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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratorium on the use of the death penalty**

Report of the Secretary-General

Summary

The present report provides information on the implementation of General Assembly resolution [73/175](#). It discusses developments towards the abolition of the death penalty and the establishment of moratoriums on executions. The report highlights trends in the use of the death penalty, including the application of international standards relating to the protection of the rights of those facing the death penalty. It discusses conditions of detention for persons on death row, the application of the death penalty on foreign nationals, its disproportionate and discriminatory application to women, its disproportionate impact on poor or economically vulnerable individuals, its discriminatory use on persons exercising their human rights, and various initiatives for advancing its abolition. The report welcomes progress made towards universal abolition in States representing different legal systems, traditions, cultures and religious backgrounds. It concludes that all measures towards limiting the application of the death penalty constitute progress in the protection of the right to life.

* [A/75/150](#).

** The present report was submitted after the deadline in order to reflect the most recent information.



I. Introduction

1. In its resolution [73/175](#), the General Assembly requested the Secretary-General to report to it at its seventy-fifth session on the implementation of the resolution. The Secretary-General draws attention to the reports submitted to the Human Rights Council and to the Economic and Social Council.¹ The present report covers the period from December 2018 to May 2020 and is based largely on information received following a call for input circulated to States, national human rights institutions, United Nations agencies, international and regional intergovernmental bodies and non-governmental organizations.²

II. Availability of information on the use of the death penalty

2. In its resolution [73/175](#), the General Assembly called upon States to make available relevant information, disaggregated by sex, age, nationality and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty. The Human Rights Council and human rights mechanisms too have called upon States to ensure accessibility of information on the death penalty³ and have expressed concern about individuals on death row and their relatives not being notified promptly about the date and place of any execution.⁴

III. Developments since the adoption of General Assembly resolution [73/175](#)

A. Abolition of the death penalty and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights

3. In 2019, on the occasion of the thirtieth anniversary of the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the United Nations High Commissioner for Human Rights commended the global progress made with respect to the death penalty.⁵ Several States took initiatives towards abolition. In 2019, the Constitutional Court of Bosnia and Herzegovina issued a decision abolishing the death penalty in the Republika Srpska. Chad abolished it in 2020. Angola and the Gambia, as well as the State of Palestine, became parties to the Second Optional Protocol, bringing the number of States parties to 88; the decision of Armenia to sign that Protocol brought the number of signatories to 39. Benin and Guinea adopted Constitutions confirming the abolition of the death penalty. In the United States of America, the States of Colorado and New Hampshire abolished the death penalty. Several other States described their process of abolition and their support for the abolition of the death penalty.⁶

¹ [A/HRC/42/25](#), [A/HRC/42/28](#), [A/HRC/45/20](#) and [E/2020/53](#).

² See www.ohchr.org/EN/Issues/DeathPenalty/Pages/CallForInputs_DeathPenalty.aspx.

³ Human Rights Council resolution [42/24](#), para. 6; [CAT/C/VNM/CO/1](#), para. 42; and [CCPR/C/VNM/CO/3](#), para. 23.

⁴ [CCPR/C/BLR/CO/5](#), para. 27 (b).

⁵ See www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24724.

⁶ Submissions of Andorra, Bosnia and Herzegovina, Burundi, Croatia, Ireland, Sweden and

B. Moratoriums

4. In its resolution [73/175](#), the General Assembly welcomed the decisions made by an increasing number of States from all regions, at all levels of government, to apply a moratorium on executions, followed in many cases by abolition of the death penalty. It called upon States to establish a moratorium on executions with a view to abolition and encouraged States which have a moratorium to maintain it and to share their experience in that regard.

5. In its submission, Cuba indicated that it was in favour of eliminating the death penalty when favourable conditions were in place and that it understood and respected the arguments of the international movement proposing its abolition or the establishment of a moratorium. Tunisia recalled the moratorium it currently had in place. With regard to Dominica, the Human Rights Committee welcomed its de facto moratorium and commended steps showing a commitment to a full moratorium, including voting in favour of General Assembly resolution [73/175](#).⁷ In the United States, California became the fourth State to adopt a moratorium on executions.⁸

6. United Nations human rights mechanisms called upon States, including Bangladesh, Eritrea, Nigeria, Saint Vincent and the Grenadines, South Sudan and Viet Nam, to consider establishing a moratorium.⁹ They also called upon States, including the Central African Republic, the Democratic Republic of the Congo, Equatorial Guinea, Mauritania, the Niger and Tunisia, to consider abolishing the death penalty and called upon Saudi Arabia to consider doing so for persons with psychosocial or intellectual disabilities.¹⁰ Similar calls were made during the universal periodic review.¹¹

C. Reduction in the number of offences punishable by death

7. In its resolution [73/175](#), the General Assembly called upon States to reduce the number of offences for which the death penalty may be imposed, including by considering removing its mandatory application. In his report to the Human Rights Council on the question of the death penalty,¹² the Secretary-General provides information on the reduction in the number of offences punishable by death and the removal of the mandatory death penalty.

D. National initiatives to advance abolition

8. In its resolution [73/175](#), the General Assembly welcomed initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making. During the reporting period, initiatives – including by abolitionist States – were taken to advance abolition

Turkmenistan. See also the submissions of Mauritius, the Office of the Attorney for the Defence of Human Rights of Nicaragua, the Office of the Ombudsman of Latvia and the Danish Institute for Human Rights.

⁷ [CCPR/C/DMA/COAR/1](#), para. 26.

⁸ See www.gov.ca.gov/2019/03/13/governor-gavin-newsom-orders-a-halt-to-the-death-penalty-in-california/; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24329&LangID=E.

⁹ [CAT/C/BGD/CO/1](#), para. 51; [CCPR/C/ERI/CO/1](#), para. 24 (e); [CCPR/C/NGA/CO/2](#), para. 25; [CCPR/C/VCT/CO/2/Add.1](#), para. 23 (a); www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24184&LangID=E; and [CCPR/C/VNM/CO/3](#), para. 24 (a).

¹⁰ [CCPR/C/CAF/CO/3](#), para. 18; [CAT/C/COD/CO/2](#), para. 37 (a); [CCPR/C/GNQ/CO/1](#), para. 35; [CCPR/C/MRT/CO/2](#), para. 25 (d); [CCPR/C/NER/CO/2](#), para. 27; [CAT/C/NER/CO/1](#), para. 34 (a); [CCPR/C/TUN/CO/6](#), para. 28 (c)–(d); and [CRPD/C/SAU/CO/1](#), para. 18.

¹¹ [A/HRC/45/20](#), para. 9.

¹² [A/HRC/45/20](#).

around the world.¹³ In their submissions, Croatia, Ireland and Sweden reported that advocating for moratoriums or abolition was a priority task for their governments and highlighted initiatives undertaken in that regard at the United Nations.

9. During the universal periodic review, some States, including the Central African Republic, Chad, the Comoros, the Congo and Côte d'Ivoire, referred to their commitment to abolishing the death penalty.¹⁴ During the Seventh World Congress against the Death Penalty, Burkina Faso and the Gambia announced plans to introduce the abolition of the death penalty in new Constitutions, while the Congo and Guinea announced that they would accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights,¹⁵ as did Kazakhstan, during the forty-third session of the Human Rights Council.¹⁶

10. Some States announced that they would consider abolishing or restricting the use of the death penalty. The President of Zimbabwe, in the foreword to a report, expressed his “sincere hope that, in the near future, Zimbabwe will formally abolish the death penalty”.¹⁷ Zambia announced being “open to the consultative process for abolition of the death penalty”.¹⁸ Morocco announced a reform of the penal code to reduce the number of capital offences.¹⁹ The President of Ghana reportedly announced willingness to consider abolition of the death penalty for some offences.²⁰ The Government of the Sudan prepared a bill to abolish the death penalty for “apostasy”.²¹ Barbados and Kenya began a review of death sentences following their abolition of the mandatory death penalty.²² In Uganda, the mandatory death penalty was removed from the Penal Code, the Anti-Terrorism Act 2002 and other laws.²³ Maldives committed itself to upholding the moratorium on the death penalty and to voting in favour of the General Assembly resolution on a moratorium on the use of the death penalty.²⁴

11. Tajikistan indicated that a working group had been studying the social and legal aspects of abolition since 2010.²⁵ In its submission, Belarus, the only country in Europe with the death penalty, reported that a working group on studying the abolition of the death penalty was established in 2020 in the National Assembly. Furthermore, Belarus planned to develop a road map to a moratorium with the Council of Europe.²⁶ The Constitutional and Law Reform Commission of Papua New Guinea, in response to a council of churches call to abolish the death penalty, announced that it would conduct a nationwide consultation to gauge the views of citizens on whether the death penalty

¹³ Ibid., para. 7.

¹⁴ A/HRC/45/20.

¹⁵ See www.youtube.com/watch?v=rFLJiiSaqoQ&list=PL_a4BGZd1rfqcFFT-0c4_cBfXxosNTrmr&index=9&t=0s; www.ecpm.org/wp-content/uploads/actes-Bruxelles-2019.pdf, p. 29.

¹⁶ See <http://webtv.un.org/search/kazakhstan-high-level-segment-1st-meeting-43rd-regular-session-human-rights-council-6135361620001/?term=&lan=english&cat=Regular%2043rd%20session&sort=date&page=17>.

¹⁷ See www.deathpenaltyproject.org/knowledge/time-to-abolish-the-death-penalty-in-zimbabwe-exploring-the-views-of-its-opinion-leaders/.

¹⁸ See www.hrc.org.zm/index.php/multi-media/speeches/file/274-speech-by-vice-president-of-zambia-on-2019-human-rights-day-commemoration.e.

¹⁹ See www.youtube.com/watch?v=rFLJiiSaqoQ&list=PL_a4BGZd1rfqcFFT-0c4_cBfXxosNTrmr&index=9&t=0s.

²⁰ See <https://cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf>, p. 18.

²¹ See www.sudantribune.com/spip.php?article69083.

²² See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, pp. 17 and 48; and the submission of Reprieve.

²³ Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019.

²⁴ CAT/C/MDV/CO/1, para. 6 (f).

²⁵ CCPR/C/TJK/CO/3, para. 27.

²⁶ See www.osce.org/odihr/430268?download=true; www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf, p. 65.

should remain a part of the country's laws.²⁷ In the Republic of Korea, the national bishops' conference called for an end to the death penalty²⁸ and a bill to abolish it was submitted to the National Assembly while the constitutionality of the death penalty is considered by the Constitutional Court.²⁹ In 2019, a citizens' committee to abolish capital punishment was established in Japan to create momentum for a dialogue on abolition.³⁰ A dialogue on efforts made towards abolition in Central Asia and Mongolia sought to identify future steps towards a possible death penalty-free zone.³¹ In the Philippines, activities were undertaken against the reinstatement of the death penalty.³² The Truth and Dignity Commission in Tunisia recommended abolishing the death penalty,³³ as did the National Human Rights Council in Morocco.³⁴

12. The Human Rights Committee continued to request States to undertake initiatives towards abolition. Specifically, it recommended that Mauritania initiate a political and legislative process aimed at the abolition of the death penalty and carry out public advocacy efforts and campaigns to promote that objective³⁵ and that Saint Vincent and the Grenadines consider carrying out appropriate awareness-raising measures to mobilize public opinion in support of abolition of the death penalty.³⁶

13. As highlighted in previous reports, the effectiveness and transparency of any debate on the death penalty requires that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it without resorting to capital punishment.³⁷ During the reporting period, public opinion surveys and studies were conducted on various aspects of the use of the death penalty, including in the Eastern Caribbean and Barbados, Indonesia and Zimbabwe.³⁸ In addition, awareness-raising activities were undertaken, including in Benin, Cameroon, the Central African Republic, the Congo, Côte d'Ivoire, Liberia, Mali³⁹ and Uganda.⁴⁰

IV. Trends in the use of the death penalty

A. Number of executions and executing countries

14. Up-to-date and accurate global figures on the use of the death penalty are difficult to obtain. Belarus, China and Viet Nam continue to reportedly classify data on its use as a State secret. Little or no information was reportedly available on some countries, including the Lao People's Democratic Republic and the Democratic People's Republic of Korea.⁴¹

²⁷ See <https://postcourier.com.pg/death-penalty-under-review/>; www.thenational.com.pg/survey-on-death-penalty/.

²⁸ See www.catholicnewsagency.com/news/south-korean-bishops-call-for-an-end-to-the-death-penalty-55913.

²⁹ See www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF, p. 32.

³⁰ See <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24955&LangID=E>.

³¹ Submission of the International Commission against the Death Penalty.

³² Submission of the Commission on Human Rights of the Philippines.

³³ See www.ivd.tn/rapport/doc/TDC_executive_summary_report.pdf, p. 607; www.ivd.tn/rapport/doc/recommandation.pdf (in Arabic).

³⁴ See https://cndh.org.ma/sites/default/files/ltqryr_lsnwy_llmjls_lwtny_lhqwq_Insns-2019_1.pdf.

³⁵ CCPR/C/MRT/CO/2, para. 25 (d).

³⁶ CCPR/C/VCT/CO/2/Add.1, para. 23 (c).

³⁷ A/HRC/24/18, para. 80; A/HRC/27/23, para. 73; and A/73/260, para. 14.

³⁸ See www.deathpenaltyproject.org/knowledge-resource/studies-and-surveys/.

³⁹ See http://fiacat.org/attachments/article/2876/FIACAT_rapport%20d'activit%C3%A9_2019_UK_mailing-.pdf, p. 13.

⁴⁰ See www.penalreform.org/resource/practice-guide-for-defense-counsel-representing-individuals-facing/.

⁴¹ See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, p. 6.

15. The number of executions reportedly decreased during the reporting period.⁴² Twenty States carried out executions in 2019, the same number as in 2018.⁴³ While reports indicate a decrease in the number of death sentences, the number of countries that imposed death sentences increased in 2019 compared with 2018.⁴⁴ In their submissions, Belarus, Cuba, Qatar and Tunisia reported that they retained the death penalty, and Singapore referred to General Assembly resolution [73/175](#), in which the Assembly had reaffirmed the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations.⁴⁵

16. Iran (Islamic Republic of), Iraq and Saudi Arabia reportedly accounted for 81 per cent of confirmed executions in 2019.⁴⁶ The Secretary-General and special procedure mandate holders of the Human Rights Council reiterated their concern at executions in the Islamic Republic of Iran.⁴⁷ At least 280 executions were reportedly carried out in the Islamic Republic of Iran in 2019, seven more than 2018,⁴⁸ and that country remained responsible for 38 per cent of known executions worldwide.⁴⁹ Thirteen executions were conducted in public spaces and at least four juvenile offenders were among those executed.⁵⁰ In Saudi Arabia, 184 executions were carried out in 2019, reportedly the highest annual number ever recorded.⁵¹ Reportedly, executions increased significantly in Iraq (reportedly by 92 per cent),⁵² South Sudan and Yemen,⁵³ and reduced significantly in Egypt, Japan and Singapore.⁵⁴

B. Resumption of executions

17. In its resolution [73/175](#), the General Assembly called upon States that had abolished the death penalty not to reintroduce it, and encouraged them to share their experience in that regard. In a report to the Human Rights Council, the Secretary-General paid specific attention to the impact of the resumption of the use of the death penalty on human rights. The report includes information on international law provisions regarding the resumption of the use of the death penalty; the restriction of the death penalty to “most serious crimes”; methods of execution; due process guarantees affected by resumption; the argument of public support; the impact of calls for resumption; and the situation of foreign nationals on death row and the role of the international community. The Secretary-General recalled that States parties to the International Covenant on Civil and Political Rights and its Second Optional Protocol that had legally abolished the death penalty had an international obligation not to reintroduce it. Where a long de jure or de facto moratorium on the use of the death penalty had been observed, resuming its use could be contrary to the object and

⁴² According to Amnesty International, the number of confirmed executions in 2019 (at least 667) decreased by 5 per cent compared with 2018 (at least 690), to the lowest number recorded in at least 10 years, confirming a year-on-year reduction since 2015. These figures do not include China. See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, pp. 7–8.

⁴³ *Ibid.*, pp. 4–5.

⁴⁴ According to Amnesty International, 2,307 sentences were handed down in 2019 (compared with 2,531 in 2018) and 56 countries imposed death sentences in 2019 (compared with 54 in 2018). See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, pp. 10–11.

⁴⁵ [A/73/1004](#).

⁴⁶ See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, p. 8.

⁴⁷ [A/HRC/40/24](#), [A/HRC/40/67](#), [A/HRC/43/20](#), [A/HRC/43/61](#), [A/74/188](#) and [A/74/273](#).

⁴⁸ See https://iranhr.net/media/files/Rapport_iran-GB.pdf, p. 7.

⁴⁹ See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, p. 9.

⁵⁰ See https://iranhr.net/media/files/Rapport_iran-GB.pdf, p. 7.

⁵¹ See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, p. 8.

⁵² *Ibid.*, pp. 8–9.

⁵³ *Ibid.*, p. 8.

⁵⁴ *Ibid.*

purpose of article 6 of the Covenant.⁵⁵ In particular, as there was little evidence that the death penalty had an impact on reducing levels of crime, its resumption was inconsistent with the aim of crime reduction.⁵⁶

18. During the reporting period, Bahrain, Bangladesh and India resumed executions.⁵⁷ Sri Lanka announced plans to resume executions after 43 years.⁵⁸ The United States announced its intention to resume federal executions after 17 years.⁵⁹

V. Protection of the rights of those facing the death penalty

19. In its resolution 73/175, the General Assembly called upon States to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards.⁶⁰ The Human Rights Committee, in its general comment No. 36 (2018) on the right to life, addressed notably the meaning of “most serious crimes”; the prohibition of mandatory death sentences; the methods of execution; deportation and extradition; fair trial guarantees; the right to consular notification; and the protection of juveniles, persons with disabilities and pregnant women.

20. Belarus, Qatar and Tunisia provided information regarding guarantees and safeguards in capital cases within their jurisdictions. Trends regarding the protection of the rights of those facing the death penalty, including with regard to proceedings that have failed to meet international fair trial standards, are contained in the recent report of the Secretary-General to the Human Rights Council.⁶¹ Some key trends are outlined below.

A. Imposition of the death penalty for drug-related offences

21. In accordance with article 6 (2) of the International Covenant on Civil and Political Rights, States that have not abolished the death penalty may impose it only for the “most serious crimes”, which has been consistently interpreted by the Human Rights Committee as crimes of extreme gravity involving intentional killing.⁶² Drug-related offences can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.⁶³ The International Narcotics Control Board has continued to encourage States to consider abolishing the death penalty for drug-related offences.⁶⁴

⁵⁵ A/HRC/42/28, para. 45.

⁵⁶ Ibid., para. 47.

⁵⁷ See www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF, p. 9. See also the joint submission of the Bahrain Institute for Rights and Democracy and Americans for Democracy and Human Rights in Bahrain and the submission of Project 39A.

⁵⁸ A/HRC/43/19, para. 35; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24686>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24049>; and the joint submission of Freedoms Collective and Reprieve.

⁵⁹ See www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse.

⁶⁰ See Economic and Social Council resolution 1984/50, annex.

⁶¹ A/HRC/45/20.

⁶² General comment No. 36, paras. 35–36.

⁶³ Ibid.

⁶⁴ *Report of the International Narcotics Control Board for 2019 (E/INCB/2019/1)*, chap. IV, p. 113; www.incb.org/documents/Speeches/Speeches2020/INCB_President_statement_at_opening_of_63rd_CND.pdf.

22. There was reportedly a slight decline in the number of death sentences for drug-related offences worldwide.⁶⁵ In the Islamic Republic of Iran, implementation of the amendment to the drug-trafficking law led to a decrease in executions in 2018 and 2019⁶⁶ and triggered the review of at least 3,300 death sentences. Reportedly, the review process was “opaque, tainted by insufficient resources and allegations of corruption, and excessive alternative punishments”.⁶⁷ No new death sentences for drug offences were reportedly pronounced in India in 2019. One death sentence was commuted to imprisonment, the justification cited being the age of the defendant (over 75 years), the impossibility that he would offend again and the “absence of clear and unequivocal evidence with regard to the deterrent impact of death penalty on crime statistics”.⁶⁸

23. Nonetheless, at least 35 States maintain the death penalty for drug-related offences, which was reportedly imposed during the reporting period in Bahrain, China, Egypt, Indonesia, Iran (Islamic Republic of), Kuwait, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand and Viet Nam,⁶⁹ among other countries. At least 122 people were executed for drug-related offences in 2019, an increase of 31 per cent from 2018.⁷⁰ According to the same source, only four States (China, Iran, Saudi Arabia and Singapore) were confirmed to have carried out executions in 2019 for drug-related offences.⁷¹ By the end of 2019, at least 3,000 people convicted of drug offences were reportedly on death row, many of whom had been there for a decade or more, and hundreds are sentenced to death every year.⁷² China and Egypt expanded the scope of the death penalty for drug-related offences.⁷³ Reports also indicate that defendants in drug-related cases subject to the death penalty, often already some of the most vulnerable individuals in both society and the drug trade, are placed at greater risk of receiving a death sentence and of being executed.⁷⁴

24. During the reporting period, United Nations human rights mechanisms remained concerned about the imposition of the death penalty for drug-related crimes in Bangladesh⁷⁵ and Viet Nam.⁷⁶ With regard to the Philippines, the United Nations High Commissioner for Human Rights expressed serious concern about Congress considering measures to reintroduce the death penalty for drug-related crimes.⁷⁷ In 2019, Commission on Human Rights of the Philippines drew attention to barriers inhibiting international cooperation in countering transnational organized crime (especially drug trafficking) that the reintroduction of the death penalty would generate, and stressed that the reintroduction of the death penalty for drug-related offences would severely compromise the efficacy of information-sharing relationships with abolitionist States.⁷⁸ The International Narcotics Control Board,

⁶⁵ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf, p. 9.

⁶⁶ A/74/273, para. 3.

⁶⁷ Submission of Harm Reduction International.

⁶⁸ Ibid.

⁶⁹ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf; joint submission of Freedoms Collective and Reprieve; and the joint submission of the Bahrain Institute for Rights and Democracy and Americans for Democracy and Human Rights in Bahrain.

⁷⁰ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf (excluding China and Viet Nam).

⁷¹ Ibid.

⁷² Ibid., p. 9.

⁷³ Submission of Harm Reduction International.

⁷⁴ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf, p.10; www.hri.global/files/2020/05/29/Malaysia_Death_Penalty_-_Fair_Trial_-_Monash_ADPAN.pdf.

⁷⁵ CAT/C/BGD/CO/1, para. 50.

⁷⁶ CCPR/C/VNM/CO/3, para. 23. See also <https://bangkok.ohchr.org/wp-content/uploads/2020/01/Drug-Related-Offences-2018.pdf>.

⁷⁷ See www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24265.

⁷⁸ See www.righttolifeonline.org/uploads/cms/uploads/chr-a2019-007-compressed.pdf, pp. 1 and 3.

the High Commissioner and mandate holders further expressed concern at the steps taken in Sri Lanka to resume executions for drug-related offences.⁷⁹

B. Imposition of the death penalty by special or military courts

25. According to the Human Rights Committee, as a rule, civilians must not be tried for capital crimes before military tribunals, and military personnel can be tried for offences carrying the death penalty only before a tribunal affording all fair trial guarantees.⁸⁰ Some States have introduced expedited procedures for certain offences. Given that stricter due process guarantees should apply to death penalty cases, expedited procedures may not be compatible with article 6 of the International Covenant on Civil and Political Rights if they do not permit adequate time and facilities for the preparation of the defence.⁸¹

26. In its submission, Tunisia clarified that military tribunals follow the same pardon procedures as civilian courts. Military courts in Cameroon reportedly sentenced civilians to death.⁸² Mandate holders urged the release of four juvenile offenders sentenced to death by a military court in Egypt along with more than 300 individuals.⁸³ Referring to that case, the Working Group on Arbitrary Detention recalled that the intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of human rights and the right to a fair trial with due guarantees. The Working Group has consistently argued that the trial of civilians by military courts is a violation of the International Covenant on Civil and Political Rights and of customary international law and that, under international law, military tribunals can be competent to try only military personnel for military offences. The Working Group recalled that the minimum guarantees for military justice, which the authorities in the above-mentioned case failed to observe,⁸⁴ include that military tribunals should never be competent to impose the death penalty.⁸⁵

C. Prohibition of extradition, expulsion or deportation to countries where there is a risk of being subjected to the death penalty

27. According to the Human Rights Committee, States that have abolished the death penalty cannot deport, extradite or otherwise transfer persons to a country in which they are facing criminal charges that carry the death penalty, unless credible and effective assurances against the imposition of the death penalty have been obtained. Furthermore, States should not deport, extradite or otherwise transfer an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, unless credible and effective assurances against exposing the individual to the death penalty have been obtained.⁸⁶ Failure to afford individuals about to be deported to a country in

⁷⁹ A/HRC/43/19, para. 35; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24686>; *Report of the International Narcotics Control Board for 2019*, chap. II, para. 257; www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html.

⁸⁰ General comment No. 36, para. 45. See also general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 22.

⁸¹ General comment No. 36, para. 41.

⁸² Submission of the International Federation of ACAT.

⁸³ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25676.

⁸⁴ A/HRC/WGAD/2019/65, para. 77.

⁸⁵ A/HRC/27/48, para. 69 (e).

⁸⁶ General comment No. 36, para. 34. See also Committee against Torture, general comment No. 4

which their lives are claimed to be at real risk the opportunity to avail themselves of available appeal procedures would violate article 6 (1) of the International Covenant on Civil and Political Rights.⁸⁷

28. Actual or threatened resumption of the use of the death penalty in a State may create an obligation on third States to seek specific guarantees of non-application regarding nationals already transferred, or to refrain from any form of deportation, extradition or transfer where credible guarantees cannot be obtained.⁸⁸

29. In its submission, Bosnia and Herzegovina highlighted that “a foreign person will in no way be extradited to a country where he or she is threatened with the death penalty, or even in a country where he or she is not protected from being sent to another country where he or she would be threatened with the death penalty”. Ireland noted that extradition shall not be granted for an offence punishable by death under the law of the requesting country unless the requesting country gives such assurance as the Minister for Justice and Equality considers sufficient that the death penalty will not be carried out. Furthermore, mutual legal assistance shall be refused if there are reasonable grounds for believing that providing the assistance may result in any contravention of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

30. The Office of the United Nations High Commissioner for Refugees (UNHCR) considers that Iraqis and former habitual residents of Iraq who seek international protection within the European Union and who are found not to be refugees under the 1951 Convention relating to the Status of Refugees may qualify for subsidiary protection under Directive 2011/95/EU⁸⁹ on the grounds of facing a real risk of, inter alia, death penalty or execution.⁹⁰ Furthermore, regarding determination of refugee status, UNHCR guidance is that forced compliance or conformity with religious practices could rise to the level of persecution if, among others, the law imposes disproportionate punishment for breaches of the law (for example, death for adultery).⁹¹ UNHCR notes that a number of countries maintain the death penalty for consensual same-sex relations and that there is greater awareness in many countries of asylum that people fleeing persecution for reasons of their sexual orientation and/or gender identity can qualify as refugees.⁹²

31. The Special rapporteur on extrajudicial, summary or arbitrary executions noted that States that have abolished the death penalty are absolutely prohibited from forcibly transferring persons to States where they face a genuine risk of the death penalty, unless adequate, effective and credible assurances are obtained. She recommended that States with a long-standing moratorium on the imposition of the death penalty should consider amending national laws on extradition and deportation in line with this prohibition.⁹³

(2017) on the implementation of article 3 of the Convention in the context of article 22, paras. 20 and 29.

⁸⁷ General comment No. 36, para. 42.

⁸⁸ [A/HRC/42/28](#), para. 42.

⁸⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

⁹⁰ See www.refworld.org/docid/5cc9b20c4.html, pp. 114–115.

⁹¹ See www.refworld.org/docid/5cb474b27.html, p. 128.

⁹² *Ibid.*, p. 166.

⁹³ [A/74/318](#), para. 110.

D. Conditions on death row

32. In its resolution 73/175, the General Assembly emphasized the need to ensure that persons facing the death penalty are treated with humanity and with respect for their inherent dignity and in compliance with their rights under international human rights law. In a report to the Human Rights Council, the Secretary-General noted that life on death row can have a devastating impact on mental health. Conditions on death row are frequently worse than for the general prison population, often violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and may themselves amount to torture or cruel, inhuman or degrading treatment or punishment. In some countries, persons on death row are subject to special regimes, which may include lower levels of family contact, excessive time spent in seclusion and ineligibility for training or work. Such regimes exacerbate feelings of helplessness, a lack of hope and a lack of control over one's life, which are common in death row prisoners.⁹⁴

33. In a statement made during the Seventh World Congress against the Death Penalty, mandate holders stated that conditions on death row around the world did not comply with international standards and could amount to torture or other cruel, inhuman or degrading treatment or punishment. They highlighted that prisoners on death row were often detained in isolation, in insalubrious cells and quarters, without proper access to food, sanitation or basic health care. They were frequently denied the rights to receive visits from their families and legal counsel and to petition for pardon. Such detention conditions could have severe physical and psychological consequences and were further exacerbated by the constant expectation of execution or, alternatively, the often indefinite prolongation of their stay on death row due to extended proceedings or de facto moratoriums.⁹⁵ Separately, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recalled that the circumstances accompanying the practice of the death penalty, including the "death row phenomenon", almost invariably inflict a degree of pain and suffering on convicts and their relatives, which cannot be reconciled with the prohibition of torture and ill-treatment and the underlying principle of human dignity.⁹⁶

34. In relation to Viet Nam, the Committee against Torture expressed concern about reports of the physical and psychological suffering that persons sentenced to the death penalty have experienced as a result of their particularly harsh conditions of detention, which may amount to torture or ill-treatment, including solitary confinement in unventilated cells, inadequate food and drink, being shackled 24 hours a day and being subjected to physical abuse, and that such prisoners often develop psychological disorders and commit suicide as a result. The Committee recommended that urgent measures be taken to render the material conditions of detention of persons sentenced to death equivalent to those of other prisoners, in line with the Nelson Mandela Rules, including access to adequate food and drink and meaningful social contacts, without restraints, and to protect them against physical abuse.⁹⁷ With regard to the Democratic Republic of the Congo, the Committee recommended that the Government ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment by taking immediate

⁹⁴ A/HRC/42/28, para. 38. See also general comment No. 36, para. 40.

⁹⁵ See <http://congres.ecpm.org/wp-content/uploads/2019/03/7thWC-joint-statement-UN-Special-Procedures-Mandate-Holders.pdf>.

⁹⁶ A/73/207, para. 44. See also A/67/279, paras. 42–51 and 78.

⁹⁷ CAT/C/VNM/CO/1, paras. 32–33.

steps to strengthen legal safeguards.⁹⁸ The Committee made similar recommendations with regard to Bangladesh and the Niger.⁹⁹

35. In 2020, the Inter-American Commission on Human Rights found, in respect of *Nwtohiyada Idehesdi Sequoyah v. United States*, that the fact of spending 27 years on death row was excessive and inhuman, and was aggravated by the prolonged expectation that the death penalty could be executed. The Commission also found that the United States was responsible for violating the rights to humane treatment and not to receive cruel or unusual punishment.¹⁰⁰

36. Submissions highlighted concerns regarding conditions on death row in Mauritania¹⁰¹ and Sri Lanka,¹⁰² and the conditions on death row of children detained with their parents in India.¹⁰³ Concern were also raised with regard to Indonesia¹⁰⁴ and Malaysia.¹⁰⁵ In the United States, the States of Oklahoma, Pennsylvania, South Carolina and Virginia took steps to limit solitary confinement.¹⁰⁶ The State of Oregon announced it would close its death row and integrate most of the prisoners held there into the general prison population.¹⁰⁷ The Paris Bar and the International Association of Lawyers advocated for the adoption of additional international guidelines or standards on the detention conditions for people sentenced to death, with specific guarantees related to the particular vulnerabilities of death row inmates.¹⁰⁸

VI. Prohibition of the use of the death penalty against children and persons with psychosocial or intellectual disabilities, and the disproportionate impact on foreign nationals, including migrant workers

A. Children

37. In its resolution [73/175](#), the General Assembly called upon States not to impose capital punishment for offences committed by persons below 18 years of age, as required pursuant to article 6 (5) of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child. During the reporting period, juvenile offenders reportedly remained on death row in the Democratic Republic of the Congo, Egypt, Iran (Islamic Republic of), Maldives, Mauritania, Nigeria, Pakistan, Saudi Arabia and South Sudan.¹⁰⁹ Only a very small number of States are believed to have executed juveniles during the reporting period.¹¹⁰

⁹⁸ [CAT/C/COD/CO/2](#), para. 37 (c).

⁹⁹ [CAT/C/BGD/CO/1](#), para. 51; and [CAT/C/NER/CO/1](#), para. 34 (b).

¹⁰⁰ See <https://files.deathpenaltyinfo.org/documents/IACHR-Report-No-27-20-Sequoyah-v-United-States-2020-04-22.pdf>, para. 70.

¹⁰¹ Submission of Penal Reform International. See also www.ecpm.org/wp-content/uploads/Mauritanie-Le-bagne-au-pays-des-sables.pdf.

¹⁰² Joint submission of Freedoms Collective and Reprieve.

¹⁰³ Submission of Project 39A.

¹⁰⁴ See www.ecpm.org/wp-content/uploads/rapportindonésie_gb.pdf.

¹⁰⁵ See www.ecpm.org/wp-content/uploads/mission-enquete-Malaisie-GB-2019-280420-WEB.pdf.

¹⁰⁶ See <https://files.deathpenaltyinfo.org/reports/year-end/YearEndReport2019.pdf>, pp. 23–24; <https://files.deathpenaltyinfo.org/documents/Reid-v-Wetzel-MDPA-Settlement-Order-2020-04-09.pdf>.

¹⁰⁷ See <https://deathpenaltyinfo.org/news/oregon-closes-death-row-joins-national-trend-away-from-automatic-solitary-confinement>.

¹⁰⁸ See <http://congres.ecpm.org/wp-content/uploads/2019/03/7thWC-joint-statement-Bars.pdf>.

¹⁰⁹ [A/HRC/45/20](#) and the submission of Justice Project Pakistan.

¹¹⁰ [A/HRC/45/20](#). See also www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf.

B. Persons with psychosocial or intellectual disabilities

38. In its resolution [73/175](#), the General Assembly called upon States not to impose capital punishment on persons with mental or intellectual disabilities. United Nations human rights mechanisms have stated that the death penalty should not be imposed on individuals who face specific barriers in defending themselves on an equal basis with others, such as persons with psychosocial or intellectual disabilities.¹¹¹ This prohibition is firmly rooted in the customs and practices of most legal systems.¹¹²

39. Despite progress in some States, individuals with psychosocial or intellectual disabilities in Iran (Islamic Republic of), Japan, Maldives, Pakistan, the Republic of Korea, Saudi Arabia, Singapore and the United States, among others, reportedly remained under sentence of death.¹¹³

C. Foreign nationals, including migrant workers

40. In its resolution [73/175](#), the General Assembly noted with deep concern that, frequently, foreign nationals are disproportionately represented among those sentenced to the death penalty. It called upon States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance. The Human Rights Committee noted that a failure to promptly inform detained foreign nationals of their right to consular notification, resulting in the imposition of the death penalty, would violate article 6 (1) of the International Covenant on Civil and Political Rights.¹¹⁴ The Committee also highlighted that data suggesting that foreign nationals are disproportionately likely to face the death penalty may indicate an unequal application of the death penalty, raising concerns under article 2 (1), read in conjunction with article 6, of the Covenant, as well as under article 26.¹¹⁵

41. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, given that the application of the death penalty disproportionately affects foreign nationals, the failure by home States to provide adequate consular assistance in such cases amounts to a violation of their responsibility to protect the right to life.¹¹⁶ The Special Rapporteur developed guidelines for adequate consular assistance¹¹⁷ and maintained that consular access is a human right, which includes the right to be notified of and the right to receive consular assistance, and which places distinct but complementary obligations on both the prosecuting State and the home State of the detainees. Furthermore, the failure of a State of nationality to provide adequate consular assistance when notified that one of its nationals is facing the death penalty amounts to a violation of its responsibility to protect the right to life. In the Special Rapporteur's view, the decision to withhold or to provide sub-standard consular assistance can only be described as arbitrary. In so doing, States of nationality violate the fundamental principle of non-discrimination, deprive their nationals of equality before the law and act in complicity with the violation of their nationals' rights at the hands of prosecuting States.¹¹⁸ Furthermore, both the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while

¹¹¹ General comment No. 36, paras. 41 and 49; [CRPD/C/IRN/CO/1](#), paras. 22–23. See also Economic and Social Council resolutions [1984/50](#) and [1989/64](#) and [A/HRC/37/25](#), paras. 31 and 34.

¹¹² [A/HRC/36/26](#), para. 50.

¹¹³ [A/HRC/45/20](#).

¹¹⁴ General comment No. 36, para. 42.

¹¹⁵ *Ibid.*, para. 44.

¹¹⁶ [A/74/318](#), para. 105.

¹¹⁷ *Ibid.*, paras. 63–104.

¹¹⁸ *Ibid.*, para. 106.

countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions recalled that States have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law, including the imposition of the death penalty.¹¹⁹

42. With regard to Belgium,¹²⁰ the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism emphasized the important role that effective consular assistance plays as a tool for preventing flagrant violations or abuses of human rights, while also noting the remedial nature of diplomatic protection proceedings. The Special Rapporteur also strongly encouraged France to activate positive legal and diplomatic protection for French citizens in conflict zones overseas, particularly children, including by taking positive steps to support interventions where French nationals face serious human rights violations in detention, including the imposition of the death penalty.¹²¹ The Special Rapporteur on extrajudicial, summary or arbitrary executions expressed serious concern for French nationals in Iraq awaiting execution on terrorism charges, and encouraged France to increase efforts on behalf of its nationals detained in Iraq, to ensure that they are not arbitrarily deprived of life and that they can be prosecuted in France in a spirit of genuine accountability and respect for the rule of law.¹²² In communications to Belgium and the United States, mandate holders shared information received concerning the risks to foreign nationals facing prosecution and trials for offences carrying the death penalty in Iraq.¹²³

43. In December 2018, the General Assembly noted that six of the Mexican nationals included in the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals* had been executed, in clear violation of the decision of the Court, constituting new breaches of the international obligations incumbent upon the United States and causing additional harm to Mexico. The Assembly urgently called for full and immediate compliance with the Judgment, in conformity with the relevant provisions of the Charter of the United Nations.¹²⁴

44. In 2019, the International Court of Justice ordered Pakistan to provide “effective review and reconsideration of the conviction and sentence” of Kulbhushan Sudhir Jadhav, an Indian national sentenced to death, to determine if he was prejudiced by the denial of his rights to consular information, notification and access, which had been withheld; and its implications for the principles of a fair trial. In particular, the Court stressed that “any potential prejudice and the implications for the evidence and the right of defence of the accused should receive close scrutiny during the review and reconsideration”. The Court also ordered that Pakistan allow Indian consular officers “to have access to [Mr. Jadhav] and to arrange for his legal representation”.¹²⁵

45. In September 2019, the Minister for Foreign Affairs of Indonesia reportedly stated that, during the previous five years, the Ministry of Foreign Affairs had successfully resolved 297 cases involving Indonesians abroad facing the death

¹¹⁹ See www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf, para. 3.

¹²⁰ [A/HRC/40/52/Add.5](http://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf), para. 80.

¹²¹ [A/HRC/40/52/Add.4](http://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf), para. 61.

¹²² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24887&LangID=E.

¹²³ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24851> (in French); <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24858>.

¹²⁴ General Assembly resolution [73/257](https://www.un.org/en/ga/res/73/257).

¹²⁵ International Court of Justice, *Jadhav (India v. Pakistan)*, Judgment of 17 July 2019, paras. 134 and 138–148.

penalty.¹²⁶ Other reports indicate that foreign nationals are particularly disadvantaged, and sometimes discriminated against, in the criminal justice systems of countries that retain the death penalty.¹²⁷ For example, foreign nationals reportedly constituted a significant proportion of those executed for drug offences in Saudi Arabia in 2019; those cases were characterized by a systemic denial of consular assistance.¹²⁸

VII. Disproportionate and discriminatory application of the death penalty to women

46. In its resolution [73/175](#), the General Assembly called upon all States to ensure that the death penalty was not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law. According to the Human Rights Committee, the death penalty must not be imposed in a discriminatory manner contrary to articles 2 (1) and 26 of the International Covenant on Civil and Political Rights.¹²⁹

47. In 2019, the United Nations High Commissioner for Human Rights stated that women faced gender-based discrimination in the application of the death penalty, referring to a report¹³⁰ showing that they were judged not only on the basis of their crime, but because they were perceived to have betrayed traditional gender roles. Some women were sentenced to death for perceived moral transgressions, such as adultery or witchcraft. Women sentenced to death for murdering their partners had often been victims of severe and repeated domestic abuse for years, and had lived in fear for their lives, but the law in their countries recognized self-defence as a legal defence only in the case of direct and imminent lethal threat.¹³¹

48. With regard to the Sudan, the Human Rights Committee welcomed the quashing of the death sentence imposed on Noura Hussein. The Committee was concerned nonetheless that the gender-based violence to which she had been subjected had not been taken into account as evidence by the court and recommended that the Sudan ensure that she would not be subjected to the death penalty and reconsider her five-year jail sentence.¹³²

49. Submissions on Sri Lanka and reports on Indonesia, Malaysia and Pakistan illustrated how women, overwhelmingly from fragile socioeconomic backgrounds, are disproportionately affected by the death penalty, including for drug-related offences.¹³³ This was also reportedly true in Thailand, where 98 per cent of those on death row had been found guilty of drug-related offences.¹³⁴ In Malaysia, reportedly 95 per cent of women on death row had been sentenced to death for drug-related offences (90 per cent of whom were foreign nationals).¹³⁵

¹²⁶ See <https://icjr.or.id/a-game-of-fate-report-on-indonesia-death-penalty-policy-in-2019/>, p. 28.

¹²⁷ See www.hri.global/files/2019/03/12/death-penalty-foreign-nationals.pdf; www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf.

¹²⁸ Submission of Harm Reduction International.

¹²⁹ General comment No. 36, para. 44. See also [A/73/260](#), para. 44.

¹³⁰ See www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf.

¹³¹ [A/HRC/42/25](#), para. 6.

¹³² [CCPR/C/SDN/CO/5](#), paras. 21–22.

¹³³ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf, pp. 29 and 32; www.fidh.org/IMG/pdf/pakistan740angweb-2.pdf, p. 32; and the joint submission of Freedoms Collective and Reprieve.

¹³⁴ See www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf, p. 32; www.fidh.org/en/region/asia/thailand/not-so-model-the-reality-of-women-incarcerated-in-thailand-s-model, p. 11.

¹³⁵ See www.amnesty.org/download/Documents/ACT5010782019ENGLISH.pdf, pp. 17 and 20.

50. In Qatar, women are reportedly disproportionately affected by legislation providing for the death penalty as pregnancy serves as evidence of extramarital sex and women who report rape can find themselves prosecuted for consensual sex instead.¹³⁶

VIII. Disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals and its discriminatory use on persons exercising their human rights

51. In its resolution [73/175](#), the General Assembly noted with deep concern that, frequently, poor and economically vulnerable persons, persons exercising their human rights and persons belonging to religious or ethnic minorities were disproportionately represented among those sentenced to the death penalty. The Human Rights Committee highlighted that data suggesting that members of religious, racial or ethnic minorities and indigent persons are disproportionality likely to face the death penalty may indicate an unequal application of the death penalty, raising concerns under article 2 (1), read in conjunction with article 6, of the International Covenant on Civil and Political Rights, as well as under article 26.¹³⁷

52. Serious concern was voiced during a Human Rights Council high-level panel discussion about discrimination in the application of the death penalty, including on the basis of poverty, economic vulnerability, political opinion, sexual orientation or gender identity, and other grounds. The United Nations High Commissioner for Human Rights noted that discrimination was never more evident than when the situation of persons on death row was examined. She also noted that death rows were disproportionately populated by the poor and economically vulnerable, members of ethnic minorities and other marginalized members of society.¹³⁸ The panel noted that a first step towards addressing bias and discrimination was to determine its extent, which required the publication of disaggregated, quantitative data as well as a continuous review of the impact and consequences of the death penalty. The panel observed that the availability of quality data showing how the death penalty was applied in practice was often associated with a sharp decline in public support for capital punishment. The panel noted that addressing discrimination also required training judges, magistrates, police officers and social service providers to understand bias and reform processes that might discriminate. In addition, due process safeguards must be scrupulously applied at all stages of the judicial process and indigent defendants should have access to legal aid.¹³⁹ The panel concluded by noting that it was nearly impossible to apply the death penalty without discrimination and so, to avoid irreversible miscarriages of justice and arbitrary killing, it should not be applied.¹⁴⁰

53. Mandate holders indicated receiving information to the effect that a person's sexual orientation was part of the considerations that had led him to be sentenced to death in the United States State of South Dakota and that there was "a colorable claim that it may have been a determining factor in that decision". The experts stated that if "the choice of death penalty was based, even in part, on the sexual orientation of the accused, imposing the death penalty would constitute an arbitrary deprivation of life".¹⁴¹

54. Mandate holders addressed the use of the death penalty on persons exercising their right to freedom of religion. They urged Saudi Arabia to review a death sentence

¹³⁶ See www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf, p. 471.

¹³⁷ General comment No. 36, para. 44.

¹³⁸ [A/HRC/42/25](#), para. 5.

¹³⁹ *Ibid.*, paras. 50–51.

¹⁴⁰ *Ibid.*, para. 52.

¹⁴¹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24903>.

handed down as a result of an unfair trial and discrimination based on religion.¹⁴² They recalled that the death penalty can never be applied as a sanction against religious conduct and/or non-religious forms of belief. Furthermore, they urged States to ensure that the death penalty is not applied as a result of discriminatory or arbitrary application of the law, including based on grounds of religion or belief.¹⁴³ With regard to Yemen, mandate holders stated that they cannot accept the injustice of having anyone punished by death on the grounds of his or her religion or belief and for belonging to a religious minority.¹⁴⁴

55. Submissions on Kenya,¹⁴⁵ Malawi¹⁴⁶ and Sri Lanka¹⁴⁷ highlighted the disproportionate impact that the death penalty had on poor or economically vulnerable individuals. Concerns were also been raised with regard to Pakistan.¹⁴⁸ In the United States, the Supreme Court of the State of Washington found the application by that State of the death penalty unconstitutional because it was imposed in an arbitrary and racially biased manner.¹⁴⁹ In the State of California, the executive order establishing a moratorium on the death penalty refers to the uneven and unfair application of capital punishment to “people of color ... and people who cannot afford costly legal representation”.¹⁵⁰ The Supreme Court of the State of North Carolina struck down the attempted retroactive repeal of the Racial Justice Act, enabling approximately 140 prisoners to seek redress for death sentences that they claim were substantially affected by racial bias.¹⁵¹

IX. International and regional initiatives relating to the implementation of General Assembly resolution 73/175

A. Human Rights Council

56. The Human Rights Council held a high-level panel discussion on the question of the death penalty in March 2019, addressing human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality (see sect. VIII above).

57. Mandate holders monitored the application of international human rights standards for protecting the rights of those facing the death penalty. United Nations independent experts reaffirmed that it is almost impossible to practice the death penalty without violating some of the most fundamental human rights, most notably the rights to freedom from torture and other cruel, inhuman and degrading treatment or punishment.¹⁵² In the context of the universal periodic review, States formulated recommendations related to the death penalty, for example in relation to Afghanistan,

¹⁴² See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24622>.

¹⁴³ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24982>.

¹⁴⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24532&LangID=E; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24561>.

¹⁴⁵ Submission of Reprieve.

¹⁴⁶ Ibid.

¹⁴⁷ Joint submission of Freedoms Collective and Reprieve.

¹⁴⁸ See www.fidh.org/IMG/pdf/pakistan740angweb-2.pdf.

¹⁴⁹ *Washington v. Gregory*, case No. 88086-7, opinion filed on 11 October 2018.

¹⁵⁰ See www.gov.ca.gov/2019/03/13/governor-gavin-newsom-orders-a-halt-to-the-death-penalty-in-california.

¹⁵¹ *North Carolina v. Ramseur*, case No. 388A10, opinion filed on 5 June 2020; <https://deathpenaltyinfo.org/news/north-carolina-supreme-court-strikes-down-racial-justice-act-repeal-permits-race-challenges-by-130-death-row-prisoners>.

¹⁵² See <http://congres.ecpm.org/wp-content/uploads/2019/03/7thWC-joint-statement-UN-Special-Procedures-Mandate-Holders.pdf>.

the Democratic Republic of the Congo, El Salvador, Equatorial Guinea, Iraq, Kazakhstan, Nigeria, Saudi Arabia and Yemen.¹⁵³

B. Office of the United Nations High Commissioner for Human Rights

58. The priorities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for 2018–2021 include undertaking strategic advocacy and strengthening partnerships to promote the abolition of the death penalty and, pending its abolition, to promote moratoriums and increased adherence to international human rights law.¹⁵⁴ During the reporting period, OHCHR organized a high-level panel discussion on the question of the death penalty and participated in meetings in Geneva and New York,¹⁵⁵ in the sixty-third session of the Commission on Narcotic Drugs¹⁵⁶ and the Twelfth International Meeting of Justice Ministers on the abolition of the death penalty organized by the Community of Sant'Egidio. Moreover, the United Nations High Commissioner for Human Rights made an opening statement at the Seventh World Congress against the Death Penalty, in 2019.

59. OHCHR continued to monitor the application of the death penalty and provided support to advancing its abolition, including in Bahrain, Brunei Darussalam, Iran (Islamic Republic of), Iraq, Japan, Malaysia, Pakistan, Saudi Arabia, Singapore, Sri Lanka, Thailand and the United States.¹⁵⁷

C. Other initiatives, including regional initiatives

60. In its resolution [73/175](#), the General Assembly welcomed initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making. One such initiative was the Seventh World Congress against the Death Penalty, held in Brussels from 26 February to 1 March 2019, which was organized by Ensemble contre la peine de mort and sponsored by Belgium, Norway and Switzerland, as well as the European Union and the European Parliament, in partnership with the World Coalition against the Death Penalty.

61. In 2019, the African Commission on Human and Peoples' Rights adopted resolution 416 (LXIV) on the abolition of the death penalty in Africa, its third resolution on that topic, in which it urged States that still retained the mandatory death penalty to abolish it as it breached the right to life and the right to human dignity. The Commission also urged retentionist States to observe a moratorium on the death penalty with a view to its abolition and, for those that had established a moratorium, to undertake further practical steps towards the full abolition of the death penalty in law. In addition, the Commission called upon States to support the adoption by the African Union of the draft protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.¹⁵⁸ The African Commission, the International Federation of ACAT, the World Coalition against the

¹⁵³ [A/HRC/45/20](#).

¹⁵⁴ See [www2.ohchr.org/english/ohchrreport2018_2021/OHCHRManagementPlan2018-2021.pdf](#), p. 33.

¹⁵⁵ See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24772](#); [www.ohchr.org/EN/NewYork/Stories/Pages/death-penalty-screening-of-fallout.aspx](#).

¹⁵⁶ See [http://cndblog.org/2020/03/the-death-penalty-for-drug-offences-implementing-fair-trial-safeguards/](#).

¹⁵⁷ [A/HRC/43/3](#), para. 82.

¹⁵⁸ See also [www.achpr.org/public/Document/file/English/ComKayitesi_IntersessionReport_DP_65OS_ENG.pdf](#).

Death Penalty and the International Organization of la Francophonie organized an awareness-raising workshop on the draft protocol to the African Charter.¹⁵⁹

62. In December 2018, the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations held a regional consultation on access to justice, including on the protection of the rights of persons sentenced to death.¹⁶⁰ The Inter-American Commission on Human Rights held a thematic hearing on the death penalty in English-speaking countries in the Caribbean.¹⁶¹

63. In its submission, the European Union indicated that the Generalized Scheme of Preferences Plus was instrumental in the implementation of its guidelines on the death penalty, including in Mongolia, Pakistan, the Philippines and Sri Lanka. The Council of Europe and the European Union encouraged all countries to join the global Alliance for Torture-Free Trade, which was committed to restricting the trade in goods used to carry out torture and the death penalty.¹⁶² In a publication, the Organization for Security and Cooperation in Europe addressed changes in the status of the death penalty in its participating States, including the arguments used to retain the death penalty.¹⁶³

X. Conclusions and recommendations

64. **I welcome the progress made in several States representing different legal systems, traditions, cultures and religious backgrounds towards the universal abolition of the death penalty since the adoption of General Assembly resolution 73/175. All measures taken towards limiting the application of the death penalty constitute progress in the protection of the right to life. I reiterate my call for universal ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, and urge abolitionist States that have not yet ratified it to do so without delay.**

65. **Moratoriums remain useful transition tools towards achieving abolition. Moving to an official moratorium often requires strong leadership. Achieving abolition is a long process in many States, one that requires a national debate and the free communication of information and ideas through public debate and dialogue, including by guaranteeing the right to freedom of expression. States should systematically and publicly provide full, accurate and disaggregated data on death sentences, including data on the characteristics of convicted and executed persons and on the crimes with which they are charged.**

66. **Pending abolition, States must provide guarantees, including strict fair trial guarantees, and adhere to strict limits, specifically by limiting the imposition of the death penalty to the “most serious crimes”, that is, crimes of extreme gravity involving intentional killing. Even for such crimes, the death penalty should not be mandatory. Crimes not involving intentional killing, such as drug-related offences or terrorism-related crimes not involving intentional killing, should not result in the death penalty. The death penalty should never be imposed as a**

¹⁵⁹ See www.fiacat.org/presse/communiqués-de-presse/2753-communique-organisation-d-un-panel-sur-l-abolition-de-la-peine-de-mort-a-la-64eme-session-de-la-cadh (in French); www.fiacat.org/presse/communiqués-de-presse/2737-communique-l-importance-de-la-sensibilisation-des-ambassadeurs-aupres-de-l-union-africaine-sur-le-projet-de-protocole-africain-sur-l-abolition-de-la-peine-de-mort.

¹⁶⁰ See <https://aichr.org/wp-content/uploads/2019/08/AICHR-Annual-Report-2019.pdf>, para. 14.

¹⁶¹ See www.oas.org/en/iachr/media_center/PReleases/2019/301.asp.

¹⁶² See <https://rm.coe.int/2019-joint-declaration-final-003-/16809818b6>.

¹⁶³ See www.osce.org/odihr/430268?download=true.

sanction for non-violent conduct such as apostasy, blasphemy, witchcraft, adultery and same-sex relations.

67. Pending abolition, States must ensure that the death penalty is not applied on the basis of discriminatory laws or as a result of a discriminatory or arbitrary application of the law. I urge States to repeal any provisions that result in the discriminatory and disproportionate application of the death penalty to poor or economically vulnerable individuals, foreign nationals, women and those exercising their human rights.

68. States should ensure that laws and sentencing guidelines are developed or amended to guarantee equality and non-discrimination for persons with psychosocial or intellectual disabilities and to prohibit the unlawful sentencing and execution of persons with psychosocial or intellectual disabilities.

69. States must ensure that the death penalty is never imposed on persons who are under the age of 18 years at the time of the commission of the offence. They should immediately be resentenced to a lesser sentence.

70. States should urgently examine the effects of the conditions on death row to ensure they do not constitute cruel, inhuman or degrading punishment or treatment, and take immediate steps to strengthen legal safeguards.

71. States should ensure that laws on extradition and deportation specifically prohibit the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognized standards, unless adequate assurances are obtained that the death penalty will not be carried out.
