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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Albania,* Australia,* Austria, Belgium,* Benin,* Bulgaria, Chile,* Costa Rica,* Croatia,* Cyprus,* Czechia, Denmark, Dominican Republic,* Ecuador,* Estonia,* Fiji, Finland,* France, Georgia,* Germany, Greece,* Iceland,* Ireland,* Israel,* Italy, Latvia,* Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Mexico, Monaco,* Mongolia,* Montenegro,* Namibia, Netherlands, New Zealand,* North Macedonia,* Norway,* Peru,* Poland, Portugal,* Republic of Moldova,* Romania,* San Marino,* Slovakia,* Slovenia,* Spain,* Sweden,* Switzerland,* Ukraine, United Kingdom of Great Britain and Northern Ireland and Uruguay: draft resolution

48/... Question of the death penalty

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and all other relevant international and regional human rights instruments, and reaffirming that all States must implement their obligations under international human rights law,

Recalling also the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling further General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012, 69/186 of 18 December 2014, 71/187 of 19 December 2016, 73/175 of 17 December 2018 and 75/183 of 16 December 2020 on the question of a moratorium on the use of the death penalty,

Reaffirming the safeguards guaranteeing the protection of persons facing the death penalty set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

Recalling all resolutions of the Commission on Human Rights on the question of the death penalty, the last of which was resolution 2005/59 of 20 April 2005,

Recalling also Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level

* State not a member of the Human Rights Council.



panel discussion on the question of the death penalty, and Council resolutions 26/2 of 26 June 2014, 30/5 of 1 October 2015, 36/17 of 29 September 2017 and 42/24 of 27 September 2019 on the question of the death penalty,

Taking note of the reports of the Secretary-General on the question of the death penalty, in the latest of which the Secretary-General focused on consequences arising from the lack of transparency in the application and imposition of the death penalty for the enjoyment of human rights, and where he examined international legal aspects of transparency and discussed practices and challenges at the national level in ensuring such transparency, including relating to the right of access to information, the right to a fair trial, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the principles of non-discrimination and equality before the law,¹

Acknowledging the report of the Office of the United Nations High Commissioner for Human Rights on the high-level panel discussion on the question of the death penalty,² according to which the panel found that there was no evidence that the death penalty had a deterrent effect that reduced the crime rate,

Mindful of the work of the special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

Mindful also of the work undertaken by the treaty bodies to address human rights issues related to the death penalty,

Recognizing the role of regional and subregional instruments and initiatives towards the abolition of the death penalty, which in some cases have led to the prohibition of the use of the death penalty,

Welcoming the fact that the international trend towards the abolition of the death penalty is continuing and that many States are applying a moratorium on the use of the death penalty, and welcoming also all measures taken by States towards limiting the application of the death penalty,

Noting that, according to the Human Rights Committee, States parties to the International Covenant on Civil and Political Rights that have abolished the death penalty are barred from reintroducing it, and noting also that the reinstatement of the death penalty by a State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights is a violation of international law,

Noting also that States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use,

Strongly deploring the fact that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons,

Emphasizing that lack of transparency in the use of the death penalty has direct consequences for the human rights of the persons sentenced to death and for other affected persons,

Emphasizing also the importance of transparency to ensure that those in detention awaiting execution are treated humanely, with respect for their inherent dignity, and that their prison conditions comply with international standards, such as the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),

Noting that discrimination is aggravated when transparency does not exist or is insufficient, and that transparent reporting and access to information can expose discriminatory practices or impact in the imposition and application of the death penalty,

Recalling that, particularly in cases of capital punishment, States must guarantee transparency in order to ensure that all persons benefit from due process guarantees, such as

¹ A/HRC/48/29.

² A/HRC/48/38.

a fair and public trial and adequate assistance by legal counsel at every stage of proceedings, including during detention and arrest, without discrimination of any kind,

Recalling also that derogation from the right to life is never permitted, even during a state of emergency, and noting further that since the coronavirus disease (COVID-19) pandemic, additional limitations on transparency and due process were recorded in some countries, including for death penalty cases, negatively affecting the rights of convicted persons and their family members,

Recalling further that persons sentenced to death, their families and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions and executions,

Stressing that the term “the most serious crimes” has consistently been read restrictively and interpreted as pertaining only to crimes of extreme gravity involving intentional killing, and stressing also that under no circumstances can the death penalty ever be applied as a sanction against specific forms of conduct, such as apostasy, blasphemy, adultery, consensual same-sex conduct or relations, establishing political opposition groups or offending a head of State, and that States parties that retain the death penalty for such offences commit a violation of their international obligations,

Stressing also the need to examine further in which circumstances the imposition or application of the death penalty violates the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including because of the death row phenomenon, the methods of execution or the lack of transparency around executions,

Emphasizing that access to consular assistance for foreign nationals, provided for in the Vienna Convention on Consular Relations, is an important aspect of the protection of those facing the death penalty abroad,

Acknowledging the interest in studying the question of the death penalty, as well as in holding local, national, regional and international debates related thereto,

Emphasizing the importance for the effectiveness and transparency of debates on the death penalty of ensuring that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it without resorting to capital punishment,

1. *Urges* all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations;

2. *Calls upon* States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, to consider doing so;

3. *Urges* States that have not yet abolished the death penalty to ensure transparency in the imposition and application of this punishment, and to respect all other international minimum safeguards for the protection of the human rights of individuals who are facing the death penalty, as set out in the annex to Economic and Social Council resolution 1984/50;

4. *Calls upon* States that have not yet abolished the death penalty to ensure that any trial leading to the imposition of the death penalty complies with international fair trial guarantees, including during a state of emergency, bearing in mind that failure to be transparent in proceedings resulting in the imposition of the death penalty could constitute a violation of the right to life;

5. *Calls upon* States to ensure that all accused persons, in particular poor and economically vulnerable persons, can exercise their rights relating to equal access to justice, to ensure adequate, qualified and effective legal representation at every stage of civil and criminal proceedings in cases of capital punishment through effective legal aid, and to ensure that those facing the death penalty can exercise their right to seek pardon or commutation of their death sentence;

6. *Also calls upon* States to ensure that children whose parents or parental caregivers are on death row, the inmates themselves, their families and their legal representatives are provided, in advance, with adequate information about a pending

execution, including its date, time and location, and to allow a last visit or communication with the convicted individual and the return of the body to the family for burial, or to provide information about where the body is located, unless this is not in the best interests of the child;

7. *Further calls upon* States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, and to inform without delay foreign nationals who have been arrested or detained of their right to contact the relevant consular post and to communicate with their consular representatives, bearing in mind that failure to promptly inform detained foreign nationals of their right to consular notification pursuant to the Vienna Convention on Consular Relations, resulting in the imposition of the death penalty, would likely violate the right to life;

8. *Calls upon* States that have not yet abolished the death penalty and that carry out executions either in secret or with little or no prior warning to end these practices, which impair the ability of the convicted individual and family members to prepare for death and can amount to cruel, inhuman or degrading treatment;

9. *Calls upon* States that have not yet abolished the death penalty to be transparent with respect to their execution methods, including through legislation, protocols or practices, bearing in mind that the judiciary has a key role to play in ensuring transparency in methods of execution;

10. *Also calls upon* States that have not yet abolished the death penalty to make available systematically and publicly full, accurate and relevant information, disaggregated by gender, age, nationality, race and other applicable criteria, with regard to their use of the death penalty, inter alia, the charges, number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, bearing in mind that access to reliable information on the imposition and application of the death penalty enables national and international stakeholders to understand and assess the scope of these practices, including about compliance with the obligations of States with regard to the use of the death penalty;

11. *Requests* the Secretary-General to dedicate the 2023 supplement to his quinquennial report on capital punishment to the relationship between articles 6 and 14 of the International Covenant on Civil and Political Rights focusing on the right to seek pardon or commutation of the sentence and the right to have to one's conviction and sentence reviewed by a higher tribunal according to law, in accordance with the safeguards guaranteeing the protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50, and to present it to the Human Rights Council at its fifty-fourth session;

12. *Decides* that the upcoming biennial high-level panel discussion to be held during the fifty-second session of the Human Rights Council will address human rights violations relating to the use of the death penalty, in particular with respect to limiting the death penalty to the most serious crimes;

13. *Requests* the Office of the United Nations High Commissioner for Human Rights to organize the high-level panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions with a view to ensuring their participation in the panel discussion, and to make the biennial panel discussion fully accessible;

14. *Also requests* the Office of the High Commissioner to prepare a summary report on the panel discussion, also in an accessible format, and to submit it to the Human Rights Council at its fifty-fourth session;

15. *Decides* to continue its consideration of this issue in accordance with its programme of work.