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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Question of the death penalty

**Report of the Secretary-General submitted pursuant
to Commission resolution 2002/77***

* The report was submitted after the deadline in order to incorporate the received replies.

Executive summary

In its resolution 2002/77, the Commission on Human Rights requested the Secretary-General 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 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.¹ The present report contains information covering the period from January 2001 through December 2002, in order to ensure that there are no gaps in coverage since the last version of the sixth quinquennial report² which covered information up to the end of 2000. The report indicates that the trend towards abolition of the death penalty continues, which is illustrated, inter alia, by the increase in the number of ratifications of international instruments that provide for the abolition of this punishment.

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I. INTRODUCTION

1. In paragraph 8 of its resolution 2002/77, the Commission on Human Rights requested 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,³ paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence”. To date, six reports have been submitted, the most recent in 2000 (E/2000/3), covering the period from 1994 to 1998. A revised and updated version of the last report was also submitted to the Commission on Crime Prevention and Criminal Justice at its tenth session in 2001 (E/CN.15/2001/10), covering the period from 1994 to the end of 2000. The present supplemental report contains information covering the period from January 2001 through December 2002.

2. The quinquennial reports are prepared by the Centre for International Crime Prevention at the United Nations Office at Vienna on the basis of a detailed questionnaire sent to States. The reports also draw on other available data, including criminological research, and information from specialized agencies and intergovernmental and non-governmental organizations. The latest quinquennial report provides information on changes in the status of the death penalty and its enforcement, implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, and relevant international developments.

3. For the present supplemental report prepared by the Office of the United Nations High Commissioner for Human Rights, and pursuant to Commission on Human Rights resolution 2002/77, all States that still maintain the death penalty were requested to provide information relating to the use of capital punishment and the observance of the Safeguards. Furthermore, the Secretariat requested information from all States and intergovernmental and non-governmental organizations on changes in law and practice concerning the death penalty, as well as implementation of the Safeguards, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence. In response to this request, information was received from the following States: Antigua and Barbuda, Belarus, Chile, Costa Rica, Cuba, Ecuador, Ethiopia, the Federal Republic of Yugoslavia, Jordan, Lebanon, Morocco, Mexico, Panama, Thailand and Turkey. This information is summarized in annex II to the present report and is available in the Secretariat for further consultation. Additionally, the following organizations sent their publications and other materials addressing the issue discussed in the report: the Council of Europe (CoE), Organization for Security and Co-operation in Europe (OSCE), Amnesty International, the International Federation of Human Rights Leagues and the World Organization against Torture.

4. Following the practice adopted in quinquennial reports, countries are classified in the present report as completely abolitionist, abolitionist for ordinary crimes, de facto abolitionist, or retentionist. Countries that are abolitionist for all crimes, whether in peacetime or in wartime, are regarded as completely abolitionist. Countries that are regarded as abolitionist for ordinary crimes are those that abolished the death penalty for all ordinary offences committed in time of peace. In such countries, the death penalty is retained only for exceptional circumstances, such

as those which may apply in time of war for military offences, or for crimes against the State, such as treason or armed insurrection. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more are considered abolitionist de facto. All other countries are defined as retentionist, meaning that the death penalty is in force and executions do take place, although in many retentionist countries such executions might be quite rare.

II. CHANGES IN LAW AND PRACTICE

5. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international instruments that provide for the abolition of the death penalty. Changes in practice may cover non-legislative measures with a significant new approach regarding the use of the death penalty; for example, countries may, while retaining the death penalty, announce a moratorium on its application. Such changes might also include measures to commute death sentences. Based on the information received and collected from available sources, the following changes in law and practice can be reported since 1 January 2001.

A. Countries which have abolished the death penalty for all crimes

6. Cyprus became entirely abolitionist since 19 April 2002, when its Military Criminal Code was amended to remove the death penalty for crimes committed in wartime. The Federal Republic of Yugoslavia became totally abolitionist in 2002 when both the Republic of Serbia and the Republic of Montenegro amended their criminal codes, so as to completely abolish the use of the death penalty.

B. Countries which have abolished the death penalty for ordinary crimes

7. The Government of Chile reported that the death penalty for ordinary crimes was abolished, on 5 June 2001, while Act No. 19.734 continues to provide for the application of the death penalty in time of war. The Government of Turkey reported that, within the context of Law No. 4771, which entered into force on 9 August 2002, the death penalty was abolished in the Turkish legal system except in time of war and imminent threat of war.

C. Countries restricting the scope of the death penalty or limiting its use

8. While Uzbekistan continues to impose and execute the death penalty, in 1998, the Uzbekistan Parliamentary Commissioner for Human Rights announced that the country was following a policy of abolishing the death penalty in stages. On 29 August 2001, the death penalty was removed for four additional offences, including treason, criminal conspiracy, illegal sale of large quantities of narcotics and rape of women less than 14 years of age.

D. Countries having ratified international instruments that provide for the abolition of the death penalty

9. There are one international and two regional instruments in force which commit States parties to abolishing the death penalty, namely: the Second Optional Protocol to the

International Covenant on Civil and Political Rights (ICCPR); Protocol No. 6 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); and the Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty. Protocol No. 6 to ECHR concerns the abolition of the death penalty in peacetime. The two other protocols provide for the total abolition of the death penalty, but allow States wishing to do so to retain the death penalty in wartime, if they make a reservation to that effect upon ratification.

10. Three new States acceded to the Second Optional Protocol to ICCPR during the reported period, namely Bosnia and Herzegovina on 16 March 2001, Lithuania on 28 March 2002 and Yugoslavia on 6 September 2001. Two States ratified Protocol No. 6 to ECHR, that is Azerbaijan on 15 April 2002 and Bosnia and Herzegovina on 12 July 2002. Armenia signed the Protocol on 25 January 2001. Chile signed the Protocol to ACHR on 9 October 2001.

11. On 21 February 2002, the CoE Committee of Ministers adopted Protocol No. 13 to ECHR concerning the abolition of the death penalty in all circumstances. On 3 May 2002, Protocol No. 13 was opened for signature, accession or ratification. It needs 10 ratifications to enter into force. As of 1 December 2002, three member States, Ireland, Malta and Switzerland, had ratified the Protocol. A total of 35 member States have signed the Protocol without ratifying it.

E. Countries establishing a moratorium on executions

12. A de facto moratorium has been in place in Armenia since 1990. Armenian courts, however, continue to sentence people to death and the President exercises his constitutional authority to issue pardons. In Kyrgyzstan, the Presidential Decree of 11 January 2002 has extended an official moratorium until the end of 2002. A moratorium with retroactive effect from 1 January 1999 continued to be in place in Moldova. In the Russian Federation, a de facto moratorium in place since August 1996 continued to be observed.

F. Countries reintroducing the use of the death penalty, extending its scope or resuming executions

13. On 23 September 2002, the moratorium on the death penalty has been suspended in the Democratic Republic of the Congo.

III. ENFORCEMENT OF THE DEATH PENALTY

14. The only figures available suggest that at least 5,265 persons were sentenced to death in 68 countries and at least 3,048 people were executed in 31 countries during 2001.⁴

IV. INTERNATIONAL DEVELOPMENTS

15. The issue remains a regular item on the agenda of the Commission on Human Rights. In its resolutions, the Commission called upon all States that still maintain the death penalty to progressively restrict the number of offences for which it may be imposed; to establish a

moratorium on executions with a view to completely abolishing the death penalty; and to make information with regard to the imposition of the death penalty available to the public.

16. The Sub-Commission on the Promotion and Protection of Human Rights and its sessional working group on the administration of justice have considered the evolution of capital punishment. The Sub-Commission's member, Mr. El Hadji Guissé, made presentations on this issue to the working group in 2001 and 2002 (see, for example, documents E/CN.4/Sub.2/2001/7 and E/CN.4/Sub.2/2002/7). During its fifty-fourth session, held in 2002, the Sub-Commission urged the United States authorities to stay the execution of Mr. Javier Suarez Medina, a Mexican national detained on "death row" in the State of Texas for 13 years and to re-examine his case, guaranteeing his right to consular protection and to a fair trial. The Sub-Commission and the Government of Mexico later expressed regret when Mr. Medina was executed as scheduled.

17. The Human Rights Committee continued to examine cases involving capital punishment under the Second Optional Protocol to ICCPR. On 19 October 2000,⁵ the Committee concluded that the State party committed a grave breach of its obligations under the said Protocol by putting alleged victims to death before the Committee had concluded its consideration of the communication. This was the first decision on the merits of a communication, in which the Committee pronounced on the mandatory character of interim measures. This finding was followed by the Committee in its views adopted on 16 July 2001⁶ and on 21 March 2002.⁷ In addition, in the latter communication, the Committee noted that the State party executed the sentence in full knowledge of the fact that the author was still seeking remedies before the Courts of Appeal of the State party, the Judicial Committee of the Privy Council and the Human Rights Committee. The Committee found that the carrying out of the execution of the author when the execution of the sentence was still under challenge constituted a violation of article 6, paragraphs 1 and 2, of ICCPR.

18. In its views adopted on 18 October 2000,⁸ the Human Rights Committee noted that under the domestic law the death penalty was mandatory in all cases of "murder" and the mandatory imposition of the death penalty was based solely upon the category of crime, without regard to the defendant's personal circumstances or the circumstances of the particular offence. Furthermore, the Committee found that the *carrying out* of the death penalty in this case would constitute an arbitrary deprivation of life in violation of article 6, paragraph 1, of ICCPR.⁹ Subsequently, in its views adopted on 26 March 2002,¹⁰ the Committee went further and found that the *mandatory imposition*¹¹ of the death penalty violated article 6, paragraph 1, of ICCPR.

19. In its views adopted on 2 April 2002,¹² the Committee was of the opinion that the execution of a mentally incompetent person constituted a violation of article 7 of ICCPR as he was issued with a warrant for execution despite the fact that he was mentally incompetent at the time. Information proving his incompetence was not contested by the State party. The Committee did not have information allowing it to consider whether article 6 was also violated in this case.

20. In the follow-up to fact-finding missions undertaken by CoE delegations to Japan and the United States, which have observer status and retain the death penalty in law and practice, the CoE Parliamentary Assembly adopted resolution 1253 (2001)¹³ calling on Japan and the United States, inter alia, to institute a moratorium on executions and to take the necessary steps

to abolish the death penalty as well as to improve conditions on “death row” immediately. The Parliamentary Assembly decided to call into question the continuing observer status of the two States should no significant progress in the implementation of that resolution be made by 1 January 2003.

21. The CoE Committee of Ministers continued its monitoring of capital punishment to ensure compliance with the commitments accepted by all member States of CoE. The subject is considered at meetings of the Ministers’ Deputies at six-month intervals “until Europe has become a de jure death penalty-free zone”. On 9 November 2000, the Committee of Ministers adopted a “Declaration For a European Death Penalty-Free Area”.¹⁴

22. OSCE continued to publish reports on the death penalty in the OSCE area, which served as background documents for the OSCE Human Dimension Implementation Meetings, which took place in Warsaw in 2001 and 2002.

23. On 13 May 2002, the World Coalition against the Death Penalty was formally instituted at a meeting in Rome. The Coalition’s aim is to work for the universal abolition of capital punishment, and its membership is open to national and international abolitionist organizations, as well as bar associations, trade unions and local and regional authorities such as city councils.

V. IMPLEMENTATION OF 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

24. The Safeguards guaranteeing protection of the rights of those facing the death penalty, inter alia, establish that: (a) capital punishment may be imposed only for the most serious crimes; (b) the right to benefit from lighter penalty if, subsequent to the commission of the crime, provision is made by law to this effect; (c) persons below 18 years of age at the time of the commission of the crime should not be sentenced to death and the death sentence should not be carried out on pregnant women, new mothers, or persons who have become insane; (d) capital punishment may be imposed only when the guilt is based upon clear and convincing evidence leaving no room for an alternative explanation of facts; and (e) the death sentence 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, including the right of a defendant to adequate legal assistance; (f) the right to appeal against the death sentence to a court of higher jurisdiction must be granted; (g) the right to seek pardon or commutation of sentence must be granted; (h) capital punishment shall not be carried out pending any appeal or other recourse procedure; and (i) when capital punishment occurs, it shall be carried out so as to inflict minimum suffering.

25. From the retentionist countries - Belarus, Cuba, Ethiopia, Jordan, Lebanon, Morocco and Thailand - comments were provided on the implementation of the Safeguards. In addition, Antigua and Barbuda, which is considered a de facto abolitionist country, commented on the Safeguards (see annex II below).

26. Furthermore, non-compliance with the Safeguards are often brought to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions and reflected in her reports. In her 2002 report to the Commission on Human Rights, the Special Rapporteur made the following conclusions and recommendation:

“The Special Rapporteur notes that the safeguards and guarantees for the protection of those facing capital punishment are not being followed in a large number of cases brought to her attention. She is also concerned at the lack of transparency and information on capital punishment and executions of death sentences. She, therefore, calls upon all retentionist Governments to impose a moratorium on executions and set up national commissions to report on the situation in the light of international standards and resolutions before executions are resumed. The execution of persons who were children under the age of 18 at the time of the crime is only being carried out by a very few countries. There is a virtual consensus on its abolition. The Special Rapporteur urges the few countries still executing children to abolish the practice. In order to scrutinize whether safeguards relating to capital punishment are being observed, it is urged that every court decision awarding capital punishment must record the safeguards to be observed and that the decision be made public.”¹⁵

27. During the period under review, the Special Rapporteur has acted, inter alia, in cases in which the defendants were reported to have been sentenced to death in trials falling short of international fair trial standards, in which persons suffering from mental handicap or illness have been sentenced, when the death penalty was imposed for crimes that did not fall within the category of “the most serious crimes”. The Special Rapporteur continued to reiterate that capital punishment for juvenile offenders is prohibited under international law and informed about her action in cases where juvenile offenders faced the death penalty in the Democratic Republic of the Congo, India, the Islamic Republic of Iran and the United States.¹⁶

28. In its resolution 2000/17, the Sub-Commission on the Promotion and Protection of Human Rights condemned “unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence” and recommended that the Commission adopts a decision confirming that “international law concerning the imposition of the death penalty in relation to juveniles clearly establishes that the imposition of the penalty on persons aged under 18 years at the time of the offence is in contravention of customary international law”. The Commission, in its resolution 2001/68, welcomed the Sub-Commission resolution; expressed deep concern “that several countries impose the death penalty in disregard of the limitations provided for in the Covenant and the Convention on the Rights of the Child”; and urged “all States that still maintain the death penalty 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 crimes committed by persons below eighteen years of age ...”. In 2002, the Commission endorsed Sub-Commission resolution 2000/17 on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence.¹⁷ During its fifty-eighth session, the Commission on Human Rights, in three additional resolutions,¹⁸ called upon States to ensure that the death penalty is not imposed on persons below 18 years of age at the time of the commission of the offence.

29. During 2001 and 2002, the Committee on the Rights of the Child¹⁹ addressed the issue of the death penalty in 10 of its concluding observations. In the cases of Saint Vincent and the Grenadines, Belgium and Côte d'Ivoire, the Committee welcomed the abolition of the death penalty for persons below the age of 18 years or, more generally, for everyone. In several cases, the Committee expressed its deep concern about the death penalty being still applicable to persons under the age of 18 in violation of article 37 (a), paragraph (a), of the Convention on the Rights of the Child. It recommended that Burkina Faso, the Democratic Republic of the Congo, Ethiopia, the Gambia, Qatar, Saudi Arabia and the United Republic of Tanzania amend their legislation to ensure that all children under 18 years are not sentenced to death.

30. Additional information about the imposition of the death penalty against people younger than 18 years was provided by Amnesty International, which drew attention to its report "Children and the death penalty".²⁰ Amnesty International reported that three executions of juvenile offenders took place in 2001 in three different countries.

VI. SUMMARY OF THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 1 DECEMBER 2002

31. The latest quinquennial report and its revised version include a number of tables showing the status of the death penalty worldwide. Annex I to the present report reproduces some of these tables and updates them to include developments until 1 December 2002. Based on the information provided in annex I, the following is a summary of the status of the death penalty worldwide as of 1 December 2002:

Summary of the status of the death penalty worldwide as of 1 December 2002	
Number of retentionist countries	71
Number of completely abolitionists countries	77
Number of countries abolitionist for ordinary crimes only	15
Number of countries that can be considered de facto abolitionist	33

VII. CONCLUSIONS

32. **The trend towards abolition continues, with an increase in the figure of completely abolitionist countries from 76 to 77. The number of countries that are abolitionist for ordinary crimes has increased from 11 to 15. The overall number of retentionist countries remains at 71. There is also an increase in the number of countries which have ratified international instruments providing for the abolition of the death penalty.**

Notes

- ¹ See Economic and Social Council resolution 1984/50 of 25 May 1984.
- ² See E/CN.15/2001/10.
- ³ The Safeguards guaranteeing protection of the rights of those facing the death penalty are contained in Economic and Social Council resolution 1984/50 of 25 May 1984. Economic and Social Council resolution 1989/64 of 24 May 1989 recommended steps for their implementation.
- ⁴ Amnesty International, "Death Sentences and Executions in 2001"(ACT 51/001/2002) p.1.
- ⁵ Communication No. 869/1999, Mr. Alexander Padilla and Mr. Ricardo III Sunga (legal counsel) on behalf of Mr. Dante Piandiong, Mr. Jesus Morillos and Mr. Archie Bulan (deceased) v. The Philippines.
- ⁶ Communication No. 839/1998, Anthony B. Mansaraj et al.; Communication No. 840/1998, Mr. Gborie Tamba et al.; Communication No. 841/1998, Mr. Abdul Karim Sesay et al. v. Sierra Leone.
- ⁷ Communication No. 580/1994, Glenn Ashby v. Trinidad and Tobago.
- ⁸ Communication No. 806/1998, Eversley Thompson v. Saint Vincent and the Grenadines.
- ⁹ See also the judgement of the Court of Appeal of Belize in the case of Patrick Reyes v. The Queen (Privy Council Appeal No. 64 of 2001), delivered on 11 March 2002
- ¹⁰ Communication No. 845/1999, Rawle Kennedy v. Trinidad and Tobago.
- ¹¹ See also Communication No. 806/1998, Eversley Thompson v. Saint Vincent and the Grenadines, views adopted on 18 October 2000.
- ¹² Communication No. 648/1996, R.S. v. Trinidad and Tobago.
- ¹³ See Doc. 9115. Report of the Committee on Legal Affairs and Human Rights. See also related Order No. 574 (2001) and Recommendation 1522 (2001).
- ¹⁴ See Monitor/Inf (2002) 1 rev of 23 April 2002, appendix XI.
- ¹⁵ E/CN.4/2002/74, para. 149.
- ¹⁶ See the interim report to the General Assembly of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions A/57/138, sect. IV.G. See also the reports of the Special Rapporteur to the Commission on Human Rights E/CN.4/2002/74, sect. V.F. and E/CN.4/2001/9, sect. V.F.

¹⁷ Commission resolution 2002/77, para. 2

¹⁸ See Commission resolutions 2002/36 (Extrajudicial, summary or arbitrary executions), para. 7; 2002/47 (Human rights in the administration of justice, in particular juvenile justice), para. 19 and 2002/92 (Rights of the child), para. 3.

¹⁹ As of 1 December 2002, 191 States were parties to the Convention on the Rights of the Child. Article 37, paragraph (a), of the Convention stipulates that capital punishment shall not be imposed for offences committed by persons below 18 years of age.

²⁰ ACT 50/007/2002.

ANNEXES

Annex I

TABLES INDICATING THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 1 DECEMBER 2002

Table 1. List of retentionist countries and areas^a

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

^a The 71 countries and areas listed 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.

Table 2. List of countries that are completely abolitionist^a

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
Andorra	1990		1943
Angola	1992		..
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Bolivia	1995/1997 ^b		1974
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	1990		1987
Cyprus	2002		..
Czech Republic	1990		
Denmark	1978	1933	1950
Djibouti	1995		1977 ^c
Dominican Republic	1966		..
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1949 ^d		^e
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 ^c
Liechtenstein	1987		1785
Lithuania	1998		1995

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
Luxembourg	1979		1949
Malta	2000	1971	1943
Marshall Islands	1986		1986 ^c
Mauritius	1995		1987
Micronesia (Federated States of)	1986		1986 ^c
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 ^c
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 ^c
Seychelles	1993		1976 ^c
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 ^f
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944
Timor-Leste ^g	1999 ^h		1999 ⁱ
The former Yugoslav Republic of Macedonia	1991		..
Turkmenistan	1999		1997
Tuvalu	1976		1976 ^c
Ukraine	1999		1997

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
United Kingdom of Great Britain and Northern Ireland	1998	1965	1964
(Northern Ireland	1998	1973	..)
Uruguay	1907		..
Vanuatu	1980		1980 ^j
Venezuela	1863		..
Yugoslavia	2002		

^a Total: 77.

^b The Constitution of Bolivia, amended in 1995, prohibits the imposition of the death penalty. However, the Penal Code of 1973 provides for capital punishment. To bring the law in line with the Constitution, the Congress, by law 1768 of 1997, formally abolished the death penalty for all ordinary offences and crimes against the security of the State.

^c Date of independence. No executions have taken place since that time. The date of the last execution prior to independence is not available.

^d Capital punishment was abolished for all crimes in 1949 in the Federal Republic of Germany and in 1987 in the former German Democratic Republic.

^e The date of the last execution in the former German Democratic Republic is not known.

^f Before that year.

^g On 20 May 2002, East Timor became independent and is now known as the Democratic Republic of Timor-Leste.

^h Following the popular consultation held on 30 August 1999, in which East Timor voted for independence from Indonesia, the United Nations Transitional Administration in East Timor decided to abolish the death penalty.

ⁱ No executions have taken place since the popular consultation. The date of the last execution prior to the popular consultation is not available.

^j Date of independence.

Table 3 List of countries that are abolitionist for ordinary crimes only^a

Country	Date of abolition for ordinary crimes	Date of last execution
Albania	2000	1995
Argentina	1984	1916
Bosnia and Herzegovina	1997	..
Brazil	1979(1882) ^b	1855
Chile	2001	1985
Cook Islands		
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1999	1964
Greece	1993	1972
Israel	1954	1962
Latvia	1999	1996
Mexico	..	1930
Peru	1979	1979
Turkey	2002	1984

^a Total: 15 countries.

^b The death penalty was abolished in Brazil in 1882, but reintroduced in 1969 for political crimes only until 1979, when the death penalty was again abolished.

Table 4. List of countries or territories that can be considered de facto abolitionist^a

Country or territory	Date of last execution
Antigua and Barbuda	1989
Armenia	1991
Barbados	1984
Belize	1986
Benin	1989
Bhutan	1964
Brunei Darussalam	1957
Burkina Faso	1989
Central African Republic	..
Congo	1982
Dominica	1986
Eritrea ^b	1989
Gabon	1989
Gambia	1981
Grenada	1978
Guinea	1984
Jamaica	1988
Lao People's Democratic Republic	1989
Madagascar	1958
Maldives	1952
Mali	1980
Mauritania	1989
Myanmar	1989
Nauru	1968 ^c
Niger	1976
Papua New Guinea	1950
Samoa	1962 ^c
Senegal	1967
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982

^a Total: 33. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more. In some of these countries death sentences continue to be imposed, and not all of the countries listed have a policy of regularly commuting death sentences.

^b Eritrea became independent in 1993.

^c Date of independence. No executions have taken place since that time. The date of the last execution prior to independence is not available.

Annex II

SUMMARY^a OF COMMENTS RECEIVED FROM MEMBER STATES

Antigua and Barbuda

1. The Government of Antigua and Barbuda stated that it observes the Safeguards set out in Economic and Social Council resolution 1984/50. Capital punishment is only imposed for the most serious crimes and by virtue of the Offences Against the Person Act. Persons who are under 18 years at the time of the offence, pregnant women and insane persons are not sentenced to death. The death sentence is passed only after guilt has been established on the clearest of evidence. Once the sentence is passed upon the individual, defence counsel automatically files an appeal. The State carries out the judicial execution once all remedies have been exhausted and dismissed. The country has no record of carrying out the death sentence on anyone pending an appeal. Pardon can be granted under the Constitution and ordinary law.

2. The Government further stated that the law with respect to the death penalty has been radically revised since 2001. Mandatory imposition of the death penalty is no longer possible. Defence counsel may make a plea for mitigation, showing why the death sentence should not be carried out. In January 2000, warrants were read to five inmates on death row. Their defence counsel filed a stay of execution and as of October 2002, one inmate has had his sentence commuted.

Belarus

3. The Government of Belarus stated that the Constitution guarantees the right to life and establishes the obligation of the State to protect human life from any unlawful attacks. Until the death penalty is abolished, it may be applied in accordance with the law as an exceptional punishment for especially serious crimes, and only in pursuance of a court decision. The adoption of the 1999 Criminal Code marked a major step in making the State's policy on criminal matters more humane. The death penalty may be imposed only when it is dictated by special aggravating circumstances, as well as an exceptional danger posed by the offender, but it is not mandatory in case of any crime. The 1999 Criminal Code contains fewer offences punishable by death (in 14 articles) than the previous Code of 1960 (in 29 articles). According to the 1999 Code, the death penalty may not be imposed on persons for an offence committed when they were aged under 18, on women, or on men who have reached the age of 65 at the time of the court ruling. The Code also establishes that criminal proceedings may not be brought against persons who committed the crime in a state of diminished responsibility as a result of a chronic psychiatric illness, temporary mental disturbance, imbecility or similar unhealthy mental state. The death penalty may be replaced by life imprisonment under the pardons procedure.

^a The full text of the replies is available for consultation in the Secretariat files.

4. The Government further stated that, in May 2002, parliamentary hearings were held in Belarus on the political and legal problems associated with the abolition of the death penalty, culminating in the adoption of related recommendations. A series of legislative and organizational safeguards have been developed to ascertain whether the death sentence has been correctly imposed. In the past 10 years, the death penalty has been imposed on an average of 27 individuals each year. Over the past three years, the number of people facing the death sentence has fallen (13 in 1999, 4 in 2000 and 7 in 2001). Death sentences were carried out on 10 people in 2000, on 7 in 2001 and on 3 as of 1 June 2002.

Chile

5. The Government of Chile stated that the right to life is enshrined in the Constitution and that the death penalty was abolished on 5 June 2001. According to the Government, this is fully in line with Chile's international obligations, in particular ICCPR, promulgated by Supreme Decree No. 778 of 1976, and its Second Optional Protocol, signed on 15 November 2001, as well as the Optional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, signed on 10 September 2001.

6. The Government informed that Act No. 19.734 of 5 June 2001 established in Chile a sentence of life imprisonment for crimes previously punishable by the death penalty and introduced a conditional release regime. The Act provides for the application of the death penalty in time of war (retained for offences for which such punishment is laid down in the Code of Military Justice, in full accordance with the reservations entered in respect of the above-mentioned Protocols).

Costa Rica

7. The Government of Costa Rica stated that capital punishment had been abolished in 1878. The provision establishing the sanctity of human life was granted constitutional status on 26 April 1882. Today, this principle is enshrined in the Constitution of the Republic of Costa Rica, promulgated on 7 November 1949, which provides that "Human life is inviolable". Additionally, other legal standards establish provisions to that end, such as the Law on Extradition, which provides that extradition will not be granted "when the offences for which extradition is sought would be punished by execution ...".

Cuba

8. The Government of Cuba stated that the death penalty continues to be part of Cuban legislation. While its Constitution contains no provisions concerning capital punishment, the Cuban Penal Code prescribes it, along with other penalties, for a given set of offences considered to be of an extremely serious nature. The death penalty is of an exceptional nature. All the offences punishable by the death penalty may also be punished less severely. In 1999, the National Assembly of People's Power adopted Act No. 87 amending the Penal Code, in which life imprisonment was prescribed for certain offences, principally as an alternative to capital punishment.

9. The Government informed that it complies with, and in some cases goes beyond, the Safeguards contained in Economic and Social Council resolution 1984/50. Inter alia, the following features were noted: (a) a person committing a criminal act in a state of unsound mind, temporary mental disorder or retarded mental development is exempt from criminal responsibility if, for any of these reasons, he or she does not possess the capacity to understand the significance of his or her action or to control his or her behaviour; (b) capital punishment is only applied as a measure of last resort, in the most serious cases of offences for which it is prescribed by law; (c) the death sentence may not be imposed on persons under 20 years of age, or on women who were pregnant when they committed the offence or when the sentence was passed. No woman has been sentenced to death in Cuba since 1 January 1959; (d) the courts have ample scope to exercise their discretion, as all offences punishable by the death penalty may also be punished by a term of imprisonment; (e) before the sentence is pronounced, every criminal act must be comprehensively proved by detailed and reliable evidence, independently of the testimony of the accused or relatives within the fourth degree of consanguinity. In cases involving the death penalty, proof of guilt must be absolute; (f) proceedings are conducted in two stages - the pre-trial investigation and the trial. Trials are oral, public and held before a court of five judges. If the accused has not appointed a defence lawyer, a legal aid lawyer is officially assigned; (g) a death sentence pronounced in the first instance may be appealed by the accused to a higher instance; if the accused does not appeal, an appeal is considered to be lodged automatically; (h) once an appeal has been admitted, the Supreme People's Court, the highest judicial instance, holds a fresh trial; (i) all the fair trial guarantees are strictly observed; (j) if the Supreme Court confirms the death penalty, the case is referred to the Council of State for a decision on whether to exercise the right of pardon and commute the death sentence to imprisonment. Until the Council of State has pronounced its decision, the death penalty may not be carried out; (k) in every trial for offences punishable by the death penalty, a thorough compulsory psychiatric examination to determine whether the accused is fit to stand trial is conducted by a team of specialists.

10. The Government emphasized that the death penalty is a legal weapon by which the "Cuban Revolution" can defend itself. It pointed out that there is clear public support for the death penalty to remain part of the legislation. The Government further noted that the situation facing the country as a result of over 40 years of hostility by the United States, has forced it to retain the death penalty in its Penal Code. Nevertheless, Cuba did not exclude the possibility of abolishing the death penalty and was always ready to assess that possibility. It informed that abolition would take place once all the conditions are right and the Cuban people agree.

Ecuador

11. The Government of Ecuador stated that its legislation does not provide for the imposition of the death penalty under any circumstances. Ecuador advocates the abolition of capital punishment throughout the world, in accordance with the provisions of its national legislation and with the instruments of international human rights law, to which it is a State party. Ecuador was one of the sponsors of Commission on Human Rights resolution 2002/77.

Ethiopia

12. The Government of Ethiopia stated that, under its 1957 Penal Code, capital punishment may be imposed only for some of the most serious crimes prescribed by law and in the absence of extenuating circumstances. Anyone sentenced to death has the right to appeal and capital punishment may only be carried out pursuant to a final judgement rendered by the appropriate court of law upon approval by the head of State. A young offender who has not attained the age of majority at the time of the commission of the crime may not be sentenced to death and capital punishment may not be carried out on a pregnant woman. An insane person may not be held criminally responsible. Any offender sentenced to death has the right to seek pardon or commutation of sentence. The Government noted that the death penalty under Ethiopian Criminal Law meets the requirements of Economic and Social Council resolution 1984/50 and the pertinent provisions of ICCPR. In order to promote awareness about the different legal issues, including the death penalty, regular education programmes are transmitted to the public through various types of mass media, and court decisions on criminal cases are made public.

Federal Republic of Yugoslavia (FRY)

13. The Government of FRY stated that by ratifying the Second Optional Protocol to ICCPR in 2001, FRY assumed the obligation to abolish the death penalty in its internal legislation. At the federal level, in accordance with the 1992 FRY Constitution, the death penalty was substituted by a prison sentence in the 1993 Criminal Law of FRY. In 2002, the Law on Amendments to the Criminal Law of Serbia and the Law on Amendments to the Criminal Law of Montenegro abolished the death penalty in both Republics and replaced it with a prison sentence of 40 years, by which the obligation of FRY with regard to the Second Optional Protocol to ICCPR was fulfilled. The death penalty still exists in the Constitutions of both Serbia and Montenegro. However, redefinition of the relations in the common State will be followed by the amendment of these instruments and the death penalty will then be formally abolished in the legal system of Serbia and Montenegro. The Government also stated that no death penalty has been carried out since 1 January 2000 in FRY. No person from FRY was either deported or extradited to a country where the person could risk facing the death penalty. The law excludes the possibility of extraditing a foreigner to a country in which a death penalty has been passed against him or her.

Jordan

14. The Government of Jordan informed that the death penalty may be applied only in very limited circumstances and is imposed only for serious offences. The enforcement of the death penalty is confined to the extinction of a life, without torture or exemplary punishment. The Jordanian Criminal Law ensures that persons facing the death penalty are afforded safeguards guaranteeing their protection. A death sentence (a) is imposed only after meticulous scrutiny by the courts and does not become final until upheld by the Court of Appeal, the highest judicial body; (b) may not be imposed on pregnant women or minors nor can it be carried out until the President of the Department of Public Prosecutions has referred it to the Minister of Justice with

an attached report indicating the grounds for its enforcement or replacement by an alternative penalty; (c) must be reviewed by the Council of Ministers, which will deliver an opinion on whether it ought to be carried out or replaced by a different penalty. Additionally, the approval of his Majesty the King is required for the sentence. A death sentence may not be carried out in public or during national holidays.

Lebanon

15. The Government of Lebanon informed that the most recent death sentence had been carried out in 1998 against two persons. Although 20 persons have been condemned to death since then, no sentence has been carried out.

16. According to Lebanese legislation, the death penalty may be imposed for certain serious crimes only, following a meticulous trial in which the right to a defence is guaranteed through representation by legal counsel. Under the 2001 Code of Criminal Procedure, all capital sentences handed down by criminal courts can be appealed without any other legal grounds being required. A person condemned to death is thus guaranteed a second public trial by the court of appeal. An amnesty board can consider the case. The signature of the President of the Republic under a decree providing for the enforcement of the death sentence is required to carry out the execution. The death penalty is not imposed on persons under the age of 18 years.

17. The Government provided additional information about relevant changes in its Penal Code.

Mexico

18. The Government of Mexico considered that the death penalty is a violation of one of the most basic human rights, namely the right to life. It further noted that Mexico supported and sponsored initiatives for the abolition of the death penalty and has urged countries still applying that penalty to respect the provisions of article 36 of the Vienna Convention on Consular Relations relating to the obligation to provide detainees with information on consular assistance, since it is deeply concerned about the situation of 53 Mexicans sentenced to death in the United States. It was further noted that Mexico regards itself as an abolitionist country because the death penalty has not been applied since 1930, even though it is provided for in the legislation in force. It pointed out that the Congress of the Union is now considering the possibility of removing the death penalty from national legislation. The Government thus considered that paragraphs 5 and 8 of Commission on Human Rights resolution 2002/77 do not apply to Mexico.

Morocco

19. The Government of Morocco stated that its Criminal Law establishes the death penalty for serious crimes. The Moroccan Criminal Law embodies most of the legal principles and rules referred to in United Nations rules establishing guarantees for a fair criminal trial. The law stipulates that an offender must be sound in mind, capable of discretion and able to exercise free

will in order to be punished. The accused person must be released if the examining magistrate fails to issue an order, within a period of one year, referring the case to the criminal court. A verdict shall be declared null and void, if the court was not constituted in accordance with the law and if the hearings were not held in public. If it is proved during the hearings that the accused was not in possession of his/her mental faculties at the time of the commission of the offence or at the time of trial, the court must apply to that person the special provisions laid down in the Penal Code. The condemned person is advised that he or she has eight days to appeal the sentence, beginning on the date on which the sentence is handed down. The death sentence is only enforced after an appeal for a pardon has been turned down. The condemned person enjoys all rights in prison. Moroccan law provides for legal mitigating factors which, if one or more are proved to the court, can enable the court to impose a lighter sentence for crimes punishable by death or life imprisonment. Moreover, the court can exonerate a person, if it has evidence to justify the non-imposition of the penalty prescribed by law or may commute the death penalty to life imprisonment or a term of 20 to 30 years' imprisonment, if the accused person benefits from mitigating circumstances. Moreover, the penalty for a crime committed by a juvenile that would require a death sentence or life imprisonment if committed by an adult, is a prison term of 10 to 20 years.

Panama

20. The Government of Panama stated that article 30 of the Constitution of the Republic of Panama provides that there shall be no death penalty, nor expatriation or confiscation of property.

Thailand

21. The Government of Thailand stated that it fully respects its commitments under ICCPR and considers the application of the death penalty in light of the Covenant's provisions under article 6. Thailand has always taken into account the different perspectives on the death penalty. However, the abolition of the death penalty is not yet an accepted international norm. The use of the death penalty in Thailand is a continuing reflection of the country's general public opinion that the punishment is a necessary crime deterrent and a measure to ensure protection of the rights of victims and their families. The Government recognized the importance of making available public information regarding the imposition of the death penalty: the Department of Corrections has consistently informed the public of the situation of the death penalty in order to help it understand its legal aspect.

22. The Government stated that it pursues measures to guarantee that the legal process leading to the use of death penalty involves careful consideration. Following trials before lower instances, a person sentenced to death can present his case to the Supreme Court and petition for Royal pardon. The Government pointed out that the use of death penalty should be handled under humanitarian considerations. Mentally ill persons, pregnant women, and persons under the age of 18 years are not subject to the death penalty. The death penalty is prohibited for a pregnant woman until her child is delivered. For pregnant women who face capital punishment,

reduction of their sentence to life imprisonment shall be considered. As of October 2002, the Parliament was in the process of considering changes to Section 19 of Thailand's Penal Code in order to replace execution by firing squad with the use of lethal injection. Also, the change will formalize the existing practice of not subjecting persons under 18 years of age to the death penalty.

Turkey

23. The Government of Turkey stated that the death penalty had been abolished, except in time of war and imminent threat of war, by virtue of Law No. 4771, adopted on 3 August 2002.
