



**Economic and Social
Council**

Distr.
LIMITED

E/CN.4/2002/L.104
19 April 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 17

PROMOTION AND PROTECTION OF HUMAN RIGHTS

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2002/... The question of the death penalty

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Recalling also General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 on capital punishment, as well as resolution 44/128 of

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling further Economic and Social Council resolutions 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling its resolutions 1997/12 of 3 April 1997, 1998/8 of 3 April 1998, 1999/61 of 28 April 1999, 2000/65 of 26 April 2000 and 2001/68 of 25 April 2001, in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Noting that, in some countries, the death penalty is often imposed after trials which do not conform to international standards of fairness and that persons belonging to national or ethnic, religious and linguistic minorities appear to be disproportionately subject to the death penalty,

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

Welcoming also the abolition of the death penalty which has taken place in some States since the last session of the Commission, and in particular in those States that have abolished the death penalty for all crimes,

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

Welcoming the recent signature of the Second Optional Protocol by some States,

Welcoming also the fact that many countries, while still keeping the death penalty in their penal legislation, are applying a moratorium on executions,

Referring to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2001/9 and Corr.1) with respect to the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

Deeply concerned that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child,

Concerned that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Recalls* the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3) and looks forward to receiving the yearly supplement on changes in law and practice concerning the death penalty worldwide as requested in Commission resolution 2001/68;

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

3. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

4. *Urges* all States that still maintain the death penalty:

(a) To comply fully with their obligations under the Covenant and the Convention on the Rights of the Child, notably not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, not to impose it for crimes committed by persons below 18 years of age, to exclude pregnant women from capital punishment and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

(b) To ensure that all legal proceedings, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to adequate legal assistance and the right to review by a higher tribunal;

(c) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

(d) Not to enter any new reservations under article 6 of the International Covenant on Civil and Political Rights which may be contrary to the object and the

purpose of the Covenant and to withdraw any such existing reservations, given that article 6 of the Covenant enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;

(e) To observe the Safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;

(f) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;

(g) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

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

(a) Progressively to restrict the number of offences for which the death penalty may be imposed;

(b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

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

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the Safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50 of 25 May 1984;

6. *Calls upon* States which no longer apply the death penalty but maintain it in their legislation to abolish it;

7. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;

8. *Requests* the Secretary-General to continue to submit to the Commission, at its fifty-ninth session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law

and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence;

9. *Decides* to continue consideration of the matter at its fifty-ninth session under the same agenda item.
