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**Human Rights Council**

**Forty eighth session**

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Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,**

**political, economic, social and cultural rights,**

**including the right to development**

 **Question of the death penalty**[[1]](#footnote-2)\*

 **Report of the Secretary General**

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|  *Summary* |
|  The present report is submitted pursuant to decision 18/117 and resolution 42/24 of the Human Rights Council. The report focuses on consequences arising from the lack of transparency in the application and imposition of the death penalty on the enjoyment of human rights. |
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 I. Introduction

1. The present report is submitted pursuant to [Human Rights Council decision 18/117](https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/168/68/PDF/G1116868.pdf?OpenElement)  and [resolution 42/24](https://undocs.org/A/HRC/RES/42/24). In resolution [42/24](https://undocs.org/A/HRC/RES/42/24), the Human Rights Council requested the Secretary-General to dedicate the 2021 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to the consequences of the lack of transparency in the application and imposition of death penalty.

2. In preparing this report, the Office of the High Commissioner for Human Rights, on behalf of the Secretary-General, sought contributions from Member States; international and regional organizations; national human rights institutions; and non-governmental organizations. The report also draws on a range of materials, including the work of United Nations human rights mechanisms and other public sources, including outside scholars, practitioners and civil society organizations.

3. This report focuses on consequences of the lack of transparency in the application and imposition of the death penalty on the enjoyment of human rights, and also includes information on the recent developments towards the abolition of the death penalty. It further examines international legal aspects of transparency and discusses practices and challenges at the national level in ensuring such transparency. The issue of transparency has previously been raised by the Secretary-General in his recent reports on the death penalty to the General Assembly,[[2]](#footnote-3) the Economic and Social Council[[3]](#footnote-4) and the Human Rights Council.[[4]](#footnote-5)

 II. Recent developments towards abolition of the death penalty

4. In December 2020, an increased number of States voted for the adoption of the 8th General Assembly resolution on a moratorium on the use of the death penalty.[[5]](#footnote-6) Since the September 2020 report of the Secretary-General to the Human Rights Council on the question of the death penalty, the Parliament of Sierra Leone has reportedly passed legislation abolishing the death penalty;[[6]](#footnote-7) and Kazakhstan abolished the death penalty for all crimes and signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).[[7]](#footnote-8)

5. Furthermore, Amnesty International’s 2020 annual report on the global use of the death penalty noted a significant decrease in the number of known executions compared to 2019. According to Amnesty International, the number of executions has been continuously decreasing since 2015 and, in 2020, it reached the lowest figure in more than 10 years. However, the organization cautioned that “its figures were only minimum known ones - as several countries either conceal their death penalty data or provide only limited information”.[[8]](#footnote-9)

 III. Transparency and the death penalty: legal frameworks and national practices

6. Under international human rights law, pending abolition, States that still impose or apply the death penalty should comply with international human rights standards. In particular, in States that have not abolished the death penalty, capital punishment may only be imposed for the “most serious crimes”, which has been considered by the UN Human Rights Committee to be limited to intentional killing.[[9]](#footnote-10) They should also fully adhere to fair trial and due process guarantees in capital punishment [[10]](#footnote-11)￼

7. The United Nations system has over many years underlined the importance of the public availability of information on the death penalty. In 1989, the Economic and Social Council set out the minimum requirements of such transparency when, in paragraph 5 of its [resolution 1989/64](https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-64.pdf), it called upon all Member States: “To publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.”

8. The Economic and Social Council has requested that the Secretary-General conduct a survey of Member States at five-year intervals since 1973.[[11]](#footnote-12) The response rate has been low, leading the Council to request the Secretary-General to “draw on all available data” in future reports, rather than relying solely on Government responses.[[12]](#footnote-13) The Secretary-General’s most recent report shows that retentionist countries have been least likely to respond to these surveys.[[13]](#footnote-14)

9. In resolutions on a moratorium on the use of the death penalty, the General Assembly has also called upon all States that maintained the death penalty to provide the Secretary-General with information relating to the use of capital punishment and to make that information publicly available so that informed national and international debates, including on the obligations of States pertaining to the use of the death penalty are possible[[14]](#footnote-15). In its, the Human Rights Council further recalled that secret executions or those with short or no prior warning added to the suffering of the persons sentenced to death, as well as of other affected persons, and called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform on where the body was located, unless this was not in the best interests of the child.

10. In their contributions to this report, several States expressed concerns regarding the lack of transparency. Australia was firmly of the opinion that lack of transparency in the use of the death penalty had direct consequences for the human rights of persons facing the death penalty as well as for other affected persons. Australia viewed that transparency was a prerequisite to assess whether the death penalty was being carried out in compliance with international human rights law. Without transparency, it is not possible to ensure that those in detention awaiting execution are being treated humanely and afforded appropriate legal and procedural protections in accordance with international human rights law. Australia strongly urged countries that retain the death penalty, *inter alia*, to increase transparency in the application and imposition of the death penalty.[[15]](#footnote-16)

11. Italy observed that several countries did not issue official statistics on capital punishment, and as such, was of the view that the number of executions was likely to be much higher. Italy noted that in some countries, the death penalty was considered a State secret and reports of executions, upon which the execution totals were based, came to light through local media, independent sources or relatives, sometimes long after the fact, and represented only a fraction of the total of executions carried out nationwide. Other States divulged news of executions after they had taken place, while relatives, lawyers and the condemned people themselves were kept in the dark before the actual executions took place. In Italy’s view, this framework pointed to the fact that the fight against capital punishment entailed, beyond the stopping of executions, a battle for transparency of information concerning capital punishment, respecting human rights of the condemned persons and their families.[[16]](#footnote-17)

12. Switzerland stated that the commitment against the death penalty was a priority for its foreign policy, and that it was determined to play a leading role in the global movement for the universal abolition of the death penalty. It also remained concerned about the consequences of the lack of transparency in the application of the death penalty for convicts and their families.[[17]](#footnote-18)

13. Trinidad and Tobago reported that the death penalty existed under its domestic laws and provided information regarding legal provisions on the imposition of the death penalty in the country.[[18]](#footnote-19)

14. Some legal systems have made special provisions for minimizing consequences for relatives of persons sentenced to death.[[19]](#footnote-20) For example, the Office of the High Commissioner for Human Rights reported that in Guyana, information and updates in the death penalty cases were provided by the Guyana Prison Service, but how often the information had been shared was not known.[[20]](#footnote-21) In 2015, the Law Commission of India also noted the requirement of transparency in providing information regarding the death penalty.[[21]](#footnote-22) While the Indian National Crime Records Bureau published its Prison Statistics Report annually, it only contained information on the number of prisoners on death row and provides no further details.[[22]](#footnote-23) In Pakistan, the Federal Ombudsman submitted information on the death row population in a report on jail conditions to the Supreme Court of Pakistan.[[23]](#footnote-24)

15. Regional organizations or entities have also addressed the issue of transparency in the use of the death penalty. In its General Comment No. 3 regarding the right to life, the African Commission on Human and Peoples’ Rights states that “[...] transparency is a necessary part of accountability. Transparency about laws, policies, practices and the circumstances of any limitations of the right to life”.[[24]](#footnote-25) Similarly, the 2018 European Union Guidelines on the Death Penalty emphasized that retentionist States should maintain maximum transparency, including through publishing information about the death penalty and its use.[[25]](#footnote-26)

16. Some states continue to not disclose information on the death penalty under the rationale that such information is a “State secret.” In Vietnam, consideration of data on the death penalty as a state secret was included in the 2018 Law on State Secrets, whereby those who disclose such data either intentionally or unintentionally are subject to criminal penalties of up to 15 years in prison.[[26]](#footnote-27) The Government of Belarus has also declined to disclose statistics on death sentences and executions on the grounds that it is a “State secret”. [[27]](#footnote-28)

17. Singapore has previously supported a recommendation provided during its Universal Periodic Review to make available statistics and other factual information on the use of the death penalty.[[28]](#footnote-29) However, it has reportedly remained difficult to verify the exact number of death sentences and executions because the Government does not publish data on the death row population.[[29]](#footnote-30) Lack of transparency in Indonesia, Lao People’s Democratic Republic and Malaysia has been highlighted in some submissions by non-governmental organizations, where it is reported that executions are often carried out either in secret or with little to no advance notice to the prisoner, her or his lawyer, or the family.[[30]](#footnote-31) In 2018, an execution was carried out in Thailand with little advance notice to the family of the executed person.[[31]](#footnote-32) Lack of transparency has also been highlighted as to the actual number of executions carried out in the Islamic Republic of Iran. [[32]](#footnote-33)

 IV. Human rights consequences in the lack of transparency in the application and imposition of the death penalty

 A. The right to fair trial and transparency in the death penalty

18. The Human Rights Committee has observed that holding trials in public and therefore providing greater transparency, “is a duty upon the State that is not dependent on any request, by the interested party”.[[33]](#footnote-34) Transparency safeguards for the due process of law are guaranteed by article 14, paragraph 1 of the ICCPR, which narrowly limits the scope for secrecy at trial, and provides a powerful transparency requirement thereafter. The Special Rapporteur on extrajudicial, summary and arbitrary executions has also stated that transparency is fundamental to the administration of justice and the surest safeguard of fairness. The Special Rapporteur also noted that secrecy throughout the post-conviction process is limited by State obligations to ensure due process rights and to respect the right to freedom from cruel, inhuman or degrading treatment or punishment.[[34]](#footnote-35)

19. In General Comment 32 on the right to fair trial, the Human Rights Committee observed that all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.[[35]](#footnote-36)

20. The Human Right Committee further stated that Article 14, paragraph 1 of the ICCPR, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.[[36]](#footnote-37)

21. The Special Rapporteur on extrajudicial, summary and arbitrary executions stated that under international human rights law, even during a state of emergency, derogation from transparency rights is never permitted in death penalty cases.[[37]](#footnote-38) The permissible scope of derogation from due process rights is always tightly circumscribed. Although the right to fair trial is not listed among the so-called “non-derogable rights,” measures taken in derogation must always be limited “to the extent strictly required by the exigencies of the situation” (art. 4, para. 1 of the ICCPR). The Special Rapporteur on extrajudicial, summary and arbitrary executions underlined that “derogations from due process may never go so far as to eviscerate the rule of law, because to permit such derogation would be to defeat the very purpose of the article 4 derogation: to prohibit states of exception subject solely to executive discretion by accommodating states of emergency subject to the rule of law”.[[38]](#footnote-39)

22. With respect to the application and imposition of the death penalty, the Human Rights Committee considers that the provisions of the ICCPR relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Thus, for example, as article 6 of the ICCPR is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the ICCPR, including all the requirements of articles 14 and 15 of the Covenant.[[39]](#footnote-40) In accordance with the jurisprudence of the Human Rights Committee, a violation of fair trial rights during capital cases, including the openness of the trial to the public, can constitute a violation of the right to life itself:[[40]](#footnote-41) Violations of the fair trial guarantees provided for in article 14 of the ICCPR in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the ICCPR.[[41]](#footnote-42)The Special Rapporteur has similarly concluded that, a State that fails to be transparent in its death sentences in line with article 14 risks also violating article 6.[[42]](#footnote-43)

23. The right to effective legal representation of one’s choice at all stages of criminal proceedings is enshrined in international human rights law.[[43]](#footnote-44) As “essential agents of the administration of justice,”[[44]](#footnote-45) lawyers play a crucial role in upholding the rule of law and protecting human rights. Defense lawyers are crucial in any death penalty related process, including post-conviction and pre-execution phases.[[45]](#footnote-46) Conversely, a lack of transparency in the application and imposition of the death penalty can limit their ability to fully discharge their professional functions in the best interests of their clients.[[46]](#footnote-47)

24. In practice, cases of drug crimes punishable by death in some States are tried in hearings that have been described by some non-governmental organizations as lacking openness and transparency.[[47]](#footnote-48) For example, some claim that in the Islamic Republic of Iran “drug-related cases are dealt with in the Islamic Revolutionary Courts, which reportedly operate with considerably lower transparency and guarantee fewer human rights standards, including access to legal assistant, than ordinary courts in the country.”[[48]](#footnote-49) For its part, the Government has asserted that the death penalty was carried out in full compliance with fair trial standards and with full transparency.[[49]](#footnote-50)

25. Submissions from non-governmental organizations have also stated that in China, lawyers have reportedly faced barriers to providing effective legal representation in drug cases, including obstacles to meeting their clients and accessing information about the case, limited disclosure by the prosecution, and restrictions on conducting their own defense investigations.[[50]](#footnote-51)

26. Since the COVID-19 pandemic, additional limitations on transparency were recorded in some countries, where many hearings in death penalty cases were held virtually in an attempt to control the spread of the virus. In a 2020 global overview on the death penalty for drug offences, one non-governmental organization noted that “the issue of transparency was exacerbated in 2020, when collecting information about the use of the death penalty for drug offences was even more challenging than in previous years. This is likely due to COVID-19 dominating the news, restrictions imposed on movement, and the shrinking of civil society space; all of which negatively impacted independent monitoring of the death penalty.”[[51]](#footnote-52)

 B. The right to seek a pardon or commutation of a death sentence and transparency

27. As stipulated in article 6(4) of the ICCPR, anyone sentenced to death should have the right to seek a pardon or commutation of the sentence. It is critical that the process through which applications for clemency, pardons and commutation are filed, processed, evaluated and decided should be clearly set out in law. It is essential to ensure transparency, certainty, due process and objectivity in the evaluation of mercy petitions.

28. However, many retentionist States are unable to provide transparency in their clemency, pardon and commutation processes due to an overall lack of transparency in reporting of death penalty information. In Belarus, for example, the sessions of the presidential pardons commission, which examines such requests, are by regulation open to public organizations and the media, but in practice such access is consistently denied.[[52]](#footnote-53) A submission by a non-governmental organization also stated that, reportedly, the Commission withholds decisions not to grant a presidential pardon from death row prisoners, their lawyer and their relatives until the execution itself is carried out.[[53]](#footnote-54)  In India, the Secretariat of the President of the Republic is required to disclose information pertaining to the rejection, commutation and pendency of mercy petitions filed by prisoners on death row.[[54]](#footnote-55) However, this information is reportedly rarely updated and does not account for information on the pendency of such petitions.[[55]](#footnote-56)

29. In another submission from a non-governmental organization, Malawi is noted for having rules governing the process of clemency and commutation that are unclear, as the Government does not publish the guidelines underpinning the criteria applied to clemency.[[56]](#footnote-57) Another non-governmental organization report states that in Malaysia – where the majority of people on death row have been convicted for drug offences – the Board of Pardon, responsible for evaluating requests for clemency, is not required to disclose how it reaches its decisions.[[57]](#footnote-58) In Pakistan, a policy of blanket refusal of clemency applications was allegedly in place, and no clemency applications have been granted in recent years.[[58]](#footnote-59) In October 2019, the Ministry of Interior issued new procedures for the consideration of mercy petitions, [[59]](#footnote-60) designed to ensure that prison authorities disclose all relevant records related to a prisoner.[[60]](#footnote-61)

 C. The right to access to consular assistance and transparency in the death penalty cases

30. Access to consular assistance is an important aspect of the protection of foreign nationals facing the death penalty abroad. Under Article 36 of the Vienna Convention on Consular Relations, local authorities must inform all detained foreigners “without delay” of their right to have their consulate notified of their detention and to communicate with their consular representatives. This applies to all detained foreigners, but is of particular significance to those who face the death penalty because of the irreversibility of the punishment.[[61]](#footnote-62) The lack of transparency in overall death penalty information can negatively impact the ability of foreigners to seek and receive consular assistance in a timely manner.

31. In its General Comment 36, the Human Rights Committee stated that a failure to promptly inform detained foreign nationals of their right to consular notification pursuant to the Vienna Convention on Consular Relations, resulting in the imposition of the death penalty, would violate article 6, paragraph 1 of the ICCPR.[[62]](#footnote-63) General consular protection for migrant workers is further elaborated in article 23 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[[63]](#footnote-64)

32. In Saudi Arabia, numerous foreign nationals have been sentenced to death, some of which have reportedly not been afforded consular services.[[64]](#footnote-65) One such case that received particular attention from several United Nations Special Procedures mandate holders was that of a Jordanian national, who was sentenced to death by beheading for drug trafficking charges in May 2015. Reportedly, he was only allowed to contact a lawyer after he was sentenced. Among other things, the special procedures mandate holders were also concerned that the accused might not have been granted the possibility to request consular assistance from the Jordanian authorities.[[65]](#footnote-66)

 D. The right to freedom of information and transparency in the death penalty cases

33. Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression have underlined that the right to freedom of opinion and expression is an enabler of other rights,[[66]](#footnote-67) and that access to information is often essential for individuals seeking to give effect to other rights.[[67]](#footnote-68) The right to seek and receive information also comprises the right of individuals to access information of public interest that can contribute to public debate.[[68]](#footnote-69) With regard to the use of the death penalty, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that Article 19 of the ICCPR also generates transparency requirements in recognizing not only freedom of expression, but also public access to information.[[69]](#footnote-70)

34. United Nations human rights entities have recognised the importance of the right to information in the context of the use of the death penalty. In the case of Toktakunov v. Kyrgyzstan[[70]](#footnote-71), the Human Rights Committee reiterated the position set out in Resolutions [Nos. 2003/67](https://www.refworld.org/docid/43f3134a12.html) and [2004/60](https://www.refworld.org/docid/43f3137e0.html) of the former United Nations Commission on Human Rights and as set forth in the Copenhagen Document [[71]](#footnote-72)that the general public has a legitimate interest in having access to information on the use of the death penalty. The Committee concluded that the restrictions to the exercise of the author's right to access information on the application to the death penalty held by public bodies could not be deemed necessary for the protection of national security or of public order (ordre public), public health or morals, or for respect of the rights or reputations of others.[[72]](#footnote-73) The Committee concluded, on the contrary, that information about a State’s use of the death penalty was of public interest, and recognized a general right to gain access to that information deriving from article 19 of the ICCPR.[[73]](#footnote-74)

35. The Special Rapporteur on extrajudicial, summary or arbitrary executions has also opined that article 14 of the ICCPR contemplates not only the prisoner’s rights, but also the public interest in information. The Special Rapporteur underscored that States have a duty to make information on the death penalty publicly available in the aggregate and not simply buried in files in courts throughout the country. In the view of the Special Rapporteur, for every organ of government and every member of the public to have at least the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner, the administration of justice must be transparent, and the kind of informed public debate about capital punishment that is contemplated by human rights law is undermined if governments choose not to inform the public. The Special Rapporteurs further asserted that the lack of transparency reveals authorities' lack of willingness to create space for an informed public debate on the death penalty.[[74]](#footnote-75)

36. Policies and practices related to the use of the death penalty are often justified by States with reference to the state of public opinion or the sentiment of the people. For example, in 2019, thirty States noted that the question of whether to retain or abolish the death penalty and the types of crimes for which the death penalty was applied should be determined by each State, taking fully into account the sentiments of their people, the state of crime and their criminal policies.[[75]](#footnote-76) In many countries, however, non-compliance with transparency obligations means that the public lacks the information necessary to form evidence-based opinions.

37. Previous reports of the Secretary-General[[76]](#footnote-77) have already emphasized that it is important for the effectiveness and transparency of debate on the death penalty to ensure 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.

38. Claims of public support for the death penalty without adequate evidence need to be treated with caution. Evidence suggests that where public support does exist, it is frequently based on a misconception that the death penalty acts as a deterrent to serious crime.[[77]](#footnote-78) The provision of fair and public trials also enables the public to more accurately scrutinize the work of a country’s prosecutorial and judicial systems. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, maintaining any part of the administration of justice secret, including the imposition and carrying out of death sentences, risks undermining public trust in judicial institutions and in the legal process as such.[[78]](#footnote-79)

39. The Council of Europe has asserted that the more people know about the facts surrounding the execution process and the reasons for abolition and alternatives to capital punishment, the less resistant they are to abolition.[[79]](#footnote-80) According to a non-governmental organization, in the United States, where there is greater transparency surrounding processes of capital punishment, less than half of the population reportedly believe that the death penalty is fairly applied.[[80]](#footnote-81)

40. Failure to compile and publish data on capital punishment also means that governments can be more likely swayed by political concerns, rather than evidence. For example, recently governments of several States have moved to address public outcries over serious incidents of sexual violence by increasing the scope of the death penalty. Yet, without clear data on the death sentences awarded, it is difficult for stakeholders, to make well-informed arguments about whether or not the death penalty is effective in deterring crime.[[81]](#footnote-82)

41. Civil society organizations have also contributed in securing transparency by relying on laws on freedom of information in many countries to procure relevant data. For example, upon an order issued by the High Court of Lahore, the Justice Project Pakistan successfully used the right to information law mechanism to access copies of old mercy petitions submitted by the prison authorities to the State of Punjab on behalf of some death row prisoners.[[82]](#footnote-83) However, the lack of freedom of information legislation in many other retention States impedes the ability to obtain official death penalty related data.[[83]](#footnote-84)

 E. Prohibition of torture, or other cruel, inhuman or degrading treatment, and transparency in death penalty cases

42. Transparency around executions can also prevent infliction of torture, or other cruel, inhuman or degrading treatment in the use of the death penalty, both with respect to the convicted person as well as their family members. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that secret executions violate the rights of the convict and family members to prepare for death, and recommended that States end the practice of secret executions and the practice of executions with little or no prior warning given to condemned prisoners and their families.[[84]](#footnote-85)

43. The Human Rights Committee has recommended that families of death row inmates be given reasonable advance notice of the scheduled date and time of execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for such execution.[[85]](#footnote-86) Similarly, in *Staselovich v. Belarus*, the Committee found that the failure of the authorities to notify the mother of the scheduled date for the execution of her son and their subsequent persistent failure to notify her of the location of her son’s grave amounted to inhuman treatment of the mother, in breach of the ICCPR.[[86]](#footnote-87) Secrecy and the refusal to hand over remains to families are especially cruel features of capital punishment, highlighting the need for full transparency and avoidance of harm to innocent family members in the whole process.[[87]](#footnote-88) The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe has also stated that the lack of transparency and secrecy surrounding executions in Belarus may constitute cruel, inhuman or degrading treatment, or even torture.[[88]](#footnote-89)

44. General Comment 36 of the ICCPR states that subjecting prisoners on death row to extreme delay violates articles 6 and 7.[[89]](#footnote-90) According to experts in this area, the failure to keep track of death row populations leads to a greater risks of extreme delay, which has been shown to aggravate the ‘death row phenomenon’, the intense distress brought on by being on death row.[[90]](#footnote-91) For example, one study found that in Bangladesh, the longest and shortest durations in death penalty cases were reportedly 11 years 2 months 7 days and 1 year 6 months 8 days. [[91]](#footnote-92) In another study on Pakistan, of 72 condemned prisoners interviewed, 51% had spent over 10 years on death row, with the longest period amounting to 32 years.[[92]](#footnote-93)

 1. Method of execution and transparency

45. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has reminded that, even if considered legal under international law, the actual practice of the death penalty is not left to the unfettered discretion of the State, but must itself comply with the requirements of the ICCPR, notably the prohibition of cruel, inhuman or degrading treatment, set out in article 7. In practice, the method of executions often violate this absolute prohibition, either because the method applied involves unnecessary suffering and indignity or through the ‘death row phenomenon’.[[93]](#footnote-94)

46. In its General Comment No. 36, the Human Rights Committee also recalled that article 7 of the ICCPR prohibited certain methods of execution, as they constituted torture or cruel, inhuman or degrading punishment, that it had already opined that stoning, injection of untested lethal drugs, gas chambers, burning and burying alive and public executions were contrary to article 7, and that other painful and humiliating methods of execution were also unlawful under the ICCPR. The International Academy of Compounding Pharmacists has also actively discouraged its members from preparing medications for use in executions.[[94]](#footnote-95)

47. According to a non-governmental organization, several retentionist states in the United States of America maintain secrecy with respect to their execution method through legislation, protocols, and practices that are inconsistent with international standards on transparency in the imposition of death penalty.[[95]](#footnote-96) In its concluding observations during the fourth periodic report of the United States, the Human Rights Committee noted with concern “reports about the administration, by some states, of untested lethal drugs to execute prisoners and the withholding of information about such drugs.”[[96]](#footnote-97)

48. The Inter-American Commission on Human Rights has taken the position that in order to be able to mount a proper challenge to the method of execution, a person threatened with the death penalty must have access to information related to the precise procedures to be followed, the drugs and doses to be used in case of executions by lethal injection, and the composition of the execution team as well as training of its members.[[97]](#footnote-98) The Commission has further underlined that “the State has the duty to inform the person sentenced to death, in a timely manner, about the drug and method of execution that will be used, so he or she is not precluded from litigating the right to be executed in a manner devoid of cruel and unusual suffering”.[[98]](#footnote-99)

49. Courts have a key role to play in ensuring transparency in methods of execution. One State Court in the United States, for example, rejected the practice of non-disclosure of information regarding drugs used in lethal injection executions and ordered the state’s authorities to disclose the relevant information.[[99]](#footnote-100) Similarly, a court in the state of Nevada ordered the state’s Department of Corrections to disclose certain information related to the procedures it planned to implement in an execution.[[100]](#footnote-101)

 F. Non-discrimination, equality before the law and transparency in death penalty cases

50. The International Commission against the Death Penalty has stated that lack of transparency in the application of the death penalty also has dire consequences violating article 26 of the ICCPR, in that it leads to discrimination and threatens the principle that all persons are equal before the law.[[101]](#footnote-102) Discrimination against vulnerable or marginalized groups is aggravated when transparency does not exist or is insufficient. Transparent reporting and access to information can expose discriminatory practices or impacts in the imposition and application of the death penalty. States that are less transparent and restrict access to the data on the death penalty make it more difficult for the public to become aware of these disparities and to press for remedial change.

51. For example, a recent research study on the death penalty in Bangladesh found that 71.79% of death row prisoners are economically vulnerable.[[102]](#footnote-103) In another study conducted in 2016 in India, 74.1% of persons under sentence of death were considered to be economically vulnerable.[[103]](#footnote-104) According to a report prepared for a federal level interbranch commission for gender, racial and ethnic fairness in the United States, more than half of offenders sentenced to capital punishment are persons of African descent, while persons of African descent comprise less than 12% of the population.[[104]](#footnote-105)

 V. Conclusion and Recommendations

52. **The present report notes that several countries have taken positive steps towards the abolition of the death penalty, and that the number of executions has decreased over the last few years. The Secretary-General welcomes all measures undertaken by States towards limiting the application of, or abolishing, the death penalty. These measures reaffirm the continued progress in the protection of the right to life, and are important steps towards the universal abolition of the death penalty.**

53. **The Secretary-General reiterates his recommendation that States that continue to impose and implement death sentences establish a moratorium on executions with a view to abolishing the death penalty. States that have retained the death penalty should only impose it for the “most serious crimes”, which has been consistently interpreted as meaning intentional killing. States that have retained the death penalty should respect all international minimum safeguards for the protection of human rights of individuals who are facing the death penalty, including ensuring transparency in the imposition and application of such punishment.**

54. **The lack of transparency in the imposition and carrying out of the death penalty has serious human rights implications. It particularly impedes the timely and adequate legal defense for individuals under sentence of death, especially those under imminent risk of executions, thereby increasing the possibility of an innocent person being executed. Human rights protections in the imposition and carrying out of the death penalty also include the right of access to information, the right to a fair trial, the right to not be subjected to torture, other cruel, inhuman or degrading treatment or punishment, and the principles of non-discrimination and equality before the law.**

55. **The Secretary-General recommends that, with regard to their method of executions, retentionist States fully comply with the requirements of the ICCPR, notably the prohibition of cruel, inhuman or degrading treatment, set out in article 7. In all cases, States should enable ready access to information related to such methods, in particular information on the precise procedures to be followed and, in cases of lethal injection, the drugs and doses to be used.**

56. **The Secretary-General recommends that States ensure access to full, accurate and information to facilitate a fully informed public debate on the death penalty. Without access to reliable information on the imposition and carrying out of the death penalty, it remains difficult for national and international stakeholders to understand and assess the scope of these practices, including compliance with the legal framework relating to the death penalty in retentionist States. The ability of civil society to effectively monitor death penalty information has been made more challenging since the onset of the COVID-19 pandemic as trials are conducted online. It is therefore more important than ever for States to comply with transparency requirements on the imposition and application of the death penalty.**

57. **In particular, the Secretary-General urges States to systematically and publicly provide full, accurate and disaggregated data on death sentences, including data on the socio-economic and other status or vulnerabilities of convicted and executed persons and on the crimes with which they were convicted. Disaggregated data should include, at a minimum, sex, age, nationality and race of individuals sentenced to death, the number of persons under sentence of death and their related offences, the number of executions carried out and the method(s) of execution, and the number of death sentences reversed or commuted on appeal or in which amnesty or pardon has been granted.**

1. \* The present report was submitted after the deadline in order to reflect the most recent information. [↑](#footnote-ref-2)
2. A/65/280; A/67/226; A/69/288; A/71/332; A/73/260; A/75/ 309. [↑](#footnote-ref-3)
3. E/2020/53; E/2015/49; E/2010/3; E/2000/3. [↑](#footnote-ref-4)
4. A/HRC/45/20, A/HRC/42/18; A/HRC/39/19; A/HRC/36/26; A/HRC/33/20; A/HRC/27/23; A/HRC/24/18; A/HRC/21/29; A/HRC/18/20; A/HRC/15/14; A/HRC/12/45; A/HRC/8/11; A/HRC/7/72; A/HRC/4/78. [↑](#footnote-ref-5)
5. A/75/PV.46, pages 17-18. [↑](#footnote-ref-6)
6. https://www.deathpenaltyproject.org/sierra-leone-abolishes-the-death-penalty/. [↑](#footnote-ref-7)
7. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-12&chapter=4&clang=\_en. [↑](#footnote-ref-8)
8. Amnesty International, Death Sentences and Executions 2020, <https://www.amnesty.org/en/documents/act50/3760/2021/en/>, p. 6. [↑](#footnote-ref-9)
9. Human Rights Committee, General Comment 36 (2018). [↑](#footnote-ref-10)
10. Ibid. [↑](#footnote-ref-11)
11. ECOSOC resolution 1754 (LIV) (16 May 1973). [↑](#footnote-ref-12)
12. ECOSOC resolution 1995/57 (28 July 1995), para. 4. [↑](#footnote-ref-13)
13. E/2020/53, para. 4. [↑](#footnote-ref-14)
14. Resolutions 62/249, 63/168, 65/206, 67/176, 69/186, 71/187, 73/175 and 75/183. [↑](#footnote-ref-15)
15. Submission of Australia. [↑](#footnote-ref-16)
16. Submission of Italy. [↑](#footnote-ref-17)
17. Submission of Switzerland. [↑](#footnote-ref-18)
18. Submission of Trinidad and Tobago. [↑](#footnote-ref-19)
19. E/2020/53, para. 118. [↑](#footnote-ref-20)
20. Submission of the Office of the High Commissioner for Human Rights. [↑](#footnote-ref-21)
21. The 262nd Law Commission of India Report on The Death Penalty, pg. 49, para. 3.8.22, https://lawcommissionofindia.nic.in/reports/report262.pdf. [↑](#footnote-ref-22)
22. See e.g., <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>, p. 149. [↑](#footnote-ref-23)
23. Submission of the Justice Project Pakistan. [↑](#footnote-ref-24)
24. African Commission on Human and Peoples’ Rights, General Comment No. 3 on the Right to Life Article 4 of the African Charter on Human and Peoples’ Rights, 2015; https://www.achpr.org/legalinstruments/detail?id=10. [↑](#footnote-ref-25)
25. <https://data.consilium.europa.eu/doc/document/ST-8416-2013-INIT/en/pdf>, p. 7. [↑](#footnote-ref-26)
26. Law No. 29/2018/QH14 of the National Assembly on Protection of State Secrets. [↑](#footnote-ref-27)
27. A/HRC/44/55, para 24. [↑](#footnote-ref-28)
28. A/HRC/18/11, para. 95.15. [↑](#footnote-ref-29)
29. Joint submission of Reprieve and Transformative Justice Collective. [↑](#footnote-ref-30)
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33. *Van Meurs* v. *the Netherlands*, Human Rights Committee, communication No. 215/1986 (1990), CCPR/C/39/D/215/1986, para. 6.1. [↑](#footnote-ref-34)
34. E/CN.4/2006/53/Add.3, p. 2. [↑](#footnote-ref-35)
35. Human Rights Committee, General Comment No. 32, CCPR/C/GC/32 (2007), para. 28. [↑](#footnote-ref-36)
36. Ibid, para. 29. [↑](#footnote-ref-37)
37. E/CN.4/2006/53/Add.3, para. 11. [↑](#footnote-ref-38)
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39. Human Rights Committee, General Comment No. 29 (2001), para. 15. [↑](#footnote-ref-40)
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41. Human Rights Committee, General Comment No. 36 (2018), para. 41. [↑](#footnote-ref-42)
42. A/67/275, para. 106. [↑](#footnote-ref-43)
43. Article 11(1), UDHR; Article 14(3)(d), ICCPR; Article 7(1)(c), African Charter on Human and Peoples’ Rights; Article 6(3)(c), European Convention on Human Rights; Article 8(2)(d) and (e), American Convention on Human Rights. [↑](#footnote-ref-44)
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46. Submission of International Bar Association, Human Rights Institute. [↑](#footnote-ref-47)
47. Harm Reduction International, The Death Penalty for Drug Offences: Global Overview 2019 ( March 2020) <https://www.hri.global/files/2020/02/28/HRI_DeathPenaltyReport2019.pdf>; see also Javid-Tehrani, B (February 2017) ‘Fair trials for the accused in drug-related offences.’ [↑](#footnote-ref-48)
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54. Mercy Petition, President’s Secretariat, https://rashtrapatisachivalaya.gov.in/mercy-petition-0. [↑](#footnote-ref-55)
55. Submission of National Law University, Delhi, India. [↑](#footnote-ref-56)
56. Submission of Reprieve. [↑](#footnote-ref-57)
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59. <https://www.nadra.gov.pk/20_Months_achievements_Brochure.pdf> , p.16. [↑](#footnote-ref-60)
60. Submission of the Justice Project Pakistan. [↑](#footnote-ref-61)
61. A/70/304, para. 92. In the case of Avena and Other Mexican Nationals, the International Court of Justice ruled that the United States failed in providing fifty-two Mexican nationals sentenced to death with consular information and enabling consular officers to access the individuals for, inter alia, arranging for legal representation. (Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4 (A/59/4), chap. V, sect. A.23.). In 2009, the International Court of Justice reiterated these findings in the case of José Ernesto Medellin Rojas ( https://www.icj-cij.org/public/files/case-related/139/139-20090119-JUD-01-00-EN.pdf). [↑](#footnote-ref-62)
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68. European Court of Human Rights, *Youth Initiative for Human Rights v. Serbia*, Application No. 48135/06, Judgement of 25 June 2013, para. 24, and *Claude Reyes and others v. Chile*, Judgement of 19 September 2006, Series C, No. 151, paras. 77 and 87; and Human Rights Committee, General Comment No. 34 (CCPR/C/GC/34), paras.18 and 19. [↑](#footnote-ref-69)
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72. CCPR/C/101/D/1470/2006, para. 7.7. [↑](#footnote-ref-73)
73. CCPR/C/101/D/1470/2006, para. 6.3. [↑](#footnote-ref-74)
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75. See Note verbale dated 13 September 2019 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General, A/73/1004, Annex, para.(e). [↑](#footnote-ref-76)
76. See A/HRC/24/18, para. 80; see also A/HRC/27/23, para. 73. [↑](#footnote-ref-77)
77. See A/HRC/42/28; see also, for example, Giada Girelli, The Death Penalty for Drug Offences: Global Overview 2018, Harm Reduction International (February 2019), pp. 9, 17, 20 and 25. [↑](#footnote-ref-78)
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84. A/67/279. paras. 40, 80. [↑](#footnote-ref-85)
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