

# UN Secretary-General's 2014 report to the Human Rights Council on the death penalty Submission by Foundation for Human Rights Initiative (FHRI) and Penal Reform International (PRI)

31 March 2014

## Introductory remarks

PRI<sup>1</sup> and FHRI<sup>2</sup> 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 welcome 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 2013.

PRI and FHRI welcome the attention given to issues related to the death penalty by the UN Human Rights Council in the past year, notably the panel discussion on the human rights of children of parents sentenced to the death penalty or executed (24<sup>th</sup> Session, September 2013) and the high-level panel on the question of the death penalty (25<sup>th</sup> Session, March 2014).

## EAST AFRICA

### Republic of Kenya

There were 1,179 persons on death row since April 2013 (1,127 male and 52 female).<sup>3</sup>

In a negative development, the mandatory death penalty was restored for murder in Kenya in 2013 following a successful appeal to the case of *Republic v. Godfrey Ngotho Mutiso*. The

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<sup>1</sup> 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 works for the abolition of the death penalty and the implementation of humane alternative sanctions.

PRI has Consultative Status with the United Nations 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. PRI is on the Steering Committee of the World Coalition against the Death Penalty.

<sup>2</sup> The Foundation for Human Rights Initiative (FHRI) is an independent, nongovernmental, 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.

<sup>3</sup> Information from the Kenyan National Commission on Human Rights.

original High Court case had found that the mandatory death penalty for murder was unconstitutional because, insofar as the death penalty was the only sentence for murder, it was cruel inhuman and degrading treatment. However, the Court of Appeal in *R v. John Kimiti Mwaniki* asserted that the mandatory death penalty was underpinned by Article 26(3) of the Kenyan Constitution, which states that the right to life can only be deprived by written law. It again buttressed this view in the October 2013 *Njuguna* case, further stating that since Kenya had not ratified the Optional Protocol to the ICCPR, the death sentence was still valid.<sup>4</sup>

## Republic of Uganda

On 7 February 2014, 301 persons were on death row (283 male and 18 female).

On 26 September 2013, a death penalty reduction Bill<sup>5</sup> was introduced in Parliament by Alice Alaso MP, who is also a member of the Parliamentarians for Global Action global parliamentary platform for the abolition of the death penalty. At the end of March 2014, it was awaiting a Certificate of Financial Implications from the Ministry of Finance, required before it can be debated.

In April 2013, new Sentencing Guidelines<sup>6</sup> were launched in Uganda. Direction 17 of these Guidelines states that a court can only impose a death sentence in exceptional circumstances in the 'rarest of the rare' cases.

The *Attorney General v. Susan Kigula & 417 Ors (CONSTITUTIONAL APPEAL NO. 03 OF 2006)* case upheld the scrapping of mandatory death sentencing. Additionally, it held that respondents whose sentences arose from the mandatory sentence provisions and are still pending before an appellate Court would have their cases remitted to High Court to be heard only on mitigation of sentence. As a result, the Judiciary held a special mitigation session that ran from 18 November – 12 December 2013, where 158 inmates had their sentences reduced. 16 death sentences were upheld, 6 inmates were released, 4 were referred to Butabika Mental Hospital, 1 inmate was pending Minister's orders at time of submission, 2 inmates were not sentenced and the rest were given custodial sentences ranging from 8 to 65 years.

On 24 February 2014, the Anti-Homosexuality Act was signed into law. It did not include the death penalty as a punishment for homosexual acts, as proposed at earlier stages, with the maximum sentence being life imprisonment.

## Republic of Tanzania

Deliberations have continued about whether the death penalty will remain as a punishment in the new constitution of Tanzania. The draft current at 31 March 2014 states: 'Every person has the right to live and the protection of his life by the society in accordance with the law'. However, the death sentence is still provided for in draft Article 69 (1), which states that the President can authorise implementation of a death sentence in accordance with the law. Article 82 (1) gives power to the President to substitute a life sentence for a death penalty.

## EASTERN EUROPE

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<sup>4</sup> Information from Anita Nyajong from ICJ-Kenya.

<sup>5</sup> In full: the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill.

<sup>6</sup> Full title: *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.*

## Republic of Belarus

Three people have been sentenced to death in the past year. On 24 April 2013, Moliheu Oblast Court passed a death sentence on Grigoriy Yuzepchuk for murder. On 14 June 2013, Homel Oblast Court sentenced Aliaksandar Hrunau to death for murder. On 18 September 2013 the Supreme Court upheld the death sentence of Pavel Selyun, who was convicted of double murder and theft of documents.

The Parliamentary Commission on the Death Penalty (re-established 28 December 2012) has continued its work. Chair of the Commission Nikolay Samoseiko participated in a PRI study visit of parliamentarians from ten countries to the UK and European Parliaments in May 2013. There he met with counterparts from 8 other countries and discussed the legal and policy steps towards progressive abolition of the death penalty and the implementation of humane alternative sanctions.

PRI launched a public opinion survey in 2013, which registered public support for the death penalty at 64%, significantly below the 80%+ recorded in a 1996 referendum on abolition.<sup>7</sup>

## Russian Federation

No steps have been taken by the Russian Federation to abolish the death penalty in law since 1 April 2013. Following the suicide bombings in Volgograd on 29 December 2013, some deputies of the State Duma called for the reintroduction of the death penalty; however, their initiative had not progressed at time of writing.

## CENTRAL ASIA

### Republic of Kazakhstan

The Kazakhstan Criminal Code, Criminal Executive Code and Criminal Procedural Code are currently being reviewed in Parliament, with revised Codes aiming to be adopted by June 2014. At present, discussions are ongoing about which offences linked to 'acts of terrorism resulting in death' and 'grave crimes committed during times of war' will retain the death penalty in the new Codes.<sup>8</sup>

On 10 October 2013, two Kazakhstan MPs (Aigul Solovyeva and Svetlava Bychkova) participated in an Inter-Parliamentary Union roundtable about the abolition of the death penalty; they shared the current situation of Kazakhstan in moving towards abolition.<sup>9</sup>

### Republic of Tajikistan

No changes regarding the death penalty have taken place. However, there have been discussions within parliament, the presidential administration and among civil society about the issue. A roundtable is planned for 15 April 2014 to discuss the current situation regarding public opinion and the death penalty.

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<sup>7</sup> To read the study in full, which analyses attitudes by different demographic and socioeconomic groups, go to <http://www.penalreform.org/resource/belarusian-public-opinion-crime-punishment-including-death-penalty/> (study in Russian; English version available shortly)

<sup>8</sup> For more information, see PRI's report *Counter-terrorism in Kazakhstan: Why the death penalty is no solution*, available at <http://www.penalreform.org/resource/counter-terrorism-kazakhstan-death-penalty-solution/>

<sup>9</sup> Information about the roundtable available at <http://www.icomdp.org/2013/10/celebrating-world-day-against-the-death-penalty-10-october-parliamentarians-a-critical-force-in-promoting-the-abolition-of-the-death-penalty/>

## MIDDLE EAST AND NORTH AFRICA

### Hashemite Kingdom of Jordan

There were no executions in 2013-14, but courts continue to sentence people to death. There are 110 people on death row (100 men and 10 women).

A Parliamentary Network Against the Death Penalty was established in February 2014 and will be formally launched in June 2014. It now has 27 MPs participating, including former speaker of the House of Representatives Saad Srour.

In early 2014, an initiative began to raise the awareness of Jordanian youth about the death penalty, through training for youth leaders and the creation of a youth-focused facebook page. It is run by the NGO KAFA – Action on Societal Violence, and funded by Penal Reform International as part of its EU-funded project on death penalty abolition.

### Kingdom of Morocco

117 people are currently on death row. No executions took place in 2013-14.

In 2013, one death row prisoner had their sentence reduced to 15 years following a review and appeal of the case, spearheaded by Parliamentarians with legal training. Further reviews are planned for 2014.

The Moroccan Parliamentary Network Against the Death Penalty now has 300 members, who introduced a death penalty abolition Bill in 2013. While it did not pass, it is expected to be reintroduced in 2014 and MPs opposing abolition have suggested reducing the number of offences that carry the death penalty from 265 to 14.

### Republic of Tunisia

Despite voting for the UN General Assembly moratorium resolution in 2012, death sentences continued to be passed in Tunisia in 2013-14. No executions took place in 2013-14.

The new Constitution (approved by the Constituent Assembly 26 January 2014) includes provision for the death penalty.

### People's Democratic Republic of Algeria/regional

A civil society conference on death penalty abolition in MENA was held in Algiers in December 2013. Around 120 participants from 9 countries planned activities for the next two years and agreed the Algiers Declaration calling for abolition. Intended activities include working with the media, building support in regional and international fora, and working with legislative and judicial institutions.

### For more information, please contact:

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