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**PROMOTION AND PROTECTION OF HUMAN RIGHTS:
STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS**

The question of the death penalty

Report of the Secretary-General

Summary

In its resolution 2005/59, the Commission on Human Rights requested the Secretary-General to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities (see also Economic and Social Council resolution 1984/50 of 25 May 1984).

The present report contains information covering the period from January 2004 to December 2005. The report indicates that the trend towards abolition of the death penalty continues; this is illustrated, *inter alia*, by the increase in the number of countries that are completely abolitionist and by the increase in ratifications of international instruments that provide for the abolition of this punishment.

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I. INTRODUCTION

1. In paragraph 11 of its resolution 2005/59, the Commission on Human Rights requested the Secretary-General “to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,¹ paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities”. To date, seven quinquennial reports have been submitted, the most recent in 2005 (E/2005/3), covering the period from 1999 to 2003. The seventh quinquennial report was made available to the Commission on Human Rights at its sixty-first session in 2005.² The present supplemental report contains information covering the period from January 2004 to December 2005, in order to ensure that there are no gaps in coverage since the last version of the quinquennial report.

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

3. For the present supplemental report prepared by the Office of the United Nations High Commissioner for Human Rights, and pursuant to Commission on Human Rights resolution 2005/59, States and intergovernmental and non-governmental organizations were requested to provide information on changes in law and practice concerning the death penalty and implementation of the safeguards, as applicable. In response, information was received from the following States: Algeria, Chile, Colombia, Costa Rica, Japan, Mexico, Morocco, the Philippines, Qatar, the Russian Federation, Singapore, Slovakia, Slovenia, Turkey, and Venezuela (Bolivarian Republic of). This information is summarized in annex II to the present report and is available in the Secretariat for further consultation. Additionally, the following organizations sent their publications and other materials addressing the issue discussed in the report: Amnesty International, Community of Sant’Egidio, the Council of Europe (CoE), and the Organization for Security and Cooperation in Europe (OSCE).

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

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

II. CHANGES IN LAW AND PRACTICE

5. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international instruments that provide for the abolition of the death penalty. Changes in practice may cover non-legislative measures with a significant new approach regarding the use of the death penalty; for example, countries may, while retaining the death penalty, announce a moratorium on its application. Such changes might also include measures to commute death sentences. Based on the information received and collected from available sources, the following changes in law and practice can be reported since 1 January 2004.

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

6. In March 2004, the death penalty was banned in Bhutan pursuant to a royal decree. In February 2005, Greece ratified Protocol No. 13 to the European Court of Human Rights (ECHR), abolishing the death penalty in all circumstances. In January 2004, Samoa abolished the death penalty by the Crimes (Abolition of Death Penalty) Amendment Act 2004. In December 2004, the Senegalese parliament passed a law abolishing the death penalty for all crimes. In 2004, Turkey prohibited the death penalty for all crimes under its constitution and removed it from its penal code, and, in January 2004, it signed Protocol No. 13 to the ECHR. In 2005, Liberia and Mexico abolished the death penalty for all crimes.

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

7. During the reporting period, no country abolished the death penalty for ordinary crimes only.

C. Countries which have restricted the scope of the death penalty or are limiting its use

8. In November 2004, the lower house of parliament in Tajikistan adopted amendments to the criminal code that provide for life imprisonment for five crimes that have been punishable by death. These amendments were endorsed by the upper chamber of parliament in February 2005 and signed by the President in March 2005.

9. On 1 March 2005, the United States Supreme Court, in *Roper v. Simmons*, held that the imposition of the death penalty on offenders who were under the age of 18 when they committed the offence was in violation of the United States constitutional ban on cruel and unusual punishments.

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

10. There are one international and three regional instruments in force which commit States parties to abolishing the death penalty: the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR); Protocol No. 6 to the ECHR; Protocol No. 13 to the ECHR; and the Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty. Protocol No. 6 to the ECHR concerns the abolition of the death penalty in peacetime. The Second Optional Protocol to the ICCPR and the Protocol to the ACHR provide for the total abolition of the death penalty, but allow States wishing to do so to retain the death penalty in wartime, if they make a reservation to that effect upon ratification. Protocol No. 13 concerns the abolition of the death penalty in all circumstances, including for acts committed in times of war and of imminent threat of war.

11. During the reporting period, five States acceded to the Second Optional Protocol to the ICCPR, namely, Canada on 25 November 2005, the Czech Republic on 15 June 2004, Estonia on 30 January 2004, Liberia on 16 September 2005, and San Marino on 17 August 2004. Turkey signed the Second Optional Protocol to the ICCPR on 6 April 2004. Two States ratified Protocol No. 6 to the ECHR, namely, Monaco on 30 November 2005 and Serbia and Montenegro on 3 March 2004. Thirteen States ratified Protocol No. 13 to the ECHR, namely, Austria on 12 January 2004, the Czech Republic on 2 July 2004, Estonia on 25 February 2004, Finland on 29 November 2004, Germany on 10 November 2004, Greece on 1 February 2005, Iceland on 10 November 2004, Lithuania on 29 January 2004, Monaco on 30 November 2005, Norway on 16 August 2005, Serbia and Montenegro on 3 March 2004, Slovakia on 18 August 2005 and The former Yugoslav Republic of Macedonia on 13 July 2004.

E. Countries observing a moratorium on executions

12. In Kyrgyzstan, the Presidential Decree extended an official moratorium until the end of 2005. In Kazakhstan, the moratorium in place since December 2003 was observed. In the Russian Federation, a de facto moratorium in place since August 1996 continued to be observed. On 30 April 2004, the President of Tajikistan introduced a moratorium and signed a subsequent law to that effect on 15 July 2004. While Uzbekistan continues to impose and execute the death penalty, in August 2005 the President signed a decree on the abolition of the death penalty as of 1 January 2008.

13. In 2004, the President of Malawi commuted 79 death sentences. In 2004, the President of Zambia commuted several death sentences.

F. Countries which have reintroduced the use of the death penalty, extended its scope or resumed executions

14. In June 2005, several executions were carried out after the Palestinian Authority authorized the resumption of executions, ending a moratorium of three years. The death penalty was reinstated in Iraq, with the first executions taking place in August 2005. On 20 November 2004, the Office of the President in Sri Lanka announced that the death penalty

will be effective for rape, murder and narcotics dealings. A moratorium on executions had been in effect since 1976 in Sri Lanka. In April 2004, the first execution took place in Afghanistan since the establishment of the interim Government in 2001. In August 2004, the first execution took place in India since the late 1990s.

III. ENFORCEMENT OF THE DEATH PENALTY

15. According to the available figures, at least 7,395 persons were sentenced to death in 64 countries and at least 3,797 prisoners were executed in 25 countries during 2004.³

IV. INTERNATIONAL DEVELOPMENTS

16. The issue remains a regular item on the agenda of the Commission on Human Rights. In its resolution 2005/59, the Commission called upon all States that still maintain the death penalty to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions; to progressively restrict the number of offences for which it may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply; and to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution. The resolution also urged States, inter alia, not to impose the death penalty for crimes committed by persons below 18 years of age, to exclude pregnant women and mothers with dependent infants from capital punishment, and not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person.⁴

17. The Human Rights Committee continued the examination of cases involving capital punishment under the ICCPR. In Views adopted on 20 and 24 August and 10 December 2004, 13 April, 7 and 16 November 2005,⁵ the Committee followed its established jurisprudence in finding violations of the right to life, under article 6 of the ICCPR, by reason of the imposition (and in the cases of Saidov and Khalilova the carrying out) of the death penalty, in circumstances in which the individual's right to a fair trial was not guaranteed. In Views adopted on 7 September and 8 December 2004 and 25 and 31 October 2005,⁶ the Committee referred to its established case law that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being paid to the defendant's personal circumstances or the circumstances of the particular offence. The automatic imposition of the death penalty in these cases violated the individual's right to life under article 6, paragraph 1, of the Covenant.

18. The Council of Europe's Committee of Ministers has continued to monitor capital punishment to ensure compliance with the commitments accepted by all member States of the Council of Europe within the context of its thematic monitoring procedure. The subject continues to be considered at meetings of the Ministers' Deputies at regular intervals "until Europe has become a de jure death penalty-free zone". In October 2005, the Committee of Ministers adopted a decision in which it called on the Russian Federation to take, without delay, all the necessary steps to transform the existing moratorium on executions into de jure abolition

of the death penalty and to ratify Protocol No. 6 to the ECHR. It also encouraged those States which have not yet signed or ratified Protocol No. 13 to do so rapidly. In May and October 2004 respectively, the Committee of Ministers submitted, on behalf of the Council of Europe, statements of interest in support of two “amicus curiae briefs” prepared by the European Union for individual death penalty cases⁷ in the United States of America.

19. The European Court of Human Rights has further recognized the considerable evolution with regard to the legal position concerning the death penalty. In the Grand Chamber judgement of 12 May 2005 in *Öcalan v. Turkey*, the Court noted that capital punishment in peacetime had come to be regarded as an unacceptable form of punishment which was no longer permissible under article 2 of the European Convention on Human Rights, guaranteeing the right to life. The Court held that the imposition of the death sentence on the applicant following an unfair trial by a court whose independence and impartiality were open to doubt amounted to inhuman treatment in violation of article 3 of the European Convention on Human Rights.

20. During its 38th ordinary session in 2005, the African Commission on Human and Peoples’ Rights adopted a resolution on the composition and the operationalization of the working group on the death penalty.

21. On 10 October 2005, the World Coalition against the Death Penalty organized the third World Day against the Death Penalty. The focus was on Africa, as recent developments show a growing trend towards abolition among African countries.

V. IMPLEMENTATION OF SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY, PAYING SPECIAL ATTENTION TO THE IMPOSITION OF THE DEATH PENALTY ON PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME OF THE OFFENCE

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

23. From among the retentionist countries, Japan, the Philippines and Qatar provided comments on the implementation of the safeguards (see annex II below).

24. The Commission on Human Rights has consistently requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment. The Special Rapporteur has continued to take action in situations where there was concern that these internationally recognized standards were being violated and where the application of the death penalty may have amounted to a violation of the right to life. With a view to establishing a constructive dialogue with the Governments, communications were sent, inter alia, in cases in which defendants were reportedly sentenced to death following the application of laws or trial proceedings falling short of international fair trial standards; when capital punishment was imposed for crimes that did not appear to fall within the category of the most serious crimes; and when the death penalty was imposed by special courts and under special legislation which failed to provide due process of law. The Special Rapporteur paid particular attention to situations where the death penalty was imposed as a mandatory measure. Additionally, the prohibition of capital punishment for juvenile offenders remained of particular concern to the Special Rapporteur. While the period under review has seen improvement in this respect, recurring reports that, in a few countries, people were still being sentenced to death for crimes they had committed when they were under 18 years old have led the Special Rapporteur to take further action in this regard. Discussions between the Special Rapporteur and these countries are therefore ongoing.

25. In 2005, the Commission, in its resolution 2005/59, specifically urged all States that still maintain the death penalty not to impose it “for crimes committed by persons below 18 years of age” and “on a person suffering from any mental or intellectual disabilities or to execute any such person”. The Commission also reaffirmed Sub-Commission resolution 2000/17 on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence.⁸ In two additional resolutions adopted in 2005,⁹ the Commission called upon all States in which the death penalty has not been abolished to comply with their obligations as assumed under relevant provisions of international human rights instruments, including in articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the ICCPR, keeping in mind the safeguards.

26. During the period from January 2004 to December 2005, the Committee on the Rights of the Child discussed, during the consideration of their reports, the abolition of the death penalty for crimes committed by persons under the age of 18 years with five States parties to the Convention on the Rights of the Child. The Committee welcomed the fact that Armenia had abolished capital punishment unconditionally¹⁰ and that China had eliminated capital punishment as a sentence for crimes committed while under the age of 18 years.¹¹ However, the Committee noted with concern that in Nigeria¹² and the Islamic Republic of Iran,¹³ the death penalty continues to be imposed for crimes committed under the age of 18. In the case of the Philippines, the Committee noted with appreciation that legal measures had been enacted to prohibit the imposition of the death penalty for crimes committed while under the age of 18, but it regretted that persons could be sentenced to death without definite proof of their age.¹⁴

27. As a step towards the total abolition of the death penalty, Amnesty International has launched an international Stop Child Executions! campaign to end its use against child offenders.¹⁵ Amnesty International also reported that four executions of juvenile offenders took place in 2004, and eight in 2005.

VI. SUMMARY OF THE STATUS OF THE DEATH PENALTY WORLDWIDE AS OF 31 DECEMBER 2005

28. The latest quinquennial report and its revised version include a number of tables showing the status of the death penalty worldwide. Annex I to the present report reproduces some of these tables and updates them to include developments up to 31 December 2005. Based on the information provided in annex I, the following table is a summary of the status of the death penalty worldwide as of 31 December 2005.

Table 1
**Summary of the status of the death penalty worldwide
as of 31 December 2005**

Number of retentionist countries	65
Number of completely abolitionist countries	85
Number of countries abolitionist for ordinary crimes only	12
Number of countries that can be considered de facto abolitionist	34

VII. CONCLUSIONS

29. The trend towards abolition continues. The number of countries that are completely abolitionist has risen from 77 to 85. The overall number of retentionist countries decreased from 66 to 65. There was also a significant increase in the number of countries which have ratified international instruments providing for the abolition of the death penalty.

Notes

¹ The safeguards guaranteeing protection of the rights of those facing the death penalty are contained in Economic and Social Council resolution 1984/50 of 25 May 1984. Economic and Social Council resolution 1989/64 of 24 May 1989 recommended steps for their implementation.

² See E/CN.4/2005/94.

³ Amnesty International, "The death penalty worldwide: developments in 2004" (ACT 50/001/2005), p. 3.

⁴ Paras. 7 (a-c).

⁵ Communication No. 964/2001, *Saidova v. Tajikistan* and Communication No. 1117/2002, *Khomidov v. Tajikistan*, Communication No. 912/2000, *Deolall v. Guyana*, Communication No. 973/2001, *Khalilova v. Tajikistan*, Communication No. 907/2000, *Siragev v. Uzbekistan*, Communication No. 985/2001, *Aliboeva v. Tajikistan*.

⁶ Communication No. 1167/2003, *Rayos v. Philippines*, Communication No. 1110/2002, *Rolando v. Philippines*, Communication No. 862/1999, *Hussain and Hussain v. Guyana*, Communication No. 913/2000, *Chan v. Guyana*.

⁷ The first amicus curiae brief, in May 2004, was in the case of *Roper v. Simmons*, concerning the application of the death penalty in the United States against persons who were below 18 years of age at the time of the offence. The second, of October 2004, was in the case of Jose Medellin and concerns the right of detained foreign nationals to be informed of the right to consular access (art. 36 of the Vienna Convention on Consular Relations).

⁸ Commission resolution 2005/59, preamble.

⁹ See Commission resolutions 2005/34 (Extrajudicial, summary or arbitrary executions), paragraph 6; and 2005/44 (Rights of the child), paragraph 27 (a).

¹⁰ CRC/C/15/Add.225.

¹¹ CRC/C/CHN/CO/2.

¹² CRC/C/15/Add.257.

¹³ CRC/C/15/Add.254.

¹⁴ CRC/C/15/Add.258.

¹⁵ ACT 50/015/2004.

ANNEXES

Annex I

**TABLES INDICATING THE STATUS OF THE DEATH PENALTY
WORLDWIDE AS OF 31 DECEMBER 2005**

Table 1

List of retentionist countries and areas^a

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

^a The 65 countries and areas listed retain the death penalty for ordinary crimes. Most of them are known to have carried out executions during the past 10 years. In some cases, however, it is difficult to ascertain whether or not executions have in fact been carried out.

Table 2
List of countries that are completely abolitionist^a

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
Andorra	1990		1943
Angola	1992		..
Armenia	2003	2003	1993
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Bhutan	2004		1964
Bolivia	1995/1997 ^b		1974
Bulgaria	1998		1989
Cambodia	1989		..
Canada	1998	1976	1962
Cape Verde	1981		1835
Colombia	1910		1909
Costa Rica	1878		..
Côte d'Ivoire	2000		1960
Croatia	1990		1987
Cyprus	2002		..
Czech Republic	1990		
Denmark	1978	1933	1950
Djibouti	1995		1977 ^c
Dominican Republic	1966		..
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1949 ^d		e
Greece	2003	1993	1972
Guinea-Bissau	1993		1986
Haiti	1987		1972
Holy See	1969		..
Honduras	1956		1940
Hungary	1990		1988
Iceland	1928		1830
Ireland	1990		1954
Italy	1994	1947	1947

Table 2 (continued)

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
Kiribati	1979		1979 ^c
Liberia	2005		
Liechtenstein	1987		1785
Lithuania	1998		1995
Luxembourg	1979		1949
Malta	2000	1971	1943
Marshall Islands	1986		1986 ^c
Mauritius	1995		1987
Mexico	2005		1930
Micronesia (Federated States of)	1986		1986 ^c
Monaco	1962		1847
Mozambique	1990		1986
Namibia	1990		1988
Nepal	1997	1990	1979
Netherlands	1982	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Norway	1979	1905	1948
Palau	1994		1994 ^c
Panama	..		1903
Paraguay	1992		1928
Poland	1997		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1989		1989
Samoa	2004		1962
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975 ^c
Senegal	2004		1967
Serbia and Montenegro	2002		
Seychelles	1993		1976 ^c
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 ^f
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944

Table 2 (continued)

Country or area	Date of abolition for all crimes	Date of abolition for ordinary crimes	Date of last execution
The former Yugoslav Republic of Macedonia	1991		..
Timor-Leste ^g	1999 ^h		1999 ⁱ
Turkey	2004	2002	1984
Turkmenistan	1999		1997
Tuvalu	1976		1976 ^c
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965	1964
(Northern Ireland	1998	1973	..)
Uruguay	1907		..
Vanuatu	1980		1980 ^j
Venezuela (Bolivarian Republic of)	1863		..

^a Total: 85.

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

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

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

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

^f Before that year.

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

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

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

^j Date of independence.

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

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

^a Total: 12 countries.

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

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

Country or territory	Date of last execution
Algeria	1993
Antigua and Barbuda	1989
Barbados	1984
Belize	1986
Benin	1989
Brunei Darussalam	1957
Burkina Faso	1989
Central African Republic	..
Congo	1982
Dominica	1986
Eritrea ^b	1989
Gabon	1989
Gambia	1981
Ghana	1993
Grenada	1978
Jamaica	1988
Kenya	1987
Lao People's Democratic Republic	1989

Table 4 (continued)

Country or territory	Date of last execution
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1989
Morocco	1993
Myanmar	1989
Nauru	1968 ^c
Niger	1976
Papua New Guinea	1950
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982
Tunisia	1991

^a Total: 34. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more. In some of these countries death sentences continue to be imposed, and not all of the countries listed have a policy of regularly commuting death sentences.

^b Eritrea became independent in 1993.

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

Annex II

SUMMARY OF COMMENTS RECEIVED FROM MEMBER STATES

Algeria

1. The Government of Algeria stated that it had acceded to the International Covenant on Civil and Political Rights in 1989 but not to its Second Optional Protocol. The legislation provides for the death penalty for serious crimes concerning State security, terrorism, treason, espionage and murder. Nevertheless, in 1993, Algeria decided to stay executions of the death penalty and since then the country has been moving to a progressive suppression of the death penalty. Since 2001, Algeria has been attempting to reduce the categories of crimes punishable by the death penalty. As a first step, the death penalty has been suppressed for economic crimes. Algeria is in the process of revising its domestic legislation, in particular its penal code, and the abolition of the death penalty is envisaged for several crimes. The new legislation in penal matters does not contain the death penalty. With regard to the safeguards, the legislation provides for a fair trial, rights to a defence and to recourse in accordance with article 14 of the ICCPR, and to petition for pardon with the President. The legislation also provides various safeguards regarding the carrying out of the death sentence, as specifically included in Law No. 05-04 of 6 February 2005, including not carrying out the death sentence until all remedies have been exhausted and the petition for pardon has been refused; the exclusion of a death sentence and a sentence to life imprisonment for a child below 18 years of age; non execution of the sentence on a pregnant woman, nursing mother of a child below 24 months of age, or a person with a mental disorder or serious illness. With regard to the execution of the sentence, the law includes particular provisions taking into account the dignity of the condemned persons. The sentence could be executed only in a prison and never in public.

Colombia

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

Costa Rica

3. The Government of Costa Rica stated that it had abolished the death penalty in 1878. The provision establishing the sanctity of human life was granted constitutional status in 1882. The Constitution, promulgated in 1949, enshrines this provision. Other legislation, such as the Extradition Act, contains similar provisions.

Chile

4. The Government stated that in Chile, one of the pillars of the rule of law is the promotion of the respect for the fundamental rights inherent in the human person, particularly the right to life as set forth in article 19 (1) of the Constitution and reflected in the abolition of the death penalty in June 2001. This constitutional provision and the law abolishing the death penalty are fully consistent with the international instruments to which Chile is a party, especially the

ICCPR, its Second Optional Protocol, and the Protocol to the American Convention on Human Rights. Act No. 19 734 of 2001 abolishes the death penalty and replaces it with rigorous life imprisonment. The Act also provides for the application of the death penalty in time of war, which remains in force for the offences described in the Code of Military Justice. This is in full conformity with the reservations entered in respect of the aforementioned protocols.

Japan

5. The Government of Japan listed the offences for which capital punishment may be imposed. The Government further stated that during the period from 1 January 2004 to 30 September 2005, no person was sentenced to death by a court of first instance; 22 persons were sentenced to death after the appeal/clemency process had been completed; 3 persons were executed; and no person had their death sentence overturned by decision of an appeal court or by presidential or royal commutation or by pardon. As of 30 September 2005, 74 persons were under sentence of death. The Government believed that the death penalty should be retained, as the majority of people in Japan recognize the death penalty as a necessary punishment for grievous crimes. When Japan requests extradition of a person charged with a capital offence in Japan, it is not possible to provide assurances to the State concerned that capital punishment will not be carried out.

6. As to the implementation of the safeguards, the Government informed that the law provides that capital punishment may not be imposed retroactively for offences for which it was not provided at the time of the offence; a lighter sentence may be substituted for capital punishment if legislation abolishing capital punishment is passed after the person has been sentenced to death; a person who committed an offence when under the age of 18 may not be sentenced to death; pregnant women may not be executed; a person who became insane after committing the offence and is still insane at the time of going to trial may not be sentenced to death; a person who became insane after being sentenced to death may not be executed; a person suffering from mental retardation or extremely limited mental competence may not be sentenced to death. A person charged with a capital offence has a right in all circumstances laid down in law to a public hearing, to be presumed innocent until proved guilty, and to the free assistance of an interpreter from the moment of arrest, if he does not understand or speak the language used by the police or in court. An offender who is prosecuted has a right to choose his own counsel at public expense if he does not have the resources to pay for it. The new law will be brought into force by 27 November 2006, allowing an offender who is arrested and detained but not prosecuted to have a right to choose his own counsel at public expense if he does not have the resources to pay for it. All foreign nationals are informed of their right to seek the assistance of their consular authorities at the time of their arrest and/or committal to prison or custody awaiting trial. In all death penalty cases, there is a right to appeal to a court of higher jurisdiction. A person sentenced to capital punishment has 14 days to submit an appeal. Not all death sentences are automatically reviewed by a court of appeal. A person sentenced to death has a right to seek commutation of the sentence or a pardon from the State authorities.

7. The Government of Japan also stated that until the judgement becomes final through the procedure of a three-instance system (exceptionally a two-instance system), the death penalty must not be carried out. The Minister of Justice shall order the death penalty to be carried out within six months from the day a judgement becomes final. However, in cases where a request for the recovery of right of appeal or for a retrial, or an extraordinary appeal or a petition or recommendation for pardon has been made, and/or the term for finishing the procedure thereof and the term for which the judgements pronounced upon co-defendants, if any, remain unfinished, these shall not be calculated in the said term. The execution is not suspended until all avenues of appeal through international bodies have been exhausted, as an appeal to the international bodies does not legally affect the procedure for the execution of the death penalty. The law provides for execution by hanging. The Government stated that, from a humanitarian point of view, execution by hanging is not particularly cruel compared with other ways such as beheading, shooting, electrocution and lethal gas. The law does not permit executions to take place in public.

Mexico

8. The Government of Mexico stated that the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) has maintained a consistent position on the right to life as a basic principle which should apply throughout society. CNDH administers a programme on prison transfers and the granting of early release, and against the death penalty. There are currently more than 50 Mexicans under sentence of death in the United States of America. CNDH, in coordination with the Ministry of Foreign Affairs, has continued to monitor their cases, with a view to obtaining the legal assistance to which they are entitled under United States law and legal advice for their families, and ensuring that action is taken and applications made to the competent authorities at the appropriate moment. CNDH also works with the Ministry to obtain reviews of those sentences under which Mexicans have been condemned to death in the United States and, in applicable cases, reconsideration of the proceedings for violation of the Vienna Convention on Consular Relations.

9. The Government stated that, on 17 March 2005, the Chamber of Deputies passed a constitutional amendment explicitly prohibiting the death penalty in Mexico. The measure will enter into force following acceptance by the State Congresses. On 29 June 2005, a decree amending various provisions of the Code of Military Justice in order to abolish the death penalty was published in the *Official Gazette* and entered into force the following day.

Morocco

10. The Government of Morocco stated that it is committed to bringing its domestic legislation in line with its international obligations. The Criminal Code is being revised to progressively reduce the number of offences for which the death penalty is imposed to a minimum, to include the most serious and reprehensible crimes. National debate on the abolition of the death penalty is being conducted. This subject was discussed at a seminar on criminal

policy which was organized by the Ministry of Justice in 2004. The National Charter of Human Rights of 1990 explicitly appeals for the abolition of the death penalty, and numerous civil society organizations are making similar demands. If this direction is taken, the issue will be reflected in the priorities set by the committee responsible for amending the criminal code. While the Moroccan legislation provides for the death penalty, it is applied only in limited cases involving serious offences. The courts tend to limit the cases in which death sentences are handed down. Between 1994 and 2005, a total of 152 death sentences was imposed. The legal guarantees accorded to persons condemned to death are taken fully into account. Persons with mental disabilities are exempted from the death penalty and committed to care institutions. In cases of juvenile offenders, the death penalty is replaced by a prison sentence and committal to a correctional and reform institution. The work being done by Morocco on the legislative and judicial front is thus consistent with resolution 2005/59.

The Philippines

11. The Government of the Philippines stated that it had adopted many safeguards, including that the death penalty may not be imposed retroactively for offences for which it was not provided at the time of the commission of the offence; that the death penalty shall not be imposed on a person below 18 years of age at the time of the commission of the crime or when upon appeal or automatic review by the court of higher jurisdiction the required majority vote is not obtained for the imposition of the death penalty; and that the death sentence shall not be inflicted upon a pregnant woman or a mother within one year of giving birth, nor upon any person over 70 years of age. An offender charged with a capital offence has the right to be informed of the nature of the charge against him, to have a public hearing, to be presumed innocent until proved guilty, to have a counsel, to have an appeal and to question the judgement of conviction before a higher tribunal. The Court of Appeals shall automatically review the judgement of the trial court imposing the death penalty. If the Court of Appeals finds that the death penalty should be imposed, it should render the judgement but refrain from making an entry of the judgement and elevate the entire record to the Supreme Court for review. In all cases where the death sentence has become final, the records of the case are forwarded immediately by the Supreme Court to the Office of the President for the possible exercise of the pardoning power. The imposition of the death penalty is not mandatory; the courts are mandated by the revised penal code to consider both the attendant circumstances of the offence and the offender before they can impose the death penalty. There is a presidential moratorium on the execution of those sentenced to death, except those convicted of kidnapping and drug-related offences. Since March 2000, when the former President announced a suspension of executions, nobody has been executed. There have been significant recent moves in the 13th Congress towards the abolition of the death penalty. There are currently 20 bills providing for the abolition of the death penalty pending before the House of Representatives, and the Senate is also considering similar bills.

Qatar

12. The Government of Qatar stated that it had acceded to the Convention on the Rights of the Child in 1995. Article 53 of the Qatar Penal Code No. 11 of 2004 stipulates that “[n]o one shall be held criminally liable for a crime which he committed when he was below 7 years of age. The measures enumerated in the Juveniles Act shall be applied to anyone who commits a

serious or lesser offence when he is over 7 and below 14 years of age". Article 8 of the Juveniles Act No. 1 of 1994 prescribes the penalties that may be imposed on minors, which do not include capital punishment. Article 19 states that "if a minor commits a serious or lesser offence, he may not be sentenced to capital punishment". The Government noted that it can thus be understood that the laws of Qatar do not permit the imposition of the death penalty on minors. Furthermore, article 54 of the Criminal Code stipulates that "[n]o person shall be held criminally liable for a crime that that person committed while being unable to understand what he was doing owing to madness or mental infirmity". Article 44 (2) of the Prisons Act No. 3 of 1995 states "where a physician deems it necessary to suspend the imposition of any penalty, in view of a prisoner's physical or mental health, he must inform the prison warden of this in writing, indicating the type of treatment that the prisoner should be given. The prison warden must comply with the physician's recommendations and duly notify the director of prisons". The Government pointed out that the laws of Qatar do not permit the attachment of criminal responsibility to persons who are mentally disabled. Consequently, the death penalty is not imposed on anyone who is medically proven to be suffering from any form of mental infirmity.

Russian Federation

13. The Government of the Russian Federation stated that upon joining the Council of Europe, it had undertaken the obligation to sign during 1996, and to ratify no later than 28 February 1999, Protocol No. 6 to the ECHR as well as to introduce, without further delay, a moratorium on the carrying out of death sentences. Article 20 of the Constitution of the Russian Federation allows for the establishment by federal law of the death penalty as an exceptional form of punishment for particularly serious crimes against life, and does not make a distinction between wartime and peacetime. The article refers explicitly to the possibility of abolishing the death penalty, with a view to its total abolition. Since 1996, there has been a moratorium on executions in the Russian Federation. On 16 April 1997, the Russian Federation signed Protocol No. 6 to the ECHR but has not yet ratified it. In 1999, the Constitutional Court prohibited the handing down of death sentences pending the introduction of trial by jury throughout the country. In August 1999, the President submitted bills to Parliament concerning the abolition of the death penalty and the ratification of Protocol No. 6.

14. The Government stated that the abolition of the death penalty is one of the aims of the judicial and legal reforms under way. However, in recent years, there has been a steady rise in incidents of particularly serious crimes, many of which have provoked a major public outcry. Moreover, there has recently been a rise in the activities of criminal terrorist groups, which carry out acts that cause the death of hundreds of people and have other serious consequences. In light of the intense public debate on the abolition of the death penalty, the President has consistently opposed the idea of imposing harsher penalties and resuming the application of the death penalty. The forthcoming introduction of trial by jury throughout the Russian Federation would make it possible, in theory, to repeal the Constitutional Court's ban on the handing down of death sentences. However, even if that comes to pass, the President's moratorium on executions will remain in force. On the other hand, the introduction of trial by jury and the recent adoption of the new Code of Criminal Procedure should prompt members of Parliament to speed up

ratification of Protocol No. 6, which will result in the legislative abolition of the death penalty in accordance with the Russian Federation's international obligations. In practical terms, the Russian Federation considers the next step towards the legislative abolition of the death penalty to be the ratification of Protocol No. 6, preparations for which are well under way. The question of the Russian Federation's accession to Protocol No. 13 to the ECHR, which for all intents and purposes will replace Protocol No. 6 for the States that have acceded to it, may be taken up at a later stage.

Singapore

15. The Government of Singapore stated that there is no international consensus that capital punishment should be abolished. This is abundantly evident from the deliberations at the Commission where many countries disagreed with the premise of resolution 2005/59. Capital punishment is first and foremost a criminal justice issue. The rights of the victims and the right of the community to live in peace and security must be considered. States must be free to pursue policies and measures to protect the rights of victims and to deter crime. The question of whether to retain or abolish capital punishment should be carefully studied by each State, taking into account the values of its people, the crime situation, and criminal policy. States have the sovereign right to retain the use of the death penalty for most serious crimes, as long as this is accompanied by appropriate judicial safeguards. The ICCPR explicitly recognizes the right of a State to impose the death sentence. Article 6 (2) states that "sentence of death may be imposed only for the most serious crimes in accordance with the law in force".

16. The Government stated that the Commission resolution raises the broader issue of whether some States have the right to impose their values on others as a universal concern. While there are certain values that are clearly universal or may be evolving towards universality, others are still far from universally accepted. Respect for human rights must include respect for differences in systems and practices. Any new international human rights standard should evolve only from real consensus. To try to force the abolition of the death penalty in the absence of such consensus would damage the credibility of the Commission and be counterproductive to its work.

Slovakia

17. The Government of Slovakia stated that both its Constitution and the Penal Code guarantee an absolute prohibition of the death penalty, including in both peacetime and time of war. The Slovak Republic is a traditional co-sponsor of the Commission resolution on the death penalty. It ratified the Second Optional Protocol to the ICCPR on 22 June 1999, Protocol No. 6 to the ECHR on 18 March 1992, and Protocol No. 13 to the ECHR on 20 July 2005.

Slovenia

18. The Government of Slovenia stated that article 17 of its Constitution stipulates that "there is no capital punishment in Slovenia". Slovenia ratified Protocol No. 6 to the ECHR on 28 June 1994, Protocol 13 to the ECHR on 4 December 2003, and the Second Optional Protocol to ICCPR on 10 March 1994.

Turkey

19. The Government of Turkey stated that the death penalty was abolished in Turkey.

Venezuela (Bolivarian Republic of)

20. The Government stated that Bolivarian Republic of Venezuela abolished the death penalty in 1864 as well as imprisonment in perpetuity, for all crimes. Venezuela thus became the first country in the world to abolish the death penalty. The Constitution confirms the determination of Venezuela to protect human life by prohibiting the death penalty, and commits it to protecting the life of persons deprived of their liberty. Furthermore, the Criminal Code (Partial Reform) Act of 2005 establishes that "... [e]xtradition shall not be granted for a foreigner accused of a crime which is liable to the death penalty or imprisonment in perpetuity under the legislation of the requesting country". Venezuela committed itself to the abolition of the death penalty in all countries, and is a party to the Universal Declaration of Human Rights, the ICCPR and its Second Optional Protocol, and the ACHR.
