netherlands*, Human Rights Committee (HRC), communication No. 215/1986 (1990), CCPR/C/39/D/215/1986, para. 6.1.

[5] International Covenant on Civil and Political Rights, art. 14, para. 1: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

[6] ECOSOC resolution 1989/64.

[7] HRC, general comment No. 29 (2001) on derogations during a state of emergency, para. 16; see also Inter-American Court Of Human Rights, Advisory Opinion OC-9/87, *Judicial Guarantees in States of Emergency (arts. 27 (2), 25 and 8 American Convention on Human Rights)* (6 October 1987).

[8] HRC, general comment No. 29 (2001), para. 15.

[9] HRC, general comment No. 31 (2004), para. 4, on the nature of the general legal obligation imposed on States parties to the Covenant.

[10] The Universal Declaration of Human Rights, preamble; see also Charter of the United Nations, Article 1.

[11] See E/CN.4/2005/7, para. 58. In a note verbale to the Special Rapporteur, dated 11 October 2005, the Government of China explained that the death penalty is applicable only to "extremely serious crimes" and that one of the factors leading to its use in that context is public opinion. "[E]ven though attitudes towards capital punishment and understanding of the issue have undergone considerable evolution in recent years in the judicial and theoretical fields, as well as in society in general, surveys show that retaining the death penalty for the crimes described above still garners widespread approval. Some 90 per cent of the population demand application of the death penalty in very serious cases of economic and other non-violent crime … We have also taken note of the fact that the questions of whether and when to abolish capital punishment in China are under discussion in academic circles and among the general public. The mainstream viewpoint, however, is that the practical conditions for abolition of the death penalty do not yet exist in China."

[12] See *Capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty*, Report of the Secretary-General to the Economic and Social Council, at pp. 8-9, U.N. Doc. E/2005/3 (9 March 2005).

[13] ECOSOC resolution 1754 (LIV) (16 May 1973).

[14] ECOSOC resolution 1995/57 (28 July 1995), para. 4.

[15] Calculated on the basis of information contained in E/2005/3 (9 March 2005), para. 6; annex I, table 1; E/2005/3/Add.1 (21 June 2005), paras. 3 (d), 8.

[16] interfax news service, *belarus says nobody on death row now* (5 october 2004).

[17] BBC Monitoring Ukraine and Baltics, *Belarusian Interior Minister says five people executed in 2004*, 20 November 2004 (citing *Sovetskaya Belorussiya, Minsk*, in Russian, 19 November 2004).

[18] According to a note verbale sent by the Government of Belarus to the Special Rapporteur on 15 November 2005, 47 persons were sentenced to death in 1998 (6 of whose sentences were commuted to deprivation of liberty), 13 persons were sentenced to death in 1999, 4 persons were sentenced to death in 2000 (2 of whose sentences were commuted to life imprisonment), 7 persons were sentenced to death in 2001, 4 persons were sentenced to death in 2002, 4 persons were sentenced to death in 2003 (1 of whose sentences was commuted to life imprisonment), 2 persons were sentenced to death in 2004. All these persons were convicted of murder in aggravating circumstances (1960 Criminal Code, art. 100; 1999 Criminal Code, art. 139, para. 2). In the first six months of 2005, the courts did not hand down any death sentences.

[19] Response of Singapore Home Ministry to Reuters responding to Reuters News, *Amnesty challenges Singapore on executions*, 19 October 2004 (on file with the author).

[20] Response of Singapore Home Ministry to Reuters responding to Reuters News, *Amnesty challenges Singapore on executions*, 19 October 2004 (on file with the author).

[21] Reuters News, *Singapore says Amnesty execution report "absurd"* (16 January 2004). The response of the Government also indicated that, although the Government does not as a rule disclose execution statistics, it nonetheless possesses detailed statistical information on the death penalty. For example, the Government replied to Amnesty International's claim that most of those executed were foreigners by stating that 64 per cent of those executed between 1993 and 2003 were Singaporeans and in the previous five years, 101 Singaporeans and 37 foreigners had been executed. Responding to Amnesty International's claim that the death penalty was imposed disproportionately on the "poorest, least educated and most vulnerable", the Government stated that, "of those executed between 1993 and last year, 44 per cent had primary education, 34 per cent had secondary education and 2 per cent had vocational or tertiary education. Only 20 per cent were unemployed". Straits Times, *Govt points out 12 'grave errors' in Amnesty Report* (31 January 2004).

[22] Decision of the Prime Minister of Viet Nam on the list of State top secrets of the People's Court, No. 01/2004/QD-TTg (5 January 2004) (on file with the author).

[23] In a note verbale to the Special Rapporteur dated 26 September 2005, the Government of Viet Nam noted that, "In accordance with Article 18 of the Criminal Procedure Law, verdicts must be made publicly. Article 229 of the Criminal Procedure Law states that within 15 days after the verdict is made, first-trial court shall have to provide the defendant, defender, procuracy of the same level with the verdict. Viet Nam has so far publicized some of the verdicts by the Council of Judges of the People's Supreme Court." The Government did not address the classification of death penalty statistics as "State secrets" in its note verbale.

[24] In a note verbale to the Special Rapporteur, dated 11 October 2005, the Government of China stated that, "On the statistical tables kept by the People's Courts, executions and death sentences-with-reprieve are counted among all sentences that exceed five years of imprisonment. These figures are forwarded in March every year to the President of the Supreme People's Court, who reports them to the National People's Congress and arranges for their publication in the People's Daily and the Supreme Court journal."

[25] Agence France-Presse, *China defends keeping execution statistics secret*, 5 February 2004. ("The question you raised is not up to me to answer", Foreign Ministry spokeswoman Zhang Qiyue said. "But I think with China's improvement and reform and opening, China has made great improvements in information transparency".)

[26] Capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty, Report of the Secretary-General to the Economic and Social Council, E/2005/3 (9 March 2005).

[27] Letter from the Deputy Inspector General (Prisons) Delhi Prisons to Deepika Tandon, PUDR (12 May 2005) (on file with the author).

[28] The International Covenant on Civil and Political Rights article 14 (1) (emphasis added).

[29] Human Rights Committee, *Communication No. 886/1999: Belarus*, para. 10.2, seventy-seventh session, 28 April 2003, CCPR/C/77/D/886/1999. The same conclusion was reached in a similar case. HRC, *Communication No. 887/1999: Belarus*, para. 9.2, seventy-seventh session, 24 April 2003. Article 7 of the Covenant states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

[30] *Pratt and Morgan v. Jamaica*, Human Rights Committee, thirty-fifth session, para. 13.7, CCPR/C/35/D/210/1986, 7 April 1989.

[31] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum - Summary of cases transmitted to Governments and replies received, to the Commission on Human Rights at its sixty-first session, E/CN.4/2005/7/Add.1, para. 227.

[32] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum - Summary of cases transmitted to Governments and replies received, to the Commission on Human Rights at its sixty-first session, E/CN.4/2005/7/Add.1, para. 329.

[33] Note verbale of the Government of Saudi Arabia to the Special Rapporteur (dated 30 December 2005): "With regard to the Special Rapporteur's reference to Somali nationals, according to a letter received from the Director-General of Prisons in the Ministry of the Interior there are no Somali prisoners who have been executed or who are facing the death penalty. Instead of generalizing and making unfounded and inaccurate accusations, it would have been more appropriate for the Special Rapporteur to provide full information on this case in order to enable the competent authority to reply to his allegations."

[34] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum - Summary of cases transmitted to Governments and replies received, to the Commission on Human Rights at its sixty-first session, E/CN.4/2005/7/Add.1, para. 82.

[35] In a note verbale to the Special Rapporteur, dated 11 October 2005, the Government of China clarified that:

> "With respect to the case mentioned in the Report of two Nepalese citizens sentenced to death in Tibet, in the absence of concrete details of the case, China is unable to determine which specific case is at issue. According to case information at hand, however, China's judicial organs did try a case in 2004 involving the Nepalese citizens Ananda, Jiansan and others accused of smuggling arms and munitions, and a case involving the Nepalese citizen Rebi and others, accused of smuggling narcotics. In all cases, the proceedings of second instance saw the

defendants' death sentences reduced to death penalties with a two-year reprieve, or to life or fixed-term imprisonment. During trial proceedings, the People's High Court of the Tibetan Autonomous Region made regular reports to the Nepalese Consulate in Lhassa, and Nepalese officials were permitted to meet with the Nepalese defendants."

[36] See also the note verbale from the Government of China to the Special Rapporteur, dated 11 October 2005: "In China, a condemned prisoner may meet with his or her family prior to execution, no matter how grave the offence committed. The rights of the condemned to settle personal affairs and to make family farewells are respected and fully protected. In Beijing for example, in 2004, two Intermediate People's Courts approved all applications by condemned prisoners for final family visits and made the due arrangements on their behalf. In addition, the Courts also specially arranged for the presence of a physician at these meetings so as to ensure that no harm befall the prisoners or their family members due to an excess of emotion. These actions clearly demonstrate the humanitarian concern of these authorities."

[37] The Government addressed some of these issues in a note verbale to the Special Rapporteur dated 15 November 2005. The Government did not address the publicity of hearings and judgements; it did, however, state that decisions to grant clemency to a convicted person under sentence of death, to turn down such appeals or to commute the death penalty to life imprisonment, deprivation of liberty or another more lenient sentence, shall take the form of a presidential decree. The activities of the Pardons Board and presidential decisions on clemency are regularly reported in the mass media.

With respect to post-conviction transparency, the note verbale stated that article 369 of the Code of Criminal Procedure provides that, after the verdict has been handed down, the presiding officer at the trial or the president of the court shall permit the accused's family and close relatives to visit him in custody, at their request. Where such permission is granted, the prison administration shall not obstruct meetings between accused persons and their families or close relatives. Persons under sentence of death have the same obligations and rights as persons detained in a remand prison on the basis of a pretrial restraining order. Once their sentence has become enforceable, convicted prisoners under sentence of death shall have, inter alia, the following rights: to meet with lawyers and other persons entitled to provide legal assistance, for as often and as long as necessary; to receive and send letters without restriction; to one short meeting with close relatives every month; to receive one parcel or hand-delivered package every three months under the procedure established by the prison administration; and, the right to be visited by ministers of religion.

[38] HRC, *Communication No. 886/1999: Belarus*, para. 10.2, seventy-seventh session, 28 April 2003, CCPR/C/77/D/886/1999.

[39] Capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty, Report of the Secretary-General to the Economic and Social Council, (E/2005/3), p. 43.

[40] The International Covenant on Civil and Political Rights, articles 7 and 17.

[41] In a note verbale to the Special Rapporteur, dated 11 October 2005, the Government of China stated that:

"With respect to the method of execution, China's 1979 Law of Criminal Procedure stipulated execution by shooting; this was amended in 1996 to include execution by lethal injection. The implementation and promotion of this latter method has served to make executions more civilized and humanitarian. Meanwhile, Chinese law strictly prohibits public executions, and in actual practice, no case of a public execution has ever occurred.

"China's Law of Criminal Procedure stipulates that, 'Executions of death sentences shall be announced but shall not be held in public'. In the past, individual cases of condemned persons being paraded in public have occurred in certain regions of the country. On 24 July 1986 and again on 1 June 1988, the ministries responsible for law, the People's Procuratorates, public security and justice jointly issued a circular strictly forbidding the public display of condemned persons, and the pertinent authorities have since then treated this issue with the utmost gravity. In recent years, the phenomenon has thus been effectively prohibited."

[42] In its note verbale to the Special Rapporteur dated 19 September 2005, the Government of the Democratic People's Republic of Korea did not address the particular issues raised by the Special Rapporteur but stated in general terms that "such phenomena as mentioned in your letter do not exist in reality in the Democratic People's Republic of Korea. In spite of this, the hostile forces have been ceaselessly fabricating and spreading the plot information as part of their pursuit of ill-minded aim to disintegrate and overthrow the state system of the Democratic People's Republic of Korea."

[43] International Herald Tribune, "Only arrest photos available", 8 June 2005.

[44] Capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty, Report of the Secretary-General to the Economic and Social Council, E/2005/3, pp. 8-9.

[45] Capital punishment and implementation of the safeguards guaranteeing protection of those facing the death penalty, Report of the Secretary-General to the Economic and Social Council, E/2005/3, p. 36.
