



Promoting penal  
reform worldwide



## UN Secretary-General's 2013 report to the Human Rights Council on the death penalty

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### Submission by Foundation for Human Rights Initiative (FHRI) and Penal Reform International (PRI)

27 March 2013

#### Brief about Penal Reform International

Penal Reform International (PRI) is an international non-governmental organisation working on penal and criminal justice reform worldwide. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment and for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty and the implementation of humane alternative sanctions.

PRI has Consultative Status with the United Nations (ECOSOC) and the Council of Europe. It has Observer Status with the African Commission on Human and Peoples' Rights and the Inter-Parliamentary Union. PRI is also a registered civil society organisation with the Organization of American States (OAS). PRI is on the Steering Committee of the World Coalition against the Death Penalty (WCADP).

#### Brief about Foundation for Human Rights Initiative

The Foundation for Human Rights Initiative (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organisation established in December 1991. It seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms enshrined in the 1995 Uganda Constitution and other internationally recognised human rights instruments. FHRI is a member of the World Coalition against the Death Penalty and the East African Coalition against the Death Penalty.

## Introductory remarks

PRI and FHRI launched a two year multi-regional project in November 2012 on the progressive abolition of the death penalty and the implementation of humane alternative sanctions after a moratorium or abolition in four regions: East Africa, Central Asia, Eastern Europe, and the Middle East and North Africa. This programme of work is supported by the European Union, under the European Instrument for Democracy and Human Rights (EIDHR).

PRI and FHRI welcomes this opportunity to provide additional information regarding the implementation of the death penalty in East Africa, Central Asia, Eastern Europe, and the Middle East and North Africa since 1 April 2012.

PRI and FHRI would also like to take this opportunity to congratulate the UN Secretary-General on his report on the Question of the Death Penalty (A/HRC/21/29) covering the period July 2011 to June 2012, as well as the reports of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279) and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/67/275) which recognise the development of progressive restrictions to the application of the death penalty under international legal standards and jurisprudence. In particular, we welcome the report of the Special Rapporteur on torture which concluded that there is an 'evolving standard' whereby States and judiciaries consider the death penalty to be a violation *per se* of the prohibition of torture or cruel, inhuman or degrading treatment. We welcome the Special Rapporteur on extrajudicial executions conclusion that only 'intentional killing' fits the definition of 'most serious crimes', making the threshold more restrictive.

Finally, we welcome the adoption of resolution A/HRC/22/L.18 of the UN Human Rights Council (15 March 2013) calling for a panel discussion on the human rights of children of parents sentenced to the death penalty or executed. We hope that this opportunity enables States to better understand how such children can also be victims of violations committed against their parents, in particular cruel, inhuman or degrading treatment or punishment.

## EAST AFRICA

### Republic of Uganda

Seven death sentences were issued in 2012. The most recent death sentence was handed down by Pader district Court Martial on 1 November 2012.

The number of death row inmates has dramatically dropped in Uganda in recent years. In 2009 there were almost 900 persons sentenced to death, by the end of 2011 this number had dropped to 505, and by June 2012 there were 473 death row inmates.

In November 2012, the Ugandan Parliament renewed efforts to pass the Anti-Homosexuality Bill. The Bill seeks to implement the death penalty for Ugandans who practice homosexual acts with an 'aggravating factor', which includes a spate of criteria, including being HIV-positive. Uganda's Prime Minister, Amama Mbabazi, appeared to distance himself from aspects of the Bill, implying that the government may not support

the Bill in its present form. However, the Bill has passed the Legal and Parliamentary Affairs Committee, and went for its second debate in Parliament in February 2013. Although there have been rumors that the Committee suggested removing references to the death penalty, this has not been confirmed or denied.

## Republic of Tanzania

According to the Legal and Human Rights Centre (LHRC), as of November 2012, there were 2,624 death row prisoners in Tanzania. Tanzania has four death penalty applicable offences: murder<sup>1</sup>, treason<sup>2</sup>, treasonable offence<sup>3</sup>, and misconduct of commanders in the presence of an enemy<sup>4</sup> (Article 14 of the Constitution provides for the death penalty).

## EASTERN EUROPE

### Republic of Belarus

In response to repeated calls for a moratorium, at an annual parliamentary address in May 2012, President Alexander Lukashenko suggested that the death penalty reflected the will of the Belarusian people and that a moratorium would not be possible while this was the case.<sup>5</sup>

On 28 December 2012, President Lukashenko signed an Order for the re-establishment of the Parliamentary Commission on the Death Penalty. This follows over two years of uncertainty for abolitionists in Belarus. The Parliamentary Commission was originally established at the beginning of 2010. Many people had hoped that this Commission represented a first step towards Belarus establishing a moratorium on executions. However, following the Presidential elections in December 2010, the Commission ceased activities and Belarus went on to carry out at least four more executions (two in May 2011 and two in March 2012). The re-established Parliamentary Commission will be chaired by Nikolay Samoseiko. It is hoped that the Commission will start to gather information about the application of the death penalty in Belarus, create a platform for dialogue on the topic, and make recommendations to government on how Belarus can implement its international human rights commitments with regard to the death penalty, such as the Safeguards Guaranteeing Protection of the Rights of Those Facing the death penalty, and move towards establishing a moratorium on executions.

Nikolay Samoseiko has been invited to take part in a PRI study visit of parliamentarians from ten countries to London and Belgium in May 2013 to meet with his counterparts to discuss the legal and policy steps towards progressive abolition of the death penalty and the implementation of humane alternative sanctions. It is also hoped that Nikolay Samoseiko will be able to take part in the Fifth World Congress Against the Death Penalty (12-15 June 2013, Madrid).

<sup>1</sup> Section 196, Tanzania Penal Code, Cap 16.

<sup>2</sup> Section 39, Tanzania Penal Code, Cap 16.

<sup>3</sup> Section 40, Tanzania Penal Code, Cap 16.

<sup>4</sup> First schedule of the National Defence Act.

<sup>5</sup> "Lukashenko: Personally I never to abolish death penalty", [www.telegraf.by](http://telegraf.by/en/2012/05/lukashenko-sam-ya-nikogda-ne-otmenyu-smertnuyu-kazn), 8 May 2012, <<http://telegraf.by/en/2012/05/lukashenko-sam-ya-nikogda-ne-otmenyu-smertnuyu-kazn>>.

On 23 January 2013, Piotr Miklashevich, Chairman of the Constitutional Court, said at a press conference held in Minsk that the issue of declaring a moratorium on the death penalty is still an open question for the courts to decide: "In case we receive an appeal on how a moratorium may be introduced – we will prepare an appropriate response."

It should be noted that prior to the March 2012 executions, public attitude towards the death penalty was generally in favour of its retention, however following the March 2012 executions, the balance between those opposing the death penalty and those supporting it became almost the same<sup>6</sup>. This was due to the wide media interest in the case, which raised public awareness over the fairness of the trial against the two men accused of terrorism and the question whether human rights abuses (allegations of torture, and violations of fair trial guarantees) may have resulted in wrongful convictions, and subsequently, the execution of innocent people.

## Russian Federation

No steps have been taken by the Russian Federation to abolish the death penalty in law since 1 April 2012.

## CENTRAL ASIA

### Republic of Kazakhstan

The Kazakhstan Criminal Code is currently being reviewed by government officials, with the aim of adopting a new Code (it will be debated in parliament in August 2013, and adopted by the end of 2013). There is a risk that the new Code will increase the number of death penalty applicable offences from 18 to 25.

Article 15(2) of the Constitution of Kazakhstan provides for two offences punishable by death: acts of terrorism which result in death and grave crimes committed during times of war. However, legislators have broadly interpreted those two offences into 18 different articles under the current Criminal Code. The current review of the criminal code aims to further broaden the scope of application of the death penalty, in direct contravention to stated Kazakhstan policy of phased abolition of the death penalty.<sup>7</sup>

On 19 February 2013, PRI organised a roundtable on "The death penalty and life imprisonment as forms of punishment in the new Criminal Code". The roundtable was held in the Mazhilis (lower house) of the Parliament of Kazakhstan, and organised in cooperation with the Committee on Legislative and Judicial Reform of the Mazhilis and with the NGO "Charter for Human Rights". At least ten parliamentarians attended, as well as a representative from the General Prosecutor's Office, the Ministry of Justice, the Ministry of the Interior, the Supreme Court, representatives from local civil society and

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<sup>6</sup> PRI will organise two comparative public opinion polls (in April-May 2013 and Sep-Oct 2014) to evaluate how Belarusians feel about retaining the death penalty in light of entering the Council of Europe, and how they evaluate other forms of punishments in Belarus. Such polls will provide real evidence and demonstrate a real position of the population towards the death penalty and its abolition, and give additional arguments to challenge the official position concerning the negative attitude of the general population towards abolition.

<sup>7</sup> See for example, National report to the working group on the Universal Periodic Review, A/HRC/WG.6/7/KAZ/1, 3 November 2009, para. 166, and 2009-2012 National Human Rights Action Plan of the Republic of Kazakhstan.

EU diplomats, journalists and other media representatives. Of note, the General Prosecutor's office stated that the number of death penalty applicable offences should be reduced in the new Criminal Code, rather than increased. PRI will continue to engage with parliamentarians and other government officials throughout 2013 to advocate for a reduction of the number of death penalty applicable offences in the new Code.

### **Republic of Tajikistan**

No steps have been taken by the Republic of Tajikistan to abolish the death penalty in law since 1 April 2012.

## **MIDDLE EAST AND NORTH AFRICA**

### **Hashemite Kingdom of Jordan**

Between April 2012 and February 2013, 26 people were sentenced to death in Jordan (among them, three since the beginning of 2013). To date, there are 106 persons on death row, among them are nine women.

### **Kingdom of Morocco**

In 2012, there were at least six new death sentences in Morocco. To date, there are 112 persons on death row, of whom two are women, and 19 are convicted of terrorism related offences.

In October 2012, parliamentarians established a Parliamentary Network against the Death Penalty, which to date has 167 members representing both Houses of the Parliament. The objectives of the Network are to protect and promote human rights, including the right to life (as enshrined in Article 20 and 22 of the 2011 Constitution) and the abolition of the death penalty. On 26 February 2013, the Network held its founding meeting in collaboration with the Moroccan Coalition against the Death Penalty, under the theme "The legislative power actor for the protection of the fundamental right to life."

### **Republic of Tunisia**

While 2011 encouragingly went by without any death sentences being handed down, at least nine death sentences are known to have been imposed in Tunisia in 2012. Another two death sentences are at appeal stage at the Court of Cassation. To date, there are 179 prisoners on death row in Tunisia.

In December 2012, Tunisia voted in favour of the UN GA moratorium resolution for the first time.

The current draft Constitution (due to be adopted in 2013) does not prohibit the death penalty (draft Article 16).

## The Republic of Yemen

On 9 March 2013, Yemen executed Mohammed Haza'a by firing squad in Sanaa despite legitimate questions as to whether he was under the age of 18 when he committed an alleged murder.

On 3 December 2012, Hind al-Barti was also executed by firing squad in Sanaa, whose birth certificate indicated she was 15 at the time of the alleged murder.

On 26 January 2013, Yemen sentenced to death Nadim al-'Azaazi on charges of murder, allegedly committed when he was 15 years of age. Al-'Azaazi, now 18 years of age, is at imminent risk of execution.

On 27 January, 77 alleged juvenile offenders went on a hunger strike at the central prison in the capital Sana'a to protest against their conditions and about the death sentence previously being handed down against a fellow prisoner.

Even though Yemen's Penal Code (Article 31) exempts those who committed a capital offence under the age of 18 from the death penalty, and Yemen's ratification of the Convention on the Rights of the Child in May 1991, the sentencing to death and execution of those who committed an offence when they were under the age of 18 is a serious cause for concern in Yemen.

There are approximately 21 individuals facing execution in Yemen who were alleged to be under the age of 18 at the time of the offence.

Problems in determining the age of alleged juvenile offenders are endemic in Yemen. In many areas of the country birth certificates are not issued to or sought by families, creating confusion regarding the age of young alleged offenders (birth registration rate stands at only 22 per cent). In cases where the age of an alleged juvenile offender is in doubt, Yemeni courts rely on medical personnel, named by the prosecution, who have been alleged by human rights organisations of drawing conclusions supporting adulthood and subsequent prosecution for capital offences.

In June 2012, the Yemeni Ministry of Justice established an independent medical examination committee to determine ages of alleged juvenile offenders in cases where birth certificates are unavailable. Despite support and funding from UNICEF and the European Commission, it lacked the necessary legal status and competence and ceased to function within six months of its creation.

Although it is unknown how many executions have taken place in the last year, it is known that since 25 December 2012 to date, Yemen has executed 25 people. This includes 5 in the governorate of Sanaa, 4 in Hudayda, 8 in Ta'ez, 1 in Ibb, 1 in Hajja, 1 in Zamar, 1 in Dalla, 1 in Lahed, 1 in Shabwa, and 2 in Omran.

### For more information, please contact:

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