



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2004/86  
23 January 2004

Original: ENGLISH

---

COMMISSION ON HUMAN RIGHTS  
Sixtieth session  
Item 17 (a) of the provisional agenda

**STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS**

**Question of the death penalty\***

**Report of the Secretary-General submitted pursuant  
to Commission resolution 2003/67**

---

\* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

### **Summary**

In its resolution 2003/67, the Commission on Human Rights requested the Secretary-General to submit to the Commission, at its sixtieth 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 (Economic and Social Council resolution 1984/50). The present report contains information covering the period from January 2003 through December 2003. The report indicates that the trend towards abolition of the death penalty continues, illustrated, *inter alia*, by the increase in the number of ratifications of international instruments that provide for the abolition of this punishment.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	4
I. CHANGES IN LAW AND PRACTICE .....	5 - 14	5
A. Countries which have abolished the death penalty for all crimes .....	6	5
B. Countries which have abolished the death penalty for ordinary crimes .....	7	5
C. Countries restricting the scope of the death penalty or limiting its use .....	8	5
D. Countries having ratified international instruments that provide for the abolition of the death penalty .....	9 - 11	5
E. Countries establishing a moratorium on executions .....	12 - 13	6
F. Countries reintroducing the use of the death penalty, extending its scope or resuming executions .....	14	6
II. ENFORCEMENT OF THE DEATH PENALTY .....	15	6
III. INTERNATIONAL DEVELOPMENTS .....	16 - 27	6
IV. 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 .....	28 - 35	9
V. SUMMARY OF THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 31 DECEMBER 2003 .....	36	10
VI. CONCLUSIONS .....	37	11
<u>Annexes</u>		
I. Tables indicating the status of the death penalty worldwide as of 31 December 2003 .....		13
II. Summary of comments received from Member States .....		20

## Introduction

1. In paragraph 8 of its resolution 2003/67, the Commission on Human Rights requested the Secretary-General to continue to submit to the Commission, at its sixtieth 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,<sup>1</sup> 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 quinquennial 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 subsequent supplemental report submitted to the Commission on Human Rights at its fifty-ninth session (E/CN.4/2003/106) covered 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 quinquennial report. The present supplemental report contains information covering the period from January 2003 through December 2003.

2. The quinquennial reports are prepared by the Office on Drugs and Crime 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 2003/67, 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: Costa Rica, Colombia, Czech Republic, Haiti, Italy, Luxembourg, Mauritius, Mexico, Morocco, Paraguay, Romania, 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: African Commission on Human and Peoples' Rights, Amnesty International, Council of Europe, European Court of Human Rights, Human Rights in China, Organization for Security and Cooperation in Europe (OSCE), Together Against the Death Penalty, 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.

## **I. 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 have been reported since 1 January 2003.

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

6. During the reporting period, no country abolished the death penalty for all crimes.

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

7. Armenia ratified Protocol No. 6 to the European Convention on Human Rights (ECHR) concerning the abolition of the death penalty in peacetime on 29 September 2003.

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

8. While Tajikistan continues to impose and execute the death penalty, in July 2003, the death penalty was removed from the Criminal Code for 10 crimes. The death penalty was retained in the Criminal Code for the following five crimes: murder with aggravating circumstances, rape with aggravating circumstances, terrorism, biocide and genocide.

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

9. There are one international and three 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 ECHR; Protocol No. 13 to 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 Second Optional Protocol to ICCPR and the Protocol to

ACHR 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. Protocol No. 13 concerns the abolition of the death penalty in all circumstances, including for acts committed in time of war and of imminent threat of war.

10. During the reporting period, three States acceded to the Second Optional Protocol to ICCPR, namely Djibouti on 5 February 2003, Paraguay on 18 August 2003 and Timor-Leste on 18 September 2003. On 29 September 2003, Armenia ratified Protocol No. 6 to ECHR. On 12 November 2003, Turkey ratified Protocol No. 6. On 3 April 2003, Serbia and Montenegro signed the Protocol No.6.

11. On 1 July 2003, Protocol No. 13 to ECHR concerning the abolition of the death penalty in all circumstances, entered into force when 10 ratifications were reached. As of 31 December 2003, the following 20 Member States had ratified Protocol No. 13: Andorra, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Hungary, Ireland, Liechtenstein, Malta, Portugal, Romania, San Marino, Slovenia, Sweden, Switzerland, Ukraine, and United Kingdom of Great Britain and Northern Ireland.

#### **E. Countries establishing a moratorium on executions**

12. In Kyrgyzstan, the Presidential Decree of 1 January 2003 extended an official moratorium until the end of 2003. In the Russian Federation, a de facto moratorium in place since August 1996 continued to be observed.

13. The Government of Kenya released 28 prisoners sentenced to death and commuted the death sentence of 195 others in February 2003. The outgoing Governor of Illinois (United States of America), commuted death sentences of 167 prisoners and pardoned 4 others on 13 January 2003.

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

14. After more than a decade, several executions were carried out in Chad in November 2003.

### **II. ENFORCEMENT OF THE DEATH PENALTY**

15. The only figures available suggest that at least 3,248 persons were sentenced to death in 67 countries and at least 1,526 prisoners were executed in 31 countries during 2002.<sup>2</sup>

### **III. INTERNATIONAL DEVELOPMENTS**

16. The issue remains a regular item on the agenda of the Commission on Human Rights. In its resolution 2003/67, the Commission called upon all States that still maintained the death penalty to progressively restrict the number of offences for which it could be imposed and, at least, not to extend its application to crimes to which it did not at present apply; to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions; and to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution. The resolution also urged States "to exclude mothers with

dependent infants from capital punishment” and “not to carry out capital punishment 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, be stopped immediately” (paras. 4 (h) and (i)).

17. The Sub-Commission on the Promotion and Protection of Human Rights (hereinafter “Sub-Commission”) and its sessional working group on the administration of justice have considered the issues relating to deprivation of the right to life, with special reference to the imposition of the death penalty (see E/CN.4/Sub.2/2003/6). In its resolution 2003/11, the Sub-Commission urged all States “not to transfer persons to the jurisdiction of States which still use the death penalty unless there is a guarantee that the death penalty will be neither sought nor applied in the particular case” (para. 3 (a)).

18. The Human Rights Committee continued the examination of cases involving capital punishment under ICCPR. In its Views adopted on 5 August 2003,<sup>3</sup> the Committee took the unprecedented step of revising its previous jurisprudence<sup>4</sup> with respect to its interpretation of article 6 of the Covenant as it related to a State party which had itself abolished the death penalty but sought to remove an individual to a country where the imposition of the death penalty could reasonably be anticipated. In the present case, the Committee decided to review its application of article 6, in light of the fundamental nature of the right involved, the notable factual and legal developments and changes in international opinion in respect of the issue raised, and the amendment to the State party’s own domestic law to secure the protection of those extradited from Canada. The Committee concluded that for countries that had abolished the death penalty, there was an obligation not to expose a person to the real risk of its application. Thus, the Committee found that Canada had violated the author’s right to life under article 6, paragraph 1 of ICCPR by deporting him to the United States where he was under sentence of death, without first seeking assurances that the death penalty would not be carried out. In addition, the Committee found a separate violation of article 6, together with article 2, paragraph 3, of ICCPR, for having deported the author without giving him the opportunity to appeal his case to the Court of Appeal.

19. In its Views adopted on 28 October 2002,<sup>5</sup> the Committee found violations of article 9, paragraph 3, and article 14, paragraph 3 (c), (d) and (e), of ICCPR, by reason of pre-trial detention and failure to implement procedural guarantees during the trial. The Committee followed its established jurisprudence in also finding a violation of the right to life, under article 6 of ICCPR, by reason of the imposition of the death penalty in circumstances in which the individual’s right to a fair trial was not guaranteed. In its Views adopted on 28 March 2003,<sup>6</sup> the Committee referred to its established case law on the mandatory imposition of the death penalty, in observing that the authors were automatically sentenced to death by virtue of the fact that they had committed two crimes (including murder) by a single act. As no assessment of the particular circumstances of the case or of the authors had been made, the imposition of the death penalty was therefore considered arbitrary and contrary to article 9, paragraph 1, of ICCPR. The Committee also considered, in its Views adopted on 3 April 2003,<sup>7</sup> that in a situation where the death penalty was carried out in secrecy, it had the effect of intimidating or punishing the authors’ families by intentionally leaving them in a state of uncertainty and mental distress. The Committee concluded that the authorities’ initial failure to notify the authors of the scheduled dates of the executions, and their subsequent persistent failure to notify the authors of the location of their sons’ graves, amounted to inhuman treatment of the authors, in violation of article 7 of ICCPR.

20. On 24 July 2003, the Committee issued a press release deploring the execution of six individuals in Uzbekistan whose cases were pending before the Committee, despite the fact that requests for interim measures of protection had been issued.<sup>8</sup> It reminded the State party that it amounted to a grave breach of the Optional Protocol to execute an individual whose case was pending before the Committee, in particular where a request for interim protection under rule 86 of the Committee's rules of procedure had been issued. Furthermore, the Committee reiterated its request for interim protection under rule 86 in all other cases pending before the Committee in respect of Uzbekistan.

21. The Committee of Ministers of the Council of Europe continued its monitoring of capital punishment to ensure compliance with the commitments accepted by all member States of the Council. The subject is considered at meetings of the Ministers' Deputies at six-month intervals that will take place until Europe has become a de jure death penalty-free zone. In May 2003, the Committee of Ministers reiterated its call for the relevant member States to accelerate the process towards abolition of the death penalty by speedy ratification of Protocol No. 6 to ECHR, whilst respecting strictly the moratoria on executions in the meantime.

22. In 2001, the Parliamentary Assembly of the Council of Europe adopted resolution 1253 (2001)<sup>9</sup> requiring Japan and the United States, 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 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. During 2002 and 2003, the Committee on Legal Affairs and Human rights organized seminars on the issue in Tokyo, Springfield (Illinois, United States) and Washington, D.C. Subsequently, in its resolution 1349 (2003),<sup>10</sup> the Assembly decided to "intensify its dialogue with parliamentarians from Japan with a view to encouraging rapid progress on the institution of a moratorium on executions and the abolition of the death penalty, and to continue its efforts to enter into a dialogue with parliamentarians from the United States (both state and federal) with a view to supporting them in their endeavours to institute moratoria on executions and abolish the death penalty". The Assembly resolved to debate the abolition of the death penalty in Council member and observer States in the future.

23. OSCE continued to publish its report on the death penalty in the OSCE area, which served as a background document for the OSCE Human Dimension Implementation Meetings, which took place in Warsaw in October 2003.

24. The African Commission on Human and Peoples' Rights recalled its resolution urging States to envisage a moratorium on the death penalty, which was adopted in November 1999 in Kigali.

25. Additional information about the death penalty in the States members of the Economic Community, of West African States (ECOWAS) was provided in a report by Amnesty International, "West Africa: Time to abolish the death penalty".<sup>11</sup>

26. On 10 October 2003, the World Coalition against the Death Penalty organized the first World Day against the Death Penalty. The Coalition also supports the event "Cities For Life - Cities Against the Death Penalty", organized annually by the Community of Sant'Egidio and Together Against the Death Penalty to celebrate the first abolition of the death penalty by the Duchy of Tuscany, on 30 November 1786.

27. Amnesty International contributed a statement on "The role of United Nations standards and norms in the fight for human rights" to the expert group meeting on the application of the United Nations standards and norms in crime prevention and criminal justice, organized by the Office on Drugs and Crime in February 2003. The report was published in 2003 by the Office on Drugs and Crime and was made available electronically via the Internet.<sup>12</sup>

#### **IV. 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**

28. 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; (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.

29. No information on the implementation of the Safeguards was provided by the Member States that still maintain the death penalty. Morocco, which is considered a de facto abolitionist country, commented on the Safeguards (see annex II below, containing the summary of comments received from Member States).

30. As in previous years, the Special Rapporteur on extrajudicial, summary or arbitrary executions continued to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment. During the period under review, the Special Rapporteur took action in cases of capital punishment in which there was reason to believe that these international restrictions were not respected and where the carrying out of a death sentence may have constituted a violation of the right to life.

31. The Special Rapporteur has acted, *inter alia*, in cases in which defendants were reportedly sentenced to death following the application of laws or trial proceedings, including the pre-trial stage, falling short of international standards. She also has taken up cases in which persons suffering from mental handicap or illness or with extremely limited mental competence faced the death penalty, and when capital punishment was imposed for crimes that did not fall within the category of “the most serious crimes”. Of particular concern to the Special Rapporteur is the prohibition of capital punishment for juvenile offenders. In this connection, she received several allegations which she brought to the attention of the United States of America in various urgent appeals.<sup>13</sup>

32. The Special Rapporteur further observed that in countries where the safeguards and restrictions placed on the application of the death penalty are not effectively observed, it is desirable to abolish, or at least put in place a moratorium on this irreversible punishment. Finally, of particular concern to the Special Rapporteur were cases where death penalty was imposed by special courts and under special legislation which fail to provide due process of law.

33. In 2003, the Commission in its resolution 2003/67 specifically urged all States that still maintain the death penalty “not to impose it for crimes committed by persons below 18 years of age ...” (para. 4 (a)). In the same resolution the Commission also reaffirmed Sub-Commission resolution 2000/17<sup>14</sup> on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence (para. 2). In two additional resolutions adopted in 2003,<sup>15</sup> the Commission called upon all States in which the death penalty had not been abolished to comply with their obligations as assumed under relevant provisions of international human rights instruments, including in articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of ICCPR, keeping in mind the Safeguards.

34. In 2003, the Committee on the Rights of the Child<sup>16</sup> addressed the issue of the death penalty in two of its concluding observations. In the cases of both Bangladesh and Pakistan, 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) of the Convention on the Rights of the Child. It recommended that these States parties take immediate steps to ensure that the prohibition of death penalty is guaranteed for all children under 18 years (see CRC/C/15.Add.221 and CRC/C/15.Add.217).

35. 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 under general international law”.<sup>17</sup> Amnesty International reported that three executions of juvenile offenders took place in 2002, all in one country.

## **V. SUMMARY OF THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 31 DECEMBER 2003**

36. 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 31 December 2003. Based on the information provided in annex I, the following is a summary of the status of the death penalty worldwide as of 31 December 2003:

Summary of the status of the death penalty worldwide as of 31 December 2003	
Number of retentionist countries	66
Number of completely abolitionist countries	77
Number of countries abolitionist for ordinary crimes only	15
Number of countries that can be considered de facto abolitionist	37

## VI. CONCLUSIONS

**37. The trend towards abolition continues. The number of countries that can be considered de facto abolitionist has increased from 33 to 37. The overall number of retentionist countries decreased from 71 to 66. There was also a significant increase in the number of countries that have ratified international instruments providing for the abolition of the death penalty.**

### Notes

<sup>1</sup> The Safeguards guaranteeing protection of the rights of those facing the death penalty are contained in Economic and Social Council resolution 1984/50. Council resolution 1989/64 recommended steps for their implementation.

<sup>2</sup> Amnesty International, "Facts and figures on the death penalty" (ACT 50/005/2003), p. 1.

<sup>3</sup> Communication No. 829/1998, *Judge v. Canada*.

<sup>4</sup> Previously, in the case of *Kindler v. Canada*, communication No. 470/1991, Views adopted on 30 July 1993, the Committee considered that as the State party had not itself imposed the death penalty but had extradited the author to the United States to face capital punishment, a State which had not abolished the death penalty, the extradition itself would not amount to a violation by the State party unless there was a real risk that the author's rights under the Covenant would be violated in the United States.

<sup>5</sup> Communication No. 838/1998, *Oral Hendricks v. Guyana*.

<sup>6</sup> Communication No. 1077/2002, *Carpo v. The Philippines*.

<sup>7</sup> Communication No. 886/1999, *Bondarenko v. Belarus*; communication No. 887/1999, *Lyashkevich v. Belarus*.

<sup>8</sup> Communication No. 1170/2000, *Muzaffar Mirzaev*; communication No. 1166/2003, *Shukrat Andasbaev*; communication No. 1165/2003, *Uligbek Eshov*; communication No. 1162/2003, *Ilkhon Badadzhanov and Maksud Ismailov*; and communication No. 1150/2003, *Azamat Uteev*.

<sup>9</sup> See Report of the Committee on Legal Affairs and Human Rights (doc. 9115). See also related order No. 574 (2001) and recommendation 1522 (2001).

<sup>10</sup> See *ibid.* (doc. 9908). See also related recommendation 1627 (2003).

<sup>11</sup> AFR 05/003/2003.

<sup>12</sup> United Nations Office on Drugs and Crime, *The Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice*, report of an expert group meeting held at the Peace Centre, Stadtschlaining, Austria, 10-12 February 2003, Ministry of Justice, Vienna, 2003, pp. 231-232. Available online at [www.unodc.org/pdf/crime/publications/standards%20&%20norms.pdf](http://www.unodc.org/pdf/crime/publications/standards%20&%20norms.pdf).

<sup>13</sup> See report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2003/3/Add.1), paras. 511, 513, 514, 519, 521, 522 and 527.

<sup>14</sup> In paragraphs 1 and 6, the Sub-Commission 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 adopt 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”.

<sup>15</sup> See Commission resolutions 2002/53 (Extrajudicial, summary or arbitrary executions), paragraph 6, and 2003/86 (Rights of the child), paragraph 35 (a).

<sup>16</sup> As of 31 December 2003, 191 States were parties to the Convention on the Rights of the Child. Article 37, subparagraph (a) of the Convention stipulates that capital punishment shall not be imposed for offences committed by persons below 18 years of age.

<sup>17</sup> Act 50/004/2003.

## ANNEXES

## Annex I

TABLES INDICATING THE STATUS OF THE DEATH PENALTY  
WORLDWIDE AS OF 31 DECEMBER 2003

Table 1

List of retentionist countries and areas<sup>a</sup>

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

<sup>a</sup> The 66 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<sup>a</sup>

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 <sup>b</sup>		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 <sup>c</sup>
Dominican Republic	1966		-
Ecuador	1906		-
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1949 <sup>d</sup>		<sup>e</sup>
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 <sup>c</sup>
Liechtenstein	1987		1785
Lithuania	1998		1995
Luxembourg	1979		1949
Malta	2000	1971	1943
Marshall Islands	1986		1986 <sup>c</sup>
Mauritius	1995		1987

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
Micronesia (Federated States of)	1986		1986 <sup>c</sup>
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 <sup>c</sup>
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 <sup>c</sup>
Serbia and Montenegro	2002		
Seychelles	1993		1976 <sup>c</sup>
Slovakia	1990		-
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 <sup>f</sup>
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944
Timor-Leste <sup>g</sup>	1999 <sup>h</sup>		1999 <sup>i</sup>
The former Yugoslav Republic of Macedonia	1991		-
Turkmenistan	1999		1997
Tuvalu	1976		1976 <sup>c</sup>
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965	1964
(Northern Ireland	1998	1973	-)
Uruguay	1907		-
Vanuatu	1980		1980 <sup>j</sup>
Venezuela	1863		-

<sup>a</sup> Total: 77.

<sup>b</sup> 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.

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

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

<sup>e</sup> The date of the last execution in the former German Democratic Republic is not known.

<sup>f</sup> Before that year.

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

<sup>h</sup> 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.

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

<sup>j</sup> Date of independence.

**Table 3**  
**List of countries that are abolitionist for ordinary crimes only<sup>a</sup>**

Country	Date of abolition for ordinary crimes	Date of last execution
Albania	2000	1995
Argentina	1984	1916
Armenia	2003	1991
Bosnia and Herzegovina	1997	-
Brazil	1979 (1882) <sup>b</sup>	1855
Chile	2001	1985
Cook Islands		
El Salvador	1983	1973
Fiji	1999	1964
Greece	1993	1972
Israel	1954	1962
Latvia	1999	1996
Mexico	-	1930
Peru	1979	1979
Turkey	2002	1984

<sup>a</sup> Total: 15 countries.

<sup>b</sup> 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<sup>a</sup>**

Country or territory	Date of last execution
Algeria	1993
Antigua and Barbuda	1989
Barbados	1984
Belize	1986
Benin	1989
Bhutan	1964
Brunei Darussalam	1957
Burkina Faso	1989
Central African Republic	-
Congo	1982
Dominica	1986
Eritrea <sup>b</sup>	1989
Gabon	1989
Gambia	1981
Ghana	1993
Grenada	1978
Jamaica	1988
Kenya	1987
Lao People's Democratic Republic	1989
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1989
Morocco	1993
Myanmar	1989
Nauru	1968 <sup>c</sup>
Niger	1976

**Table 4 (continued)**

Country or territory	Date of last execution
Papua New Guinea	1950
Samoa	1962 <sup>c</sup>
Senegal	1967
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982
Tunisia	1991

<sup>a</sup> Total: 37. 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.

<sup>b</sup> Eritrea became independent in 1993.

<sup>c</sup> 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<sup>a</sup> OF COMMENTS RECEIVED FROM MEMBER STATES**

#### **Costa Rica**

1. The Government of Costa Rica stated that it had abolished the death penalty in 1878. The provision establishing the sanctity of human life was granted constitutional status on 26 April 1882. The Constitution of the Republic of Costa Rica, promulgated on 7 November 1949, enshrines this provision. Additionally, other legislation, such as the Extradition Act, contains similar provisions.

#### **Colombia**

2. The Government of Colombia informed that there is no death penalty in Colombia.

#### **Czech Republic**

3. The Government of the Czech Republic stated that the Charter of Fundamental Rights and Freedoms, which is a part of the country's constitutional order, abolished the death penalty in its article 6 (3). The Czech Republic is a State party to ECHR and ICCPR. In May 2002, the Czech Republic signed Protocol No. 13 to ECHR. Following the approval of the Government, the Parliament was discussing a proposal for accession to the Second Optional Protocol to ICCPR, as well as a proposal for ratification of Protocol No. 13 to ECHR. Both proposals were approved by relevant Committees of the Chamber of Deputies during the first reading. Following the second reading in autumn 2003, proposals would be submitted to the Senate for its approval.

#### **Haiti**

4. The Government of Haiti stated that the death penalty had been abolished by article 20 of the Constitution. Article 21 (1) of the Constitution provided, as a substitute to the death penalty, for a life sentence of forced labour without possibility of commutation. The death penalty was applied for the last time prior to 1987 for homicide and crimes against State security.

#### **Italy**

5. The Government of Italy reported that it was engaged in a campaign aimed at the complete abolition of the death penalty in the world. In 1994, the Italian Parliament adopted Law 589/1994 in order to abolish any reference to the execution of death penalty sentences as originally included in its military penal code. The Government also recalled its signature of Protocol No. 13 to ECHR. The Parliament is in the process of adopting the ratification law for the Protocol.

#### **Luxembourg**

6. The Government of Luxembourg stated that the Law of 20 June 1979 expressly abolished the death penalty in all circumstances. By ratifying Protocol No. 6 to ECHR, Luxembourg undertook to guarantee that the death penalty will not be reintroduced. In practice, Luxembourg

does not extradite persons to States where they could be subject to the death penalty, unless it is provided with sufficient guarantees that the death penalty will not be executed. Those guarantees are stipulated in the extradition treaties recently concluded with other States, as well as in article 12 of the Law on Extradition of 20 June 2001.

### **Mauritius**

7. The Government of Mauritius stated that the Abolition of Death Penalty Act of 1995 was still in force and that no changes had been effected to it. Act 31 of 1995 amended the Criminal Code by replacing the words "death sentence" with the words "penal servitude for life". Additionally, section 16 (i) of the Juvenile Offenders Act stated that sentences of death shall not be pronounced on, or recorded against, a person convicted of an offence where it appears to the court that at the time the offence was committed, the person was under the age of 18. In lieu of the death sentence, the court should sentence the person to be detained at the President's pleasure. If so sentenced, the person shall be liable to be detained in such place and under such conditions as the President may direct.

### **Mexico**

8. The Government of Mexico stated that article 22 of its Constitution contemplated the possibility of imposition of the death penalty. However, the death penalty is not reflected in any criminal legislation. The Code of Military Justice contains a provision for the imposition of the death penalty in certain cases of crimes and offences against military discipline. In practice however, the death penalty has not been applied in the last 30 years. In September 2003, the Government through the Commission on Government Policy on Human Rights Matters, led by the President of the Republic, decided to support initiatives presented in Congress aimed at removing the death penalty from the Constitution.

### **Morocco**

9. The Government of Morocco informed that its legislature has restricted the number of offences for which the death penalty may be imposed. The following offences in the Criminal Code are punishable by the death penalty: (a) attacks upon the life of the King, the Crown Prince or members of the Royal family; (b) capital offences, espionage or incitement to commit either of those two crimes; (c) attacks upon the internal or external integrity of the State; (d) violation of freedoms, and (e) the use of threats or violence against a pilot during a flight. In the Military Justice Act, offences include: (a) desertion, mutiny and insubordination; (b) setting fire to or destroying infrastructure provided for the army, and (c) capitulations or conspiracy. In the Prevention of Crimes Against Public Health Act, the death penalty may be imposed for: (a) trading in the manufacture of products or substances that are unfit for human consumption and pose a threat to public health. The Anti-Terrorism Act restricts the imposition of the death penalty to the ordinary crimes in the Criminal Code that are punishable by life imprisonment, if the act committed is designated as a terrorist crime (sect. 218-7).

10. The Government stated that, with regard to the implementation of the Safeguards, the legislature provided adequate guarantees to persons facing the death penalty, both through due process and through guarantees of the right to a fair trial. Moreover, the Code of Criminal Procedure introduced a new provision, according to which the proceedings may be heard at two

levels of jurisdiction. The legislature does not allow executions of the death penalty to be conducted in public, but rather in the presence of a group of persons, including the defence counsel, a doctor, an imam and two witnesses. The death sentence cannot be carried out against a pregnant woman until 45 days after she has delivered her child. Following the execution, the body must be handed over to the family, at its request, on condition that the funeral is not conducted in public.

### **Paraguay**

11. The Government of Paraguay stated that on 22 July 2003 the Government promulgated Law 2131/03 whereby Paraguay ratifies the Second Optional Protocol to ICCPR.

### **Romania**

12. The Government of Romania reported that the death penalty had been abolished by its Constitution in 1991.

### **Turkey**

13. The Government of Turkey reported that following the abolition of the death penalty except in time of war and imminent threat of war, with the enactment of legislation on 3 August 2002, the Parliament ratified Protocol No. 6 to ECHR on 26 June 2003.

### **Note**

<sup>a</sup> The full text of the replies is available for consultation in the Secretariat files.

-----