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Social and human rights questions: crime prevention and criminal justice

Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty**Report of the Secretary-General***Summary*

The Economic and Social Council, by its resolution 1745 (LIV) of 16 May 1973, invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. The Council, by its resolution 1995/57 of 28 July 1995, recommended that the quinquennial reports of the Secretary-General should continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. By the same resolution, the Council requested the Secretary-General, in preparing the quinquennial report, to draw on all available data, including current criminological research. The present eighth quinquennial report reviews the use of and trends in capital punishment, including the implementation of the safeguards during the period 2004-2008.

In accordance with Economic and Social Council resolutions 1745 (LIV) and 1990/51 of 24 July 1990 and Council decision 2005/247 of 22 July 2005, this report is submitted to the Council at its substantive session of 2010, and will also be before the Commission on Crime Prevention and Criminal Justice at its nineteenth session, and the Human Rights Council, in accordance with its decision 2/102.

The report confirms a very marked trend towards abolition and restriction of the use of capital punishment in most countries. The rate at which States that retained

* E/2010/100.



the death penalty at the start of the quinquennium have abolished its use either in law or in practice is comparable with that of previous reporting periods, and may even be accelerating slightly. Moreover, countries that retain the death penalty are, with rare exceptions, significantly reducing its use in terms of numbers of persons executed and the crimes for which it may be imposed. Nevertheless, where capital punishment remains in force, there are serious problems with regard to the respect of international norms and standards, notably in the limitation of the death penalty to the most serious crimes, the exclusion of juvenile offenders from its scope, and guarantees of a fair trial.

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I. Introduction

1. The present report, prepared pursuant to Economic and Social Council resolutions 1754 (LIV) of 16 May 1973 and 1995/57 of 28 July 1995, and Council decision 2005/247 of 22 July 2005, is the eighth quinquennial report of the Secretary-General on capital punishment.¹ It covers the period 2004-2008 and reviews developments in the use of capital punishment. In accordance with Council resolution 1989/64 of 24 May 1989, the report also covers the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2005/3 and Corr.1, annex).

2. The report is based primarily on information collected through the eighth survey questionnaire, which was sent by the United Nations Office on Drugs and Crime (UNODC) to Member States, intergovernmental organizations, specialized agencies of the United Nations system and non-governmental organizations.²

II. Background and scope

3. All States Members of the United Nations were invited to contribute information to the eighth quinquennial report of the Secretary-General on capital punishment by means of a detailed questionnaire (hereinafter referenced to as “the survey questionnaire”). In this report, States are classified by death penalty status as of 1 January 2004, making it possible to chart changes over the five-year period up to the end of December 2008, as well as to make comparisons with the results of previous quinquennial reports, which used a similar method of analysis. The following categories are used:

(a) Abolitionist for all crimes, whether in time of peace or war;

(b) Abolitionist for ordinary crimes, meaning that the death penalty had been abolished for all ordinary offences committed in peacetime, such as those contained in the criminal code or those recognized in common law (for example, murder, rape and robbery with violence); and that the death penalty was retained only for exceptional circumstances, such as military offences in time of war, or crimes against the State, such as treason, terrorism or armed insurrection;

(c) Retentionist in law, further divided into two subcategories, comprising:

(i) States and territories that retained the death penalty in their legislation, so that death sentences may still be imposed, but that have not enforced it for at least 10 years. As in previous reports, they have been designated as *de facto* abolitionist, although this does not necessarily mean that they have an established policy of never carrying out executions. States that have carried out executions within the previous 10 years but that have made an international commitment through the establishment of an official moratorium have also been designated as *de facto* abolitionist;

¹ For an overview, see E/CN.15/2001/10 and Corr.1, paras. 4-8, and E/2000/3 and Corr.1, paras. 4-8. For the previous report, see E/2005/3 and Corr.1.

² The survey instrument and the present report were prepared with the expert assistance of Professor William Schabas of the National University of Ireland, Galway.

(ii) States and territories in which executions had taken place within the 10 years prior to 1 January 2004.

4. Although this report deals with the period covered by the survey, significant developments that took place during 2009 relevant to the law and practice of capital punishment have been noted so as to make the conclusions of the report as current as possible.

5. Survey questionnaires were returned by 56 States,³ with an additional 5 States (Bulgaria, Jordan, Oman, Thailand and Turkmenistan) replying during the processing of the report representing an improvement over previous reports. In 2008, the United Nations conducted another survey in conjunction with General Assembly resolution 62/149 of 18 December 2007, entitled “Moratorium on the use of the death penalty”. Eighteen countries that did not reply to the questionnaire for the eighth quinquennial report completed the one circulated pursuant to that resolution.⁴ Among those States that did not reply to either of the questionnaires, information about the death penalty, generated for 18 additional States within the context of the universal periodic review mechanism, was before the Human Rights Council in the course of its conduct of the review,⁵ and information for a further 23 was contained in periodic reports submitted to the Human Rights Committee during the quinquennium.⁶ Thus, 120 countries have provided information to the United Nations about the death penalty over the period 2004-2008. Furthermore, the special procedures of the Council have been helpful in completing the picture, notably through the reports of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions and the Special Rapporteur of the Council on torture and other cruel, inhuman or degrading treatment or punishment. All of this material has been considered during the preparation of the present study.

6. In order that a more comprehensive understanding of the situation might be developed, information on use of the death penalty was drawn from other sources. The following intergovernmental organizations and specialized agencies of the United Nations system submitted reports and information: the Office of the United Nations High Commissioner for Human Rights, the African Union Commission, the

³ Albania, Algeria, Andorra, Argentina, Armenia, Austria, Bahrain, Belarus, Belgium, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, France, Germany, Greece, Italy, Japan, Jordan, Kazakhstan, Latvia, Liechtenstein, Luxembourg, Malaysia, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Norway, Panama, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Ukraine and United Kingdom of Great Britain and Northern Ireland. Replies from Bulgaria, Oman, Syrian Arab Republic, Thailand and Turkmenistan, as well as additional information from Jordan and Turkey, were received during the processing of the report.

⁴ Barbados, Bhutan, Bosnia and Herzegovina, Botswana, Costa Rica, Cuba, Denmark, Georgia, Guatemala, Ireland, Kuwait, Libyan Arab Jamahiriya, Lithuania, Poland, Slovenia, Togo, Tunisia and Venezuela (Bolivarian Republic of).

⁵ Afghanistan, Bangladesh, Benin, Burkina Faso, China, Comoros, Congo, Gabon, Ghana, Israel, Mali, Nigeria, Pakistan, Peru, Saudi Arabia, Sri Lanka, United Arab Emirates and Yemen.

⁶ Azerbaijan, Brazil, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Georgia, Honduras, Iceland, Kenya, Madagascar, Nicaragua, Panama, Paraguay, Republic of Moldova, Rwanda, Sudan, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, United States of America, Uzbekistan and Zambia.

European Commission, the Southeast European Cooperative Initiative Centre and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. The following non-governmental organizations submitted reports and written statements: the International Secretariat of Amnesty International, Human Rights Watch, the International Harm Reduction Association, the Japan Federation of Bar Associations and the World Coalition for the Abolition of the Death Penalty.

III. Changes in the status of the death penalty, 2004-2008

A. Countries and territories that had abolished the death penalty for all crimes by the beginning of 2004

7. At the beginning of 2004, 79 States had already abolished the death penalty for all crimes, a considerably higher number than that recorded at the beginning of the previous quinquenniums, in 1999, when there had been 70 completely abolitionist countries, and 1993, when there had been 55. No fully abolitionist State reintroduced the death penalty during the survey period. By the end of the quinquennium, in 2008, 95 countries were abolitionist for all crimes. In 2009, Burundi and Togo abolished the death penalty for all crimes (see table 1).

Table 1

Status of the death penalty at the beginning and end of the five-year survey period, 2004-2008

	<i>Abolitionist</i>	<i>Abolitionist for ordinary crimes</i>	<i>Retentionist: de facto abolitionist</i>	<i>Retentionist</i>
1 January 2004 (194 States and territories)	79	12	41	62
31 December 2008 (198 States and territories)	95	8	46	47

8. Many of these completely abolitionist countries reported involvement in initiatives at the international level to promote the abolition of capital punishment or to reduce its scope or the incidence of its application. In particular, several mentioned support for the resolutions adopted by the General Assembly in 2007 and 2008, in which the Assembly called for a moratorium on the death penalty, as well as for initiatives within regional organizations such as the European Union and the Council of Europe. Belgium reported on parliamentary resolutions criticizing the practice of imposing capital punishment in other States.

9. With one exception, all fully abolitionist States responding to the questionnaire declared a policy of denying extradition to States where the death penalty might be imposed, unless assurances were given that the individual concerned could not be sentenced to death or, if sentenced to death, that the penalty would not be carried out. Canada stated that in all but exceptional circumstances its policy was to obtain assurances that the death penalty would not be applied before extraditing a person for an offence subject to the death penalty. Several States reported that they had received extradition requests where capital punishment was an issue, and that they had sought and obtained satisfactory assurances. Most such cases involved extradition to the United States of America in terror-related

prosecutions. There were no reports of extradition from a fully abolitionist State where assurances had not been obtained, nor of requests for such assurances where these had not been provided. Japan, a retentionist State, said that in the context of an extradition request, it could not provide assurances that the death penalty would not be imposed. Mongolia stated it could provide assurances, but that there had been no case where this was applied. The Human Rights Committee expressed concern that in Australia, the Attorney General has a residual power, “in ill-defined circumstances, to allow the extradition of a person to a State where he or she may face the death penalty”, adding that Australia also lacks “a comprehensive prohibition on the providing of international police assistance for the investigation of crimes that may lead to the imposition of the death penalty in another State”.⁷

10. The eighth survey questionnaire asked for details about the maximum punishment that had been substituted for the crimes that had been previously sanctioned by capital punishment. The replies reveal considerable variation. In some States, there is a minimum penalty that must be imposed, ranging from a substantial fixed term of imprisonment to life imprisonment. In others, sentencing for crimes that were once subject to the death penalty is within the discretion of the court, and no minimum period is prescribed. All States reported that those sentenced, whether for a fixed term or for life, are subject to early release, depending upon the circumstances. In no State that reported does there appear to be the possibility of a sentence of life imprisonment without any eligibility for early release or parole.

11. With two exceptions, fully abolitionist States reported that there had been no initiatives whatsoever undertaken with a view to reintroducing capital punishment. France stated that on 8 April 2004, draft legislation aimed at reviving the death penalty for terrorist crimes had been submitted to the National Assembly, but it was never placed in the agenda or debated. In 2004, the lower house of the Polish parliament rejected a proposal by the Law and Justice Party to reintroduce capital punishment, by a vote of 198 to 194, with 14 abstentions. The President had threatened to veto the legislation if adopted.⁸ In July 2006, the new President called for restoration of the death penalty in Poland and throughout Europe.⁹ However, in 2008, Poland began the process of ratification of the Second Optional Protocol¹⁰ to the International Covenant on Civil and Political Rights,¹¹ aiming at the abolition of the death penalty, which copper-fastens abolition and poses a virtually insurmountable legal obstacle to revival of capital punishment.

B. Countries and territories that had abolished the death penalty for ordinary crimes by the beginning of 2004

12. At the beginning of 2004, 12 countries had abolished the death penalty for ordinary offences but not for certain special offences against the State (usually treason) and/or offences under the military code committed in times of war:

⁷ CCPR/C/AUS/CO/5, para. 20.

⁸ Amnesty International, “The death penalty worldwide: developments in 2004” (April 2005), p. 4.

⁹ Amnesty International, “The death penalty worldwide: developments in 2006” (May 2007), p. 6.

¹⁰ General Assembly resolution 44/128, annex.

¹¹ See General Assembly resolution 2200 A (XXI), annex.

Albania, Argentina, Brazil, Chile, El Salvador, Fiji, Greece, Israel, Latvia, Mexico, Peru and Turkey. None of these countries recorded any executions during the quinquennium. Turkey noted that the death penalty under the Military Penal Code is in fact non-applicable, owing to the amendment of related laws, and that initiatives were taken to remove it from the Code.

13. During the quinquennium, five States that had been abolitionist for ordinary crimes only became fully abolitionist: Albania, Argentina, Greece, Mexico and Turkey. Kazakhstan joined the category of States that are abolitionist for ordinary crimes. Thus, over the quinquennium, the total number of States in this category declined from 12 to 8. Since the first of the quinquennial reports, the category of States that are abolitionist for ordinary crimes only has declined in importance. For example, in 1974, more States were abolitionist for ordinary crimes only (16) than were abolitionist for all crimes (11). Over the years, the total number of such States has fluctuated between 17 and 12, but with the number of fully abolitionist States growing constantly. Whereas in 1974, States that were abolitionist for ordinary crimes only represented 59 per cent of the total number of abolitionist States, they now account for less than 8 per cent.

14. Moreover, most States described as abolitionist for ordinary crimes only might also be listed as abolitionist for all crimes *de facto*. Brazil, Chile, El Salvador, Fiji, Israel and Peru have remained in the category of abolitionist States for ordinary crimes for more than two decades, but have never carried out an execution for any crime during that time. In its report to the Human Rights Council, Israel stated that “although the imposition of a death penalty formally exists in a limited number of extremely severe cases under Israel’s criminal legislation, Israel has applied a *de facto* moratorium on executions”.¹² Latvia, where the last execution dates to 1999, indicated a settled policy not to apply capital punishment, and to commute any death sentence if imposed by the courts. Latvia stated that legislation prepared by the cabinet providing for the abolition of the death penalty in all circumstances was being considered by the legislature. Latvia recalled that it had signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, as well as Protocol No. 6 to the European Convention on Human Rights. On 9 May 2008, the Latvian parliament endorsed a law allowing the ratification of Protocol No. 13 to the European Convention on Human Rights. In its reply to the questionnaire, El Salvador indicated that a working group would be established to consider accession to the Second Optional Protocol.

15. Legislation has been proposed in Peru with a view to reviving the death penalty for crimes involving children and terrorism-related offences, and for Peru to denounce the American Convention on Human Rights,¹³ which prevents a State that has abolished the death penalty from bringing it back into force.¹⁴ In its presentation to the Human Rights Council, Peru referred to these legislative initiatives, and to public debate on the extension of the death penalty to serious

¹² “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Israel” (A/HRC/WG.6/3/ISR/1 and Corr.1), para. 104.

¹³ United Nations, *Treaty Series*, vol. 1144, No. 17955.

¹⁴ “Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Peru” (A/HRC/WG.6/2/PER/3), para. 11.

crimes, stressing that senior public officials have publicly declared that Peru will in no circumstances move away from the Inter-American human rights system.¹⁵ Aside from Peru, no other State that was abolitionist for ordinary crimes only reported significant initiatives aimed at restoring the death penalty.

16. In its response to the questionnaire, El Salvador stated that it retains the death penalty for certain offences under military law, namely, treason, espionage and mutiny. Capital punishment may be mandatory or discretionary, depending upon the circumstances. Latvian law authorizes the death penalty for murder with aggravating circumstances when committed in time of war. In Israel, the law provides for genocide and crimes against humanity, for treason committed in wartime, and for offences involving illegal use of firearms against persons, or use of explosives or inflammable objects with intent to kill or to cause grievous bodily harm.

C. Retentionist countries and territories at the beginning of 2004

17. At the beginning of the quinquennium, in January 2004, 103 States retained the death penalty on their statute books for ordinary crimes (and, usually, also other offences). Of these, 62 could be regarded as retentionist in that executions had been carried out within the previous 10 years and no commitment to cease executions had been made. The remainder could be considered *de facto* abolitionist on the grounds that no person had been judicially executed for at least 10 years or, in the case of Albania, Armenia, Latvia and the Russian Federation, that an international commitment had been made not to resume executions.

1. De facto abolitionist countries and territories at the beginning of 2004

18. Of the 41 countries and territories that were *de facto* abolitionist at the beginning of 2004, 5 went on to abolish the death penalty for all crimes.¹⁶ One of them, Kazakhstan, abolished the death penalty for ordinary crimes.

19. Several States that have not imposed the death penalty for more than 10 years acknowledge that they are applying a moratorium. For example, Algeria informed the Human Rights Council that its moratorium had been in place since 1993.¹⁷ It has described itself as a *de facto* abolitionist State.¹⁸ Benin told the Council that there was a moratorium on capital punishment.¹⁹ Mali explained that no executions had

¹⁵ “Universal periodic review: Peru” (A/HRC/8/37), para. 10.

¹⁶ Bhutan, Liberia, Samoa, Senegal and Togo.

¹⁷ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Algeria” (A/HRC/WG.6/1/DZA/1), para. 46.

¹⁸ CCPR/C/DZA/CO/3, para. 5.

¹⁹ “Report of the Working Group on the Universal Periodic Review: Benin” (A/HRC/8/39), para. 54; see also “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Benin” (A/HRC/WG.6/2/BEN/1), para. 46, and “Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Benin” (A/HRC/WG.6/2/BEN/3), para. 5.

been carried out since 1979, and that a moratorium has been in place since 1984.²⁰ Other States confirming the existence of a moratorium include the Russian Federation,²¹ Sri Lanka²² and Tunisia.²³ Guatemala stated that it is applying a moratorium, in accordance with General Assembly resolution 62/149.²⁴ In its fourth periodic report to the Human Rights Committee, Cameroon stated that “it may not be an overstatement to say executions have been suspended de facto in Cameroon”.²⁵ In its second periodic report to the Committee, Kenya stated that a de facto moratorium has been in place since 1988.²⁶ Zambia made a similar declaration in its third periodic report.²⁷ Tajikistan is included in the category of de facto abolitionist States, although its last execution had taken place in 2003, because the following year the country established an official moratorium on the death penalty.²⁸ Twelve States in the de facto abolitionist category have voted in favour of the Assembly resolutions calling for a moratorium on the use of capital punishment,²⁹ while 17 have abstained.³⁰

20. Several States in the de facto category have indicated that they are considering de jure abolition of capital punishment. Burkina Faso reported to the Human Rights Council that abolition of the death penalty was being considered.³¹ The Central African Republic informed the Council that capital punishment might be abolished under the reform of the Criminal Code in late 2009, “particularly as it was no longer applied”.³² In its national report to the Council, the Congo stated that it “must

²⁰ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Mali” (A/HRC/WG.6/2/MLI/1), para. 53; see also “Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Mali” (A/HRC/WG.6/2/MLI/2), para. 14; “Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Mali” (A/HRC/WG.6/2/MLI/3), para. 22. In 2009, Mali abolished the death penalty de jure.

²¹ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Russian Federation” (A/HRC/WG.6/4/RUS/1), para. 43; “Report of the Working Group on the Universal Periodic Review: Russian Federation” (A/HRC/11/19), para. 76.

²² “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Sri Lanka” (A/HRC/WG.6/2/LKA/1), para. 59.

²³ “Report of the Working Group on the Universal Periodic Review: Tunisia” (A/HRC/8/21 and Corr.1), para. 6 (g).

²⁴ Report by Guatemala to the United Nations High Commissioner for Human Rights, 30 May 2008.

²⁵ CCPR/C/CMR/4, para. 122.

²⁶ CCPR/C/KEN/2004/2, para. 52.

²⁷ CCPR/C/ZMB/3, para. 150.

²⁸ CCPR/C/TJK/2004/1, para. 26.

²⁹ Algeria, Benin, Burkina Faso, Congo, Gabon, Guatemala, Madagascar, Mali, Nauru, Russian Federation, Sri Lanka and Tajikistan.

³⁰ Cameroon, Central African Republic, Eritrea, Gambia, Ghana, Kenya, Lao People’s Democratic Republic, Lesotho, Malawi, Morocco, Niger, Republic of Korea, Sierra Leone, Swaziland, Togo, United Republic of Tanzania and Zambia.

³¹ “Report of the Working Group on the Universal Periodic Review: Burkina Faso” (A/HRC/10/80 and Corr.1), para. 17.

³² “Report of the Working Group on the Universal Periodic Review: Central African Republic” (A/HRC/12/2), para. 47.

abolish the death penalty”.³³ Gabon told the Council that its Government had taken a decision to abolish the death penalty.³⁴ Ghana noted that no executions had been conducted since 1993, informing the Council that it intended to review the constitution on this issue.³⁵ In February 2008, the Legislation Committee of the Russian Federation’s State Duma submitted a bill to the lower house of parliament providing for abolition of the death penalty. The Constitutional Court of the Russian Federation, in November 2009, issued a ruling blocking any attempts to reintroduce capital punishment in practice.

21. On the other hand, the fact that some States have indicated an absence of executions over a 10-year period should not be construed as suggesting a decision not to impose capital punishment, or the existence of a moratorium. Barbados so informed the Human Rights Council in the course of the universal period review process.³⁶ Seventeen States in the *de facto* category registered their opposition to General Assembly resolution 62/149 entitled “Moratorium on the use of the death penalty” by including their names in a note verbale addressed to the Secretary-General of the United Nations.³⁷ Fifteen of them voted against the resolution.³⁸

22. No State in the *de facto* abolitionist category resumed executions during the quinquennium. This compares with three States that had resumed executions in the period 1999-2003 and seven in the period 1994-1998. When the *de facto* abolitionist category is looked at over a longer time-horizon, it appears to provide useful confirmation of the hypothesis that most States that have stopped using the death penalty for 10 years will remain in that category or proceed to *de jure* abolition. The first of the quinquennial reports to use the *de facto* classification, that of 1985, indicated that there were seven such States.³⁹ Five of the 7 remained abolitionist in practice and subsequently confirmed the policy with legislation making them fully abolitionist *de jure*;⁴⁰ one has remained abolitionist *de facto*⁴¹ and one returned briefly to the practice of capital punishment although it is now,

³³ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Congo” (A/HRC/WG.6/5/COG/1), para. 141 (l).

³⁴ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Gabon” (A/HRC/WG.6/2/GAB/1), para. 105; see also “Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Gabon” (A/HRC/WG.6/2/GAB/2), para. 16.

³⁵ “Report of the Working Group on the Universal Periodic Review: Ghana” (A/HRC/8/36), para. 31.

³⁶ “Report of the Working Group on the Universal Periodic Review: Barbados” (A/HRC/10/73), paras. 13 and 48.

³⁷ A/62/658. The 17 States were: Antigua and Barbuda, Barbados, Brunei Darussalam, Central African Republic, Dominica, Eritrea, Grenada, Jamaica, Lao People’s Democratic Republic, Maldives, Mauritania, Papua New Guinea, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Swaziland and Tonga.

³⁸ Antigua and Barbuda, Barbados, Belize, Brunei Darussalam, Dominica, Grenada, Jamaica, Maldives, Mauritania, Myanmar, Papua New Guinea, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Tonga.

³⁹ E/1985/43 and Corr.1, annex, table 1.

⁴⁰ Argentina, Cyprus, Greece, Ireland and New Zealand.

⁴¹ Madagascar.

once again, de facto abolitionist.⁴² Of 21 de facto abolitionist States listed in the 1990 report,⁴³ 11 remained abolitionist and then became de jure abolitionist,⁴⁴ 7 remained de facto abolitionist,⁴⁵ and 3 resumed the practice of capital punishment.⁴⁶ The 1995 quinquennial report listed 30 States as de facto abolitionist.⁴⁷ Fifteen years later, 13 of them had abolished the death penalty de jure,⁴⁸ although 2 of them, Philippines and Rwanda, carried out executions in the interim. Another 13 remained de facto abolitionist.⁴⁹ Only four have used the death penalty since 1994.⁵⁰ The 2000 quinquennial report listed 38 States as de facto abolitionist.⁵¹ Ten years later, 8 had become fully abolitionist de jure,⁵² 26 remained abolitionist de facto,⁵³ and 3 carried out executions.⁵⁴ Of the 41 de facto abolitionist States listed in the 2005 report,⁵⁵ 5 became de jure abolitionist,⁵⁶ 35 remained de facto abolitionist⁵⁷ and 1 resumed executions.⁵⁸ Overall, since the quinquennial reports began recording members of the de facto abolitionist category, in 1985, a total of 68 States have been so listed. Ten of them resumed execution at some point,⁵⁹ although two of those subsequently abolished capital punishment for all crimes.⁶⁰ Some 36 have remained de facto abolitionist,⁶¹ and 22 maintained their de

⁴² Guyana.

⁴³ E/1990/38/Rev.1 and Corr.1, annex III, table 3.

⁴⁴ Belgium, Bhutan, Côte d'Ivoire, Djibouti, Greece, Ireland, Nepal, Paraguay, Samoa, Senegal and Togo.

⁴⁵ Brunei Darussalam, Grenada, Madagascar, Maldives, Nauru, Niger and Sri Lanka.

⁴⁶ Bahrain, Comoros and Trinidad and Tobago.

⁴⁷ E/CN.15/1996/19, annex II, table 4.

⁴⁸ Belgium, Bhutan, Bosnia and Herzegovina, Burundi, Chile, Côte d'Ivoire, Djibouti, Philippines, Rwanda, Samoa, Senegal, Togo and Turkey.

⁴⁹ Brunei Darussalam, Central African Republic, Congo, Gambia, Madagascar, Maldives, Mali, Nauru, Niger, Papua New Guinea, Sri Lanka, Suriname and Tonga.

⁵⁰ Bahrain, Comoros, Guatemala and Guinea.

⁵¹ E/2000/3 and Corr.1, annex I, table 4.

⁵² Albania, Armenia, Bhutan, Côte d'Ivoire, Samoa, Senegal, Serbia and Montenegro, and Turkey.

⁵³ Antigua and Barbuda, Belize, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo, Dominica, Eritrea, Gabon, Gambia, Grenada, Jamaica, Lao People's Democratic Republic, Madagascar, Mali, Mauritania, Myanmar, Nauru, Niger, Papua New Guinea, Sri Lanka, Suriname, Swaziland, Togo and Tonga.

⁵⁴ Barbados, Guinea and Qatar.

⁵⁵ E/2005/3 and Corr.1, annex I, table 4.

⁵⁶ Bhutan, Liberia, Samoa, Senegal and Togo.

⁵⁷ Algeria, Antigua and Barbuda, Belize, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo, Dominica, Eritrea, Gabon, Gambia, Ghana, Grenada, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Sri Lanka, Suriname, Swaziland, Tonga and Tunisia.

⁵⁸ Barbados.

⁵⁹ Bahrain, Barbados, Comoros, Guatemala, Guinea, Guyana, Qatar, Rwanda, Philippines and Trinidad and Tobago.

⁶⁰ Philippines and Rwanda.

⁶¹ Algeria, Antigua and Barbuda, Belize, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo, Dominica, Eritrea, Gabon, Gambia, Ghana, Grenada, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, Sri Lanka, Suriname, Swaziland, Togo, Tonga and Tunisia.

facto status before becoming de jure abolitionist.⁶² In conclusion, de facto abolition appears to be a useful indicator of future behaviour, and a concept offering valuable assistance in understanding trends with respect to capital punishment in both practice and law.

23. It is not uncommon for States in the de facto category to continue to pronounce sentences of death, even if there is no intention of having them carried out. For example, in 2008, 17 States deemed abolitionist de facto were reported to have issued death sentences.⁶³ This is indeed a consequence of the concept of de facto abolition. For example, the courts of Belgium and Ireland continued to issue death sentences well into the 1980s, although their Governments had been committed to abolition for many decades. In many countries, de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon. This is not without negative consequences, however, because in some States where it seems highly unlikely that there will be any executions, “death row” continues to exist, with all of its attendant conditions. The spectre of execution, however remote it may be, continues to haunt prisoners and their families.

24. One of the six States that had been deemed de facto abolitionist at the beginning of the quinquennium, and that subsequently abolished the death penalty de jure, namely, Liberia, is currently in an uncertain position. In September 2005, Liberian law was amended to remove capital punishment and the country acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which prevents it from reinstating capital punishment. Some months after abolition, legislation had been enacted imposing capital punishment for gang rape, although the penalty was subsequently changed to life imprisonment. Then, Liberia’s parliament introduced the death penalty for armed robbery, terrorism and hijacking. The legislation was approved by the President in July 2008. In this report, Liberia is still deemed abolitionist de jure, because it is prohibited by its international obligations from imposing the death penalty, despite the inconsistency in its own national legislation. No executions have been carried out in Liberia since 2000.

2. Retentionist countries and territories that enforced capital punishment at the beginning of 2004

25. As of the beginning of 2004, 62 States were considered retentionist, in that they continued to use the death penalty and had conducted executions during the previous decade (E/2005/3 and Corr.1, annex I, table 1). During the period 2004-2008, the number of members of this category declined from 62 to 47 States. Three States abolished the death penalty entirely (Kyrgyzstan, Philippines and Rwanda). Twelve States became de facto abolitionist, not having employed the

⁶² Albania, Argentina, Armenia, Belgium, Bhutan, Bosnia and Herzegovina, Burundi, Chile, Côte d’Ivoire, Cyprus, Djibouti, Greece, Ireland, Liberia, Nepal, New Zealand, Paraguay, Samoa, Senegal, Serbia and Montenegro, Togo and Turkey.

⁶³ Algeria, Burkina Faso, Burundi, Gambia, Ghana, Jamaica, Kenya, Lao People’s Democratic Republic, Madagascar, Mali, Mauritania, Morocco, Niger, Saint Vincent and the Grenadines, Sierra Leone, Sri Lanka and United Republic of Tanzania.

death penalty for a period of 10 years: Burundi, Cameroon, Guatemala, Guyana, Lesotho, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Tajikistan, United Republic of Tanzania and Zambia. Thus, some 15 States out of a total of 62, or 24.2 per cent, abolished the death penalty de jure or de facto during the quinquennium. In the previous quinquennium, the number declined from 78 to 62, a decrease of 20.5 per cent. For the period 1994-1998, the total number of retentionist States had dropped from 94 to 78, or 17.0 per cent. Therefore, although the absolute number of countries that became abolitionist in the period 2004-2008 is marginally less than in previous quinquenniums, the proportion is actually higher, indicating that the rate of abolition may be accelerating rather than slowing.

26. Some retentionist States have indicated that they are considering the abolition of the death penalty. During a high-level segment of the Human Rights Council, held on 12 March 2007, the head of the Chinese delegation stated: "We are seeking to limit the application of the death penalty in China. I am confident that with the development and the progress in my country, the application of the death penalty will be further reduced and it will be finally abolished."⁶⁴ In its report to the Council in the context of the universal periodic review process, Jordan stated that no executions had been carried out since 2007, and that its Criminal Code was being reviewed "with the aim of eliminating the death penalty".⁶⁵ It is reported that in 2005, King Abdullah II stated that "Jordan could soon become the first country in the Middle East without capital punishment".⁶⁶ The initial report of Chad to the Human Rights Committee said it is "preparing the population to accept the abolition of the death penalty".⁶⁷ The Libyan Arab Jamahiriya cited the Green Document on Human Rights in the Age of the Masses, which affirms: "The members of Jamahiri society venerate and protect human life. The intention of Jamahiri society is to abolish capital punishment and, until such time as this is achieved, the death penalty shall apply only to those whose lives threaten or undermine the society."⁶⁸ During the universal periodic review process, Cuba said that it is "philosophically speaking" against the death penalty, and that it plans to eliminate it "when suitable conditions exist".⁶⁹

27. Some retentionist States have indicated support for a moratorium on capital punishment. In its report to the Human Rights Council, Nigeria stated that, although the death penalty was in its statute book, it was rarely applied, and that this was "tantamount to the adoption of a self-imposed moratorium". It said its Government

⁶⁴ See www.un.org/webcast/unhrc/archive.asp?go=070312; see also "Human Rights Council opens fourth session" (HRC/07/3), 12 March 2007, p. 9. On developments in China concerning capital punishment, see Roger Hood, "Abolition of the death penalty: China in world perspective", *City University of Hong Kong Law Review*, vol. 1, No. 1 (2009).

⁶⁵ "National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Jordan" (A/HRC/WG.6/4/JOR/1), p. 5.

⁶⁶ Amnesty International, *Amnesty International Report 2006* (London, 2006), p. 157.

⁶⁷ CCPR/C/TCD/1, para. 134.

⁶⁸ Report of the Libyan Arab Jamahiriya to the United Nations High Commissioner for Human Rights, 5 June 2008.

⁶⁹ Human Rights Council, eleventh session, "Responses provided by Cuba", 10 June 2009.

had noted the global trend towards a moratorium on the death penalty.⁷⁰ Burkina Faso indicated it would consider imposing a moratorium on the death penalty.⁷¹ In its reply to the survey questionnaire, Mongolia stated that a moratorium on the death penalty is in place. However, Amnesty International reported that at least one execution had taken place in Mongolia in 2008.⁷² Cuba said it “understands and respects the arguments of the international movement that proposes its elimination or a moratorium. For that reason, our country has not rejected initiatives in the United Nations having this aim”.⁷³

28. Public statements in bodies such as the Human Rights Council, in the course of the universal periodic review process, provide further indications. For example, a few retentionist States used the occasion to reaffirm their commitment to the use of capital punishment, namely, Afghanistan,⁷⁴ China⁷⁵ and Malaysia.⁷⁶ Others simply rejected calls for abolition or for a moratorium, or to ratify the Second Optional Protocol, often adding that the death penalty is rarely imposed and that when it is, international standards are respected: Bangladesh,⁷⁷ Botswana,⁷⁸ Comoros,⁷⁹ Japan,⁸⁰ Jordan,⁸¹ United Arab Emirates⁸² and Yemen.⁸³ Pakistan said its coalition

⁷⁰ “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Nigeria” (A/HRC/WG.6/4/NGA/1), para. 75; see also “Report of the Working Group on the Universal Periodic Review: Nigeria” (A/HRC/11/26), para. 13. Note, however, that the Special Rapporteur on extrajudicial, summary or arbitrary executions has said that “despite claims for many years by Nigeria that it has had a moratorium on the death penalty, it has become apparent that the death penalty has in fact been carried out in secret” (A/HRC/8/3/Add.3, para. 7).

⁷¹ “Report of the Working Group on the Universal Periodic Review: Burkina Faso” (A/HRC/10/80 and Corr.1), para. 98 (recommendation 9).

⁷² Amnesty International, “Death sentences and executions in 2008” (London, 24 March 2009), p. 8.

⁷³ “Responses provided by Cuba”, 10 June 2009.

⁷⁴ “Report of the Working Group on the Universal Periodic Review: Afghanistan” (A/HRC/12/9), para. 95 (recommendation 46).

⁷⁵ “Report of the Working Group on the Universal Periodic Review: China” (A/HRC/11/25), para. 117 (re para. 27 (b)).

⁷⁶ “Report of the Working Group on the Universal Periodic Review: Malaysia” (A/HRC/11/30), para. 105 (re para. 93 (b) (iii)).

⁷⁷ “Report of the Working Group on the Universal Periodic Review: Bangladesh — addendum” (A/HRC/11/18/Add.1), p. 4.

⁷⁸ “Report of the Working Group on the Universal Periodic Review: Botswana” (A/HRC/10/69), paras. 22 and 42; “Report of the Working Group on the Universal Periodic Review: Botswana — addendum” (A/HRC/10/69/Add.1), pp. 2 and 7.

⁷⁹ “Report of the Working Group on the Universal Periodic Review: Comoros” (A/HRC/12/16), para. 66.

⁸⁰ “Report of the Working Group on the Universal Periodic Review: Japan” (A/HRC/8/44), para. 9; “Report of the Working Group on the Universal Periodic Review: Japan — addendum” (A/HRC/8/44/Add.1), p. 3.

⁸¹ “Report of the Working Group on the Universal Periodic Review: Jordan” (A/HRC/11/29), para. 94 (re para. 48 (d)).

⁸² “Report of the Working Group on the Universal Periodic Review: United Arab Emirates” (A/HRC/10/75), para. 93 (re para. 67 (a)).

⁸³ “Report of the Working Group on the Universal Periodic Review: Yemen” (A/HRC/12/13), para. 9.

Government had initiated a review of all questions related to capital punishment.⁸⁴ Saudi Arabia accepted a recommendation from New Zealand that it protect the rights of those facing the death penalty, “including through strengthened application of international safeguards in the use of the death penalty”.⁸⁵

29. In paragraph 2 (c) of its resolution 62/149 adopted on 18 December 2007, the General Assembly called upon Member States to progressively restrict the use of the death penalty and reduce the number of offences for which it might be imposed. During the quinquennium, some retentionist States had reduced the crimes for which the death penalty could be imposed. Malaysia said that it was “considering to further reduce” the number of crimes for which capital punishment could be imposed, “by, among others, proposed amendments to existing anti-drug trafficking legislation to reduce the maximum sentence to life imprisonment”.⁸⁶ There were also reports that Viet Nam is reducing the number of crimes subject to the death penalty. In July 2009, its National Assembly voted to abolish the death penalty for the crimes of rape, fraud for appropriating property, smuggling, making and trafficking in counterfeit money, using drugs, giving bribes, hijacking or piracy and destroying military weapons. Capital punishment will be maintained for drug trafficking.⁸⁷ Three other States (Jordan, Oman and Thailand) reported that they maintained capital punishment for drug-related offences.

30. During the quinquennium, some retentionist States appear to have increased the number of crimes for which the death penalty may be applied. In its reply to the questionnaire, Mongolia said that it had extended the death penalty to terrorism in 2008. In Iraq, in 2005, new legislation made the death penalty applicable to “committing acts of terror” or “financing, planning or provoking” terrorism.⁸⁸ A law was proposed in the Islamic Republic of Iran to provide for capital punishment in the case of apostasy, heresy and witchcraft and for certain Internet-related crimes that “promote corruption and apostasy”.⁸⁹ New measures were also proposed for making the production of pornographic material subject to a sentence of death.⁹⁰ In November 2008, Pakistan enacted legislation authorizing the death sentence for “the offence of cyberterrorism” when it caused death.⁹¹

⁸⁴ “Report of the Working Group on the Universal Periodic Review: Pakistan — addendum” (A/HRC/8/42/Add.1), para. 48.

⁸⁵ “Report of the Working Group on the Universal Periodic Review: Saudi Arabia — addendum” (A/HRC/11/23/Add.1), para. 37.

⁸⁶ “Report of the Working Group on the Universal Periodic Review: Malaysia — addendum” (A/HRC/11/30/Add.1), response to recommendation 10.

⁸⁷ A/HRC/12/45, para. 7.

⁸⁸ Amnesty International, “Death penalty developments in 2005” (April 2006), p. 5.

⁸⁹ Amnesty International, “Death sentences and executions in 2008” (London, 24 March 2009), p. 16.

⁹⁰ A/63/293 and Corr.1, para. 36.

⁹¹ Amnesty International, *Amnesty International Report 2009* (London, 2009), p. 254.

D. Status of the death penalty at the end of 2008

31. During the quinquennium under examination, the category of fully abolitionist States increased by 16 States and territories,⁹² from 79 at the beginning of 2004 to a total of 95 by the end of 2008 (see table 1).⁹³ Five of the 16 had previously been abolitionist for ordinary crimes.⁹⁴ Five of them had previously been abolitionist de facto.⁹⁵ Three moved from being retentionist to fully abolitionist.⁹⁶ Three were not included in the previous survey.⁹⁷ The number of States that were abolitionist for ordinary crimes actually declined, from 12 to 8, over the quinquennium. Five of them moved to the fully abolitionist category,⁹⁸ while one State, Kazakhstan, left the de facto abolitionist category for that of abolitionist for ordinary crimes. The total of de facto abolitionist States increased from 41 to 46. Six previously de facto abolitionist States joined the fully abolitionist category,⁹⁹ Kazakhstan became abolitionist for ordinary crimes and 11 States moved from retentionist to abolitionist de facto.¹⁰⁰ Consequently, the category of retentionist States declined by 15, from 62 to 47.

32. One conclusion to be drawn from the eighth quinquennial survey is that the rate at which countries have embraced abolition has continued and even accelerated, if abolition is measured by the proportion of retentionist States that leave the category during the five years under consideration. The number of de facto abolitionist countries increased significantly. Even among retentionist countries, only 43 carried out any judicial executions during the five-year period. It is very likely that some of them will join the de facto or de jure abolitionist category during the next five-year period. Importance should also be attached to the decline in numbers of persons executed in many States, which is discussed in more detail in section IV, entitled "Enforcement of the death penalty". As that section will show, only a small proportion of retentionist States carried out large numbers of executions. An up-to-date list of abolitionist and retentionist countries, organized according to the four categories is contained in the annex to the present report.

33. The first of the quinquennial reports, issued in 1975, had stated: "It remains extremely doubtful whether there is any progression towards the restriction of the use of the death penalty. Periods of abolition or non-use may be succeeded by widespread executions in a highly unstable political situation or by a sudden return to the death penalty as a sanction where a State feels insecure. Moreover, in a few States where serious forms of terror and violence have been experienced, the death penalty has been used increasingly as counter-terror, or deterrence."¹⁰¹ Ten years later, the third report was still very equivocal: "On the basis of the data received, it

⁹² Albania, Argentina, Bhutan, Cook Islands, Greece, Kyrgyzstan, Liberia, Mexico, Montenegro, Niue, Philippines, Rwanda, Samoa, Senegal, Turkey and Uzbekistan.

⁹³ Burundi and Togo abolished the death penalty in 2009.

⁹⁴ Albania, Argentina, Greece, Mexico and Turkey.

⁹⁵ Bhutan, Kyrgyzstan, Liberia, Samoa and Senegal.

⁹⁶ Philippines, Rwanda and Uzbekistan.

⁹⁷ Cook Islands, Montenegro and Niue.

⁹⁸ Albania, Argentina, Greece, Mexico and Turkey.

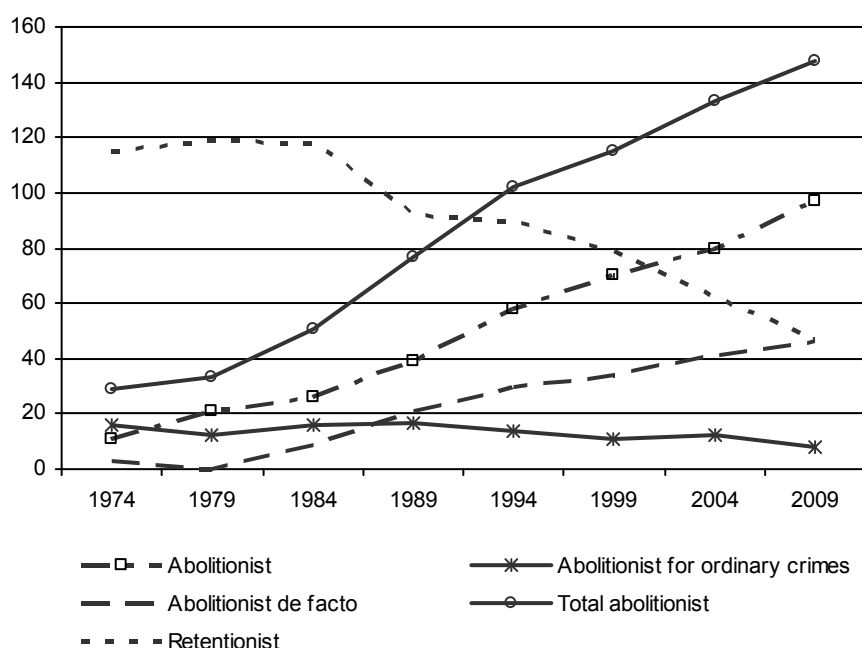
⁹⁹ Bhutan, Kyrgyzstan, Liberia, Mali, Samoa and Senegal.

¹⁰⁰ Cameroon, Guatemala, Guyana, Lesotho, Republic of Korea, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Tajikistan, United Republic of Tanzania and Zambia.

¹⁰¹ E/5616, para. 48.

was found that, while several countries moved towards the abolition of capital punishment by either not sentencing offenders to death or by not executing offenders, there were also several countries that reported an increase in the number of executions during the period under consideration. It was difficult, however, to draw general conclusions about the question of and trends in capital punishment, since the number of respondents was somewhat low and there were different respondents to the two surveys.”¹⁰² On the other hand, the more recent reports have been quite affirmative in terms of their recognition of trends towards restriction and abolition of capital punishment. A statistical overview of the situation from the time of the first quinquennial report makes it clear that the trends have been maintained since then, even if they were not so readily apparent at the time (see figure).

Comparative developments, 1974-2009



Note: The first quinquennial reports did not use the term “de facto abolition”. Rather, they used the term “abolition by custom”, which referred to a State that had not sentenced a person to death or conducted an execution for 40 years. The results are listed here within the “abolitionist de facto” category. The early reports included a separate category for federal States where capital punishment applied only in some jurisdictions. These numbers have been included in the total of retentionist States. The category of abolitionist de facto, comprising States where the death penalty has not been imposed for 10 years, was introduced in the third quinquennial report. A separate category for abolition by custom was retained, although it comprised only one State. The two categories have been combined here.

¹⁰² E/1985/43 and Corr.1, para. 12.

IV. Enforcement of the death penalty

34. During the period 2004-2008, executions were conducted in 35 States Members of the United Nations¹⁰³ and in 2 areas, Taiwan Province of China and Palestine. Fewer than 20 executions were conducted in 20 of those States or areas.¹⁰⁴ Table 2 shows the number of executions by country for each of the five years of the quinquennium. Many of these data have been derived from non-official sources, principally the reports of Amnesty International and Hands Off Cain, given the failure of many retentionist States to provide official data or respond to the questionnaire. States have been requested by the Commission on Human Rights to make “available to the public information with regard to the imposition of the death penalty and to any scheduled execution”.¹⁰⁵ The Special Rapporteur on extrajudicial, summary or arbitrary executions has insisted upon transparency in the imposition of the death penalty, noting that “a considerable number of countries’ information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families.”¹⁰⁶ According to the Special Rapporteur, “countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty”.¹⁰⁷

Table 2
Executions, by country or area, 2004-2008

Country or area	2004	2005	2006	2007	2008	Total
Afghanistan	1	—	—	15	17+	33+
Bahrain	—	—	3	—	1	4
Bangladesh	13	2	5	6	5	31
Belarus	5	1	3	1+	4	14+
Botswana	—	—	1	1	1	3
China	3 400	1 770	1 000	470	1 718+	8 358+
Democratic People’s Republic of Korea	40+	75	3	13	63+	194+
Egypt	6	—	—	1	2	9
Equatorial Guinea	—	—	1	3	—	4

¹⁰³ Afghanistan, Bahrain, Bangladesh, Belarus, Botswana, China, Democratic People’s Republic of Korea, Egypt, Equatorial Guinea, Ethiopia, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mongolia, Pakistan, Saint Kitts and Nevis, Saudi Arabia, Singapore, Somalia, Sudan, Syrian Arab Republic, Tajikistan, Uganda, United Arab Emirates, United States of America, Uzbekistan, Viet Nam and Yemen.

¹⁰⁴ Bahrain, Belarus, Botswana, Egypt, Equatorial Guinea, Ethiopia, India, Indonesia, Jordan, Lebanon, Malaysia, Mongolia, Palestine, Saint Kitts and Nevis, Somalia, Syrian Arab Republic, Taiwan Province of China, Tajikistan, Uganda and United Arab Emirates.

¹⁰⁵ For example, Commission on Human Rights resolution 2005/59, entitled “The question of the death penalty” (see *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A).

¹⁰⁶ E/CN.4/2005/7, para. 57; see also A/HRC/8/3/Add.3, paras. 79-82.

¹⁰⁷ E/CN.4/2005/7, para. 59; see also E/CN.4/2006/53/Add.3.

<i>Country or area</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>Total</i>
Ethiopia	–	–	–	1	–	1
India	1	–	–	–	–	1
Indonesia	3	2	3	1+	10	19+
Iran (Islamic Republic of)	197	94	215	335	346+	1 187+
Iraq	–	3	65	33	37+	138
Japan	2	1	4	9	15	31
Jordan	1	15	4+	–	–	20+
Kuwait	9	7	11	1	–	28
Lebanon	3	–	–	–	–	3
Libyan Arab Jamahiriya	–	6	–	9	8+	23+
Malaysia	–	–	4	1	1+	6
Mongolia	–	8	3	1	1	13+
Pakistan	29	42	82	134	36+	323+
Palestine	–	5	–	–	–	5
Saint Kitts and Nevis	–	–	–	–	1	1
Saudi Arabia	38	86	39	158	102+	423+
Singapore	6	8	5	2	1	22
Somalia	1	1	7	5	3+	17+
Sudan	2	4	65	7	5	83
Syrian Arab Republic	2	–	2	7	1+	12+
Taiwan Province of China	3	3	–	–	–	6
Tajikistan	4	–	–	–	–	4
Uganda	7	8	2	–	–	17
United Arab Emirates	–	–	1	–	1+	2+
United States of America	59	60	53	42	37	251
Uzbekistan	50	2	–	–	–	52
Viet Nam	82	27	14	25	19	167
Yemen	6	7	30	15+	13+	71+

35. Simply to list retentionist countries does not begin to capture the diversity of views and approaches that exist. Previous quinquennial reports have noted that raw numbers alone may be misleading, because they do not take into account differences in overall population. This makes comparisons difficult between States that retain the death penalty. As a result, the 2000 and 2005 reports contained tables listing both the total number of executions by country and the rate per million of the population for countries and territories where 20 or more persons had been executed during the period concerned.¹⁰⁸ These data have been compiled for the period 2004-2008 and appear, with the statistics for the previous two periods, in table 3.¹⁰⁹

¹⁰⁸ E/2000/3 and Corr.1, tables 1 and 2; and E/2005/3 and Corr.1, table 2.

¹⁰⁹ The data for 2004-2008 include four States that had numbers of executions that exceeded 20 and that were not on the 1994-1998 list: Bangladesh, Democratic People's Republic of Korea, Iraq and Kuwait.

Table 3
Countries and territories that remained retentionist at the end of 2008 and in which there were reports of at least 20 persons having been executed in any of the periods 1994-1998, 1999-2003 or 2004-2008, with the estimated annual average (mean) rate per 1 million population

<i>Country or territory</i>	<i>Executions 1994-1998</i>	<i>Rate per million</i>	<i>Executions 1999-2003</i>	<i>Rate per million</i>	<i>Executions 2004-2008</i>	<i>Rate per million</i>
Afghanistan	34	0.36	78	0.56	33+	0.16
Bangladesh	—	—	—	—	29	0.04
Belarus	168	3.20	37-52	0.74-1.04	14+	0.29
China	12 338	2.01	6 687	1.04	8 188	1.22
Democratic People's Republic of Korea	—	—	—	—	194+	1.62
Democratic Republic of the Congo	100	0.43	350	1.30	0	0
Egypt	132	0.43	350	1.30	9	0.02
Iran (Islamic Republic of)	505	1.59	604+	1.83	1 187	3.29
Iraq	—	—	—	—	135	0.92
Japan	24	0.04	13	0.02	31	0.05
Jordan	55	2.12	52+	2.08	19+	0.62
Kuwait	—	—	—	—	28	1.93
Libyan Arab Jamahiriya	31	1.17	23	0.73
Nigeria	248	0.41	4	0.006	0	0
Pakistan	34	0.05	48+	0.07	323	0.39
Republic of Korea	57	0.25	—	—	0	0
Saudi Arabia	465	4.65	403+	3.66	423	3.34
Sierra Leone	71	2.84	0	0	0	0
Singapore	242	13.83	138	6.9	22	1.26
Sudan	5	0.03	53+	1.17	83	0.42
Taiwan Province of China	121	1.13	67	0.59	6	0.05
Thailand	4	0.04	33	0.29	0	0
Uganda	4	0.04	33	0.29	17	0.10
United States of America	274	0.20	385	0.27	251	0.16
Viet Nam	145	0.38	128+	0.32	167	0.38
Yemen	88	1.10	144+	1.51	71	0.61
Zimbabwe	22	0.37	3	0.05	0	0

Notes: An en dash (—) indicates that no data for the country were provided in previous reports. Two dots (..) indicate that data are not available.

36. Of the 26 countries or territories that were listed in the 1994-1998 study as having executed 20 or more persons, only 11 have remained on the list for the period 2004-2008. Most of the 19 States that no longer appear on the list have actually abolished the death penalty in law or practice, or have virtually abandoned its use. The data for 1994-1998 included such countries as the Russian Federation (161 executions), Ukraine (389), Kazakhstan (148), Kyrgyzstan (70), Rwanda (23) and Turkmenistan (373), all of which are now abolitionist. The list also comprised several other States and territories with executions numbering 20 or

more: Cuba (22), Democratic Republic of the Congo (100), Nigeria (248), Republic of Korea (57), Sierra Leone (71), Taiwan Province of China (121) and Zimbabwe (22). These States and territories are now either de facto abolitionist or have gone several years without an execution. Even in cases where there can be no plausible suggestion that the States concerned have become abolitionist, some dramatic decreases in the use of the death penalty are apparent. Thus, Egypt evolved from 132 executions in 1994-1998, and 350 executions in 1999-2003, to 9 executions in 2004-2008. Similarly, the number of executions in Singapore dropped dramatically, from 242 in 1994-1998, and 138 in 1999-2003, to 22 in 2004-2008. Belarus went from 168 in 1994-1998, and between 37 and 52 in 1999-2003, to a minimum of 14 in the most recent quinquennium.

37. This shows a very pronounced decline in the use of the death penalty by many States that have employed it in a significant way in the recent past. Of countries and territories recording 20 or more executions for the period 1994-1998, the rate of execution per 1 million population declined for 17 of them,¹¹⁰ whereas it increased for only 5.¹¹¹ Although it is not suggested that they are contemplating abolition, the most convincing explanation for the dramatic decline in the rates of execution in some of these States must be changing attitudes towards the death penalty. In the case of China, significant declines in the total number of persons executed were reported in 2007 and 2008, a consequence of changes made to the appeals system and, possibly, new perspectives on the death penalty more generally.¹¹² Because China does not provide official statistics, it is difficult to go beyond broad approximations. Moreover, the two non-governmental organizations that regularly monitor the use of the death penalty in China make different assessments as to the extent of capital punishment in China.¹¹³ In its concluding observations, the Committee against Torture criticized China for the failure to provide data on death penalty cases.¹¹⁴ That there is an important decline in the use of the death penalty within China, however, does not seem to be in much doubt. This is probably not adequately reflected in table 3, because the changes began to take effect only in 2007 and 2008. The official statistics published by the United States indicate a measurable decline in the rate of executions, from 0.20 per million in 1994-1998 to 0.27 in 1999-2003 and to 0.16 in 2004-2008. The United States also records a significant decline in executions during the period under consideration, from 59 executions in 2004 to 42 executions in 2007¹¹⁵ and 37 in 2008.¹¹⁶

¹¹⁰ Afghanistan, Belarus, China, Democratic Republic of the Congo, Egypt, Jordan, Libyan Arab Jamahiriya, Nigeria, Republic of Korea, Saudi Arabia, Sierra Leone, Singapore, Taiwan Province of China, Thailand, United States of America, Yemen and Zimbabwe.

¹¹¹ Iran (Islamic Republic of), Japan, Pakistan, Sudan and Uganda.

¹¹² Xie Chuanjiao, "Top court overturns 15% of death sentences in 1st half year", *China Daily*, 27 June 2008.

¹¹³ For example, according to Amnesty International, there were "at least 1,718" executions in China in 2008, whereas according to Hands Off Cain there were "at least 5,000".

¹¹⁴ CAT/C/CHN/CO/4, para. 34.

¹¹⁵ Tracy L. Snell, "Capital punishment, 2007: statistical tables", United States of America Department of Justice (Washington, D.C., Bureau of Justice Statistics, 1 December 2008), table 15.

¹¹⁶ Amnesty International, "Death sentences and executions in 2008" (London, 24 April 2009), p. 17.

The 2008 figure is the lowest number for executions since 1994, and contrasts with a peak of 98 in 1999.¹¹⁷

38. There is very significant regional diversity in the use of capital punishment. In Europe, only Belarus continues to carry out executions. The rate of execution in Belarus dropped from 3.20 per million in 1994-1998 to 0.29 per million in 2004-2008. In the Western hemisphere, aside from the United States, there was only one execution in the entire quinquennium, in Saint Kitts and Nevis. Law and practice concerning the death penalty have changed greatly in Africa. Of countries executing 20 or more persons during the period 2004-2008, only two, the Sudan and the Libyan Arab Jamahiriya, were in Africa. There were six on the list in the 1994-1998 study. For the year 2008, four countries in Africa, Botswana, the Libyan Arab Jamahiriya, Somalia and the Sudan reported executions, estimated to total 18. Table 4 shows the leading practitioners of capital punishment, based upon the rate of execution per 1 million population over the quinquennium. With the exception of the United States, the Libyan Arab Jamahiriya and the Sudan, all are located in the Middle East or Asia.

Table 4

Countries, by estimated annual average (mean) rate per 1 million population, where the number of total executions for the period 2004-2008 was 20 or more

<i>Country</i>	<i>Rate</i>
Saudi Arabia	3.34
Iran (Islamic Republic of)	3.29
Kuwait	1.93
Democratic People's Republic of Korea	1.62
Singapore	1.26
China	1.22
Iraq	0.92
Libyan Arab Jamahiriya	0.73
Jordan	0.62
Yemen	0.61
Sudan	0.42
Pakistan	0.39
Viet Nam	0.38
Afghanistan	0.16
United States of America	0.16
Japan	0.05
Bangladesh	0.04

V. International developments

39. Important developments during the quinquennium concerning capital punishment took place within intergovernmental organizations, international courts and human rights monitoring bodies. Probably the most significant was the

¹¹⁷ Snell, "Capital punishment, 2007", table 15.

adoption, in 2007 and 2008, General Assembly resolutions calling for a moratorium on capital punishment. Debate on issues relating to the death penalty in the Assembly in the late 1960s had led to the adoption of an initial resolution, in 1968 (Assembly resolution 2393 (XXIII)), which actually prompted the preparation of the first quinquennial report. In paragraph 1 of its resolution 32/61 of 8 December 1977, the Assembly stated that the main objective to be pursued in the field of capital punishment was that of progressively restricting the number of offences for which the death penalty might be imposed with a view to the desirability of abolishing that punishment. However, several years passed before there were new attempts to address death penalty-related issues in the Assembly. A draft resolution calling for a moratorium proposed at the forty-ninth session of the Assembly in 1994¹¹⁸ was defeated.¹¹⁹ A similar draft resolution, introduced at the fifty-fourth session of the Assembly in 1999, was withdrawn by its sponsors.¹²⁰

40. In November 2007, an interregional group of Member States introduced a draft resolution in the General Assembly calling for a moratorium on capital punishment. On 18 December 2007, Assembly resolution 62/149, entitled “Moratorium on the use of the death penalty”, was adopted by a recorded vote of 104 to 54, with 29 abstentions. Following the adoption of the resolution, on 11 January 2008, the representatives of 58 permanent missions to the United Nations addressed a note verbale to the Secretary-General to express their wish to “place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law”.¹²¹ Four countries that had opposed the resolution, Belize, Chad, India and the United States of America, did not sign the note verbale. It was endorsed by eight countries that had abstained from voting: Central African Republic, Equatorial Guinea, Eritrea, Fiji, Guinea, Lao People’s Democratic Republic, Swaziland and United Arab Emirates. On 18 December 2008, the Assembly adopted resolution 63/168, also entitled “Moratorium on the use of the death penalty”. It had been co-sponsored by 89 Member States. The voting was 106 in favour to 46 against, with 34 abstentions. Four States that had voted against the 2007 resolution, namely, Bahrain, Jordan, Mauritania and Oman, abstained during the vote in 2008. The issue will be reconsidered by the Assembly in 2010. The Secretary-General was requested by the Assembly to report to it on the implementation of those resolutions. Pursuant to that request, the Secretary-General sought information from Member States and compiled a report to reflect their submissions.¹²²

41. On 21 April 2004, the eighth annual resolution on capital punishment was adopted by the Commission on Human Rights.¹²³ In its resolution 2004/67, the Commission called upon States that still maintained the death penalty to abolish it altogether and, in the meantime, to establish a moratorium on executions and urged those States not to impose the death penalty for crimes committed by persons below

¹¹⁸ See A/49/234 and Add.1 and Add.2, later revised in A/C.3/49/L.32/Rev.1.

¹¹⁹ See A/C.3/49/SR.61.

¹²⁰ A/C.3/54/L.8/Rev.1.

¹²¹ A/62/658.

¹²² A/63/293 and Corr.1 entitled “Moratoriums on the use of the death penalty”.

¹²³ Resolution 2004/67 (see *Official Records of the Economic and Social Council, 2004, Supplement No. 3 (E/2004/23)*), chap. II, sect. A.

the age of 18, or on persons suffering from any form of mental disorder. The resolution had been co-sponsored by 76 Member States, including Iraq, Kiribati, Samoa and Solomon Islands, which had joined the group of sponsors for the first time, and was adopted by a recorded vote of 29 to 19, with 5 abstentions. A statement of dissociation was signed by 64 countries.

42. The Commission on Human Rights in its resolution 2005/59, entitled “The question of the death penalty”, reiterated the contents of previous resolutions but also affirmed the right of everyone to life and stated that abolition of the death penalty was essential for the protection of that right. In the same resolution, the Commission condemned the use of the death penalty on the basis of discriminatory legislation, policies or practices, and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities, and called on States not to impose mandatory death sentences. The Commission also called on States that had recently lifted or had announced the lifting *de facto* or *de jure* of moratoriums on executions once again to commit themselves to suspending such executions. Co-sponsored by 81 Member States, it was adopted by a vote of 26 to 17, with 10 abstentions. The statement of dissociation that followed was signed by 66 countries.

43. The Commission on Human Rights was superseded, in 2006, by the Human Rights Council. The Council assumed responsibility for reports and studies of mechanisms and mandates that it had inherited from the Commission.¹²⁴ Pursuant to the request of the Council to continue with the fulfilment of his activities, in accordance with all previous Commission decisions, the Secretary-General has submitted annual reports on the death penalty to the Council.¹²⁵ These are intended to supplement the quinquennial reports. Materials dealing with the issue of capital punishment are also submitted to the Council in the context of its special procedures, including by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The subject is also addressed regularly in the course of activities carried out in the framework of the universal periodic review mechanism.

44. The Human Rights Committee has addressed issues concerning the administration of capital punishment in its examination of periodic reports from States parties as well as in its consideration of communications from individual victims submitted to it pursuant to the first Optional Protocol to the International Covenant on Civil and Political Rights. Judicial decisions concerning capital punishment have been issued by international human rights tribunals and similar bodies, notably the European Court of Human Rights, the Inter-American Court of Human Rights, the Inter-American Commission of Human Rights and the African Commission of Human and Peoples’ Rights. These decisions and statements are reported under the relevant safeguard in section VI of this report.

45. The death penalty has been abolished in all 27 States members of the European Union. The Charter of Fundamental Rights prohibits capital punishment as well as

¹²⁴ See Human Rights Council decision 2/102, entitled “Reports and studies of mechanisms and mandates” (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. I, sect. B).

¹²⁵ A/HRC/4/78, A/HRC/8/11 and A/HRC/12/45, all entitled “The question of the death penalty”.

extradition to a State where it might be imposed. The Charter is incorporated in the Treaty of Lisbon, which entered into force on 1 December 2009. Work of the European Union with respect to capital punishment is conducted pursuant to the “Guidelines on EU policy towards third countries on the death penalty”,¹²⁶ which were adopted on 29 June 1998 pursuant to a declaration in the Amsterdam Treaty of the European Union of 2 October 1997. These were revised and updated by the Council of the European Union in 2008,¹²⁷ and in the future will be reviewed every three years. The Guidelines include a list of “minimum standards” to be used in auditing third States that still maintain capital punishment. To some extent, these minimum standards go beyond those contained in the United Nations safeguards. For example, the European Union guidelines declare that “(t)he death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience”. In 2008, the words “and sexual relations between consenting adults nor as a mandatory sentence” were added. The European Union has stated that it is “particularly concerned about those countries which execute large numbers of prisoners (for example, China, Democratic Republic of the Congo, Iran (Islamic Republic of), Iraq and United States of America) as well as cases where countries have resumed executions or those that have withdrawn from international safeguards aimed at preventing miscarriages of justice, such as Trinidad and Tobago and Peru”.¹²⁸ In the course of the quinquennium, the European Union issued more than 80 démarches to third countries or territories. The European Commission has provided substantial funding to non-governmental organizations in their efforts to promote abolition of capital punishment throughout the world. As part of the €100 million budget of the European Initiative for Democracy and Human Rights, the European Commission has backed projects aimed at reducing the use of the death penalty, such as through publicizing the ineffectiveness of capital punishment as a mechanism for reducing crime.¹²⁹

46. At the Council of Europe, both the Parliamentary Assembly and the Committee of Ministers have taken initiatives aimed at abolition of capital punishment, including promotion of the ratification of Protocols Nos. 6 and 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) by the 47 Member States and encouraging abolition in third States. On 29 July 2009, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a resolution “on a moratorium on the death penalty and towards its abolition”.¹³⁰ The Office of Democratic Institutions and Human Rights of OSCE produces an annual background paper on the use of the death penalty in OSCE member States.

¹²⁶ Council of the European Union, General Secretariat, *European Union Annual Report on Human Rights, 1998/1999* (Luxembourg, Office for Official Publications of the European Communities, 2000), annex 7.

¹²⁷ Council of the European Union, “EU Guidelines on the Death Penalty: revised and updated version”, document No. 10015/08 (Brussels, 5 June 2008).

¹²⁸ *European Union Annual Report on Human Rights*, p. 49.

¹²⁹ See communication from the Commission to the Council and the European Parliament entitled “The European Union’s role in promoting human rights and democratisation in third countries”, 8 May 2001, p. 13.

¹³⁰ “Resolution on a moratorium on the death penalty and towards its abolition”, adopted at the eighteenth session of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, Vilnius, 29 June-3 July 2009. Available from www.osce.org.

47. On 24 November 2008, the African Commission on Human and Peoples' Rights adopted a resolution¹³¹ calling on States parties to the African Charter on Human and Peoples' Rights¹³² that still retain the death penalty to ensure fair trial guarantees in capital trials and to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty (paras. 1 and 2). In its resolution, the Commission expressed concern at the failure of some African States to give effect to United Nations resolutions and to the Commission's own resolution calling for a moratorium, which had been adopted in Kigali in 1999 (ACHPR/Res.42 (XXVI)). The resolution also expressed concern at the application of the death penalty in conditions not respectful of the right to a fair trial and other human rights.

48. The non-governmental organization Together against the Death Penalty organized the Third World Congress against the Death Penalty, held in Paris from 1 to 3 February 2007. The Fourth World Congress is scheduled to take place in Geneva in February 2010. Representatives of Arab civil society, the League of Arab States, the Office of the United Nations High Commissioner for Human Rights and international non-governmental organizations attended the Alexandria meeting from 12 to 14 May 2008, leading to the adoption of a Declaration by Arab civil society "calling upon Arab countries to implement United Nations General Assembly resolution 62/149 on the establishment of a moratorium on the death penalty" (the Alexandria Declaration).¹³³ The Declaration called upon Arab Governments to take concrete steps to progressively abolish the death penalty and to consider amending article 7 of the Arab Charter on Human Rights in order to ensure that the death penalty is not applied with respect to crimes committed by persons under age 18.

49. As of the beginning of 2004, 52 countries were parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which had been adopted by the General Assembly on 15 December 1989 and entered into force on 11 July 1991. Twenty countries ratified or acceded to the Protocol during the quinquennium: Albania, Andorra, Argentina, Canada, Chile, Czech Republic, Estonia, France, Honduras, Liberia, Mexico, Montenegro, Nicaragua, Philippines, Republic of Moldova, Rwanda, San Marino, Turkey, Ukraine and Uzbekistan. Nicaragua ratified the Protocol on 25 February 2009. At the time of ratification, Chile formulated a declaration, which was authorized by article 2 (1), reserving application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. On 15 December 2009, at the time of its twentieth anniversary, there were 72 States parties and 35 signatories to the Protocol.

50. During the reporting period, there were four new ratifications or accessions to Protocol No. 6 to the European Convention on Human Rights, which abolishes the death penalty except in time of war or threat of war: those of Monaco, Montenegro, Romania and Serbia. As of the end of 2008, all 47 members of the Council of Europe, with the exception of the Russian Federation, were parties to the Protocol. The Russian Federation signed the Protocol in 1997.

¹³¹ ACHPR/Res.136 (XXXXIII).

¹³² United Nations, *Treaty Series*, vol. 1520, No. 26363.

¹³³ Amnesty International, *Death Penalty News*, May-December 2008 (ACT 53/001/2009).

51. Protocol No. 13 to the European Convention on Human Rights, which abolishes the death penalty altogether, including in time of war, was adopted on 3 May 2002. At the beginning of the survey period, in January 2004, it had obtained 17 ratifications. During the quinquennium, 23 States ratified the Protocol: Albania, Austria, Czech Republic, Estonia, Finland, France, Germany, Greece, Iceland, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, Norway, Portugal, Republic of Moldova, Serbia, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, Turkey and United Kingdom of Great Britain and Northern Ireland. Italy ratified the Protocol on 3 March 2009. Four member States of the Council of Europe, Armenia, Latvia, Poland and Spain, have signed but have yet to ratify Protocol No. 13. Azerbaijan and the Russian Federation have neither signed nor acceded to the Protocol.

52. During the reporting period, Chile and Mexico ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, bringing to 11 the number of States parties.

53. An analysis of international obligations binding States not to impose capital punishment is incomplete without considering the effect of general human rights treaties. The American Convention on Human Rights specifies that a State that has abolished the death penalty may not reintroduce it. Thus, States that ratify or accede to the American Convention that are abolitionist at the time have, in effect, bound themselves to an international obligation comparable with those set out in the protocols. Five States parties to the American Convention have abolished the death penalty but have not ratified or acceded to any of the abolitionist protocols: Bolivia (Plurinational State of), Dominican Republic, El Salvador, Haiti and Peru.

54. The International Covenant on Civil and Political Rights does not contain a clause equivalent to that of the American Convention on Human Rights by which a State that has abolished the death penalty may not reinstate it. However, the prevailing interpretation by the Human Rights Committee of article 6 of the International Covenant on Civil and Political Rights, by which a State that has already abolished the death penalty may not contribute in any manner to its imposition,¹³⁴ appears to have, as a logical corollary, the prohibition of reinstatement of capital punishment. The extensive jurisprudence of the Committee on article 6 is described in the annual reports to the Human Rights Council.¹³⁵ Nine States that have abolished the death penalty are parties to the International Covenant on Civil and Political Rights, but have not ratified or acceded to any of the abolitionist protocols, namely, Angola, Burundi, Cambodia, Côte d'Ivoire, Kyrgyzstan, Mauritius, Samoa, Senegal and Togo. Two States that have abolished the death penalty for ordinary crimes, Israel and Kazakhstan, appear to be in a similar position.

55. In total, some 81 countries have bound themselves to the abolition of capital punishment by ratifying or acceding to an international treaty (see table 5). If the expansive interpretation of article 6 of the International Covenant on Civil and

¹³⁴ *Judge v. Canada* (CCPR/C/78/D/829/1998, para. 10.6).

¹³⁵ "Question of the death penalty: report of the Secretary-General" (A/HRC/4/78), "Question of the death penalty: report of the Secretary-General" (A/HRC/8/11) and "Question of the death penalty: report of the Secretary-General" (A/HRC/12/45).

Political Rights taken by the Human Rights Committee is followed, that number climbs to 92.

Table 5

States bound by international legal obligations with respect to the death penalty, by instrument and date of accession, ratification or signature

	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights</i>	<i>Protocol No. 6 to the European Convention on Human Rights</i>	<i>Protocol No. 13 to the European Convention on Human Rights</i>	<i>American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Albania	17/10/07	01/10/00	01/06/07		
Andorra	22/09/06	01/02/96	01/07/03		
Argentina	02/09/08			08/14/84	06/18/08
Armenia		01/10/03	19/05/06 ^a		
Australia	02/10/90				
Austria	02/03/93	01/03/85	01/05/04		
Azerbaijan	22/01/99	01/05/02			
Belgium	08/12/98	01/01/99	01/10/03		
Bolivia (Plurinational State of)				06/20/79	
Bosnia and Herzegovina	16/03/01	01/08/02	01/11/03		
Brazil				07/09/92	07/31/96
Bulgaria	10/08/99	01/10/99	01/07/03		
Canada	25/11/05				
Cape Verde	19/05/00				
Chile	26/09/08			08/10/90	08/04/08
Colombia	05/08/97			05/28/73	
Costa Rica	05/06/98			03/02/70	03/30/98
Croatia	12/10/95	01/12/97	01/07/03		
Cyprus	10/09/99	01/02/00	01/07/03		
Czech Republic	15/06/04	01/01/93	01/11/04		
Denmark	24/02/94	01/03/85	01/07/03		
Djibouti	05/11/02				
Dominican Republic				01/21/78	
Ecuador	23/02/93			12/08/77	02/05/98
El Salvador				06/20/78	
Estonia	30/01/04	01/05/98	01/06/04		
Finland	04/04/91	01/06/90	01/03/05		
France	02/10/07	01/03/86	01/02/08		
Georgia	22/03/99	01/05/00	01/09/03		
Germany	18/08/92	01/08/89	01/02/05		
Greece	05/05/97	01/10/98	01/06/05		
Guinea-Bissau	12/09/00 ^a				
Haiti				09/14/77	
Honduras	01/04/08			09/05/77	
Hungary	24/02/94	01/12/92	01/11/03		

	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights</i>	<i>Protocol No. 6 to the European Convention on Human Rights</i>	<i>Protocol No. 13 to the European Convention on Human Rights</i>	<i>American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Iceland	02/04/93	01/06/87	01/03/05		
Ireland	18/06/93	01/07/94	01/07/03		
Italy	14/02/95	01/01/99	01/07/09		
Latvia		01/06/99	03/05/02 ^a		
Liberia	16/09/05				
Liechtenstein	10/12/98	01/12/90	01/07/03		
Lithuania	27/03/02	01/08/99	01/05/04		
Luxembourg	12/02/92	01/03/85	01/07/06		
Malta	29/12/94	01/04/91	01/07/03		
Mexico	26/09/07			03/02/81	
Monaco	28/03/00	01/12/05	06/03/06		
Montenegro	23/10/06	06/06/06	01/06/06		
Mozambique	21/07/93				
Namibia	28/11/94				
Nepal	04/03/98				
Netherlands	26/03/91	01/05/86	01/06/06		
New Zealand	22/02/90				
Nicaragua	25/02/09			09/25/79	03/24/99
Norway	05/09/91	01/11/88	01/12/05		
Panama	21/01/93			05/08/78	06/27/91
Paraguay	18/08/03			08/18/89	10/31/00
Peru				07/12/78	
Philippines	20/11/07				
Poland	21/03/00 ^a	01/11/00	03/05/02 ^a		
Portugal	17/10/90	01/11/86	01/02/04		
Republic of Moldova	20/09/06	01/10/97	01/02/07		
Romania	27/02/91	01/07/04	01/08/03		
Russian Federation		16/04/97 ^a			
Rwanda	15/12/08				
San Marino	17/08/04	01/04/89	01/08/03		
Sao Tome and Principe	06/09/00 ^a				
Serbia	06/09/01	01/04/04	01/07/04		
Seychelles	15/12/94				
Slovakia	22/06/99	01/01/93	01/12/05		
Slovenia	10/03/94	01/07/94	01/04/04		
South Africa	28/08/02				
Spain	11/04/91	01/03/85	03/05/02 ^b		
Sweden	11/05/90	01/03/85	01/08/03		
Switzerland	16/06/94	01/11/87	01/07/03		
The former Yugoslav Republic of Macedonia	26/01/95	01/05/97	01/11/04		
Timor-Leste	18/09/03				

	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights</i>	<i>Protocol No. 6 to the European Convention on Human Rights</i>	<i>Protocol No. 13 to the European Convention on Human Rights</i>	<i>American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Turkey	02/03/06	01/12/03	01/06/06		
Turkmenistan	11/01/00				
Ukraine	25/07/07	01/05/00	01/07/03		
United Kingdom of Great Britain and Northern Ireland	10/12/99	01/06/99	01/02/04		
Uruguay	21/01/93			03/26/85	02/08/94
Uzbekistan	23/12/08				
Venezuela (Bolivarian Republic of)	22/02/93			06/23/77	08/24/92

Note: Entries under the column entitled “American Convention on Human Rights” refer to abolitionist States that are parties thereto.

^a Signature.

^b Signature *ad referendum*.

56. The international criminal tribunals established by the United Nations for the former Yugoslavia, Rwanda, Sierra Leone and Lebanon all exclude the death penalty. Similarly, the death penalty may not be imposed by the International Criminal Court, a fact that is often cited as evidence of a trend towards universal abolition of capital punishment.¹³⁶ During the quinquennium, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda launched what is known as their completion strategies. In an effort to reduce the judicial activities of the Tribunals, cases are transferred to national courts in situations where indictments have been issued but where the facts suggest the matter to be of insufficient gravity to merit prosecution at the international level. One of the requirements imposed by the Rules of Procedure and Evidence of the two Tribunals is that there can be no transfer to a State where the death penalty might be imposed or carried out. In order to comply with the requirements, Rwanda enacted legislation that eliminated the death penalty in the case of persons transferred by the International Criminal Tribunal. The legislation also applied to individuals extradited to Rwanda from other countries.¹³⁷ Four months later, the Rwandan National Assembly enacted legislation that abolished the death penalty in the country altogether.¹³⁸ The move was praised by Louise Arbour, then the United Nations High Commissioner for Human Rights.¹³⁹ Although the Human Rights Committee also welcomed the development, it noted with concern that capital punishment had been replaced by life imprisonment in solitary confinement, which it said was contrary to article 7 of the International Covenant on Civil and Political

¹³⁶ See, for example, A/HRC/10/44, para. 32; and A/HRC/4/49, para. 60.

¹³⁷ Rwanda, Organic Law concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States, *Official Gazette of the Republic of Rwanda of 16 March 2007, Year 46*, 19 March 2007.

¹³⁸ Rwanda, Organic Law No. 31/2007 of 25/07/2007 relating to the abolition of the death penalty, *Official Gazette of the Republic of Rwanda, Year 46*, 25 July 2007.

¹³⁹ “High Commissioner for Human Rights hails abolition of capital punishment in Rwanda”, press release, 27 July 2007.

Rights.¹⁴⁰ In November 2007, in a debate in the United Nations General Assembly on the resolution calling for a moratorium on the death penalty, the Rwandan delegate joined in support of the resolution.¹⁴¹ Thus, the international criminal tribunals have had a catalytic effect upon at least one national jurisdiction, encouraging abolition. Rwanda's decision probably had repercussions in the region as well, for in 2009, neighbouring Burundi also abolished the death penalty.

57. Reservations to international treaty provisions concerning the death penalty are exceedingly rare. The Commission on Human Rights, in paragraph 7 (g) of its resolution 2005/59 on the death penalty, called upon member States to withdraw and/or not to enter any new reservations under article 6 of the Covenant that might be contrary to the object and purpose of the Covenant, given that article 6 enshrined the minimum rules for the protection of the right to life and the generally accepted standards in that area. At the time the resolution was adopted, there was in fact only one operative reservation to article 6 of the International Covenant on Civil and Political Rights, formulated by the United States of America at the time of its ratification in 1993: "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age". It has always seemed clear that the reservation was intended to shelter the United States from complaints concerning imposition of the death penalty for crimes committed by persons under 18 years of age. The reservation was presented in this fashion to the Human Rights Committee in the initial report of the United States.¹⁴² When, in 2005, in *Roper v. Simmons*, the United States Supreme Court declared the death penalty for crimes committed under age 18 to be unconstitutional, this was in principle no longer an issue for the United States.¹⁴³ When the United States presented its second and third periodic reports to the Committee, in 2006, members invited the United States to withdraw the reservation. In a document filed with the Committee, the United States said that the reservation remained in effect and that there was no intention of having it be withdrawn.¹⁴⁴ The Committee also called upon Thailand to withdraw a declaration concerning article 6 (5) of the Covenant that it had formulated at the time of ratification.¹⁴⁵

VI. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

58. The safeguards guaranteeing protection of the rights of those facing the death penalty constitute an enumeration of minimum standards to be applied in countries that still impose capital punishment. They both reflect and further develop the

¹⁴⁰ CCPR/C/RWA/CO/3, para. 14; see also Jamil Ddamulira Mujuzi, "Issues surrounding life imprisonment after the abolition of the death penalty in Rwanda", *Human Rights Law Review*, vol. 9, No. 2 (2009), pp. 329-338.

¹⁴¹ A/C.3/62/SR.46, para. 76.

¹⁴² CCPR/C/81/Add.4, paras. 147-148.

¹⁴³ *Roper v. Simmons*, 543 US 551 (2005).

¹⁴⁴ CCPR/C/SR.2380, paras. 7-8.

¹⁴⁵ CCPR/CO/84/THA, para. 14.

norms governing capital punishment set out in article 6 of the International Covenant on Civil and Political Rights. The safeguards were adopted on 25 May 1984 by the Economic and Social Council in its resolution 1984/50. The Council, in its resolution 1996/15 of 23 July 1996, called upon Member States in which the death penalty had not been abolished to apply effectively the safeguards guaranteeing protection of the rights of those facing the death penalty. The Commission on Human Rights, in its resolution 2005/59, reaffirmed the significance of the safeguards, as did the General Assembly in its resolutions 62/149 and 63/168.

A. First safeguard: “most serious crimes”

59. The first of the safeguards 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 norm is derived from article 6 (2) of the International Covenant on Civil and Political Rights, which requires States that have not abolished the death penalty to confine its use to “the most serious crimes”. Application of this safeguard in recent years has focused on two main issues: the mandatory death penalty, and the use of the death penalty for crimes that are not intentional and that do not have lethal or other extremely grave consequences.

1. Mandatory death sentences

60. Only one of the States that responded to the questionnaire indicated that a mandatory death penalty can be imposed pursuant to its criminal law. Mongolia declared that the death penalty is mandatory for the assassination of a State or public figure, the murder of someone carrying out an official or public duty, banditry and genocide.

61. The Human Rights Committee has concluded that a mandatory death penalty is not compatible with the limitation of capital punishment to the “most serious crimes”. According to the Committee, a mandatory sentence fails to take into account the defendant’s personal circumstances and the circumstances of the offence.¹⁴⁶ Similar approaches have been taken by international human rights bodies¹⁴⁷ and by national courts.¹⁴⁸ In April 2007, the High Court of Malawi declared the mandatory death penalty to be unconstitutional. In January 2009, the Supreme Court of Uganda upheld a decision by the Constitutional Court of Uganda

¹⁴⁶ *Rolando v. Philippines* (CCPR/C/82/D/1110/2002, para. 5.2); *Rayos v. Philippines* (CCPR/C/81/D/1167/2003, para. 7.2); *Hussain and Singh v. Guyana* (CCPR/C/85/D/862/1999, para. 6.2); *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002, para. 7.4); *Chan v. Guyana* (CCPR/C/85/D/913/2000, para. 6.5); *Larrañaga v. Philippines* (CCPR/C/87/D/1421/2005, para. 7.2); *Persaud and Rampersaud v. Guyana* (CCPR/C/86/D/812/1998/Rev.1, para. 7.2); *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005, para. 7.2).

¹⁴⁷ Inter-American Court of Human Rights, *Raxcacó-Reyes v. Guatemala*, Series C, No. 133, paras. 81-82; *Boyce et al. v. Barbados*, Series C, No. 169, para. 51; and, *Dacosta-Cadogan v. Barbados*, Series C, No. 204.

¹⁴⁸ *Bowe and Davis v. The Queen (The Bahamas)* [2006] UKPC 10.

declaring that all provisions in the country's legislation authorizing the death penalty as a mandatory sentence were unconstitutional.¹⁴⁹

62. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in his 2007 report to the Human Rights Council, said he had addressed communications to a number of Governments noting the prohibition of a mandatory death penalty under international law.¹⁵⁰ According to the Special Rapporteur, “(t)he intuitive argument against the mandatory death penalty is strong — surely, a human facing death merits a chance to present reasons why he or she should be allowed to live — but some still contend that this opportunity may be denied”.¹⁵¹ The principal argument favouring the compatibility of a mandatory death penalty with international human rights norms is that, to the extent that capital punishment is available only for the “most serious crimes”, the facts legally relevant to the acceptability of the sentence have already been considered as part of the judgement on the conviction, the Special Rapporteur has explained. Moreover, a person condemned to a mandatory death sentence may still exercise the right to seek pardon or commutation, which is enshrined in article 6 (4) of the International Covenant on Civil and Political Rights and the seventh safeguard; but international norms require that any sentence of death involve an assessment of individual factors relevant to the offender.¹⁵² According to the Special Rapporteur: “The conclusion, in theory as well as in practice, was that respect for human rights can be reliably ensured in death penalty cases only if the judiciary engages in case-specific, individualized sentencing that accounts for all of the relevant factors.”¹⁵³

2. Crimes for which the death penalty is applicable

63. In the sixth quinquennial report, the Secretary-General stated that while the concept of “most serious crimes” had given rise to “wide interpretation by a number of countries”, the reference in the safeguards to intentional crimes with lethal or other extremely grave consequences “is intended to imply that the offences should be life-threatening, in the sense that this is a very likely consequence of the action”.¹⁵⁴ The Commission on Human Rights, in paragraph 7 (f) of its 2005 resolution on the death penalty, called on States “(t)o 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”. The guidelines on European Union policy state that in considering what constitutes “the most serious crimes”, capital punishment should not be imposed “for non-violent financial crimes or for non-violent religious practice or expression of conscience”.

64. The Human Rights Committee has frequently determined that specific crimes do not meet the “most serious crimes” standard in article 6 (2) of the International

¹⁴⁹ *A-G v. Kigula et al.*, Constitutional Appeal No. 03 of 2006, Uganda, Supreme Court, 21 January 2009.

¹⁵⁰ A/HRC/4/20, para. 54.

¹⁵¹ *Ibid.*, para. 55.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, para. 56; see also A/HRC/11/2/Add.6, para. 84.

¹⁵⁴ E/2000/3 and Corr.1, para. 79.

Covenant on Civil and Political Rights, including theft or robbery by force,¹⁵⁵ aggravated robbery with the use of a firearm,¹⁵⁶ stealing cattle¹⁵⁷ and political offences.¹⁵⁸ It has said that “the imposition of that penalty for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life” is contrary to the Covenant.¹⁵⁹ Its interpretation has been endorsed by the Inter-American Court of Human Rights.¹⁶⁰ The Committee has also addressed the “most serious crimes” issue in the context of offences that are vaguely defined or overbroad.

65. The “most serious crimes” issue has been in the agenda of the Special Rapporteur on extrajudicial, summary or arbitrary executions since the early days of the discharge of the mandate.¹⁶¹ In communications with Governments, the Special Rapporteur has addressed death sentences for offences and conduct including adultery, apostasy, blasphemy, bribery, acts incompatible with chastity, corruption, drug possession, drug trafficking, drug-related offences, economic offences, expressing oneself, holding an opinion, homosexual acts, matters of sexual orientation, manifesting one’s religion or beliefs, prostitution, organization of prostitution, participation in protests, premarital sex, singing songs inciting men to go to war, sodomy, speculation, “acts of treason, espionage or other vaguely defined acts usually described as ‘crimes against the State’”, and writing slogans against a country’s leader.¹⁶² The Special Rapporteur has taken the view that a subjective approach to interpretation of the concept of “most serious crimes” is not viable, in that relying upon what individuals or Governments consider to be serious would “render the relevant international law standard meaningless”.¹⁶³ Nigeria challenged the Special Rapporteur, arguing that “the notion that executions for offences such as homosexuality and lesbianism are excessive is judgemental rather than objective. What may be seen by some as disproportional penalty in such serious offences and odious conduct such may be seen by others as appropriate and just punishment.”¹⁶⁴

66. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, “(t)he conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting these provisions is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life”.¹⁶⁵

67. In March 2009, in conjunction with the Commission on Narcotic Drugs High-level Meeting, the United Nations High Commissioner for Human Rights noted that

¹⁵⁵ CCPR/C/79/Add.85, para. 8; CCPR/CO/83/KEN, para. 13; CCPR/C/SDN/CO/3.

¹⁵⁶ CCPR/C/ZMB/CO/3.

¹⁵⁷ CCPR/C/MDG/CO/3.

¹⁵⁸ CCPR/C/79/Add.101, para. 8.

¹⁵⁹ CCPR/C/79/Add.25, para. 8; see also *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002, para. 7.4) and the thorough review of this case law in A/HRC/4/20, paras. 51-52.

¹⁶⁰ *Raxcacó-Reyes v. Guatemala*, para. 69 (see footnote 147).

¹⁶¹ E/CN.4/1984/29, paras. 38-40.

¹⁶² A/HRC/4/20, para. 40.

¹⁶³ *Ibid.*

¹⁶⁴ A/HRC/8/3/Add.3, para. 77.

¹⁶⁵ A/HRC/4/20, para. 53.

the application of the death penalty to those convicted solely of drug-related offences raised serious human rights concerns, not the least of which was whether or not those offences could be said to fall within the category of “most serious crimes” for which the death penalty might be sought.¹⁶⁶ In a paper presented in 2008 to the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice, the Executive Director of the United Nations Office on Drugs and Crime condemned the use of capital punishment for drug criminals: “Although drugs and crime kill, Governments should not kill because of them.”¹⁶⁷ In a letter, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the question of torture stated: “Many States, commendably, will not extradite those who may face the death penalty. This is of particular relevance to drug policy due to the number of death sentences handed down and executions carried out for drug offences each year. While capital punishment is not prohibited entirely under international law, the weight of opinion indicates clearly that drug offences do not meet the threshold of ‘most serious crimes’ to which the death penalty might lawfully be applied.”¹⁶⁸

68. In June 2008, the United States Supreme Court held that the death penalty could not be applied in the case of the crime of rape of a child where the crime did not result, and was not intended to result, in the victim’s death. The majority of the Court confined the scope of its decision to crimes against individual persons and not offences against the State, giving treason, espionage, terrorism, and “drug kingpin activity” as examples thereof.¹⁶⁹

B. Second safeguard: non-retroactivity

69. The second safeguard states: “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.” This norm is a specific formulation of the more general principle set out in article 15 (1) of the International Covenant on Civil and Political Rights.

70. No information was forthcoming to suggest that the laws of any of the responding countries or any other country allowed the death penalty to be applied retroactively if the law specifying capital punishment had not been in effect prior to the commission of the offence. As far as is known, all countries that abolished the death penalty in the period 2004-2008 did not permit persons sentenced to death prior to abolition to be executed. Several countries that responded to the questionnaire indicated that there is no possibility of retroactive imposition of the

¹⁶⁶ “High Commissioner calls for focus on human rights and harm reduction in international drug policy”, press release, 10 March 2009.

¹⁶⁷ “Organized crime and its threat to security: tackling a disturbing consequence of drug control” (E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4).

¹⁶⁸ Available from www.hrw.org/sites/default/files/related_material/12.10.2008%20Letter%20to%20CND%20fromSpecial%20Rapporteurs.pdf. On the use of the death penalty for drug-related offences, see also Rick Lines and Damon Barrett, “Complicity or abolition? UNODC and the death penalty for drugs” (London, International Harm Reduction Association, 2007).

¹⁶⁹ *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008).

death penalty. Belarus, Japan and Mongolia have legislative provisions assuring that the convicted person will benefit from the lighter penalty if the applicable sentence has been changed since the commission of the crime. Malaysia and Trinidad and Tobago reported that they do not have such provisions in their laws.

C. Third safeguard: juveniles, pregnant women and other categories

71. The third safeguard 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 sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.” The prohibition upon execution for crimes committed when the offender was under age 18, and the prohibition on execution of pregnant women, are derived from article 6 (5) of the International Covenant on Civil and Political Rights. The third safeguard was amplified by the Economic and Social Council in 1988 with the words “persons suffering from mental retardation or extremely limited mental competence”.¹⁷⁰

1. Persons under age 18

72. The prohibition of executions for crimes committed under age 18 appears in several international human rights conventions.¹⁷¹ It is also set out in three international humanitarian law conventions.¹⁷² There is authority for the view that the prohibition on executions for crimes committed by persons under age 18 is a norm of customary international law.¹⁷³ The Human Rights Council, in its resolution 7/29, adopted on 28 March 2008,¹⁷⁴ called upon all States, in particular those States in which the death penalty had not been abolished: (a) to abolish by law, as soon as possible, the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offence; (b) to comply with their obligations as assumed under relevant provisions of international human rights instruments, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights; and (c) to keep in mind the safeguards guaranteeing protection of the rights of those facing the

¹⁷⁰ Economic and Social Council resolution 1989/64, para. 1 (d).

¹⁷¹ The Convention on the Rights of the Child (United Nations, *Treaty Series*, vol. 1577, No. 27531), para. 37 (a); the American Convention on Human Rights (United Nations, *Treaty Series*, vol. 1144, No. 17955), article 4 (5); and the African Charter on the Rights and Welfare of the Child (Organization of African Unity document CAB/LEG/24.9/49), article 5 (3).

¹⁷² Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (United Nations, *Treaty Series*, vol. 75, No. 973), article 68; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (United Nations, *Treaty Series*, vol. 1125, No. 17512), article 77 (5); and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (United Nations, *Treaty Series*, vol. 1125, No. 17513), article 6 (4).

¹⁷³ *Domingues v. United States*, Report No. 62/02, Merits, Case 12.285 (22 October 2002), para. 67; and Subcommission on the Promotion and Protection of Human Rights resolution 2000/17 entitled “The death penalty in relation to juvenile offenders” (see E/CN.4/2001/2-E/CN.4/Sub.2/2000/46), chap. II, sect. A.

¹⁷⁴ Human Rights Council resolution 7/29 entitled “Rights of the child” (see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 53 (A/63/53)*, chap. II, sect. A).

death penalty and the guarantees set out in Economic and Social Council resolutions 1984/50 of 25 May 1984 and 1989/64 of 24 May 1989 (para. 30 (a)-(c)).

73. Article 7 (a) of the Arab Charter on Human Rights, which entered into force in 2008, states that the death penalty shall not be imposed for “persons under 18 years of age, *unless* otherwise stipulated in the laws in force at the time of commission of the crime” (emphasis added). The provision is obviously inconsistent with the norms reprised in the previous paragraph, as well as the third safeguard. The Arab Charter has been ratified by 7 of the 22 members of the League of Arab States. With the exception of Palestine, all States parties to the Arab Charter are also bound by either the Convention on the Rights of the Child or the International Covenant on Civil and Political Rights, or by both of these instruments, and are therefore in principle subject to an absolute prohibition on execution for crimes committed by persons under age 18. There do not appear to be any relevant reservations formulated by these States that might mitigate the force of the prohibition in these instruments.

74. All of the reporting States that retain the death penalty indicated that they do not allow the execution of persons for crimes committed under age 18. In reports submitted to the United Nations High Commissioner for Human Rights, Algeria, Belarus, Botswana, Kuwait and Tunisia indicated that this was also the case.¹⁷⁵

75. Nevertheless, despite the universal prohibition of capital punishment with respect to juvenile offenders, the practice continues in a handful of countries. The Special Rapporteur on extrajudicial, summary or arbitrary executions has regularly addressed communications to Governments concerning allegations that the death penalty was imposed for a crime committed by a minor, or that the execution of a young offender was imminent or had been carried out.¹⁷⁶

76. According to the seventh quinquennial report, the largest number of executions of young offenders carried out during the period 1999-2003 was in the United States. In 2005, the Supreme Court of the United States ruled, by a vote of 5 to 4, that the execution of persons for crimes committed under age 18 was a violation of the Eighth Amendment to the Constitution, which prohibits “cruel and unusual punishments”.¹⁷⁷

77. During the quinquennium, there were regular reports of juvenile executions in the Islamic Republic of Iran. The Islamic Republic of Iran was the only country in which juvenile executions are believed to have taken place in 2008. In January 2005, the Islamic Republic of Iran informed the Committee on the Rights of the Child that all executions of persons under age 18 who had committed crimes had been halted.¹⁷⁸ It referred to legislation being considered that “clearly stated that the death penalty for persons between 15 and 18 years of age was to be replaced by a prison sentence of two to eight years”.¹⁷⁹ This was reiterated in a note verbale dated 8 March 2005, addressed to the Office of the United Nations High Commissioner for Human Rights, in which the Islamic Republic of Iran explained that the ban had

¹⁷⁵ A/63/293 and Corr.1, paras. 40 and 42.

¹⁷⁶ A/HRC/11/2, para. 29.

¹⁷⁷ *Roper v. Simmons*, 543 US 551 (2005).

¹⁷⁸ CRC/C/SR.1015, para. 34.

¹⁷⁹ CRC/C/SR.1016, para. 58.

been incorporated into the draft bill on juvenile courts, which was before parliament for ratification.¹⁸⁰ The Special Rapporteur on extrajudicial, summary or arbitrary executions has cited reliable reports indicating there are at least 130 juvenile offenders on death row in the Islamic Republic of Iran.¹⁸¹ According to the Special Rapporteur, “the main argument advanced by the Islamic Republic of Iran is that, where the death penalty is provided as retribution (*Qesas*) for murder, the ‘enforcement of *Qesas* depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former’”.¹⁸² The Special Rapporteur said it was “noteworthy that none of the other States in which Islamic law is applicable has seen the need to invoke this exception”.¹⁸³

78. Executions for crimes committed by persons under age 18 have also been reported in Saudi Arabia as recently as 2007.¹⁸⁴ In 2005, Saudi Arabia told the Committee on the Rights of the Child that “Islamic Shariah applicable in the Kingdom never imposes capital punishment on persons who have not attained their majority, regardless of whether the offence they committed was a *qisas* offence (for which the penalty is retaliation), a *hadd* offence (for which the prescribed penalty is mandatory) or a *ta'zir* offence (for which the penalty is left to the judge's discretion)”.¹⁸⁵ The Committee took note of this information, but said it was “deeply concerned that judges have the discretionary power, which is often used when presiding over criminal cases involving children, to decide that a child has reached the age of majority at an earlier age, and that as a consequence capital punishment is imposed for offences committed by persons before they have reached the age of 18”.¹⁸⁶ The Special Rapporteur on extrajudicial, summary or arbitrary executions noted that Saudi Arabia claimed that it applied “regulations stipulat(ing) that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another”.¹⁸⁷ However, although the Convention on the Rights of the Child allows some flexibility in fixing the age of a child, for specific purposes, this is not the case for the death penalty, where the Convention is absolutely clear.¹⁸⁸ This has been pointed out to Saudi Arabia by the Committee on the Rights of the Child.¹⁸⁹

79. During the conduct of the universal periodic review process, Saudi Arabia accepted a recommendation that it amend the Code of Criminal Practice to stipulate that only individuals over age 18 would be tried as adults, and that executions of any individuals who were less than 18 years old when they had committed the crime should be commuted to a custodial sentence.¹⁹⁰ Saudi Arabia said it “accepts this

¹⁸⁰ A/HRC/4/20/Add.1, p. 152.

¹⁸¹ A/HRC/11/2, para. 39.

¹⁸² A/HRC/8/3/Add.1, p. 216.

¹⁸³ A/HRC/11/2, paras. 29 and 35.

¹⁸⁴ Amnesty International, “The death penalty: worldwide developments in 2007” (April 2008), p. 17.

¹⁸⁵ CRC/C/136/Add.1, para. 68.

¹⁸⁶ CRC/C/SAU/CO/2, para. 32.

¹⁸⁷ A/HRC/8/3/Add.1, p. 336.

¹⁸⁸ A/HRC/11/2, para. 33.

¹⁸⁹ CRC/C/SAU/CO/2, para. 32.

¹⁹⁰ A/HRC/11/23 and Corr.1, para. 87 (23).

recommendation in accordance with its commitments undertaken under the Convention on the Rights of the Child”.¹⁹¹

80. Legislation of the Sudan states that children should not, as a matter of principle, be sentenced to capital punishment. Nevertheless, the applicable statute describes a child as a person under 18 “unless the applicable law stipulates that the child has reached maturity”. Furthermore, the Sudan’s Interim Constitution, which was ratified on 9 July 2005, declares that the death penalty shall not be imposed on a person under the age of 18 or a person who has attained the age of 70 *except in cases of retribution or hudud*.¹⁹² Although the Southern Sudan had abolished the death penalty for children when it adopted its Interim Constitution in 2006, at least six persons sentenced for juvenile crimes remained on death row. In August 2008, a counter-terrorism court in Khartoum sentenced a 17-year-old to death on charges of *hiraba* (brigandage), a *hudud* offence.¹⁹³ The only reported executions of juvenile offenders in recent times in the Sudan, the executions of Mohammed Jamal Gesmallah and Imad Ali Abdullah, took place in 2005.¹⁹⁴

81. According to Human Rights Watch, in 2008 a death sentence was issued by the Palestinian Authority against a person who was only 17 years of age at the time of the crime.¹⁹⁵

82. Pakistan’s Juvenile Justice System Ordinance, promulgated in 2000, prohibits the execution of juvenile offenders. However, the legislation requires the presence of specific legal structures, many of which are not in existence in various parts of the country. According to the 2007 report of the Human Rights Commission of Pakistan, the Ordinance “remained unimplemented in most of the country”.¹⁹⁶ Pakistan is reported to have executed Mutabar Khan, on 18 June 2006, for crimes committed when he was under age 18. Khan provided the appeals court with a school-leaving certificate supporting his claim that he had been 16 years of age at the time of the killings. He also said the authorities had kept him in the juvenile wing of Peshawar Central Prison for two years, thereby acknowledging his minority. The appeal was dismissed by the Peshawar High Court and the Supreme Court on the grounds that a 2001 Presidential Commutation Order did not apply because his age had not been recorded at trial.¹⁹⁷

83. In Yemen, Adil Muhammad Saif al-Ma’amari was executed in February 2007, the only known juvenile to have been executed in that country since 1993. Al-Ma’amari was sentenced to death for a murder committed when he was 16 years of age. A medical examination concluded he was under age 17, but the

¹⁹¹ A/HRC/11/23/Add.1, para. 38.

¹⁹² See also CCPR/C/SDN/3, para. 182.

¹⁹³ A/HRC/11/2, para. 41.

¹⁹⁴ Human Rights Watch, “Sudan: detainees suffer arbitrary arrest, execution: Sudanese Government should commute death sentences, grant fair trials”, 6 September 2005.

¹⁹⁵ Available from www.hrw.org/en/news/2008/12/16/letter-president-abbas-juvenile-executions.

¹⁹⁶ Human Rights Commission of Pakistan, *State of Human Rights in 2007* (Lahore, March 2008), pp. 167-168.

¹⁹⁷ Human Rights Watch, *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, and Yemen* (New York, 2008), p. 15.

court nevertheless imposed a death sentence. Al-Ma'amari did not have legal assistance during his trial.¹⁹⁸

2. Execution of older persons

84. A prohibition on executing older persons was first set out in the American Convention on Human Rights, which says that “(c)apital 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” (article 4, paragraph 5). The wording appears to permit the execution of persons over age 70, to the extent that the crimes were committed when they were young, an interpretation that seems contrary to the humanitarian purpose of the provision. Although the issue of execution of older persons is not taken up in the safeguards, in its resolution 1989/64, the Economic and Social Council recommended that States establish a maximum age beyond which a person might not be sentenced to death or executed (para. 1 (c)). It would appear that few, if any, States that did not already have a limit on the age of execution have acted pursuant to this appeal from the Council.

85. In its response to the questionnaire, Mongolia reported that a male over age 60 cannot be sentenced to death; Belarus said that its legislation imposed an age limit of 65; and Japan stated that it has no maximum age. Other countries and territories reported to have upper age-limits on the death penalty include Taiwan Province of China (80), the Sudan (70), Belarus (65),¹⁹⁹ Kazakhstan (65) and Guatemala (60).²⁰⁰

3. Pregnant women and new mothers

86. The prohibition on the execution of pregnant women set out in the third safeguard is derived from article 6 (5) of the International Covenant on Civil and Political Rights. Somewhat different formulations of a similar norm appear in the Additional Protocols to the Geneva Conventions, which exclude execution of “pregnant women or mothers having dependent infants, for an offence related to the armed conflict”²⁰¹ and “pregnant women or mothers of young children”.²⁰² The third safeguard encompasses “new mothers” in addition to pregnant women. The Commission on Human Rights urged States that still maintained the death penalty to exclude “mothers with dependent infants”.²⁰³

87. All States that replied to the questionnaire indicated that they do not allow the execution of pregnant women. Cuba stated that it does not carry out the death penalty on women who were pregnant at the time of the crime or the sentence,

¹⁹⁸ Ibid., p. 17.

¹⁹⁹ The reply of Belarus to the seventh survey on capital punishment and on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, covering the period 2004-2008.

²⁰⁰ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 4th ed. (Oxford, Oxford University Press, 2008), p. 194.

²⁰¹ 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).

²⁰² 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).

²⁰³ Commission on Human Rights resolution 2005/59, para. 7 (b) (see footnote 105).

adding that the death penalty has not been imposed on any woman since 1959.²⁰⁴ Indeed, there does not appear to be a country anywhere that allows the execution of a pregnant woman, and there are no reports of any such executions in modern times. Amnesty International reported that in 2004, a pregnant woman who had been facing the death penalty for drug-related offences was forced to have an abortion while in police custody so that she could be put to death.²⁰⁵

88. Provisions vary with regard to a woman after she has given birth. Many States do not make any allowance for such cases in their legislation, with the result that, in theory at least, young mothers are subject to the same legislation as everyone else. Japan, Malaysia and Trinidad and Tobago stated that they had no special rule applicable to women after the birth of the child. In some States, such as Kuwait and Algeria, the concept of “new mothers” applies to women nursing a child who is under 24 months.²⁰⁶ In Bahrain, the sentence can be carried out only three months after the delivery of the child.²⁰⁷

89. The issue of executing pregnant women and new mothers is situated within the larger context of the imposition of capital punishment on women. Some States, such as Mongolia and Belarus, report that women are simply excluded from the scope of capital punishment. There are reports of the execution of women in many countries that retain the death penalty, although these are anecdotal and there is rarely any statistical breakdown to indicate the proportion of women versus men who are actually sentenced to death or executed. Such a lack of data makes it hard to assess the impact of capital punishment on women. In the United States, where the Department of Justice produces a detailed annual report on capital punishment, this information is available. As of 31 December 2007, 56 women were under sentence of death in the United States, representing 1.7 per cent of the overall death row population.²⁰⁸ In the survey period, one woman was executed in the United States.²⁰⁹

4. The insane and persons suffering from mental retardation or having extremely limited mental competence

90. The final category of persons sheltered from capital punishment by the third safeguard consists of “persons who have become insane”. The Economic and Social Council subsequently added the recommendation that Member States eliminate the death penalty “for persons suffering from mental retardation or extremely limited

²⁰⁴ A/63/293 and Corr.1, paras. 41-42.

²⁰⁵ Amnesty International, “The death penalty worldwide: developments in 2004” (April 2005), p. 10.

²⁰⁶ A/63/293 and Corr.1, para. 40.

²⁰⁷ Bahrain’s reply to the seventh survey on capital punishment and on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, covering the period 2004-2008.

²⁰⁸ Snell, “Capital punishment, 2007”, table 5, entitled “Demographic characteristics of prisoners under sentence of death, 2007”, and table 12, entitled “Women under sentence of death, by race and jurisdiction, 12/31/07” (see footnote 115).

²⁰⁹ Amnesty International USA, “Execution statistics by year”, available from www.amnestyusa.org/death-penalty/death-penalty-facts/executions-by-year/page.do?id=1011591&yr=2005.

mental competence, whether at the stage of sentence or execution”.²¹⁰ Although the prohibition of the execution of the insane is firmly rooted in the customs and practices of most legal systems,²¹¹ it is not explicitly set out in applicable treaties. The norm should be subsumed within the general protection against arbitrary deprivation of the right to life. In its resolution 2005/59 on the question of the death penalty, the Commission on Human Rights urged Member States not to impose capital punishment on or to execute “a person suffering from any mental or intellectual disabilities” (para. 7 (c)).

91. This issue is often confused with the related but different questions of responsibility for the crime itself and application of an insanity defence, and of fitness to stand trial, where a person is unable to participate in the trial for mental health reasons. The norm protecting insane and mentally disabled persons from execution applies even when there is no question of competency at the time the crime was committed or at trial. It is not uncommon for a person to become insane subsequent to conviction and sentence of death, and in such cases execution is forbidden by the third safeguard.

92. In replies to the questionnaire, Japan and Trinidad and Tobago stated that they do not execute the insane, and postpone execution in such cases. In a reply to the Office of the United Nations High Commissioner for Human Rights, this was also confirmed with respect to Kuwait.²¹² Morocco, Bahrain and Mongolia stated in their replies to the questionnaire that the rule also applies to persons who are mentally ill.

93. The real difficulty with the safeguard lies not in its formal recognition but in its implementation. Whereas with juvenile offenders or pregnant women, the determination that a person belongs to the protected category is relatively straightforward, there is an enormous degree of subjectivity involved when assessing such concepts as insanity, limited mental competence and “any form of mental disorder”. The expression “any form of mental disorder” probably applies to a large number of people sentenced to death.

D. Fourth safeguard: presumption of innocence

94. The fourth safeguard requires that capital punishment 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”. This is an original formulation, although it may also be taken as a rather firm restatement of the concept of the presumption of innocence, which is solidly anchored in international human rights treaties and whose application to all criminal trials, not only those involving the death penalty, is unquestioned. The retentionist countries that responded to the questionnaire confirmed that this norm is respected in their legal systems. None reported any cases of death sentences being overturned because the conviction was deemed unsafe.

²¹⁰ Economic and Social Council resolution 1989/64, para. 1 (d).

²¹¹ Malaysia indicated in its reply that it has no particular rule concerning a prohibition of execution of persons who are insane.

²¹² A/63/293 and Corr.1, para. 42.

95. Difficulties in this respect have arisen in cases where there has been a miscarriage of justice. That an innocent person might be executed has proved to be one of the most unsettling possibilities associated with the practice of the death penalty. Many who seem to support capital punishment have been greatly concerned about whether the justice system does a satisfactory job of separating the innocent from the guilty, and are inclined to support a moratorium or abolition when such doubts are sustained.

96. In China, there have been several newspaper reports of miscarriages of justice. For example, a young farmer in northern China was executed for the rape and murder of a local woman. He was allegedly tortured while in police custody. In 2005, a suspect detained for another crime was reported to have confessed to the same crime, describing the crime scene in detail.²¹³

E. Fifth safeguard: guarantees of a fair trial

97. The fifth safeguard states: “Capital punishment may only be carried out pursuant to a final judgement 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.”

98. The Economic and Social Council, in its resolution 1989/64, recommended that Member States afford “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” (para. 1 (a)). In its resolution 1996/15, the Council encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as contained 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 (para. 3). In the same resolution, the Council encouraged States to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court.

99. The Human Rights Committee has frequently declared that the imposition of a death sentence upon conclusion of a trial in which the provisions of the Covenant

²¹³ Amnesty International, “Death penalty developments in 2005” (April 2006), pp. 2-3.

have not been respected constitutes a violation of article 6.²¹⁴ In its General Comment 32 on the right to a fair trial, adopted in 2007, the Committee reaffirmed that scrupulous respect of fair-trial guarantees is particularly important in trials leading to the imposition of the death penalty. Imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 have not been respected, constitutes a violation of the right to life.²¹⁵ Further, the Committee affirmed that this consequence would not change during a declared public emergency under article 4 of the Covenant, because the right to life is non-derogable under that article.²¹⁶ Similarly, the Grand Chamber of the European Court of Human Rights held that, to the extent capital punishment is possible, “the most rigorous standards of fairness (must be) observed in the criminal proceedings both at first instance and on appeal”.²¹⁷ The Inter-American Court of Human Rights has made similar pronouncements.²¹⁸

100. States responding to the survey questionnaire confirmed that they provide relevant fair-trial guarantees. Mongolia declared that it guarantees the right to counsel, including counsel funded by the State, but said that there is not an automatic right to an interpreter, in that a fee may be imposed. Japan, Malaysia, Morocco and Trinidad and Tobago indicated that they respect the right to public trial, the right to counsel and the right to an interpreter. Specific information about fair-trial rights was provided by Botswana, Cuba, Kuwait, the Libyan Arab Jamahiriya and Tunisia in their submissions to the Office of the United Nations High Commissioner for Human Rights.²¹⁹ Belarus furnished detailed information about restrictions on the right to public trial in capital cases, noting that in camera proceedings could be allowed in the interest of maintaining State secrets and any other secret protected by law, in cases of sexual crimes and to prevent disclosure of information regarding the private lives of individuals involved in the case that would deprive them of their dignity, and if it is in the interest of the safety of a complainant, a witness or other participants in legal proceedings.

²¹⁴ *Mulai v. Guyana* (CCPR/C/81/D/811/1998, para. 6.3); *Smartt v. Guyana* (CCPR/C/81/D/867/1999, para. 6.4); *Rayos v. Philippines* (CCPR/C/81/D/1167/2003, para. 7.3); *Arutyunyan v. Uzbekistan* (CCPR/C/80/D/917/2000, para. 6.4); *Saidov v. Tajikistan* (CCPR/C/81/D/964/2001, para. 6.9); *Khomidova v. Tajikistan* (CCPR/C/81/D/1117/2002, para. 6.6); *Deolall v. Guyana* (CCPR/C/82/D/912/2000, para. 5.2); *Khalilov v. Tajikistan* (CCPR/C/83/D/973/2001, para. 7.6); *Sultanova v. Uzbekistan* (CCPR/C/86/D/915/2000, para. 7.6); *Aliboeva v. Tajikistan* (CCPR/C/85/D/985/2001, para. 6.6); *Chan v. Guyana* (CCPR/C/85/D/913/2000, para. 6.4); *Chikunova v. Uzbekistan* (CCPR/C/89/D/1043/2002, para. 7.5); *Shukurova v. Tajikistan* (CCPR/C/86/D/1044/2002, para. 8.6); *Khudayberganov v. Uzbekistan* (CCPR/C/90/D/1140/2002, para. 8.4); *Karimov and Nursatov v. Tajikistan* (CCPR/C/89/D/1108&1121/2002, para. 7.6); *Tulyaganova v. Uzbekistan* (CCPR/C/90/D/1041/2001, para. 8.3); *Strakhov and Fayzullaev v. Uzbekistan* (CCPR/C/90/D/1017/2001&1066/2002, para. 8.4); *Uteeva v. Uzbekistan* (CCPR/C/91/D/1150/2003, para. 7.4); *Tolipkhuzhaev v. Uzbekistan* (CCPR/C/96/D/1280/2004, para. 8.5); *Idieva v. Tajikistan* (CCPR/C/95/D/1276/2004, para. 9.7); and *Dunaev v. Tajikistan* (CCPR/C/95/D/1195/2003, para. 7.4).

²¹⁵ CCPR/C/GC/32, para. 59.

²¹⁶ *Ibid.*, para. 6.

²¹⁷ *Öcalan v. Turkey*, 2005-IV, para. 166.

²¹⁸ *Ramirez v. Guatemala*, 20 June 2005, para. 79.

²¹⁹ A/63/293 and Corr.1, paras. 51-53.

101. In Commission of Human Rights resolution 2005/59 on the death penalty, the Commission urged Member States that continued to use the death penalty “(t)o 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,²²⁰ 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 judgments” (para. 7 (h)). Belarus, Japan, Malaysia, Mongolia, Morocco and Trinidad and Tobago confirmed in their responses to the questionnaire that all persons accused of capital crimes are advised of their rights under the Vienna Convention.

102. Confirming its earlier act of jurisprudence,²²¹ in 2004, the International Court of Justice ruled that the United States of America had violated its international obligations under the Vienna Convention on Consular Relations in a number of cases involving Mexican nationals on death row who had not been informed of their right to consular assistance.²²² The federal Government agreed to comply with the ruling of the International Court of Justice, but there was resistance from the Government of Texas. A challenge to the pending execution of José Medellín based upon the International Court of Justice decision was dismissed by the Supreme Court of the United States in 2008.²²³ According to the Supreme Court, the judgment of the International Court of Justice was not directly enforceable in Texas. Mexico then obtained a provisional measures order from the International Court of Justice directing the United States to take all necessary measures to prevent the execution of several Mexican nationals, including Medellín.²²⁴ Medellín was executed on 5 August 2008. In January 2009, the International Court of Justice held that the execution of Medellín had breached the obligations of the United States under international law.²²⁵

103. The Inter-American Court of Human Rights held that the right to a fair trial was violated by the failure of Barbados to provide a psychiatric assessment of the defendant, which would have enabled a defence of diminished responsibility. According to the Court, “(i)n order to guarantee that events such as those analysed in the present judgment are not repeated, the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty are duly informed, at the initiation of the criminal proceedings against them, of the right to obtain a psychiatric evaluation carried out by a State-employed psychiatrist”.²²⁶

²²⁰ United Nations, *Treaty Series*, vol. 596, No. 8638.

²²¹ *LaGrand (Germany v. United States of America)*, Judgment, *I.C.J. Reports* 2001, p. 466.

²²² *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, *I.C.J. Reports* 2004, p. 12.

²²³ *Medellín v. Texas*, 128 S. Ct. 1346 (2008).

²²⁴ Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*, request for the indication of provisional measures (Mexico v. United States of America) Order, General List No. 139 (ICJ 2008), 16 July 2008.

²²⁵ Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*, (Mexico v. United States of America) Judgment, General List No. 139; ICJ 349 (ICJ 2009), para. 53.

²²⁶ *Dacosta-Cadogan v. Barbados* (see footnote 147).

104. On 22 May 2008, the Supreme Court and the Ministry of Justice of China jointly issued regulations on the protection of defence lawyers' roles in capital cases to ensure that defendants' legal rights were upheld.

105. The Special Rapporteur on extrajudicial, summary or arbitrary executions stated that there were strong reasons for imposition of a moratorium on executions in Afghanistan, given terrible shortcomings in the criminal justice system. He wrote: "Even the police, prosecutors, and judges acknowledge that corruption and incompetence are widespread and that the criminal justice system is incapable of ensuring respect for due process rights. Thus, convictions often follow trials that are inherently unfair and unreliable. Those sentenced to death often had no access to lawyers, and were convicted following trials in which no evidence was produced or no defence witnesses called. And, while some well-informed interlocutors did not think that any genuinely innocent person has yet been sentenced to death, others felt certain that there are innocents on death row. Proceeding with executions in these circumstances would clearly be unjust and violate international legal standards."²²⁷

F. Sixth safeguard: appeal

106. The sixth safeguard declares that any person sentenced to death shall have the right to appeal to a court of higher jurisdiction. Moreover, steps should be taken to ensure that such appeals become mandatory. The right to an appeal is set out in article 14 of the International Covenant on Civil and Political Rights, although in ordinary criminal cases not involving capital punishment, the convicted person would be free not to avail him- or herself of the opportunity. The importance of "mandatory appeals or review" was affirmed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 (para. 1 (b)).

107. Retentionist States that responded to the questionnaire all indicated that there is a right to appeal a sentence of death. Belarus, Malaysia and Mongolia stated that the review is automatic. Japan and Trinidad and Tobago said that death sentences are not automatically reviewed. In recent submissions to the United Nations High Commissioner for Human Rights, Cuba, Kuwait, the Libyan Arab Jamahiriya and Tunisia reported that their legislation requires mandatory appeal or review of death sentences.²²⁸

108. The most significant impact of the application of the sixth safeguard during the quinquennium has been in China, where legislation that entered into force in 2007 required that all death sentences pronounced by provincial courts be reviewed and ratified by the Supreme People's Court.²²⁹ Previously, despite the fact that China's criminal procedure legislation had required the Supreme People's Court to review death sentences, since 1980 this authority has been gradually delegated to lower courts. Although precise numbers are not known, because these are considered a State secret and are not officially released, there have been many reports indicating that this reform has resulted in a significant reduction in the number of death sentences and executions in China. The requirement of mandatory

²²⁷ A/HRC/11/2/Add.4, para. 65.

²²⁸ A/63/293 and Corr.1, para. 56.

²²⁹ A/HRC/11/25, para. 11.

appeal has probably resulted in the quashing of death sentences of many hundreds of condemned persons, perhaps more than the total number of executions in the rest of the world combined.

G. Seventh safeguard: pardon or commutation

109. The seventh safeguard 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.” This norm is derived from article 6 (4) of the International Covenant on Civil and Political Rights, which 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.” In its resolution 1989/64 of 24 May 1989, the Economic and Social Council recommended that Member States provide “provisions for clemency or pardon in all cases of capital offence” (para. 1 (b)). Moreover, in its resolution 1996/15 of 23 July 1996, the Council called upon Member States to “ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question” (para. 6).

110. In *Fermin Ramírez v. Guatemala*, the Inter-American Court of Human Rights held that “the right to grace forms part of the international *corpus juris*”, and that Guatemala had violated international law because its internal legislation does not provide for measures of grace.²³⁰ The Human Rights Committee concluded that Uzbekistan had breached article 6 (4) of the International Covenant on Civil and Political Rights when it failed to respond to applications for pardon and proceeded with an execution.²³¹

111. The reporting period saw instances of large-scale commutations of death sentences. Thus, in January 2009, the President of Ghana commuted all remaining death sentences (about 500) to prison terms, while the President of Zambia commuted over 50 death sentences. On 29 April 2008, the President of Cuba commuted virtually all of the death sentences in force to 30 years’ imprisonment.²³² On 1 October 2006, Nigeria’s Federal Minister of Justice announced the commutation of death sentences of 107 death row inmates as part of Independence Day celebrations. In August 2006, the President of the United Republic of Tanzania commuted all death sentences on the country’s mainland, estimated to number about 400, to life imprisonment. On 15 April 2006, the President of the Philippines commuted all 1,230 death sentences then in force to life imprisonment, a development associated with the abolition of capital punishment in the country. In Morocco, on 28 February 2007, King Mohamed VI, to mark the birth of his daughter, granted clemency to 11 persons who had been sentenced to death.

112. Belarus, Japan, Malaysia, Mongolia, Morocco and Trinidad and Tobago reported in their reply to the survey questionnaire that persons sentenced to death have the right to apply for pardon. Belarus explained that if the accused is sentenced

²³⁰ Inter-American Court of Human Rights, *Fermin Ramírez v. Guatemala*, Judgment of 20 June 2005, Series C, No. 126, paras. 109-110.

²³¹ *Chikunova v. Uzbekistan* (CCPR/C/89/D/1043/2002, para. 7.6).

²³² Amnesty International, *Death Penalty News*, April-May 2008, p. 2.

to death, the presiding judge informs him of the right to request a pardon after the sentence has entered into force. Japan indicated that procedures are in place for informing officials of a pardon or commutation. The Japan Federation of Bar Associations has said that although an amnesty system exists, it has been applied very rarely in cases of capital punishment, the last instance having been in 1975.²³³ Afghanistan reported to the Human Rights Council that application of the death penalty requires the consent of the President, “who scrutinizes the whole case with the intention of finding reason to commute the sentence”.²³⁴

H. Eighth safeguard: stay pending challenges to the death sentence

113. The eighth safeguard 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.” In order to ensure that this is effective, the Economic and Social Council, in resolution 1996/15, as mentioned above, called upon States to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question (para. 6).

114. All States responding to the questionnaire indicated that executions are stayed pending appeal and review procedures under their domestic law. More generally, the application of this norm with respect to appeals and review procedures prescribed by national law does not appear to be a source of great abuse or difficulty. The Special Rapporteur on extrajudicial, summary or arbitrary executions sent a communication to Pakistan concerning a reported hanging prior to a final judgement. In this regard, Pakistan responded that, although the appeal had been admitted and notices had been circulated, the authorities did not issue orders to stop the execution.²³⁵

115. In its reply to the questionnaire, Trinidad and Tobago stated that it recognizes a stay of a death sentence while international mechanisms are proceeding. Belarus, Malaysia, Morocco and Japan indicated that there was no provision to suspend execution in the case of international remedies. The Human Rights Committee has held that there have been violations of the Optional Protocol to the International Covenant on Civil and Political Rights when orders to stay executions while proceedings were pending were not followed by Kyrgyzstan,²³⁶ Tajikistan²³⁷ and Uzbekistan.²³⁸

116. The recently established Caribbean Court of Justice, which had been created to replace the London-based Judicial Committee of the Privy Council as the highest

²³³ See A/63/293 and Corr.1.

²³⁴ A/HRC/12/9, para. 84.

²³⁵ E/CN.4/2006/53/Add.1, pp. 169-170.

²³⁶ *Maksudov et al. v. Kyrgyzstan* (CCPR/C/93/D/1461,1462,1476&1477/2006, para. 10.2).

²³⁷ *Saidov v. Tajikistan* (CCPR/C/81/D/964/2001, para. 4.2); *Khalilov v. Tajikistan* (CCPR/C/83/D/973/2001, para. 4.2); *Shukurova v. Tajikistan* (CCPR/C/86/D/1044/2002, para. 6.2); and *Idieva v. Tajikistan* (CCPR/C/95/D/1276/2004, para. 7.3).

²³⁸ *Sultanova v. Uzbekistan* (CCPR/C/86/D/915/2000, para. 5.3); *Uteeva v. Uzbekistan* (CCPR/C/91/D/1150/2003, para. 5.2); and *Tolipkhuzhaev v. Uzbekistan* (CCPR/C/96/D/1280/2004, para. 6.3).

court of appeal for the region, ruled that the decision by authorities in Barbados to issue execution warrants after convicted persons had instituted proceedings before the Inter-American Commission on Human Rights constituted a violation of their right to the protection of the law.²³⁹ In its first ruling, the Caribbean Court of Justice held that “convicted persons may have a legitimate expectation that the State should await for a reasonable time reports from international bodies”.

117. According to the Japanese Federation of Bar Associations, filing of an appeal for retrial or amnesty is not considered to be a reason to suspend an execution. The Committee against Torture has expressed its concerns in regard to this matter.²⁴⁰

I. Ninth safeguard: minimizing suffering

118. According to the ninth safeguard, “(w)here capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering”. In its resolution 1996/15, the Economic and Social Council urged States 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 (para. 7). Whereas international human rights law generally looks at the death penalty from the perspective of the right to life, issues concerning its implementation are also relevant to the prohibition of cruel, inhuman or degrading treatment or punishment. The Commission on Human Rights, in its resolution 2005/59 on the death penalty, urged Member States 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, is stopped immediately” (para. 7 (i)).

1. Method of execution

119. The method of execution varies greatly among States that continue to impose the death penalty. During the quinquennium, several methods were employed to conduct executions: beheading (Saudi Arabia), hanging (Bangladesh, Botswana, Egypt, Iran (Islamic Republic of), Iraq, Japan, Malaysia, Pakistan, Saint Kitts and Nevis, Singapore and Sudan), lethal injection (China, United States of America), shooting (Afghanistan, Belarus, China, Indonesia, Iran (Islamic Republic of), Mongolia and Viet Nam), stoning (Islamic Republic of Iran) and electrocution (United States). There is much dispute about whether one or another method is unacceptably cruel, inhuman or degrading. For example, in a reply to the questionnaire sent out by the Office of the United Nations High Commissioner for Human Rights, the Libyan Arab Jamahiriya reported that execution by the electric chair, lethal injection or toxic gases was not acceptable.²⁴¹

120. Of the States that responded to the questionnaire, Belarus, Morocco and Mongolia indicated that they conduct the death sentence by firing squad; and Malaysia and Japan use hanging. Japan stated: “Hanging as a way of execution is

²³⁹ *Attorney General v. Joseph and Boyce*, 8 November 2006, CCJ Appeal No. CV2 of 2006.

²⁴⁰ CAT/C/JPN/CO/1, para. 20.

²⁴¹ A/63/293 and Corr.1, para. 67.

not particularly cruel in light of humanitarianism compared to other ways such as beheading, shooting, electrocution and lethal gas.”

121. In January 2009, the Supreme Court of Uganda found that execution by hanging was cruel punishment and recommended that another means of execution be considered.²⁴² India’s Supreme Court, on the other hand, dismissed a challenge that hanging should be replaced with lethal injection. “How do you know that hanging causes pain? And how do you know that injecting the condemned prisoner with a lethal drug would not cause pain?” asked Supreme Court Chief Justice K. G. Balakrishnan.²⁴³

122. In November 2009, it was reported that China will adopt the method of lethal injection exclusively. Lethal injection has become the predominant method in the United States. In December 2006, the Governor of Florida halted executions following an execution using lethal injection where administration of a second dose of poison was required and where the convicted man, Angel Diaz, took 34 minutes to die. The following year, a country-wide moratorium was put in place after the Supreme Court agreed to hear a challenge to the use of lethal injection as a method of execution. Justice John Paul Stevens stated that he had reached the conclusion that “the imposition of the death penalty represents the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes”. The moratorium came to an end following the 16 April 2008 ruling by the United States Supreme Court that upheld the constitutionality of the lethal injection procedures in Kentucky.²⁴⁴ The ruling ended an eight-month moratorium on executions in the United States while the case was being considered by the Supreme Court.

123. Electrocution is used by only a few States in the United States. Nebraska was the only State to provide exclusively for electrocution until 8 February 2008 when its Supreme Court ruled that the method was unconstitutional. “Condemned prisoners must not be tortured to death, regardless of their crimes”, the judgement stated.²⁴⁵

124. The Islamic Republic of Iran was said to have suspended the practice of execution by stoning following a 2002 directive by the head of its judiciary, Ayatollah Shahroudi. However, in July 2007, an execution was conducted in defiance of the directive. During the examination of its periodic report under the International Covenant on Civil and Political Rights, the Human Rights Committee recommended that Yemen officially abolish the sentence of death by stoning.²⁴⁶ The Special Rapporteur on extrajudicial, summary or arbitrary executions criticized Nigeria’s legislation that, in accordance with sharia law, authorizes the death penalty by stoning for sodomy.²⁴⁷

²⁴² A/HRC/12/45, para. 8.

²⁴³ “Indian court backs hanging for death sentences”, *Associated Press*, 7 July 2009.

²⁴⁴ *Baze v. Rees*, 553 US 35 (2008).

²⁴⁵ *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

²⁴⁶ CCPR/CO/84/YEM, para. 15.

²⁴⁷ E/CN.4/2006/53/Add.4, paras. 21-24; see also A/HRC/8/3/Add.3, paras. 76-78.

2. Public execution

125. The safeguards do not specifically address the issue of execution carried out in public. The Guidelines on European Union Policy state that the death penalty may not be carried out in public or in any other degrading manner.

126. None of the countries that responded to the questionnaire allow executions to be carried out in public. Belarus specified that when several people are executed, execution is conducted separately for each one in the absence of the others. Present at the execution are the public prosecutor, the head of the facility where the death penalty is carried out, and a physician. The public prosecutor may permit others to be present at the execution in exceptional cases.

127. Reports of public executions are rare, and the practice appears to be allowed in only a few States. There have been frequent public executions in the Islamic Republic of Iran in recent years, but on 29 January 2008, the Chief of the Judiciary, Ayatollah Mahmoud Hashemi-Shahrudi, issued a decree banning the practice. Public executions will need approval by the head of the Judiciary to be carried out. Mass media are also banned from publishing images from executions.²⁴⁸ According to *Hands Off Cain*, the directive is not being fully complied with.²⁴⁹ Public executions are also reported in Saudi Arabia, where the method of execution is beheading with a sword.

128. Probably the most public execution during the quinquennium was never intended as such. On 30 December 2006, the former president of Iraq, Saddam Hussain, was executed by hanging. At least one person who was present filmed the execution, apparently using a mobile telephone, and the video was disseminated widely on the Internet.

3. Secrecy

129. In a few countries, executions are carried out secretly, or with little prior warning. The Japan Federation of Bar Associations reports the absence of the prior announcement of executions. The condemned person is informed approximately one hour before the execution, with no prior announcement to either family or legal counsel. The Federation says that the lack of such warning deprives convicted persons of the possibility of challenging the legitimacy of the execution. Furthermore, it terrorizes them during the period of incarceration prior to execution, which may last many years.²⁵⁰ In its concluding observations, the Human Rights Committee has expressed its concern regarding the practice of secrecy in respect of execution dates in Botswana²⁵¹ and Japan.²⁵²

4. Death row conditions

130. The requirement in the ninth safeguard that capital punishment be carried out so as to inflict the minimum possible suffering is relevant to the period between the

²⁴⁸ Amnesty International, "Death sentences and executions in 2008" (London, 24 March 2009), p. 15.

²⁴⁹ A/63/293 and Corr.1, para. 68.

²⁵⁰ *Ibid.*, para. 67.

²⁵¹ CCPR/C/BWA/CO/1, para. 13.

²⁵² CCPR/C/JPN/CO/5, para. 16.

pronouncement of a sentence of death and its imposition. Issues arise with respect both to the conditions of detention and to the length of detention. The Committee against Torture has addressed the issue of the conditions of detention for those on death row, which may involve cruel, inhuman or degrading treatment not only as a result of physical circumstances, but also as a consequence of the mental anguish caused by spending an excessive length of time on death row.²⁵³

131. In response to the questionnaire, Belarus said that the longest period between the imposition of the sentence and the carrying out of the execution was 1 year, 1 month and 10 days. It estimated that the average time between imposition of sentence of death and execution was about six months. Malaysia said the average time from sentence of death to execution was four years. Japan said that, for cases after December 2007, the longest period between imposition of sentence and execution was 11 years and 8 months. It estimated the average time during the survey period as 6 years and 3 months.

132. Statistics published by the United States Department of Justice show an average period of detention from imposition of sentence to execution of 10 years and 7 months, when the average over the period 1977-2007 is calculated. For those executed in 2007, the average had been 12 years and 9 months, the highest recorded over the 30-year period. By comparison, at the beginning of the quinquennium, in 2004, the average was 10 years and 11 months.²⁵⁴ Given that the number of persons actually executed has been declining steadily, it seems inevitable that the average length of time spent on death row should continue to increase in the coming years.

133. In January 2009, the Supreme Court of Uganda held it unreasonable to keep convicts on death row for more than three years. It said those held for a longer period should have their sentences commuted to life in prison.²⁵⁵

134. In many States that are de facto abolitionist, prisoners continue to be sentenced to death and, in some cases, detained in segregated facilities despite the likelihood that they will not be executed. Referring to Nigeria, where executions have not taken place for many years but where persons continue to be sentenced to death, including death by stoning, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted that “the ‘mere possibility’ that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment”.²⁵⁶

5. Cruelty to family and friends

135. The ninth safeguard applies not only to the condemned person but also to those in his or her entourage, notably family members and friends. Some legal systems make special provisions so as to minimize the consequences for these “secondary victims” of the imposition of capital punishment, as was described in the seventh report.²⁵⁷ In its concluding observations on the periodic report of Botswana,

²⁵³ “Concluding observations of the Committee against Torture: Zambia” (CAT/C/ZMB/CO/2), para. 19.

²⁵⁴ Snell, “Capital punishment, 2007”, table 11 entitled “Time under sentence of death and execution, by race, 1977-2007” (see footnote 115).

²⁵⁵ A/HRC/12/45, para. 8.

²⁵⁶ A/HRC/8/3/Add.3, para. 76.

²⁵⁷ E/2005/3 and Corr.1, para. 125.

the Human Rights Committee expressed its concern regarding the fact that the body of the executed person is not returned to the family for burial.²⁵⁸ It recommended that Japan ensure that the families of death row inmates be given reasonable advance notice of the scheduled date and time of the execution, “with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event”.²⁵⁹

VII. Conclusions and recommendations

136. It has frequently been stated that international law does not prohibit capital punishment. This statement requires some qualification. As explained in this report, 81 States have already committed themselves to the prohibition of capital punishment from the standpoint of international law through the ratification of or accession to international treaties, in particular the Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocols Nos. 6 and 13 to the European Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights. Of course, it is also beyond dispute that States that have not ratified or acceded to these treaties are nevertheless bound by international standards, notably those set out in the safeguards. That the safeguards may be considered the general law applicable on the subject of capital punishment, even for those States that have not assumed any treaty obligations whatsoever with respect to the imposition of the death penalty, is borne out through the implementation of the universal periodic review mechanism of the Human Rights Council. Member States report on their compliance with international human rights norms, including those in the safeguards, even if they are not subject to any relevant conventional norms. Even States that are not subject to conventional obligations with respect to capital punishment have participated in the universal periodic review process as if they were subject to international norms concerning the death penalty.

137. There is recent authority for the view that capital punishment violates the right to life. The Human Rights Committee, in *Judge v. Canada*, held that limitations on the death penalty, as set out in article 6 (2) of the International Covenant on Civil and Political Rights could not be invoked by a State that had already abolished the death penalty, given the opening words of article 6 (2) (“In countries which have not abolished the death penalty”). The Committee took the view that a State that had abolished the death penalty was bound by article 6 (1), which proclaims “the inherent right to life” and affirms that no person “shall be arbitrarily deprived of his life”.²⁶⁰ The issue in *Judge* was whether an abolitionist State could extradite someone to a State where the death penalty might be imposed, in the absence of an assurance that they would not be subject to capital punishment. The Committee concluded there was a violation of article 6 (1) inherent in such a case. In effect, the Committee took the view that the death penalty amounts to “arbitrarily” depriving a person of the right to life. Two years later, the Commission on Human Rights, in the first preambular paragraph of its resolution 2005/59, its final resolution on the

²⁵⁸ CCPR/C/BWA/CO/1, para. 13.

²⁵⁹ CCPR/C/JPN/CO/5, para. 16.

²⁶⁰ *Judge v. Canada* (CCPR/C/78/D/829/1998, para. 10.6); see also *Maksudov et al. v. Kyrgyzstan* (CCPR/C/93/D/1461,1462,1476&1477/2006, para. 12.6).

question of the death penalty, stated that “abolition of the death penalty is essential for the protection of this right”.

138. In a recent report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examined whether the death penalty should also be considered from the standpoint of the prohibition of cruel, inhuman or degrading punishment. He referred to General Assembly resolution 62/149, in which the assembly justified its call for a moratorium on capital punishment by stating that the use of the death penalty undermined human dignity (fifth preambular para.). According to the Special Rapporteur, “(a)lthough the notion of human dignity underpins the development of human rights in general, this statement can be interpreted as implying that the clear majority of States Members of the United Nations today consider that the death penalty violates the right to not be subjected to cruel, inhuman or degrading punishment”.²⁶¹ He noted that several national constitutional courts have found the death penalty to be a violation of the prohibition of cruel, inhuman or degrading punishment. The Special Rapporteur urged the preparation of “a more comprehensive legal study on the compatibility of the death penalty with the right not to be subjected to cruel, inhuman or degrading punishment under present human rights law”.²⁶² Some States expressed the opinion that the Rapporteur was “overstepping” his mandate by addressing these issues.²⁶³ However, the debate about the scope of his mandate is not germane to the substance of his remarks.

139. Developments in the practice of States with respect to capital punishment are clear: there is a growing trend towards abolition. This must be appreciated not only with reference to the traditional lists of abolitionist and retentionist States, but also by examining more closely the sharply declining rates of use of the death penalty in many retentionist States. Furthermore, the accelerating rate by which States are abandoning the death penalty measured against the number of retentionist States must be taken into account. International law applicable to the subject is derived from a variety of sources, including the relevant treaties, together with so-called soft law instruments such as the safeguards guaranteeing protection of the rights of those facing the death penalty, the Universal Declaration of Human Rights,²⁶⁴ international humanitarian law and customary international law. Interpretation and application of the law require a logical and systemic grasp of all of these sources which, taken individually, cannot provide a complete answer. Moreover, while practice in the area, whose overwhelming trend is the dramatic decline in the death penalty in recent years, will influence the evolution of the law, that evolution will also be set in motion as international bodies start framing the debate about the legality of capital punishment within the context of fundamental concepts such as human dignity, the right to life and the prohibition of torture and cruel, inhuman or degrading punishment, all having prominent status in international law.

140. For States that still retain the death penalty, certain issues retain their importance with regard to the implementation of the safeguards. The prohibition of

²⁶¹ A/HRC/10/44 and Corr.1, para. 42.

²⁶² Ibid., para. 48.

²⁶³ See www.un.org/webcast/unhrc/archive.asp?go=090310; and www.un.org/webcast/unhrc/archive.asp?go=090312.

²⁶⁴ General Assembly resolution 217 A (III).

the execution of persons for offences committed while under age 18 is quite strict; however, a few States still continue this practice. The role of international monitoring bodies and tribunals in ensuring compliance with the safeguards is becoming increasingly important; however, their decisions are not always implemented. Conditions on death row are often quite appalling and tend to aggravate suffering rather than minimize it. Additionally, there is the important issue of fair-trial standards and the presumption of innocence. It appears to be beyond dispute that innocent people are still sentenced to death.

141. The following recommendations are therefore brought to the attention of the Economic and Social Council:

1. States that have abolished the death penalty but have not yet ratified the relevant international instruments should proceed with such ratification. Moreover, States that have abolished the death penalty should deny extradition to States where the death penalty might be imposed, unless assurances are given that the individual concerned could not be sentenced to death or, if sentenced to death, the penalty would not be carried out.
2. States that retain the death penalty should:
 - Apply all safeguards and, in particular:
 - Abstain from imposing the death penalty for offences committed while the person was under age 18
 - Limit the application of the death penalty to the most serious crimes
 - Apply fair-trial standards and the presumption of innocence, and ensure that these are applied to each and every case involving the death penalty
 - Stay execution pending challenges to the death sentence and, in particular, respect orders from international courts and tribunals ordering suspension of execution
 - Ameliorate conditions on death row in accordance with international standards
 - Collect and provide statistical data on cases involving the death penalty, including data disaggregated by gender
 - Apply General Assembly resolution 62/149, entitled “Moratorium on the use of the death penalty”

Annex

Supplementary data and tables

Table 1
Status of capital punishment as of December 2008: retentionist countries and territories (47)

<i>Country or territory</i>	<i>Date of last execution</i>
Afghanistan	2008
Bahamas	2000
Bahrain	2008
Bangladesh	2008
Belarus	2008
Botswana	2008
Chad	2003
China	2008
Comoros	1999
Cuba	2003
Democratic People's Republic of Korea	2008
Democratic Republic of the Congo	2008
Egypt	2008
Equatorial Guinea	2007
Ethiopia	2007
Guinea	2001
India	2004
Indonesia	2008
Iran (Islamic Republic of)	2008
Iraq	2008
Japan	2008
Jordan	2007
Kuwait	2007
Lebanon	2004
Libyan Arab Jamahiriya	2008
Malaysia	2008
Mongolia	2008
Nigeria	2002
Oman	2001
Pakistan	2008
Palestine	2005
Qatar	2003
Saint Kitts and Nevis	2008
Saudi Arabia	2008
Singapore	2008
Somalia	2007
Sudan	2008
Syrian Arab Republic	2008

<i>Country or territory</i>	<i>Date of last execution</i>
Taiwan Province of China	2005
Thailand	2003
Trinidad and Tobago	1999
Uganda	2006
United Arab Emirates	2008
United States of America	2008
Viet Nam	2008
Yemen	2008
Zimbabwe	2003

Table 2
Status of capital punishment as of December 2008: fully abolitionist States and territories (95)

<i>Country or territory</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Albania	2007	2000	
Andorra	1990		1943
Angola	1992		..
Argentina	2008	1984	1916
Armenia	2003		1991
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Bhutan	2004		1974
Bolivia (Plurinational State of)	1997	1991	1974
Bosnia and Herzegovina	2001	1997	..
Bulgaria	1998		1989
Cambodia	1989		..
Canada	1998	1976	1962
Cape Verde	1981		1835
Colombia	1910		1909
Cook Islands	2007		..
Costa Rica	1877		..
Côte d'Ivoire	2000		1960
Croatia	1990		1987
Cyprus	2002	1983	1962
Czech Republic	1990		..
Denmark	1978	1933	1950
Djibouti	1995		1977 ^a
Dominican Republic	1966		..
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1987		..
Greece	2004	1993	1972
Guinea-Bissau	1993		1986
Haiti	1987		1972
Holy See	1969		..
Honduras	1956		1940
Hungary	1990		1988
Iceland	1928		1830
Ireland	1990		1954
Italy	1994	1947	1947
Kiribati	1979		1979 ^a

<i>Country or territory</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Kyrgyzstan	2007		1998
Liberia	2005		2000
Liechtenstein	1989		1785
Lithuania	1998		1995
Luxembourg	1979		1945
Malta	2000		1943
Marshall Islands	1986		1986 ^a
Mauritius	1995		1987
Mexico	2005		1961
Micronesia (Federated States of)	1986		1986 ^a
Monaco	1962		1847
Montenegro	2002		2006 ^a
Mozambique	1990		1986
Namibia	1990		1988
Nepal	1997	1990	1979
Netherlands	1982	1970	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Niue			
Norway	1979	1905	1948
Palau	1994		1994 ^a
Panama	1917		1903 ^a
Paraguay	1992		1928
Philippines	2006		2000
Poland	1997		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1990		1989
Rwanda	2007		1998
Samoa	2004		1962 ^a
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975 ^a
Senegal	2004		1967
Serbia	2002		1980
Seychelles	1993		1976
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 ^a
South Africa	1995	1995	1991
Spain	1995	1978	1975
Sweden	1973	1921	1910
Switzerland	1992	1942	1944
The former Yugoslav Republic of Macedonia	1991		..
Timor-Leste	1999		1999 ^a

<i>Country or territory</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Turkey	2004	2002	1984
Turkmenistan	1999		1997
Tuvalu	1976		1976 ^a
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965 ^b	1964
Uruguay	1907		..
Uzbekistan	2008		2005
Vanuatu	1980		1980 ^a
Venezuela (Bolivarian Republic of)	1863		..

Note: Two dots (..) indicate that the information is not available.

^a Year in which independence was achieved. No executions have taken place since that time. The date of the last execution prior to independence is not available.

^b Capital punishment for ordinary crimes was abolished in Northern Ireland in 1973.

Table 3
Status of capital punishment in December 2008: abolitionist countries and territories for ordinary crimes only (8)

<i>Country or territory</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Brazil	1979	1855
Chile	2001	1985
El Salvador	1983	1973
Fiji	1979	1964
Israel	1954	1962
Kazakhstan	2007	2003
Latvia	1999	1996
Peru	1979	1979

Table 4
**Status of capital punishment in December 2008: de facto abolitionist countries
 and territories (47)**

<i>Country or territory</i>	<i>Date of last execution</i>
Algeria	1993
Antigua and Barbuda	1989
Barbados	1984
Belize	1986
Benin	1987
Brunei Darussalam	1957
Burkina Faso	1989
Burundi	1997 ^a
Cameroon	1997
Central African Republic	1981
Congo	1982
Dominica	1986
Eritrea	1989
Gabon	1989
Gambia	1981
Ghana	1993
Grenada	1978
Guatemala	2000 ^b
Guyana	1997
Jamaica	1988
Kenya	1987
Lao People's Democratic Republic	1989
Lesotho	1995
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980 ^a
Mauritania	1989
Morocco	1993
Myanmar	1989
Nauru	1968
Niger	1976
Papua New Guinea	1950
Republic of Korea	1997
Russian Federation	1996 ^c
Saint Lucia	1995
Saint Vincent and the Grenadines	1995
Sierra Leone	1998
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Tajikistan	2003 ^d

<i>Country or territory</i>	<i>Date of last execution</i>
Togo	1979
Tonga	1982
Tunisia	1981
United Republic of Tanzania	1994
Zambia	1997

^a Abolished the death penalty in 2009.

^b An official moratorium was proclaimed in 2002.

^c Executions ceased in 1996, with the exception of Chechnya, where executions were reported as recently as 1999.

^d An official moratorium was proclaimed in 2004.
