

ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS



“a partnership for human rights in our region”

INAUGURAL SESSION OF THE ADVISORY COUNCIL OF JURISTS

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Reference on the Death Penalty

Final Report

December 2000

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Reference on the Death Penalty

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Introduction

On August 8-9 2000 the Advisory Council of Jurists considered two issues referred to it by the Forum. Seven Forum Members have nominated representatives to the Council. As the most recent Member to the Forum, Nepal is yet to nominate its representative to the Council. The Jurists present at the meeting were the Honourable Justice Dame Silvia Cartwright of New Zealand (President), Sir Ronald Wilson of Australia, Professor JE Sahetapy of Indonesia and Mr Sedfrey Ordonez of the Philippines. The Jurists present at the meeting decided to solicit the comments of the absent Members before distributing their final report as they felt that the final report should reflect the views of all Members.

The Council invites the Forum to consider the action it might take in light of the following recommendations.

Preamble

The Council is cognisant of the substantial body of international jurisprudence relating to the death penalty, which recognises its imposition as a limited exception to the right to life. It also notes that human rights are universal, indivisible and aspirational.

Reflecting that the common basis of all human rights is the recognition of the fundamental and inalienable dignity of the human person, the Council considers that in commenting on the death penalty it must pay regard not only to literal denial to the right to life, but to the broader issue of the denial to the right to live in dignity.

The Council also considers that the death penalty cannot be analysed in isolation from the context within which its imposition occurs.

The Council is not persuaded that justifications proffered for the retention of the death penalty do in fact justify its retention for any purpose. The Council considers that the death penalty is ineffective as a deterrent and that the public safety concern stemming from the possibility of recidivism is largely unfounded. Moreover the widely acknowledged possibility of error in the process leading to conviction and its disproportionate application on those from lower socio-economic groups are powerful arguments against the retention of the death penalty.

Furthermore, the Council considers that the administration of a criminal justice system should not lead to the taking of the life of a person and that the exacting of retributive justice is not available as a defence to the imposition of the death penalty.

The Council emphasises the important symbolic role played by law, and the need for governments and the judiciary to promote respect for law, justice and human rights. The Council is particularly concerned that the imposition of the death penalty has the effect of dehumanising the community, and implicitly promotes the notion that the taking of life is morally legitimate.

The Council considers that criminality is influenced by economic, social, political and cultural conditions. In particular the Council considers that racism, poverty, the denial of economic opportunities, and exclusion from social and cultural life contribute to increased criminality, and are inconsistent with the creation and maintenance of a just society. The Council considers that the recognition and protection of fundamental rights will lead to a reduction in crime and only in such an environment will the rule of just law thrive.

If the death penalty is to be imposed, the Council emphasises that this must be in compliance with the rule of law and in association with a genuine commitment to its restriction and ultimate abolition.

In this context, the Council is also concerned about the effect that extra-judicial killings and disappearances have on the legal process and the subsequent loss of confidence in the rule of law and the judicial process.

The Council considers that the rule of law requires not only that the content of the law be just but that it be administered by an independent and impartial judiciary and independent and accountable law enforcement agencies free from corruption. For justice to thrive, the Council considers that it must exist in an environment in which the right of access to justice, the right to competent and effective counsel, the right to be free from cruel, inhuman and degrading punishment, and other rights of accused persons are protected.

The Council urges Member states to concentrate on crime control strategies that promote these fundamental rights rather than focusing on retribution; to work toward the restriction, suspension and ultimate eradication of the death penalty; and to take measures toward the ratification of the International Covenant on Civil and Political Rights and the Second Optional Protocol to that Covenant.

1. International human rights law and standards

(i) the offences for which international human rights law permits the imposition of the death penalty

The range of offences for which the death penalty could be imposed should be limited to the “most serious offences” as referred to in Article 6 of the International Covenant on Civil and Political Rights (ICCPR)¹. The Council considers that the “most serious offences” are those which involve the wanton destruction of human life.

The Council acknowledges that it may take some time for those States which retain the death penalty to limit the range of offences punishable by death to the “most serious crimes” because of concerns about national security. The Council expects that States will aim towards the decrease in the number of offences punishable by death as a means of achieving *de facto* abolition of the death penalty and ultimately *de jure* abolition.

The Council considers that limitation of the offences for which the death penalty is provided and ultimate abolition is possible only when the basic standards in the criminal justice system already referred to have been achieved.

(ii) whether the resumption of executions by governments after long periods during which death sentences have been commuted or not carried out for other reasons is consistent with international human rights law

The Council considers that the resumption of executions in such circumstances is not consistent with the spirit and intent of international human rights law. Resumption of executions is also contrary to trends in international law and practice. The Council considers that in a world of freedom, justice and peace, the reintroduction of the death penalty is indefensible. However, where there is *de facto* abolition the Council acknowledges the reintroduction of the death penalty in exceptional circumstances that threaten the peace and security of a nation or nations may occur.

The Council urges those States that are *de facto* abolitionist to maintain this position at the very least and wherever possible, move towards the *de jure* abolition of the death penalty.

(iii) whether the enactment of laws that introduce or reintroduce the death penalty or that apply the death penalty to additional offences is consistent with international human rights law

The Council considers that the introduction or reintroduction of the death penalty and the expansion of the number of offences subject to the death penalty is contrary to the spirit of the ICCPR.

The Council considers that in those States that have abolished the death penalty, its introduction or reintroduction is proscribed by the terms of Article 1 of the Second Optional Protocol to the ICCPR².

¹ Article 6, 7, 14 and 15 of the ICCPR can be found at Annexure 1.

² See Annexure 2.

(iv) whether international human rights law allows for the imposition of the death penalty for crimes for which the sentence of death did not exist at the time the crime was committed

The Council considers that international human rights law clearly does not allow for the imposition of the death penalty for crimes for which the sentence of death did not exist at the time the crime was committed.

The Council endorses the terms of Article 15 of the ICCPR which states that:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

(v) the nature and scope of procedural guarantees and other safeguards stipulated by international human rights law in the imposition and execution of the death penalty

The Council considers Article 14 of the ICCPR, paragraph 7 of the General Comment 6 on Article 6 of the ICCPR³, and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty⁴ to be the most relevant international standards on procedural guarantees and safeguards in relation to the death penalty. The Council endorses these standards and safeguards.

³ See Annexure 3.

⁴ See Annexure 4.

The Council notes that the process which leads to the death penalty is both vulnerable to error and impacts unevenly on different socio-economic groups. It therefore considers that particular attention should also be paid to the rights to: competent and effective Counsel; freedom from self-incrimination; and access to all information held by prosecuting authorities prior to trial.

(vi) the restrictions that may be required by international human rights law on the manner and method of carrying out the death penalty

The Council considers that the method of carrying out a death penalty should be the most humane method available and one which upholds the dignity of the human being. The Council considers that public executions should be avoided in order to protect the dignity of the person to be executed and that the numbers of witnesses should be limited. In this context the Council notes and endorses article 7 of the ICCPR which provides that

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”

(vii) whether there are further groups of persons, aside from those specified by international human rights law, upon whom it should not be permissible to impose the death penalty

The Council accepts as a minimum the restrictions placed on the categories of persons that can be executed as set out in the ICCPR namely persons who commit an offence while below eighteen years of age⁵; pregnant women⁶; and the mentally disabled⁷.

The Council questions the restriction of mothers to new mothers and believes the scope of the exemption should be determined by what is required in the best interests of the child.⁸

⁵ Article 6(5), ICCPR. See also Safeguard 6 of the Safeguards guaranteeing protection of the right of those facing the death penalty; and Article 37 of the Convention on the Rights of the Child.

⁶ Article 6(5), ICCPR.

⁷ Safeguard 3, Safeguards guaranteeing protection of the right of those facing the death penalty.

⁸ Article 3, Convention on the Rights of the Child.

The Council emphasizes that the persons who commit offences when below the age of 18 are not to be executed under the terms of the ICCPR and Convention on the Rights of the Child (CROC)⁹.

The Council also considers that persons who at the time of the offence or subsequently lack criminal capacity should not be subject to the death penalty.

The Council has difficulty understanding the rationale behind the approach adopted in the *American Convention on Human Rights* in limiting the application of the death penalty to persons below the age of 70 years. In the general interest of restricting the categories of persons subject to the death penalty, however, the Council commends the approach adopted in the *American Convention* as a further means of limiting the scope of the death penalty.

(viii) whether international human rights law imposes any limitations on the duration and conditions of incarceration of persons sentenced to death

The Council endorses the standards adopted in the *Universal Declaration on Human Rights*, Article 7 of the ICCPR, and the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment.

The Council considers that use of solitary confinement following final judgment should be used only in limited instances. The Council also considers that the time between judgment and execution should not be unduly prolonged, yet be sufficient to allow appropriate time required for the adequate exercise of the rights and procedures of appeal and the possible commutation of the sentence.

The Council considers that particularly during any period of detention, inhuman and degrading treatment should be totally eliminated. It also condemns the denial and restriction of education and adequate exercise for persons sentenced to death.

⁹ See Annexure 5.

2. Recommendations to Forum Member States

The Council invites the Forum to act on the following recommendations.

(i) Australia

Australia is commended for its ratification of the ICCPR, Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment (CAT)¹⁰ and CROC and for its accession to the Second Optional Protocol to the ICCPR.

Australia is commended for its abolition of the death penalty *de jure*, both in the federal jurisdiction in 1973 and in the States in 1987.

Australia is commended for its *Extradition Act* which imposes a positive duty on the Attorney-General not to surrender a person on whom the death penalty may be imposed.

Australia is encouraged to maintain its record of abolition of the death penalty and resist calls for its reintroduction.

Australia is encouraged to exercise national and State leadership to educate civil society on the issues surrounding the death penalty, Australia's international legal obligations and international standards and norms.

(ii) Fiji

Fiji is commended for its *de facto* abolition of the death penalty and is encouraged to move towards ratification of the ICCPR, CAT and the Second Optional Protocol to the ICCPR.

Fiji is encouraged to affirm the rights expressed in its Constitution of 1997 namely the right to life, freedom from torture and procedural safeguards.¹¹

¹⁰ See Annexure 6.

¹¹ Sections 22, 25, 27, 28, 29, Constitution of the Fiji Islands (1997).

Fiji is urged to revoke the provision of the Penal Code which provides for the mandatory imposition of the death penalty for specific crimes.

(iii) India

India is commended for its ratification of the ICCPR and CROC.

India is encouraged to move towards ratification of the Second Optional Protocol to the ICCPR and CAT.

India is commended for its constitutional provision regarding the fostering of respect for international law and treaty obligations.

However, the Council expresses concern about the stated intention of the Government to increase the list of offences which are punishable by death and draws particular attention to its comments regarding the criteria for what constitute “most serious crimes.”

The Council endorses the comments of the Human Rights Committee in relation to India’s obligation to ensure that its Penal Code does not permit the execution of a person who commits a crime while under the age of eighteen.¹²

The Council notes that religious and cultural traditions cannot justify the breach of international human rights law. In this regard, the Council draws attention to the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief

India is encouraged to take progressive steps towards *de facto* abolition of the death penalty and ultimately its *de jure* abolition.

¹² “The Committee expresses concern at the lack of compliance of the Penal Code with article 6, paragraphs 2 and 5, of the Covenant. Therefore: the Committee recommends that the State party abolish by law the imposition of the death penalty on minors and limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition.” ‘Concluding observations of the Human Rights Committee: India’. 04/08/97. CCPR/C/79/Add.81, para 20.

(iv) Indonesia

Indonesia is encouraged to move towards the ratification of the ICCPR and its Second Optional Protocol.

The Council notes with concern the possibility of an expansion of the crimes which are punishable by death. The Council also observes that cultural and religious traditions do not justify laws that breach international norms and standards.

The Council is particularly concerned about the lack of adherence to the principles of the independence and fairness of the judicial process.

Indonesia is urged to limit the number of crimes for which the death penalty may be imposed in line with the Council's definition of "most serious crimes".

Indonesia is urged to move towards abolition of the death penalty *de facto*, and ultimately the abolition of the death penalty *de jure*.

(v) Nepal

Nepal is commended for its ratification of the ICCPR, CAT, CROC and the Second Optional Protocol to the ICCPR.

Nepal is commended for its constitutional provision entrenching the abolition of the death penalty.

While Nepal is commended for its formal moves to abolish the death penalty, the Council expresses concern regarding information received stating that within the last year hundreds of extrajudicial killings have occurred at the hands of police squads and a significant number of persons have disappeared.

The Council considers that Nepal has an obligation to ensure that the rule of law is observed, that law enforcement agencies are accountable and that extrajudicial killings and disappearances not continue.

(vi) New Zealand

New Zealand is commended for its ratification of the ICCPR, CAT, CROC and the Second Optional Protocol to the ICCPR.

New Zealand is commended for not having imposed the death penalty since 1957, abolishing the death penalty for ordinary crimes in 1961 and *de jure* for all crimes in 1989.

The Council notes with concern that the New Zealand *Extradition Act* provides for the *discretionary* power to extradite persons who may be subject to the death penalty. The Council recommends that New Zealand confer on the Attorney-General a positive duty not to surrender a person who may be subject to the death penalty.

The Council notes the continuing need for leadership and public education regarding the issues surrounding the death penalty, New Zealand's international legal obligations and international standards and norms.

(vii) Philippines

The Philippines is commended for its ratification of the ICCPR, CAT and CROC and is encouraged to move towards the ratification of the Second Optional Protocol to the ICCPR.

The Council, however, expresses concern at the reintroduction of the death penalty in 1993 and the later expansion of categories of offences subject to the death penalty. It notes that the reintroduction has resulted in a sharp increase in the number of detainees on whom the death penalty has been imposed. The Philippines is commended for the introduction in March 2000 of a moratorium. The Council regrets, however, that the commutation of all death sentences did not occur immediately.

The Council recommends that consideration be given to the commutation of all death sentences particularly those of persons under sentence of death for a prolonged period.

The Council considers that the prolonged period of detention contravenes the Constitutional prohibition of “cruel and unusual punishment”.

The Council recommends that the Philippines move towards *de facto* abolition of the death penalty and ultimately *de jure* abolition.

The Council emphasizes and commends the Philippines Constitution which enshrines such principles as the presumption of innocence¹³ and freedom from torture or intimidation for those charged with criminal offences¹⁴. The Council is, however, concerned that the rights to competent and effective counsel and the requirement for an independent and impartial judiciary may not comply fully with Constitution guarantees.

(viii) Sri Lanka

Sri Lanka is commended for its ratification of the ICCPR, CAT and CROC and encouraged to work towards the ratification of the Second Optional Protocol to the ICCPR.

The Council notes, however, that not all crimes currently punishable by death are the “most serious crimes” and recommends that the laws be amended so as to reflect the Council’s definition of “most serious crimes”.

The Council notes with concern the possibility of the re-implementation of the death penalty in Sri Lanka and the expansion of the range of offences that would attract such a penalty.

¹³ Section 14(2), Constitution of the Republic of the Philippines (1987).

¹⁴ Section 12(2), Constitution of the Republic of the Philippines (1987).

The Council acknowledges the situation that Sri Lanka is currently experiencing but considers that the re-implementation of the death penalty is not likely to be an effective tool to address it.

The Council considers that the resumption of executions and expansion of offences punishable by death in Sri Lanka would be contrary to the principles underlying a just and civilized society and contrary to the terms and spirit of the ICCPR to which Sri Lanka is a party.

The Council expresses concern regarding information received stating that since the late 1980's thousands of extrajudicial killings and disappearances have occurred at the hands of law enforcement agencies. The Council considers that Sri Lanka has an obligation to ensure that the rule of law is observed, that law enforcement agencies are accountable and that extrajudicial killings and disappearances not continue.

Annexures

1 International Covenant on Civil and Political Rights

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

- 1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If,

subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

2 Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,
Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

3 General Comment on Article 6 of the International Covenant on Civil and Political Rights (General Comment 6(16))

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

2. The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between article 6 and article 20, which states that the law shall prohibit any propaganda for war (para. 1) or incitement to violence (para. 2) as therein described.

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to

life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

4 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty - (ESC Res. 1984/50. Subsequently endorsed by GA Res. 39/118)

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

5 Convention on the Rights of the Child

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.