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**Human Rights Council****Fifty-fourth session**

11 September–13 October 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Resolution adopted by the Human Rights Council  
on 13 October 2023****54/35. 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, 75/183 of 16 December 2020 and 77/222 of 15 December 2022 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 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, 42/24 of 27 September 2019 and 48/9 of 8 October 2021 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 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 sentences and the right to have one's conviction and sentence reviewed by a higher tribunal according to law, in accordance with the safeguards guaranteeing protection of the rights of those facing the death penalty set out in the annex to Economic and Social Council resolution 1984/50, and in which he analysed the applicable legal framework and shared available data and examples of national practices,<sup>1</sup>

*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, according to which the panel stated that the death penalty continues to be provided and applied for crimes that do not meet the threshold of "the most serious crimes", including drug-related offences,<sup>2</sup>

*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,

*Mindful* of the work of the special procedure mandate holders who have addressed human rights issues relating 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 relating 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, that many States are applying a moratorium on the use of the death penalty, and all measures taken by States towards limiting the application of the death penalty,

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

*Recalling* article 6 (6) of the International Covenant on Civil and Political Rights, which states that nothing in that article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the Covenant, and bearing in mind that, according to the Human Rights Committee, States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future,

*Noting* that, also 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,

*Recalling* that derogation from the right to life is never permitted, even during a state of emergency,

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

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<sup>1</sup> A/HRC/54/33.

<sup>2</sup> A/HRC/54/46.

*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,

*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,

*Recalling* that, particularly in capital punishment cases, States are required to ensure that all persons benefit from a fair trial and a guarantee of due process by providing adequate assistance of legal counsel from the earliest stages of their detention and at every stage of the proceedings, without discrimination of any kind, and effective access to documents and other evidence that are essential for their defence, and that failure to respect fair trial guarantees in proceedings resulting in the imposition of the death penalty could constitute a violation of the right to life,

*Emphasizing* that it is important that States ensure that due process and fair trial guarantees and safeguards, including the right to have one's conviction and sentence reviewed by a higher tribunal according to law and the right to seek pardon and commutation, are effectively in place and implemented,

*Recalling* that the right of everyone convicted of a crime to have their conviction and sentence reviewed by a higher tribunal according to the law includes a duty on States to review the conviction and sentence on the merits, and stressing that violation of this right in proceedings resulting in the imposition of the death penalty renders the death sentence arbitrary in nature and in violation of the right to life,

*Underscoring* that the denial of legal assistance by the tribunal reviewing the death sentence of an indigent convicted person precludes an effective review of the conviction and sentence by the higher tribunal, and that such denial of legal assistance constitutes a violation of article 14 (3) (d) and (5) of the International Covenant on Civil and Political Rights,

*Reaffirming* that States are required to allow individuals sentenced to death to seek pardon or commutation, that amnesties, pardons and commutations can be granted to them in appropriate circumstances, that such requests for pardon or commutation are thoroughly examined and that death sentences are not carried out in the event any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence remain pending or unresolved,

*Reaffirming also* that, under international human rights law, no category of sentenced persons may be excluded in law or in practice from pardons or commutations of a death sentence, and that the conditions for attainment of relief must not be unnecessarily burdensome, discriminatory in nature or applied in an arbitrary and non-transparent manner, and expressing concern that, while many countries provide for the right to seek pardon or commutation of a death sentence in their national legislation, certain crimes are often excluded from it, or the number of pardons or commutations may be capped,

*Underlining* that in all cases where the death penalty may be imposed, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements, must be considered by the sentencing court, and expressing concern in this regard that the use of mandatory death sentences denies the sentencing court that discretion, rendering it arbitrary and inconsistent with the right to a fair trial and the right to life,

*Stressing* that those convictions resulting in the death penalty based on information obtained through torture or cruel, inhuman or degrading treatment of interrogated persons violate article 15 of the Convention against Torture and articles 7, 14 (3) (g) and 6 of the International Covenant on Civil and Political Rights,

*Considering* that, in order to avoid wrongful convictions in death penalty cases, States should take all feasible measures to review procedural barriers to reconsideration of convictions and to re-examine past convictions based on new evidence, including new DNA evidence,

*Recalling* 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* 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,

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. *Calls upon* States that have not yet abolished the death penalty to take active steps to reduce the number of offences for which the death penalty may be imposed and to limit them strictly to “the most serious crimes”;

4. *Calls upon* States that provide for or apply the mandatory death penalty to end this practice;

5. *Urges* all States to respect international standards that provide safeguards guaranteeing protection of the human rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50;

6. *Also urges* all States to ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those relating to capital offences, uphold the rights and are consistent with the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights, including:

(a) That those facing the death penalty can exercise their right to apply for pardon or commutation of their death sentence, notably by ensuring necessary procedural guarantees, such as that conditions for attaining pardons or commutations are not unnecessarily burdensome, discriminatory in nature or applied in an arbitrary and non-transparent manner, that clemency applications are heard within a reasonable period of time, and that certainty is provided regarding the pardon and commutation procedures;

(b) That everyone sentenced to death has the right to have his or her conviction and sentence reviewed by a higher tribunal according to the law, and that the conviction and sentence are reviewed on the merits, on the basis of the sufficiency of the evidence and the law, while taking particular care to consider and investigate fully allegations that a death sentence is based on evidence elicited through torture or ill-treatment, noting that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) can provide useful guidance regarding investigations into such allegations, and that civilian courts have the right to review any death sentences issued against civilians by military tribunals;

7. *Calls upon* States to ensure that all accused persons, in particular poor and economically vulnerable persons and persons with disabilities, 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 assistance, and to ensure that those facing the death penalty can exercise their right to seek pardon or commutation of their death sentence;

8. *Also 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;

9. *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, disability 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 and the location of their detention, 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;

10. *Requests* the Secretary-General to dedicate the 2025 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to equality of arms, the need to prevent miscarriage or failure of justice, and the irreversibility of the death penalty, and to present it to the Human Rights Council for consideration at its sixtieth session and to make it available in all languages before the session;

11. *Decides* that the upcoming biennial high-level panel discussion to be held during the fifty-eighth session of the Human Rights Council will address the contribution of the judiciary to the advancement of human rights and the question of the death penalty;

12. *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;

13. *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 sixtieth session;

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

*49th meeting  
13 October 2023*

[Adopted by a recorded vote of 28 to 11, with 7 abstentions. The voting was as follows:

*In favour:*

Argentina, Belgium, Benin, Bolivia (Plurinational State of), Chile, Costa Rica, Côte d'Ivoire, Czechia, Finland, France, Gabon, Georgia, Germany, Honduras, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, Malaysia, Mexico, Montenegro, Nepal, Paraguay, Romania, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland and Uzbekistan

*Against:*

Bangladesh, Cameroon, China, India, Maldives, Pakistan, Qatar, Somalia, Sudan, United Arab Emirates and United States of America

*Abstaining:*

Algeria, Eritrea, Gambia, Malawi, Morocco, Senegal and Viet Nam]