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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 seventh quinquennial report, to draw on all available data, including current criminological research. The present seventh quinquennial report reviews the use of and trends in capital punishment, including the implementation of the safeguards during the period 1999-2003.

In accordance with Council resolutions 1745 (LIV) and 1990/51 of 24 July 1990 and Council decision 2004/242 of 21 July 2004, the report is submitted to the Council at its substantive session of 2005 and will also be before the Commission on Crime Prevention and Criminal Justice at its fourteenth session. Pursuant to Commission on Human Rights resolution 2004/67, the report will also be before that Commission at its sixty-first session.

The report shows an encouraging trend towards abolition and restriction of the use of capital punishment in most countries. It also shows that much remains to be done in the implementation of the safeguards guaranteeing protection of the rights of persons facing the death penalty in those countries that retain it.

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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, is the seventh quinquennial report of the Secretary-General on capital punishment.¹ It covers the period 1999-2003 and reviews developments in the use of capital punishment worldwide, both in law and in practice. 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 (see annex II).

2. The report is based on information collected through the seventh survey, which was sent to Member States, intergovernmental organizations, United Nations specialized agencies and non-governmental organizations in consultative status with the Council, and from other sources, including current criminological data.²

II. Background and scope

3. All United Nations Member States were invited to contribute information to the seventh quinquennial report of the Secretary-General on capital punishment by means of a detailed, methodical questionnaire. Countries have been classified in the present report according to their death penalty status at the beginning of the quinquennium under review, that is, 1 January 1999, making it possible to chart changes easily over the five-year period up to the end of December 2003. The categories used are as follows:

(a) Countries that were abolitionist for all crimes, whether in time of peace or war;

(b) Countries that were 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). In these countries, the death penalty was retained only for exceptional circumstances, such as those that might apply in time of war for military offences or for crimes against the State, such as treason or armed insurrection;

(c) Countries that retained the death penalty in law. These were divided into:

(i) Those countries that retained the death penalty in their statutes so that death sentences could continue to be imposed, but which had not enforced it by execution for a long period of time, at least 10 years. These countries, following past practice in United Nations reports, have been designated as *de facto* abolitionist, although, as will be explained below, this does not always mean that they have an established policy never to carry out executions. In the present report, for the first time in a quinquennial survey, countries that have carried out executions within the previous 10 years but which nevertheless have made an international commitment through the establishment of an official moratorium as a prelude to abolition, have also been designated as *de facto* abolitionist;

(ii) Those countries and territories in which executions had taken place within the 10 years prior to 1 January 1999.

4. For the first time in these five-yearly surveys, questions were framed separately for abolitionist countries, for countries that did not impose the death penalty for ordinary offences and for retentionist countries, including those that were de facto abolitionist. Countries that were already completely abolitionist were asked whether they had any policy to promote abolition in other countries; whether there had been any attempts to reintroduce the death penalty; whether they had adopted a policy relating to extradition of persons charged with capital offences; and what alternatives to the death penalty had been established. Countries that were abolitionist for ordinary criminal offences were asked to specify which offences remained subject to the death penalty; and whether any persons had been sentenced to death or executed during the survey period. Countries that retained the death penalty were asked whether capital punishment had been abolished for, or extended to, any offences during the survey period and, if so, what factors had led to that change; for what offences the death penalty could be imposed at the end of the survey period (31 December 2003); the number of persons sentenced to death and the number executed, separately for men and women and for those under the age of 18 and those over that age at the time of the commission of the offence; as well as the number under sentence of death at the beginning and end of the five-year survey period. Questions were also asked about the appeal and clemency process and whether there was any discussion or research relating to the question of abolition of the death penalty. A separate section was devoted to the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.

5. Although the present report deals with the period covered by the survey, significant developments that took place during 2004 have been noted so as to make the conclusions of the report as current as possible, taking also into account the request of the Commission on Human Rights to give special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence (Commission resolution 2004/67).

6. By 25 January 2004, questionnaires had been returned by 52 countries.³ The large majority of them (33) were already completely abolitionist at the beginning of 1999: Australia, Austria, Azerbaijan, Cambodia, Canada, Colombia, Costa Rica, Croatia, Denmark, Finland, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Mauritius, Monaco, Mozambique, Namibia, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland. In addition, replies were received from five countries that were abolitionist only for ordinary crimes on 1 January 1999: Argentina, El Salvador, Greece, Malta and Mexico. Five replies were received from retentionist but de facto abolitionist countries: Albania, which established an official moratorium on executions in 1996; Latvia, which has signalled its intention to abolish the death penalty by instituting a moratorium in 1995 and signing Protocol No. 6 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty⁴ in 1998; the Philippines, where the last execution had been carried out in 1976; Senegal, which replied only that it had abolished capital punishment on 10 December 2004; and Turkey, where the last execution had been carried out in 1984. Only 8 of the 79 countries that were

retentionist at the beginning of 1999 replied to the survey: Bahrain, Egypt, Japan, Morocco, Pakistan, Thailand, Trinidad and Tobago and Ukraine.⁵ Three of these, Egypt, Thailand and Pakistan, filled out the part of the questionnaire dealing with safeguards, disregarding the part related to the offences for which the death penalty could be or was imposed and the number of executions carried out. This is an even lower response rate than that obtained for the fifth and sixth quinquennial surveys.⁶ It is from the retentionist States, many of which do not publish any official statistics relating to the use of capital punishment, that information through a United Nations survey is most needed.

7. The following intergovernmental organizations and United Nations specialized agencies submitted reports and information: the Council of Europe and in particular the European Court of Human Rights, the European Commission, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) and the Office of the United Nations High Commissioner for Refugees. The following non-governmental organizations submitted reports and written statements: the International Secretariat of Amnesty International, the Dui Hua Foundation, the International Association of Lawyers, the International Federation of Human Rights (FIDH), the International Service for Human Rights, the Japan Federation of Bar Associations (JFBA), the Law Association for Asia and the Pacific, the South Asia Human Rights Documentation Centre, Prison Fellowship International and the Association for Crime Prevention and Rehabilitation of Offenders.

8. As mandated, and in order to obtain a truer picture of the status and situation with respect to application of the death penalty and safeguards relating thereto throughout the world, the seventh quinquennial report of the Secretary-General, as did the sixth report, has had to rely to a considerable extent on information derived from a variety of sources. In particular, the report draws upon information provided to and by United Nations human rights bodies and special rapporteurs as well as other sources, such as national statistics, reports from Governments, academic sources and information provided by non-governmental organizations, in order to ascertain the number of death sentences imposed and executions carried out around the world during the period under review.

III. Changes in the status of the death penalty, 1999-2003

A. Countries that had abolished the death penalty for all crimes by the beginning of 1999

9. At the beginning of 1999, 70 countries had already abolished the death penalty for all crimes, a considerably higher number than at the beginning of the previous quinquennium, in 1993, when there had been 55 completely abolitionist countries. As mentioned above, 33 of these 70 countries responded to the seventh survey by completing the questionnaire. None of the 70 countries reintroduced the death penalty during the survey period⁷ and only 4 of the 33 that replied to the survey stated that there had been proposals put forward for reinstating the death penalty. These were generally proposals from individuals, members of Parliament or minority political parties, which in no instances had any impact.

10. A majority (22) of these completely abolitionist countries reported that they had taken or were involved in initiatives to promote the abolition of capital punishment or to reduce its scope or the incidence of its application. They mentioned such activities as sponsorship of resolutions at the Commission on Human Rights and support for the policy of regional organizations such as the European Union and the Council of Europe. Portugal called attention to the resolution adopted by the Community of Portuguese Speaking Countries in 2003 on human rights and the abolition of the death penalty. Several countries reported on more direct initiatives at the bilateral or multilateral level, such as bilateral human rights dialogue.

11. All but one of the 33 countries that responded stated that they had adopted a policy to refuse to extradite a person charged with a capital offence to a requesting State that had not abolished capital punishment, unless that State gave assurances that the individual would not be sentenced to death or executed, as they had been consistently requested by the Commission on Human Rights (Commission on Human Rights resolution 2004/67, para. 7). In the period covered by the seventh survey, Australia, Canada, Costa Rica, Germany, Ireland and Switzerland reported that they had applied that policy.

12. The seventh survey asked countries 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, both in the type of penal sanction (whether life imprisonment or a determinate sentence of imprisonment) and in the period that in reality has to be served before there can be any consideration of early release. Yet in none of the responding countries was life imprisonment without the possibility of parole formally mandated as the mandatory or the maximum discretionary penalty to replace the death penalty. In seven countries, the penalty for murder was mandatory life imprisonment. In all these countries there were mechanisms to allow these prisoners to be released after a period of time, which varied considerably. A total of 17 countries had replaced the death penalty with a discretionary maximum sentence of life imprisonment, with the alternative being a determinate sentence. All had a policy whereby the prisoner could be released, but the period to be served varied considerably. A total of 9 countries had replaced the death penalty by a determinate period of imprisonment. In three of them (Costa Rica, Ireland and Mozambique), the period to be served was mandatory. Where there was discretionary release, the minimum period before this could be considered varied from one half to three quarters of the sentence imposed.

B. Countries that had abolished the death penalty for ordinary crimes by the beginning of 1999

Countries that became abolitionist for all crimes between 1999 and 2003

13. At the beginning of 1999, 11 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: Argentina, Bosnia and Herzegovina, Brazil, Cyprus, El Salvador, Fiji, Greece, Israel, Malta, Mexico and Peru. As mentioned above, replies to the seventh survey

were received only from Argentina, El Salvador, Greece, Malta and Mexico within this category.

14. Three of these 11 countries, formerly abolitionist for ordinary crime became abolitionist for all crimes in the period 1999-2003: Bosnia and Herzegovina, Cyprus and Malta.

15. In 2004, a fourth country, Greece, became completely abolitionist. Information on planned abolition was also received from Argentina and Mexico. Argentina stated that bills to reform the existing Code of Military Justice were before its Parliament, relating in particular to the abolition of capital punishment and that the possibility to sign and ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty⁸ and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (General Assembly resolution 44/128, annex) was being studied. The reply stated that "Argentina should be considered a State that has effectively abolished capital punishment". It was also reported that the President of Mexico submitted to Congress in March 2004 a proposal, in the context of constitutional reform, to remove the death penalty from the military penal code.⁹

16. El Salvador reported that the question of reintroducing capital punishment for ordinary crimes had been the subject of a round of discussions and consultations within the National Legislative Assembly, but the matter had been subsequently shelved. It was pointed out that, under the Constitution, executions could only take place if the offences were committed during a state of international war.

17. The remaining countries that are abolitionist for ordinary crimes can all be regarded as de facto abolitionist as far as crimes against the State or under the Military Code for which they retain the death penalty are concerned. It is many years since a judicial execution has been carried out in any of these countries for a crime against the State, under special emergency laws, or for a military offence.

18. In summary, by the end of 2004, over half the countries formerly abolitionist for ordinary crimes had either become completely abolitionist or had plans to become so.

C. Retentionist countries at the beginning of 1999

19. As the quinquennium began, 113 countries retained the death penalty on their statute books for ordinary crimes (and usually also other offences). Of these, 78¹⁰ 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. A further 34 countries¹¹ retained capital punishment but could be considered de facto abolitionist on the grounds that no person had been judicially executed for at least 10 years or, as in the case of Albania, Armenia, Latvia and the Russian Federation, an international commitment had been made not to resume executions.

1. Retentionist countries that were de facto abolitionist at the beginning of 1999

20. Of the 34 countries that were de facto abolitionist at the beginning of 1999, 9 changed their status during the quinquennium. Four of them, Albania, Latvia, Senegal and Turkey, replied to the seventh survey. Two of the 34 countries became

abolitionist for all crimes between 1999 and 2003: Côte d'Ivoire in 2000 and Armenia in 2003.¹² Four other countries became abolitionist for all ordinary crimes: Albania,¹³ Chile, Latvia¹⁴ and Turkey.

21. Three formerly de facto abolitionist countries resumed executions. In the Philippines in 1999 an adult male was the first person to be executed in 23 years. This was followed by five more executions in that year and one in 2000. Since then there have been no further executions. After a period of 11 years without executions, they were resumed by Qatar when, in June 2000, two men and a woman were executed for murder. And in 2001, seven people were executed in Guinea, the first since 1984. This is a lower figure than the seven formerly de facto abolitionist countries that resumed executions during the quinquennium 1994-1998.

22. Thus, 25 countries remained de facto abolitionist from the beginning of 1999 until the end of 2003 (6 of the 34 on 1 January 1999 having become abolitionist and 3 having reverted to being retentionist).

23. Three of these 25 countries abolished capital punishment completely in 2004: Bhutan, Samoa and Senegal. Two other countries might be expected to become abolitionist in the near future: Kenya and the Russian Federation. In the Russian Federation, capital punishment was in effect banned by a ruling of the Constitutional Court in February 1999. In Kenya, while the Justice Minister had declared the newly elected Government's intention to abolish the death penalty and the President had commuted all death sentences, the national Constitutional Conference decided in March 2004 to retain the death penalty for murder and the rape of minors, abolishing it for treason and robbery with violence.¹⁵

24. It needs to be recognized, however, that at least five of the countries that, according to the "10-year rule" remained de facto abolitionist in 2004, have intended to resume executions but have not been able to do so because of legal interventions or have been considering the resumption of executions. This has been the case in Barbados (last execution 1984), Belize (1986), Jamaica (1988), Papua New Guinea (around 1950) and Sri Lanka (1976).¹⁶ As regards the imposition of death sentences by de facto abolitionist countries, they continued to be imposed in the Gambia, Mali and Togo during the period 1999-2003.

2. Retentionist countries and territories that enforced capital punishment at the beginning of 1999

25. Only 7 of the 78 countries that enforced capital punishment for ordinary offences at the beginning of 1999 (Bahrain, Egypt, Japan, Morocco, Pakistan, Trinidad and Tobago and Uzbekistan), plus one (the Philippines) of the three that reinstated executions after a period of de facto abolition during the survey period, replied to the seventh survey. None of them had abolished the death penalty or become de facto abolitionist by the end of 2003. Information on Japan was also received from JFBA.

26. Bahrain replied that there was no discussion of the issue of abolition in civil society and that there was no research on the subject, nor any plans by the Government to promote such research. It also reported that capital punishment had not been abolished because it was "only taken for the capital crimes". In response to the question as to why capital punishment had not been abolished for ordinary crimes in Japan, the official response stated: "The majority of people in Japan

recognize the death penalty as a necessary punishment for grievous crimes. Considering the number of serious crimes ... it is inevitable to impose death penalty to the offenders who commit such crimes.”¹⁷

27. Morocco responded that the reason why capital punishment had not been abolished for ordinary crimes was the “gravity of certain criminal acts and brutality and hideousness of other acts as well”. Nevertheless, no executions had taken place since 1993 and, in response to the question of whether there was a settled policy never to execute persons sentenced to death, the reply was “yes”, although it should be noted that there is no official moratorium in force. “Juristic organizations” were said to be discussing the question of restriction of the scope of capital punishment or total abolition of the death penalty. Trinidad and Tobago responded that the Government “remains steadfast in its commitment to upholding the Laws of the Land”, namely that the death penalty is the mandatory penalty for persons found guilty of the offences of murder or treason. There had, however, been some discussion on radio and television talk shows about the abolition of capital punishment.

28. The Philippines responded that the question of capital punishment had a high profile in public debate. There were seven bills pending before the 13th Congress of the Republic of the Philippines, each one seeking the complete abolition of capital punishment. Moreover, various sectors of society had signified their staunch opposition to the death penalty, including the Coalition Against the Death Penalty. Although the President had announced on 1 January 2004 that she would lift the moratorium on executions that had been decided in March 2000, “out of respect for the 2,000th anniversary of the birth of Christ”, no executions have taken place so far, although over 1,000 prisoners remain on death row in the Philippines.

29. Morocco, the Philippines and Trinidad and Tobago had all agreed to guarantee in one or several cases that persons for whom they had successfully sought extradition would not be executed.

(a) Retentionist countries that became abolitionist

30. Three of the 78 retentionist countries abolished the death penalty for all crimes: Turkmenistan in 1999,¹⁸ Ukraine in 2000¹⁹ and Serbia and Montenegro in 2002. It should also be noted that Timor-Leste, on attaining independence from Indonesia in 1999, abolished the death penalty completely.

31. In summary, three countries that were retentionist in 1999 became abolitionist for all crimes by the end of 2003. To these can be added six retentionist countries that were formerly de facto abolitionist and that abolished capital punishment: two completely (Armenia and Côte d’Ivoire) and four for ordinary offences (Albania, Chile, Latvia and Turkey), during this period.

(b) Countries that became or consider themselves as de facto abolitionist

32. Of the remaining 75 countries that were retentionist on 1 January 1999, 15 became de facto abolitionist during 1999-2003, since no execution had taken place for at least 10 years, although one of them, Chad, subsequently reverted to executions (see para. 34 below). These were, with the date of last execution in brackets: Algeria (1993), Antigua and Barbuda (1989), Benin (1989), Burkina Faso (1989), Chad (1991), Eritrea (1989), Ghana (1993), Lao People’s Democratic

Republic (1989), Liberia (1993), Malawi (1992), Mauritania (1989), Morocco (1993), Myanmar (1989), Swaziland (1989) and Tunisia (1991).

33. In addition, two other countries, Kyrgyzstan²⁰ and Kazakhstan²¹ can be classified as de facto abolitionist by establishing official moratoriums on executions and both seem to be heading towards full abolition. Thus, with the addition of these two countries, 17 States that were formerly retentionist became de facto abolitionist within the five-year period 1999 to 2003.

34. It is difficult to establish how many of the 15 countries that had not executed any persons for at least 10 years as at 1 January 1999 are indeed intending to abandon the practice of enforcing the death penalty, for in most of them death sentences have continued to be imposed, even if relatively rarely. As already noted, Chad had briefly become de facto abolitionist, but resumed executions within the period of the survey. The country became de facto abolitionist in 2001 on the basis that the last execution had been carried out in Chad in 1991. However, executions were resumed in November 2003, when nine prisoners who had been convicted by the Criminal Court in August 2003 of murder or assassination, were executed.²²

35. In contrast, several of the new members of the de facto abolitionist camp have indicated that they have an ambition to join the ranks of abolitionist States. Such information was reported from Ghana,²³ Malawi,²⁴ Morocco²⁵ and Myanmar.²⁶ These figures confirm the fact that the number of countries in which executions regularly take place continues to dwindle.

(c) Countries that remained retentionist

36. The death penalty status of 59 of the 78 retentionist countries and territories at the beginning of 1999 had not changed at the end of 2003. Of these 59 countries, 18 did not, as far as can be ascertained, carry out any judicial executions between 1999 and 2003,²⁷ even though they had continued to impose death sentences. Two of these, however, recommenced executions in 2004: India²⁸ and Lebanon.

37. Several of these countries appeared to be moving towards an abolitionist stance, among them Nigeria,²⁹ Republic of Korea,³⁰ Sierra Leone³¹ and Zambia³² (except in its Northern provinces). In Iraq, after the death penalty was suspended in March 2003 by the Coalition Provisional Authority, in August 2004 the Interim Government announced that it was being reinstated for murder, drug trafficking, kidnapping and threats to national security. The Minister for Human Rights of Iraq announced in December 2004 that the Government "had decided to apply the death penalty in Iraq as a temporary measure to have a dissuasive impact and to improve the security situation ... once the security situation had improved the intention was to abolish the practice altogether." In November 2004, Amnesty International reported that 10 unnamed persons had been recently sentenced to death by Iraqi courts.

38. Thus, only 43 of the countries and territories that have remained retentionist carried out executions during the period 1999-2003.³³ As indicated in the following section, a substantial proportion of these countries executed offenders quite rarely.

39. There has also been some movement towards abolition among countries and territories that have continued to carry out executions although much less

frequently. This was the case in the State of Illinois in the United States of America,³⁴ Belarus,³⁵ Taiwan Province of China³⁶ and Tajikistan.³⁷

D. Status of the death penalty at the end of 2003

40. The conclusion to be drawn from the seventh quinquennial survey is that the rate at which countries have embraced abolition has proceeded at a steady pace, even if a somewhat more modest one than during the previous 10 years, when 39 countries (an average of almost four a year) abolished capital punishment: a pace of change described in the report on the fifth and sixth surveys as “quite remarkable”. In comparison, 12 countries abolished capital punishment in the period 1999-2003 (an average of just over 2 a year) 8 of them completely and 4 for ordinary offences. However, no abolitionist countries reintroduced the death penalty during the period 1999-2003, compared with four countries and two states of the United States of America that did so in the previous quinquennium. Moreover, although 3 countries that had been regarded as *de facto* abolitionist did resume executions, that is a much smaller number than the 9 that did so between 1994 and 1998. Of great significance is the fact that the number of *de facto* abolitionist countries has increased considerably (see table 1) and that even amongst retentionist countries, only 43 had carried out any judicial executions over the whole five-year period. As the next section will show, only a small handful of these carried out large numbers of executions. An up-to-date list of abolitionist and retentionist countries is contained in annex I to the present report.

Table 1

Status of the death penalty at the beginning and end of the five-year survey period, 1999-2003

	<i>Completely abolitionist</i>	<i>Abolitionist for ordinary crimes</i>	<i>Retentionist—de facto abolitionist</i>	<i>Retentionist</i>
1 January 1999 (194 countries)	70	11	34	79
31 December 2003 (195 countries)	80	12	41	62

Note: In 2004, Bhutan, Samoa and Senegal (*de facto* abolitionist on 31 December 2003) and Greece and Turkey (*abolitionist for ordinary crimes* on 31 December 2003) became completely abolitionist. Tajikistan became *de facto* abolitionist on legally establishing a moratorium on executions without limit of time in 2004.

IV. Enforcement of the death penalty

41. Information about death sentences imposed and persons executed was received from six countries: Bahrain, Japan, Morocco, Philippines, Thailand and Trinidad and Tobago, plus Latvia for the period prior to abolition. Bahrain reported that only two persons had been sentenced to death for offences against the person, one adult male (by a military court) and one adult female (by an ordinary criminal court) in the period 1999-2003. In Japan, 63 death sentences were imposed at initial trials on persons convicted of offences against the person. In four cases, death sentences were reduced to imprisonment after appeal. During the five-year period, 20 death

sentences were confirmed following the conclusion of the appeal/clemency process. Thirteen males, all aged 18 or older, were executed, all for offences against the person: five of them in 1999, falling to one in 2003. On 1 January 1999, 53 prisoners remained under sentence of death and on 31 December 2003 the number was 56.

42. In Latvia, where there had been a moratorium on executions since 1996, one male had been sentenced to death in 1999 before capital punishment was abolished for ordinary offences later that year. In Morocco, 66 persons (63 men and 3 women) had been sentenced to death, 49 for offences against the person and 17 for terrorism,³⁸ but none had been executed. Three pardons had been granted and eight persons remained under sentence of death on 31 December 2003, half the number on 1 January 1999.

43. The Philippines reported that 280 death sentences had been imposed between 1999 and 2003. During the same period, 54 persons had their sentences overturned on appeal or through the commutation process. Seven males had been executed, six of them in 1999 and one in 2000. Thailand did not report the number of death sentences imposed, but it did report the number of executions that had been carried out: 43. In Trinidad and Tobago, 45 people had been sentenced to death for murder and 10 males had been executed, all of them in 1999.

44. It must again be emphasized that many countries do not publish official statistics on sentences and executions. Therefore, to obtain an overall picture, information provided by non-governmental organizations has been used, in particular Amnesty International. A comparison between the five-year periods 1994-1998 and 1999-2003 (based on figures provided by Amnesty International, which recognizes that they are not accurate and may well be a substantial underestimate of the true numbers) suggests that there has been a decrease in the number of death sentences from around 23,000 over the whole period 1994-1998 to approximately 18,200 during 1999-2003, as well as a decrease in the number of persons judicially executed from approximately 13,500 to 9,000. As in the previous period, the annual number of death sentences fluctuated in the years 1999 to 2003 from approximately 3,050 to 5,300. Similarly, the annual number of executions varied between approximately 1,150 and 3,050. These variations reflected to a large extent changes in the annual number of persons known to have been sentenced to death and executed in China.

45. As far as can be ascertained, 11 of the 43 countries that remained retentionist throughout 1999-2003 executed fewer than 5 persons over the whole period and 16 countries fewer than 10. Only 19 countries are known to have carried out 20 or more judicial executions during this time.

46. Table 2 below shows, as far as can be ascertained from the number of executions reported annually by Amnesty International, the countries that executed most offenders. A comparison is made between the number of executions and the yearly average rate per million of the population for 26 countries that in either the period covered by the sixth survey (1994-1998) or the period encompassed by the seventh survey (1999-2003) executed over the five-year period at least 20 persons.³⁹ The purpose of this table is to illustrate trends in the use of capital punishment.

Table 2
Countries that remained retentionist at the end of 2003 and in which there were reports of at least 20 persons having been executed in either of the periods 1994-1998 or 1999-2003, with the estimated annual average (mean) rate per one million of the population^a

<i>Country or territory</i>	<i>Total executions 1994-1998</i>	<i>Estimated annual rate per one million of the population</i>	<i>Total executions 1999-2003</i>	<i>Estimated annual rate per one million of the population</i>
Afghanistan	34	0.36	78	0.56
Belarus	168	3.20	37-52	0.74-1.04
China	12 338	2.01	6 687	1.04
Democratic Republic of the Congo	100	0.43	350	1.30
Egypt	132	0.43	59+	0.16
Iran (Islamic Republic of)	505	1.59	604+	1.83
Japan	24	0.04	13	0.02
Jordan	55	2.12	52+	2.08
Libyan Arab Jamahiriya	31	1.17
Nigeria	248	0.41	4	0.006
Pakistan	34	0.05	48+	0.07
Republic of Korea	57	0.25	-	-
Rwanda	23	0.58	-	-
Saudi Arabia	465	4.65	403+	3.66
Sierra Leone	71	2.84	-	-
Singapore	242	13.83	138	6.9
Sudan	5	0.03	53+	0.33
Taiwan Province of China	121	1.13	67	0.59
Tajikistan	1	0.03	35+	1.17
Thailand	5	0.02	43	0.14
Uganda	4	0.04	33	0.29
United States of America	274	0.20	385	0.27
Texas	93	0.93	149	1.35
Virginia	37	1.08	30	1.23
Missouri	21	0.77	29	1.02
Oklahoma	10	0.57	56	3.2
Uzbekistan	8	0.07	35+	0.28

<i>Country or territory</i>	<i>Total executions 1994-1998</i>	<i>Estimated annual rate per one million of the population</i>	<i>Total executions 1999-2003</i>	<i>Estimated annual rate per one million of the population</i>
Viet Nam	145	0.38	128+	0.32
Yemen	88	1.10	144+	1.51
Zimbabwe	22	0.37	3	0.05

Source: Data on executions derived from reports issued by Amnesty International.

^a Rates calculated on the basis of the average annual number of executions. Where there were no reports, it had to be assumed that the number was zero, although this may not have been the case in several of these countries. Population estimates have been taken from Keesing's *Worldwide, Annual Register* for 1997 and 2002. The population estimates for states of the United States of America have been taken from <http://quickfacts.census.gov/qfd/states/12000.html>.

47. As can be seen from table 2, the largest number of recorded executions has been carried out in China, followed by the Islamic Republic of Iran, Saudi Arabia, the United States and the Democratic Republic of the Congo. Substantial numbers of executions—over 100 during the five-year survey period—were also carried out in Singapore, Viet Nam and Yemen.

48. Raw numbers can, of course, be misleading when countries vary so greatly in the size of their populations. Thus, Singapore had by far the highest rate of executions (6.9 per million per annum) followed by Saudi Arabia (3.7) and Jordan (2.1). Only three countries (China, the Islamic Republic of Iran and Saudi Arabia) executed more persons in the period 1999-2003 than the United States, yet that country as a whole had one of the lowest average annual rates of executions (0.27) per one million of the population of the countries included in table 2. This is because the executions have been concentrated in a few states. Over the five-year period, 13 of the 38 states in the United States of America with the death penalty on their statute books did not carry out any executions at all. Moreover, while 20 states carried out an execution in 1999, the number had fallen to 11 by 2003. The Federal Government conducted three executions: in 2001 the first execution for a federal offence since 1963 was carried out. Two thirds (264 or 68.5 per cent) of the 385 executions were carried out by the four states listed in table 2 (Missouri, Oklahoma, Texas and Virginia). Nearly one in four executions (38.7 per cent) took place in Texas, although it was the much less highly populated state of Oklahoma that had the highest annual average rate of executions over the period 1999 to 2003, amounting to 3.2 per million of the population.

49. A comparison of the data presented in table 2 for 26 countries that were still retentionist at the end of 2003 and had carried out at least 20 executions over either the five-year period 1994-1998 or 1999-2003, reveals that, over the latter quinquennium as a whole, the number of recorded executions declined both in absolute numbers and in 13 of them in terms of the annual average rate per million of the population. The fall in reported executions was especially notable in Belarus, China, Egypt, Nigeria, the Republic of Korea, Singapore, Taiwan and Zimbabwe. Smaller numbers were also executed in Japan and, as far as can be ascertained, in the Libyan Arab Jamahiriya.

50. These figures hide even more striking changes within the period 1999-2003. Thus, it appears that the number of executions in Belarus fell from 29 in 1999 to 5 in 2002 and 1 in 2003. In China, during the "strike hard" campaign against criminality in 2001, Amnesty International recorded news of 2,468 executions, but Amnesty garnered news of only 763 executions in 2003. Similar trends were seen in Singapore and Taiwan Province of China.

51. Even where the five-yearly total appears to have increased, as compared with 1994-1998, this has sometimes hidden a trend towards an annual decline in executions. Thus, all the 78 judicial executions reported in Afghanistan occurred in the three years 1999, 2000 and 2001 and 51 of them in 2001 alone; there were no reported executions in 2002 and 2003. The same was the case in some countries where the overall execution rate appeared to be stable, for instance in the Democratic Republic of the Congo, Saudi Arabia, the Sudan, Thailand and Uganda. Although the total number of executions in the United States was considerably higher between 1999 and 2003 than between 1994 and 1998, the annual number has declined from a peak of 98 in 1999 to 85 in 2000 and 65 in 2003.

52. In only one country, Viet Nam, does the estimated number of executions appear to have increased substantially and regularly during the period: 64 (50 per cent) of the 128 executions recorded over the five-year period having taken place in 2003, compared with 8 in 1999. Without officially published statistics being available, it is impossible to know whether these figures reflect a real change or simply better information becoming available.⁴⁰

53. The overall conclusion is that there is evidence of a decline in the use of executions by retentionist States and that a substantial proportion of them have recourse to executions only rarely. Even in those few countries that carry out the majority of judicial executions, there are signs that the practice has decreased. Finally, it is once more necessary to state how important it is for Member States to implement the recommendation contained in Economic and Social Council resolution 1989/64 to ensure the annual, if possible, publication of statistics on sentencing and executions.

V. International developments

54. There have been further developments in the international arena since the updated report on the sixth survey was presented in 2001 (E/CN.15/2001/10). The Commission on Human Rights has continued annually to adopt resolutions calling upon all States that have not already abolished the death penalty to consider establishing a moratorium on executions with a view to completely abolishing the death penalty. These resolutions have also called upon all States that are parties to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) that have not yet done so to consider acceding to or ratifying the Second Optional Protocol thereto (Assembly resolution 44/128, annex), aiming at the abolition of the death penalty, and called upon all retentionist States to abide by the safeguards guaranteeing the rights of those facing the death penalty and to make available to the public information with regard to the imposition of the death penalty.

55. The Human Rights Committee, established under the International Covenant on Civil and Political Rights, has continued to hear cases involving the administration of capital punishment submitted to it under the individual complaints procedure laid down in the first Optional Protocol to the Covenant (General Assembly resolution 2200 A (XXI), annex). Over the period 1999-2003, the Committee has found many instances where there has been a violation of one of the articles of the Covenant that are intended to ensure fair and humane treatment of persons facing criminal proceedings. These decisions are reported under the relevant safeguard in the next section of the present report.

56. Many regional intergovernmental organizations have been involved in promoting abolition. This is the case of the Council of Europe, the European Union,⁴¹ OSCE and the African Union. The Parliamentary Assembly and the Committee of Ministers of the Council of Europe have continued vigorously to oppose capital punishment, not only within its own sphere, but also in other so-called "third nations" as well, through adoption of resolutions, awareness-raising activities, such as those carried out in Belarus and the Russian Federation, and publications.⁴² The European Union has, among other activities,⁴³ supported projects in other countries, for example working with the University of the Philippines to increase the use of testing of deoxyribonucleic acid (DNA), and has provided training for parliamentarians and other opinion-makers in States that still retain the death penalty. The Office of Democratic Institutions and Human Rights of OSCE has produced an annual background paper on the use of the death penalty in OSCE member States.

57. At its 26th ordinary session, in November 1999, the African Commission on Human and People's Rights adopted a resolution that called upon all States parties to consider establishing a moratorium on the death penalty.

58. The non-governmental organization Together against the Death Penalty organized the First World Congress against the Death Penalty in Strasbourg, France, in June 2001 and the Second World Congress against the Death Penalty in Montreal, Canada, in October 2004. In May 2002, at a meeting in Rome, the World Coalition against the Death Penalty was founded to bring together non-governmental organizations, bar associations, unions, local governments and other organizations in a campaign for the universal abolition of the death penalty. The Coalition has declared 10 October as an annual World Day against the Death Penalty.

59. The United Nations High Commissioner for Refugees stated that, in relation to international protection activities the death penalty can be of particular relevance in the conduct of refugee status determination, because the imposition of the death penalty may amount to persecution and lead to the granting of refugee status under certain circumstances. On the other hand, an individual might be denied international protection as a refugee where the death penalty has been imposed on an individual for having committed a crime against peace, a war crime or a crime against humanity, or for a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee.

60. By the beginning of 1999, 34 countries had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (General Assembly resolution 44/128, annex). By the end of November 2004, 52 countries had ratified that instrument, affirming their

commitment to the abolition of the death penalty. A further four nations had signed the Second Optional Protocol by the end of 2004. One country, Nicaragua, ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty⁸ in 1999 and Paraguay signed that Protocol in the same year.

61. Protocol No. 6 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms,⁴ which abolishes the death penalty except in time of war, was ratified by a further 14 States in the period 1999-2003. By the end of 2003, only 4 of the 46 States that make up the Council of Europe had not ratified the Protocol: Monaco, Romania, the Russian Federation and Serbia and Montenegro. Serbia and Montenegro and Romania did so respectively in March and June 2004. Both Monaco and the Russian Federation have signed the Protocol and are committed to ratifying it in the near future (see annex I, table 5).⁴⁴

62. Of particular significance in the period covered by the seventh survey was the adoption on 3 May 2002 of Protocol No. 13 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances,⁴⁵ by which the member States resolved to take the final step to abolish the death penalty in all circumstances, including in respect of acts committed in time of war or of imminent threat of war. By the time the Protocol came into force on 1 July 2003, already 41 of the 45 member States of the Council of Europe had signed it and, by November 2004, 28 countries had ratified the Protocol and a further 15 had signed it. The only Council of Europe member States so far not to have acceded to this treaty are Armenia, Azerbaijan and the Russian Federation.⁴⁶

63. Altogether, by the end of 2004, 74 countries had ratified one or other of the international treaties or conventions that bar the imposition of capital punishment (the Second Optional Protocol to the International Convention on Civil and Political Rights, aiming at the abolition of the death penalty (General Assembly resolution 44/128, annex), Protocol No. 64 or Protocol No. 13⁴⁵ to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and either the Protocol to the American Convention on Human Rights to Abolish the Death Penalty,⁸ or, having already abolished the death penalty, the American Convention on Human Rights).⁴⁷ A list of countries together with the dates of their signature and ratification to these international instruments can be found in table 5 of annex I to the present report.⁴⁸

64. During the period 1999-2003, the policy of not extraditing persons who might face the death penalty to countries that retain it without a firm commitment that it will not be imposed nor the person concerned executed has been further developed and institutionalized. Article 19 of the Charter of Fundamental Rights of the European Union,⁴⁹ adopted in December 2000, states that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, which includes the so-called "death-row" phenomenon. In July 2002, the Committee of Ministers of the Council of Europe adopted the Guidelines on human rights and the fight against terrorism.⁵⁰ Guideline No. XIII, paragraph 2, provides that extradition of a person to a country where he/she risks being sentenced to the death penalty may not be granted, unless the guarantees mentioned above are given. A similar provision has been included in the Protocol amending the European Convention on the Suppression of Terrorism,⁵¹ which opened for signature on

15 May 2003. In its resolution 2003/11, the Subcommission on the Promotion and Protection of Human Rights of the Commission on Human Rights urged all States not to transfer persons to the jurisdiction of States that still use the death penalty unless there is a guarantee that the death penalty will be neither sought nor applied in the particular case. This policy was also affirmed by the Commission on Human Rights in its resolution 2004/67 of 21 April 2004. Significantly, the Human Rights Committee reversed the views it had held in 1993 in *Kindler v. Canada*⁵² when it held in *Judge v. Canada*,⁵³ that countries that had abolished the death penalty had an obligation not to expose a person to the real risks of its application, which would constitute a violation of the person's right to life under article 6 of the International Covenant on Civil and Political Rights.

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

65. The Economic and Social Council, by 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 (see annex II to the present report).

66. The following countries provided information relating to the safeguards as regards persons facing the death penalty on conviction of an ordinary criminal offence: Bahrain, Egypt, Japan, Morocco, the Philippines and Trinidad and Tobago. In respect of offences under the Military Code, information was provided by El Salvador and Mexico.

67. In the present report, no attempt has been made to try to provide a full account of the extent to which countries fail to abide by the safeguards; a great deal of information of that kind was provided in the report on the sixth survey (E/CN.15/2001/10) and is also available from other sources.⁵⁴ The purpose here is to bring to notice, as far as possible, new information reported in the period 1999-2003. With this in mind, it should be noted that in her report to the Commission on Human Rights at its sixtieth session, in 2003, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the safeguards and guarantees for the protection of those facing capital punishment were not being followed in a large number of cases brought to her attention (see E/CN.4/2004/7, para. 96).

A. First safeguard

68. The Human Rights Committee has, on various occasions, called for repeal of all provisions incompatible with article 6, paragraph 2, of the International Covenant on Civil and Political Rights.⁵⁵ In addition, the Commission on Human Rights, in its resolutions 1991/61 of 6 March 1991 and 2004/67 of 21 April 2004 has urged all States that still maintain the death penalty to ensure that it is not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience.⁵⁶ The Special Rapporteur on extrajudicial, summary or arbitrary executions reported in 2002 that she was deeply concerned that in a number of countries the death penalty was imposed for crimes that did not fall

within the category of the “most serious” (see E/CN.4/2002/74, para. 114). During the reporting period she sent urgent appeals to Nigeria, Pakistan, Saudi Arabia and Somalia, all relating to persons sentenced to death for religious offences or offences against morals.

69. It appears that some countries have expanded the scope of capital punishment to deal with offences arising from acts defined as terrorism where death ensues. Morocco stated that legislation promulgated on 28 May 2003 on combating terrorism provided for the aggravation of punishment for certain terrorist acts that lead to the death of one or more persons, where the maximum punishment previously established had been life imprisonment. Japan also aimed at terrorist groups when providing the death penalty for “organized murder” on 1 February 2000. Cuba amended its Criminal Code in 1999 to make aggravated robbery, corruption of minors and serious cases of drug-trafficking capital offences, but apparently only to be enforced in respect of the “most serious crimes” (see E/CN.4/2000/3/Add.1, para. 163). The death penalty was extended to an environmental offence when, at the end of 1999, the United Arab Emirates made it a capital offence to import banned materials or nuclear waste and to dump or store them in the country.⁵⁷

70. In line with the aspiration of United Nations policy, several countries have restricted the scope of capital punishment, often as a prelude to, or in conjunction with, a moratorium on executions, with a view to moving towards complete abolition (see General Assembly resolutions 2857 (XXVI) and 32/61). OSCE has reported abolition of the death penalty for 3 crimes in Kyrgyzstan in 2004;⁵⁸ for 10 crimes in Tajikistan⁵⁹ and for 6 crimes in Uzbekistan leaving the death penalty available for only 2 crimes.⁶⁰ In Belarus, the death penalty was abolished for 15 out of 29 offences and can now only be imposed when it is dictated by special aggravating circumstances as well as an exceptional danger posed by the offender (see E/CN.4/2003/106, annex II, para. 3). In 2001, the Human Rights Committee, on receiving a report from the Democratic People’s Republic of Korea, welcomed the reduction of capital offences from 33 to 5 as well as the readiness, confirmed by the delegation, further to review the issue of capital punishment with a view to its abolition.⁶¹

71. In China, the publication in 2004 of a book containing articles by leading legal scholars, entitled “The Road of the Abolition of the Death Penalty in China: Regarding the Abolition of the Non-Violent Crime at the Present Stage” (in Chinese and in English) by the Press of the Chinese People’s Public Security University is a most significant development.

72. In her interim report to the General Assembly in 2000 (see A/55/288, para. 34), the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions stated her belief that the death penalty “should under no circumstances be mandatory”. As regards the retentionist countries that replied to the seventh survey, Bahrain noted that death was the mandatory penalty for certain offences against drug laws, although it should be noted that no persons had been executed for such an offence between 1999 and 2003. In Morocco, the death penalty is mandatory for eight types of homicide, including “beating and wounding leading to death without intention and perjury leading to a death sentence against an innocent person”. Capital punishment remains the mandatory punishment in Trinidad and Tobago for murder and for treason.

73. There have been encouraging moves to declare mandatory sentences unlawful or unconstitutional, or at least to mitigate the effects of mandatory sentences. In Japan, the death penalty for ordinary offences is discretionary and although it is mandatory for “conspiring with foreign States to cause the use of armed force against Japan”, there are circumstances where this punishment can be mitigated. The reply from the Philippines stated that “While several provisions of the Penal Code indeed provide for the imposition of the death penalty for specified offences, courts are mandated under the same criminal code to consider attendant circumstances of both the offence and the offender before they could impose the death penalty”. This is of significance given that the Human Rights Committee had held that the mandatory imposition of the death penalty for the broadly defined offence of murder by article 48 of the Revised Penal Code of the Philippines violated article 6 of the International Covenant on Civil and Political Rights.⁶² Under the provisions of the Military Code of El Salvador, the death penalty is mandatory for treason, espionage, rebellion and conspiracy to desert, but the judge has discretion to decide to apply it to a few of the most culpable ringleaders.

74. During the period under review, there have been a number of successful legal challenges to mandatory death sentences.⁶³ Thus, it appears that during the period 1999-2003, further progress has been made in reducing the range of offences subject to capital punishment and in the further elimination of mandatory capital statutes.

B. Second safeguard

75. 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 the countries that abolished the death penalty in the period 1999-2003 did not permit persons sentenced to death prior to abolition to be executed.

C. Third safeguard

1. Persons below 18 years of age

76. The execution of a person who committed a capital offence under the age of 18 is forbidden not only by the third safeguard, but also under the following international instruments: article 37 (a) of the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) (which all States have ratified, except for Somalia and the United States, who have signed the Convention indicating that they intend to become parties in due course);⁶⁴ article 6, paragraph 5, of the International Covenant on Civil and Political Rights; article 4, paragraph 5, of the American Convention on Human Rights;⁶⁵ and the African Charter on the Rights and Welfare of the Child.⁶⁶ Both the Subcommission on the Promotion and Protection of Human Rights, in its resolution 2000/17 of 17 August 2000 (E/CN.4/SUB.2/RES/2000/17), and the Inter-American Commission on Human Rights, in 2002,⁶⁷ have voiced the opinion that this principle has become part of customary international law.

77. All the responding retentionist countries stated that the law prohibited the execution of persons who had committed a capital offence when under the age of 18.⁶⁸ This was put into effect by an ordinance in Pakistan in 2000 (but see para. 79 below) and by law in Thailand in the same year.

78. According to Amnesty International, in the period 1999-2003 16 “juvenile offenders” were executed, 10 of them in the United States, 3 in the Islamic Republic of Iran, 1 in China, 1 in the Democratic Republic of the Congo and 1 in Pakistan. Of these 16 individuals, 2 were executed in 1999, 6 in 2000, 3 in 2001, 3 in 2002 and 2 in 2003. In 2004, Amnesty International reported four executions, one in China and three in the Islamic Republic of Iran, including a 16-year-old female who was hanged in public in the Islamic Republic of Iran for “acts incompatible with chastity”.⁶⁹ The Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to India in 2001 concerning a youth aged 15 years at the time he committed four murders. The Indian Supreme Court had upheld his sentence, despite the fact that the Juvenile Justice Act prohibits imposition of the death sentence on persons under 16.⁷⁰ Since 2002, child offenders have also been sentenced to death by special courts in the Darfur region of the Sudan.⁷¹

79. Several countries have stated that they intend to amend their laws to comply with their international obligations. This was the case, for instance, in the Islamic Republic of Iran and Taiwan Province of China. In Pakistan, the Juvenile Justice System Ordinance promulgated in July 2000 was intended to abolish the death penalty for persons under the age of 18 at the time of the offence,⁷² but did not extend to the Provincially and Federally Administered Tribal Areas in the North and West and was not retroactively applied to those already under sentence of death. However, in December 2001 the President of Pakistan announced the commutation of the death sentences imposed on all 125 young offenders before the Juvenile Justice System Ordinance came into force.⁷³

80. But amending laws has not guaranteed that those who were under the age of 18 at the time they committed the offence escape being sentenced to death. In 2003, the Committee on the Rights of the Child expressed deep concern that the death penalty could still be imposed in Bangladesh and Pakistan for those less than 18 years old (see E/CN.4/2004/86, para. 34). It has been suggested that the main reason why some juveniles have continued to be sentenced to death in Pakistan is the failure of the legal system properly to determine the age of the accused.⁶⁴ Similar cases have been reported in relation to China, Jamaica and the Philippines⁷⁴ (E/CN.4/2004/7/Add.2, para. 57).

81. The United States has so far not responded to calls from international and regional organizations to withdraw its reservation to article 6, paragraph 5, of the International Covenant on Civil and Political Rights. In 1999, the Supreme Court in the case of *Domingues v. Nevada* decided not to consider the issue of whether the execution of a person who was 16 at the time of the offence was a violation of customary international law and United States treaty obligations.⁷⁵ However, since 1976 only seven states have been involved in carrying out the 22 executions of juvenile offenders, almost two thirds of them in Texas. Only 12 states have juvenile offenders on their death row. Four states raised the minimum age to 18 during the period of the seventh survey.⁷⁶ Although in 2001 the Supreme Court of the United States refused, by a majority of five to four, to reconsider its 1989 judgment in the case of Kevin Stanford (who had been 17 when he committed murder) that the death

sentence passed on him was not a violation of the Constitution, the four dissenting justices declared that, in their opinion, the execution of juvenile offenders was a “relic of the past and inconsistent with evolving standards of decency in a civilized society”.⁷⁷ In 2003, the Missouri Supreme Court held that the minimum age in law (16) was in violation of the eighth Amendment of the United States Constitution and must be raised to 18. On 1 March 2005, in *Roper v. Simmons*, the Supreme Court held that the Eighth and Fourteenth Amendments forbade imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.⁷⁸

82. At its fifty-ninth session, the General Assembly adopted resolution 59/261 of 23 December 2004 on children’s rights, in which all States were called upon to abolish the death penalty for children below 18 years of age at the time of the offence.

2. Maximum age

83. The Philippines reported that 70 was the maximum age after which a person could not be executed. There were no reports during the survey period of countries introducing a maximum age.

3. Pregnant women and new mothers

84. El Salvador (as regards military offences in time of international war), Japan, Thailand and Trinidad and Tobago reported that a pregnant woman cannot be executed, but mothers of young children can be. Egypt reported that “Execution of the death penalty against pregnant women is stayed until two months after delivery of the child”; in the Philippines, it is at least one year after the delivery. Neither pregnant women nor young mothers can be executed in Morocco, but there was no such ban for either under the Mexican Criminal Code. No executions of pregnant women or of mothers of infant children were reported in the period 1999-2003.

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

85. All the responding retentionist countries stated that the law would not allow death sentences to be imposed on persons who were insane. However, Bahrain and Morocco reported that they had no laws to prohibit the execution of the mentally retarded. Mexico (as regards the Military Code) and Thailand stated that a person who becomes insane after being sentenced to death may not be executed. Yet, in El Salvador (as regards military offences), Japan, Morocco and Trinidad and Tobago they can be executed if they recover from their insanity. According to a leading Japanese lawyer, at least one prisoner has been executed despite suffering from schizophrenia.⁷⁹

86. In Japan the “weak-minded” cannot be sentenced to death, but the legal test of being able to distinguish right from wrong and the mental competence to act on that knowledge is so limited that JFBA reported that mental retardation is not necessarily included in “weak-minded”. In fact, according to JFBA, the court finds even the most mentally retarded people are completely mentally competent. The reply from Trinidad and Tobago stated that the law did not allow the mentally retarded or those of extremely limited mental competence to be sentenced to death. But it appears that

this is only insofar as mental retardation falls within the concept of “abnormality of mind, defined as a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury”. The condition would have to be such as to render the person unfit to plead or guilty but insane at the time the murder was committed. In the Philippines, an “imbecile” is excused from criminal liability, defined as a person who “while advanced in age has a mental development comparable to children between two and seven years of age. He is deprived completely of reason or discernment and freedom of will at the time of committing the crime”. Thailand replied that the mentally retarded or those of extremely limited mental competence may not be sentenced to death because section 78 of the Thai Penal Code allows extenuating circumstances to be taken into account by the Court, which may “if it thinks fit, reduce the punishment to be inflicted on the offender by not more than one half”. In Belarus and Tajikistan, according to reports from OSCE, if it is established that the defendant has a mental disorder resulting in inability to be aware of or control his actions, the court may suspend the execution, but in Kazakhstan and Kyrgyzstan (which now have moratoriums on executions) there were no provisions in domestic legislation explicitly prohibiting the execution of persons who suffer from any kind of mental disorder.⁸⁰

87. Of great significance was the decision by the Supreme Court of the United States, in June 2002, to declare in the case of *Atkins v. Virginia*⁸¹ (which concerned a man with an intelligence quotient of 59 who had been found guilty of kidnapping and murdering a 21-year-old airman when he was just 18 years of age) that “evolving standards of decency” had now produced a “national consensus” in opposition to the execution of the mentally retarded: a consensus that was backed by international condemnation of the practice. This ruling required 20 states to amend their legislation. However, the decision did not lay down how mental retardation should be defined (although the majority quoted the definition used by the American Association of Mental Retardation and the American Psychiatric Association, both of which stressed “significant sub-average mental functioning”). It has been left to the individual states “to develop appropriate ways to enforce the constitutional restriction on the execution of sentences”. It has been pointed out that the State of Texas has yet to set up a system for screening the mental capacity of those already on death row who were sentenced before the change in the law.⁸²

88. Even though most responding countries state that the insane and the mentally retarded are shielded from the infliction of the death penalty and especially from execution, reports of mentally ill and retarded persons facing the death penalty have continued to emerge during the five years covered by the seventh survey. Furthermore, the Commission on Human Rights, in its resolution 2004/67, called upon all States that still retain the death penalty not to impose it on “a person suffering from any form of mental disorder or to execute any such person”. In two cases from Trinidad and Tobago, heard in 1999 by the Judicial Committee of the Privy Council,⁸³ the Judicial Committee accepted that there was a shortage of qualified forensic psychiatrists in certain Caribbean countries and that this meant that the mental health of defendants in murder cases was not routinely assessed either by the State or the defence. In *Sahadath v. Trinidad and Tobago*, the Human Rights Committee found that issuing a warrant for execution to a prisoner who was known to be mentally ill constituted a violation of article 7 of the International Covenant on Civil and Political Rights.⁸⁴ On her visit to Jamaica in 2002, the Special Rapporteur on extrajudicial, summary or arbitrary executions was told by a

number of inmates that some persons were convicted despite being mentally ill and she saw two persons on death row who appeared to be mentally ill (see E/CN.4/2004/7/Add.2, para. 58). She sent urgent appeals to Cuba (see E/CN.4/2001/9/Add.1, para. 157) and Singapore (see E/CN.4/2003/4/Add.1 and Corr.1, para. 450) in respect of prisoners who, it was claimed, had been sentenced to death despite being mentally ill.⁸⁵ In 2003, four urgent appeals were sent to states of the United States of America concerning prisoners facing execution despite being mentally ill (see E/CN.4/2004/7, para. 55). In the case of Charles Singleton, a Federal Appeals Court ruled that it was lawful to induce a death row inmate to take medication, a consequence of which would be his reaching a level of sanity to enable the execution to take place, and he was executed in Arkansas in April 2004. In May 2004, Kelsey Patterson was executed in Texas for double murder, despite having suffered from paranoid schizophrenia since 1981 and having been recommended for commutation of sentence by the Texas Board of Pardons.⁸⁶

89. This review suggests that the safeguard to protect the insane and persons suffering from mental retardation or extremely limited mental competence from capital punishment will need to be reformulated to be in line with the recommendation of the Commission on Human Rights to include “any form of mental disorder”.

D. Fourth safeguard

90. To comply with the fourth safeguard, a State must ensure that capital punishment may only be imposed where the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts. All the retentionist countries that replied to the survey said that this was the case. However, both the Philippines and Trinidad and Tobago reported that death sentences had been overturned because of doubts about the safeness of the conviction. Although Morocco stated that article 1 of the law of criminal procedure “provides for the original assumption of innocence”, this does not appear to have satisfied the Human Rights Committee which, in 2000, had recommended the adoption of legislation to guarantee the presumption of innocence as required by article 14, paragraph 2, of the International Convention on Civil and Political Rights.⁸⁷ At a Conference organized by JFBA in October 2004, it was asserted “it is obvious that there are wrongful convictions among capital cases”. According to a report submitted by the International Federation for Human Rights on a mission to Japan, it is the defendant’s responsibility to bring forth evidence in favour of their defence or to mitigate their responsibility, which is not always possible where defendants have limited means.⁸⁸

91. In other countries, persons have been released on grounds of innocence, often many years after conviction. This was the case in Taiwan Province of China when three young men were acquitted by the High Court in January 2003 on the grounds of insufficient evidence.⁸⁹ Concerns have regularly been voiced in the United States that innocent persons remain under sentence of death and that some are eventually executed. Between 1973 and the first three months of 2000, 95 persons were released from death row in the United States after evidence of their innocence emerged. Between 1999 and 2003, 28 persons were exonerated.⁹⁰ The availability of DNA technology has played an important part. In 2002, the United States Senate

Judiciary Committee approved the draft “Innocence Protection Act”, which would seek to improve the administration of justice in death penalty cases by ensuring availability of post-conviction DNA testing in appropriate cases.⁹¹

92. With respect to the aspiration for there to be no room for an alternative explanation of the facts in capital cases, it is worth quoting the conclusion of the Commission set up by Governor Ryan to review the system in Illinois: “The Commission was unanimous in its belief that no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death”.⁹²

E. Fifth safeguard

93. The fifth safeguard concerns procedures for a fair trial by a competent court, including adequate legal assistance at all stages of the proceedings.

94. The official reply from the Ministry of Justice of Japan stated that “a person charged with a capital offence has the right to choose his or her own counsel at public expense”, but it appears that this is only after the person has been prosecuted. According to the JFBA, “The Japanese Criminal Justice System ... doesn’t adequately provide the right to counsel and the right to defence and fails to meet international human rights standards”.⁹³ Prior to indictment, the person can be detained for up to 23 days and at that stage only legal aid services are available.⁹⁴ According to the official response, a new law which will enter into force on 27 November 2006 will allow a suspect who is arrested and detained but not prosecuted to have the right to choose his/her own counsel at public expense if he/she does not have the resources to pay for it. Furthermore, in 1999 the Human Rights Committee expressed its concern about a number of issues.⁹⁵

95. The reply from Morocco stated that “the principle of fair trial is established in the law of criminal procedure”, which “entitles the public prosecutor to supervise the conduct of investigations by the judicial police and control its operations, as well as to visit the places of custody of persons suspected of committing an offence”. In 2000, the Human Rights Committee expressed its concern that the time that a suspect could be detained before being brought before a judge could be as long as 96 hours and that the Crown Prosecutor General had the power to extend that period, during the whole of which detainees may not have access to legal counsel.⁹⁶ Egypt stated that “offences punishable by the death penalty are designated as serious crimes under article 10 of the Penal Code and consequently must be investigated by the Department of Public Prosecutions, an intrinsic part of the judiciary whose members enjoy legal immunity If the accused has no counsel to defend him during investigations, the Department of Public Prosecutions appoints such counsel in the decision for committal for trial If the accused fails to engage counsel for the trial the court is obliged by law to appoint a lawyer to undertake his defence at the expense of the State.” Special safeguards are provided at the trial stage for those who may be liable to the death penalty, specifically “they are examined by trial court composed of three appeal court justices and presided over by the appeal court president ... before handing down the death penalty the court must seek the opinion of the Mufti of the Republic and the court may not hand

down a death penalty except by consensus of its members”. However, it appears that an indigent defendant cannot choose his own counsel at public expense.

96. Bahrain reported that all international standards for a fair trial were observed, that the accused was provided with counsel of his or her own choosing from the moment of arrest and that there were specific safeguards for those facing a charge for which capital punishment could be imposed over and above those generally available, but no details were provided. The Philippines reported that there were special safeguards for defendants facing a capital charge over and above those available to all defendants and that this included the right to a counsel of the defendant’s own choice, if necessary at public expense, from the moment of arrest. Thailand reported that the procedures in place to guarantee a fair trial were that the hearing must be in public,⁹⁷ that the sentence would automatically be reviewed by the court of appeal (see the sixth safeguard), and that “the offender is able to defend his/her offence at every stage from investigation to court level”. However, this means that impecunious defendants would be provided with a “court attorney”, not a counsel of their own choosing at public expense.

97. The reply from Trinidad and Tobago stressed that “strong laws on criminal procedure and more importantly a strong judiciary ensure that every accused facing capital punishment is afforded a fair trial”. Defendants would also have counsel of their own choosing, at public expense if necessary, from the time of their arrest. There was therefore no need for additional safeguards for those facing a charge in which capital punishment could be imposed. However, Trinidad and Tobago had been found by the Human Rights Committee on a number of occasions during the period 1999-2003 (mostly in relation to communications initiated before 1999) to be in violation of its obligations under article 14 of the International Covenant on Civil and Political Rights to provide a fair trial and in particular to ensure the timely provision of competent counsel,⁹⁸ as well as of articles 9 and 14 because of the excessive delays experienced by suspects and defendants in bringing their cases before a judge and in determining the outcome of trials and appeals.⁹⁹

98. In the United States, according to Amnesty International at least 16 of those executed between 1985 and 2001 had been defended by lawyers who were incompetent or who failed to mount an adequate case for the defence.¹⁰⁰ Steps have been taken to try to improve the situation, such as in Texas where the “Fair Defence Act” of 2002 provides that indigent defendants are provided with counsel no later than five days after their arrest and also provides research assistance to lawyers appointed in capital cases.¹⁰¹ In Illinois, since 2000 fees for lawyers who defend death penalty cases have been raised.¹⁰²

99. In June 2002, in *Ring v. Arizona* the United States Supreme Court held that death sentences in five states imposed by a decision of a judge rather than a decision reached by a jury violated the constitutional right to trial by jury, thus reversing until a new trial is held the death sentences that had been imposed on about 800 prisoners. However, in *Schriro v. Summerlin* in June 2004, the Court decided that because its earlier decision had been on a point of procedure it would not be applied retroactively to those who had already been sentenced to death.¹⁰³

100. The United States was again found by the International Court of Justice to have failed to abide by its obligations under article 36 of the Vienna Convention on Consular Relations¹⁰⁴ for failing to inform foreign nationals of their right to have

their consulate informed of their detention in a case concerning Avena and other Mexican nationals. On 31 March 2004, the Court held that the United States had violated its obligation under the Convention in 51 out of 52 cases brought before the Court in *Mexico v. United States of America* and that the United States should review through the judicial process the convictions and sentences imposed in each case.¹⁰⁵

101. In 2001, the President of the United States authorized by Executive Order the establishment of military tribunals, sitting in or outside the United States, to try non-United States citizens accused of terrorism and gave these tribunals the power to impose the death penalty. There has been widespread concern that the tribunals might not meet the standards required for a fair trial. Of particular concern is the fact that there would be no appeal of a death sentence to a civilian court of appeal independent of the executive branch of the Government, because the Order limited appellate review to a specially created three-member panel appointed by the Secretary of Defense. The President retains final review of convictions and sentences.¹⁰⁶

102. According to reports from Amnesty International, a ruling of the Botswana High Court in 1999 had established that it was a violation of constitutional rights to deny prisoners who had been sentenced to death access to their lawyers.¹⁰⁷ Nevertheless, it has been reported that a convict was executed without the knowledge of his lawyers.¹⁰⁸ Concerns have also been raised about trials in Saudi Arabia, which “often take place behind closed doors ... defendants are not given the right to a lawyer and the right to an effective appeal. They may also have been convicted solely on the basis of confessions obtained under duress, torture or deception. Foreign workers [who] do not speak Arabic may be forced to sign a confession in a language they cannot understand. They do not have access to their family and, in many instances, consular assistance.” More than half of those executed in Saudi Arabia in the last decade were foreign nationals.¹⁰⁹ The Special Rapporteur on extrajudicial, summary or arbitrary executions had alleged many violations of article 36 of the Vienna Convention on Consular Assistance,¹⁰⁴ resulting in many migrant workers from Egypt, Eritrea, Ethiopia, India, Iraq, Nigeria, Pakistan, the Philippines, Sudan and Yemen having been executed (see E/CN.4/1999/39/Add.1, paras. 212 and 213). In relation to China, many issues have been raised in relation to access of defendants to lawyers and the constraint placed upon and even harassment of defence lawyers by the authorities, as well as on the reliance on confessions, obtained by torture or other forms of intimidation, in obtaining convictions.¹¹⁰

103. The Human Rights Committee has also expressed concern about, or found violations of, the right to a fair trial in courts with powers to impose the death sentence in a number of other countries during its sessions held between 1999 and 2003. These include Egypt,¹¹¹ Syrian Arab Republic,¹¹² Tajikistan¹¹³ and Uzbekistan.¹¹⁴ The Special Rapporteur on extrajudicial, summary or arbitrary executions has also expressed concern about trials in which judicially imposed death sentences have failed to conform to international standards of fairness in one or more respects in the following countries and territories: Oman, for lack of provisions for appeal (see E/CN.4/2001/9/Add.1, para. 323); the Libyan Arab Jamahiriya, for deprivation of counsel and trial behind closed doors (see E/CN.4/2003/3/Add.1, para. 338); Nigeria, for lack of legal representation and

summary jurisdiction (paras. 396-399); the Sudan, concerning special courts in the Darfur region without legal representation (paras. 474 and 475); Palestine, in respect of unfair trials in State Security Courts (paras. 568-570); Saudi Arabia, for unfair trials and lack of legal assistance (see E/CN.4/2002/74/Add.2, para. 536); the United States, for racist jury selection (see E/CN.4/2002/74/Add.2, para. 590, and E/CN.4/2003/3/Add.1, para. 510); Viet Nam, for lengthy pre-trial detention without legal assistance (see E/CN.4/2002/74/Add.2, para. 630); and Yemen, for lengthy incommunicado detention and denial of legal representation (see E/CN.4/2000/3/Add.1, paras. 489 and 490).

F. Sixth safeguard

104. All the retentionist countries that replied to the seventh survey stated that they abided by the sixth safeguard (providing for appeals against a death sentence) and provided details of the procedures in place. In most countries there was an automatic review, while in Japan, Morocco and Trinidad and Tobago that was not the case. The response of JFBA stated that: "There is no official procedure to review the sentence. A death row prisoner can request a retrial, but in the course of this procedure the Court examines only if there is new and obvious evidence, which proves the applicant's innocence, or that the crime he/she committed deserves a lighter sentence After the conviction of the death sentence, there is a possibility of execution even if the prisoner is requesting a retrial In Japan even ongoing retrial procedure can be neglected for the execution." In relation to Morocco, in 2000 the Human Rights Committee recommended the adoption of legislation to ensure a right of appeal in all criminal cases.¹¹⁵ In 1998, Trinidad and Tobago decided not to recognize the competence of the Human Rights Committee to receive individual petitions relating to the death penalty.

105. During the survey period (1999-2003) there have been further reports of death sentences being imposed by military or special courts in Burundi,¹¹⁶ Egypt,¹¹⁷ Palestine (see E/CN.4/2001/9/Add.1, para. 436) and Sierra Leone.¹¹⁸ Concerns have also been expressed about the lack of a proper appeal process in Chad²² and Oman (see E/CN.4/2001/9/Add.1, para. 323).

106. The Supreme People's Court of China delegated to the local High Courts its mandatory responsibility (under the Criminal Law of 1997) to verify and approve all death sentences. Executions have usually been carried out speedily after final approval of the sentence.¹¹⁹ However, it has recently been announced that the Supreme Court intends to take back and exercise this power itself so as to ensure more uniformity in the infliction of death sentences.¹²⁰

G. Seventh safeguard

107. All the retentionist countries that responded to this section of the seventh questionnaire (Bahrain, Egypt, Japan, Morocco, the Philippines, Thailand and Trinidad and Tobago) stated that all persons sentenced to death had the right to seek a pardon or commutation of sentence, as did two countries that were abolitionist for ordinary crimes: El Salvador and Mexico. The countries provided explanations on

the specific procedures to be followed; in most countries a request for pardon or commutation was automatically forwarded to the relevant person/body.

108. The official reply from Japan noted that a person sentenced to death had a right to seek commutation of the sentence or a pardon, but the JFBA stated that this was not the case: “Only the warden, chief probation officer and public prosecutor have rights to make application for amnesty”, although prisoners are allowed to request wardens to make such applications. No specific time is allowed for such procedures because, as the JFBA pointed out “a person cannot be informed of the date when he/she will be executed ... it seems that the Government rejects the request [for an amnesty] just before the execution without any notice to the legal adviser. There is no recourse to confirm whether the prisoner him (her) self is informed of the fact of rejection, since the Government never discloses this type of information.” It seems that no prisoner has received a special pardon since 1975.¹²¹

109. According to the information provided by OSCE, in Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, cases of persons sentenced to death are automatically considered by the Clemency Commission irrespective of whether the person concerned seeks clemency. The case is then forwarded to the President for a final decision. No information on the outcome is published in Belarus and “very few acts of clemency” appear to have been granted in Kazakhstan, Kyrgyzstan or Tajikistan prior to the establishment of moratoriums on executions, or in Uzbekistan, although no official statistics have ever been published.

110. According to the International Federation for Human Rights, in Chad, “if no cassation plea is made, or the Supreme Court denies the plea, the prisoner may appeal for pardon to the President of the Republic, but in reality the plea is automatic because even if the prisoner does not seek a pardon the prosecution must prepare a plea for pardon to send to the Ministry of Justice”. The code of criminal procedure provides that a death sentence can only be enforced after the plea for pardon has been rejected. The Federation was unable to ascertain whether the clemency procedures were observed with regard to five persons executed in 2003.²²

111. The Human Rights Committee expressed concern about the elimination of the right to seek a pardon or commutation of sentence in Guatemala, noting that the President had nevertheless exercised his right to grant pardons based on the precedence of international treaties over domestic law.¹²²

112. In China, the power granted to the President under the Constitution to grant pardons to persons under sentence of death must be approved by the Standing Committee of the National People’s Congress but no prisoner has been pardoned since 1975.¹²³ In the United States in January 2003, Governor Ryan of the State of Illinois commuted the death sentences of all 167 inmates on death row on the grounds that the criminal justice system of the State could not guarantee that innocent persons were not amongst them (see para. 92 above).

113. It is thus apparent that in a number of retentionist countries the person who has been sentenced to death plays no part in the process nor is the pardoning process subject to the requirements of due process, or subject to review. In this regard, the decision of the Judicial Committee of the Privy Council in London in 2000 in the case of *Neville Lewis and others v. the Attorney General of Jamaica and Another*¹²⁴ should be noted, which held that the exercise of the prerogative of mercy should, in the light of Jamaica’s international obligations, be exercised by procedures that are

fair and proper, such as disclosure to the applicant of all materials to go before the review committee, and amenable to judicial review.

114. In countries where judicial procedures are based on Islamic law or Shariah, the system of Diya operates, by which the relatives of the victim are given the choice between execution and reprieve of the offender, with or without receiving compensation. No statistical information on the extent to which Diya is accepted in lieu of execution seems to be available. Several instances where convicts were forgiven at the last moment have been reported in the Islamic Republic of Iran and Saudi Arabia.¹²⁵ However, since Diya depends on the family being available and able and willing to pay compensation, it appears that one pardon is granted in relation to every six executed Saudi citizens, but only 1 in relation to every 84 executed foreign workers.¹²⁶ The Human Rights Committee expressed its concern to Yemen in 2002 that the preponderant role of the victim's family in determining, through their decision whether or not to pay compensation, has meant that the right to seek a pardon is not guaranteed for all on an equal footing, contrary to articles 6, 15 and 26 of the International Covenant on Civil and Political Rights, and therefore called on Yemen to bring its legislation into line with the Covenant.¹²⁷

H. Eighth safeguard

115. Not all the responding retentionist countries stated that they abided by the eighth safeguard guaranteeing that no person would be executed pending any appeal or other recourse procedures, including pardon or commutation of sentence. Thailand replied that "international authorities have no authority on this issue". The official reply from Japan stated that it was not possible to answer the question whether execution was invariably suspended: "In cases where the request for the recovery of right of appeal or for the retrial, or an extraordinary appeal or petition or recommendation for pardon has been made [after the final judgment through the appeal system has been handed down] the term for finishing the procedure thereof and the term for which the judgments pronounced upon co-defendants, if any, remain not final shall not be calculated in the same term ... an appeal to international bodies does not legally affect the procedure for execution of the death penalty." According to the report on the mission by the International Federation for Human Rights, inmates can be executed even if no decision has been reached on the question of a retrial or pardon.¹²⁸ At least one such case has been reported.¹²⁹

116. The Human Rights Committee found in 2000 that three executions had taken place in the Philippines despite pending communications alleging violations of articles 6 and 14 and the Committee having acted under its rule 86 requesting the State to refrain from executing them. The Committee refused to accept the State's explanation that it was inappropriate for counsel to submit a communication after rejection of their application for Presidential clemency.¹³⁰ In its reply to the seventh survey, the Philippines stated "ordinarily the Philippines acceded to requests made by international bodies to suspend execution of individuals whose cases are under consideration before them".

117. There have been further reports of executions having taken place between 1999 and 2003 while petitions for clemency or review by an international body have been under way. Such cases were reported in the Bahamas in 2000 while the

Inter-American Commission on Human Rights was due to hear a petition¹³¹ and in Botswana in 2001, where a woman was executed while her petition was pending before the African Commission on Human and Peoples' Rights¹³² and without her family or lawyer being informed. According to OSCE, in Tajikistan since the beginning of 2001 and up to the announcement of the moratorium in 2004, seven people had been executed while their cases were before the Human Rights Committee, despite requests for interim stays of execution by the Committee.¹³³ The OSCE reported that in Uzbekistan "at least 14 death sentences have been executed despite requests of the Human Rights Committee to stay the executions, ... which reminded Uzbekistan that it amounts to a grave breach of the Optional Protocol".¹³⁴

I. Ninth safeguard

118. The retentionist countries that responded to the questionnaire employed a variety of forms of execution. In Bahrain and Morocco it is carried out by a firing squad; in Egypt, Japan and Trinidad and Tobago by hanging; in the Philippines and Thailand by lethal injection (the latter changed from execution by firing squad in 2003).¹³⁵ Both Bahrain and Pakistan stated that there were no special procedures employed to minimize the suffering of persons sentenced to death. Bahrain stated that the person had a choice of method of execution, but provided no details.

119. Opinions were divided on whether one or other form of execution minimized the suffering inflicted on the person. It appears to be widely believed that lethal injection is likely to inflict the least suffering and this is at least one of the reasons why countries like the Philippines and Thailand have turned to it.

120. On the other hand, Japan's reply expressed the view that "hanging as a way of execution is not particularly cruel in light of humanitarianism compared to other ways such as beheading, shooting, electrocution and lethal gas". In contrast, a report from the Law Commission of India in 2003 argued that hanging is a particularly painful method of execution and suggested that lethal injection is "being accepted as the most civilized mode of execution of the death sentence", the pain it induces being "only as the result of needle prick". It recommended that lethal injection should be introduced in addition to hanging and that the choice of method should be left to the Court to decide.¹³⁶ However, a detailed study of executions in the United States concluded that "botched executions" involving possible "unnecessary agony for the prisoner" have continued to take place since the introduction of lethal injection due to "unanticipated disruption of the flow of drugs to the inmate [which] is frequently the cause of a prolonged death". There may be proportionately fewer such instances but, as the authors conclude, "Botched executions are indisputably an inherent component of the modern practice of capital punishment".¹³⁷ It should be recalled that at its 52nd Assembly, held in October 2000, the World Medical Association amended a resolution adopted at the 34th Assembly to declare that "it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process".¹³⁸

121. In resolution 2004/67, the Commission on Human Rights urged States to ensure that where capital punishment occurs it 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”. During the survey period, there were reports of stoning to death in public in the Islamic Republic of Iran, although the head of the judiciary was reported to have sent a directive to judges ordering a moratorium on executions by stoning.¹³⁹ There have been other reports of executions by hanging in public in the Islamic Republic of Iran (see E/CN.4/2004/7/Add.1, para. 232). In Nigeria, the sentence of death by stoning passed on Amina Lawal in 2003 was quashed after international condemnation. In Kuwait, in January and May 2004, the bodies of prisoners executed by hanging were afterwards publicly displayed.¹⁴⁰ In Saudi Arabia, where public executions by beheading persist, the body of an Egyptian national was reported to have been crucified following execution for murder.¹⁴¹

122. The responses to the seventh survey indicated that in the Philippines the death sentence is to be carried out “not earlier than one year nor later than 18 months after the judgment has become final and executory”. Trinidad and Tobago stated that it was one year and seven months: there were 77 people under sentence of death on 1 January 1999 and 92 on 31 December 2003. The official reply from Japan reported that there were no data on the longest period spent on death row, but JFBA stated that it had been 18 years and 6 months in the case of a prisoner executed in 1999: 10 years between final determination of the sentence and execution. The average length of time in the survey period was said to be approximately 7 years and 4 months, although according to the JFBA “the ‘waiting time’ is becoming shorter these days”. Pakistan reported that the longest period between the sentence being imposed and execution taking place was approximately 6 to 8 years;¹⁴² Bahrain said 2-3 years; Morocco approximately one year; Thailand, where the number on death row had reached almost 1,000 by the end of 2003,¹⁴³ stated the longest time was 2 years and the average between 8 months and 1.6 years.

123. Concerning the conditions under which persons sentenced to death are detained, there was no response from Bahrain, Egypt, Pakistan or the Philippines. Thailand replied that the rules were applied by changing the method of execution from shooting to lethal injection and Trinidad and Tobago pointed out that “there is an Inspector of Prisons and established guidelines for the treatment of all prisoners”. Japan said that “although there are no specific regulations to keep to a minimum the suffering of prisoners under sentence of death in the Standard Minimum Rules for the Treatment of Prisoners, religious services and advice/guidance by volunteers are offered upon their request in order to keep them emotionally stable”.

124. In the case of *Evans v. Trinidad and Tobago*¹⁴⁴ the Human Rights Committee found that article 10 of the International Covenant was violated by the conditions of his confinement.¹⁴⁵ JFBA reported that the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 663 (XXIV), annex) are not observed in Japan. Other sources depict the conditions as very harsh.¹⁴⁶ According to the report by the International Federation for Human Rights, prisoners have to pay for periodic medical examinations themselves, so many forego them, contrary to principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).¹⁴⁷ The Human Rights Committee urged Japan in 1999 to make conditions more humane, in accordance with articles 7 and 10 of the International Covenant on Civil and Political Rights. The Committee has also expressed concern about the extremely poor living conditions of death row

detainees in Uzbekistan.¹⁴⁸ Difficult conditions of death row prisoners have been reported in other countries, for instance Kenya¹⁴⁹ and the State of Texas in the United States of America.¹⁵⁰

125. Concerning the treatment of the relatives of the person sentenced to death, Egypt mentioned that “facilities were provided for relatives to visit on the day appointed for execution ... and facilities must be provided for the observance of the religious duties necessary in accordance with the religious confession of the condemned person ... the penalty may not be executed on official feast days particular to the religious confession of the condemned person.” In Trinidad and Tobago “access to family and persons of like faith was provided prior to execution of the sentence”.¹⁵¹ However, this is not the case in Japan;¹⁵² nor, according to the reports provided by OSCE, in Belarus, Tajikistan or Uzbekistan, nor was it the practice in Kazakhstan or Kyrgyzstan prior to the establishment of the moratoriums. In each of these countries, the execution and burial is kept secret and the family only informed afterwards. In several of them, the body is not returned and the place of burial kept secret. The Human Rights Committee has stigmatized this, in cases involving Belarus, as having the effect of intimidating or punishing families by leaving them in state of uncertainty and distress, amounting to a violation of article 7 of the International Covenant on Civil and Political Rights.¹⁵³ In Botswana, an execution was conducted without any prior notice to the condemned person’s family and friends.¹⁵⁴

126. Finally, the conditions of confinement even for those spared execution under a moratorium or whose sentences have been commuted to life imprisonment must be regarded as relevant to countries that have abolished or contemplate abolishing the death penalty. There have been reports from the Russian Federation of persons pleading to be executed rather than being imprisoned in intolerable conditions.¹⁵⁵

VII. Conclusions and recommendations

127. The seventh quinquennial survey met with a disappointing response. Altogether, 50 countries completed the questionnaire, while a number of countries replied during the processing of the present report. The response rate was, as usual, higher from those countries which were abolitionist by the end of the survey period (31 December 2003): 33 of the 80 that were completely abolitionist replied, as did 7 of the 12 that were abolitionist for ordinary offences, in total less than half of all abolitionist countries. Furthermore, only one of the 41 countries that were de facto abolitionist by the end of 2003 replied. However, the main problem remained the low response rate from States retaining and enforcing capital punishment at the end of the survey period; responses were received from 9 out of the 62 and only 5 of these were in full.

128. While some valuable information has come to light from those countries and organizations that did respond, the time has surely come to take stock of what the quinquennial survey can best achieve. As the present report has shown, there is a wealth of information now available from a wide variety of reputable organizations and agencies that were not gathering and disseminating data when the quinquennial surveys were launched 35 years ago. Whatever the reasons for the low response rate, especially from retentionist countries from where it is the most vital to obtain

information, some reconsideration of the survey in its present form appears to be desirable. In this context, it is necessary to reiterate that if countries retain capital punishment they have a duty to their citizens to do so in a manner that is transparent and accountable by providing accurate and comprehensive statistics on the number of death sentences imposed, appeals allowed and executions carried out by age, gender and type of offence. They could also encourage research into the way the system works in practice. Statistical returns could then be made available to the United Nations on a regular basis.

129. The report of the Secretary-General on the sixth quinquennial survey concluded that in the seven years from 1994 to 2000, 25 countries abolished capital punishment: 22 completely and 3 for ordinary crimes. Of these 25 countries, 19 had been formerly retentionist (5 of them de facto abolitionist) and 6 had moved from abolitionist for ordinary crimes to abolitionist for all crimes. The current survey has not shown such a remarkable pattern of change, but nevertheless one that is, in rather different ways, very significant.

130. While the pace of change to full abolition was slower in the period 1999-2003, with 10 countries becoming abolitionist (6 for all crimes, including the new State of Timor-Leste, and 4 for ordinary crimes), there has been a very substantial reduction in the number of countries that regularly execute their citizens. Over the five-year period, 17 formerly retentionist countries joined the ranks of the de facto abolitionists (either by not judicially executing any persons for at least 10 years or by formally announcing a moratorium on all executions). As a result, the number of countries that could be counted as retentionist fell from 79 to 62 in just five years. And, as far as is known, only 43 of them actually executed someone in the five-year period covered by the survey.

131. Furthermore, the rate of executions has fallen. During the quinquennium 1999-2003 there were only 19 countries that executed 20 or more persons (an average of 4 a year or fewer) and only 8 that executed 100 or more (an average of at least 20 a year). This compares with 26 executing at least 20 and 15 executing at least 100 during the five-year period 1994-1998 (see table 2 of E/CN.15/2001/10). There were only 26 countries that remained retentionist at the end of 2003 in which at least 20 people had been executed in either or both the quinquennial periods 1994-1998 and 1999-2003. In 13 of these 26 countries, both the total number executed and the average annual rate per million of the population was lower in 1999-2003 than it had been in 1994-1998. In all but one of the remaining 13 countries, there was a decline in executions between 1999 and 2003. Thus, there is evidence to suggest that where the abolitionist movement has not persuaded retentionist countries to abandon capital punishment, it has had the effect of modifying the frequency with which they have recourse to execution.

132. Although three countries that were formerly de facto abolitionist resumed executions, none of them have done so on a substantial scale and no countries that had abolished the death penalty reintroduced it. Rather, a further 20 countries ratified one or other of the international instruments that would bar the reintroduction of the death penalty. The quinquennium also saw the adoption in 2002 of a fourth international instrument, Protocol No. 13 to the European Convention for the Protection of Human Rights,⁴⁵ which provides for the total abolition of the death penalty in all circumstances, including acts committed in time of war or the imminent threat of war. By November 2004, 28 countries had ratified

the Protocol and a further 15 had signed it. Another feature of this period was the institutionalization in Europe, and its adoption in most other abolitionist countries, of a policy of refusing to extradite a person charged with an offence for which the death penalty could be imposed to a retentionist country without an assurance that the person would not be sentenced to death.

133. As regards the safeguards guaranteeing protection of the rights of those facing the death penalty, there are still far too many reports that give rise for concern. Nevertheless, there has been some progress in restricting the scope of capital punishment in several retentionist countries and discussion of the prospect of doing so in others, most notably China. There has also been progress in abolishing the mandatory imposition of the death sentence in several countries and in restricting further the imposition of the death penalty on those under the age of 18 at the time of the offence and on those who are mentally retarded or suffering from mental illness. In this regard, the report has highlighted the necessity of clarifying the safeguards to be applied to the mentally ill as opposed to the insane or the mentally retarded. Of particular concern in a number of countries are the conditions under which persons are kept in confinement while under sentence of death or under a moratorium.

Notes

¹ For a brief overview of prior quinquennial reports, see E/CN.15/2001/10 and Corr.1, paras. 4-8.

² The survey instrument and the present report were prepared with the assistance of Mr. Roger Hood, a leading authority on the death penalty, who was engaged as a consultant by the United Nations Secretariat for that purpose.

³ Additional replies were received during the processing of the report from Brazil, Brunei Darussalam, Panama, Republic of Korea, Tunisia, United Republic of Tanzania, Uzbekistan, Venezuela (Bolivarian Republic of) and Zimbabwe, which will be covered in an addendum to the present report. Several countries (such as Afghanistan, Jordan, Qatar and the United States of America) informed the Secretariat that they would need more time to complete the survey and/or requested an extension of the deadline for submitting their reply.

⁴ Council of Europe, *European Treaty Series*, No. 114.

⁵ Answers to a few questions were sent by Ukraine, although it stated that because it had fully abolished the death penalty it did not belong among the countries that should fill out the survey.

⁶ It should be noted that the following countries that did not respond to the seventh survey had provided information for the supplementary reports prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to Commission on Human Rights resolutions 2002/77 and 2003/67, respectively: Antigua and Barbuda, Belarus, Chile, Cuba, Ecuador, Ethiopia, Jordan, Lebanon, Panama and Serbia and Montenegro (E/CN.4/2003/106); and Czech Republic, Haiti and Paraguay (E/CN.4/2004/86).

⁷ In the province of Transdnistria in the Republic of Moldova, the death penalty can be imposed for six crimes, although it appears that a retrospective moratorium on executions has been in effect since 1 January 1999 (see E/CN.4/2003/106, para. 12).

⁸ Organization of American States, *Treaty Series*, No. 73.

⁹ Amnesty International, *Death Penalty News*, AI Index: ACT 53/001/2004 (June 2004).

- ¹⁰ Afghanistan, Algeria, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Belarus, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, China, Comoros, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Ghana, Guatemala, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan (a moratorium for one year had been introduced on 8 December 1998, but no commitment was made at that time to cease executions permanently), Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Malaysia, Mauritania, Mongolia, Morocco, Myanmar, Nigeria, Oman, Pakistan, Palestine, Republic of Korea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Serbia and Montenegro, Sierra Leone, Singapore, Somalia, Sudan, Swaziland, Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Republic of Tanzania, United States of America (38 states plus the federal Government), Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe.
- ¹¹ Albania (1995), Armenia (1991), Barbados (1984), Belize (1986), Bhutan (1964), Brunei Darussalam (1957), Central African Republic (1981), Chile (1985), Congo (1982), Côte d'Ivoire (1960), Dominica (1986), Gabon (1981), Gambia (1981), Grenada (1978), Guinea (1984), Jamaica (1988), Kenya (1987), Latvia (1996), Madagascar (1958), Maldives (1952), Mali (1980), Nauru (since independence in 1968), Niger (1976), Papua New Guinea (1950), Philippines (1976), Qatar (1989), Russian Federation (1996), Samoa (since independence in 1962), Senegal (1967), Sri Lanka (1976), Suriname (1982), Togo (1979), Tonga (1982) and Turkey (1984). The date of the last known execution or the beginning of an official moratorium is provided in parentheses.
- ¹² See Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *The Death Penalty in the OSCE Area*, background paper 2004/1 (October 2004), sect. 3.2 (hereinafter OSCE background paper 2004/1).
- ¹³ *Ibid.*, sect. 3.1. See also Robert Badinter and others, *Death Penalty—Beyond Abolition* (Strasbourg, Council of Europe Publishing, 2004), appendix III, p. 239.
- ¹⁴ See OSCE, background paper 2004/1, sect. 3.7.
- ¹⁵ Hands Off Cain 2004 Report, *The Death Penalty Worldwide*, E. Zamparutti and A. Zammit, eds. (Rome, 2004), p. 50.
- ¹⁶ Asian Centre for Human Rights, *ACHR Review*, Review/49/2004. See also Amnesty International, "Sri Lanka: Amnesty International concerned at reactivation of death penalty", AI Index: ASA 37/007/2004.
- ¹⁷ JFBA stated that one of the "main reasons" why capital punishment had not been abolished was "the extraordinary secrecy about the death penalty system and the consequent lack of proper information to discuss about the matter of abolition". JFBA was conducting activities to induce a public debate on the death penalty, including whether to abolish it or not.
- ¹⁸ See Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *The Death Penalty in the OSCE Area: a survey, January 1998-June 1999*, background paper 1999/1 (September 1999).
- ¹⁹ See Council of Europe, *Compliance with Member States Commitments* (AS/Inf (1999)2). See also Sergiy Holovaty, "Abolishing the Death Penalty in Ukraine: Difficulties Real or Imagined?", *The Death Penalty in Europe* (Strasbourg, 1999).
- ²⁰ See OSCE background paper 2004/1, sect. 3.6.
- ²¹ *Ibid.*, sect. 3.5.
- ²² International Federation for Human Rights, *Chad, Death penalty: ending a moratorium, between security opportunism and settling of scores*, report of the International Mission of Investigation, No. 404/2 (September 2004).

- ²³ See Hands Off Cain 2004 Report, p. 48.
- ²⁴ Ibid., pp. 47 and 48.
- ²⁵ Ibid., p. 48.
- ²⁶ In its reply for the sixth survey, Myanmar stated categorically that it was a de facto abolitionist country.
- ²⁷ Cameroon, Comoros, Equatorial Guinea, Ethiopia, Guyana, India, Lebanon, Lesotho, Libyan Arab Jamahiriya, Mongolia, Republic of Korea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, United Republic of Tanzania and Zambia.
- ²⁸ South Asia Human Rights Documentation Centre, *Use of the Death Penalty in India* (<http://www.hrhc.net/sahrdc>).
- ²⁹ Amnesty International, *Sierra Leone: Amnesty International expresses dismay at 10 death sentences for treason*, AI Index: AFR 51/009/2004 (21 December 2004).
- ³⁰ Hands Off Cain 2004 Report, pp. 51 and 52.
- ³¹ Amnesty International, *Zambia: Time to Abolish the Death Penalty*, AI Index: AFR 63/004/2001 (July 2001) and *Death Penalty News*, AI Index: ACT 53/001/2004 (June 2004).
- ³² Amnesty International, *The Death Penalty Worldwide: Developments in 2000*, AI Index: ACT 50/001/2001, p. 9.
- ³³ Afghanistan, Bahamas, Bangladesh, Belarus, Botswana, Burundi, Chad, China, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Egypt, Guatemala, Guinea, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kuwait, Malaysia, Nigeria, Oman, Pakistan, Palestine, Philippines, Qatar, Saudi Arabia, Singapore, Somalia, Sudan, Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States of America, Uzbekistan, Viet Nam, Yemen and Zimbabwe.
- ³⁴ In January 2000, the Governor announced a moratorium on executions when he set up an inquiry into the state's system of capital punishment because of concerns about wrongful convictions in capital cases.
- ³⁵ OSCE background paper 2004/1, sect. 3.9.
- ³⁶ See the website of the Ministry of Justice of Taiwan Province of China at <http://www.moj.gov.tw/english/file/execution.pdf>.
- ³⁷ Background paper 2004/1 (October 2004), sect. 3.3, quoting the *Tajikistan Daily Digest*, Eurasianet, 4 June 2004.
- ³⁸ The figures provided are confusing, because another table gives the total as 74 (72 sentenced in ordinary criminal courts and 2 in military courts) and yet the year-by-year total amounts to 75 persons.
- ³⁹ Iraq has not been included because of lack of any reliable information on which to compare the two quinquennial periods. But it is known that many executions were carried out during the period of Saddam Hussein's regime. Hands Off Cain had heard of at least 214 executions in 2002 and 113 in the first few months of 2003.
- ⁴⁰ Amnesty International, *Death Penalty News*, AI Index: ACT 53/001/2004 (June 2004). In January 2004, the Prime Minister of Viet Nam signed a decision classifying reports and statistics on the death penalty as a state secret; see also United Kingdom, Foreign and Commonwealth Office, *Human Rights Annual Report 2004* (HM Stationery Office, 2004), p. 188.
- ⁴¹ For instance, the European Parliament resolution on the death penalty in the world and the introduction of a European Day against the Death Penalty. See Minutes of 5 July 2001, final edition.

- ⁴² For example, R. Hood and others, *The Death Penalty—Abolition in Europe* (Strasbourg, Council of Europe Publishing, 1999), Robert Badinter and others, *Death Penalty—Beyond Abolition* (Strasbourg, Council of Europe Publishing, 2004), and an information brochure, “Death is not justice: the Council of Europe and the death penalty” (updated March 2004).
- ⁴³ Minutes of 23 October 2003, final edition.
- ⁴⁴ According to replies to the survey received from the European Court of Human Rights and the Directorate General of Human Rights of the Council of Europe.
- ⁴⁵ Council of Europe, *European Treaty Series*, No. 187.
- ⁴⁶ See status at the Council of Europe website (<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=187&CM=7&DF=03/03/05&CL=ENG>).
- ⁴⁷ Organization of American States, *Treaty Series*, No. 36; article 4, paragraph 3, of the American Convention on Human Rights forbids States to reintroduce capital punishment.
- ⁴⁸ There are 65 countries, listed in table 6, that have ratified one or more of the protocols, to which should be added Bolivia, the Dominican Republic, Haiti and Honduras (abolitionist for all crimes) and Argentina, Chile, El Salvador, Peru and Mexico, all of which are abolitionist for ordinary offences and bound by their ratification of the American Convention on Human Rights not to reintroduce the death penalty for offences for which it has been abolished.
- ⁴⁹ *Official Journal of the European Communities*, No. C 364/1, 18 December 2000.
- ⁵⁰ Guidelines on human rights and the fight against terrorism (Strasbourg, Directorate General of Human Rights, 2002).
- ⁵¹ Council of Europe, *European Treaty Series*, No. 190.
- ⁵² CCPR/C/48/D/470/1991.
- ⁵³ See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40), para. 147.
- ⁵⁴ See, for example, Roger Hood, *The Death Penalty: A Worldwide Perspective*, 3rd ed. (Oxford University Press, 2002), in particular chaps. 3-6.
- ⁵⁵ For example, in relation to Viet Nam, the Committee noted that the number of crimes that carried the death penalty had decreased from 44 to 29, it could be imposed for opposition to order and national security violations, both of which were excessively vague and inconsistent with article 6, para. 2, of the Covenant (see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40*, vol. I (A/57/40), para. 82 (7)). A similar concern had been expressed by the Committee about article 4 of the Promotion of Freedom Act of the Libyan Arab Jamahiriya, which stipulated that the death penalty can be imposed on a “person whose life endangers or corrupts society” and similar wording in the Great Green Document (see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 40*, vol. I (A/54/40), para. 128).
- ⁵⁶ William A. Schabas, “International law and the death penalty: reflecting or promoting change?”, *Capital Punishment: Strategies for Abolition*, Peter Hodgkinson and William A. Schabas, eds. (Cambridge, Cambridge University Press, 2004), pp. 36-62.
- ⁵⁷ Amnesty International, *Death Penalty News*, AI Index: ACT 53/005/1999 (December 1999).
- ⁵⁸ OSCE background paper 2004/1, p. 25.
- ⁵⁹ *Ibid.*, p. 32.

- ⁶⁰ In 2001, Uzbekistan abolished capital punishment for treason, criminal conspiracy, illegal sale of large quantities of narcotics and rape of a female less than 14 years of age; in 2003, capital punishment was abolished for aggression against another State and genocide. See OSCE background paper 2004/1, p. 44.
- ⁶¹ See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40), para. 86 (4).
- ⁶² *Carpo et al v. the Philippines* (Communication No. 1077/2002, views adopted on 28 March 2003).
- ⁶³ See, for example, the case of *Hughes and Spence v. The Queen*, which was upheld by the Judicial Committee of the Privy Council of the United Kingdom, the highest court of appeal, in *The Queen v. Peter Hughes* [2002] UKPC 12; *Patrick Reyes v. The Queen* [2002] UKPC 11; and *Roodal v. The State of Trinidad and Tobago* [2003] UKPC 78. See also *Thompson v. Saint Vincent and the Grenadines*, Communication No. 806/1998, views of the Human Rights Committee adopted 18 October 2000. In *Kennedy v. Trinidad and Tobago* (Communication No. 845/1998, views adopted on 26 March 2002) the Human Rights Committee ruled that the mandatory death penalty for murder where a felony involves personal violence and this results even inadvertently in the death of the victim was a violation of article 6, para. 1, of the International Covenant on Civil and Political Rights, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40*, vol. I (A/57/40), para. 138.
- ⁶⁴ Amnesty International, *The exclusion of child offenders from the death penalty under general international law*, AI Index: ACT 50/004/2003 (July 2003).
- ⁶⁵ Organization of American States, *Treaty Series*, No. 36.
- ⁶⁶ African Union, OAU Doc. CAB/LEG/24.9/49 (1990).
- ⁶⁷ See Amnesty International, ACT 50/004/2003, p. 1; see also Schabas, *op. cit.*, p. 59.
- ⁶⁸ In Bahrain, the minimum age was 19 years.
- ⁶⁹ Amnesty International, *Facts and figures on the death penalty* (<http://web.amnesty.org/pages/deathpenalty-facts-eng>); see also, Hands Off Cain 2004 Report, p. 89.
- ⁷⁰ Amnesty International, *Death Penalty News*, AI Index: ACT 53/003/2001 (June 2001).
- ⁷¹ Amnesty International, *Stop Child Executions! Ending the Death Penalty for Child Offenders*, AI Index: ACT 50/001/2004, p. 10.
- ⁷² Amnesty International, *Children and the Death Penalty: Executions Worldwide Since 1990*, AI Index: ACT/50/010/2000, p. 7; and Amnesty International, *Stop Child Executions ...*
- ⁷³ Amnesty International, News Release, *Pakistan: Young Offenders Taken off Death Row*, AI Index: ASA 33/029/2001; and *Death Penalty News*, AI Index: ACT 001/2002, p. 2.
- ⁷⁴ Amnesty International, *The Death Penalty in 2000*, AI Index: ASA 17/03/2002.
- ⁷⁵ *Michael Domingues v. Nevada*, 528 U.S. 963 (1999).
- ⁷⁶ Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, 1 January 1973 to 30 September 2004* (www.deathpenaltyinfo.org).
- ⁷⁷ *In Re: Kevin Nigel Stanford*, 537 U.S. (2002), 21 October 2002.
- ⁷⁸ *Roper v. Simmons*, 03-633, 1 March 2005 (<http://www.supremecourtus.gov/opinions/04slipopinion.html>).
- ⁷⁹ See Yoshihiro Yasuda, "The Death Penalty in Japan", *Death Penalty Beyond Abolition* (Strasbourg, Council of Europe, 2004), pp. 215-231. He was referring to Tetsuo Kawanaka, executed in 1993.

- ⁸⁰ See Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *The Death Penalty in the OSCE Area*, background paper 2003/1, pp. 33 and 37.
- ⁸¹ 122 S.Ct. 2242 (2002).
- ⁸² “Mental Retardation and the Death Penalty” at www.deathpenaltyinfo.org.
- ⁸³ *Ramjattan v. Trinidad and Tobago* (The Times, 1 April 1999) and *Campbell v. Trinidad and Tobago* (21 July 1999, unreported).
- ⁸⁴ Communication No. 684/1996 (views adopted 2 April 2002).
- ⁸⁵ In 2002, Cuba assured the Human Rights Commission that it did not execute mentally ill persons (see E/CN.4/2003/106, annex II, para. 9).
- ⁸⁶ “Mental Illness and the Death Penalty” at www.deathpenaltyinfo.org; and OSCE background paper 2004/1, pp. 41 and 42.
- ⁸⁷ See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40), para. 111.
- ⁸⁸ International Federation for Human Rights, *The Death Penalty in Japan: A Practice Unworthy of a Democracy*, report of the International Mission of Investigation, No. 359/2 (May 2003), p. 14 (hereinafter FIDH report No. 359/2).
- ⁸⁹ Amnesty International, *Death Penalty News*, AI Index: ACT 53/002/2003 (March 2003).
- ⁹⁰ Death Penalty Information Center, *Innocence and the Crisis in the American Death Penalty* (September 2004) at www.deathpenaltyinfo.org.
- ⁹¹ See “DPIC SUMMARY: The Innocence Protection Act of 2004” at www.deathpenaltyinfo.org.
- ⁹² “Report of the Governor’s Commission on Capital Punishment”, George H. Ryan, Governor of Illinois (April 2002), p. 207.
- ⁹³ Conference entitled “Does Japan need the Death Penalty in the 21st Century?” held in Miyazaki City, Japan, on 7 October 2004; report available from JFBA.
- ⁹⁴ See *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 40*, vol. I (A/54/40), para. 164.
- ⁹⁵ Yoshihiro Yasuda, op. cit., pp. 215-231.
- ⁹⁶ See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40), para. 108.
- ⁹⁷ Elsewhere the reply stated “There is not a public hearing in all circumstances in Thailand: however every death sentence will be informed to the public”.
- ⁹⁸ See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40), para. 72 (7); and *Kennedy v. Trinidad and Tobago* (Communication No. 845/1998, views adopted on 26 March 2002); *Teesdale v. Trinidad and Tobago* (Communication No. 677/1996, views adopted on 1 April 2002); and *Sooklal v. Trinidad and Tobago* (Communication No. 928/2000, views adopted on 21 March 2003).
- ⁹⁹ See *Ashby v. Trinidad and Tobago* (Communication No. 580/1994, views adopted on 21 March 2002); *Wanza v. Trinidad and Tobago* (Communication No. 683/1996, views adopted on 26 March 2002); *Francis et al v. Trinidad and Tobago* (Communication No. 899/1999, views adopted on 25 July 2002); *Boodoo v. Trinidad and Tobago* (Communication No. 721/1996, views adopted on 2 April 2002); *Sextus v. Trinidad and Tobago* (Communication No. 818/1998, views adopted on 16 July 2001); and *Evans v. Trinidad and Tobago* (Communication No. 908/2000, views adopted on 21 March 2003). See also *Kennedy, Teesdale and Sooklal v. Trinidad and Tobago* cited in note 98.

- ¹⁰⁰ Amnesty International, *US: Arbitrary, Discriminatory or Cruel*, AI Index: AMR 51/003/2002, pp. 8 and 9.
- ¹⁰¹ www.deathpenaltyinfo.org.
- ¹⁰² International Federation for Human Rights, *The Death Penalty in the United States*, International Mission of Investigation No. 316/2 (May 2002) (hereinafter FIDH report No. 316/2).
- ¹⁰³ *Ring v. Arizona*, 122 S.Ct. 2428 (2002); and *Schriro v. Summerlin*, 341 F.3d 1082 (see www.deathpenaltyinfo.org).
- ¹⁰⁴ United Nations, *Treaty Series*, vol. 596, No. 8638.
- ¹⁰⁵ International Court of Justice, General List No. 128.
- ¹⁰⁶ Military Commission Order No. 1, “Procedures for trials by military commissions of certain non-United States citizens in the war against terrorism”, 21 March 2002. See Organization for Security and Cooperation in Europe background paper 2004/1, p. 43.
- ¹⁰⁷ Amnesty International, *Death Penalty Developments 1999*, AI Index: ACT 50/04/00, p. 21.
- ¹⁰⁸ Hands Off Cain 2004 Report, pp. 37 and 38.
- ¹⁰⁹ Amnesty International, *Saudi Arabia, Defying World Trends*, AI Index: MDE 23/015/2001; see also Lamri Chirouf, “Defying World Trends”, paper presented to the First World Congress against the Death Penalty (Strasbourg, June 2001).
- ¹¹⁰ Amnesty International, *People’s Republic of China. Establishing the Rule of Law and Respect for Human Rights: The Need for Institutional and Legal Reforms*, AI Index: ASA 17/052/2002; and *Executed “according to law”?: the death penalty in China*, AI Index: ASA 17/003/2004.
- ¹¹¹ See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40), para. 77.
- ¹¹² *Ibid.*, *Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40), para. 81.
- ¹¹³ *Kurbanova v. Tajikistan* (Communication No. 1096/2002, views adopted on 6 November 2003); cited in OSCE background paper 2004/1, p. 34.
- ¹¹⁴ *Arutyunyan v. Uzbekistan* (Communication No. 917/2000, views adopted on 29 March 2004); cited in OSCE background paper 2004/1, p. 46.
- ¹¹⁵ See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40), para. 110.
- ¹¹⁶ Amnesty International, *Report 2001*, p. 61.
- ¹¹⁷ See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40), para. 77.
- ¹¹⁸ *Mansaraj et al v. Sierra Leone* (Communication Nos. 839/1998, 840/1998 and 841/1998, views adopted on 16 July 2001).
- ¹¹⁹ See Amnesty International, “Killing Chickens to Scare Monkeys”, paper presented to First World Congress against the Death Penalty (Strasbourg, June 2001).
- ¹²⁰ Amnesty International, *Executed “according to law”?: the death penalty in China*, AI Index: ASA 17/003/2004.
- ¹²¹ Yoshiro Yasuda, *op. cit.*, p. 226.
- ¹²² See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40), para. 85.

- ¹²³ See *The Death Penalty in China: a Baseline Document*, The Rights Practice (December 2003), p. 30, at <http://www.rights-practice.org>.
- ¹²⁴ 2000, 3 WLR, 178; see also Amnesty International, *Death Penalty Developments 2000*, AI Index: ACT 50/001/2001.
- ¹²⁵ Amnesty International, *Death Penalty Developments 2001*, AI Index: ACT 50/001/2001; and Hands Off Cain 2004 Report, pp. 83-85.
- ¹²⁶ Amnesty International, AI Index: MDE 23/015/2001.
- ¹²⁷ See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40*, vol. I (A/57/40), para. 83.
- ¹²⁸ International Federation for Human Rights 2003, No. 359/2, see note 88 above.
- ¹²⁹ Yoshihiro Yasuda, op. cit., p. 226.
- ¹³⁰ *Piandiong et al v. the Philippines* (Communication No. 869/1999, views adopted on 19 October 2000).
- ¹³¹ Amnesty International, *Report 2001*, p. 40.
- ¹³² Amnesty International, *Botswana*, AI Index: AFR 15/002/2001.
- ¹³³ OSCE background paper 2004/1, p. 35.
- ¹³⁴ OSCE background paper 2004/1, p. 47.
- ¹³⁵ In El Salvador execution (for military offences) is carried out by shooting by firing squad in a place designated by the Court.
- ¹³⁶ See *Use of the Death Penalty in India* (New Delhi, South Asia Human Rights Documentation Centre, 2004), pp. 21-26, citing the report of the Law Commission of India.
- ¹³⁷ See Marian Borg and Michael Radelet, "On botched executions", *Capital Punishment: Strategies for Abolition*, Peter Hodgkinson and William A. Schabas, eds. (Cambridge, Cambridge University Press, 2004), pp. 143-168. Borg and Radelet define "botched executions" as those involving unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner. Amnesty International reported that in 2000 the execution of two men by lethal injection, broadcast live on television had been "botched", AI/AR 2001, p. 113. See also Deborah Denno, "Lethally Humane? The Evolution of Execution Methods in the USA", *America's Experiment with Capital Punishment*, 2nd ed., James R. Acker, Robert M. Bohm and Charles S. Lanier, eds. (Carolina Academic Press, 2004), pp. 693-762.
- ¹³⁸ www.wma.net/e/policy/20-6-81_e.html.
- ¹³⁹ Amnesty International, *Iran: Lives in the balance: an open appeal to Iran's judicial authorities*, AI Index: MDE 13/055/2004 and AI/AR 2004, p. 132.
- ¹⁴⁰ United Kingdom, Foreign and Commonwealth Office, *Human Rights Annual Report 2004* (HM Stationary Office, 2004), p. 190.
- ¹⁴¹ Amnesty International, *Report 2001*, p. 207, and *Report 2003*, p. 215.
- ¹⁴² United Kingdom, Foreign and Commonwealth Office, *Human Rights Annual Report ...*, states that there were 6,593 condemned prisoners in Pakistan's jails at the end of 2003 compared with 5,758 in September 2002, p. 189.
- ¹⁴³ Hands Off Cain 2004 Report, p. 35.
- ¹⁴⁴ Communication No. 908/2000, views adopted on 21 March 2003.

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- ¹⁴⁵ See also *Francis et al v. Trinidad and Tobago* (Communication No. 899/1999, views adopted on 25 July 2002); *Teesdale v. Trinidad and Tobago* (Communication No. 677/1996, views adopted on 1 April 2002).
- ¹⁴⁶ Yoshihiro Yasuda, op. cit., pp. 224 and 225.
- ¹⁴⁷ FIDH report No. 359/2, pp. 19-21.
- ¹⁴⁸ See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I, (A/56/40), para. 79 (9).
- ¹⁴⁹ Amnesty International, *Report 2004*, p. 57.
- ¹⁵⁰ FIDH report No. 316/2, p. 28.
- ¹⁵¹ This was the case also in El Salvador, where in the event of a person being executed under military law, “The person under sentence of death ‘shall be placed in a special room where he may receive relatives, friends and, upon request, a religious representative, and will be provided with facilities necessary to ensure that his needs are met in accordance with the law ...’ The requirements set out in the Minimum Rules for the Treatment of Prisoners serve as a basis for such arrangements.”
- ¹⁵² In answer to questions at a news conference on 27 September 2004, the new Minister of Justice of Japan said that she had decided to order executions on a “case-by-case basis” and with regard to the disclosure of the names of the executed, their names were made public during their trials so they were socially punished already. She therefore thought that the public announcement of their names on the day of execution would be cruel (<http://www.moj.go.jp/SPEECH/POINT/sp040927-01.html>).
- ¹⁵³ *Schedko v. Belarus* (Communication No. 886/1999, views adopted on 3 April 2003); and *Staselovich v. Belarus* (Communication No. 887/1999, views adopted on 3 April 2003).
- ¹⁵⁴ See note 132 above.
- ¹⁵⁵ See Anatoly Pristavkin, “The Russian Federation and the death penalty”, *Death Penalty—Beyond Abolition* (Strasbourg, Council of Europe, Publishing, 2004), pp. 199-204.

Annex I

Supplementary data and tables

Table 1
Status of capital punishment in December 2003: retentionist countries and territories^a

Afghanistan	Iran (Islamic Republic of)	Sierra Leone
Bahamas	Iraq	Singapore
Bahrain	Japan	Somalia
Bangladesh	Jordan	Sudan
Belarus	Kuwait	Syrian Arab Republic
Botswana	Lebanon	Taiwan Province of China
Burundi	Lesotho	Tajikistan ^b
Cameroon	Libyan Arab Jamahiriya	Thailand
Chad	Malaysia	Trinidad and Tobago
China	Mongolia	Uganda
Comoros	Nigeria	United Republic of Tanzania
Cuba	Oman	United Arab Emirates
Democratic People's Republic of Korea	Pakistan	United States of America
Democratic Republic of the Congo	Palestine	Uzbekistan
Egypt	Philippines	Viet Nam
Equatorial Guinea	Qatar	Yemen
Ethiopia	Republic of Korea	Zambia
Guatemala	Rwanda	Zimbabwe
Guinea	Saint Kitts and Nevis	
Guyana	Saint Lucia	
India	Saint Vincent and the Grenadines	
Indonesia	Saudi Arabia	

Note: The above-mentioned countries and territories retain the death penalty for ordinary crimes. Most of them are known to have carried out executions during the past 10 years. In some cases, however, it is difficult to ascertain whether or not executions have in fact been carried out.

^a Total 62 countries and territories.

^b Tajikistan instituted an official moratorium on executions in 2004 without any time limit, thus making it a de facto abolitionist country.

Table 2
Status of capital punishment in December 2003: completely abolitionist
countries and territories^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>
Andorra	1990		1943
Angola	1992		..
Australia	1985	1984	1967
Austria	1968	1950	1950
Armenia	2003		1991
Azerbaijan	1998		1993
Belgium	1996		1950
Bolivia	1997	1991	1974
Bosnia and Herzegovina	2001	1997	..
Bulgaria	1998		1989
Cambodia	1989		..
Canada	1998	1976	1962
Cape Verde	1981		1835
Colombia	1910		1909
Costa Rica	1877		..
Côte d'Ivoire	2000		1960
Croatia	1991		1987
Cyprus	2002	1983	1962
Czech Republic	1990		..
Denmark	1978	1933	1950
Djibouti	1995		1977 ^b
Dominican Republic	1966		..
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1987		..
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 ^b
Liechtenstein	1987		1785
Lithuania	1998		1995
Luxembourg	1979		1949
Malta	2000		1943

<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>
Marshall Islands	1986		1986 ^b
Mauritius	1995		1987
Micronesia (Federated States of)	1986		1986 ^b
Monaco	1962		1847
Mozambique	1990		1986
Namibia	1990		1988
Nepal	1997	1990	1979
Netherlands	1982	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Norway	1979	1905	1948
Palau	1994		1994 ^b
Panama			1903
Paraguay	1992		1928
Poland	1997		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1989		1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975 ^b
Serbia and Montenegro	2002		1989
Seychelles	1993		1976 ^c
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 ^d
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944
The former Yugoslav Republic of Macedonia	1991		..
Timor-Leste	1999		1999 ^b
Turkmenistan	1999		1997
Tuvalu	1976		1976 ^b
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965 ^e	1964
Uruguay	1907		..
Vanuatu	1980		1980 ^b
Venezuela	1863		..

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

^a Total 79 countries and territories.

^b 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.

^c Became fully abolitionist in 2004.

^d Before that year.

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

Table 3
Status of capital punishment in December 2003: abolitionist countries and territories for ordinary crimes only^a

<i>Country</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Albania	2000	1995
Argentina	1984	1916
Brazil	1979	1855
Chile	2001	1985
El Salvador	1983	1973
Fiji	1999	1964
Greece ^b	1993	1972
Israel	1954	1962
Latvia	1999	1996
Mexico	..	1930
Peru	1979	1979
Turkey ^c	2002	1984

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

^a Total 12 countries.

^b Became fully abolitionist in 2004.

^c Has carried out execution(s) within the last 10 years, but has made an international commitment to cease the practice.

Table 4
Status of capital punishment in December 2003: de facto abolitionist countries
and territories^a

<i>Country or territory</i>	<i>Date of last execution</i>
Algeria	1993
Antigua and Barbuda	1989
Barbados	1984
Belize	1986
Benin	1989
Bhutan ^b	1964
Brunei Darussalam	1957
Burkina Faso	1989
Central African Republic	1981
Democratic Republic of the Congo	1982
Dominica	1986
Eritrea	1989
Gabon	1989
Gambia	1981
Ghana	1993
Grenada	1978
Jamaica	1988
Kazakhstan ^c	
Kenya	1987
Kyrgyzstan ^c	
Lao People's Democratic Republic	1989
Liberia	1993
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1989
Morocco	1993
Myanmar	1989
Nauru	1968 ^d
Niger	1976
Papua New Guinea	1950
Russian Federation ^c	1996
Samoa ^b	1962
Senegal ^b	1967
Sri Lanka	1976

<i>Country or territory</i>	<i>Date of last execution</i>
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982
Tunisia	1991

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

^a Total 41 countries.

^b These countries completely abolished the death penalty in 2004.

^c These countries have carried out executions within the last 10 years, but have made an international commitment to cease the practice.

^d 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.

Table 5
Countries that have signed or ratified Protocols No. 6 and No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Second Optional Protocol to the International Covenant on Civil and Political Rights and/or the Protocol to the American Convention on Human Rights

<i>Country (by region)</i>	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>				<i>International Covenant on Civil and Political Rights</i>		<i>American Convention on Human Rights</i>	
	<i>Signed Protocol No. 6</i>	<i>Ratified Protocol No. 6</i>	<i>Signed Protocol No. 13</i>	<i>Ratified Protocol No. 13</i>	<i>Signed Second Optional Protocol</i>	<i>Ratified Second Optional Protocol</i>	<i>Signed Protocol</i>	<i>Ratified Protocol</i>
Asia and the Pacific								
Armenia	X (2001)	X (2003)						
Australia						X (1990)		
Nepal						X (1998)		
New Zealand					X (1990)	X (1990)		
Seychelles						X (1994)		
Timor-Leste						X (2003)		
Turkey	X (2003)	X (2003)	X (2004)		X (2004)			
Turkmenistan						X (2000)		
Latin America and the Caribbean								
Brazil							X (1994)	X (1996)
Chile					X (2001)		X (2001)	
Colombia						X (1997)		
Costa Rica					X (1990)	X (1998)	X (1991)	X (1998)
Ecuador						X (1993)	X (1990)	X (1998)
Honduras					X (1990)			
Nicaragua					X (1990)		X (1990)	X (1999)
Panama						X (1993)	X (1990)	X (1991)
Paraguay						X (2003)	X (1999)	X (2000)
Uruguay					X (1990)	X (1993)	X (1990)	X (1994)
Venezuela							X (1990)	X (1992)
Eastern Europe								
Albania	X (2000)	X (2000)	X (2003)					
Azerbaijan	X (2001)	X (2002)				X (1999)		

<i>Country (by region)</i>	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>				<i>International Covenant on Civil and Political Rights</i>		<i>American Convention on Human Rights</i>	
	<i>Signed Protocol No. 6</i>	<i>Ratified Protocol No. 6</i>	<i>Signed Protocol No. 13</i>	<i>Ratified Protocol No. 13</i>	<i>Signed Second Optional Protocol</i>	<i>Ratified Second Optional Protocol</i>	<i>Signed Protocol</i>	<i>Ratified Protocol</i>
Bosnia and Herzegovina	X (2002)	X (2002)	X (2002)	X (2003)	X (2000)	X (2001)		
Bulgaria	X (1999)	X (1999)	X (2002)	X (2003)	X (1999)	X (1999)		
Croatia	X (1996)	X (1997)	X (2002)	X (2003)		X (1995)		
Czech Republic	X (1991)	X (1992)	X (2002)	X (2004)		X (2004)		
Estonia	X (1993)	X (1998)	X (2002)	X (2004)		X (2004)		
Georgia	X (1999)	X (2000)	X (2002)	X (2003)		X (1999)		
Hungary	X (1990)	X (1992)	X (2002)	X (2003)		X (1994)		
Latvia	X (1998)	X (1999)	X (2002)					
Lithuania	X (1999)	X (1999)	X (2002)	X (2004)	X (2000)	X (2002)		
Poland	X (1999)	X (2000)	X (2002)		X (2000)			
Republic of Moldova	X (1996)	X (1997)	X (2002)					
Romania	X (1993)	X (1994)	X (2002)	X (2003)	X (1990)	X (1991)		
Russian Federation	X (1997)							
Serbia and Montenegro	X (2003)	X (2004)	X (2003)	X (2004)		X (2001)		
Slovakia	X (1991)	X (1992)	X (2002)		X (1998)	X (1999)		
Slovenia	X (1993)	X (1994)	X (2002)	X (2003)	X (1993)	X (1994)		
The former Yugoslav Republic of Macedonia	X (1996)	X (1997)	X (2002)	X (2004)		X (1995)		
Ukraine	X (1997)	X (2000)	X (2002)	X (2003)				
Africa								
Cape Verde						X (2000)		
Djibouti						X (2002)		
Guinea-Bissau					X (2000)			
Mozambique						X (1993)		
Namibia						X (1994)		
Sao Tome and Principe					X (2000)			
South Africa						X (2002)		

<i>Country (by region)</i>	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>				<i>International Covenant on Civil and Political Rights</i>		<i>American Convention on Human Rights</i>	
	<i>Signed Protocol No. 6</i>	<i>Ratified Protocol No. 6</i>	<i>Signed Protocol No. 13</i>	<i>Ratified Protocol No. 13</i>	<i>Signed Second Optional Protocol</i>	<i>Ratified Second Optional Protocol</i>	<i>Signed Protocol</i>	<i>Ratified Protocol</i>
Western Europe								
Andorra	X (1996)	X (1996)	X (2002)	X (2003)	X (2002)			
Austria	X (1983)	X (1985)	X (2002)	X (2004)	X (1991)	X (1993)		
Belgium	X (1983)	X (1998)	X (2002)	X (2003)	X (1990)	X (1998)		
Cyprus	X (1999)	X (2000)	X (2002)	X (2003)		X (1999)		
Denmark	X (1983)	X (1983)	X (2002)	X (2002)	X (1990)	X (1994)		
Finland	X (1989)	X (1990)	X (2002)	X (2004)	X (1990)	X (1991)		
France	X (1983)	X (1986)	X (2002)					
Germany	X (1983)	X (1989)	X (2002)	X (2004)	X (1990)	X (1992)		
Greece	X (1983)	X (1998)	X (2002)			X (1997)		
Iceland	X (1985)	X (1987)	X (2003)	X (2004)	X (1991)	X (1991)		
Ireland	X (1994)	X (1994)	X (2002)	X (2002)		X (1993)		
Italy	X (1983)	X (1988)	X (2002)		X (1990)	X (1995)		
Liechtenstein	X (1990)	X (1990)	X (2002)	X (2002)		X (1998)		
Luxembourg	X (1983)	X (1985)	X (2002)		X (1990)	X (1992)		
Malta	X (1991)	X (1991)	X (2002)	X (2002)		X (1994)		
Monaco	X (2004)		X (2004)			X (2000)		
Netherlands	X (1983)	X (1986)	X (2002)		X (1990)	X (1991)		
Norway	X (1983)	X (1988)	X (2002)		X (1990)	X (1991)		
Portugal	X (1983)	X (1986)	X (2002)	X (2003)	X (1990)	X (1990)		
San Marino	X (1989)	X (1989)	X (2002)	X (2003)	X (2003)	X (2004)		
Spain	X (1983)	X (1985)	X (2002)		X (1990)	X (1991)		
Sweden	X (1983)	X (1984)	X (2002)	X (2003)	X (1990)	X (1990)		
Switzerland	X (1983)	X (1987)	X (2002)	X (2002)		X (1994)		
United Kingdom of Great Britain and Northern Ireland	X (1999)	X (1999)	X (2002)	X (2003)	X (1999)	X (1999)		

Annex II

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. The safeguards guaranteeing protection of the rights of those facing the death penalty, as contained in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, are as follows:

(a) 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;

(b) 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;

(c) 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;

(d) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts;

(e) 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,^a 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;

(f) Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory;

(g) 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;

(h) 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;

(i) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

2. Further to the above-mentioned safeguards, the Council, in its resolution 1989/64 of 24 May 1989, recommended that Member States take steps to implement

^a General Assembly resolution 2200 A (XXI), annex.

the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable by:

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

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

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

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

3. Further, the Council in its resolution 1996/15 of 23 July 1996:

(a) Called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it was stated that capital punishment might be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(b) 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,^b the Basic Principles on the Role of Lawyers,^c the Guidelines on the Role of Prosecutors,^d the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,^e and the Standard Minimum Rules for the Treatment of Prisoners;^f

(c) Also encouraged Member States in which the death penalty had not been abolished 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;

(d) Called upon Member States in which the death penalty might be carried out to allow adequate time for the preparation of appeals to a court of higher

^b Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

^c Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

^d *Ibid.*, sect. C.26.

^e General Assembly resolution 43/173, annex.

^f First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I, sect. A.

jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

(e) Also called upon Member States in which the death penalty might be carried out 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;

(f) Urged Member States in which the death penalty might be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.
