



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

The Death Penalty 1999 to 2016

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The Death Penalty 1999 to 2016

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TERMINOLOGY

In this paper, the following terminology, borrowed from the UN Secretary General's 'Quinquennial report on the death penalty' is used:

'Abolitionist for all crimes' refers to a State in which the death penalty has been abolished for all offences under all circumstances, whether in time of peace or war;

'Abolitionist for ordinary crimes' refers to a State in which the death penalty has been abolished for all ordinary offences committed in peacetime, such as those contained in the criminal code or those recognized in common law (for example, murder, rape and robbery with violence) and that the death penalty is retained only for exceptional circumstances, such as military offences in time of war, or crimes against the State, such as treason or armed insurrection;

'Abolitionist in practice' or **'de facto abolitionist'** refers to a State in which the death penalty remains lawful and death sentences may still be pronounced but executions have not taken place for at least 10 years. States and territories that have carried out executions within the previous 10 years but have made an international commitment to abolish capital punishment and have established an official moratorium are also designated as in practice abolitionist;

'Retentionist' refers to a State in which the death penalty remains lawful for ordinary crimes and that has conducted an execution during the past 10 years;¹

'Customary international law' refers to a body of international rules that is binding on all States regardless of the treaties they have ratified. Customary international law is "evidence of a general practice accepted as law" and is determined by two factors: (1) the general practice of States; and (2) what States have accepted as law.

This paper occasionally refers to the UN Human Rights Committee's *Draft General Comment 36*, in which the Committee discusses Article 6 ("right to life") of the ICCPR for the first time since it issued *General Comment 6* in 1982, in a vastly different death penalty context. Although the Draft General Comment (published on September 2, 2015) may yet be amended before adoption, it provides useful insight into the direction in which international law is moving with regard to the death penalty.

ABBREVIATIONS

ACHR	Arab Charter on Human Rights
APF	Asia Pacific Forum of National Human Rights Institutions
CAT	Convention Against Torture
CRC	Convention on the Rights of the Child
ECOSOC	United Nations Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights
Safeguards	ECOSOC 'Safeguards guaranteeing protection of those facing the death penalty'
UDHR	Universal Declaration on Human Rights
UNGA	United Nations General Assembly

¹ Note that Amnesty International has adopted a different definition for States that are abolitionist in practice: States must not only meet the requirement of 10 years without executions, but must also be "believed to have a policy or established practice of not carrying out executions". Consequently, Amnesty documents usually cite a higher number of retentionist States and a lower number of States that are abolitionist in practice than the numbers used by the United Nations and cited here.

1. Introduction

In September 1999, at the Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (APF), member institutions agreed to consider a reference on the issue of the death penalty.

Following the finalization of terms of reference in March 2000, members asked the Advisory Council of Jurists to consider and report on a range of issues including: the offences for which international human rights law permits the imposition of the death penalty; the nature and scope of procedural guarantees and other safeguards; the restrictions on the manner and method of carrying out the death penalty; and whether certain groups of persons should not be subject to the imposition of the death penalty.

The subsequent report made a series of recommendations to the (then) seven APF member institutions including: ratification of relevant international human rights instruments; revocation of laws requiring a mandatory death sentence; restrictions on the imposition of the death penalty on persons under 18 years of age; reducing the number of crimes for which the death penalty may be imposed; promoting fair trial guarantees; monitoring and reporting on extra-judicial killings; and extradition.

In September 2015, at the APF's Twentieth Annual Meeting, member institutions agreed to undertake a review of the earlier reference on the death penalty in order to understand developments in State law and practice as they relate to the death penalty in order to better facilitate their engagement on this issue, domestically, regionally and internationally.

2. The death penalty 1999 to 2016

2.1. GLOBAL TRENDS

The period from 1999 to 2016 has seen a significant decrease in support for the death penalty. This is reflected in a number of developments such as:

- an increase in the number of States that have formally abolished the death penalty;
- an increase in the number of States supporting an international moratorium on the use of the death penalty; and
- a reduction in the number of states supporting the death penalty and carrying out executions;

The period from 1999 – 2016 also saw:

- broader acceptance of (but not necessarily improved adherence to) the relevant safeguards and procedures contained in the ICCPR, by both State and non-State Parties, such as freedom from torture, fair trial and equality before the law; including the principles that:
 - relevant offences must be clearly defined;
 - the standard or proof must be clear and convincing, leaving no room for an alternative verdict;
 - the presumption of innocence and the protection against self-incrimination must be respected;
 - the determination of guilt must be made by a competent independent court/tribunal;
 - trials should be conducted without undue delay;
 - capital defendants must have a right to appeal;
 - there must be access to, and a clear and meaningful process for, seeking a pardon or clemency;
 - the defendant has a right to effective legal representation, as well as sufficient time and resources to prepare and participate in the trial;
 - a translator and/or consular access must be made available where appropriate;
 - the imposition of the death penalty may not be mandatory; and
 - an execution may not be carried out while an appeal or review (including by an international body) is pending.
- greater respect for the prohibition on the imposition of the death penalty on children under eighteen years of age;
- greater respect for the prohibition on the application of the death penalty on pregnant women and an extension of that prohibition to mothers with young dependent children;
- greater acceptance of the need to exclude persons with a mental illness or intellectual disability from the application of the death penalty;
- greater acceptance that certain methods of execution might breach the prohibition on torture or cruel, inhumane or degrading treatment or punishment, specifically stoning, gas asphyxiation, burning, burying alive, and public executions; and
- a reduction in the types of crimes for which a sentence of capital punishment may be imposed.

Within the reporting period, several emerging norms were also noted. These include developing practices to prohibit the imposition of the death penalty on mothers with dependent children, and the elderly.

Finally, there appears to be growing discussion about whether any method of execution can be considered compatible with the prohibition on torture or on cruel, inhuman or degrading treatment or punishment.

2.1.1. Abolition of the death penalty

An increasing number of States have abolished the death penalty or may be considered abolitionist in practice. Conversely, the number of States that retain the death penalty has reduced considerably, as has the number of States that regularly carry out executions.

When the APFs initial reference was adopted in 1999, 70 countries had abolished the death penalty and a further 34 could be considered abolitionist in practice. Conversely, 78 States retained the death penalty for ordinary crimes and had carried out executions in the previous 10 years.²

As of 1st September 2016, 102 States have abolished the death penalty under all circumstances and a further 48 are considered abolitionist in practice. There are 38 States and territories that retain the death penalty and have executed at least one person in the previous ten years, a number that has decreased by half since 1999.

2.1.2. Moratorium on the death penalty

Since 2007, the United Nations General Assembly has considered a regular resolution entitled "*Moratorium on the use of the death penalty*".³ The resolution calls on States to, amongst other things, "*establish a moratorium on executions with a view to abolishing the death penalty*".⁴

Commencing in 2007, the first resolution was supported by 104 States, with 54 opposed and 29 abstaining. Subsequent resolutions in 2008, 2010, and 2012 received increasing support, and a record 117 States supported the most recent 2014 resolution, with 38 opposed and 34 abstaining.

Following the adoption of the 2007 moratorium resolution, a number of States wrote to the United Nations Secretary General to "*place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition*". This '*Note Verbale of dissociation*' was signed by 58 States. Similar *Note Verbales* were prepared following the subsequent resolutions in 2008, 2010 and 2012, but with declining support. By 2015, in response to the 2014 UNGA moratorium resolution, the *Note Verbale of dissociation* was signed by only 27 States, less than half the number that originally signed in 2007.

The UN General Assembly moratorium resolution has proved a useful tool to track the expanding global movement to move away from the death penalty and the decline in the number of States that advocate for its retention. The UN General Assembly will vote on the next moratorium resolution in December 2016.

2.1.3. Ratification of the Second Optional Protocol to the ICCPR

The Second Optional Protocol to the ICCPR (OP2) was adopted by the UN General Assembly in 1989 and provides for the full abolition of the death penalty (though States may retain the death penalty for a most serious crime of a military nature in times of war provided a reservation to that effect is made at the time of ratification or accession). The treaty does not contemplate a withdrawal procedure, so it has been argued that for States Parties, abolition is irreversible under international law. In 1999, 34 States had ratified OP2. By August 2016 this had grown to 81, with an additional 3 signatories.

2 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. E/2005/3. 9 March 2005. Para 9.

3 United Nations General Assembly resolution 62/149 – Moratorium on the use of the death penalty.

4 United Nations General Assembly resolution 62/149 – Moratorium on the use of the death penalty, Para 1(d).

Utilising the various indicators outlined above, Table 1 below provides a graphic representation of global support for the abolition and a moratorium on the use of the death penalty for the period 1999 to 2015.

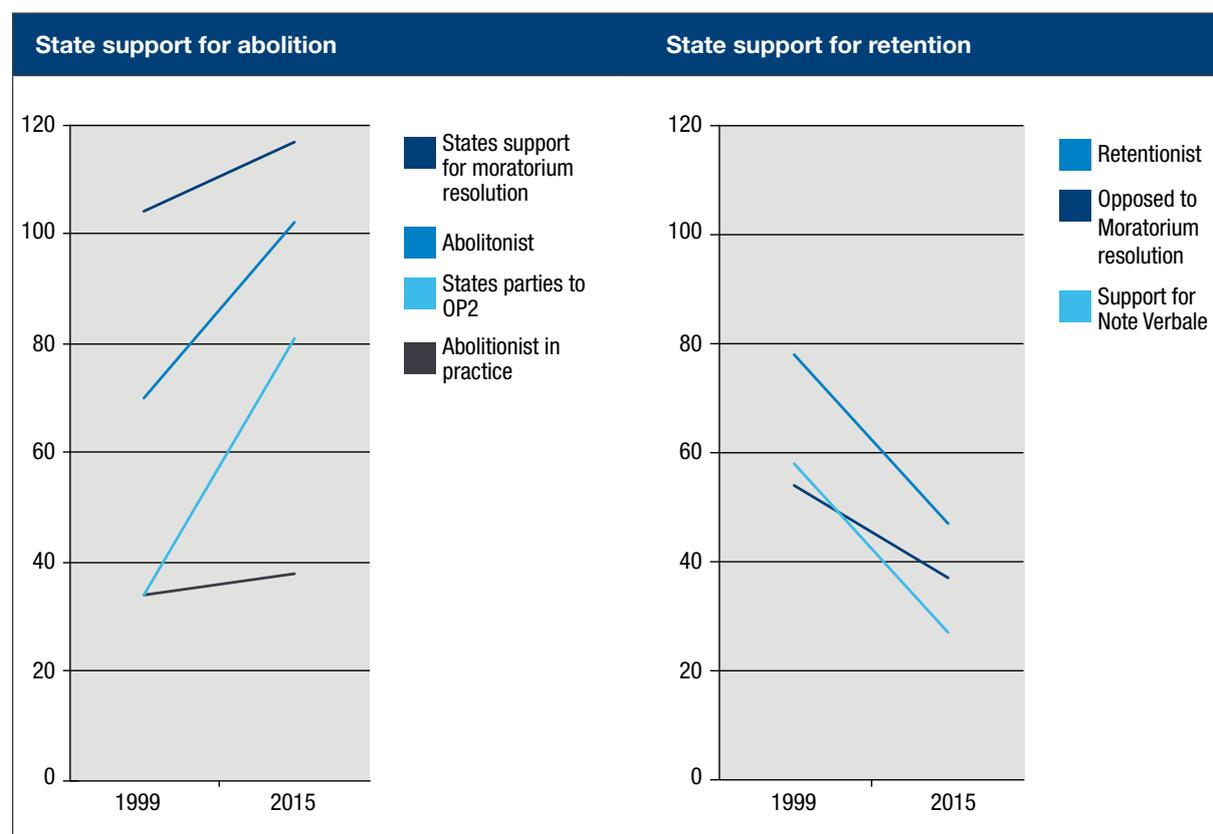
2.2. OVERVIEW OF DEATH PENALTY STATES

2.2.1. Global

As of September 1, 2016:

- 102 UN member States, over half of the UN's 193 members, have abolished the death penalty.
- 7 States have abolished the death penalty for ordinary crimes committed in peacetime but retain it for exceptional crimes. One of these States, Suriname, has stated that it will eliminate the death penalty from its military laws and become fully abolitionist by December 2016.⁵
- 48 States, or almost 25% of the UN's member States, are considered abolitionist in practice, that is, they have not carried out an execution in at least 10 years.
- 36 States, or around 20% of the UN's member States, are retentionist; that is, they retain the death penalty in their laws and have carried out at least one execution in the past 10 years. Two territories are also classified as retentionist: Taiwan and Palestine.
- 25 States and territories were known to have carried out executions in 2015.⁶

Table 1: State support and opposition to abolition or a moratorium (1999 – 2015)



5 At its last UPR review in May 2016, the Suriname delegation acknowledged that the death penalty remained in the country's military code but that capital punishment was set to be repealed in military law in December 2016. U.N. Doc. A/HRC/WG.6/25/L.1, May 19, 2016, para. 28.

6 Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 63-65.

2.2.2. Within the Asia Pacific region

In the Asia Pacific region:

- 19 States have abolished the death penalty;⁷
- 1 State has abolished the death penalty for ordinary crimes;⁸
- 10 States are considered abolitionist in practice;⁹
- 22 States are retentionist;¹⁰ and
- 19 States and territories were known to have carried out executions in 2015, according to Amnesty International.¹¹

Within the membership of the APF:

- 7 States have abolished the death penalty;¹²
- 1 State has abolished the death penalty for ordinary crimes;¹³
- 4 States are considered abolitionist in practice;¹⁴
- 10 States are retentionist¹⁵ and a further 3 prospective member States retain the death penalty and have carried out an execution in the past ten years.¹⁶
- 7 States and territories were known to carry out executions in 2015, according to Amnesty International.¹⁷

2.3. APPLICATION OF THE DEATH PENALTY IN 2015

Amnesty International's annual report on the death penalty provides the most comprehensive summary of death penalty developments in any given year. It must be noted however that Amnesty International only counts executions and death sentences that it is able to corroborate, which means that its figures tend to be conservative estimates, particularly in States where the application of the death penalty is shrouded in secrecy.

7 Australia, Azerbaijan, Bhutan, Cambodia, Kiribati, Kyrgyzstan, Micronesia, Mongolia, Nauru, New Zealand, Palau, Philippines, Samoa, Solomon Islands, Timor-Leste, Turkmenistan, Tuvalu, Uzbekistan, Vanuatu. The following territories have also abolished the death penalty: Cook Islands, Niue.

8 Kazakhstan.

9 Laos, Lebanon, Maldives, Myanmar, Papua New Guinea, Qatar, South Korea, Sri Lanka, Tajikistan, Tonga.

10 Afghanistan, Bahrain, Bangladesh, China, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Malaysia, North Korea, Oman, Pakistan, Saudi Arabia, Singapore, Syria, Thailand, United Arab Emirates, Viet Nam, Yemen.

11 China, Iran, Pakistan, Saudi Arabia, Iraq, Indonesia, Yemen, Taiwan, Bangladesh, Singapore, Japan, Jordan, Oman, Afghanistan, India, UAE, Malaysia, North Korea, Viet Nam. Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 63-65.

12 Australia, Mongolia, Nepal, New Zealand, Philippines, Samoa, Timor Leste. Mongolia ratified OP2 in 2012 and Criminal Code amendments repealing death penalty provisions enters into force in September 2016.

13 Kazakhstan, which has not carried out an execution in over ten years (the last execution took place in 2003).

14 Maldives, Myanmar, South Korea, Sri Lanka.

15 Afghanistan, Bangladesh, India, Indonesia, Jordan, Malaysia, Oman, Palestine, Qatar, Thailand.

16 Bahrain, Iraq, Pakistan are expected to join the APF in 2016/17.

17 Indonesia, Bangladesh, Jordan, Oman, Afghanistan, India, Malaysia. Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 63-65.

2.3.1. Executions in 2015

- At least 1634 people were executed globally in 2015, excluding China, according to Amnesty International.¹⁸ The Dui Hua Foundation estimates that around 2,400 executions were carried out in China in 2015,¹⁹ for a global total of **at least 4034 executions in 25 countries**.
- At least 3933 executions were carried out in countries in the Asia Pacific region, including at least 1533 outside of China. The vast majority of the executions outside China (1461, or over 95%) were carried out in just three States: Iran (at least 977), Pakistan (at least 326) and Saudi Arabia (at least 158). Executions in these three States represented over a third of the world's total number of executions.
- At least 24 executions were carried out in APF members' States: Indonesia (14); Bangladesh (4); Jordan (2); Oman (2); Malaysia (at least 2); Afghanistan (1); India (1).²⁰

2.3.2. Death sentences imposed by Courts in 2015

According to Amnesty International's 2015 report on the death penalty:

- Death sentences were imposed on at least 1998 people in 61 countries. This figure does not include new death sentences in China.²¹
- At least 855 of the 1998 death sentences outside of China, or 42%, were imposed in countries in the Asia Pacific region.
- At least 474 death sentences were imposed in APF members' States: Bangladesh (at least 197); India (at least 75); Sri Lanka (at least 51); Indonesia (at least 46); Malaysia (at least 39); Myanmar (at least 17); Afghanistan (at least 12); Palestine (at least 12); Qatar (9); Thailand (at least 7); Jordan (at least 3); Maldives (3); Mongolia (at least 2);²² South Korea (1).²³

18 These figures do not include China, where Amnesty International reports the number of executions are "in the thousands". Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 27.

19 The Dui Hua Foundation, 2015 Annual Report, http://duihua.org/wp/wp-content/uploads/2016/05/AR2015_Final_web.pdf, 2016.

20 Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 64.

21 These figures do not include China, where Amnesty International report the number of executions are "in the thousands". Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 27.

22 One of these death sentences has since been commuted and the other has been reversed pending a retrial. Mongolia has since enacted amendments to its domestic law to abolish the death penalty, and its revised Criminal Code comes into force in September 2016.

23 Death Sentences and Executions 2015, Amnesty International. ACT3487/2016 @ page 63.

3. The death penalty in international law

3.1. INTERNATIONAL LAW

Both international treaty law and international customary law, which arises out of State practice, place substantial limitations on the application of the death penalty and are moving in the direction of universal abolition. Several regional instruments and one global treaty, the Second Optional Protocol to the ICCPR (OP2), abolish capital punishment outright. Though it is too early to state that international customary law prohibits the death penalty, the emergence of increasingly robust customary norms restricting the use of the death penalty is particularly significant, since international custom binds all States regardless of whether or not they have ratified corresponding human rights treaties.

International human rights law has grappled with the question of the death penalty since the Second World War. As early as 1948, the *Universal Declaration of Human Rights* (UDHR), stated that “*everyone has the right to life, liberty and security of person*”, without reference to any exceptions to this right. The question of capital punishment was considered during the drafting of the UDHR, but several drafters successfully argued that an emerging trend towards abolition meant that reference to the death penalty, as an exception to the right to life, should not be included.²⁴

The ICCPR, one of world’s foremost human rights treaties with (currently) 168 States Parties, sets out much of the framework that restricts the death penalty under international law. Article 6 of the ICCPR enshrines the right to life and expressly recognises the death penalty as an exception to that right under certain circumstances. As a result, it is often stated that international law “permits” capital punishment, an oversimplification that fails to account for the narrowness of the exception or the dynamic nature of international human rights law, which has expanded significantly since the ICCPR was adopted in 1966. By the time OP2 opened for signature in 1989, preambular paragraph 3 stated that ICCPR Article 6 “*refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable*”.

ICCPR Article 6(1) provides: “Every human being has the inherent right to life. This right shall be protected by law.” It goes on to prohibit the “**arbitrary**” deprivation of life.²⁵

Paragraphs 2-6 proceed to place significant limitations on how and in what circumstances the death penalty may be imposed.

Pursuant to Article 6(2), the death penalty can only be imposed:

- for the commission of the “**most serious crimes**”; and
- in accordance with the **law in force at the time of the offence**; and
- pursuant to a “**final judgment**” rendered by a “**competent court**”; and
- if “**not contrary to the provisions of the present Covenant**”, thus incorporating all of the human rights standards contained in the ICCPR.

Paragraphs 6(2) and 6(3) together require that the imposition of the death penalty be carried out in compliance with the Convention Against Genocide.²⁶

24 International law and the abolition of the Death Penalty, Schabas, W. 55 Wash. and Lee L. Review 797 (1998). Volume 55, Issue 3, Article 10 at 799.

25 Art. 6(1): “No one shall be arbitrarily deprived of his life.”

26 Art 6(2) and (3): “(2) . . . sentence of death may be imposed . . . if not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”.

(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.”

Article 6(4) provides individuals with a **right to seek the commutation** of their sentence or a **pardon**, and mandates that States make provision for amnesty.²⁷

Article 6(5) specifically prohibits the “*imposition*” of the death penalty on persons under eighteen year years of age at the time of the offence as well as its “*application*” on pregnant women.²⁸

Article 6(6) explicitly contemplates abolition as the ultimate goal of States Parties, providing: “*Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to this Covenant*”.

The content of each of these standards will be examined in more detail below.

3.2. REGIONAL LAW

Several regional human rights instruments impose additional restrictions on the use of capital punishment.

Both the *European Convention on Human Rights* (adopted in 1950)²⁹ and the *American Convention on Human Rights* (adopted in 1969)³⁰ recognise the death penalty as an exception to the right to life. In Europe, this exception has been rendered obsolete: all members of the European Union and the Council of Europe have abolished the death penalty, and the Council of Europe has treated abolition as a prerequisite to membership.

The Arab Charter on Human Rights (ACHR), adopted by the Council of the League of Arab States on 22 May 2004 similarly recognises the death penalty and the limitation that it may be imposed only for the most serious crimes and with certain limitations.³¹

The African Charter of Human and Peoples’ Rights, while not making specific reference to the death penalty, may by implication recognise the death penalty in that it provides that “*no one may be arbitrarily deprived of this right*”.³²

3.3. TRENDS TOWARDS ABOLITION IN INTERNATIONAL AND REGIONAL LAW

In recent years, at both the international and regional levels, there have been developments aimed at abolishing or limiting the application of the death penalty.

27 ICCPR Art. 6(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”.

28 Art 6(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.”

29 Article 2(1) provides: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

30 Article 4 provides:

“1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be re-established in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.”

31 ACHR, Article 6 and 7.

32 Article 4, African Charter on Human and Peoples’ Rights.

In 1989, the UNGA adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2) that promotes the abolition of the Death Penalty.³³ Article 1 provides that:

“(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.”

As was outlined above, States Parties to OP2 have steadily increased, from 34 in 1999 to 81 in September 2016.

This development is mirrored at the regional level.

In 1983, the Council of Europe adopted Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty.³⁴ This sought to abolish of the death penalty for ordinary crimes, that is, not crimes committed in time of war. This was followed on 3 May 2002 by the adoption of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which sought to abolish the death penalty in all circumstances.³⁵

In 1990, the Americas adopted the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, though like the OP2, States may retain the death penalty in times of war provided a reservation to that effect is made at the time of ratification or accession.³⁶

Comments by regional human rights bodies also support an emerging trend towards the abolition of the death penalty.

In 2010, the European Court of Human Rights considered that it might be possible to argue that, in light of consistent State practice, the *European Convention on Human Rights* has been amended to prohibit the death penalty in all circumstances.³⁷

In the same year, a Working Group on the Death Penalty established by the African Commission on Human and Peoples’ Rights stated that it envisaged the preparation of a protocol to the African Charter on Human and Peoples’ Rights on the abolition of the death penalty. In addition, the Commissioner of the African Commission stated that capital punishment may represent a violation of fundamental rights under the African Charter.³⁸

33 GA Res. 44/128, (1990) 29 ILM 1464. Note that the 2OP, Art. 2, provides that States may retain the death penalty in times of war provided a reservation to that effect is made at the time of ratification or accession.

34 ETS 114.

35 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

36 OASTS 73, 29 ILM 1447.

37 European Court of Human Rights, *Al-Saadoon and Mufdhi v. the United Kingdom*, Application No. 61498/08, Judgement of 4 October 2010, para. 120; *Kozhayev v. Russia*, Application No. 60045/10, Judgement of 5 June 2012, para. 81.

38 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Report of the UN Secretary-General. E/2015/49 of 13 April 2015, para 43.

4. Limitations on the application of the death penalty

The ICCPR imposes significant limitations on the imposition of the death penalty. These limitations have been considered and interpreted by various fora including the UNGA, the UN Commission on Human Rights and subsequent Human Rights Council, the Human Rights Committee, and in the reports and statements from various UN Treaty Bodies and Special Procedure Mandate holders. Other sources of relevance include the decisions of the regional bodies and courts, as well as national legislation, national constitutions, the decisions of national courts and the commentary of distinguished academics. Successive resolutions by the ECOSOC on the ‘Safeguards guaranteeing protection of the rights of those facing the death penalty’ have played a crucial role in the development of this area of international law.

The ICCPR is one of the main sources of restrictions on the application of capital punishment on a global level, but it is not the only one. Some of the norms set out by this treaty have since taken on a customary nature. Regional human rights instruments, particularly in Africa and the Americas, also play an increasingly significant role.

4.1. OFFENCES PUNISHABLE BY DEATH: THE ‘MOST SERIOUS CRIMES’ STANDARD

Article 6 paragraph 2 of the ICCPR states that the sentence of death may be imposed only for the “*most serious crimes*”.

The ICCPR does not define what constitutes ‘most serious crimes’ and this lacuna led to the development by the Economic and Social Council and subsequent endorsement by the UNGA, of the 1984 ‘Safeguards guaranteeing protection of those facing the death penalty’.³⁹

The first safeguard states that the term ‘most serious crimes’ should be understood as referring only to “intentional crimes, with lethal or other extremely grave consequences”.⁴⁰

In considering international law and the safeguards, the Human Rights Committee has indicated that ‘most serious crimes’ excludes the imposition of the death penalty when the crime did not involve the death of the victim. In its General Comment 6(16), the Committee stated that the expression ‘most serious crimes’ must be “*read restrictively to mean that the death penalty should be a quite exceptional measure*”.⁴¹ It has subsequently identified certain individual offences and suggested that they do not meet the standard of Article 6 paragraph 2 of the ICCPR. These include:

- political offences,⁴² including the refusal to divulge previous political activities⁴³ (the American Convention on Human Rights also stipulates that “in no case shall capital punishment be inflicted for political offences”);⁴⁴
- drug-related offences (the Committee has said that “to extend the death penalty to all cases of drug trafficking, including those involving the sale and consumption of unprocessed coca leaves, [is] an excessive measure.”)⁴⁵

39 ESC Res. 1984/50; GA Res. 39/118.

40 ESC Res. 1984/50; GA Res. 39/118.

41 General Comment 6(16), §7.

42 UN Doc. CCPR/C/SR.200, §19 (1980).

43 UN Doc. CCPR/C/SR.200, §42.

44 ACHR, art. 4(4).

45 ‘Second Periodic Report from Mauritius’, UN Doc. CCPR/C/28. Add.12.

- economic crimes,⁴⁶ including the misappropriation of State or public property,⁴⁷ crimes against the economy,⁴⁸ the misuse of public funds,⁴⁹ and corruption;⁵⁰
- robbery with violence;⁵¹
- abduction;⁵²
- inchoate crimes i.e. preparing to commit a crime, such as attempted murder,⁵³ or conspiracy between civil servants and soldiers;⁵⁴
- repeated evasion of compulsory military service;⁵⁵
- piracy⁵⁶; and
- adultery.⁵⁷

There is debate as to whether treason and espionage qualify as “most serious crimes”.⁵⁸

The Committee has also objected to “vaguely defined crimes”, including offences against “peace, humanity or human rights” or war crimes “motivated by hostility towards the Republic.”⁵⁹ The Commission on Human Rights similarly found offences such as “opposition to order” and “national security violations”⁶⁰ to be unacceptably vague and in violation of Article 6(2). These concerns are particularly timely in view of many States’ endorsement of capital punishment for broadly worded terrorism-related offences.

The Commission on Human Rights’ 2005 resolution on the death penalty reinforced this interpretation, calling on States to refrain from extending capital offences beyond “*intentional crimes with lethal or extremely grave consequences*”.⁶¹ In so doing it noted that this would not include non-violent activity such as expressions of conscience or religion, sexual conduct between consenting adults or financial crimes.

This issue was again considered in the 2007 report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. In his report the Special Rapporteur stated that, following an analysis of the interpretations of international law and practice by the relevant UN bodies, the term ‘most serious crime’ can now only be apply to **crimes where there is an intention to kill which results in loss of life**.⁶² The report also identified a range of crimes that were not considered to meet the criteria of ‘most serious’ including: abduction not resulting in death, adultery, apostasy, blasphemy, bribery, corruption, acts incompatible with chastity, corruption, drug possession, drug trafficking, drug-related offences, economic offences, expressing oneself, holding an opinion, homosexual acts, matters of sexual orientation, manifesting one’s religion or beliefs, prostitution, organization of prostitution, participation in protests, premarital sex, singing songs inciting men to go to war, sodomy, speculation, “acts of treason,

46 UN Doc. CCPR/C/79/Add.25, §8.

47 ‘Initial Report of Mongolia’, UN Doc. CCPR/C/1/Add.38; UN Doc. CCPR/C/SR.197, §6; UN Doc. CCPR/C/SR.198, §21; UN Doc. CCPR/C/SR.198, §32.

48 UN Doc. CCPR/C/1/Add.3, §7; also ‘Initial Report of Democratic Yemen’, UN Doc. CCPR.C.50/Add.2, UN Doc. CCPR/C/SR.927, SR.932, UN Doc A/45/40, §45; ‘Initial Report of Viet Nam’, UN Doc. CCPR/C/26/Add.3, UN Doc. CCPR/C/SR.982, SR.983, Sr.986, SR.987, UN Doc A/45/40, §465.

49 UN Doc. A/33/40, §153.

50 UN Doc. CCPR/C/79/Add.25, §8.

51 ‘Initial Report of Mongolia’, UN Doc. CCPR.C.1/Add.38; UN Doc. CCPR/C/SR.197, §17; UN Doc. CCPR.C.SR.198, §32.

52 Concluding Observations: Guatemala (2001), para. 17.

53 HR Committee Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4.

54 ‘Initial Report of Mali’, UN Doc. CCPR/C/1/Add.49, UN Doc. CCPR/C/SR.284, §6.

55 Concluding Observations: Iraq (1997), para. 11.

56 Concluding Observations: UK (2001), para. 37.

57 UN Doc. CCPR/C/79/Add.25, §8.

58 UN Doc. CCPR/C/SR.258, §10.

59 ‘Initial Report of Democratic Yemen’, UN Doc. CCPR/C/SR.362, §43.

60 UN Doc. E/CN.4/2002/L.104, §4c.

61 CHR resolution 2005 (para 7(f)).

62 Report of the Special Rapporteur on extrajudicial summary or arbitrary executions A/HRC/4/20, 2007.

espionage or other vaguely defined acts usually described as ‘crimes against the State’”, and writing slogans against a country’s leader.⁶³

The intentionality requirement implies that the “most serious crimes” standard imposes restrictions not only on the type of offences that are punishable by death but also on the degree of involvement of the offender. In the words of the Human Rights Committee’s Draft General Comment 36, the death penalty may only be imposed on the direct and “chief perpetrator” of a capital offence and not on individuals who, for example, provided the means for the commission of the crime or failed to prevent it.⁶⁴

The UNGA has, through regular resolutions, called on States to progressively restrict the number of offences for which the death penalty may be imposed.⁶⁵

4.2. OFFENDERS EXCLUDED FROM THE DEATH PENALTY

4.2.1 Juvenile offenders

The prohibition on executing a defendant who was under the age of 18 at the time of the offense is one of the most widely accepted under international law. In 2008, the Inter-American Commission on Human Rights declared that the principle that the death penalty should not apply to juveniles had been established as a customary international rule.⁶⁶

Article 6 paragraph 5 of the ICCPR prohibits the imposition of the death penalty on a person who committed a crime while below eighteen years of age. This prohibition is reiterated in Safeguard 6 of the ‘Safeguards guaranteeing protection of the right of those facing the death penalty’ and Article 37 of the CRC. Executing juveniles is also barred by regional treaties, including the African Charter on the Rights and Welfare of the Child (Art. 5(3)), and the American Convention on Human Rights. Even the reservation formed by the United States when it ratified the latter convention was held to be incompatible with the very purpose of the treaty.

4.2.2. Pregnant women and women with young children

The prohibition on executing pregnant women is a widely accepted norm under international law and in state practice. Almost all countries that retain the death penalty in their laws have adopted legislation that ban the execution of pregnant women. Article 6, paragraph 5 of the ICCPR prohibits the execution of pregnant women. Safeguard 6 seeks to extend that protection such that “new mothers” shall not be sentenced to death. The reach of this safeguard beyond ‘new mothers’ remains unclear. States interpret this prohibition in various ways. Some prohibit execution until the pregnancy ends, for set periods of time, or until the completion of lactation. Other reports suggest that the sentence of death may be permanently stayed if the death-sentenced prisoner is or becomes pregnant.

Two regional human rights treaties also prohibit the execution of women with small children: the African Charter on the Rights and Welfare of the Child, and the Arab Charter on Human Rights. Article 30(e) of the African Charter on the Rights and Welfare of the Child prohibits State Parties from imposing the death penalty on expectant mothers and “*mothers of infants and young children.*” Article 12 of the Arab Charter on Human Rights states that the death penalty shall not be imposed on a pregnant woman before delivery or on “*a nursing mother within two years from the date on which she gave birth.*” Not all States Parties to these two treaties have implemented this norm in their domestic legislation, but twenty-two countries have passed laws protecting mothers of young children from capital punishment, for periods varying from 40 days (Morocco) to 3 years (Thailand). These countries include APF members’ States such as Qatar, Palestine, and Thailand. Additionally, Bangladesh law grants courts the discretion to exclude

63 Report of the Special Rapporteur on extrajudicial summary or arbitrary executions A/HRC/4/20, 2007, §40.

64 Draft General Comment 36, §37.

65 See for examples UNGA Resolution 62/149 of 18 December 2007.

66 Amnesty International, *The Exclusion of Child Offenders From the Death Penalty Under General International Law*, ACT 50/004/2003, p. 1.

women with young children from the death penalty. Adding together the countries that have enacted legislation prohibiting the execution of women with small children and those that have undertaken to respect the prohibition at the international level, there are 50 countries in which it is illegal to execute women with small children, corresponding to over half of the world's death penalty States.

4.2.3. Mental illness or intellectual disability

While there are no international treaties that directly address the application of the death penalty to individuals with mental or intellectual impairments, certain treaty provisions have been interpreted by international and regional bodies as prohibiting the executions of both mentally ill and intellectually disabled offenders. The 1984 'Safeguards' prohibit the imposition of the death penalty "on persons who have become insane." The Resolution of the Economic and Social Council on the implementation of the 'Safeguards' recommended that Member States:

"take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty by: ... eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution."

Both the Special Rapporteur on Torture and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions have stated that they consider the imposition of the death penalty in such circumstances as a breach of Article 7 of the ICCPR and Articles 1 and 16 of the Convention Against Torture.

Moreover, the recognition by many States of the ban on executing mentally impaired prisoners has arguably led to the emergence of a customary international norm excluding such individuals from execution. The penal codes of many death penalty States mandate special treatment of mentally ill or intellectually disabled individuals. Advocates seeking to implement these human rights norms, however, face significant challenges. While many countries provide that individuals who are severely mentally ill (and in some cases, those who are intellectually disabled) may not be found criminally liable, they lack legislative provisions to protect individuals who develop a mental illness post-conviction. Moreover, most States fail to provide special protections for individuals who are mentally ill or intellectually disabled but who nonetheless fail to meet the definition of "insanity" or "incompetence" set forth in the penal code. Even in States that ostensibly prohibit the execution of individuals with severe mental illnesses or intellectual disabilities, there is a dearth of qualified mental health professionals capable of conducting mental health evaluations.

4.2.4. Elderly

Neither the ICCPR nor the original 'Safeguards' specify a maximum age above which a person cannot be sentenced to death or executed. In contrast, Article 4(5) of the American Convention on Human Rights specifically prohibits the imposition of the death penalty on persons "over 70 years of age."

In the 1989 Resolution concerning the implementation of the 'Safeguards', however, ECOSOC recommended that Member States establish "a maximum age beyond which a person may not be sentenced to death or executed." This measure would bring the international community in line with the practice in the American system and contribute to achieving the goal of gradual abolition of the death penalty.

Ten States have passed legislation that explicitly prohibits the execution of an individual who has reached a certain age, ranging from 60 (Guatemala) and 65 (Belarus) to 75 (China) and 80 (Taiwan). Among APF members' States, Qatar's criminal law provides that a person held under sentence of death for over 30 years will not be executed.

4.2.5. Mandatory death penalty

Courts apply a mandatory death penalty when conviction for a capital offence automatically leads to a sentence of death, without the court having the authority to consider the circumstances of the offence and the characteristics of the offender in order to determine the appropriate sentence.

The Human Rights Committee has determined that mandatory sentencing breaches Article 6 of the ICCPR.⁶⁷ Similarly, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has consistently argued against the application of mandatory sentencing in capital cases, stating that international human rights law explicitly requires that “[n]o one shall be arbitrarily deprived of his life” and “[n]o one shall be subjected to ... cruel, inhuman or degrading ... punishment”.⁶⁸ In his 2007 report, the then Special Rapporteur Philip Alston stated that in his view, these protections required a court to weigh all relevant factors, including mitigating factors, to determine if an accused is guilty of committing a “most serious crime” and what consequences should flow from the commission of that crime. He stated that:

*“[t]he conclusion, in theory as well as in practice, was that respect for human rights can be reliably ensured in death penalty cases only if the judiciary engages in case-specific, individualized sentencing that accounts for all of the relevant factors.”*⁶⁹

International courts have also condemned the mandatory death penalty. In a series of cases decided in 2000 and 2001, the Inter-American Commission on Human Rights found that the mandatory death penalty violated the right to life, the right to humane treatment or punishment, and the right to a fair trial.⁷⁰ In *Boyce v. Barbados*, the Inter-American Court on Human Rights affirmed that laws that prohibit individualized sentencing are inherently arbitrary: “A lawfully sanctioned mandatory sentence of death may be arbitrary where the law fails to distinguish the possibility of different degrees of culpability of the offender and fails to individually consider the particular circumstances of the crime.”⁷¹

The number of States that apply the mandatory death penalty is on the decline, largely as a result of judicial challenges to its application.⁷² Since 2000, courts in at least eighteen States have discarded the mandatory death penalty as unconstitutionally arbitrary and/or inhumane, and some courts have determined that it violates the right to life, the right to due process, and separation of powers principles.⁷³ Support for this approach can also be found in the increasing number of States that have removed the requirement of mandatory sentencing for certain capital offences.⁷⁴

67 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Report of the Secretary-General. E/2015/49, 2015 @63.

68 Reports of the Special Rapporteur on extrajudicial summary or arbitrary executions. A/55/288, 2000 at para. 34, A/HRC/4/20, 2007 at para 40.

69 Report of the Special Rapporteur on extrajudicial summary or arbitrary executions A/HRC/4/20, 2007 at 54-56.

70 *Baptiste v. Grenada*, Inter-American Comm. H.R., Report No. 38/00 (2000); *McKenzie v. Jamaica*, Case 12.023, Inter-American Comm. H.R., Report No. 41/00 (2000); *Knights v. Grenada*, Case 12.028, Inter-American Comm. H.R., Report No. 47/01 (2001); *Edwards v. Bahamas*, Case 12.067, Inter-Am. Comm. H.R., Report No. 4801 (2001).

71 *Boyce v. Barbados*, Ser. C No. 169, paras. 57-63, Inter-American Court of Human Rights, Nov. 20, 2007.

72 *Woodson et al. v. North Carolina*, 428 U.S. 280 (1976); *Sumner v. Shuman*, 483 U.S. 66 (1987). Similar decisions have been made by courts in India (*Mithu v. State of Punjab*, 2 S.C.R. 690 (1983)); Uganda (*Susan Kigula and 416 others v. Attorney General*, Constitutional Petition No. 6 of 2003, Judgement of 10 June 2005); Malawi (*Kafantayeni v. Malawi* (2007)); Kenya (*Mutiso v. Republic* (2010)).

73 See Death Penalty Worldwide, Mandatory Death Penalty, www.deathpenaltyworldwide.org/mandatory-death-penalty.cfm, Jan. 2012.

74 Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Report of the Secretary-General. E/2015/49, 2015 @ para 64.

4.2.6. Reintroduction of the death penalty

Paragraph 2 of Article 6 of the ICCPR starts with the phrase ‘*in countries which have not abolished the death penalty ...*’.

The report of the Working Party of the Third Committee of the General Assembly explained that the phrase was “*intended to show the direction in which the drafters of the Covenant hoped that the situation would develop.*”⁷⁵

The phrase “[i]n countries which have not abolished the death penalty” indicates that paragraph 2 is inapplicable to those States that have abolished the death penalty. Some commentators suggest that it also implies that there can be no reintroduction of the death penalty once it has been abolished.⁷⁶ However, an express provision to this effect is contained in the *American Convention on Human Rights*.⁷⁷ Without such a clear provision in the ICCPR a debate remains as to whether paragraph 2 of Article 16 can be argued to restrict the reintroduction of the death penalty by a State, should it choose to do so.

In States that have ratified the OP2, however, the death penalty may not be revived, since there is no mechanism for withdrawing from the treaty.

4.2.7. Retrospective imposition of the death penalty

Article 6 of the ICCPR provides for a sentence of death to be imposed only “*in accordance with the law in force at the time of the commission of the crime*”.⁷⁸ This principle is restated and expanded upon in Article 15, which prohibits conviction for an act that did not constitute a crime when the act was committed. This Article also prohibits the imposition of a punishment greater than that existing at the time the crime was committed. The ‘Safeguards guaranteeing protection of the rights of those facing the death penalty’ restate the principle against retrospectivity.⁷⁹

The Human Rights Committee’s Draft General Comment 36 notes that, conversely:

*“the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence ... The need to retroactively apply legislation abolishing the death penalty or certain capital offences is ... dictated by the impossibility of justifying the need for imposing the death penalty after the legislature has deemed this penalty to be no longer appropriate.”*⁸⁰

75 UN Doc. A/C.3/SR.816, §19.

76 See for example R. Sapienza, ‘International Legal Standards on Capital Punishment’, in Bertrand G. Ramcharan (ed), *The Right to Life in International Law*, Martinus Nijhoff Publishers, Boston, 1985, p. 289.

77 (1979) 1144 UNTS 123, OASTS 36, Article 4§3.

78 ICCPR, Article 6§2.

79 ESC Res. 1984/50. Subsequently endorsed by GA Res. 39/118, §2.

80 Human Rights Committee, Draft General Comment 36, §41.

5. Procedural and other protections

The procedural safeguards that a State is required to respect in determining whether to impose the death penalty are principally derived from three paragraphs of Article 6, paragraphs 1, 2 and 4, and Article 14 of the ICCPR, but similar fair trial rights appear in many international and regional human rights instruments. Many of these rights form part of international customary law and apply to all States regardless of the treaties they've ratified.

The Human Rights Committee has declared that if a capital trial fails to respect all fair trial rights, the resulting sentence of death may not lawfully be carried out under international law.

5.1. ARBITRARY DEPRIVATION OF LIFE

Article 6(1) of the ICCPR states that a person may not be 'arbitrarily' deprived of their life. While there continues to be a debate as to the meaning of 'arbitrarily' it is perhaps best understood as referring to deprivation of life that is illegal, unjust or unreasonable.⁸¹ The Human Rights Committee has also defined "arbitrariness" as encompassing "elements of inappropriateness, injustice and lack of predictability,"⁸² such as the discriminatory application of capital laws. The Inter-American Court of Human Rights has indicated in an advisory opinion that "*deprivation of life is arbitrary if it is done in conflict with international human rights standards or international humanitarian law.*" Under this interpretation, any human rights violation invalidates the use of capital punishment.

A non-arbitrary deprivation of life requires, amongst other things, that a regularly constituted, independent court or tribunal of competent jurisdiction must make the determination of guilt. The Human Rights Committee's Draft General Comment 36 indicates that such a court must be independent of both the executive and legislative and that many military tribunals would not meet these requirements. It also notes that courts of customary justice may not provide sufficient fair trial guarantees to meet these standards.

5.2. FAIR TRIAL RIGHTS

Article 6(2) of the ICCPR proscribes the imposition of the death penalty in a manner "*contrary to the provisions of the present Covenant*". This paragraph therefore incorporates the additional protections contained in Article 14, which sets out a list of fair trial rights.⁸³

The procedural rules that apply to capital cases go above and beyond the guarantees afforded in other types of criminal cases. In its deliberations concerning procedural safeguards and the death penalty, the Human Rights Committee has clearly stated that "*in capital punishment cases, the duty of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the Covenant is even more imperative.*"⁸⁴ The 1984 'Safeguards' mandate that capital trials respect "*all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil*

81 Manfred Nowak, *CCPR Commentary* (2nd revised ed. 2005), pp. 127-128: "Although the term 'arbitrarily' was criticized as too vague, the HRCComm [Human Rights Commission] ultimately opted for it after lengthy discussion. ... [In the Third Committee of the General Assembly:] Despite strong criticism of the vagueness of the word 'arbitrarily' and a Dutch proposal that Art. 6 be drafted along the same lines as Art. 2 of the ECHR, the majority insisted on the formulation adopted by the HRCComm, even though its meaning had not been clarified. Several delegates took the opinion that arbitrarily was synonymous with the term 'without due process of law' common in Anglo-American law. Others argued that it contained an ethical component, since national legislation could also be arbitrary. The Committee of Experts, which had taken up the interpretation of this term at the request of the Committee of Ministers of the Council of Europe, concurred with the view of the Chilean delegate in the HRCComm that arbitrary deprivation of life contained elements of *unlawfulness and injustice*, as well as those of *capriciousness and unreasonableness*."

82 *Van Alphen v. The Netherlands*, Communication No. 305/1988.

83 Human Rights Committee's *General Comment* 6(16).

84 *Reid v Jamaica* (No. 250/1987), §12.2.

and *Political Rights*” (emphasis added). Moreover the notion that capital cases receive special procedural treatment has long been recognised in some domestic jurisdictions.⁸⁵

The following fair trial rights must be stringently respected in capital cases:

- **Right to be informed promptly and in detail of the nature and cause of the charge** (Article 14(3)(a)).
- **Right to be tried without undue delay** (Article 14(3)(c)), i.e. within a reasonable time of being taken into custody. Although there is no determination as to what constitutes “undue delay”, the Human Rights Committee has ruled that a delay of 51 months (4.25 years) between a conviction and the dismissal of the appeal constituted a violation of this right.⁸⁶
- **Freedom from self-incrimination** (Article 14(3)(g)).
- **Right to free legal representation of the defendant’s own choosing** (Article 14(3)(d)) and **right to adequate time and facilities for the preparation of the defence** (Article 14(3)(b)). See below for further discussion.
- **Right to examine, or have examined, the witnesses against him** (Article 14(3)(e)), or equality of arms between the prosecution and the defence. This principle entails, as the Human Rights Committee has held, that defendants must be able to access all documents essential for conducting the defence or appeal, such as access to official prosecutorial applications to the court,⁸⁷ the court’s judgment⁸⁸ or the trial transcript.
- **Right for the defendant to be tried in his presence** (Article 14(3)(d)).
- **Right to the free assistance of the interpreter if the defendant does not understand the language spoken in court** (Article 14(3)(f)), in order to “ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court” (1996 ‘Safeguards’).
- **Right to benefit from a high standard of proof.** The 1984 ‘Safeguards’ state that a death sentence may not be passed except “when the guilt of the person charged is based upon **clear and convincing evidence** leaving no room for an alternative explanation of the facts”.
- **Right to appeal or review** (Article 14(5) & 1984 ‘Safeguards’). The Human Rights Committee clarified that this right entails the right to all available stages to appeal, which means that if a country provides for more than one appeal as part of the appellate process, the convicted person must be given effective access to each stage of appeal.⁸⁹ The 1989 Resolution on the implementation of the ‘Safeguards’ further recommended that States provide for mandatory appeals or review in capital cases. Furthermore, the Human Rights Committee’s Draft General Comment 36 refers to the need for post-conviction review, indicating that States “*must... take all feasible precautions in order to avoid wrongful convictions in death penalty cases, including re-examination of past convictions on the basis of new evidence, including new DNA evidence, and consideration of the implications on conviction in capital offences of new studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.*”

85 See for example in the United States *Furman v Georgia*, 408 US 238, 286-287 (1972) (Brennan J); *Callins v Collins*, cert. denied, 114 S.Ct. 1127, 127 L.Ed., 435 (1994) (Blackmun J., dissenting).

86 Human Rights Committee, *Johnson v. Jamaica*, 1996.

87 Human Rights Committee, Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

88 Human Rights Committee, Communication No. 445/1991, *Champagne v Jamaica*, par. 7.3-7.4.

89 Human Rights Committee, *Henry v. Jamaica*, 1992.

- **Right to finality of sentence.** The 1984 ‘Safeguards’ state that no execution may be carried out while “*any appeal or other recourse, procedure or other proceeding relating to pardon or commutation*” is pending. This includes appeals and complaints filed before regional or international bodies.
- **Right of foreign nationals to consular notification.** Article 36 of the Vienna Convention on Consular Relations, which has arguably become an international customary norm, entitles foreign nationals arrested or imprisoned to contact the consular authorities of his State of nationality. Consular officials have the right to visit a national in custody and to “*arrange for his legal representation*”.

The Human Rights Committee has found violations of Article 14, and consequently of Article 6, in many death penalty cases. Among the fair trial rights listed above, the Committee has found a violation of the following procedural rights, among others, in capital cases: to be informed promptly of the nature and cause of the charge⁹⁰ (Article 14§3(a)); to have adequate time and facilities for the preparation of a defence⁹¹ (Article 14§3(b)); to be tried in his or her presence and to defend him or herself⁹² (Article 14§3(d)); to legal counsel;⁹³ (Article 14§3(d)); to obtain the attendance of witnesses⁹⁴ (Article 14§3(e)); to a right of appeal⁹⁵ (Article 14§5); and to not be forced to confess guilt⁹⁶ (Article 14§3(g)).

5.3. RIGHT TO EFFECTIVE LEGAL REPRESENTATION

Among the fair trial rights that must be guaranteed in capital cases, the right to legal representation deserves particular attention. Numerous international human rights treaties provide for this right as part of the right to a fair trial.⁹⁷

Both national courts and international human rights tribunals have held that States must ensure that legal assistance is both effective and substantial. In particular, States must ensure that every accused person has the right to be assisted by counsel of their choice, regardless of their means (including at the State’s expense if the defendant cannot afford a private lawyer), and, if detained, to communicate with counsel in private.

Importantly, the right to effective legal representation encompasses the right to be accompanied by counsel before any authority at every stage of the proceedings. The Human Rights Committee has found

90 See for example *Mbenge v Zaire*, (No. 16/1977), UN Doc. CCPR/C/OP/2 in which the Committee found that Mbenge had been deprived of the time necessary for preparation of a proper defence due to no serious efforts having been made to notify Mbenge that he must appear before the tribunal; *Thomas v Jamaica*, (No. 272/1988), UN Doc. A/47/40 in which the Committee found that Thomas’s right to a fair trial had been violated by his conviction *in absentia*.

91 See for example *Reid v Jamaica* (No. 250/1987) in which the complainant was only able to communicate with his legal aid attorney for the first time on the day of the trial; *Little v Jamaica* (No. 283/1988), UN Doc. A/47/40 in which, on appeal, a court-appointed attorney did not consult with Little despite several letters requesting an interview; *Mbenge v Zaire*, (No. 16/1977), UN Doc. CCPR/C/OP/2; *Thomas v Jamaica*, (No. 272/1988), UN Doc. A/47/40.

92 See for example *Mbenge v Zaire*, (No. 16/1977), UN Doc. CCPR/C/OP/2; *Thomas v Jamaica*, (No. 272/1988), UN Doc. A/47/40.

93 *Pinto v Trinidad and Tobago* (No. 232/1987) in which the court did not accept the accused’s arrangements for another attorney to represent him for the purposes of the appeal even when it would have entailed an adjournment.

94 See for example *Grant v Jamaica* (No. 353/1988), UN Doc. A/49/40, Vol.II in which a judge failed to adjourn the trial and issue a subpoena into order to secure the attendance of a witness.

95 *Henry v Jamaica* (NO. 230/1987) in which the Jamaican Court of Appeal failed to issue a written judgment in a death penalty case, in effect obstructing further appeal. See also *Little v Jamaica* (No. 283/1988), p. 276; *Francis v Jamaica* (No. 320/1988); *Hamilton v Jamaica* (No. 333/1988), p.37; *Collins v Jamaica* (No. 356/1989); *Smith v Jamaica* (No. 282/1988), §10.5; *Champagne, Palmer and Chisholm v Jamaica* (No. 445/1991), UN Doc. A/49/40, Vol. II, p. 136, §§7.2-7.3.

96 Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.2; Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.2, 7.5; Communication No. 1906/2009, *Yuzepchuk v Belarus*, Views adopted on 17 Nov. 2014, para. 8.2, 8.6.

97 See e.g., ICCPR, art. 14(3)(d); Statute of the International Criminal Court, art. 67(1)(d); European Convention for Human Rights, art. 6(3)(c); Charter of Fundamental Rights of the European Union, art. 47; American Convention on Human Rights, art. 8(2)(d); African Charter on Human and Peoples’ Rights, art. 7(1)(c).

violations of this right in capital cases where the defendant was not represented during all stages of the criminal proceedings,⁹⁸ including criminal interrogation,⁹⁹ preliminary hearings,¹⁰⁰ trial¹⁰¹ and appeal.¹⁰²

5.4. RIGHT TO SEEK PARDON OR COMMUTATION

Article 6(4) of the ICCPR establishes that:

Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence may be granted in all cases.

This requires that the State establish a process by which:

- a convicted person may apply for a pardon, or a commutation of sentence; and
- the state can grant a pardon in all capital cases.¹⁰³

The 1989 Resolution on the implementation of the ‘Safeguards’ recommends that pardon requests be mandatory for death row prisoners.

Furthermore, a meaningful pardon or commutation process must meet minimal rules of procedural fairness. The 1996 ‘Safeguards’ called upon States to “*allow adequate time for preparation*” and to ensure that petitioners are “*fully informed of the status*” of clemency petitions. The Special Rapporteur on extrajudicial, summary or arbitrary executions has further clarified that pardon procedures must offer “*certain essential guarantees, including clarity about the processes followed and the substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advanced when the request will be considered; and a right to be informed promptly about the outcome of the procedure.*”¹⁰⁴

In some countries, the continued exercise of the power to grant pardons or commute sentences has led to the de facto abolition of the death penalty in that State.

5.5. METHOD OF EXECUTION

Article 7 of the ICCPR states that:

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

The prohibition against torture is a jus cogens norm, which means that it applies to all States under all circumstances and is non-derogable.

The Human Rights Committee has interpreted this Article to mean that in the case of the imposition of a death sentence, it must only be carried out “*in such a way as to cause the least possible physical and mental suffering.*”¹⁰⁵

The Committee has found that asphyxiation by gas would be contrary to this requirement as it “*may cause prolonged suffering and agony and does not result in death as swiftly as possible*”.¹⁰⁶ In another case, two dissenting members of the Committee identified stoning as a method of execution contrary to

98 Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.4, 7.5.

99 Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

100 Communication No. 719/1996, *Levy v. Jamaica*, Views adopted on 3 Nov. 1998, para. 7.2-7.3.

101 Communication No. 775/1997, *Brown v Jamaica*, Views adopted on 11 May 1999, para. 6.11, 6.15.

102 Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, at para. 9.4.

103 UN Doc. E/CN.4/SR.310, at p. 13.

104 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 2 May 2008, para. 67, as paraphrased in Human Rights Committee, General Comment 36, para. 49.

105 *General Comment 20(44)*, UN Doc. CCPR/C/21/Rev/1/Add.3, §6.

106 *Ng v Canada* (No. 469/1991), §16.3.

Article 7 because it “is intended to and actually inflicts prolonged pain and suffering.”¹⁰⁷ Subsequently, the Commission on Human Rights in 2005 urged member States to:

*“ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, is stopped immediately” (para. 7 (i))*¹⁰⁸.

The Committee has been otherwise reluctant to enumerate the methods of judicial execution that offend Article 7. Committee member Christine Chanet explained her reluctance to do so when she wrote: “By engaging in this debate, the Committee finds itself obliged to take positions that are scarcely compatible with its role as a body monitoring an international human rights instrument.”¹⁰⁹

The Committee held in 1994 that execution by lethal injection is not a breach of Article 7.¹¹⁰ It has not revisited the issue since then, but in the intervening years a significant amount of new evidence has been collected on the effects of lethal injection.

In contrast to the Committee’s reluctance to characterize individual execution methods as torture, the UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment have in recent years questioned whether any method of execution may be considered humane. In 2009, the Special Rapporteur on torture asked:

*“If the amputation of limbs is considered cruel, inhuman, or degrading punishment, how can beheading then be qualified differently? If even comparatively lenient forms of corporal punishment, such as 10 strokes on the buttocks, are absolutely prohibited under international human rights law, how can hanging, the electric chair, execution by firing squad, and other forms of capital punishment ever be justified under the same provisions?”*¹¹¹

In 2012, the subsequent Special Rapporteur on torture stated that there is no categorical evidence that any method of execution in use today complies with the prohibition of torture and cruel, inhuman or degrading treatment. The Special Rapporteur concluded that even if the required safeguards are in place, “all methods of execution currently used can inflict inordinate pain and suffering. States cannot guarantee that there is a pain-free method of execution”.¹¹²

The Human Rights Committee has also declared public executions to be “incompatible with human dignity”.¹¹³

5.6. DURATION OF INCARCERATION: THE DEATH ROW PHENOMENON

On the basis of the prohibition against torture provision of the European Convention on Human Rights¹¹⁴ the European Court of Human Rights in 1989 developed the concept of the ‘death row phenomenon’.¹¹⁵ The Court had regard to the long duration spent on death row by the individual in this particular case, with “the ever present and mounting anguish of awaiting execution of the death penalty”¹¹⁶. They also took into account the age and mental state of the convicted person at the time of the offence. The Court held that

107 *Ng v Canada* (No. 469/1991), p. 219.

108 SG report 2010, para 118.

109 *Ng v Canada* (No. 469/1991), p. 220.

110 *Kindler v Canada* (No. 470/1991), UN Doc. A/48/40, Vol. II, p. 138.

111 Manfred Nowak, United Nations Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, p. 11 para. 38, A/HRC/10/44, Jan. 14, 2009.

112 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/67/279, para. 41.

113 UN Doc CCPR/C/79/Add.65, July 24, 1996, para. 16.

114 Article 3, European Convention on Human Rights.

115 *Soering v United Kingdom* (App. No. 14038/88), Series A, Vol. 161.

116 *Soering v United Kingdom* (App. No. 14038/88), Series A, Vol. 161.

his extradition to a State in which it was likely he would face the death penalty and be incarcerated on death row for several years would expose him to treatment going beyond the prohibition against torture provision of the *Convention*.¹¹⁷

The potential ramifications of this decision have not been thoroughly explored, although support for the principle of a ‘death row phenomenon’ can be found in judgments of the Judicial Committee of the Privy Council¹¹⁸, Supreme Court of Zimbabwe¹¹⁹ and Constitutional Court of South Africa.¹²⁰ The Privy Council held in 1993 that any delay of more than 5 years between the imposition of a capital sentence and execution amounts to inhuman or degrading punishment. This judgment had far-reaching consequences, resulting in numerous commutations of death sentences in English-speaking Caribbean countries, for which the Privy Council is the highest appellate court.

The Human Rights Committee has made it clear, however, that the notion of a ‘death row phenomenon’ may conflict with its own established case law¹²¹ which maintains that “[i]n principle prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment, even if they can be a source of mental strain for the convicted prisoners.”¹²² Although the Committee is yet to overturn its decision on the ‘death row phenomenon’, some commentators and former members of the Committee believe that the Committee will soon reconsider its decision.¹²³

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has also had cause to address the issue of duration of incarceration, yet in relation to the brevity between conviction and carrying out the sentence. The Special Rapporteur has recommended “that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency.”¹²⁴ A provision to this effect is contained within both the Third Geneva Convention of 1949 and Fourth Geneva Convention of 1949.¹²⁵

5.7. DETENTION CONDITIONS ON DEATH ROW

Article 7 also raises the issue of detention conditions on death row. The 1996 ‘Safeguards’ called upon States to apply the “*Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.*”

The cases that have come before the Committee and in which they have found a violation of the ICCPR have included instances of beatings sustained while on death row,¹²⁶ an absence of basic hygienic facilities and lack of medical or dental care.¹²⁷ The Committee has also expressed concern over the harsh conditions in which prisoners, including death row prisoners, live around the world, including insufficient

117 *Soering v. United Kingdom* (App. No. 14038/88), Series A, Vol. 161, §111.

118 *Pratt and Morgan v. Attorney General for Jamaica et. al.* (Nos. 210/1986, 225/1987), UN Doc. A/44/40.

119 *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General et. al.* See Laurel Angus, ‘Delay Before Execution: Is it Inhuman and Degrading Treatment?’, (1993) 9 *South African Journal of Human Rights* 432.

120 *Makwanyane and Mchunu v. The State*, (1995) 16 HRLJ 154.

121 *Simms v. Jamaica* (No. 540/1993).

122 *Pratt and Morgan v. Jamaica* (Nos. 210/1986, 225/1987), §13.6.

123 See for example Rosalyn Higgins, ‘Extradition, the Right to Life, and the Prohibition Against Cruel and Inhuman Punishment and Treatment: Similarities and Differences Under the ECHR and the ICCPR’, quoted in William A. Schabas, *The Abolition of the Death Penalty*, p. 134.

124 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1996/4, 25 January 1996, §556.

125 Geneva Convention of August 12, 1949 Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, Article 101; Geneva Convention of August 12, 1949 Relative to the Protection of Civilians (1950) 75 UNTS 135, Article 75.

126 *Collins v. Jamaica* (No. 240/1987); *Francis v. Jamaica* (No. 320/1988). See also *Thomas v. Jamaica* (No. 321/1988), UN Doc. A/49/40, Vol. II, p. 1, §9.2; *Bailey v. Jamaica* (No. 334/1988), UN Doc. A/48/40, Vol. II, p.72, §9.3; *Hylton v. Jamaica* (No. 407/1990), UN Doc. A/49/40, Vol. II, p.79, §9.3; *Berry v. Jamaica* (No. 330/1988), §11.2 (violation of Article 10 but not Article 7).

127 *Kelly v. Jamaica* (No. 253/1987).

access to visits and correspondence, cell size, food, exercise, extreme temperatures, lack of ventilation, and lack of time outside of cells.¹²⁸

The effect of a finding that Article 7 and/or 10 of the ICCPR has been breached is that “*the State party is under an obligation to take effective measures to remedy the violation suffered ... including the award of appropriate compensation, and to ensure that similar violations do not occur in the future.*”¹²⁹

Although the Human Rights Committee and Special Rapporteur on torture have stated that solitary confinement does not per se violate the prohibition on torture, the Special Rapporteur has indicated that in death penalty cases, the combination of extreme sensory deprivation, indefinite detention and mental anguish given uncertainty of execution date, means that solitary confinement does rise to the level of torture when it is practiced on death row.¹³⁰

The Human Rights Committee does not appear to have passed judgment on other exceptional conditions sometimes found on death row such as extraordinarily high security or the denial of any form of work or education.

5.8. EXTRADITION TO A RETENTIONIST STATE

Most, if not all abolitionist States will not extradite to State where the person may be subject to the death penalty unless the requesting State provides a formal guarantee that the death sentence will not be imposed or carried out.

At the regional level, the European Court of Human Rights has determined that that extradition, expulsion or deportation to a State in cases where there was a real risk of capital punishment was a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols Nos. 6 and 13.¹³¹ The Inter-American Court of Human Rights has taken a similar position.¹³²

At the national level, several jurisdictions have also taken a similar approach. The South African Constitutional Court ruled that the extradition could not occur where a request for written assurances that the death penalty will not be imposed had been refused by the receiving State.¹³³ In Macao, the Court of Final Appeal refused the extradition of a person to mainland China where capital punishment was threatened.

Reports to the UN from other member States have referenced a similar policy in relation to extradition.¹³⁴ In his 2015 report, the UN Secretary General referred to several instances where regional and domestic courts had scrutinised diplomatic assurances that the death penalty would not be imposed to ensure that they were sufficient, and where they were not convinced, had determined that a person could not be extradited.¹³⁵

128 Special Rapporteur on torture, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/67/279, 9 August 2012, para. 49.

129 *Bailey v. Jamaica* (No. 334/1988), §11.1.

130 Special Rapporteur on torture, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/67/279, 9 August 2012, para. 48.

131 See for example *Al Nashiri v. Poland*, Application No. 28761/11, Judgement of 24 July 2014.

132 *Wong Ho Wing v. Peru*, Provisional Measures, Order of the Inter-American Court of Human Rights, 29 January 2014; *Wong Ho Wing v. Peru*, Provisional Measures, Order of the Inter-American Court of Human Rights, 31 March 2014.

133 Constitutional Court of South Africa, *Minister of Home Affairs and Others v. Tsebe and Others, Minister of Justice and Constitutional Development and Another v. Tsebe and Others* [2012] ZACC 16, 2012 (5) SA 467 (CC), 2012 (10) BCLR 1017 (CC).

134 SG Report E/2015/49.

135 Report of the Secretary General on Capital Punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. 13 April 2015. E/2015/49 at para 59.

6. Conclusions

The death penalty is recognised in international and regional human rights instruments as an exception to the right to life. These instruments, however, impose strict limitations on when and how a death sentence may be imposed and carried out.

The progressive interpretation of these instruments by international, regional and national courts and tribunals, and by the UNGA, Human Rights Council, Human Rights Committee, Treaty Bodies, and Special Procedure Mandate Holders has affirmed and, in some cases, expanded the application of human rights norms to capital punishment. As a result, some death penalty practices that were once fairly widespread, such as the use of mandatory death sentences or the execution of juveniles, have rapidly declined and might now be considered unlawful under customary international law. National courts have played a critical role in these transformations, often incorporating the reasoning of international human rights bodies. But while substantive restrictions on the lawful application of capital punishment have tended to become more robust, other human rights, particularly those relating to fair trials, effective legal representation and detention conditions on death row, continue to be frequently violated by States that retain the death penalty, and there remains much work to be done in those arenas.

Meanwhile, in line with the goals of international human rights instruments, the world continues to move closer to abolition. The number of fully abolitionist jurisdictions has grown almost every year and today 102 States and 3 territories (an absolute majority of UN members) have repealed the death penalty in law. The death penalty has all but disappeared from Latin America and Europe, and the success of the four abolition treaties (which largely assume that abolition is irreversible) has spurred the process of preparing an African death penalty protocol. The number of de facto abolitionist States has grown even as various initiatives in retentionist States, such as criminal amendments reducing the scope of capital offences, chip away at reliance on capital punishment.

While it is too early to say that international customary law prohibits the death penalty outright, human rights challenges to the death penalty as an inhumane punishment may be moving international law in that direction. In 2012, the Special Rapporteur on torture noted that “[w]hile international human rights bodies have yet to take the step of holding the death penalty to per se run afoul of the prohibition of torture and cruel, inhuman or degrading treatment, there is clearly a trend in this direction at the regional and national levels”. He added that he was “convinced that a customary norm prohibiting the death penalty under all circumstances, if it has not already emerged, is at least in the process of formation” (emphasis added). In the current version of its Draft General Comment 36, the Human Rights Committee notes that “States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure, in the foreseeable future.”

Within the Asia Pacific Region, 10 APF members’ States retain and have carried out the death penalty within the last ten years, while a further 4 retain the death penalty, but have not carried out an execution in that period. One additional APF member’s State has not carried out an execution in over ten years and has abolished the death penalty for ordinary crimes. The following section provides recommendations for action that APF member NHRIs should consider with regard to the application of the death penalty in their respective jurisdictions.

7. Recommendations to APF member institutions

This section contains a list of general recommendations, followed by State specific recommendations that each APF members should consider in promoting compliance with international human rights law and norms regarding the death penalty.

7.1. GENERAL RECOMMENDATIONS

At the domestic level, NHRIs in retentionist States should consider the following recommendations:

7.1.1. Review of the Criminal Code

NHRIs should undertake an assessment of their respective State's Criminal Code to determine:

- if the death penalty is imposed only for the most serious crimes, that is, for crimes where the offender had an intention to kill which resulted in the loss of life;
- whether the death penalty is mandatory for certain offences;
- whether excluded or protected groups, such as persons under the age of 18, pregnant women or individuals with mental illness or intellectual disabilities are formally protected.

Particular provisions in each State's Criminal Code that may be of concern are listed below in the 'APF Member Specific' recommendations.

7.1.2. Monitoring trials

NHRIs should:

- monitor judicial proceedings in all capital cases to ensure that the fair trial guarantees recognised in international human rights law are respected and protected;
- consider opportunities to engage in death penalty cases as *amicus curiae* (friend of the court) to provide expert advice in relation to the application of domestic and international human rights protections;
- collect and maintain disaggregated data (including on the grounds of race, ethnicity, nationality and socio-economic status), and assess and report upon the application of the death penalty to different groups within society;
- investigate, assess and report on the adequacy of:
 - legal representation, particularly public defenders;
 - the rules governing, and the accessibility of, appeal processes in capital cases;
 - rules governing, and the accessibility of, processes to seek pardons or commutation of sentences.

7.1.3. Monitoring pre-trial and post-trial detention

NHRIs should consider:

- monitoring and assessing conditions of pre-trial detention and interrogation to ensure that the fundamental human rights contained in international human rights law, and in particular the UN Standard Minimum Rules for the Treatment of Prisoners, are respected and protected;¹³⁶
- monitoring police detention;
- monitoring, assessing, and reporting on police/prosecution practice and procedure to ensure that protections, including those related to self-incrimination and torture, are respected.

7.1.4. Methods of execution

NHRIs should assess whether the means of execution permitted in their respective criminal law or other relevant laws comply with international human rights law and norms. Executions carried out by any method that contravene the prohibition on cruel punishment, for example because of their duration or the amount of pain they inflict, are of concern, particularly those that have already been identified by the various international and regional human rights mechanisms such as stoning, gas asphyxiation, burning, burying alive, and public executions.

7.1.5. Reporting

NHRIs should systematically monitor, and collect detailed and disaggregated data on the use of the capital punishment by the State, including the number of executions and death sentences. This information should be included in annual reports and in shadow reports to the UPR, treaty bodies and special procedure mandate holders.

NHRIs may also utilise this information in public information campaigns, in particular information relating to the execution of vulnerable defendants such as prisoners with mental health conditions, the use of torture and false confessions and attendant risk of executing innocent people, discrimination in the distribution of death sentences, overrepresentation of poor prisoners on death row, arbitrariness of mandatory death sentences etc.

7.1.6. Extradition

NHRIs should advocate to ensure that their national laws prohibit the extradition of persons to States that retain the death penalty, unless the requesting State provides a formal assurance that the death penalty will not be applied.

136 ECOSOC resn. 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

7.2. APF MEMBER SPECIFIC RECOMMENDATIONS

The following recommendations are addressed to each APF member institution whose State retains the death penalty. Where relevant, recommendations address the following issues:

- whether crimes contained in the State's Penal Code, to which the death penalty is imposed, are considered to be the 'most serious crimes'.
- whether the State's Penal Code imposes a mandatory death penalty for certain crimes;
- whether vulnerable defendants, such as children, pregnant women, those with a mental or intellectual disability, mothers with dependent children and the elderly are protected;
- whether the method of execution is inconsistent with the CAT;
- whether the State is a party to the ICCPR or the OP2;
- the State's position in support or opposition to the UNGA resolution in support of a moratorium on the death penalty; and
- the introduction of a moratorium on the implementation of the death penalty.

1. Afghanistan

Crimes subject to the death penalty

Pursuant to the Afghanistan Penal Code (1976) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; terrorism offences resulting in death; terrorism offences not resulting in death; arson; treason; adultery; consensual same sex sexual conduct by adults; apostasy; perjury leading to the imposition of the death penalty on another.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; arson; treason; adultery; consensual same sex sexual conduct by adults; apostasy; and perjury leading to the imposition of the death penalty on another.

Imposition of a mandatory death sentence

The list of crimes for which the death penalty is mandated is as follows:

- aggravated murder; murder; treason; kidnapping not resulting in death; terrorism-related offenses resulting in death.

The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

The Commission should consider advocacy to promote a limitation on the application of the death penalty for mothers with dependent children, the elderly and those with a mental or intellectual disability.

Method of execution

The Afghanistan Penal Code provides for the sentence of death to be carried out by hanging. In addition, there have been public reports of execution by stoning in areas not controlled by the government. Stoning has been characterised by the Commission on Human Rights as a cruel and inhuman punishment.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to ensure that methods of execution are not inconsistent with the Convention Against Torture.

International law

Afghanistan is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are more than 400 people under the sentence of death in Afghanistan. The Commission should consider advocating for a moratorium on the application of the Death Penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, but did not sign the note verbale of dissociation.

The Commission should consider advocating for the State to support, or at least abstain from voting against the UNGA Moratorium resolution, which will next be considered in December 2016.

2. Bangladesh

Crimes subject to the death penalty

Pursuant to the Bangladesh Penal Code (1860) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; robbery resulting in death; injuring women and children with explosive; poisonous or corrosive substances resulting in death; terrorism offences resulting in death; terrorism offences not resulting in death; rape; kidnapping; drug trafficking and possession; treason; certain military offences resulting in death; attempted dowry murder; aiding; abetting and conspiring to commit a capital offence; human trafficking and perjury leading to the imposition of the death penalty on another.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; rape; kidnapping; drug trafficking and possession; treason; attempted dowry murder; aiding; abetting and conspiring to commit a capital offence; human trafficking and perjury leading to the imposition of the death penalty on another.

Imposition of a mandatory death sentence

In the case of Sukur Ali, the High Court purportedly ruled that a mandatory death penalty is unconstitutional. The Commission may wish to review this decision and consider whether an opportunity exists to advocate for legislative amendments to remove mandatory sentencing provisions in death penalty cases.

Whether relevant categories of persons are excluded

Under the Children Act of 1974, offenders under 16 may not be subject to the death penalty. The Commission should consider advocacy to promote a limitation on the application of the death penalty for children between the ages of 16-18, and to extend this to mothers with dependent children, the elderly and those with a mental or intellectual disability.

Method of execution

The Code of Criminal Procedure 1898 provides for execution by hanging, though a Supreme Court decision in 2009 indicates that execution by firing squad is also permissible.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

Bangladesh is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are more than 1000 people in prison under the sentence of death. The Commission should consider advocating for the State to implement a moratorium on the application of the Death Penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and in addition, signed the note verbale of dissociation.

The Commission should consider advocating for the State to abstain from voting against the UNGA Moratorium resolution or signing the note verbale of dissociation that will be considered in December 2016.

3. India

Crimes subject to the death penalty

Pursuant to the Indian Penal Code (1860) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; robbery resulting in death; kidnapping resulting in death; use of unlicensed firearms/explosives resulting in death; engaging in organised crime resulting in death; sati; assisting certain persons to commit suicide; terrorism offences resulting in death; terrorism offences not resulting in death; rape; kidnapping; drug trafficking; treason; espionage; certain military offences not resulting in death; conspiracy to commit a capital offence; and perjury leading to the imposition of the death penalty on a member of a scheduled caste or tribe.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: assisting certain persons to commit suicide; terrorism offences not resulting in death; rape; kidnapping; drug trafficking; treason; espionage; certain military offences not resulting in death; conspiracy to commit a capital offence; and perjury leading to the imposition of the death penalty on a member of a scheduled caste or tribe.

In addition, the Commission should consider the decisions of the Supreme Court in *Bachan Singh v. State of Punjab* (1983) and *State of Punjab v. Dalbir Singh* (2006), and determine whether an opportunity exists to advocate for a review of existing criminal offences and penalties to ensure that the death penalty is only imposed for the most serious crimes.

Imposition of a mandatory death sentence

The Indian Supreme Court, in *Mithu v. State of Punjab* (1983), ruled that the mandatory death sentence was unconstitutional. Notwithstanding this decision, subsequent laws have sought to mandate the death penalty in certain circumstances. The Commission should consider advocating to formalise the Supreme Court's decision by seeking amendments to legislation that mandates the imposition of the death penalty for certain crimes.

Whether relevant categories of persons are excluded

Under Indian law, children under 18 may not be subject to the death penalty, nor can such a sentence be applied to pregnant women.

The Commission should consider advocacy to promote a limitation on the application of the death penalty for mothers with dependent children, the elderly and those with a mental or intellectual disability.

Method of execution

The Criminal Procedure Code of 1973 provides for execution by hanging, while the Army Act of 1950 provides for execution by hanging or firing squad.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

India is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

India has signed but has not ratified the CAT. The Commission should continue its advocacy campaign with the State to ratify the CAT.

Support for abolition or moratorium

It is estimated that there are more than 450 people under the sentence of death, with over 100 sentences handed down each year. The Commission should consider advocating for the State to implement a moratorium on the application of the Death Penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, but did not sign the note verbale of dissociation.

The Commission should consider advocating for the State to abstain from voting against the UNGA Moratorium resolution that will next be considered in December 2016.

4. Indonesia

Crimes subject to the death penalty

Pursuant to the Penal Code of Indonesia (1982) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- murder; gang robbery resulting in death; extortion by force resulting in death; terrorism offences resulting in death; terrorism offences not resulting in death; gang robbery resulting in serious injury; drug trafficking and possession; certain economic crimes (corruption); treason; espionage; certain military offences not resulting in death; war crimes; crimes against humanity and genocide; certain offences relating to the use of chemical weapons.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; gang robbery resulting in serious injury; drug trafficking and possession; certain economic crimes (corruption); treason; espionage; certain military offences not resulting in death; and certain offences relating to the use of chemical weapons.

Whether relevant categories of persons are excluded

The Commission should consider advocacy to promote a limitation on the application of the death penalty for mothers with dependent children, the elderly and more broadly to those with a mental or intellectual disability.

Method of execution

The Penal Code of 1915 provides for execution by firing squad. Only 72 hours' notice of execution is provided. The Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights

mechanisms as inconsistent with the Convention Against Torture, as well as the adequacy of 72 hours' notice of execution.

International law

Indonesia is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are more than 100 people under the sentence of death. The Commission should consider advocating for the State to implement a moratorium on the application of the Death Penalty.

Moratorium resolution & note verbale of dissociation

The State abstained from voting on UNGA resolution in support of a Moratorium on the Application of the Death Penalty in 2014, nor did it sign the note verbale of dissociation.

The Commission should consider advocating for the State to continue to abstain from voting against the UNGA moratorium resolution that will next be considered in December 2016.

5. Jordan

Crimes subject to the death penalty

Pursuant to the Jordan Penal Code (1970) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; robbery resulting in death; terrorism offences resulting in death; terrorism offences not resulting in death; rape of a child; aggravated robbery; drug trafficking; treason; espionage; war crimes; crimes against humanity and genocide; and certain offences regarding firearms.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences; including: terrorism offences not resulting in death; rape of a child; aggravated robbery; drug trafficking; treason; espionage; war crimes; crimes against humanity and genocide; and, certain offences regarding firearms.

Imposition of a mandatory death sentence

The death penalty is mandated for drug trafficking, war crimes, crimes against humanity and genocide. The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime.

Method of execution

The Jordan Penal Code of 1960 provides for execution by hanging.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the CAT.

International law

Jordan is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Moratorium resolution & note verbale of dissociation

The State abstained from voting on the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty and did not sign the note verbale of dissociation.

The Commission should consider advocating for the State to abstain from voting against the UNGA moratorium resolution that will next be considered in December 2016.

Support for abolition or moratorium

It is estimated that there are over 100 people under the sentence of death. While executions were conducted in 2014 and 15, there were no executions in the preceding period from 2006 to 2013. The Commission should consider advocating for the State to implement a moratorium on the application of the death penalty.

6. Malaysia

Crimes subject to the death penalty

Pursuant to the Penal Code of Malaysia (1936) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- murder; gang robbery resulting in death; assisted suicide of a child or insane person; rape or attempted rape resulting in death; certain terrorism offences not resulting in death; use of a firearm in a burglary; robbery or extortion attempt; kidnapping; drug trafficking; treason; mutiny; use of firearms to avoid or escape arrest or incarceration; weapons trafficking; attempted murder; and perjury leading to the imposition of the death penalty on another.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: assisted suicide of a child or insane person; certain terrorism offences not resulting in death; use of a firearm in a burglary; robbery or extortion attempt; kidnapping; drug trafficking; treason; mutiny; use of firearms to avoid or escape arrest or incarceration; weapons trafficking; attempted murder; and perjury leading to the imposition of the death penalty on another.

Imposition of a mandatory death sentence

The list of crimes for which the death penalty is mandated is as follows:

- murder; burglary; robbery; kidnapping and drug trafficking not resulting in death; treason; and, the use of firearms to avoid or escape arrest or incarceration.

The Commission should consider advocating the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

The Commission should consider advocacy to promote a limitation on the application of the death penalty for mothers with dependent children and the elderly.

Method of execution

The Criminal Procedure Code of Malaysia 1935 provides for execution by hanging.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

Malaysia is not a party to the ICCPR nor the OP2.

The Commission should continue its existing advocacy for the State to become a party to the ICCPR.

Support for abolition or moratorium

It is estimated that there are more than 900 under the sentence of death. The Commission should consider advocating for the State to implement a moratorium on the application of the death penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and in addition, signed the note verbale of dissociation.

The Commission should consider advocating for the State to abstain from voting against the UNGA Moratorium resolution or signing the note verbale of dissociation that will be considered in December 2016.

7. Maldives

Crimes subject to the death penalty

Pursuant to the Maldives Penal Code (1967) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- murder; terrorism offences resulting in death; and treason.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including treason. The Commission may also wish to consider advocating to ensure consistent application of criminal sanctions in criminal and Sharia courts.

Whether relevant categories of persons are excluded

The Maldives Penal Code 1967 and Sharia law permit the death penalty for children under the age of 18. However, the Maldives is a party to the ICCPR and CRC, and pursuant to the Constitution, courts are required to take international treaties into account.

The Commission should consider advocacy to address this inconsistency through legislatively entrenching a limitation on the application of the death penalty to those under 18.

In addition, the Commission should consider advocating for a limitation on the application of the death penalty on women with dependent children and for the elderly.

Method of execution

The 2014 Regulation on Investigation and Execution of Sentence for Willful Murder provides for execution by lethal injection.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

The Maldives is a party to the ICCPR, but is not yet a party to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are more than 15 people are under the sentence of death. However, given that the Maldives is considered abolitionist in practice, and has not conducted an execution in over 50 years, the Commission should consider advocating for the State to formally abolish the death penalty.

Moratorium resolution & note verbale of dissociation

The State abstained from voting on the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and did not sign the note verbale of dissociation.

Given the Maldives is considered abolitionist in practice, the Commission should consider advocating for the State to vote in favour of the UNGA moratorium resolution that will be considered in December 2016.

8. Myanmar

Crimes subject to the death penalty

Pursuant to the Burma Penal Code (1860) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; drug trafficking and possession; certain economic crimes (involving corruption of public officials); treason; mutiny; certain crimes related to human trafficking; assault with intent to murder; and perjury leading to the imposition of the death penalty on another.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: drug trafficking and possession; certain economic crimes (involving corruption of public officials); treason; mutiny; certain crimes related to human trafficking; assault with intent to murder; and perjury leading to the imposition of the death penalty on another.

Imposition of a mandatory death sentence

The list of crimes for which the death penalty is mandated is as follows:

- aggravated murder; murder; drug trafficking and possession.

The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

The State is a party to the CRC however there do not appear to be any legislative provisions limiting the application of the death penalty on children.

The Commission should consider advocacy to address this inconsistency through legislatively entrenching a limitation on the application of the death penalty for persons under 18 years of age.

In addition, the Commission should consider advocating for a limitation on the application of the death penalty on women with dependent children and for the elderly.

Method of execution

The Code of Criminal Procedure 1898 provides for execution by hanging.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

The State is not a party to the ICCPR, nor the OP2.

The Commission should consider advocating for the State to accede to the ICCPR.

Support for abolition or moratorium

While all death sentences were commuted to life in prison in 2014, it is estimated that at least 1 person has since been placed under sentence of death. As Myanmar is considered abolitionist in practice, and has reportedly not conducted an execution since 1988, the Commission should consider advocating for the State to formally abolish the Death Penalty.

Moratorium resolution & note verbale of dissociation

The State abstained from voting on the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and did not sign the note verbale of dissociation.

Given that Myanmar is considered abolitionist in practice, the Commission should consider advocating for the State to vote in favour of the UNGA moratorium resolution that will be considered in December 2016.

9. Oman

Crimes subject to the death penalty

Pursuant to the Omani Penal Code (1974) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; arson resulting in death; piracy resulting in death; terrorism offences relating in death; terrorism offences not resulting in death; certain drug trafficking offences; treason; espionage; mutiny; certain crimes not resulting in death including piracy; assaulting or resisting security forces.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; certain drug trafficking offences; treason; espionage; mutiny; certain crimes not resulting in death including piracy; assaulting or resisting security forces.

Whether relevant categories of persons are excluded

The Commission should consider advocating for a limitation on the application of the death penalty for the elderly.

Method of execution

Reports suggest that while the Oman Penal Code of 1974 provides for execution by hanging, executions are generally carried out by firing squad.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about all methods of execution,

particularly those that have been specifically identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

The State is not a party to the ICCPR, nor the OP2. The Commission should consider advocating for the State to accede to the ICCPR.

Support for abolition or moratorium

It is estimated that there are very few, if any, persons held under sentence of death in Oman. Given that Oman is considered abolitionist in practice, and has reportedly not undertaken an execution since 2001, the Commission should consider advocating for the State to formally abolish the death penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and signed the note verbale of dissociation.

Given that Oman is considered abolitionist in practice, and has reported not undertaken an execution since 2001, the Commission should consider advocating for, or at least abstaining from, voting against the UNGA Moratorium resolution that will be considered in December 2016.

10. Palestine

Crimes subject to the death penalty

Pursuant to the Palestinian Penal Code (1936) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; commission of certain crimes resulting in death; terrorism certain offences resulting in death; terrorism offences not resulting in death; treason; espionage; and certain military offences not resulting in death.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; treason; espionage; and certain military offences not resulting in death.

Imposition of a mandatory death sentence

Given the application of various laws, including the Palestinian Penal Code of 1936, the Jordanian Penal Code of 1960 and the Revolutionary Penal Code of 1979, it is unclear to what extent the death penalty is mandated in law and to what extent mandatory sentencing is applied in practice.

The Commission should consider advocacy to promote the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

It appears that under the various criminal codes, pregnant women, women with small children and people with a mental illness are excluded from the application of the death penalty. It is less clear whether a limitation applies to offenders under 18.

The Commission should consider advocacy to promote a limitation on the application of the death penalty for persons under 18 and the elderly.

Method of execution

It is reported that execution is carried out by hanging and by firing squad.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to ensure that methods of execution are not inconsistent with the Convention Against Torture.

Support for abolition or moratorium

It is reported that there are approximately 80 persons under sentence of death in Palestine. The Commission should consider advocating for the State to implement a moratorium on the application of the death penalty.

11. Qatar

Crimes subject to the death penalty

Pursuant to the Qatar Penal Code (2004) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; certain offences resulting in death (violent robbery; torture; kidnapping); terrorism offences resulting in death; drug trafficking resulting in a death of a law enforcement officer; terrorism offences not resulting in death; certain offences not resulting in death (rape; drug trafficking; economic crimes (extortion)); treason; and espionage.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; certain offences not resulting in death (rape, drug trafficking, economic crimes (extortion)); treason; and espionage.

Imposition of a mandatory death sentence

The list of crimes for which the death penalty is mandated is as follows:

- aggravated murder, murder, certain offences resulting in death (torture, kidnapping); terrorism offences resulting in death; drug trafficking resulting in a death of a law enforcement officer; and certain Hadd and Qisas offences (including adultery and robbery resulting in death; and murder)

The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime, or in situations where discretion only exists at the will of the victim's family.

Whether relevant categories of persons are excluded

While pregnant women are protected, women with small children are protected for crimes under the penal code, but may not be protected for commission of qisas or hadd crimes.

The Commission should consider advocacy to address this inconsistency through legislatively entrenching a limitation on the application of the death penalty for women with dependent children.

In addition, the Commission should consider advocating for a limitation on the application of the death penalty for the elderly.

Method of execution

The Criminal Procedure Code 2004 provides for execution by hanging or firing squad.

While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about all methods of execution,

particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

The State is not a party to the ICCPR, nor the OP2.

The Commission should consider advocating for the State to accede to the ICCPR.

Support for abolition or moratorium

Given that Qatar is considered abolitionist in practice, and has reportedly not conducted an execution since 2003, the Commission should consider advocating for the State to formally abolish the death penalty.

Moratorium resolution & note verbale of dissociation

The State voted against the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and signed the note verbale of dissociation.

Given that Qatar is considered abolitionist in practice, and has reportedly not conducted an execution since 2003, the Commission should consider advocating for the State to vote for, or at least abstain from voting against, the UNGA Moratorium resolution that will be considered in December 2016.

12. Korea

Crimes subject to the death penalty

Pursuant to the Criminal Act (1953) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; certain offences resulting in death (arson, piracy, rape of a child or person with a disability; abduction; treason; hit and run crimes); terrorism offences resulting in death; terrorism offences not resulting in death; robbery, rape; kidnapping; certain economic crimes; drug trafficking; treason; espionage; certain military offences; and piracy.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; robbery; rape; kidnapping; certain economic crimes; drug trafficking; treason; espionage; certain military offences; and piracy.

Whether relevant categories of persons are excluded

The Commission should consider advocating for a limitation on the application of the death penalty on women with dependent children and for the elderly.

Method of execution

The Criminal Procedure Code 2004 provides for execution by hanging or firing squad. While there is no consensus on what constitutes an acceptable means of execution, the Commission should consider advocacy with government to highlight concerns about all methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

The State is a party to the ICCPR, but not the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

Given that the Republic of Korea is considered abolitionist in practice, and has reportedly not conducted an execution since 1997, the Commission should consider advocating for the State to formally abolish the death penalty.

Moratorium resolution & note verbale of dissociation

The State abstained from the vote on the 2014 UNGA resolution in support of a Moratorium on the Application of the Death Penalty, and did not sign the note verbale of dissociation.

Given that the Republic of Korea is considered abolitionist in practice, and has reportedly not conducted an execution since 1997, the Commission should consider advocating for the State to vote for the UNGA Moratorium resolution that will be considered in December 2016.

13. Sri Lanka

Crimes subject to the death penalty

Pursuant to the Sri Lanka Penal Code (1885) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- murder; rape; robbery; kidnapping; drug trafficking and possession; treason; certain military offences; use of a firearm to commit extortion; assault; sexual assault; theft; attempted murder; human trafficking and assisted suicide.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: rape; robbery; kidnapping; drug trafficking and possession; treason; certain military offences; use of a firearm to commit extortion; assault; sexual assault; theft; attempted murder; human trafficking and assisted suicide.

Imposition of a mandatory death sentence

The Sri Lankan Penal Code of 1885 and certain laws relating to the military specify the crimes for which the death penalty is mandated as follows:

- murder; and certain military offences not resulting in death (treason).

The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

Sri Lankan law provides protections for persons under 18 and for pregnant women and for persons with a mental illness.

The Commission should consider advocacy to promote or clarify limitations on the application of the death penalty for mothers with dependent children, the elderly, and for persons with intellectual disabilities.

Method of execution

The Code of Criminal Procedure 1979 provides for execution by hanging.

The Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

Sri Lanka is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are approximately 400 people imprisoned under the sentence of death. Given that the State is considered abolitionist in practice, and reportedly has not conducted an execution since 1976, the Commission should consider advocating for the State to implement a moratorium on the application of the death penalty.

Moratorium resolution & note verbale of dissociation

The State abstained from voting on UNGA resolution in support of a Moratorium on the Application of the Death Penalty in 2014. It did not sign the note verbale of dissociation.

Given that the State is considered abolitionist in practice, and reportedly has not conducted an execution since 1976, the Commission should consider advocating for the State to vote in support of, or at least continue to abstain from voting against, the UNGA Moratorium resolution that will next be considered in December 2016.

14. Thailand

Crimes subject to the death penalty

Pursuant to the Thailand Criminal Code 2499 (1956) and other relevant laws, the list of crimes for which the death penalty may be imposed is as follows:

- aggravated murder; murder; certain offences resulting in death including theft; gang robbery; rape; sexual; indecent assault or trafficking of a child under 15; kidnapping; arson; attacking a member of the royal family or a foreign head of State or representative; terrorism offences not resulting in death; certain offences not resulting in death including: rape; arson; kidnapping; drug trafficking and possession; economic crimes; treason; espionage; military offences not resulting in death; and trafficking in women or minors for the purpose of rape/sexual assault; and the illegal use of firearms or explosives.

The Commission should consider advocating for the removal of the death penalty for all crimes, but in particular, those that would not be considered to meet the threshold of '*most serious crimes*' or having lethal consequences, including: terrorism offences not resulting in death; certain offences not resulting in death including: rape; arson; kidnapping; drug trafficking and possession; economic crimes; treason; espionage; military offences not resulting in death; and trafficking in women or minors for the purpose of rape/sexual assault; and the illegal use of firearms or explosives.

Imposition of a mandatory death sentence

Crimes for which the death penalty is mandated are as follows:

- aggravated murder; murder; robbery causing death; drug trafficking; treason; and military defection.

The Commission should consider advocacy with regard to the removal of the mandatory imposition of the death penalty for any crime.

Whether relevant categories of persons are excluded

Thai law protects persons under 18, pregnant women and people with a mental illness.

The Commission should consider advocacy to promote a limitation on the application of the death penalty for mothers with dependent children, the elderly and to clarify the protection related to persons with an intellectual disability.

Method of execution

The Thailand Criminal Code 2499 provides for execution by lethal injection.

The Commission should consider advocacy with government to highlight concerns about methods of execution, particularly those that have been identified by international human rights mechanisms as inconsistent with the Convention Against Torture.

International law

Thailand is a party to the ICCPR but has yet to accede to the OP2. The Commission should consider advocating for the State to accede to the OP2.

Support for abolition or moratorium

It is estimated that there are more than 600 people under the sentence of death. Given that the State is considered abolitionist in practice, and reportedly has not conducted an execution since 1976, the Commission should consider advocating for the State to implement a moratorium on the application of the death penalty

Moratorium resolution & note verbale of dissociation

The State abstained from voting on the UNGA resolution in support of a Moratorium on the application of the Death Penalty in 2014, nor did it sign the note verbale of dissociation.

Given that the State is considered abolitionist in practice, and reportedly has not conducted an execution since 1976, the Commission should consider advocating for the State to continue to abstain from voting against the UNGA moratorium resolution that will next be considered in December 2016.

Appendix 1:

Relevant international declarations, covenants, protocols, comments and safeguards

Universal Declaration of Human Rights

Article 3

Everyone has the right to life, liberty and security of the person.

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.

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.

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.

Human Rights Committee draft General Comment 36 on the right to life

Excerpt from draft General Comment No. 36, Article 6: Right to life, CCPR/C/GC/R.36/Rev.2., 2 September 2015

...

IV. Imposition of the death penalty

34. Paragraphs 2, 4, 5 and 6 of article 6 regulate the imposition of the death penalty by those countries which have not yet abolished it.
35. Paragraph 2 of article 6 strictly limits the application of the death penalty, firstly, to States parties that have not abolished the death penalty, and secondly, to the most serious crimes. Given the anomalous nature of regulating the application of the death penalty in an instrument enshrining the right to life, the contents of paragraph 2 should be narrowly construed.¹³⁷
36. States parties that have abolished the death penalty, through amending their domestic laws, acceding to the Second Optional Protocol to the Covenant or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Furthermore, States parties may not transform an offence, which upon ratification of the Covenant, or at any time thereafter, did not entail the death penalty, into a capital offence. Nor can they remove legal conditions from an existing offence with the result of permitting the imposition of the death penalty in circumstances in which it was not possible to impose it before. States parties which abolished the death penalty cannot deport or extradite persons to a country in which they are facing criminal charges that carry the death penalty, unless credible assurances against the imposition of the death penalty have been obtained.¹³⁸ In the same vein, the obligation not to reintroduce the death penalty for any specific crime, requires States parties not to extradite or deport an individual to a country in which he or she is expected to stand trial for a capital offence not carrying the death penalty in the removing State, unless credible assurances against imposition of the death penalty have been obtained.
37. The term “the most serious crimes” must be read restrictively¹³⁹ and appertain to crimes of extreme gravity,¹⁴⁰ such as those involving premeditated murder¹⁴¹ or genocidal killings. Crimes not resulting directly and intentionally in death,¹⁴² such as drug offences,¹⁴³ attempted murder,¹⁴⁴ corruption,¹⁴⁵ armed robbery,¹⁴⁶ piracy,¹⁴⁷ abduction,¹⁴⁸ repeated evasion of compulsory military service¹⁴⁹ and sexual offences, although serious in nature, do not manifest the extraordinary high levels of violence,

137 Communication No. 829/1998, *Judge v. Canada*, Views adopted on 5 Aug. 2002, para. 10.5.

138 Communication No. 829/1998, *Judge v. Canada*, Views adopted on 5 Aug. 2002, para. 10.6.

139 Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4.

140 ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ESC Res. 1984/50 of 25 May 1984, para. 1.

141 Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 14.3.

142 Concluding Observations: Iran (1993), para. 8.

143 Concluding Observations: Thailand (2005), para. 14.

144 Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4.

145 Concluding Observations: Libya (1998), para. 8 (“a person whose life endangers or corrupts society”).

146 Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4; Communication No. 390/1990, *Luboto v. Zambia*, Views adopted on 31 Oct. 1995, para. 7.2.

147 Concluding Observations: UK (2001), para. 37.

148 Concluding Observations: Guatemala (2001), para. 17.

149 Concluding Observations: Iraq (1997), para. 11.

utter disregard for human life, blatant anti-social attitude and irreversible consequences that could conceivably justify the imposition of the death penalty as a form of legal retribution.¹⁵⁰ In the same vein, a limited degree of involvement or complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder or not preventing it, cannot justify the imposition of the death penalty. States parties are under an obligation to constantly review their criminal laws so as to ensure that the death penalty can be imposed, if at all, only for the most serious crimes and for their chief perpetrators only.¹⁵¹

38. Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including adultery, homosexuality, apostasy¹⁵² establishing opposition groups,¹⁵³ or insulting a head of state.¹⁵⁴ States parties that retain the death penalty for such offences commit a serious violation of their obligations under article 6 read alone and in conjunction with article 2, paragraph 2 of the Covenant.
39. In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific aggravating or attenuating elements¹⁵⁵ must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime of the most serious nature¹⁵⁶ and on whether or not to issue the death sentence in the particular circumstances of the case, are arbitrary in nature.¹⁵⁷ The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.¹⁵⁸
40. Under no circumstances can the death penalty be imposed as part of a policy of genocide against members of a national, ethnical, racial or religious group. Article 6, paragraph 3 reminds all States parties who are also parties to the Genocide Convention of their obligations to prevent and punish the crime of genocide, including the obligation to prevent and punish all deprivations of life authorized by domestic law, which constitute part of a crime of genocide.
41. Article 6, paragraph 2 also requires States parties to ensure that any death sentence would be “in accordance with the law in force at the time of the commission of the crime”. This application of the principle of legality complements and reaffirms the application of the principle of *nullum peona sine lege* found in article 15, paragraph 1 of the Covenant. As a result, the introduction of the death penalty or new capital offences after a crime has been committed can never produce retroactive results. Nor can the imposition of the death penalty be based on unclearly defined criminal provisions,¹⁵⁹ whose application to the convicted individual would depend on essentially subjective criteria,¹⁶⁰ and which would not be reasonably foreseen.¹⁶¹ At the same time, the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence in accordance with the *lex mitior* principle, which finds expression in the third sentence of article

150 Check Report of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN DOC< CCPR.C.79/Add.85, 19 Nov. 1997, para. 13.

151 General Comment 6, at para. 6.

152 Concluding Observations: Mauritania (2013), para. 21 (defining change of religion as an act of apostasy, punishable by death).

153 Concluding Observations: Libya (2007), para. 24.

154 Concluding Observations: Iraq (1997), para. 16.

155 Communication No. 390/1990, *Luboto v. Zambia*, Views adopted on 31 Oct. 1995, para. 7.2.

156 Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 11 May 1999, para. 6.14.

157 Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4; Communication 1421/2005, *Larranaga v. Philippines*, Views adopted on 24 July 2006, para. 7.2; Communication 1077/2002, *Carpo v. Philippines*, adopted on 6 May 2002, para. 8.3.

158 Communication No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 Oct. 2000, para. 8.2; Communication 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3.

159 Concluding Observations: Algeria (2007) para. 17; Concluding Observations: Cameroon (1999) para. 14.

160 Concluding Observations: Democratic Republic of Korea (2001), para. 13.

161 *SW v UK*, Judgment of the European Court of Human Rights of 22 Nov. 1995, para. 36 (retroactive introduction of criminal responsibility through interpretation can only occur when it is “consistent with the essence of the offence and could reasonably be foreseen”).

15, paragraph 1 requiring States parties when imposing sentences to benefit offenders of lighter penalties adopted after the commission of the offence. The need to retroactively apply legislation abolishing the death penalty or certain capital offences is also dictated by the impossibility of justifying the need for imposing the death penalty after the legislature has deemed this penalty to be no longer appropriate.

42. Like any other deprivation of life, application of the death penalty for the most serious crimes must be done in a manner consistent with all other provisions of the Covenant. This includes conformity with all aspects of article 7 of the Covenant governing the manner of execution. Hence, the use of execution methods, such as stoning,¹⁶² injection of untested lethal drugs,¹⁶³ firing squad, gas chambers,¹⁶⁴ burning and burying alive,¹⁶⁵ and decapitation are cruel, degrading and inhuman and thus contrary to article 7 and ipso facto article 6, paragraphs 1 and 2 of the Covenant. Public executions are a degrading form of punishment, and are thus also incompatible with articles 6 and 7 of the Covenant.¹⁶⁶ Failure to provide individuals awaiting the application of the death penalty with timely notification about the date of their execution constitutes another form of ill-treatment, which renders the subsequent carrying out of the death penalty contrary to articles 6 and 7 of the Covenant.¹⁶⁷ Extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies,¹⁶⁸ may also involve the violation of articles 6 and 7 of the Covenant, especially when the conditions of detention are exceptionally harsh¹⁶⁹ or stressful, and when the individual in question is particularly vulnerable due to factors such as age or mental state.¹⁷⁰
43. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty also violate ipso facto article 6 of the Covenant.¹⁷¹ Unfair trial proceedings in death penalty cases include the use of forced confessions;¹⁷² inability of the accused to question witnesses,¹⁷³ lack of effective representation during all stages of the criminal proceedings,¹⁷⁴ including criminal interrogation,¹⁷⁵ preliminary hearings,¹⁷⁶ trial¹⁷⁷ and appeal,¹⁷⁸ failure to respect the presumption of innocence manifesting itself in the accused being placed in a cage or handcuffed during the trial;¹⁷⁹ lack of an effective right of appeal;¹⁸⁰ inability to access legal documents essential for conducting the legal defense or appeal, such as access to official

162 Concluding Observations: Iran (2011), para. 12.

163 Concluding Observations: US (2014), para. 8.

164 Communication No. 469/1991, *Ng v. Canada*, Views adopted on 5 Nov. 1993, para. 16.4 (execution by gas violates article 7; no holding that it also violated article 6).

165 *Malawi Africa Association v. Mauritania*, Report of the ACHR of 11 May 2000, para. 120.

166 Concluding Observations: Democratic Republic of Korea (2001), para. 13.

167 Concluding Observations: Japan (2014), para. 13.

168 Communication No. 588/1994, *Johnson v. Jamaica*, Views adopted on 22 March 1996, at para. 8.5; Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.2; Communication No. 317/1988, *Martin v. Jamaica*, Views adopted on 24 March 1993, paragraph 12.2.

169 Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 11 May 1999, para. 6.13, 6.15.

170 Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.3.

171 Communication No. 1096/2002, *Kurbanov v. Tajikistan*, Views adopted on 6 Nov. 2003, para. 7.7.

172 Communication No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.2; Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007, para. 7.2, 7.5; Communication No. 1906/2009, *Yuzepchuk v. Belarus*, Views adopted on 17 Nov. 2014, para. 8.2, 8.6.

173 Communication No. 1906/2009, *Yuzepchuk v. Belarus*, Views adopted on 17 Nov. 2014, para. 8.4, 8.6.

174 Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007, para. 7.4, 7.5.

175 Communication No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

176 Communication No. 719/1996, *Levy v. Jamaica*, Views adopted on 3 Nov. 1998, para. 7.2-7.3.

177 Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 11 May 1999, para. 6.11, 6.15.

178 Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, at para. 9.4.

179 Communication No. 2120/2011, *Kovalev v. Belarus*, Views adopted on 29 Oct. 2012, para. 11.4.

180 Communication No. 829/1998, *Judge v. Canada*, Views adopted on 5 Aug. 2002, para. 10.6.

- prosecutorial applications to the the court,¹⁸¹ the court's judgment¹⁸² or the trial transcript; excessive delays in the trial¹⁸³ or the appeal process;¹⁸⁴ and general lack of fairness of the criminal process,¹⁸⁵ or lack of independence or impartiality of the trial or appeal court. The issuance of a death penalty without a trial, for example in the form of a religious fatwa which the State plans to carry out or allows to be carried out, also violates both article 14 and 6 of the Covenant.¹⁸⁶
44. Other serious procedural flaws, not covered by article 14 of the Covenant, may nonetheless render the imposition of the death penalty contrary to article 6. For example, a failure to promptly inform detained foreign nationals charged with a capital crime of their right to consular notification pursuant to the Vienna Convention on Consular Relations, and failure to afford individuals about to be deported to a country in which their lives are claimed to be at real risk with the opportunity to invoke available appeal procedures¹⁸⁷ may violate article 6, paragraph 1 of the Covenant.
 45. The application of the death penalty to convicts whose guilt has not been proven beyond reasonable doubt also constitutes an arbitrary deprivation of life. States parties must therefore take all feasible precautions in order to avoid wrongful convictions in death penalty cases,¹⁸⁸ including re-examination of past convictions on the basis of new evidence, including new DNA evidence, and consideration of the implications on conviction in capital offences of new studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.
 46. The application of the death penalty must also meet the non-discrimination requirements of article 2(1) and 26 of the Covenant. Data about the disproportionate representation on death row of members of religious or ethnic minorities or foreign nationals may suggest that the application of the death penalty has an unequal effect on members of such groups and it may be, as a result, contrary to article 6, paragraphs 1 and 2.
 47. According to the last sentence of article 6, paragraph 2, the death penalty can only be carried out pursuant to a judgment of a competent court. Such a court should be established by law within the judiciary before the commission of the offence, and it must be independent of the executive and legislative branches.¹⁸⁹ Although military courts may enjoy functional independence when adjudicating ordinary military crimes,¹⁹⁰ the Committee is of the view that it is unlikely that military courts would be regarded in the eyes of a reasonable observer¹⁹¹ as sufficiently independent and impartial when trying the most serious capital crimes, since such crimes inevitably involve issues of exceptional political sensitivity. As a result, offences carrying the death penalty need, as a rule, to be tried before civilian courts affording all fair trial guarantees. Furthermore, the Committee does not consider courts of customary justice, such as tribal courts, as judicial institutions offering sufficient fair trial guarantees that would enable them to try the most serious capital crimes.¹⁹²
 48. Any penalty of death can only be carried out pursuant to a final judgment, after all judicial appeal procedures have been exhausted, and after all other petitions to available non-judicial avenues have been attempted, including supervisory review by prosecutors, and requests for a private pardon (Diyvai) from family members of crime victims. Furthermore, death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim

181 Communication No. 1545/2007, *Gunan v. Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

182 Communication No. 445/1991, *Champagne v. Jamaica*, par. 7.3-7.4.

183 Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 11 May 1999, para. 6.6, 6.8, 6.15 (noting that the delay in opening of the trial also amounted to a violation of article 9, paragraph 3).

184 Communication No. 1859/2009, *Kamoyo v. Zambia*, Views adopted on 23 March 2012, para. 6.3.-6.4.

185 Communication No. 1906/2009, *Yuzepchuk v. Belarus*, Views adopted on 17 Nov. 2014, para. 8.5, 8.6.

186 Concluding Observations: Iran (1993), para. 9.

187 Communication No. 829/1998, *Judge v. Canada*, Views adopted on 5 Aug. 2002, para. 10.9.

188 Concluding Observations: US (2014), para. 8.

189 Egyptian Initiative for *Personal Rights v. Egypt*, Report of the ACHR of 1 March 2011, para. 203.

190 General Comment 35, para. 45.

191 See *Prosecutor v. Furundzija*, ICTY Appeals Chamber Judgment of 21 July 2000, para. 189.

192 Concluding Observations: Madagascar (2007), para. 16.

measures are designed to allow review of the sentence before international monitoring bodies, international courts, human rights courts and commissions, and the UN Treaty Bodies, and States have a good faith duty to comply with them even in the absence of a specific treaty provision to that effect.¹⁹³

49. States parties are required pursuant to Article 6, paragraph 4, to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been conclusively decided upon.¹⁹⁴ No category of convicts can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, exceptionally burdensome, discriminatory in nature or applied in an arbitrary manner.¹⁹⁵ Article 6, paragraph 4 does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures.¹⁹⁶ Still, such procedures should be specified in domestic legislation,¹⁹⁷ and they should not afford the families of victims a preponderant role in determining whether the death sentence should be carried out.¹⁹⁸ Furthermore, pardon or commutation procedures must offer certain essential guarantees, including clarity about the processes followed and the substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advanced when the request will be considered; and a right to be informed promptly about the outcome of the procedure.¹⁹⁹
50. Article 6, paragraph 5 prohibits the application of the death penalty to minors and pregnant women. Whereas for minors, the provision pertains to the time of the offence²⁰⁰ and, by necessary implication, also to the time in which the sentence is to be carried out, for pregnant women, it pertains only to the time of carrying out the sentence. The special protection afforded to minors stems from a recognition of their limited ability to defend themselves, their reduced moral culpability, and their diminished ability to understand the reasons for the sentence due to their immaturity. It also reflects concerns about the exceptional harshness of depriving a minor of the remainder of his or her life. The special protection afforded to pregnant women stems from an interest in protecting the rights and interests of affected family members, including the the unborn fetus and the fetus's father.
51. Similar rationales, such as limited ability to defend oneself, reduced moral culpability, diminished ability to understand the reasons for the sentence, exceptional harshness of deprivation of life in certain circumstances and the need to respect the rights and interests of others, would normally require State parties to refrain from applying the death penalty to other categories of individuals. These include individuals with serious mental disabilities,²⁰¹ lactating mothers, individuals at a very advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims.²⁰² The carrying out of the death penalty with respect to such vulnerable individuals could constitute an arbitrary deprivation of life, contrary to article 6, paragraph 1.
52. Article 6, paragraph 6 reflects the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for human

193 General comment 33, para. 19.

194 Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007, para. 7.6.

195 Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.5.

196 Communication 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.4.

197 Concluding Observations: Guatemala (2001), para. 18.

198 Concluding Observations: Yemen (2001), para. 15.

199 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 2 May 2008, para. 67.

200 Concluding Observations: Yemen (2012), para. 14.

201 Concluding Observations: Japan (2014), para. 13. Communication 684/1996, *R.S. v. Trinidad and Tobago*, Views adopted on 2 April 2002, para. 7.2 (executing a mentally incompetent individual, who became incompetent after the imposition of the death penalty, violated article 7 of the Covenant; the Committee did not find an article 6 violation).

202 Concluding Observations: Japan (2009), para. 16.

dignity, and abolition of the death penalty is both desirable,²⁰³ and necessary for the enhancement of human dignity and progressive development of human rights, including the right to life.²⁰⁴ It would appear to run contrary to the object and purpose of article 6, paragraph 5 for States parties to increase de facto the rate and extent in which they resort to the death penalty,²⁰⁵ and to reduce the number of pardons and commutations they grant.

53. Although the allusion to the conditions for application of the death penalty in article 6, paragraph 2 suggests that when drafting the Covenant the States parties did not regard the death penalty as a cruel, inhuman or degrading punishment per se,²⁰⁶ subsequent agreements by the State parties or subsequent practice establishing such agreements, may lead at some point in time in the future to the conclusion that the death penalty runs contrary to article 7 of the Covenant under all circumstances.²⁰⁷ The increasing number of ratifications of the Second Optional Protocol, as well as that of other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the State parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.²⁰⁸ Such a legal development ought to be welcomed as it is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6, paragraph 6 and the Second Optional Protocol.

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 1, 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.

203 General Comment 6, para. 6.

204 Second Additional Protocol, preamble.

205 Concluding Observations: Chad (2009), para. 19.

206 Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.1.

207 *Ocalan v. Turkey*, Judgment of the ECtHR of 12 May 2005, para. 163-165. *Ng v. Canada*, para. 16.2.

208 Communication No. 829/1998, *Judge v. Canada*, Views adopted on 5 Aug. 2002, para. 10.3 (“there has been a broadening international consensus in favor of abolition of the death penalty, and in states which have retained the death penalty, a broadening consensus not to carry it out”).

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.

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.

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

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.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

American Convention on Human Rights

Article 4

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Appendix 2: Status of the death penalty in the Asia Pacific region in 2015

Country ²⁰⁹	Abolitionist	Abolitionist in practice	Retentionist	Executions in 2015	Death sentences in 2015
Afghanistan			X	1	12+
Australia	X				
Azerbaijan	X				
Bahrain			X		8
Bangladesh			X	4	197
Bhutan	X				
Brunei Darussalam		X			1
Cambodia	X				
China			X	1000+	+
Cook Islands	X				
DPR Korea			X	+	+
FS Micronesia	X				
Fiji	X				
India			X		75+
Indonesia			X	14	46+
Iraq			X	26+	89+
Iran			X	977+	+
Israel	X**				
Japan			X	3	4
Jordan			X	3	3+
Kazakhstan	X**		X		
Kiribati	X				
Kuwait			X		14
Kyrgyzstan	X		X		
Lao PDR		X	X		20+
Lebanon			X		28

209 Amnesty International Global Report. Death Sentences and Executions 2015. 'The Death Penalty: List of Abolitionist and Retentionist Countries', ACT 50/01/99, Revised 18 December 1999; Amnesty International, 'Abolitionist and Retentionist Countries', Revised 27 April 2000; Report of the Secretary-General, 'Promotion and Protection of Human Rights: Status of the International Covenants on Human Rights – Question of the death penalty', E/CN.4/1999/52, 12 January 1999.

Malaysia			X	+	39+
Maldives		X			3
Marshall Islands	X				
Mongolia		X			2+
Myanmar		X			17+
Nauru		X			
Nepal	X				
New Zealand	X				
Niue	X				
Oman	-		X	2	
Pakistan	-		X	326	121+
Palau	X		-		
Palestine	-		X		12+
Papua New Guinea		X	-		
Philippines ²¹⁰	X				
Qatar			X		9
Republic of Korea		X	X		1
Samoa	X		-		
Saudi Arabia			X	158+	6+
Singapore			X	4	5+
Solomon Islands	X				
Sri Lanka		X	-		51+
Syrian AR			X		20+
Taiwan (ROC)			X	6	9
Tajikistan		X			
Thailand			X		7+
Timor Leste	X				
Tonga		X	-		
Turkmenistan	X		-		
Tuvalu	X		-		
United Arab Emirates			X	1	8
Uzbekistan			X		
Vanuatu	X		-		
Viet Nam			X	+	47+
Yemen			X	8+	+

* No executions since independence

** Ordinary crimes only²¹⁰

210 The Philippines abolished the death penalty in 1986 but reintroduced it in 1993. The first execution in 23 years was held in 1999.



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