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## International Standards on the death penalty

### Introduction

This document gives extracts from international instruments and other authoritative statements relevant to the abolition of the death penalty, arranged by subject. The texts of the relevant sections of the instruments are given in Appendix 3 at the end of the document.

Some of the extracts are from international treaties, binding on all states which become parties to them. Others are from resolutions adopted by United Nations (UN) bodies and other intergovernmental organizations. Still others are statements by UN officials and Special Rapporteurs, or judgments and recommendations of expert bodies set up to monitor the implementation of human rights treaties - the UN Human Rights Committee, set up to monitor implementation of the International Covenant on Civil and Political Rights, and the UN Committee against Torture, monitoring implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Some are of worldwide scope: they apply to all countries, or to all states parties to the relevant treaties. Others emanate from regional intergovernmental organizations and apply to states in those regions.

Many of the texts quoted in this document set out safeguards and restrictions on the use of the death penalty. These restrictions and safeguards must not be taken to justify the retention of the death penalty, a punishment which Amnesty International regards as a violation of fundamental human rights. Thus, Article 6 of the International Covenant on Civil and Political Rights, setting out safeguards and restrictions on the death penalty, states explicitly that these are to be applied in "countries which have not abolished the death penalty" (Article 6(2)) and goes on to state: "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant" (Article 6(6)).<sup>1</sup>

A checklist of the restrictions and safeguards and a chart indicating the nature and scope of the various instruments are given in Appendices 1 and 2.

In addition to the standards cited in the document, important safeguards on the conduct of death penalty cases in situations of armed conflict are set out in the laws of armed conflict. These standards are cited in the Appendices.

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<sup>1</sup> Professor William A. Schabas, Director of the Irish Centre for Human Rights, has noted that these "two important references to abolition" were added to the draft text of the International Covenant on Civil and Political Rights when it was under consideration at the Third Committee of the UN General Assembly. The reference in Article 6(2) "indicated not only the existence of abolitionist countries but also the direction which the evolution of criminal law should take", while the reference in Article 6(6) "set a goal for parties to the covenant. The *travaux préparatoires* indicate that these changes were the direct result of efforts to include a fully abolitionist stance in the covenant. They represented an intention... to express a desire to abolish the death penalty, and an undertaking by States to develop domestic criminal law progressively towards abolition of the death penalty". (William A. Schabas, *The Abolition of the Death Penalty in International Law*, second edition, Cambridge University Press, Cambridge, United Kingdom, 1997, p. 73)

## A Violation of Human Rights

The right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment are recognized in the Universal Declaration of Human Rights, other international human rights instruments and many national constitutions. Amnesty International believes that the death penalty violates these rights. This view is finding increasing acceptance among intergovernmental bodies and in national constitutions and court judgments.

A survey by Amnesty International has revealed that at least 42 countries have prohibited the death penalty in their constitutions. Almost all of these prohibitions are on human rights grounds.<sup>2</sup>

On 24 October 1990 the Hungarian Constitutional Court declared that the death penalty violates the "inherent right to life and human dignity" as provided under Article 54 of the country's constitution. The judgment had the effect of abolishing the death penalty for all crimes in Hungary.

On 6 June 1995 the South African Constitutional Court declared the death penalty for murder as provided under the country's laws to be incompatible with the prohibition of "cruel, inhuman or degrading treatment or punishment" under the country's interim constitution.<sup>3</sup> Eight of the 11 judges also found that the death penalty violates the right to life. The ruling had the effect of abolishing the death penalty for murder.<sup>4</sup>

On 9 December 1998 the Constitutional Court of the Republic of Lithuania declared that the death penalty for murder as provided under the Lithuanian Criminal Code contradicts provisions of the Constitution of the Republic of Lithuania stating that the right to life shall be protected by the law and prohibiting torture, injury, degradation and maltreatment and the establishment of such punishments.

On 29 December 1999 the Constitutional Court of Ukraine declared the death penalty under the country's laws unconstitutional and the laws providing for it void. The court stated that the death penalty is incompatible with articles of the Constitution of Ukraine which provide for the right to life and prohibit torture and cruel, inhuman or degrading treatment or punishment that violates a person's dignity. It noted that unlike the International Covenant on Civil and Political Rights, the Ukrainian Constitution does not explicitly allow for the death penalty as an exception to the right to life.<sup>5</sup>

On 11 November 1999 the Constitutional Court of the Republic of Albania abrogated the death penalty in peacetime as incompatible with the Constitution of the Republic of Albania, Article 21 of which states: *A*The life of a person is protected by law.*@* The court stated that the death penalty *A*is a denial of the right to life and constitutes an inhuman and cruel punishment.*@* The court noted that unlike previous constitutional provisions, Article 21 of the Constitution of 1998 does not explicitly allow for the death penalty as an exception to the right to life.

The European Court of Human Rights has held that "the manner in which [a death sentence] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned

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<sup>2</sup> Amnesty International, *Constitutional prohibitions of the death penalty*, AI Index: ACT 50/009/2005, April 2005.

<sup>3</sup> *Makwanyane and Mcebunu v. The State*, paragraphs 95, 146

<sup>4</sup> In 1998 the South African parliament removed the death penalty from the country's laws under the Criminal Law Amendment Act.

<sup>5</sup> In February 2000 the Ukrainian parliament removed the death penalty from the criminal code.

person within the proscription under Article 3 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)]."<sup>6</sup>

The UN Committee against Torture has referred to the uncertainty of many people under sentence of death in a country where the death penalty is in the process of being abolished as "amounting to cruel and inhuman treatment in breach of article 16 of the [UN] Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]".<sup>7</sup>

In resolution 1253 (2001), adopted on 25 June 2001, the Parliamentary Assembly of the Council of Europe stated that the application of the death penalty constitutes torture and inhuman or degrading punishment within the meaning of Article 3 of the European Convention on Human Rights.

## **Abolition**

In a general comment on Article 6 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee has stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life..."<sup>8</sup>

The UN Human Rights Committee has expressed concern over the retention of the death penalty in states parties to the International Covenant on Civil and Political Rights and has encouraged states parties to abolish it in law.<sup>9</sup>

The UN Committee against Torture has welcomed the abolition of the death penalty and moves towards abolition in several countries.<sup>10</sup>

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, states in its preamble that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights" and that "all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life".

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights stated that "the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights" and that "the abolition of the death penalty is essential for the protection of [the right to life]".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasised that "the abolition of capital punishment is most desirable in order fully to respect the right to life"<sup>11</sup>

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<sup>6</sup> European Court of Human Rights, Soering case (1/1989/161/217), judgment, Strasbourg, 7 July 1989, para. 104. Article 3 of the European Convention on Human Rights prohibits torture and inhuman or degrading treatment or punishment.

<sup>7</sup> Concluding observations of the Committee against Torture: Armenia, UN document A/56/44, 17 November 2000, para. 39(g). Article 16 of the Convention requires states parties to undertake to prevent cruel, inhuman or degrading treatment or punishment in their territories.

<sup>8</sup> General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para. 6. (See Appendix 3 for extracts)

<sup>9</sup> Concluding observations of the Human Rights Committee: Equatorial Guinea, UN document CCPR/CO/79/GNQ, 30 July 2004, para. 4.

<sup>10</sup> Conclusions and recommendations of the Committee against Torture: Estonia, UN document CAT/C/CR/29/5, 23 December 2002, para. 4(b); Concluding observations of the Committee against Torture: Armenia, UN document A/56/44, 17 November 2000, para. 35(b).

<sup>11</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document Amnesty International January 2006 *AI Index: ACT 50/001/2006*

and has urged governments of countries where the death penalty is still enforced "to deploy every effort that could lead to its abolition."<sup>12</sup>

In resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe called "upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states".

The Guidelines to EU [European Union] Policy towards Third Countries on the Death Penalty, adopted by the Council of the European Union in 1998, state that "abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights". They establish that it is an EU objective "to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states".

Under the Rome Statute of the International Criminal Court, the death penalty is excluded from the punishments which that Court is authorized to impose, even though the Court has jurisdiction over extremely grave crimes: crimes against humanity, genocide and war crimes. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes.<sup>13</sup>

## **International Treaties Favouring Abolition**

The community of states has adopted four international treaties providing for the abolition of the death penalty. One is of worldwide scope; the other three are regional.

The *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

*Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] concerning the abolition of the death penalty*, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war".

*Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] concerning the abolition of the death penalty in all circumstances*, adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war.

The *Protocol to the American Convention on Human Rights to Abolish the Death Penalty*, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol.

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E/CN.4/1997/60, 24 December 1996, para.79.

<sup>12</sup> *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General*, UN document A/51/457, 7 October 1996, para.145.

<sup>13</sup> The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established under UN Security Council resolutions 825 of 25 May 1993 and 955 of 8 November 1994, respectively.

The UN General Assembly has strongly appealed to all states that have not yet done so to become parties to the International Covenant on Civil and Political Rights and "to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil and Political Rights".<sup>14</sup>

The UN Human Rights Committee has called on states parties to the International Covenant on Civil and Political Rights to "consider... acceding to the Second Optional Protocol to the Covenant", including states that have not yet abolished the death penalty.<sup>15</sup> The Committee has commended countries for having acceded to the Second Optional Protocol.<sup>16</sup>

### **Moratoria and Commutations**

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions".

The UN Human Rights Committee has welcomed moratoria on executions<sup>17</sup> and has called for such moratoria to be extended indefinitely and the sentences of those people currently on death row to be commuted.<sup>18</sup>

In resolution 1097 (1996), adopted on 28 June 1996, the Parliamentary Assembly of the Council of Europe stated that "the willingness... to introduce a moratorium [on executions] upon accession [to the Council of Europe] has become a prerequisite for membership of the Council of Europe on the part of the Assembly."

The UN Human Rights Committee has called for the commutation of the death sentences of all prisoners whose final appeals have been exhausted in a country where no executions had been carried out for more than 10 years.<sup>19</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon "States that no longer apply the death penalty but maintain it in their legislation to abolish it".

### **Reductions in Scope**

In resolution 32/61, adopted on 8 December 1977, the UN General Assembly stated: "...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment..."

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<sup>14</sup> Resolution 58/165 of 22 December 2003, adopted without a vote. Also see UN Committee on Human Rights resolution 2004/69 of 21 April 2004.

<sup>15</sup> Concluding observations of the Human Rights Committee: Kenya, UN document CCPR/CO/83/KEN, 29 April 2005, para. 13.

<sup>16</sup> Concluding observations of the Human Rights Committee: Serbia and Montenegro, UN document CCPR/CO/81/SEMO, 12 August 2004, para. 6.

<sup>17</sup> Concluding observations of the Human Rights Committee: Mali, UN document CCPR/CO/77/MLI, 16 April 2003, para. 5.

<sup>18</sup> Concluding observations of the Human Rights Committee: Kyrgyzstan, UN document CCPR/CO/69/KGZ, 24 July 2000, para. 8.

<sup>19</sup> Concluding observations of the Human Rights Committee: Kenya, UN document CCPR/CO/83/KEN, 29 April 2005, para. 13.

The UN Human Rights Committee has called on states to reduce the number of crimes punishable by death, restricting them to the "most serious crimes" in accordance with Article 6(2) of the International Covenant on Civil and Political Rights, with a view to abolishing the death penalty.<sup>20</sup>

### **Reintroduction of Capital Punishment and the Extension of Scope**

Article 4(2) of the American Convention on Human Rights states that the application of the death penalty "shall not be extended to crimes to which it does not presently apply". Article 4(3) states: "The death penalty shall not be reestablished in states that have abolished it."

The UN Human Rights Committee has stated that "Extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the International Covenant on Civil and Political Rights."<sup>21</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "not to extend its application to crimes to which it does not at present apply".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: "The scope of application of the death penalty should never be extended..."<sup>22</sup> The Special Rapporteur has deplored reinstatements and expansions of the scope of the death penalty and has stated that these developments "are in clear violation of the international trend towards abolishing the death penalty."<sup>23</sup>

### **Resumption of Executions and Increase in Use**

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon "States that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend such executions".

The UN Human Rights Committee has stated that it was "deeply concerned at the de facto reinstatement of death sentences and executions" in a state party to the International Covenant on Civil and Political Rights.<sup>24</sup>

The UN High Commissioner for Human Rights has stated that the increasing use of the death penalty in a number of states "is a matter of serious concern and runs counter to the international community's expressed desire for the abolition of the death penalty."<sup>25</sup>

### **Restrictions and Safeguards**

Article 6 of the International Covenant on Civil and Political Rights sets out restrictions and safeguards on the use of the death penalty in countries which have not abolished it. Article 6(2) states that sentence of death must not be imposed "contrary to the provisions of the present Covenant".

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<sup>20</sup> Concluding observations of the Human Rights Committee: Viet Nam, UN document CCPR/CO/75/VNM, 26 July 2002, para. 7.

<sup>21</sup> Concluding observations of the Human Rights Committee: Peru, UN document CCPR/C/79/Add.67, 25 July 1996, para.15.

<sup>22</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1994/7, 7 December 1993, para.677.

<sup>23</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1996/4, 25 January 1996, para.544.

<sup>24</sup> Concluding observations of the Human Rights Committee: Syrian Arab Republic, UN document CCPR/CO/84/SYR, para. 7.

<sup>25</sup> Statement by the High Commissioner for Human Rights, 4 February 1998, UN press release.

Similar restrictions and safeguards are set out in the American Convention on Human Rights (Article 4).

### **Retroactive use: Offender to Benefit from Lighter Punishment if Death Penalty is Abolished**

Article 6(2) of the International Covenant on Civil and Political Rights states that a death sentence may be imposed only "in accordance with the law in force at the time of the commission of the crime".<sup>26</sup>

Article 15(1) of the International Covenant on Civil and Political Rights states that a heavier penalty shall not be imposed than the one that was applicable at the time when the criminal offence was committed, and that "[i]f, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".<sup>27</sup>

### **Restriction to the "Most Serious Crimes"**

Article 6(2) of the International Covenant on Civil and Political Rights states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."

In a general comment on Article 6 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee has stated: "The Committee is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>28</sup>

Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences."

The UN Human Rights Committee has stated that the following offences cannot be characterized as the "most serious crimes" under Article 6(2) of the International Covenant on Civil and Political Rights and that the imposition of the death penalty for these offences therefore violates that article: economic offences,<sup>29</sup> including embezzlement by officials;<sup>30</sup> political offences,<sup>31</sup>

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<sup>26</sup> See also American Convention on Human Rights, Article 9; European Convention on Human Rights, Article 7(1).

<sup>27</sup> See also American Convention on Human Rights, Article 9.

<sup>28</sup> General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para. 7.

<sup>29</sup> Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, UN document CCPR/C/79/Add.101, 6 November 1998, para. 8. The Committee has also expressed concern about the availability of the death penalty for drug-related crimes (Concluding observations of the Human Rights Committee: Kuwait, UN document CCPR/CO/69/KWT, 27 July 2000, para. 13).

<sup>30</sup> Concluding observations of the Human Rights Committee: Sudan, UN document CCPR/C/79/Add.85, 19 November 1997, para. 8.

<sup>31</sup> Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, UN document CCPR/C/79/Add.101, 6 November 1998, para. 8. In relation to the restriction of the death penalty to the "most serious crimes", the Committee has, in particular, expressed concern about "very vague categories of offences relating to internal and external security" (Concluding observations of the Human Rights Committee: Kuwait, UN document CCPR/CO/69/KWT, 27 July 2000, para. 13); about vaguely worded offences of opposition to order and national security violations (Concluding observations of the Human Rights Committee: Viet Nam, *Amnesty International January 2006* *AI Index: ACT 50/001/2006*

robbery,<sup>32</sup> abduction not resulting in death,<sup>33</sup> and illicit sex, committing a third homosexual act, and apostasy.<sup>34</sup>

Article 4(4) of the American Convention on Human Rights states: "In no case shall capital punishment be inflicted for political offences or related common crimes."

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure... that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the death penalty should be eliminated for crimes such as economic crimes and drug-related offences".<sup>35</sup> The Special Rapporteur has also stated that the restrictions set out in Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts usually described as >crimes against the State= or >disloyalty=" and that "Similarly, this principle would exclude actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation@".<sup>36</sup>

### **People Against Whom the Death Penalty must not be used**

Article 6(5) of the International Covenant on Civil and Political Rights states: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

The UN Human Rights Committee has referred to the prohibition of executing children or pregnant women under Article 6 of the International Covenant on Civil and Political Rights as a rule of customary international law, which may not be the subject of a reservation made by a state which becomes a party to that Covenant.<sup>37</sup>

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UN document CCPR/CO/75/VNM, 26 July 2002, para. 7); and about "political offences... couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria" (Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea, UN document CCPR/CO/72/PRK, 27 August 2001, para. 13).

<sup>32</sup> The Human Rights Committee has referred to "crimes... such as robbery with violence or attempted robbery with violence, which do not qualify as 'most serious crimes' within the meaning of article 6, paragraph 2, of the Covenant" (Concluding observations of the Human Rights Committee: Kenya, UN document CCPR/CO/83/KEN, 29 April 2005, para. 13).

<sup>33</sup> Concluding observations of the Human Rights Committee: Guatemala, UN document CCPR/CO/72/GTM, 27 August 2001, para. 17.

<sup>34</sup> Concluding observations of the Human Rights Committee: Sudan, UN document CCPR/C/79/Add.85, 19 November 1997, para. 8.

<sup>35</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1997/60, 24 December 1996, para.91.

<sup>36</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/1999/39, 6 January 1999, para.63.

<sup>37</sup> General Comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, adopted on 4 November 1994, para. 8.

Article 37(a) of the UN Convention on the Rights of the Child states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

Article 4(5) of the American Convention on Human Rights states: "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women."

Article 5(3) of the African Charter on the Rights and Welfare of the Child states: "The death sentence shall not be pronounced for crimes committed by children". Article 2 of this treaty specifies that the term "child" refers to anyone under the age of 18.

Safeguard 3 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death penalty be carried out on pregnant women, or on new mothers, or on persons who have become insane."

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". The Economic and Social Council also recommended that member states establish "a maximum age beyond which a person may not be sentenced to death or executed".

In resolution 2000/17, adopted on 17 August 2000, the UN Sub-Commission on the Promotion and Protection of Human Rights affirmed that "the imposition of the death penalty on those aged under 18 at the time of the commission of the offence is contrary to customary international law".<sup>38</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to exclude pregnant women and mothers with dependent infants from capital punishment" and "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "international law prohibits the capital punishment of mentally retarded or insane persons, pregnant women and mothers of young children"<sup>39</sup> and that governments that continue to enforce capital punishment legislation "with respect to minors and the mentally ill are particularly called upon to bring their domestic legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards."<sup>40</sup> The Special Rapporteur has also expressed the hope that the non-application of capital punishment would be extended to elderly persons, pending a total abolition of the death penalty.<sup>41</sup>

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<sup>38</sup> For further discussion of this issue, see Amnesty International, *The exclusion of child offenders from the death penalty under general international law*, AI Index: ACT 50/004/2003, July 2003.

<sup>39</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1994/7, 7 December 1993, para.686.

<sup>40</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1998/68, 23 December 1997, para.117.

<sup>41</sup> *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General*, UN document A/55/288, 11 August 2000, para. 32.

Commenting on the abolition of the death penalty for women in a state party to the International Covenant on Civil and Political Rights, the UN Human Rights Committee has called upon the state to "ensure equality by abolishing the death penalty for all persons".<sup>42</sup>

### **Mandatory Death Penalties**

The UN Human Rights Committee has stated that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence".<sup>43</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the death penalty should under no circumstances be mandatory by law, regardless of the charges involved"<sup>44</sup> and that "[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".<sup>45</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure... that the death penalty is not imposed... as a mandatory sentence".

### **Consular Assistance**

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to comply fully with their international obligations, in particular with those under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgements".

### **Safeguards for Fair Trials**

Article 14 of the International Covenant on Civil and Political Rights sets out standards for fair trial. These include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her; the right to have adequate time and facilities for the preparation of a defence; the right to communicate with counsel of the defendant's choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if the defendant cannot

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<sup>42</sup> Concluding observations of the Human Rights Committee: Kyrgyzstan, UN document CCPR/CO/69/KGZ, 24 July 2000, para. 8.

<sup>43</sup> *Pagdayawon Rolando v. Philippines*, Views of the Human Rights Committee... Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2. Article 6(1) of the International Covenant on Civil and Political Rights proclaims the right to life and forbids the arbitrary deprivation of life.

<sup>44</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/1999/39, 6 January 1999, para. 63.

<sup>45</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2005/7, 22 December 2004, para. 80.

understand or speak the language used in court; and the right not to be compelled to testify against him or herself or to confess guilt. The American Convention on Human Rights (Article 8), the African Charter on Human and People's Rights (Article 7) and other international instruments also set out standards for fair trial.

Safeguard 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states strengthen further the rights of those facing the death penalty by "(a)ffording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases".

In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council encouraged UN member states in which the death penalty has not been abolished to ensure that defendants facing a possible death sentence are given all guarantees to ensure a fair trial, bearing in mind the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, the UN Guidelines on the Role of Prosecutors, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners.

In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council encouraged UN member states in which the death penalty has not been abolished "to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court".

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty to impose the death penalty "only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial", and "[t]o ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights".

The UN Human Rights Committee has stated that "the imposition of a sentence of death upon conclusion of a trial in which the provisions of the [International] Covenant [on Civil and Political Rights] have not been respected constitutes a violation of article 6 of the Covenant".<sup>46</sup> The Committee has found violations of the right to life in numerous cases in which death sentences were imposed after trials in which the fair trial standards set out in Article 14 of the International Covenant on Civil and Political Rights were not respected. Features of these cases cited by the Human Rights Committee have included inadequate legal representation,<sup>47</sup> undue delay in bringing a case to trial,<sup>48</sup> trial before a

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<sup>46</sup> *Maryam Khalilova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 973/2001, UN document CCPR/C/83/D/973/2001, 13 April 2005, para. 7.6.

<sup>47</sup> *Barno Saidova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 964/2001, UN document CCPR/C/81/D/964/2001, 20 August 2004, paras. 6.8, 6.9, referring i.a. to the failure to inform the  
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military court,<sup>49</sup> allegations of jury tampering,<sup>50</sup> refusal to allow the defendant to call witnesses on his behalf,<sup>51</sup> and the defendant being compelled to confess guilt.<sup>52</sup>

The UN Human Rights Committee has stated: "The assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty."<sup>53</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the execution of the death sentence passed after a trial in which basic fair trial standards, as provided for in article 14 of the International Covenant on Civil and Political Rights, were not respected, constitutes a violation of the right to life.<sup>54</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that fair trial safeguards in death penalty cases must be implemented in all cases without exemption or discrimination.<sup>55</sup> The Special Rapporteur has reiterated "that proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be

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defendant upon arrest of his right to be represented by a lawyer, the fact that he was not represented by counsel of his choice and the fact that his lawyer was frequently absent during the trial; *Ramil Rayos v. Philippines*, Views of the Human Rights Committee... Communication No. 1167/2003, UN document CCPR/C/81/D/1167/2003, 7 September 2004, para. 7.3, referring to the lack of adequate time for the defendant to prepare his defence and communicate with counsel; *Karina Arutyunyan v. Uzbekistan*, Views of the Human Rights Committee... Communication No. 917/2000, 13 May 2004, paras. 6.3, 6.4, referring to the defendant's inability to communicate with his counsel in private; *Daphne Smartt v. Guyana*, Views of the Human Rights Committee... Communication No. 867/1999, UN document CCPR/C/81/D/867/1999, 19 August 2004, paras. 6.3, 6.4, referring to the lack of legal representation during pre-trial hearings.

<sup>48</sup> *Oral Hendricks v. Guyana*, Views of the Human Rights Committee... Communication No. 838/1998, UN document CCPR/C/76/D/838/1998, 20 December 2002, paras. 6.3, 7.

<sup>49</sup> *Safarmo Kurbanova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 1096/2002, UN document CCPR/C/79/D/1096/2002, 12 November 2003, paras. 7.6, 7.7. The Committee noted an "absence of any information by the State party to justify a trial before a military court". The defendant had been charged with murder.

<sup>50</sup> *Rookmin Mulai v. Guyana*, Views of the Human Rights Committee... Communication No. 811/1998, UN document CCPR/C/81/D/811/1998, 18 August 2004, paras. 6.1-6.3.

<sup>51</sup> *Saodat Khomidova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 1117/2002, UN document CCPR/C/81/D/1117/2002, 25 August 2004, paras. 6.5, 7.

<sup>52</sup> *Saodat Khomidova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 1117/2002, UN document CCPR/C/81/D/1117/2002, 25 August 2004, paras. 6.5, 7. In court, the defendant's lawyer had asked to have the defendant examined by a doctor to evaluate his injuries sustained as a result of torture to which he had been subjected to make him confess guilt, but "[t]he judge denied his request without providing any reason". The Committee also found a violation of Article 14(2) of the International Covenant on Civil and Political Rights in a death penalty case where the presumption of innocence was not respected (*Irina Arutyuniantz v. Uzbekistan*, Views of the Human Rights Committee... Communication No. 971/2001, UN document CCPR/C/83/D/971/2001, 13 April 2005, para. 6.6).

<sup>53</sup> Concluding observations of the Human Rights Committee: Trinidad and Tobago, UN document CCPR/CO/70/TTO, 3 November 2000, para. 7.

<sup>54</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2001/9, 11 January 2001, para. 86.

<sup>55</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2001/9, 11 January 2001, para. 86.

presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account."<sup>56</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: "Because it is impossible to ensure that wrongful executions do not occur, countries applying the death penalty should undertake regular, independent, periodic reviews of the extent to which international standards have been complied with and to consider any evidence of wrongful execution."<sup>57</sup>

### **Right to Appeal to a Higher Court**

Article 14(5) of the International Covenant on Civil and Political Rights states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."<sup>58</sup>

Safeguard 6 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory."

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "[t]o ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights".

The UN Human Rights Committee has stated that the imposition of death sentences without the possibility of appeal is incompatible with the International Covenant on Civil and Political Rights.<sup>59</sup> The Committee has found violations of the right to life in death penalty cases in which a convicted prisoner did not have the right to appeal to a higher court.<sup>60</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated with reference to capital cases that "proceedings must guarantee the right of review of both actual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance."<sup>61</sup>

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<sup>56</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1997/60, 24 December 1996, para.81.

<sup>57</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2005/7, 22 December 2004, para. 88.

<sup>58</sup> See also American Convention on Human Rights, Article 8(2)(h); Protocol No. 7 to the European Convention on Human Rights, Article 2.

<sup>59</sup> Concluding observations of the Human Rights Committee: Uganda, UN document CCPR/CO/80/UGA, 4 May 2004, para. 13.

<sup>60</sup> *Maryam Khalilova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 973/2001, UN document CCPR/C/83/D/978/2001, 13 April 2005, para. 7.5, 7.6

<sup>61</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1997/60, 24 December 1996, para.82

## Right to Seek Clemency

Article 6(4) of the International Covenant on Civil and Political Rights states: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."<sup>62</sup>

Safeguard 7 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment."

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states provide for "mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence".

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure... the right to seek pardon or commutation of sentence".

The UN Human Rights Committee has stated that the imposition of death sentences without the possibility to seek pardon or commutation of the sentence is incompatible with the International Covenant on Civil and Political Rights.<sup>63</sup> The Committee has also stated with reference to one country that "[t]he preponderant role of the victim's family in whether or not the [death] penalty is carried out on the basis of financial compensation" is "contrary to articles 6, 14 and 26 of the Covenant".<sup>64</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "There can be no exception to the defendant's right to seek pardon, clemency or commutation of the sentence"<sup>65</sup> and that "Appeals for clemency should provide effective opportunities to safeguard lives".<sup>66</sup>

## Treatment of Prisoners Under Sentence of Death

The UN Human Rights Committee has expressed concern about poor living conditions of death row inmates, including undue restrictions on visits and correspondence,<sup>67</sup> small cell size and lack of proper food and exercise,<sup>68</sup> extreme temperatures, lack of ventilation, cells infested with insects, and inadequate time spent outside cells,<sup>69</sup> and has called on states to improve these conditions in line with the requirements of the provisions of the International Covenant on Civil and Political Rights,

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<sup>62</sup> See also American Convention on Human Rights, Article 4(6).

<sup>63</sup> Concluding observations of the Human Rights Committee: Uganda, UN document CCPR/CO/80/UGA, 4 May 2004, para. 13.

<sup>64</sup> Concluding observations of the Human Rights Committee: Yemen, UN document CCPR/CO/75/YEM, 26 July 2002, para. 15.

<sup>65</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2001/9, 11 January 2001, para.88

<sup>66</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/1998/68, 23 December 1997, para.118.

<sup>67</sup> Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

<sup>68</sup> Concluding observations of the Human Rights Committee: Uzbekistan, UN document CCPR/CO/71/UZB, 26 April 2001, para. 10.

<sup>69</sup> *Safarova v. Tajikistan*, Views of the Human Rights Committee... Communication No. 1096/2002, UN document CCPR/C/79/D/1096/2002, 12 November 2003, para. 7.8.

including its Article 7 (prohibition of torture and cruel, inhuman or degrading treatment) and 10(1) (respect for the human dignity of persons deprived of their liberty).

In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council urged UN member states in which the death penalty may be carried out "to effectively apply the [UN] Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering".

### **Adequate Time Between Sentence and Execution**

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council called on UN member states in which the death penalty may be carried out "to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended "that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency."<sup>70</sup> The Special Rapporteur has stated that "Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights."<sup>71</sup>

### **Execution not to be carried out while Appeal or Petition for Clemency is Pending**

Safeguard 8 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence."<sup>72</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "not to execute any person as long as any related legal procedure, at the international or at the national level, is pending".

The UN Human Rights Committee has stated that the carrying out of the execution of a prisoner when the execution of the sentence was still under challenge in the courts of a state party to the International Covenant on Civil and Political Rights constituted a violation of Article 6(1) and 6(2) of that Covenant.<sup>73</sup>

Where prisoners were executed while their cases were under consideration by the UN Human Rights Committee and after that Committee had requested interim measures of protection so that their executions would be stayed pending consideration of their cases, the Human Rights Committee has

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<sup>70</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1996/4, 25 January 1996, para.556. See also Third Geneva Convention of 1949, Article 101; Fourth Geneva Convention of 1949, Article 75.

<sup>71</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/1998/68, 23 December 1997, para.118.

<sup>72</sup> This provision should be understood to apply not only to appeals to national courts, but to review by international bodies such as the UN Human Rights Committee, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission of Human Rights and the European Court of Human Rights. See also American Convention on Human Rights, Article 4(6).

<sup>73</sup> *Ashby v. Trinidad and Tobago*, Views of the Human Rights Committee... Communication No. 580/1994, UN document CCPR/C/74/D/580/1994, para. 10.8.

stated that "[d]isregard of the Committee's requests for interim measures constitutes a grave breach of the State party's obligations under the [International] Covenant [on Civil and Political Rights] and the [first] Optional Protocol [to that Covenant]".<sup>74</sup>

### **Officials Responsible for Execution to be Informed of Status of Case**

In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council called on UN member states in which the death penalty may be carried out "to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "officials who are responsible for carrying out an execution should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and they should be instructed not to carry out an execution while any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence is still pending".<sup>75</sup>

### **Informing Families and Lawyers of Executions**

The UN Human Rights Committee has stated that "the failure to notify the family and lawyers of the prisoners on death row of their execution" in a state party to the International Covenant on Civil and Political Rights is "incompatible with the Covenant".<sup>76</sup>

### **Method of Execution**

The UN Human Rights Committee has called for the abolition in law of the penalty of death by stoning.<sup>77</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately".

### **Public Execution**

The UN Human Rights Committee has stated: "Public executions are... incompatible with human dignity."<sup>78</sup> The Committee has called on states to refrain from public executions.<sup>79</sup>

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<sup>74</sup> Concluding observations of the Human Rights Committee: Uzbekistan, UN document CCPR/CO/83/UZB, 26 April 2005, para. 6; Concluding observations of the Human Rights Committee: Tajikistan, UN document CCPR/CO/84/TJK, 18 July 2005, para. 8. See also *Ashby v. Trinidad and Tobago*, Views of the Human Rights Committee... Communication No. 580/1994, UN document CCPR/C/74/D/580/1994, para. 10.10.

<sup>75</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document E/CN.4/1996/4, 25 January 1996, para.556.

<sup>76</sup> Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

<sup>77</sup> Concluding observations of the Human Rights Committee: Yemen, UN document CCPR/CO/84/YEM, 9 August 2005, para. 15.

<sup>78</sup> Concluding observations of the Human Rights Committee: Nigeria, UN document CCPR/C/79/Add.65, 24 July 1996, para.16.

<sup>79</sup> Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea, UN document CCPR/CO/72/PRK, 27 August 2001, para. 13.

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty “to ensure that, where capital punishment occurs, it... shall not be carried out in public or in any other degrading manner”.

### **Extradition**

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights requested “States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that the death penalty will not be carried out” and called upon “States to provide such effective assurances if requested to do so, and to respect them”.

### **Transparency**

In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council urged UN 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”.

The UN Human Rights Committee has called on states parties to the International Covenant on Civil and Political Rights to provide information on the use of the death penalty including the number of death sentences imposed over the past 10 years, the types of offence for which the death penalty has been imposed, the grounds for the sentences imposed, the number of executions carried out, the manner of execution and the identity of the prisoners executed.<sup>80</sup>

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty “to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution”.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: “Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.”<sup>81</sup>

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<sup>80</sup> Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, UN document CCPR/C/79/Add.101, 6 November 1998, para. 8; Concluding observations of the Human Rights Committee: Syrian Arab Republic, UN document CCPR/CO/71/SYR, 24 April 2001, para. 8.

<sup>81</sup> *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, UN document E/CN.4/2005/7, 22 December 2004, para. 87.

**Appendix 1. Restrictions and safeguards on the death penalty**

<b>Restriction or safeguard</b>	<b>ICCPR</b>	<b>ECOS. Safeg.</b>	<b>ACHR</b>	<b>IHL</b>	<b>ECOS. 1989/64</b>	<b>HRC</b>	<b>CHR 2005/59</b>
No extension of scope			X			X	X
No reintroduction			X				
No retroactive use	X	X	X	GC IV			
Restriction to the most serious crimes	X	X	X	GC IV		X	X
No use against people under 18 years old at the time of the offence	X	X	X	GC IV AP I, II		X	X
No use against elderly people			X		X		
No execution of pregnant women	X	X	X	AP I, II		X	X
No execution of the insane		X					X
No use against mentally retarded					X		X
No mandatory death penalties						X	X
Right to a fair trial	X	X	X	GC, Art. 3	X	X	X
Right of judicial appeal or review	X	X	X	GC, Art. 3	X	X	X
Right to petition for clemency	X	X	X	GC IV	X	X	X
Delay between death sentence and execution				GC III, IV			

<b>Restriction or safeguard</b>	<b>ICCPR</b>	<b>ECOS. Safeg.</b>	<b>ACHR</b>	<b>IHL</b>	<b>ECOS. 1989/64</b>	<b>HRC</b>	<b>CHR 2005/59</b>
No execution pending appeal or clemency procedure		X	X			X	X

### **Abbreviations**

**ICCPR** = International Covenant on Civil and Political Rights

**ECOS. Safeg.** = Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council resolution in 1984

**ACHR** = American Convention on Human Rights

**IHL** = international humanitarian law

**GC III, GC IV** = Geneva Conventions III and IV of 1949

**GC Art. 3** = Geneva Conventions of 1949, common Article 3

**AP I, AP II** = Additional Protocols I and II of 1977 to the Geneva Conventions of 1949

**ECOS. 1989/64** = UN Economic and Social Council resolution 1989/64 of 24 May 1989

**CHR 2005/59** = UN Commission on Human Rights resolution 2005/59 of 20 April 2005

## Appendix 2. Chart of international instruments

The following chart indicates whether the instruments cited in this document are treaties, binding on states parties, and whether they are worldwide or regional in scope.

Instrument	Binding treaty	Worldwide	Regional
Universal Declaration of Human Rights		x	
International Covenant on Civil and Political Rights (ICCPR)	x	x	
Second Optional Protocol to ICCPR	x	x	
Convention on the Rights of the Child	x	x	
African Charter on Human and Peoples= Rights	x		x
African Charter on the Rights and Welfare of the Child	x		x
American Convention on Human Rights (ACHR)	x		x
Protocol to ACHR to Abolish the Death Penalty	x		x
Protocols 6 and 13 to European Convention on Human Rights	x		x
Geneva Conventions of 1949 and Additional Protocols of 1977 (see below)	x	x	
1984 ECOSOC Safeguards		x	
UN resolutions, including resolutions adopted by ECOSOC and the Commission on Human Rights		x	
Resolutions adopted by the Parliamentary Assembly of Council of Europe			x

The safeguards set forth in the **Geneva Conventions of 1949** apply to people defined in these instruments as protected persons. Protected persons under the Third Geneva Convention are prisoners of war; those under the Fourth Geneva Convention are civilians. The safeguards in Article 3 common to the four Geneva Conventions (Acommon Article 3") apply in non-international armed conflicts, while the safeguards provided in other articles of the Conventions apply in international armed conflicts. The safeguards in **Additional Protocol I of 1977** apply to

persons in the power of a party to an international armed conflict. The safeguards in **Additional Protocol II** apply to persons affected by non-international armed conflicts.

## **Appendix 3: Extracts from international instruments**

### **Universal Declaration of Human Rights (extracts)**

#### *Article 3*

Everyone has the right to life, liberty and security of person.

#### *Article 5*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **International Covenant on Civil and Political Rights (extract)**

#### *Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### **American Convention on Human Rights (extract)**

#### *Article 4. Right to Life*

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

### **African Charter on Human and Peoples= Rights (extracts)**

#### *Article 4*

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### *Article 7*

1. Every individual shall have the right to have his cause heard. This comprises:
  - (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) the right to defence, including the right to be defended by counsel of his choice;
  - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

## **Convention on the Rights of the Child (extract)**

(Adopted by the UN General Assembly in resolution 44/25 of 20 November 1989)

### *Article 37*

States Parties shall ensure that:

(a) ... Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; ...

## **General comment on Article 6 of the International Covenant on Civil and Political Rights, adopted at its 378th meeting (16th session) on 27 July 1982 by the UN Human Rights Committee (extracts)**

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). ... It is a right which should not be interpreted narrowly.

...

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

**Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984**

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

**UN Economic and Social Council resolution 1989/64, adopted on 24 May 1989**

*Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*

*The Economic and Social Council,*

*Recalling* its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing the death penalty,

*Recalling also* resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

*Recalling further* section X of Council resolution 1986/10 of 21 May 1986, in which the Council requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

*Taking note of* the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,

*Noting with satisfaction* that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

*Noting with appreciation* the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,

*Alarmed* at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

*Aware* that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

*Convinced* that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

*Acknowledging* the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. *Recommends* that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence:

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. *Invites* Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. *Also invites* Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. *Invites* Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50;

5. *Urges* Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. *Recommends* that the report of the Secretary-General on the question of capital punishment, to be submitted to the Economic and Social Council in 1990, in pursuance of Council resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. *Requests* the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter prepared pursuant to section X of Economic and Social Council resolution 1986/10 and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

## **UN Economic and Social Council resolution 1996/15, adopted on 23 July 1996**

*Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*

*The Economic and Social Council,*

*Recalling* General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 and Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1990/51 of 24 July 1990 and 1995/57 of 28 July 1995,

*Recalling also* article 6 of the International Covenant on Civil and Political Rights,

*Recalling further* the safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to its resolution 1984/50 of 25 May 1984, and its resolution 1989/64 of 24 May 1989, on the implementation of the safeguards,

*Taking note* of the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,

*Recalling* the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to its resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, and taking note of the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the death penalty contained in his report to the Commission on Human Rights at its fifty-second session,

*Taking note* of Security Council resolution 827 (1993) of 25 May 1993, in which the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and to adopt the Statute of the International Tribunal annexed to the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993),

*Taking note also* of Security Council resolution 955 (1994) of 8 November 1994, in which the Security Council decided to establish the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and to adopt the Statute of the International Tribunal for Rwanda, annexed to that resolution,

1. *Notes that*, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries abolished the death penalty and others followed a policy of reducing the number of capital offences, declaring that they had not sentenced any offender to that penalty, while still others retained it and a few reintroduced it;

2. *Calls upon* Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it is stated that capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;
3. *Encourages* Member States in which the death penalty has not been abolished to ensure that each defendant facing a possible death sentence is given all guarantees for a fair trial, as reflected in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners;
4. *Also encourages* Member States in which the death penalty has not been abolished to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;
5. *Calls upon* Member States in which the death penalty may be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;
6. *Also calls upon* Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;
7. *Urges* Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

## **UN General Assembly resolution 32/61 of 8 December 1977 (extract)**

### *Capital punishment*

#### *The General Assembly,*

*Having regard* to article 3 of the Universal Declaration of Human Rights, which affirms everyone's right to life, and article 6 of the International Covenant on Civil and Political Rights, which also affirms the right to life as inherent to every human being, . . .

1. *Reaffirms* that, as established by the General Assembly in resolution 2857 (XXVI) and by the Economic and Social Council in resolutions 1574 (L), 1745 (LIV) and 1930 (LVIII), the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment. . .

## **UN Commission on Human Rights resolution 2005/59, adopted on 20 April 2005**

### *Question of the Death Penalty*

#### *The Commission on Human Rights,*

*Recalling* article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, convinced that the abolition of the death penalty is essential for the protection of this right and recalling article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

*Taking note* that the Second Optional Protocol to the International Covenant on Civil and Political Rights provides that no one within the jurisdiction of a State party shall be executed and that each State party shall take all necessary measures to abolish the death penalty within its jurisdiction,

*Recalling* the entry into force, on 1 July 2003, of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances,

*Recalling also* its previous resolutions in which it expressed its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

*Welcoming* the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court are authorized to impose,

*Welcoming also* the abolition of the death penalty in some States since the last session of the Commission and decisions taken in other States that restrict the use of the death penalty, inter alia through excluding certain categories of persons or offences from its application,

*Commending* States that have recently acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights,

*Welcoming* the fact that many countries that still retain the death penalty in their penal legislation are applying a moratorium on executions, and also welcoming the regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

*Reaffirming* the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of

25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

*Reaffirming also* resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence,

*Deeply concerned* about the recent lifting of moratoriums on executions in several countries,

*Noting* the consideration of issues relating to the question of the death penalty by the Human Rights Committee,

*Welcoming* the efforts of various sectors of civil society at the national and international levels to achieve the abolition of the death penalty,

1. *Expresses its concern* at the continuing use of the death penalty around the world, alarmed in particular at its application after trials that do not conform to international standards of fairness and that several countries impose the death penalty in disregard of the limitations set out in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and of the safeguards guaranteeing protection of the rights of those facing the death penalty;

2. *Condemns* the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices;

3. *Condemns also* cases in which women are subjected to the death penalty on the basis of gender-discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities;

4. *Welcomes* the seventh quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2005/3), submitted in accordance with Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1995/57 of 28 July 1995 and Council decision 2004/242 of 21 July 2004, which concludes that there is an encouraging trend towards the abolition and restriction of the use of the death penalty in most countries, but that much remains to be done in the implementation of the aforementioned safeguards in those countries that retain it;

5. *Calls upon* all States that still maintain the death penalty:

(a) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;

6. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;
7. *Urges* all States that still maintain the death penalty:
  - (a) Not to impose it for crimes committed by persons below 18 years of age;
  - (b) To exclude pregnant women and mothers with dependent infants from capital punishment;
  - (c) Not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person;
  - (d) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;
  - (e) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;
  - (f) To ensure also that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence;
  - (g) To withdraw and/or not to enter any new reservations under article 6 of the Covenant that may be contrary to the object and purpose of the Covenant, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;
  - (h) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgements;
  - (i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;
  - (j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;
8. *Calls upon* States that no longer apply the death penalty but maintain it in their legislation to abolish it;
9. *Calls upon* States that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend such executions;
10. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective

assurances from relevant authorities of the requesting State that the death penalty will not be carried out, and calls upon States to provide such effective assurances if requested to do so, and to respect them;

11. *Requests* the Secretary-General to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities;

12. *Decides* to continue consideration of the matter at its sixty-second session under the same agenda item.

## **Geneva Conventions and Additional Protocols (extracts)**

### **Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention)**

#### *Article 100*

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

#### *Article 101*

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

### **Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention)**

*Article 68*

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

*Article 75*

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

**Article 3 common to the four Geneva Conventions of 12 August 1949***Common Article 3*

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

. . . (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

#### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)**

##### *Article 76(3)*

To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

##### *Article 77(5)*

The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

#### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)**

##### *Article 6(4)*

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.