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**Social and human rights questions:
crime prevention and criminal justice**

Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Report of the Secretary-General

Summary

In its resolution 1745 (LIV) of 16 May 1973, the Economic and Social Council invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. The Council, in its resolution 1995/57 of 28 July 1995, recommended that the quinquennial reports of the Secretary-General continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. In the same resolution, the Council requested the Secretary-General, in preparing the quinquennial report, to draw on all available data, including current criminological research. The present report, which is the tenth quinquennial report, contains a review of the use of and trends in capital punishment, including the implementation of the safeguards during the period 2014–2018.

In accordance with resolutions 1745 (LIV) and 1990/51, of 24 July 1990, of the Economic and Social Council, as well as its decision 2005/247 of 22 July 2005, the present report is submitted to the Council at its substantive session of 2020, and will also be before the Commission on Crime Prevention and Criminal Justice at its twenty-ninth session and the Human Rights Council at its forty-fourth regular session.

The report on the 2014–2018 quinquennium confirms the trend documented in previous reports towards abolition and restriction of the use of capital punishment in most countries. The number of States that have abolished the death penalty in law and in practice continued to grow. This is reflected in the increased number of States bound by treaty obligations not to implement the death penalty. The quinquennium also witnessed some years of dramatic increases in the number of executions, which were carried out by a small number of States. The situation stabilized at the end of the survey period, and the number of recorded executions in the final year, 2018, was the lowest in many years.



The safeguards guaranteeing the protection of the rights of those facing the death penalty apply to States that retain capital punishment. It is of concern, however, that the death penalty continued to be imposed on persons below 18 years of age at the time of commission of the offence, and that death sentences were imposed in cases where the “most serious crimes” standard was not met and in cases of trials that did not comply with international standards.

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I. Introduction

1. The present report, prepared pursuant to Economic and Social Council resolutions 1754 (LIV) of 16 May 1973 and 1995/57 of 28 July 1995, and Council decision 2005/247 of 22 July 2005, is the tenth quinquennial report of the Secretary-General on capital punishment.¹ It covers the period 2014–2018 and reviews developments in the use of capital punishment. In accordance with Council resolution 1989/64 of 24 May 1989, the report also covers the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. In the same resolutions, the Council requested the Secretary-General, in preparing the quinquennial report, to draw on all available data, including current criminological research.

II. Background and scope

2. All United Nations Member States were invited to contribute information to the present report by means of a detailed questionnaire (the “survey questionnaire”).² In the present report, States are classified by death penalty status as at 1 January 2014, making it possible to chart changes over the five-year period up to the end of December 2018, as well as to make comparisons with the results of previous quinquennial reports, which used a similar method of analysis. The following categories are used:

(a) Abolitionist for all crimes, whether in time of peace or war;

(b) Abolitionist for ordinary crimes, meaning that 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 wartime, or crimes against the State, such as treason, terrorism or armed insurrection;

(c) Abolitionist de facto, that is, States and territories in which the death penalty remains lawful and death sentences may still be pronounced but executions have not taken place for 10 years. States and territories that carried out executions within the previous 10 years but have made an international commitment through the establishment of an official moratorium are also designated as de facto abolitionist;

(d) Retentionist in practice, that is, States in which the death penalty remains lawful and that have conducted executions during the previous 10 years.

3. Although the present report deals with the period covered by the survey, significant developments that took place during 2019 and are relevant to the law and practice of capital punishment have been noted so as to make the conclusions of the report as current as possible.

4. Survey questionnaires were returned by 60 States,³ which is six more than for the previous report, in 2015.

¹ For an overview, see [E/2000/3](#) and [E/2000/3/Corr.1](#), paras. 4–8. for the previous report, see [E/2015/49](#) and [E/2015/49/Corr.1](#).

² The survey instrument and the present report were prepared with the expert assistance of William Schabas of Middlesex University London.

³ Albania, Andorra, Armenia, Australia, Austria, Belgium, Bolivia (Plurinational State of), Bulgaria, China, Costa Rica, Croatia, Czechia, Denmark, Egypt, Eswatini, Finland, France, Germany, Hungary, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Liechtenstein, Luxembourg, Malta, Monaco, Myanmar, Namibia, Nepal, Netherlands, North Macedonia, Norway, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Senegal, Serbia, Singapore, Slovakia, Sweden, Switzerland, Tajikistan, Thailand, Turkmenistan, United Kingdom of Great Britain and Northern Ireland and United States of America.

5. In order to develop a more comprehensive understanding of the situation, and in accordance with resolution 1995/57, in which the Council requested the Secretary-General to draw on all available data, including current criminological research, and to invite the comments of specialized agencies, intergovernmental organizations and non-governmental organizations in consultative status with the Council on the question of capital punishment, information on the use of the death penalty was drawn from other sources, including the summary reports of high-level panel discussions requested by the Human Rights Council,⁴ annual reports submitted by the Secretary-General at the request of the Council⁵ and reports submitted by the Secretary-General at the request of the General Assembly,⁶ in accordance with the relevant resolutions and decisions.⁷ Documents produced in the course of the universal periodic review as well as those produced by treaty bodies and the special procedures of the Council also provided valuable information. The following non-governmental organizations submitted reports and written statements: Amnesty International, Death Penalty Focus, Fundación Luz María, the International Harm Reduction Association and the Japan Federation of Bar Associations.

III. Changes in the status of the death penalty, 2014–2018

6. At the end of December 2018, 167 States were deemed abolitionist either in law or in practice and 30 States were classified as retentionist. This compares with 159 abolitionist States and 38 retentionist States at the end of the previous quinquennium (2009–2013). During the survey period 2014–2018, no State that had previously become abolitionist, either in law or in practice, reverted to the use of capital punishment.

Table 1

Status of the death penalty, by category, at the beginning and end of the five-year survey period, 2014–2018

	<i>Fully abolitionist in law</i>	<i>Abolitionist for ordinary crimes</i>	<i>Retentionist – de facto abolitionist</i>	<i>Retentionist</i>
1 January 2014 (197 States and territories)	101	7	51	38
31 December 2018 (197 States and territories)	109	9	49	30

7. Full lists indicating the status of the death penalty by category and by States are provided in the annex to the present report.

A. States that had abolished the death penalty for all crimes by the beginning of 2014

8. At the beginning of 2014, 101 States had abolished the death penalty for all crimes, compared with 95 in 2009, 79 in 2004, and 70 in 1999. No fully abolitionist State reintroduced the death penalty during the survey period. By the end of the quinquennium, in 2018, 109 States were abolitionist for all crimes. Fiji, which had been abolitionist for ordinary crimes from the time of independence, abolished capital punishment in all circumstances in 2015. Several States, namely, Benin, the Congo, Guinea, Madagascar, Mongolia, Nauru and Suriname, that were previously classified as de facto abolitionist moved to the de jure abolitionist category either by the

⁴ A/HRC/27/26, A/HRC/30/21 and A/HRC/36/27.

⁵ A/HRC/27/23, A/HRC/30/18, A/HRC/33/20, A/HRC/36/26 and A/HRC/39/19.

⁶ A/69/288, A/71/332 and A/73/260.

⁷ General Assembly resolutions 67/176, para. 7, 69/186, para. 8, and 71/187, para. 11, and Human Rights Council decision 18/117 and resolutions 22/11, 26/2, 30/5 and 36/17.

enactment of legislation or by judicial decision. Two States, the Gambia and Liberia, are listed as fully abolitionist de jure by virtue of their ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,⁸ despite the fact that they still have domestic legislation in force that allows for capital punishment.

9. Of the States that responded to the survey questionnaire, 40 identified themselves as abolitionist de jure. When asked whether there had been any attempts to reintroduce capital punishment through changes in legislation, none of them answered in the affirmative.

B. States that had abolished the death penalty for ordinary crimes by the beginning of 2014

10. At the beginning of 2014, seven States, namely, Brazil, Chile, El Salvador, Fiji, Israel, Kazakhstan and Peru, had abolished the death penalty for ordinary offences governed by the criminal code or similar legislation, but not for certain special offences against the State (usually treason) or offences under the military code committed in wartime. None of those States recorded any executions during the quinquennium.

11. During the survey period, Fiji became fully abolitionist. Three States, Burkina Faso, Chad and Guatemala, enacted legislation abolishing the death penalty for ordinary crimes. In Burkina Faso, provisions allowing for capital punishment in the Penal Code were repealed by Parliament, although capital punishment remained possible under the Military Justice Code. Draft legislation and a new draft constitution in Burkina Faso provided for full abolition.⁹ In Guatemala, the Constitutional Court declared death penalty provisions in the Penal Code and the Anti-Narcotics Law to be invalid, although capital punishment under the Military Code remained possible. In Chad, the new Criminal Code, adopted in 2017, abolished the death penalty for ordinary crimes, retaining it for acts of terrorism.¹⁰ The Government of Chad informed the Human Rights Council that the legislation was under review and that it was in support of abolishing the death penalty completely.¹¹ Burkina Faso and Guatemala were deemed de facto abolitionist and have not conducted executions for many years, while Chad held several executions for terrorism-related offences in 2015.

12. Article 2 of the Second Optional Protocol to the International Covenant on Civil and Political Rights permits States to ratify or accede with a reservation allowing the death penalty “in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime”. The provision has been invoked by 10 States parties to the Protocol. When it ratified the Protocol in 2014, El Salvador made reference to its Constitution, stating that the death penalty might be imposed only in the cases provided under the military laws during an international state of war. Several States objected that the reservation was inconsistent with article 2 of the Protocol.¹²

⁸ United Nations, *Treaty Series*, vol. 1642, No. 14688.

⁹ CED/C/BFA/CO/1/Add.1, para. 6, and A/HRC/39/4, para. 76.

¹⁰ A/HRC/WG.6/31/TCD/1, paras. 11, and A/HRC/WG.6/31/TCD/3, paras. 7–8.

¹¹ A/HRC/WG.6/31/TCD/1, para. 72.

¹² Austria (C.N.243.2015.TREATIES-IV.12), Finland (C.N.247.2015.TREATIES-IV.12), France (C.N.242.2015.TREATIES-IV.12), Germany (C.N.221.2015.TREATIES-IV.12), Ireland (C.N.246.2015.TREATIES-IV.12), Italy (C.N.240.2015.TREATIES-IV.12), Netherlands (C.N.241.2015.TREATIES-IV.12), Norway (C.N.239.2015.TREATIES-IV.12), Poland (C.N.197.2015.TREATIES-IV.12), Portugal (C.N.225.2015.TREATIES-IV.12), Spain (C.N.252.2015.TREATIES-IV.12), Sweden (C.N.536.2014.TREATIES-IV.12), Switzerland (C.N.168.2015.TREATIES-IV.12) and Togo (C.N.706.2016.TREATIES-IV.12).

C. De facto abolitionist States at the beginning of 2014

13. At the beginning of the quinquennium, in January 2014, 51 States could be described as de facto abolitionist. Over the five years of the survey, seven States, namely, Equatorial Guinea, Ethiopia, Lebanon, Saint Kitts and Nevis, Uganda, Zimbabwe and the State of Palestine, became de facto abolitionist, either because 10 years had elapsed without an execution or because they had declared an official moratorium. Twenty-five of the 49 States deemed de facto abolitionist at the end of the survey period had not conducted an execution for 25 years or more.

14. In reports to the Human Rights Council and the treaty bodies and in replies to the survey questionnaire, 20 States that had not conducted an execution for at least 10 years described themselves as having a de facto moratorium, namely, Algeria,¹³ Armenia,¹⁴ Barbados,¹⁵ Eritrea,¹⁶ Eswatini,¹⁷ Grenada,¹⁸ Guinea,¹⁹ Jamaica,²⁰ the Lao People's Democratic Republic,²¹ Lebanon,²² Mali,²³ Mauritania,²⁴ Morocco,²⁵ Myanmar,²⁶ Nigeria,²⁷ the Republic of Korea,²⁸ Saint Lucia,²⁹ Sri Lanka,³⁰ Tajikistan³¹ and Zambia.³² The Niger stated that it had imposed no official moratorium, even though it had not conducted an execution since 1976 and had voted in favour of the General Assembly resolution on a moratorium on the use of the death penalty.³³ It said that it was committed to the abolition of the death penalty but had chosen to conduct awareness campaigns on the issue, with the assistance of international partners, until the conditions for abolition were met.³⁴ In its response to the questionnaire, Israel, which records only two executions in its entire history, the last dating to 1962, said that there was no official moratorium in place.

15. Some States indicated that they were in the course of moving to de jure abolition of the death penalty. For example, the Central African Republic reported that its Code of Military Justice of 2017 did not make provision for the death penalty, describing it as a first step towards abolition.³⁵ In 2015, the Central African Republic enacted legislation establishing a special criminal court for the purpose of prosecuting international crimes. The relevant legislation made specific reference to article 6 of the International Covenant on Civil and Political Rights, Article 77 of the Rome Statute of the International Criminal Court and General Assembly resolution 69/186, providing for life imprisonment as the maximum penalty.³⁶ Ghana reported that its Cabinet had granted approval for abolition in 2014 but that a referendum would be

¹³ [A/HRC/WG.6/27/DZA/1](#), paras. 81–82.

¹⁴ [A/HRC/29/11/Add.1](#), para. 2.

¹⁵ [A/HRC/WG.6/29/BRB/3](#), para. 6.

¹⁶ [A/HRC/41/14](#), para. 59.

¹⁷ [A/HRC/WG.6/25/SWZ/3](#), para. 36.

¹⁸ [A/HRC/WG.6/21/GRD/1](#), para. 29.

¹⁹ [A/HRC/WG.6/21/GIN/1](#), para. 114, and [CAT/C/GIN/CO/1](#), para. 25.

²⁰ [A/HRC/30/15](#), para. 25.

²¹ [A/HRC/29/7](#), para. 77.

²² [A/HRC/31/5](#), para. 62.

²³ [A/HRC/WG.6/29/MLI/1](#), para. 38, and [A/HRC/38/7](#), para. 10.

²⁴ [A/HRC/31/6](#), para. 55.

²⁵ [A/HRC/WG.6/27/MAR/1](#), para. 52.

²⁶ Reply of Myanmar to the survey questionnaire.

²⁷ [A/HRC/40/7](#), para. 61.

²⁸ [A/HRC/37/11](#), para. 120.

²⁹ [A/HRC/31/10/Add.1](#), para. 88.13.

³⁰ [A/HRC/WG.6/28/LKA/1](#), para. 49, and [A/HRC/37/17](#), para. 115.

³¹ [A/HRC/WG.6/25/TJK/1](#), para. 18, and [A/HRC/33/11](#), para. 10.

³² [A/HRC/WG.6/28/ZMB/1](#), para. 32.

³³ [A/HRC/WG.6/24/NER/3](#), paras. 9–11.

³⁴ [A/HRC/32/5](#), para. 30.

³⁵ [A/HRC/WG.6/31/CAF/1](#), para. 30.

³⁶ Central African Republic, Organic Law No. 15-003 on the Creation, Organization and Functioning of the Special Criminal Court (3 June 2015), art. 59.

required to repeal the death penalty, as it was a constitutional provision.³⁷ Kenya described discussions with the Kenya National Commission on Human Rights and other stakeholders on how to raise public awareness regarding the abolition of the death penalty.³⁸ Citing the recommendation of its Truth and Reconciliation Commission, Sierra Leone indicated that it expected to abolish the death penalty by 2020.³⁹ In 2017, however, a government white paper rejected the recommendation for abolition by the Constitutional Review Committee. In its reply to the survey questionnaire, Lebanon said that the National Commission for Human Rights had prepared a draft plan to acknowledge the right to life and abolish capital punishment.

16. Antigua and Barbuda informed the Human Rights Council that, although the death penalty appeared in its Penal Code, there had been no executions for many years. Its delegation “expressed its understanding of why it would be important to formally take a step beyond the existing state of affairs”.⁴⁰ The Bahamas, which has not conducted an execution since 2000, stated that it “hoped that, over time, the death penalty would no longer be necessary”.⁴¹ The Comoros stated that its Government had demonstrated a “strong commitment” to abolition, but that this “should be a gradual process, as its immediate abolition might be misunderstood in a society unfamiliar with the subtleties of law and justice”.⁴² Guyana informed the Council that it had implemented legislative reforms dealing with the death penalty, and that, “while it had not reached the point of abolishing the death penalty, discussions were continuing”.⁴³ Lesotho noted that it retained the death penalty as a form of deterrence, adding that “the Government [had taken] note of the international trend towards abolition of the death penalty”.⁴⁴ Malawi noted that, although its laws provided for capital punishment, there had been no executions since 1994 and that “[s]ociety needed to be encouraged to discuss the issue”.⁴⁵ Qatar, which has not held an execution since 2003, said that there were social and legal reasons preventing it from de jure abolition.⁴⁶ The Republic of Korea noted that the issue of abolition received “comprehensive and careful consideration”.⁴⁷ Dominica voted in favour of the General Assembly resolution, yet senior government officials had indicated that they still considered the death penalty to be necessary.⁴⁸

17. Some States deemed de facto abolitionists enacted legislation expanding the scope of the death penalty, suggesting that, despite the absence of executions, they might not be moving towards abolition.⁴⁹ Legislation governing the implementation of the death penalty in Maldives entered into force in 2014, notwithstanding its de facto moratorium since 1952.⁵⁰ The legislation applies even to persons who were under 18 years of age at the time of the crime.⁵¹ Subsequently, the Government made a commitment to upholding the moratorium and to supporting the moratorium resolution in the General Assembly.⁵² Papua New Guinea has not conducted an execution since 1954. In 2013, it expanded the scope of crimes subject to the death penalty to sorcery-related killings, aggravated rape and robbery with violence, and

³⁷ [A/HRC/WG.6/28/GHA/1](#), paras. 8 and 35, and [A/HRC/37/7](#), para. 11. Paragraph 13 (1) of the Constitution of Ghana states: “No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.”

³⁸ [A/HRC/WG.6/21/KEN/1](#), para. 56.

³⁹ [A/HRC/WG.6/24/SLE/1](#), paras. 7 and 38.

⁴⁰ [A/HRC/33/13](#), para. 37.

⁴¹ [A/HRC/38/9](#), para. 85.

⁴² [A/HRC/WG.6/32/COM/1](#), paras. 52 and 55.

⁴³ [A/HRC/29/16](#), para. 99.

⁴⁴ [A/HRC/29/9](#), para. 28.

⁴⁵ [A/HRC/30/5](#), para. 54.

⁴⁶ [A/HRC/42/15](#), para. 82.

⁴⁷ [A/HRC/WG.6/28/KOR/1](#), para. 19.

⁴⁸ [A/HRC/WG.6/33/DMA/2](#), para. 17.

⁴⁹ [A/HRC/WG.6/27/DZA/3](#), para. 18, [A/HRC/WG.6/33/BRN/3](#), para. 11, and [A/HRC/39/15](#), para. 116.

⁵⁰ [A/HRC/WG.6/22/MDV/1](#), para. 59.

⁵¹ [A/HRC/27/23](#), para. 20.

⁵² [CAT/C/MDV/CO/1](#), para. 6 (f).

announced its intention to begin executions.⁵³ The legislation also expanded the means of execution to include lethal injection, hanging, electrocution, firing squad and death by deprivation of oxygen.⁵⁴ It stated to the Human Rights Council that a de facto moratorium was “a sensitive issue”.⁵⁵ Nevertheless, there were no executions during the survey period. In 2017, the National Court of Justice of Papua New Guinea ordered an indefinite stay of execution for the 12 men then on death row and the establishment of a mercy committee to review clemency applications. Saint Vincent and the Grenadines, which has not held an execution since 1993, said that it would be hard to support a moratorium.⁵⁶ Brunei Darussalam adopted a new penal code imposing the death penalty for numerous offences and introducing stoning as the specific method of execution for rape, adultery, sodomy and extramarital sexual relations.⁵⁷ Cameroon, Chad, Guyana and Tunisia enacted laws providing for the death penalty for a number of crimes related to terrorist activities.⁵⁸ Ethiopia proposed a new law on human trafficking and migrant smuggling, which provides a range of punishments, including the death penalty in cases where the victims suffered severe injury or death. Oman amended its law on combating drugs and narcotics, introducing the death penalty for a greater range of drug-related offences.⁵⁹ In 2018, Mauritania enacted the mandatory death penalty for apostasy and blasphemy.⁶⁰

18. The category of de facto abolitionist, meaning that the death penalty has not been imposed for 10 years or that the State has made a formal commitment to a moratorium on executions, was introduced in the third quinquennial report, in 1985. The number of States that fulfil this criterion has substantially increased over the decades. Some States remain de facto abolitionist for many years, while others proceed to adopt legislation abolishing capital punishment and move into the de jure abolitionist group. In several de facto abolitionist States, the death penalty continues to be pronounced in sentencing judgments but is never carried out. For example, in its reply to the survey questionnaire, Belgium recalled that it had only abolished the death penalty in 1996, although this had been preceded by a lengthy period of de facto abolition.

19. As in the previous quinquennium, no State in the de facto abolitionist category resumed executions during the 2014–2018 quinquennium.

D. Retentionist States that enforced capital punishment at the beginning of 2014

20. At the beginning of the quinquennium, in January 2014, 38 States had carried out executions within the previous 10 years and had made no commitment to ceasing executions. Over the survey period, that number decreased to 30. This compares with a decline over the previous quinquennium from 47 to 38. Over the past quarter of a century, the number of retentionist States has declined from 94 in 1994 to 30 in 2018.

21. Of the current retentionist States, all but three had conducted executions over the survey period. Some of the retentionist States, however, indicated that they were considering full de jure abolition. Afghanistan reported to the Human Rights Council that its President had established a commission to review the cases of those already sentenced to death and that the commission had proposed that death sentences be changed to life imprisonment.⁶¹ After announcing a moratorium, the Cabinet of Malaysia declared in October 2018 that it would abolish the death penalty, although it subsequently indicated that this would apply to the mandatory death penalty only.

⁵³ [A/HRC/WG.6/25/PNG/3](#), para. 17, and [A/HRC/WG.6/25/PNG/2](#), paras. 26–27.

⁵⁴ [A/HRC/27/23](#), para. 19.

⁵⁵ [A/HRC/33/10](#), para. 45.

⁵⁶ [A/HRC/33/5](#), para. 46.

⁵⁷ [A/HRC/27/23](#), para. 18.

⁵⁸ [A/HRC/33/20](#), para. 16.

⁵⁹ *Ibid.*, para. 17.

⁶⁰ Criminal Code of Mauritania, as amended, art. 306.

⁶¹ [A/HRC/WG.6/32/AFG/1](#), para. 14.

22. Within the United States of America, some of the States took steps to abolish the death penalty. The Delaware Supreme Court ruled that the capital sentencing statute in that State was unconstitutional, and therefore abolished the death penalty.⁶² The Washington Supreme Court also declared the death penalty to be unconstitutional.⁶³ Of the 29 States in the United States that permit the death penalty, at least 12 had had no executions for 10 years or more. During the quinquennium, moratoriums on the death penalty were declared in California⁶⁴ and Pennsylvania.⁶⁵ Alabama abolished judicial override for future death sentences, a practice that had allowed judges to impose death sentences despite a jury recommendation for life imprisonment.⁶⁶ Florida abolished the possibility for a jury to recommend the death sentence if the jury was not unanimous.⁶⁷

23. Some retentionist States indicated that they had reduced the number of crimes subject to the death penalty. In its reply to the survey questionnaire, China reported that, pursuant to the ninth amendment to the Criminal Law, which came into effect on 1 November 2015, the death penalty had been abolished for nine crimes.⁶⁸ Viet Nam also reported that its Penal Code had been amended in 2015 to remove the death penalty for eight crimes.⁶⁹ The number of executions in the Islamic Republic of Iran dropped significantly as a consequence of amendments to the anti-narcotics law. In October 2017, the Guardian Council of the Constitution approved a bill amending the drug-trafficking law, which came into force on 14 November 2017. The amended law commutes the punishment for some drug offences that previously carried the death penalty or life imprisonment to a prison term of up to 30 years. The quantitative threshold for imposition of the death penalty for crimes of possession was also increased substantially. The judiciary was subsequently instructed to review the cases of those already sentenced to death for drug-related offences.⁷⁰ According to the Islamic Republic of Iran, in practice, the execution is only for heads of drug trafficking gangs, armed smuggling or those who abuse children and people with mental disabilities for smuggling high amounts of narcotics.⁷¹ In Afghanistan, the new Penal Code adopted in 2017 significantly reduced the number of crimes subject to the death penalty.⁷² Yemen reported that it was “considering the possibility of reviewing the legal provisions that provide for capital punishment, in accordance with the outcome document of the comprehensive national dialogue. Pursuant to the new draft constitution, the death penalty should be confined to extreme cases entailing the penalties prescribed in the Islamic sharia, which are subject to major and complex restrictions and conditions.”⁷³

24. On the other hand, some retentionist States conducted executions after a period of several years without using the death penalty. Thus, Bahrain conducted three executions in 2017 after a de facto moratorium that had begun in 2010.⁷⁴ Pakistan resumed executions in 2014 after a moratorium in place since 2008, following a terrorist attack on a school in Peshawar.⁷⁵ After indicating that it was preparing legislation to abolish the death penalty,⁷⁶ Thailand ended a de facto moratorium of

⁶² Supreme Court of Delaware, *Rauf v. State*, Case No. 145 A.3d 430 (2016), 2 August 2016.

⁶³ Supreme Court of Washington, *State v. Gregory*, Case No. 427 P.3d 621 (Wash. 2018), 22 December 2018.

⁶⁴ California, Office of the Governor, “Governor Gavin Newsom orders a halt to the death penalty in California”, 13 March 2019.

⁶⁵ Amnesty International, *Death Sentences and Executions in 2016*, Index No. ACT 50/5740/20 (April 2017), p. 13.

⁶⁶ United States, Alabama, Senate Bill 16, Act No. 2017-131, 11 April 2017.

⁶⁷ United States, Florida, Senate Bill No. 280 (13 March 2017), Laws of Florida, chap. 2017-1.

⁶⁸ A/HRC/WG.6/31/CHN/1, para. 37, and CAT/C/CHN/CO/5, para. 49.

⁶⁹ CCPR/C/VNM/3, para. 67 (i).

⁷⁰ A/HRC/37/24, para. 10, and A/HRC/39/19, para. 8.

⁷¹ A/HRC/WG.6/34/IRN/1, para. 85.

⁷² CAT/C/AFG/CO/2/Add.1, para. 18.

⁷³ A/HRC/WG.6/32/YEM/1, para. 73.

⁷⁴ CAT/C/BHR/CO/2-3, para. 12.

⁷⁵ A/HRC/WG.6/28/PAK/2, para. 23.

⁷⁶ A/HRC/27/23, para. 9.

nearly 10 years in 2018 by conducting an execution. Botswana and Nigeria conducted executions in 2016, the first since 2013.⁷⁷

25. Several retentionist States enacted legislation expanding the scope of capital punishment. Pakistan adopted the Constitution (Twenty-First Amendment) Act, 2015 and the Pakistan Army (Amendment) Act, 2015, allowing for the establishment of new military courts with the power to impose death sentences on civilians suspected of terrorism-related offences.⁷⁸ The Cabinet of Iraq approved a proposed amendment to the Criminal Procedure Code that expedites the implementation of death sentences by granting the Minister of Justice the power to ratify executions if the President does not ratify, pardon, issue clemency or commute final death sentences within 30 days.⁷⁹ In Nigeria, laws were adopted making kidnapping a capital crime in Bayelsa, Edo and Delta States.⁸⁰ Bangladesh adopted the Coast Guard Act, 2016, which provides the death penalty for mutiny.⁸¹ India expanded the list of crimes punishable by death to include sexual assault of a child⁸² and enacted legislation imposing the death penalty for hijacking.⁸³ Amendments to the Penal Code of Egypt adopted in January 2018 introduced the death penalty for the crime of child abduction when linked to an assault or rape.⁸⁴ Singapore enacted the death penalty for certain acts of nuclear terrorism.⁸⁵ In 2014, the United Arab Emirates adopted a law permitting the application of the death penalty to non-violent offences, including membership of a terrorist organization.⁸⁶

E. Enforcement of the death penalty

26. During the period 2014–2018, 32 Member States⁸⁷ and the State of Palestine conducted executions. Of those, 14 States conducted more than 20 executions each.⁸⁸ Table 2 shows the number of executions by State for each of the five years of the quinquennium. Some of the data are based on non-official sources, principally the reports of Amnesty International and Hands Off Cain, given that many retentionist States do not provide official data or respond to the questionnaire. Those data do not include an estimate of the number of executions in China, the Democratic People's Republic of Korea and Viet Nam, for which official statistics are unavailable.⁸⁹

27. It should be noted that, as early as 1989, with the adoption of resolution 89/64, the Economic and Social Council urged Member States to publish, for each category of offence for which the death penalty was authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of

⁷⁷ A/HRC/39/19, para. 15.

⁷⁸ A/HRC/33/20, para. 16.

⁷⁹ *Ibid.*, para. 15.

⁸⁰ A/HRC/27/23, para. 17.

⁸¹ A/HRC/33/20, para. 17.

⁸² India, Protection of Children from Sexual Offences (Amendment) Act, 2012, and Criminal Law (Amendment) Act, 2018.

⁸³ India, Anti-Hijacking Act, 2016, para. 4 (a).

⁸⁴ A/HRC/39/19, para. 14.

⁸⁵ Singapore, Terrorism (Suppression of Misuse of Radioactive Material) Act 2017, Bill No. 21/2017, sect. 6, para. 2 (a).

⁸⁶ United Arab Emirates, Federal Law No. 7 of 2014 on Combating Terrorism Offences of 20 August 2014, and submission of reprieve (June 2017).

⁸⁷ Afghanistan, Bahrain, Bangladesh, Belarus, China, including Taiwan Province of China, Botswana, Chad, Democratic People's Republic of Korea, Egypt, Equatorial Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kuwait, Malaysia, Nigeria, Oman, Pakistan, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Thailand, United Arab Emirates, United States, Uzbekistan, Viet Nam and Yemen.

⁸⁸ Bahrain, Belarus, Botswana, Equatorial Guinea, India, Indonesia, Jordan, Malaysia, Oman, State of Palestine, Somalia, South Sudan, Thailand and United Arab Emirates.

⁸⁹ Exceptionally, the Government of Viet Nam provided partial information to the National Assembly in November 2018, when it was revealed that 85 individuals had been executed throughout the year, and 122 more death sentences than in 2017 had been pronounced.

persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency had been granted, and to include information on the extent to which the safeguards guaranteeing protection of the rights of those facing the death penalty were incorporated in national law.

28. In its resolution 30/5, the Human Rights Council emphasized that lack of transparency in the use of the death penalty had direct consequences for the human rights of the persons sentenced to death, as well as for other affected persons. It called upon States that had not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon had been granted, which could contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty.

29. The total number of executions during the quinquennium (excluding China, the Democratic People's Republic of Korea and Viet Nam) is 4,736, which is an average of about 947 per year. This compares with 3,743 executions for the previous quinquennium (excluding the same three countries), or an average of about 749 per year. The number of executions increased in about half of the retentionist States. For any given year, about 20 States conducted executions, a figure that has been fairly consistent for the past 15 years.⁹⁰ However, in the final year of the quinquennium, 2018, only 16 States performed executions, the lowest number ever recorded. Moreover, the absolute number of executions dropped to 527 in 2018, the lowest figure in at least 15 years.

Table 2
Executions by State, 2014–2018

State	2014	2015	2016	2017	2018	Total executions 2014–2018	Total executions 2009–2013
Afghanistan	6	1	6	5	3	21+	18+
Bahrain	3	0	0	3	0	6	0
Bangladesh	0	4	10	6	0	20+	15+
Belarus	3+	0	4+	2+	0	9+	7+
Botswana	0	0	1	0	2	3	5
Chad	0	10	0	0	0	10	0
Egypt	15	22+	44+	35+	43+	157+	10+
Equatorial Guinea	9	0	0	0	0	9	4
India	0	1	0	0	0	1	2
Indonesia	0	14	4	0	0	18	5
Iran (Islamic Republic of)	289+	977+	567+	507+	253+	2 593+	2 305+
Iraq	61+	26+	83+	125+	52+	347	488+
Japan	3	3	3	4	15	28	24
Jordan	0	2	0	15	0	17	0
Kuwait	0	0	0	7	0	7	5
Malaysia	2+	0+	9	4+	0	15	4+
Nigeria	0	0	3	0	0	3	0
Oman	0	2	0	0	0	2	0
Pakistan	7	326	87+	60+	14+	494	1
State of Palestine ^a	2+	0	3	6	0	11+	17
Saudi Arabia	90+	158+	154+	146+	79+	627+	347+

⁹⁰ Amnesty International, *Death Sentences and Executions 2018* (London, 2019), p. 9.

<i>State</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total executions 2014–2018</i>	<i>Total executions 2009–2013</i>
Singapore	2	4	4	8	13	31	1
Somalia ^b	14+	25+	14+	24+	13+	90	17+
South Sudan	0	5+	+	4	7+	16+	14+
Sudan	23+	3	2	0	2+	30	62+
Thailand	0	0	0	0	1	1	2
United Arab Emirates	1	1	0	1	0	3	2
United States	35	28	20	23	25	131	223
Yemen	22+	8+	0	2+	4+	36+	165+
Total	587	1 618	1 018	987	526	4 736	3 743

Note: Plus signs are used in Amnesty International reports to indicate that the figure calculated is a minimum.

^a The following executions, which were not authorized by the President of the State of Palestine, were also conducted by Hamas in the Gaza Strip: 2+ in 2014; 0 in 2015; 3 in 2016; 6 in 2017; and 0 in 2018; for total number of executions of 11+ for the period 2014–2018 and 17 for the period 2009–2013.

^b The figure includes executions reported from Puntland and “Somaliland”.

30. While there are no available data for China (except for Taiwan Province of China, where 5 executions were conducted in 2014, 6 in 2015, 1 in 2016, 0 in 2017 and 1 in 2018, and the total number of executions was 13 for the period 2014–2018 and 18 for the period 2009–2013), the Democratic People’s Republic of Korea and Viet Nam, the eighth quinquennial report provided the following total number of executions for the period 2009–2013 for those three States: China: 8,590; Democratic People’s Republic of Korea: 222; and Viet Nam: 21.

31. As noted in previous quinquennial reports, raw numbers alone may be misleading because they do not take into account differences in overall population. As a result, the 2000, 2005, 2010 and 2015 reports contained tables listing both the total number of executions by country and the rate per million people for countries and territories where 20 or more persons had been executed during the period concerned. Those data have been compiled for the period 2014–2018 and appear, with those for the previous four quinquenniums, in table 3.

32. Of the 29 countries listed in the report for 1994–1998 as having executed 20 or more persons, 10 remained in that category for the period 2014–2018.⁹¹ Most of the 17 States that have appeared on the list over the years but that did not record 20 executions from 2014 to 2018 have actually abolished the death penalty in law or practice or have virtually abandoned its use. The data for 1994–1998 included such countries as the Democratic Republic of the Congo (100 executions), Kazakhstan (148), Kyrgyzstan (70), the Republic of Korea (57), the Russian Federation (161), Rwanda (23), Sierra Leone (71), Turkmenistan (373), Ukraine (389) and Zimbabwe (22), all of which are now abolitionist in law or deemed de facto abolitionist. In five of the other States, there have been significant declines: Belarus, from 168 executions in the period 1994–1998 to 9 in the period 2014–2018;⁹² Jordan, from 55 to 17; Nigeria, from 248 to 3; Singapore, from 242 to 31; and the United States, from 274 to 131. The number of executions also declined from 121 to 13 in Taiwan Province of China.

⁹¹ Excluding China, the Democratic People’s Republic of Korea and Viet Nam, as no data on executions in those countries are available for the period 2014–2018.

⁹² For a comprehensive review of the death penalty in Belarus, see the information documents issued by the Directorate General of Human Rights and Rule of Law on the death penalty in Belarus, namely, documents [CM/Inf\(2014\)11](#), [CM/Inf\(2016\)32](#), [CM/Inf\(2017\)9](#), [CM/Inf\(2018\)8](#) and [CM/Inf\(2018\)23](#). See also [A/HRC/29/43](#), paras. 68–75, [A/HRC/32/48](#), paras. 98–103, [A/HRC/35/40](#), paras. 98–106, and [A/HRC/41/52](#), paras. 19–23.

Table 3
States and territories that remained retentionist at the end of 2018 and in which there were reports of at least 20 executions in the periods 1994–1998, 1999–2003, 2004–2008, 2009–2013 or 2014–2018, with the estimated annual average (mean) rate per 1 million people

<i>State or territory</i>	<i>Executions 1994–1998</i>	<i>Rate per million</i>	<i>Executions 1999–2003</i>	<i>Rate per million</i>	<i>Executions 2004–2008</i>	<i>Rate per million</i>	<i>Executions 2009–2013</i>	<i>Rate per million</i>	<i>Executions 2014–2018</i>	<i>Rate per million</i>
Afghanistan	34	0.36	78	0.56	33+	0.16	18+	0.14	21+	0.11
Bangladesh	..	..	..	..	29	0.04	15+	0.02	20+	0.024
Belarus	168	3.2	37–52	0.74–1.04	14+	0.29	7+	0.15	9+	0.19
China	12 338	2.01	6 687	1.04	8 188	1.22	8 590	1.26	..	..
Taiwan Province of China	121	1.13	67	0.59	6	0.05	18	0.15	13	0.1
Democratic People’s Republic of Korea	..	..	..	..	194+	1.62	222+	1.78	..	..
Egypt	132	0.43	350	1.3	9	0.02	10+	0.02	157+	0.31
Iran (Islamic Republic of)	505	1.59	604+	1.83	1 187	3.29	1 511+	3.88	2 593+	6.25
Iraq	..	..	..	..	135	0.92	487	2.7	347	1.78
Japan	24	0.04	13	0.02	31	0.05	24	0.04	28	0.04
Jordan	55	2.12	52+	2.08	19+	0.62	0	0	17	0.34
Kuwait	..	..	..	..	28	1.93	5	0.31	7	0.33
Libya	31	1.17	..	..	23	0.73	22+	0.7	0	0
Nigeria	248	0.41	4	0.006	0	0	4	0.004	3	0.002
Pakistan	34	0.05	48+	0.07	323	0.39	1	0.001	494	0.45
Saudi Arabia	465	4.65	403+	3.66	423	3.34	336+	2.24	627+	3.69
Singapore	242	13.83	138	6.9	22	1.26	1	0.03	31	1.07
Somalia ^a	..	..	..	..	17+	0.22	55+	0.73	90+	1.17
Sudan	5	0.03	53+	1.17	83	0.42	62+	3.36	30	0.14
Thailand	4	0.04	33	0.29	0	0	2	0.01	1	0.002
Turkmenistan	373	14.92	0	0	0	0	0	0	0	0
United States	274	0.2	385	0.27	251	0.16	223	0.14	131	0.08
Viet Nam	145	0.38	128+	0.32	167	0.38	21+	0.04	..	..
Yemen	88	1.1	144+	1.51	71	0.61	165+	1.27	36+	0.24

Note: Two dots (..) indicate that no data for the country were provided in previous reports or are currently available.

Plus signs are used in Amnesty International reports to indicate that the figure calculated is a minimum.

^a The figure includes executions reported from Puntland and “Somaliland”.

Table 4
States with 20 or more executions in the period 2014–2018 in decreasing order of estimated annual average (mean) rate per 1 million people

<i>States</i>	<i>Rate</i>
Iran (Islamic Republic of)	6.25
Saudi Arabia	3.69
Iraq	1.78
Somalia	1.17
Singapore	1.07
Pakistan	0.45
Egypt	0.31
Bangladesh	0.24
Yemen	0.24
Sudan	0.14
Afghanistan	0.11
United States	0.08
Japan	0.04

Note: The table does not include China, the Democratic People's Republic of Korea and Viet Nam, as data are not available for those countries.

IV. International developments

A. General Assembly

33. In its resolution [62/149](#), adopted in December 2007, the General Assembly called for a moratorium on capital punishment. The resolution was adopted by a vote of 104 in favour to 54 against, with 29 abstentions. Since then, a similar resolution has been adopted by the Assembly at every other regular session, with progressively larger majorities, including three resolutions adopted during the survey period (in 2014, 2016 and 2018).⁹³ The Secretary-General presented regular reports to the Assembly on the implementation of those resolutions, as requested by the Assembly.⁹⁴

34. In its resolution [69/186](#), adopted in December 2014, the General Assembly called upon all States to make available relevant information that could contribute to informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty.

35. In its resolution [71/187](#), adopted in December 2016, the General Assembly called upon States to respect the right of foreign nationals to receive information on consular assistance when legal proceedings were initiated against them. Six States that had previously abstained, namely, Guinea, Malawi, Namibia, Solomon Islands, Sri Lanka and Eswatini, voted in favour of the resolution. Zimbabwe, which had previously opposed the resolution, modified its position by abstaining. On the other hand, Equatorial Guinea, the Niger, the Philippines and Seychelles moved from supporting the resolution to abstaining, while Burundi and South Sudan switched from support to opposition. Maldives, which had previously abstained, also voted against the resolution.

⁹³ General Assembly resolutions [63/168](#) (106 in favour, 46 against and 34 abstentions), [65/206](#) (109-41-35), [67/176](#) (111-41-34), [69/186](#) (117-37-34), [71/187](#) (117-40-31) and [73/175](#) (121-35-32).

⁹⁴ [A/69/288](#), [A/71/332](#) and [A/73/260](#).

36. With regard to General Assembly resolution [73/175](#), adopted in December 2018, Dominica, Libya and Malaysia voted in favour for the first time. Antigua and Barbuda, Guyana and South Sudan switched their position from opposition to abstention. Five States that had not supported resolution [71/187](#), namely, Equatorial Guinea, the Gambia, Mauritius, the Niger and Rwanda, voted in favour of the call for a moratorium. On the other hand, Nauru voted against, while the Congo and Guinea abstained. Bahrain and Zimbabwe moved from abstention to opposition.⁹⁵

37. The biennial resolutions of the General Assembly have been followed by the issuance of statements of dissociation from States that opposed them. They declared that they wished to place on record that they were in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention of existing stipulations under international law. They have emphasized in their statements the permissibility of capital punishment under international law and have contested the issue being considered as a matter of human rights rather than as one of criminal justice policy falling within the sovereign authority of States.⁹⁶ The statement issued in December 2015 was signed by 27 States⁹⁷ and the one issued in September 2017 statement by 32 States.⁹⁸ For purposes of comparison, similar declarations made during the previous quinquennium had been signed by 53 States in 2009, 53 in 2011 and 47 in 2013.⁹⁹

B. Human Rights Council

38. The Secretary-General has been submitting annual reports on the death penalty to the Human Rights Council since 2007.¹⁰⁰ In its decision 18/117, adopted in 2011, the Council requested that the Secretary-General continue to submit a yearly supplement to the quinquennial report. Annual reports were submitted to the Council during the quinquennium. In 2014, the report included information on the human rights of children of parents sentenced to the death penalty or executed,¹⁰¹ as requested by the Council in its resolution 22/11. Pursuant to Council resolution 26/2, the report issued in 2015 examined possible consequences of the imposition and application of the death penalty on the enjoyment of various human rights, including human dignity, the right to life, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to a fair trial and the right to equality and non-discrimination. It also examined the impact on the enjoyment of human rights by children of parents sentenced to death or executed, and other individuals associated with sentenced persons, and the consequences of the lack of transparency in the imposition and application of the death penalty.¹⁰² The report in 2016 described developments in law and practice and in the implementation of the safeguards guaranteeing the protection of persons facing the death penalty, devoting special attention to use of the death penalty against children and persons with

⁹⁵ Pakistan voted in favour of the resolution but declared after the vote that it had meant to vote against.

⁹⁶ [A/69/993](#) and [A/71/1047](#).

⁹⁷ Antigua and Barbuda, Bangladesh, Botswana, Brunei Darussalam, China, Democratic People's Republic of Korea, Egypt, Ethiopia, Guyana, Iran (Islamic Republic of), Iraq, Jamaica, Kuwait, Libya, Malaysia, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Sudan, Syrian Arab Republic, Trinidad and Tobago, United Arab Emirates, Yemen and Zimbabwe.

⁹⁸ Antigua and Barbuda, Bangladesh, Barbados, Botswana, Brunei Darussalam, Chad, China, Democratic People's Republic of Korea, Egypt, Ethiopia, Grenada, Iran (Islamic Republic of), Iraq, Jamaica, Kuwait, Libya, Malaysia, Maldives, Nigeria, Oman, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sudan, Syrian Arab Republic, United Arab Emirates, Yemen and Zimbabwe.

⁹⁹ See [A/63/716](#), [A/65/779](#) and [A/67/841](#), respectively.

¹⁰⁰ Commission on Human Rights resolution 2005/59.

¹⁰¹ [A/HRC/27/23](#), paras. 65–71.

¹⁰² [A/HRC/30/18](#).

psychosocial or intellectual disabilities. It also provided information on the human rights of children of parents sentenced to the death penalty or executed.¹⁰³

39. In its resolution 30/5, the Human Rights Council requested the Secretary-General to dedicate the 2017 supplement to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of those facing the death penalty and other affected persons, paying specific attention to the right to equality and non-discrimination. The report relied largely upon information furnished by States, international, regional and intergovernmental bodies, national human rights institutions and non-governmental organizations, as well as on the results of an expert group meeting on the linkages between the application of the death penalty and the right to equality and non-discrimination. Special attention was devoted to the disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals, foreign nationals and individuals exercising the right to religion or beliefs and freedom of expression. The report also examined the discriminatory use of the death penalty against racial and ethnic minorities, its discriminatory use based on gender or sexual orientation and its use against individuals with intellectual disabilities.¹⁰⁴

40. The report submitted to the Human Rights Council in 2018 provided an update on developments in law and practice as well as an overview of the implementation of the safeguards. As in previous reports, information on the human rights of children of parents sentenced to the death penalty or executed was included.¹⁰⁵

C. Office of the United Nations High Commissioner for Human Rights

41. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to advocate and advance the abolition of the death penalty under the mandate to promote and protect the enjoyment and full realization by all people of all human rights. The OHCHR management plan for 2014–2017 included a specific strategic focus aimed at increasing the number of States that had abolished the death penalty and/or, pending abolition, increasing the compliance of States that still used the death penalty with international human rights norms and standards. The priorities of the Office for the period 2018–2021 include a commitment to undertaking strategic advocacy and strengthening partnerships to promote the abolition of the death penalty and, pending its abolition, promote moratoriums and increased adherence to international human rights law.

42. OHCHR supported several international meetings, dialogues and expert sessions on capital punishment held in different parts of the world. It published a major study entitled *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, and a volume entitled *Death Penalty and the Victims*, providing a wide array of perspectives.

D. Regional organizations

1. European Union

43. All 28 (now 27) member States of the European Union have abolished the death penalty. Global abolition of capital punishment is an important foreign policy objective of the Union. According to the European Commission, from 2008 to 2016, the European Instrument for Democracy and Human Rights allocated more than €22 million to projects supporting the fight against the death penalty around the world, making it the largest donor for such activities. Since 1998, the work of the Council of the European Union has been governed by guidelines on the death penalty,

¹⁰³ A/HRC/33/20.

¹⁰⁴ A/HRC/36/26.

¹⁰⁵ A/HRC/39/19.

which have been updated periodically, most recently in 2013. The guidelines address the raising of the issue of the death penalty in dialogues and consultations with third countries, intervention in legal proceedings on a case-by-case basis, encouraging ratification of the relevant international instruments, assistance to civil society efforts directed at abolition, and support for legal initiatives aimed at enhancing the right to a fair and impartial trial in death penalty prosecutions. The guidelines call upon the European Union to advocate a moratorium on the death penalty, where possible, and otherwise to promote restrictions on its use and respect for minimum standards.

44. European Union legislation prohibits trade in goods that can be used for capital punishment, such as barbiturate agents that are employed in execution by lethal injection. The Alliance for Torture-Free Trade, initiated by Argentina, the European Union and Mongolia, was set up in September 2017 with the purpose of ending the shipment of goods used for capital punishment.

45. The European Parliament has regularly expressed its opposition to capital punishment, most recently in a resolution adopted in December 2018.¹⁰⁶ In a resolution adopted in 2015, the European Parliament condemned the use of capital punishment to suppress opposition, or on grounds of religious belief, homosexuality or adultery. It also reiterated that death sentences failed to deter drug trafficking or to prevent individuals from falling victim to drug abuse.¹⁰⁷

2. Council of Europe

46. Initiatives directed at the death penalty have been undertaken by organs of the Council of Europe, including the Parliamentary Assembly, the Committee of Ministers and the European Court of Human Rights. Although the death penalty is abolished in the 47 member States of the Council, issues could arise with respect to the possible transfer of individuals from Europe to death penalty States, as well as with law and practice in non-European States that are affiliated with the Council.¹⁰⁸ In decisions taken in 2018, the Committee of Ministers deeply regretted that executions continued to be carried out in Japan and the United States, two Council of Europe observer States.¹⁰⁹

47. Following earlier decisions by the European Court of Human Rights confirming its position that extradition, expulsion or deportation to a State in cases where there was a real risk of capital punishment was a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols Nos. 6 and 13, the Committee of Ministers insisted on persistent efforts to ensure that the death penalty would not be imposed or carried out subsequent to a “rendition” operation.¹¹⁰

48. The Parliamentary Assembly adopted recommendations on restricting trade in goods used for the implementation of capital punishment.¹¹¹

¹⁰⁶ European Parliament resolution of 12 December 2018 on the annual report on human rights and democracy in the world 2017 and the European Union’s policy on the matter (2018/2098(INI)), para. 29.

¹⁰⁷ European Parliament resolution of 8 October 2015 on the death penalty (2015/2879(RSP)) (*Official Journal of the European Union*, C 349/41, 17 October 2017).

¹⁰⁸ For a comprehensive overview of the policy and activity of the Council of Europe, see Policy of the Council of Europe in relation to the death penalty: challenges and policy options (SG/Inf(2017)16).

¹⁰⁹ Abolition of the death penalty (CM/Del/Dec(2018)1327/4.1).

¹¹⁰ H46-17 *Al Nashiri group v. Poland* (Application No. 28761/11) (CM/Del/Dec(2017)1294/H46-17). See also H46-17 *Al Nashiri group v. Poland* (Application No. 28761/11) (CM/Notes/1294/H46-17) and H46-21 *Al Nashiri group v. Poland* (Application No. 28761/11) (CM/Notes/1259/H46-21).

¹¹¹ Recommendation 2123 (2018) of the Parliamentary Assembly of the Council of Europe on strengthening international regulations against trade in goods used for torture and the death penalty. See also report Doc. 14454 on the same topic.

3. African Union

49. In the Cotonou Declaration, adopted in July 2014, the Continental Conference on the Abolition of the Death Penalty in Africa called upon African States that still imposed capital punishment to consider abolishing the death penalty. The Conference recalled earlier resolutions of the African Commission on Human and Peoples' Rights in which the Commission had called for a moratorium.¹¹² It noted that the evolution that had occurred in several States members of the African Union expressed a general tendency in favour of abolition of the death penalty and called upon the members of the African Union to adopt the Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa. In May 2015, the text of the additional protocol was adopted by the Commission at its fifty-sixth ordinary session. During the quinquennium, the African Commission expressed its opposition to the use of capital punishment in various statements, declaring it to be a violation of article 4 of the African Charter, which prohibits the arbitrary deprivation of the right to life.¹¹³ In 2015, it adopted general comment No. 3, on the right to life, in which it noted that the Charter did not include any provision recognizing the death penalty, even in limited circumstances, that the vast majority of African States had now abolished the death penalty in law or in practice and that international law required those States that had not yet abolished it to take steps towards its abolition in order to secure the rights to life and to dignity, in addition to other rights, such as the right to be free from torture and cruel, inhuman or degrading treatment.¹¹⁴

E. International treaty obligations

50. At the beginning of 2014, 78 States were parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,¹¹⁵ adopted in 1989 and in force since 1991, in which it is specified that no one within the jurisdiction of a State party to the Protocol shall be executed and that each State party shall take all measures necessary to abolish the death penalty within its jurisdiction. Eight States ratified or acceded to the Protocol during the quinquennium: Dominican Republic, El Salvador, Gabon, Gambia, Madagascar, Poland, Sao Tome and Principe and Togo. Angola and the State of Palestine ratified the Protocol in 2019. None of those States entered a reservation providing 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, as permitted under article 2, paragraph 1, of the Optional. During the universal periodic review conducted by the Human Rights Council, several States accepted recommendations to ratify the Protocol: Angola,¹¹⁶ Burundi,¹¹⁷ Cambodia,¹¹⁸ Central African Republic,¹¹⁹ Congo,¹²⁰ Côte d'Ivoire,¹²¹ Equatorial Guinea,¹²² Marshall Islands,¹²³ Micronesia (Federated

¹¹² Resolution urging the State to envisage a moratorium on the death penalty (ACHPR/Res.42(XXVI)99), and resolution urging States to observe a moratorium on the death penalty (ACHPR/Res.136 (XXXIII)08).

¹¹³ African Charter on Human and Peoples' Rights, "Press Release on the execution of Mohammad Bakri Mohammad Haroun and five others", 21 May 2015.

¹¹⁴ General comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (art. 4), para. 22.

¹¹⁵ United Nations, *Treaty Series*, vol. 1642, No. 14688.

¹¹⁶ A/HRC/WG.6/20/AGO/1, para. 27. Angola ratified the Protocol on 2 October 2019.

¹¹⁷ A/HRC/38/10/Add.1, para. 7.

¹¹⁸ A/HRC/41/17/Add.1, para. 2.

¹¹⁹ A/HRC/25/11, paras. 104.2–104.11, and A/HRC/40/12/Add.1, paras. 20–21.

¹²⁰ A/HRC/40/16/Add.1, para. 7.

¹²¹ A/HRC/42/6, para. 140.9.

¹²² A/HRC/42/13, paras. 122.4–122.16.

¹²³ A/HRC/30/13/Add.1, para. 1.

States of),¹²⁴ Myanmar,¹²⁵ Nauru,¹²⁶ Sierra Leone¹²⁷ and Tajikistan.¹²⁸ In its reply to the survey questionnaire, Armenia indicated its intent to become a party to the Protocol. Suriname indicated that recommendations to ratify the Protocol enjoyed its support,¹²⁹ while Vanuatu noted them.¹³⁰ Palau said that it would “work towards consultations” on the ratification of the Protocol, which is, in any event, conditional on its ratification of the Covenant itself.¹³¹

51. In its general comment No. 36 (2018) on the right to life, the Human Rights Committee declared that State parties to the International Covenant on Civil and Political Rights that have abolished the death penalty are barred from reintroducing it. Therefore, for the Committee, the Covenant would become an abolitionist treaty binding a State party under international law, even if it has not yet ratified or acceded to its Second Optional Protocol, to the extent that such a State is already or has become abolitionist. Several States would fall into this category: Brazil, Burkina Faso, Burundi, Cambodia, Chad, Côte d’Ivoire, Fiji, Gambia, Guatemala, Guinea, Israel, Kazakhstan, Peru, Russian Federation, Samoa, Senegal, Suriname and Vanuatu. During the survey period, there were initiatives in four abolitionist States to reintroduce the death penalty. All four, Hungary, Mongolia, the Philippines and Turkey, are parties to the International Covenant. Pursuant to general comment No. 36, any return to the death penalty would be a violation of the Covenant. Moreover, Hungary, the Philippines and Turkey are also parties to the Second Optional Protocol. In this regard, in a letter dated 27 March 2017 addressed to the Philippines, which is a State party to the International Covenant as well as to the Protocol, the Chair of the Human Rights Committee made reference to article 6, paragraph 2, of the International Covenant, saying that States parties to the Covenant that had abolished the death penalty, through amending their domestic laws, becoming parties to the Protocol or adopting another international instrument obliging them to abolish the death penalty, were barred from reintroducing it. In its general comment No. 36, the Committee stated that, like the Covenant, the Protocol did not contain termination provisions and States parties could not denounce it, concluding that abolition of the death penalty was therefore legally irrevocable.¹³²

52. The Second Optional Protocol can only be ratified or acceded to by a State that is already a party to the International Covenant on Civil and Political Rights. Nine States that have abolished the death penalty, namely, Bhutan, the Cook Islands, the Holy See, Kiribati, the Marshall Islands, Micronesia (Federated States of), Nauru, Niue and Palau, are not parties to the International Covenant. Some of them have indicated that they cannot consider accession or ratification to the Covenant at the present stage because of resource constraints. Nauru and Palau have signed but not ratified the Covenant. Article 7, paragraph 1, of the Protocol permits signature by States that have signed, but have yet to ratify, the Covenant itself. These States might be encouraged to ratify the Covenant and the Protocol.

53. Several States parties to the International Covenant are abolitionist de facto but not de jure. A State that has not fully abolished the death penalty may ratify or accede to the Second Optional Protocol provided that a moratorium is put in place and that it takes all measures necessary to abolish capital punishment. At least four States parties to the Protocol, namely, Benin, the Gambia, Liberia and Mongolia, had not yet abolished the death penalty in their domestic law at the time of ratification. Subsequently, both Benin and Mongolia abolished it in 2016.

¹²⁴ A/HRC/31/4/Add.1, paras. 2–3.

¹²⁵ A/HRC/31/13/Add.1, para. 7.

¹²⁶ A/HRC/31/7/Add.1, para. 1.

¹²⁷ A/HRC/32/16/Add.1, para. 11.

¹²⁸ A/HRC/33/11/Add.1, para. 118.8.

¹²⁹ A/HRC/33/4/Add.1, para. 4.

¹³⁰ A/HRC/41/10, para. 91.1.

¹³¹ A/HRC/32/11/Add.1, para. 3.

¹³² CCPR/C/GC/36, para. 34.

54. Within the regional human rights system of the Council of Europe, in which 47 countries participate, there are two protocols that address the issue of the death penalty. They amend article 2 of the European Convention on Human Rights, which deals with the death penalty as an exception to the protection of the right to life. At the beginning of the survey period, in 2014, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, adopted in 1983 to prohibit the death penalty in time of peace, had been ratified by all members of the Council of Europe, with the exception of the Russian Federation. That situation remained unchanged at the end of 2018. Protocol No. 13 for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, adopted in 2002, had been ratified by 43 countries when the survey period began. Poland ratified it in 2014. Armenia has signed the Protocol but has yet to ratify it. Azerbaijan and the Russian Federation have neither signed nor ratified it.

55. Thirteen States are parties to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. There were no new signatures, ratifications or accessions to the Protocol during the quinquennium. In article 4, paragraph 3, of the American Convention on Human Rights, it is explicitly specified that a State that has abolished the death penalty may not reintroduce it. Thus, States that are abolitionist at the time of ratification or accession to the American Convention are bound not to reintroduce the death penalty. Seven States parties to the American Convention have abolished the death penalty but have not ratified or acceded to any of the abolitionist protocols: Bolivia (Plurinational State of), Colombia, Dominican Republic, El Salvador, Guatemala, Haiti and Peru.

56. In total, 107 States have now ratified or acceded to an international treaty related to the abolition of the death penalty.

Table 5

States bound by international legal obligations with respect to the death penalty, by instrument and date of accession, ratification or signature

<i>State</i>	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</i>	<i>Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty</i>	<i>Protocol No. 13 to the Convention on Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances</i>	<i>Abolitionist States that are parties to the American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Albania	17 Oct. 2007	1 Oct. 2000	1 June 2007		
Andorra	22 Sept. 2006	1 Feb. 1996	1 July 2003		
Angola	24 Sept. 2013 ^a				
Argentina	2 Sept. 2008			14 Aug. 1984	18 June 2008
Armenia		1 Oct. 2003	19 May 2006 ^a		
Australia	2 Oct. 1990				
Austria	2 Mar. 1993	1 Mar. 1985	1 May 2004		
Azerbaijan	22 Jan. 1999	1 May 2002			
Belgium	8 Dec. 1998	1 Jan. 1999	1 Oct. 2003		
Benin	5 July 2012			20 June 1979	
Bolivia (Plurinational State of)	12 July 2013			20 June 1979	
Bosnia and Herzegovina	16 Mar. 2001	1 Aug. 2002	1 Nov. 2003		
Brazil				7 Sept. 1992	31 July 1996
Bulgaria	10 Aug. 1999	1 Oct. 1999	1 July 2003		

<i>State</i>	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</i>	<i>Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty</i>	<i>Protocol No. 13 to the Convention on Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances</i>	<i>Abolitionist States that are parties to the American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Cabo Verde	19 May 2000				
Canada	25 Nov. 2005				
Chile	26 Sept. 2008			8 Oct. 1990	8 Apr. 2008
Colombia	5 Aug. 1997			28 May 1973	
Costa Rica	5 June 1998			3 Feb. 1970	30 Mar. 1998
Croatia	12 Oct. 1995	1 Dec. 1997	1 July 2003		
Cyprus	10 Sept. 1999	1 Feb. 2000	1 July 2003		
Czechia	15 June 2004	1 Jan. 1993	1 Nov. 2004		
Denmark	24 Feb. 1994	1 Mar. 1985	1 July 2003		
Djibouti	5 Nov. 2002				
Dominican Republic				21 Jan. 1978	19 Dec. 2011
Ecuador	23 Feb. 1993			12 Aug. 1977	2 May 1998
El Salvador	8 Apr. 2014			20 June 1978	
Estonia	30 Jan. 2004	1 May 1998	1 June 2004		
Finland	4 Apr. 1991	1 June 1990	1 Mar. 2005		
France	2 Oct. 2007	1 Mar. 1986	1 Feb. 2008		
Gabon	2 Apr. 2014	1 May 2000	1 Sept. 2003		
Georgia	22 Mar. 1999	1 May 2000	1 Sept. 2003		
Germany	18 Aug. 1992	1 Aug. 1989	1 Feb. 2005		
Greece	5 May 1997	1 Oct. 1998	1 June 2005		
Guatemala				27 Apr. 1978	
Guinea-Bissau	12 Sept. 2000 ^a				
Haiti				14 Sept. 1977	
Honduras	1 Apr. 2008			9 May 1977	14 Sept. 2011
Hungary	24 Feb. 1994	1 Dec. 1992	1 Nov. 2003		
Iceland	2 Apr. 1993	1 June 1987	1 Mar. 2005		
Ireland	18 June 1993	1 July 1994	1 July 2003		
Italy	14 Feb. 1995	1 Jan. 1999	1 July 2009		
Kyrgyzstan	6 Dec. 2010	1 Jan. 1999	1 July 2009		
Latvia	19 Apr. 2013	1 June 1999	26 Jan. 2012		
Liberia	16 Sept. 2005				
Liechtenstein	10 Dec. 1998	1 Dec. 1990	1 July 2003		
Lithuania	27 Mar. 2002	1 Aug. 1999	1 May 2004		
Luxembourg	12 Feb. 1992	1 Mar. 1985	1 July 2006		
Madagascar	24 Sept. 2012 ^a				
Malta	29 Dec. 1994	1 Apr. 1991	1 July 2003		
Mexico	26 Sept. 2007			3 Feb. 1981	28 June 2007
Monaco	28 Mar. 2000	1 Dec. 2005	6 Mar. 2006		
Mongolia	13 Mar. 2012				
Montenegro	23 Oct. 2006	6 June 2006	1 June 2006		

<i>State</i>	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</i>	<i>Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty</i>	<i>Protocol No. 13 to the Convention on Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances</i>	<i>Abolitionist States that are parties to the American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Mozambique	21 July 1993				
Namibia	28 Nov. 1994				
Nepal	4 Mar. 1998				
Netherlands	26 Mar. 1991	1 May 1986	1 June 2006		
New Zealand	22 Feb. 1990				
Nicaragua	25 Feb. 2009			25 Sept. 1979	24 Mar. 1999
North Macedonia	26 Jan. 1995	1 May 1997	1 Nov. 2004		
Norway	5 Sept. 1991	1 Nov. 1988	1 Dec. 2005		
Panama	21 Jan. 1993			5 Aug. 1978	27 June 1991
Paraguay	18 Aug. 2003			18 Aug. 1989	31 Oct. 2000
Peru				7 Dec. 1978	
Philippines	20 Nov. 2007				
Poland	25 Apr. 2014	1 Nov. 2000	23 May 2014		
Portugal	17 Oct. 1990	1 Nov. 1986	1 Feb. 2004		
Republic of Moldova	20 Sept. 2006	1 Oct. 1997	1 Feb. 2007		
Romania	27 Feb. 1991	1 July 2004	1 Aug. 2003		
Rwanda	15 Dec. 2008				
Russian Federation		16 Apr. 1997 ^a			
San Marino	17 Aug. 2004	1 Apr. 1989	1 Aug. 2003		
Sao Tome and Principe	6 Sept. 2000 ^a				
Serbia	6 Sept. 2001	1 Apr. 2004	1 July 2004		
Seychelles	15 Dec. 1994				
Slovakia	22 June 1999	1 Jan. 1993	1 Dec. 2005		
Slovenia	10 Mar. 1994	1 July 1994	1 Apr. 2004		
South Africa	28 Aug. 2002				
Spain	11 Apr. 1991	1 Mar. 1985	3 May 2002		
Sweden	11 May 1990	1 Mar. 1985	1 Aug. 2003		
Switzerland	16 June 1994	1 Nov. 1987	1 July 2003		
Timor-Leste	18 Sept. 2003				
Turkey	2 Mar. 2006	1 Dec. 2003	1 June 2006		
Turkmenistan	11 Jan. 2000				
Ukraine	25 July 2007	1 May 2000	1 July 2003		
United Kingdom of Great Britain and Northern Ireland	10 Dec. 1999	1 June 1999	1 Feb. 2004		
Uruguay	21 Jan. 1993			26 Mar. 1985	2 Aug. 1994
Uzbekistan	23 Dec. 2008				

<i>State</i>	<i>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</i>	<i>Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty</i>	<i>Protocol No. 13 to the Convention on Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances</i>	<i>Abolitionist States that are parties to the American Convention on Human Rights</i>	<i>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</i>
Venezuela (Bolivarian Republic of)	22 Feb. 1993			23 June 1977	24 Aug. 1992

^a Signature.

F. World Congress

57. The sixth World Congress Against the Death Penalty took place in Oslo from 21 to 23 June 2016. The World Congress has taken place every three years since 2001. It is organized by Together against the Death Penalty and is supported financially by several Governments. The sixth Congress was held in partnership with the World Coalition Against the Death Penalty and with the sponsorship of the Governments of Norway, Australia and France.

V. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

58. The safeguards guaranteeing protection of the rights of those facing the death penalty constitute an enumeration of minimum standards to be applied in countries that still impose capital punishment. They both reflect and develop the norms governing capital punishment set out in article 6 of the International Covenant on Civil and Political Rights. The safeguards were adopted by the Economic and Social Council in 1984 in its resolution 1984/50 and updated five years later in its resolution 1989/64. In its resolution 1996/15, the Council called upon Member States in which the death penalty had not been abolished to apply the safeguards effectively, while the General Assembly called upon States to respect them in its resolutions [69/186](#), [71/187](#) and [73/175](#), and the Human Rights Council reaffirmed them in its resolutions 7/29, 26/2, 30/5 and 36/17.

A. First safeguard: “most serious crimes”

59. The first safeguard states: “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.” The norm is derived from article 6, paragraph 2, of the International Covenant on Civil and Political Rights, under which States that have not abolished the death penalty are required to confine its use to “the most serious crimes”. Referring to the first of the safeguards, the Human Rights Committee stated in its general comment No. 36 that the term “the most serious crimes” must be read restrictively and appertained only to crimes of extreme gravity involving intentional killing.

1. Mandatory death sentences

60. The Human Rights Committee has stated that mandatory death sentences that leave domestic courts with no discretion as to whether or not to designate the offence as a crime warranting the death penalty, and whether or not to issue the death sentence

in the particular circumstances of the offender, are arbitrary in nature.¹³³ In a decision adopted in 2014, the Committee held that laws that imposed the death penalty without any possibility of the defendant's personal circumstances or the circumstances of the particular offence being taken into account constituted violations of the right to life.¹³⁴

61. During the quinquennium, national courts in Bangladesh¹³⁵ and Kenya¹³⁶ declared the mandatory death penalty to be incompatible with the protection of the right to life. Courts in Antigua and Barbuda and Malawi have undertaken the revision of death sentences imposed under mandatory sentencing legislation, resulting in commutations to terms of imprisonment.¹³⁷

2. Crimes for which the death penalty should not be applied

62. According to the Human Rights Committee, crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6 of the International Covenant on Civil and Political Rights, for the imposition of the death penalty.¹³⁸ Similarly, according to the Committee, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty.¹³⁹ In its resolution 2005/59 on the question of the death penalty, the Commission on Human Rights called upon States that still maintained the death penalty to ensure that the notion of "most serious crimes" did not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty was not imposed for non-violent acts, such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults, or as a mandatory sentence. The European Union Guidelines on the Death Penalty state that capital punishment must not be imposed for non-violent acts, such as financial crimes, or for religious practices or expression of conscience.

63. In some cases, the criminalization of the act itself is incompatible with human rights norms and standards, such as the right to equality and to privacy and freedom of expression and belief, for example, adultery,¹⁴⁰ homosexuality,¹⁴¹ sodomy,¹⁴² apostasy¹⁴³ and blasphemy.¹⁴⁴

64. The death penalty is provided in the legislation of some countries for corruption and other economic crimes,¹⁴⁵ espionage,¹⁴⁶ financing terrorism,¹⁴⁷ human trafficking,¹⁴⁸ adulteration of food¹⁴⁹ and deliberately obstructing funerals.¹⁵⁰ In their

¹³³ [CCPR/C/GC/36](#), para. 37.

¹³⁴ See communication No. 2177/2012, *Johnson v. Ghana* ([CCPR/C/110/D/2177/2012](#)), views adopted 27 March 2014, paras. 7.3.

¹³⁵ Bangladesh, *Bangladesh Legal Aid and Services Trust and others v. Bangladesh and others*, judgment of 5 May 2015. See Andrew Nowak, "The abolition of the mandatory death penalty in Bangladesh: a comment on Bangladesh Legal Aid and Services Trust v. Bangladesh", *Oxford University Commonwealth Law Journal*, vol.15, No. 2 (June 2016), pp. 277–285.

¹³⁶ Kenya, *Muruatetu v. Republic of Kenya*, Petition No. 5 of 2015, 14 December 2017. See Jacqueline Mwangi, "Francis Karioko Muruatetu v. Republic", *American Journal of International Law*, vol. 112, No. 4 (October 2018), pp. 707–713.

¹³⁷ [A/HRC/39/19](#), para. 28.

¹³⁸ [CCPR/C/GC/36](#), para. 35.

¹³⁹ *Ibid.*

¹⁴⁰ [CCPR/C/SDN/CO/5](#), para. 29.

¹⁴¹ [CCPR/C/GC/36](#), para. 36.

¹⁴² [CCPR/C/SDN/CO/5](#), para. 29.

¹⁴³ [CCPR/C/GC/36](#), para. 36.

¹⁴⁴ [CCPR/C/PAK/CO/1](#), para. 17.

¹⁴⁵ [CCPR/C/SDN/CO/3](#), para. 19.

¹⁴⁶ [CCPR/C/SDN/CO/5](#), para. 29.

¹⁴⁷ [CCPR/C/BGD/CO/1](#), para. 10.

¹⁴⁸ [CCPR/C/SDN/CO/5](#), para. 29.

¹⁴⁹ [CCPR/C/BGD/CO/1](#), para. 23.

¹⁵⁰ [CCPR/C/BHR/CO/1](#), para. 31.

reports to the Human Rights Council and United Nations treaty bodies, and in their replies to the survey questionnaire, some States indicated that the death penalty applied to such crimes, but they did not provide information as to whether or not it was actually imposed. For example, Viet Nam stated that the death penalty may be applied for drug-related crimes and for corruption.¹⁵¹ In its concluding observations on the second periodic report of Thailand, the Human Rights Committee reiterated its concern that domestic law punished with the death penalty crimes relating to corruption, bribery and drugs, which did not meet the threshold of the “most serious crimes” within the meaning of article 6, paragraph 2, of the International Covenant on Civil and Political Rights.¹⁵² In Pakistan, the death penalty may be applied to crimes other than “most serious crimes”, such as drug trafficking and blasphemy.¹⁵³

65. Concerns have been raised over the adoption of new counter-terrorism legislation or the amendment of existing laws in Bahrain, Bangladesh, Nigeria and the Syrian Arab Republic that prescribe the death penalty for overly broad or vaguely defined “terrorist” activities.¹⁵⁴ Executions relating to acts of terrorism were carried out in Bangladesh, Belarus, China, India, Iran (Islamic Republic of), Iraq, Somalia and the Sudan, and possibly in other countries.¹⁵⁵ Furthermore, hundreds of death sentences were handed down, albeit not carried out, in terrorism-related cases in Algeria, Bangladesh, Egypt, Lebanon, Libya and Pakistan.¹⁵⁶ The Human Rights Committee recommended that Bangladesh ensure that the death penalty was not imposed for offences, such as the financing of terrorism, that did not constitute “most serious crimes”.¹⁵⁷ In 2016, the United Nations High Commissioner for Human Rights denounced mass executions in the Islamic Republic of Iran for purported terrorism-related offences, stating that the application of overly broad and vague criminal charges, coupled with a disdain for the rights of the accused to due process and a fair trial, had in these cases led to a grave injustice.¹⁵⁸ The Special Rapporteur on extrajudicial, summary or arbitrary executions noted that the Anti-Terrorism Law of Iraq was overly broad and that the list of crimes for which the death penalty was mandatory included acts the gravity of which fell below the threshold of most serious crimes necessary to impose such a sentence under international norms.¹⁵⁹

66. During the quinquennium covered by the present report, the death penalty was imposed or implemented for drug-related offences in a number of countries, including China, Indonesia, Iran (Islamic Republic of), Kuwait, the Lao People’s Democratic Republic, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, the United Arab Emirates and Viet Nam.¹⁶⁰ In its submission for the present report, Harm Reduction International said that 35 States had legislation providing the death penalty for drug-related crimes, and that it was mandatory for certain offences in 12 of them. It estimated that, until 2017, some 30 per cent of executions worldwide were for drug crimes, but that this figure was declining as a result of legislative changes in the Islamic Republic of Iran. The International Narcotics Control Board discussed the imposition of the death penalty for drug-related offences at its 109th session, held in February 2014. Subsequently, in a note verbale dated March 2014 addressed to all Member States, the Board encouraged States that still imposed the death penalty for drug-related offences to abolish that punishment.¹⁶¹ In addition, the Board reminded the Government of the Philippines that the conventions committed to a humane and balanced approach requiring the parties to give special attention to, and take all

¹⁵¹ CCPR/C/VNM/3, para. 67.

¹⁵² CCPR/C/THA/CO/2, para. 17.

¹⁵³ CCPR/C/PAK/CO/1, para. 17.

¹⁵⁴ A/HRC/27/23, para. 39.

¹⁵⁵ Ibid., para. 38.

¹⁵⁶ Ibid.

¹⁵⁷ CCPR/C/BGD/CO/1, para. 10.

¹⁵⁸ Office of the High Commissioner for Human Rights (OHCHR), “Zeid deplors mass executions in Iran”, 5 August 2016.

¹⁵⁹ A/HRC/38/44/Add.1, para. 47.

¹⁶⁰ A/HRC/33/20, para. 24.

¹⁶¹ A/HRC/27/23, para. 31.

practicable measures for, the prevention of drug abuse and for the early identification, treatment, education, aftercare, rehabilitation and social reintegration of the persons affected.¹⁶²

B. Second safeguard: non-retroactivity

67. The second safeguard states: “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.” This is a specific formulation of the more general principle set out in article 11, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1, of the International Covenant on Civil and Political Rights. Retroactive imposition of the death penalty is also prohibited under article 6, paragraph 2, of the Covenant, which refers to “the law in force at the time of the commission of the crime”. The Human Rights Committee said in its general comment No. 36 that the death penalty could never be imposed if it had not been provided by law for the offence at the time of its commission; nor could the imposition of the death penalty be based on vaguely defined criminal provisions, whose application to the convicted individual depended on subjective or discretionary considerations the application of which was not reasonably foreseeable. On the other hand, the Committee said that the *lex mitior* principle provided convicted persons with lighter penalties adopted after the commission of the offence, adding that the retroactive application of the abolition of the death penalty to all individuals charged or convicted of a capital crime also derived from the fact that the need for applying the death penalty could not be justified once it had been abolished.¹⁶³

68. No information was provided to suggest that the laws of any of the responding countries or any other country allowed for the death penalty to be applied retroactively if the law specifying capital punishment had not been in effect prior to the commission of the offence. Several countries that responded to the questionnaire indicated that there was no possibility for the retroactive imposition of the death penalty. In replies to the survey questionnaire, Egypt, Iraq, Japan and Kuwait confirmed that the *lex mitior* principle could apply if the law was changed to remove the death penalty subsequent to the commission of a capital offence. The United States reported that the rule of lenity would apply, so that, if the death penalty were abolished by a statute that was ambiguous with regard to its retroactive application, it could be interpreted in favour of the defendant.¹⁶⁴

C. Third safeguard: juveniles, pregnant women and other categories

69. The third safeguard states: “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.” The prohibition of execution for crimes committed when the offender was below 18 years of age and for pregnant women is derived from article 6, paragraph 5, of the International Covenant on Civil and Political Rights. The third safeguard was amplified by the Economic and Social Council in its resolution 1989/64 with the recommendations that Member States establish a maximum age beyond which a person may not be sentenced to death or executed and eliminate the death penalty for persons suffering from mental retardation or extremely limited mental competence.

¹⁶² International Narcotics Control Board, “INCB condemns acts of violence against persons suspected of drug-related crime and drug use in the Philippines”, 18 August 2017.

¹⁶³ CCPR/C/GC/36, para. 38.

¹⁶⁴ Citing *United States v. Santos*, 553 U.S. 507, 514 (2008), *Roberts v. United States*, 572 U.S. 639, 134 S. Ct. 1854, 1859 (2014), and *Muscarello v. United States*, 524 U.S. 125, 139 (1998).

1. Persons below 18 years of age

70. The prohibition of executions for crimes committed by persons below 18 years of age appears in several international human rights conventions.¹⁶⁵ Such prohibition has been considered in some instances as a norm of customary international law.¹⁶⁶ According to general comment No. 36 of the Human Rights Committee, this prohibition means that such persons can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time planned for carrying out the sentence. If there is no reliable and conclusive proof that the person was not below 18 years of age at the time in which the crime was committed, he or she will have the right to the benefit of the doubt, and the death penalty cannot be imposed.¹⁶⁷ In its general comment No. 24 (2019) on children's rights in the child justice system, the Committee on the Rights of the Child called upon the few States parties that had not yet abolished the imposition of the death penalty for all offences committed by persons below 18 years of age to do so urgently and without exceptions, adding that any death penalty imposed on a person who was below 18 years of age at the time of the commission of the offence should be commuted to a sanction that was in full conformity with the Convention on the Rights of the Child.

71. Several States have legislation that allows for the application of the death penalty to children, including India, Iran (Islamic Republic of), the Lao People's Democratic Republic, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, the Sudan, Tonga, the United Arab Emirates and Yemen. In some of them, such as the Sudan, the legislation specifies that the death penalty shall not be imposed on children except in cases of retribution or *hudud*.¹⁶⁸ In its submission for the present report, Amnesty International said that it had recorded at least 37 executions of juvenile offenders during the quinquennium, in Iran (Islamic Republic of), Pakistan and South Sudan. There have also been reports of such executions in Saudi Arabia and Yemen, as well as by Hamas in the Gaza Strip.¹⁶⁹ The Committee against Torture has expressed concern about reports of executions in Afghanistan of persons who were below 18 years of age at the time of the offence.¹⁷⁰ Furthermore, Amnesty International believed that juvenile offenders remained on death row in Iran (Islamic Republic of), Pakistan, Saudi Arabia and South Sudan.

72. Saudi Arabia reported to the Human Rights Council that, under article 15 of the Juveniles Act, if a crime committed by the juvenile was punishable by death, the sentence would be reduced to a term of no more than 10 years of detention.¹⁷¹ However, the Committee on the Rights of the Child expressed its deepest concern that Saudi Arabia tried children above 15 years of age as adults and continued to sentence to death and execute persons for offences that they had allegedly committed when they were below 18 years of age, in reference to four such individuals who were executed on 2 January 2016.¹⁷² In 2018, three United Nations experts called upon Saudi Arabia to stop the planned executions of child offenders.¹⁷³

73. The Islamic Republic of Iran continues to execute persons for crimes committed when they were below 18 years of age, some being as low as 15 years of age at the time of the crime. At least four juvenile offenders were executed in that country in

¹⁶⁵ Convention on the Rights of the Child, art. 37 (a), American Convention on Human Rights, art. 4, para. 5, and African Charter on the Rights and Welfare of the Child, art. 5, para. 3.

¹⁶⁶ *Michael Domingues v. United States*, Case No. 12.285, Report No. 62/02, Merits, 22 October 2002, para. 67. See also Subcommission on the Promotion and Protection of Human Rights resolution 2000/17.

¹⁶⁷ *CCPR/C/GC/36*, para. 48.

¹⁶⁸ See Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 5th ed. (Oxford, Oxford University Press, 2015), p. 231.

¹⁶⁹ *A/HRC/27/23*, paras. 59.

¹⁷⁰ *CAT/C/AFG/CO/2*, paras. 33–34.

¹⁷¹ *A/HRC/WG.6/31/SAU/1*, para. 61, and *A/HRC/40/4*, para. 115.

¹⁷² *CRC/C/SAU/CO/3-4*, para. 20.

¹⁷³ OHCHR, "UN experts call on Saudi Arabia to halt death sentences on children", 29 October 2018.

the first half of 2018. In a response to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the Government explained that the executions were conducted in accordance with *qisas* (retaliation in kind), by which the next of kin of a murder victim may request such punishment. The Special Rapporteur reiterated the concerns expressed by the United Nations High Commissioner for Human Rights in February 2018 with respect to the retention of the death penalty under the amended Islamic Penal Code for boys of at least 15 lunar years of age and girls of at least 9 years of age for *qisas* or *hudud* crimes, such as homicide, adultery, rape, theft, armed robbery or sodomy.¹⁷⁴ The Committee on the Rights of the Child has strongly urged the Islamic Republic of Iran as a matter of utmost priority to abolish the death sentence for persons who committed a *hudud* or *qisas* crime when they were below 18 years of age and to commute all existing sentences in such cases.¹⁷⁵

74. Although Pakistan ended the death penalty for juveniles in 2000, the measure did not apply retroactively and there are individuals who have remained on death row for crimes committed when they were below 18 years of age.¹⁷⁶ The Committee on the Rights of the Child said that it was seriously alarmed by reports of the execution of several individuals for offences committed when they were below 18 years of age, or where the age of the individual was contested.¹⁷⁷ The Human Rights Committee and the Committee on the Rights of the Child recommended that Pakistan, as a matter of priority, take all measures necessary to ensure that those charged with a capital offence had access to an effective and independent age determination process in order to ensure that, in cases where there was no proof of age, the child was entitled to a proper investigation to establish his or her age and, in the case of conflicting or inconclusive evidence, had the right to the rule of the benefit of the doubt.¹⁷⁸

2. Execution of older persons

75. In its resolution 1989/64, the Economic and Social Council recommended that Member States establish a maximum age beyond which a person might not be sentenced to death or executed. A prohibition of the execution of older persons was first set out in the American Convention on Human Rights, which provides that “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”.¹⁷⁹ The wording appears to permit the execution of persons above 70 years of age when the crimes were committed when they were younger. In its general comment No. 36, the Human Rights Committee stated that States parties to the International Covenant on Civil and Political Rights should refrain from executing persons, such as those of advanced age, where this would lead to exceptionally harsh results for them and their families.¹⁸⁰ It would appear that few, if any, States that did not already have a limit on the age of execution have acted pursuant to the appeal from the Council.

76. In its reply to the survey questionnaire, China reported that the death penalty may not be imposed on persons who have reached 75 years of age at the time of trial, except for persons who caused death by extraordinarily cruel means. In its reply, the Russian Federation said that the death penalty could not be imposed on men above 65 years of age (the law in that country prohibits the death penalty for women). Other countries also reported on age limits for the application of the death penalty, as follows: Belarus (65),¹⁸¹ Kazakhstan (63),¹⁸² Mongolia (60 for men, as the law in that

¹⁷⁴ A/73/398, para. 16.

¹⁷⁵ CRC/C/IRN/CO/3-4, para. 36.

¹⁷⁶ A/HRC/39/19, para. 42. See also Amnesty International, “Imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons with mental or intellectual disabilities”, 27 April 2018.

¹⁷⁷ CRC/C/PAK/CO/5, para. 24.

¹⁷⁸ CRC/C/PAK/CO/5, para. 25 (b), and CCPR/C/PAK/CO/1, para. 18.

¹⁷⁹ American Convention on Human Rights, art. 4, para. 5.

¹⁸⁰ CCPR/C/GC/36, para. 49.

¹⁸¹ A/HRC/WG.6/22/BLR/1, para. 158, and CAT/C/BLR/5, para. 203.

¹⁸² Reply to survey questionnaire submitted by Kazakhstan.

country prohibits the death penalty for women),¹⁸³ South Sudan (70),¹⁸⁴ Sudan (70),¹⁸⁵ Viet Nam (75)¹⁸⁶ and Zimbabwe (70).¹⁸⁷ It would appear that, in most cases, the prohibition concerns the age at the time of execution and not at the time of the offence.

3. Pregnant women and mothers of young children

77. The prohibition of the execution of pregnant women set out in the third safeguard is derived from article 6, paragraph 5, of the International Covenant on Civil and Political Rights. The third safeguard contemplates “new mothers” in addition to pregnant women. In its resolution 2005/59, the Commission on Human Rights urged all States that still maintained the death penalty to exclude mothers with dependent infants from capital punishment.

78. All States that replied to the questionnaire indicated that they did not allow the execution of pregnant women. Legislation in Viet Nam also prohibits imposing the death penalty on women who are nursing children below 36 months of age.¹⁸⁸ Qatar informed the Human Rights Council that it had a moratorium exempting all pregnant women from capital punishment for a period covering two years after delivery.¹⁸⁹ Bahrain amended its Code of Criminal Procedure to prohibit the execution of pregnant women.¹⁹⁰ Ethiopia reported to the Human Rights Committee that, if a woman was pregnant at the time of her conviction, or if she gave birth to a live child in prison while awaiting the execution of a death sentence and such child had to be nursed by her, the penalty would be commuted to life imprisonment.¹⁹¹ India said that its legislation provided for the suspension of the death penalty for pregnant women.¹⁹²

79. In their replies to the survey questionnaire, Egypt and Kuwait said that the death penalty could not be imposed on mothers of young children. On the other hand, China, Eswatini, Japan, Myanmar and the United States reported that there was no such legislative prohibition.

80. The issue of executing pregnant women and mothers of young children is situated within the larger context of the imposition of capital punishment on women. Some States, such as Belarus, Mongolia and the Russian Federation, reported that women had been excluded from the scope of capital punishment. As of 31 December 2018, approximately 50 women were under sentence of death in the United States, representing 1.8 per cent of the overall death row population.¹⁹³

4. Persons with psychosocial or intellectual disabilities

81. The final category of persons sheltered from capital punishment by the third safeguard consists of “persons who have become insane”. In its resolution 1989/64, the Economic and Social Council subsequently added the recommendation that Member States eliminate the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution. Although this prohibition is firmly rooted in the customs and practices of most legal systems, it is not explicitly set out in applicable treaties. The standard should be subsumed within the general protection against the arbitrary deprivation of the right to life. In resolutions on the death penalty, the General Assembly¹⁹⁴ has

¹⁸³ A/HRC/WG.6/9/MNG/1 and A/HRC/WG.6/9/MNG/1/Corr. 1, para. 20.

¹⁸⁴ A/HRC/34/13/Add.1, para. 7.

¹⁸⁵ CCPR/C/SDN/4, paras. 75 and 79 (d).

¹⁸⁶ A/HRC/41/7, para. 22.

¹⁸⁷ A/HRC/34/8, para. 20.

¹⁸⁸ A/HRC/WG.6/32/VNM/1, para. 43, and A/HRC/41/7, para. 22.

¹⁸⁹ A/HRC/42/15, para. 82.

¹⁹⁰ A/HRC/WG.6/27/BHR/1, para. 40.

¹⁹¹ CCPR/C/ETH/1, para. 35.

¹⁹² A/HRC/36/10, para. 108.

¹⁹³ Elizabeth Davis and Tracy L. Snell, “Capital punishment, 2016”, Brigitte Coulton and Jill Thomas, eds. (April 2018), and Tracy L. Snell, “Capital Punishment, 2017: selected findings”, Edrienne Su, ed. (July 2019).

¹⁹⁴ General Assembly resolutions 69/186, para. 5 (d), 71/187, para. 7 (d), and 73/175, para. 7 (d).

called upon and the Human Rights Council¹⁹⁵ has urged Member States not to impose capital punishment or to execute persons with mental or intellectual disabilities. In its general comment No. 36, the Human Rights Committee stated that the death penalty should not be imposed on individuals who faced special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial or intellectual disabilities impeded their effective defence.¹⁹⁶ In its concluding observations on the initial report of Pakistan, the Committee recommended to that State that it ensure that no one with serious psychosocial or intellectual disabilities was executed or sentenced to death, including by establishing an independent mechanism to review all cases where there was credible evidence that prisoners facing the death penalty had such disabilities and by reviewing the mental health of death row inmates.¹⁹⁷

82. Implementation of this safeguard often depends upon the reliability of psychological assessments. In its concluding observations on the sixth periodic report of Japan, the Human Rights Committee noted that mental examinations to determine whether persons facing execution were “in a state of insanity” were not independent.¹⁹⁸ Furthermore, presenting such evidence is reportedly hampered by the lack of resources available for obtaining forensic psychiatric and psychological evaluations. This relates to the fairness of the proceedings, whereby funded legal assistance is required, including support for examination by experts. In its concluding observations on the initial report of the Islamic Republic of Iran, the Committee on the Rights of Persons with Disabilities expressed concern that persons with disabilities, in particular persons with psychosocial or intellectual disabilities, might face a greater risk of incurring the death penalty because of a lack of procedural accommodations in criminal proceedings.¹⁹⁹

83. In April 2014, the State of Texas executed Ramiro Hernández Llanas, a Mexican national whose intelligence quotient level fell within the parameters of intellectual disability, despite a precautionary measure issued by the Inter-American Commission on Human Rights.²⁰⁰ Following a decision of 2002,²⁰¹ the Supreme Court of the United States issued in May 2014 another decision²⁰² with regard to the use of the death penalty against persons with intellectual disabilities, further elaborating that it was unconstitutional to refuse to take into account mental factors other than an intelligence quotient test. It stated that the death penalty was the gravest sentence society might impose and that persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibited their execution. In 2017, the Supreme Court granted prisoners the assistance of an independent mental health expert²⁰³ and declared the practice in Texas of evaluating intellectual disability to be unconstitutional.²⁰⁴ In June 2018, the Supreme Court of Kentucky deemed unconstitutional the use by that State of a strict intelligence quotient cut-off as a prerequisite to finding a defendant intellectually disabled.²⁰⁵

84. The Supreme Court of India commuted the death sentences of two individuals to life imprisonment on the ground of “mental illness”. It also ruled that all death row prisoners should have regular mental health checks and appropriate medical care. In Japan, in March 2014, a district court released Iwao Hakamada, who had been on death row since 1968 and developed a mental health condition attributable to the

¹⁹⁵ Human Rights Council resolution 36/17, eighth and nineteenth preambular paras. and para. 5.

¹⁹⁶ CCPR/C/GC/36, para. 49.

¹⁹⁷ CCPR/C/PAK/CO/1, para. 18 (c).

¹⁹⁸ CCPR/C/JPN/CO/6, para. 13.

¹⁹⁹ CRPD/C/IRN/CO/1, para. 22.

²⁰⁰ A/HRC/27/23, para. 63, and Inter-American Commission on Human Rights, “Precautionary Measure No. 110/14: Matter of Ramiro Hernández Llanas regarding the United States of America”, 31 March 2014.

²⁰¹ *Atkins v. Virginia*, 536 U.S. 304 (2002).

²⁰² *Hall v. Florida*, No. 572 U. S. 701 (2014).

²⁰³ *McWilliams v. Dunn*, 137 S. Ct. 1790 (2017).

²⁰⁴ *Moore v. Texas*, 137 S. Ct. 1039 (2017).

²⁰⁵ *Woodall v. Kentucky*, 2017-SC-000171-MR, 14 June 2018.

decades that he had spent in isolation.²⁰⁶ In an appeal from Trinidad and Tobago, the Judicial Committee of the Privy Council quashed a death sentence after accepting medical evidence demonstrating a diagnosis of chronic schizophrenia.²⁰⁷ In March 2017, the Judicial Committee accepted that the execution in Trinidad and Tobago of a person with “severe learning difficulties” was a cruel and unusual punishment. It stated that, in the absence of sentencing discretion in murder cases, the presidential power of mercy was a sufficient mechanism to ensure that those with such disabilities were not subjected to the death penalty.²⁰⁸

D. Fourth safeguard: clear and convincing evidence of guilt

85. The fourth safeguard states: “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.” This is a corollary of the presumption of innocence, which is solidly anchored in international human rights treaties. The retentionist States that responded to the questionnaire confirmed that this norm is respected in their legal systems. None reported any case of a death sentence being overturned because the conviction was deemed unsafe.

86. Issues with the fourth safeguard arise when the burden of proof is reversed, forcing the accused person to prove certain factual elements. The Protection of Children from Sexual Offences Act, 2012 of India reverses the burden of proof for some offences, requiring the court to presume that the accused person is guilty unless the contrary is proven. Amendments to the Act adopted in 2018 impose the death penalty for some of the offences for which there is no presumption of innocence.²⁰⁹ In its report to the Human Rights Council under the universal periodic review, China noted that its provisions on capital punishment of convicts under suspended sentence of execution had been changed from having “committed a crime with verified evidence of criminal intent” during the period of suspension to having “intentionally committed a crime with aggravated circumstances”, thereby narrowing the standard for application of the death penalty.²¹⁰

E. Fifth safeguard: fair trial guarantees

87. The fifth safeguard states: “Capital punishment may only be carried out pursuant to a final judgment 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.” According to the Human Rights Committee, violation of the fair trial guarantees provided for in article 14 of the Covenant would render the sentence arbitrary in nature, and would consequently be a violation of the right to life enshrined in article 6 of the Covenant.²¹¹ In its resolution 1996/15, the Economic and Social Council encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as contained in article 14 of the Covenant, and bearing in mind the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the

²⁰⁶ A/HRC/27/23, para. 62.

²⁰⁷ *Stephen Robinson v. The State (Trinidad and Tobago)*, judgment of 20 July 2015.

²⁰⁸ *Lester Pitman and Neil Hernandez v. The State (Trinidad and Tobago)*, judgment of 23 March 2017.

²⁰⁹ India, Criminal Law (Amendment) Act, 2018, Act No. 22 of 11 August 2018, sects. 5–6.

²¹⁰ A/HRC/WG.6/31/CHN/1, para. 37.

²¹¹ CCPR/C/GC/36, para. 41, *Yuzepchuk v. Belarus* (CCPR/C/112/D/1906/2009), paras. 8.2 and 8.6, *Burdyko v. Belarus* (CCPR/C/114/D/2017/2010), para. 8.6, *Selyun v. Belarus* (CCPR/C/115/D/2289/2013), para. 7.7, and *Grishkovtsov v. Belarus* (CCPR/C/113/D/2013/2010), para. 8.6.

Guidelines on the Role of Prosecutors, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners. It also encouraged such Member States to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court.

1. Presumption of innocence

88. The presumption of innocence is enshrined in article 14, paragraph 2, of the International Covenant on Civil and Political Rights. In *Grishkovtsov v. Belarus*, the Human Rights Committee held that the presumption of innocence had been violated because the accused person, who was sentenced to death and executed, had been kept in a metal cage during the trial hearings. The Committee said that defendants should not normally be shackled or kept in cages or otherwise presented in a manner that suggested that they were dangerous criminals, as this violated the presumption of innocence.²¹²

2. Equality

89. Article 14, paragraph 1, of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and tribunals. Nevertheless, discrimination on the basis of race, religion, gender and sexual orientation, as well as on other grounds, often accompanies the use of capital punishment. During a high-level panel discussion on the question of the death penalty held by the Human Rights Council, the United Nations High Commissioner for Human Rights noted that discrimination was never more evident than when one looked at the persons on death row. She said that prison visits conducted by her Office had consistently revealed a death row population that was disproportionately populated by the poor and economically vulnerable, members of ethnic minorities, persons with psychosocial or intellectual disabilities, foreign nationals, indigenous persons and other marginalized members of society. She added that poverty, illiteracy and language barriers often resulted in non-respect of the right to effective legal representation of defendants facing the death penalty.²¹³ In its resolution 36/17, the Council called upon States to undertake further studies to identify the underlying factors that contributed to the substantial racial and ethnic bias in the application of the death penalty, where they existed, with a view to developing effective strategies aimed at eliminating such discriminatory practices.

90. At its eighth session, in 2015, the Forum on Minority Issues recommended that the death penalty not be applied as a result of discriminatory or arbitrary application of the law, including the lack of the provision of equal access to competent legal assistance. It also called for further studies to identify the underlying factors of the substantial racial and ethnic disparities in the application of the death penalty, with a view to developing effective strategies aimed at eliminating discriminatory practices.²¹⁴ In October 2016, the Special Rapporteur on extrajudicial, summary or arbitrary executions highlighted the fact that 65 countries had retained the death penalty for terrorism-related offences, of which 15 had carried out executions in the previous 10 years and at least 7 had imposed the death penalty in 2015 alone. She stressed that many of those antiterrorism laws discriminated against religious minorities in practice and had in some cases resulted in executions.²¹⁵ Reports have

²¹² CCPR/C/113/D/2013/2010, para. 8.4. See also *Alexander Grunov and Olga Grunova v. Belarus* (CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015), para. 8.4.

²¹³ A/HRC/42/25, para. 5.

²¹⁴ A/HRC/31/72, para. 72.

²¹⁵ Office of the High Commissioner for Human Rights, "Statement by the Special Rapporteur at the 'Launch of the Parliamentary Fact Sheet on the Death Penalty and Terrorism-related Offences'", 20 October 2016.

drawn attention to high rates of execution in minority areas in the Islamic Republic of Iran.²¹⁶

91. The Human Rights Committee has expressed its concern about the disproportionate application of the death penalty amongst African-American defendants in the United States. The Committee recommended that the United States take measures to effectively ensure that the death penalty was not imposed as a result of racial bias.²¹⁷ The Committee on the Elimination of Racial Discrimination has voiced similar concerns.²¹⁸ According to the report of the Working Group of Experts on People of African Descent on its mission to the United States carried out in January 2016, the racial composition of juries is one of the main identified causes of racial bias in the application of the death penalty.²¹⁹ The Inter-American Commission on Human Rights has observed that studies conducted by the Government of the United States demonstrated that the race of defendants and the race of victims of crimes had an undeniable influence on conviction and sentencing patterns.²²⁰

92. The application of the death penalty to foreign nationals, including migrant workers, is often disproportionate, raising possible issues of inequality and discrimination.²²¹ For example, in Indonesia, 12 out of the 14 executions conducted in 2015 were of foreign nationals.²²² In its reply to the survey questionnaire, Kuwait reported that seven executions had been conducted during the quinquennium, of which only two were of Kuwaiti nationals. The Special Rapporteur on extrajudicial, summary or arbitrary executions has pointed to several countries where the death row population consists of a disproportionately high number of foreign nationals. The Special Rapporteur considered that this might be at least partially explained by the insistence of some countries on imposing the death penalty for drug offences. The Special Rapporteur explained that the impact of the death penalty on foreign nationals drew attention to various structurally discriminatory dimensions to its application, including financial or linguistic barriers.²²³

93. Discrimination based upon gender and sexual orientation is also a feature of capital punishment in some countries. In its concluding observations on the combined initial and second periodic reports of Brunei Darussalam, the Committee on the Elimination of Discrimination Against Women said that it was gravely concerned about the introduction of the death penalty by stoning for adultery and extramarital relations (*zina*). While noting that the same penalties applied to women and men, the Committee was seriously concerned that women were disproportionately affected by punishment for “crimes” involving sex and were at a higher risk of being convicted of adultery and extramarital relations, owing to discriminatory investigative policies and provisions on the weighing of evidence. It also noted with concern that women would face greater difficulty in collecting the evidence necessary to prove rape, meaning that the fear of being accused of *zina* was likely to prevent women from reporting rape.²²⁴ In addition, the threat of the death penalty for consensual same-sex relations in some States, even if the law is not enforced, may have an intimidating effect that has an impact on a broad range of rights and services for LGBTI communities.²²⁵

²¹⁶ A/HRC/34/40, para. 11, A/HRC/25/26, para. 8, and A/HRC/36/26, para. 45.

²¹⁷ CCPR/C/USA/CO/4, para. 8.

²¹⁸ CERD/C/USA/CO/7-9, para. 20.

²¹⁹ A/HRC/33/61/Add.2, para. 40.

²²⁰ Inter-American Commission on Human Rights, “Report on the merits: Kevin Cooper–United States”, Report No. 78/15, Case No. 12.831 (28 October 2015), para. 140.

²²¹ A/HRC/36/26, paras. 22–28.

²²² *Ibid.*, para. 27.

²²³ A/70/304, para. 113.

²²⁴ CEDAW/C/BRN/CO/1-2, para. 12.

²²⁵ A/HRC/36/26, para. 47.

3. Fair and public hearing

94. According to article 14 of the International Covenant on Civil and Political Rights, in the determination of a criminal charge against a person, that person is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14 requires certain minimum guarantees, in full equality, which include information about the charge, adequate time and facilities for the preparation of a defence and access to counsel, the assistance of an interpreter if necessary, and protection against being compelled to testify against oneself or to confess guilt. The Office of the United Nations High Commissioner for Human Rights expressed concern about executions in Somalia in March 2014 because of the hasty judicial process, as only nine days had elapsed between the alleged killings and the executions, depriving the suspects of full fair trial guarantees, including the right to legal representation and the right to appeal.²²⁶ Mass trials with large numbers of defendants pose particular problems with respect to fairness.²²⁷ Findings of guilt that lead to the death penalty are sometimes premised on “confessions” that may have been obtained as a result of torture or ill-treatment.²²⁸

95. Effective assistance of counsel is essential in death penalty cases. Limited or inadequate legal aid services often mean that poor or less privileged individuals lack effective legal representation and run a higher risk of being subject to the death penalty. The Kenya National Commission on Human Rights reported that many of the death row inmates had not benefited from a fair trial, largely because of extrinsic factors, including poverty, poor education and remote location. It noted that the majority of the death row inmates whom it had interviewed for a survey had lacked any form of legal representation during their trials or appeals.²²⁹

96. The Supreme People’s Court of China issued new guidelines aimed at facilitating the participation of defence lawyers during the final review of death sentences. The Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued another set of guidelines that guaranteed the rights of lawyers to have full access to their clients, as well as greater participation by defence lawyers during police investigations.²³⁰

97. The impact of inadequate access to counsel is felt particularly by foreign nationals.²³¹ As underlined by the General Assembly in its resolution [71/187](#), access to consular assistance as provided for in the Vienna Convention on Consular Relations is an important aspect of fair trial guarantees for foreign nationals charged with capital crimes. In its general comment No. 36, the Human Rights Committee indicated that, in death penalty cases, the failure to promptly inform detained foreign nationals of their right to consular notification pursuant to the Vienna Convention on Consular Relations violated article 6, paragraph 1, of the International Covenant on Civil and Political Rights. Several States have established specific programmes to support their nationals who are sentenced to the death penalty while abroad, including Indonesia, the Philippines and Mexico.²³² The International Court of Justice has concluded to a deprivation of the right of States to provide consular assistance in several death penalty cases, most recently in a dispute concerning India and Pakistan, where it also found that Pakistan had to provide, by the means of its own choosing, effective review and reconsideration of the conviction and sentence to death of an Indian citizen.²³³

²²⁶ A/HRC/27/23, para. 48.

²²⁷ *Ibid.*, paras. 50–53.

²²⁸ [CCPR/C/112/D/1906/2009](#), para. 8.2.

²²⁹ A/HRC/36/26, para. 17.

²³⁰ A/HRC/33/20, para. 36.

²³¹ A/70/304, para. 90.

²³² A/HRC/27/23, para. 56.

²³³ International Court of Justice, *Jadhav Case (India v. Pakistan)*, Judgment, 17 July 2019, paras. 145–146.

98. Under article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights, defendants are entitled to the free assistance of an interpreter if they cannot understand or speak the language used in court. In its resolution 1996/15, the Economic and Social Council encouraged Member States in which the death penalty had not been abolished to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court. More recently, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that this protection should extend beyond the courtroom to interpretation during police questioning.²³⁴

F. Sixth safeguard: appeal

99. The sixth safeguard states: “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.” The right to an appeal in capital cases is set out in article 14 of the International Covenant on Civil and Political Rights. The importance of mandatory appeals or review has been affirmed by the Economic and Social Council in its resolution 1989/64.

100. In its national report to the Human Rights Council submitted under the universal periodic review, China stated that the Supreme People’s Procuratorate had established the Procuratorial Office of Death Penalty Review to exercise rigorous procedural oversight of the application of laws on death penalty review. It added that full court hearings were held for second-instance death penalty appeals and that more attention was being paid to hearing the opinions of defence counsel in death penalty review cases. It noted that, if an accused person had not engaged a defender in a death penalty review case before a higher people’s court, a legal-aid institution should be notified so that it could appoint a lawyer for that person’s defence.²³⁵

G. Seventh safeguard: pardon or commutation

101. The seventh safeguard states: “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.” This safeguard is derived from article 6, paragraph 4, of the International Covenant on Civil and Political Rights, which states: “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.” In its resolution 1989/64, the Economic and Social Council recommended that Member States provide for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence. In its resolution 1996/15, it called upon Member States in which the death penalty might be carried out to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question. In its resolution 36/17, the Human Rights Council called upon States to ensure that those facing the death penalty could exercise their right to seek pardon or commutation of their death sentence. The Human Rights Committee has insisted on a right to commutation when countries review death sentences that were imposed as a result of mandatory legislative requirements.²³⁶

102. In its general comment No. 36, the Human Rights Committee stated that no category of sentenced persons could be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner. International law does not prescribe how States are to ensure that this safeguard is enforced, but

²³⁴ A/70/304, para. 89.

²³⁵ A/HRC/WG.6/31/CHN/1, para. 38.

²³⁶ CCPR/C/MW1/CO/1/Add.1, para. 11.

the procedures should be spelled out in domestic legislation. According to the Committee, those should not afford the families of victims of crime a preponderant role in determining whether the death sentence should be carried out. The Committee considered that pardon or commutation procedures must offer certain essential guarantees, including certainty about the processes followed and the substantive criteria applied and the rights for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances, to be informed in advance when the request would be considered and to be informed promptly about the outcome of the procedure.²³⁷

103. In Indonesia, the Constitutional Court removed a one-year limit for prisoners to exercise their right to file for clemency.²³⁸ With regard to Pakistan, the Human Rights Committee expressed its concern in 2017 that a policy of blanket refusal of clemency applications was allegedly in place and that no clemency applications had been granted.²³⁹

104. Commutation takes on particular importance in countries that are de facto abolitionist. Because the law provides for the death penalty even if it is never imposed, commutation is an extremely useful mechanism to erase the threat of execution for the convicted person. In Zambia, for example, where the death penalty has not been carried out for more than two decades, the President commuted 332 death sentences to life imprisonment in 2017. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that, by commuting those death sentences, Zambia had put a stop to mental and physical pain and suffering and taken an important step towards ensuring respect for the inherent dignity of the person. In October 2016, in Kenya, the President commuted all death sentences (2,747 inmates) to life sentences.²⁴⁰ In February 2017, the President of Sri Lanka commuted the death sentences of 60 prisoners to life in prison.²⁴¹ In February 2018, the President of Benin issued a decree commuting the death sentences of 14 prisoners to life imprisonment.²⁴²

105. Commutation of a death sentence may also be ordered by judges. The Supreme Court of Belize changed to a custodial sentence the death sentence of the last remaining person sentenced to execution, holding that his 13 years on death row amounted to inhuman treatment and rendered his sentence unlawful.²⁴³ Indian courts commuted to life imprisonment the death sentences of several prisoners.²⁴⁴ In Jamaica, the death sentence of the last remaining person on death row was commuted.²⁴⁵ In Saudi Arabia, the punishment of a woman sentenced to death by stoning for committing adultery was reviewed and commuted by a court.²⁴⁶ The Eastern Caribbean Supreme Court reviewed the cases of all prisoners under sentence of death in Antigua and Barbuda in November 2016, resentencing the prisoners to terms of imprisonment.²⁴⁷

106. National courts also issued rulings on the procedural framework for applications for pardon, amnesty and commutation. The Court of Appeal of Botswana held that there was a constitutional right to petition the President for clemency, and that it was

²³⁷ See also CCPR/C/MDV/CO/1, para. 13, CCPR/C/BGD/CO/1, para. 24, CCPR/C/BHR/CO/1, para. 32, CCPR/C/IRQ/CO/5, para. 28, and CCPR/C/IRN/CO/3, para. 12.

²³⁸ Constitutional Court of Indonesia, Decision No. 107/PUU-XIII/2015, 9 July 2015.

²³⁹ CCPR/C/PAK/CO/1, para. 17.

²⁴⁰ President, Republic of Kenya, "Death row convicts get a reprieve", 24 October 2016.

²⁴¹ Elise Guillot, "Sri Lanka: the death sentences of 60 prisoners commuted", World Coalition Against the Death Penalty, 17 February 2017.

²⁴² A/HRC/39/19, para. 35.

²⁴³ Death Penalty Project, "Belize reprieves last man on death row", 17 July 2015.

²⁴⁴ A/HRC/33/20, para. 42.

²⁴⁵ Jamaica, Court of Appeal, *Leslie Moodie v. R*, Criminal Appeal No. 90/2010 [2015] JMCA Crim 16.

²⁴⁶ A/HRC/33/20, para. 42.

²⁴⁷ Death Penalty Project, "Antigua prisoner released after 20 years on death row", 23 November 2016.

obligatory for a committee to meet to consider every clemency petition.²⁴⁸ The Judicial Committee of the Privy Council struck down a provision that imposed time limits on applications to challenge a death sentence in Saint Vincent and the Grenadines, holding that they denied due process.²⁴⁹

H. Eighth safeguard: stay pending challenges to death sentence

107. The eighth safeguard states: “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.” In its resolution 1996/15, in order to ensure the effectiveness of this provision, the Economic and Social Council called upon Member States in which the death penalty might be carried out to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question. In its general comment No. 36, the Human Rights Committee stated that States were required pursuant to article 6, paragraph 4, of the International Covenant on Civil and Political Rights to ensure that sentences were not carried out before requests for pardon or commutation had been meaningfully considered and conclusively decided upon according to applicable procedures.

108. Also in its general comment No. 36, the Human Rights Committee noted that States had a good faith duty to comply with those measures even in the absence of a specific treaty provision to that effect.²⁵⁰ The International Court of Justice has indicated that its power to issue binding provisional measures derived from its Statute as interpreted in the light of its object and purpose.²⁵¹ In May 2017, the Court indicated to Pakistan that it must take all measures at its disposal to ensure that an Indian national was not executed pending a final judgment in a dispute concerning alleged violations of article 36 of the Vienna Convention on Consular Relations.²⁵² The Court noted that the mere fact that the individual concerned was under such a sentence and might therefore be executed was sufficient to demonstrate the existence of such a risk.²⁵³

109. Similarly, the Committee against Torture recalled that non-compliance with interim measures of protection regarding deportations constituted a breach of article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and noted that a number of individuals had been executed in Belarus while proceedings were still pending before the Human Rights Committee.²⁵⁴

I. Ninth safeguard: minimize suffering

110. The ninth safeguard states: “Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.” In its resolution 1996/15, the Economic and Social Council urged Member States in which the death penalty might be carried out to effectively 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. In its resolution 2005/59, the Commission on Human Rights urged all States that still maintained the death penalty to ensure that, where capital punishment occurred, it would be carried out so as to

²⁴⁸ A/HRC/33/20, para. 46.

²⁴⁹ Saint Vincent and the Grenadines, Court of Appeal of the Eastern Caribbean Supreme Court, *Lovelace v. The Queen (Saint Vincent and the Grenadines)*, Judgment, 15 June 2017.

²⁵⁰ CCPR/C/GC/36, para. 46. See also [CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015](#), paras. 6.4–6.5.

²⁵¹ *LaGrand (Germany v. United States of America)*, para. 99–109.

²⁵² *Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 231, para. 61.

²⁵³ *Ibid.*, paras. 53–54.

²⁵⁴ CAT/C/BLR/CO/5, para. 54.

inflict the minimum possible suffering and would 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, was stopped immediately.

1. Method of execution

111. In its resolution 30/5, the Human Rights Council recalled that all methods of execution could inflict inordinate pain and suffering. In its concluding observations on the combined third to fifth periodic reports of the United States, the Committee against Torture expressed concern at reported cases of excruciating pain and prolonged suffering that procedural irregularities had caused condemned prisoners in the course of their execution. The Committee recalled that the ninth safeguard stipulated that, where capital punishment occurred, it must be carried out so as to inflict the minimum possible suffering.²⁵⁵

112. In its general comment No. 36, the Human Rights Committee recalled that article 7 of the International Covenant on Civil and Political Rights prohibited certain methods of execution, as they constituted torture or cruel, inhuman or degrading punishment, that it had already opined that stoning, injection of untested lethal drugs, gas chambers, burning and burying alive and public executions were contrary to article 7, and that other painful and humiliating methods of execution were also unlawful under the Covenant.²⁵⁶ The Committee has also condemned execution by stoning,²⁵⁷ injection of untested lethal drugs,²⁵⁸ burning and burying alive,²⁵⁹ crucifixion²⁶⁰ and public executions²⁶¹ on the same ground in its concluding observations on State reports. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has indicated that execution by stoning, gas asphyxiation, hanging, the electric chair, burning, live burial, decapitation, lethal injection (when untested or not administered properly) and any form of secret or public execution were methods of execution that inflicted unnecessary mental or physical suffering.²⁶² A number of special procedure mandate holders expressed concern at amendments to the Criminal Code of Brunei Darussalam in 2019 that introduced stoning as a method of execution.²⁶³ In the case of adultery, it is provided as punishment primarily for women, rendering it discriminatory.²⁶⁴

113. In the United States, legislation adopted in North Carolina allows for the participation of medical professionals other than a physician in executions, contrary to medical ethics codes. It also allows the authorities to keep confidential any identifying information of any person or entity involved in the manufacture, preparation or supply of drugs used for lethal injection, in an effort to curtail litigation on this matter. Oklahoma and Utah amended their legislation to allow for the use of nitrogen gas and firing squads to carry out executions, should lethal injection procedures not be implementable.²⁶⁵

2. Public execution

114. While the safeguards do not specifically address the issue of execution carried out in public, the Human Rights Council recalled in its resolution 30/5 that the

²⁵⁵ CAT/C/USA/CO/3-5, para. 25.

²⁵⁶ CCPR/C/GC/36, para. 40.

²⁵⁷ CCPR/C/SDN/CO/5, para. 29.

²⁵⁸ CCPR/C/USA/CO/4, para. 8.

²⁵⁹ CCPR/C/GC/36, para. 40, citing the report of the African Commission on Human and Peoples' Rights in *Malawi Africa Association et al. v. Mauritania*, Nos. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98, 11 May 2000, para. 120.

²⁶⁰ CCPR/C/SDN/CO/5, para. 29.

²⁶¹ CCPR/C/GC/36, para. 40.

²⁶² A/HRC/36/27, para. 18.

²⁶³ OHCHR, Comments on legislation and policy, "Brunei: Comments regarding the implementation of the Syariah Penal Code Order", Reference No. OL BRN 1/2019, 1 April 2019.

²⁶⁴ CRC/C/BRN/CO/2-3, para. 45, and CEDAW/C/BRN/CO/1-2, para. 12.

²⁶⁵ A/HRC/33/20, para. 18.

circumstances in which executions were carried out, in particular public executions, which implied an undignified exposure of the persons sentenced to death, added to the suffering of the persons sentenced to death, as well as of other affected persons. The Secretary-General also noted their dehumanizing effect on both the victim and the observers, reinforcing the cruel, inhuman and degrading nature of capital punishment.²⁶⁶

115. The practice of public execution persists in the Islamic Republic of Iran, despite a circular banning public executions issued by the former head of the judiciary in January 2008. The Government has said that public executions are only conducted in certain limited circumstances, as a deterrent for drug-related offences. However, there are reports of public execution for rape. Although the Government has given assurances that there are efforts to avoid the presence of minors at public executions, photographs taken at such sites show children in attendance.²⁶⁷ There are also reports of public executions in the Democratic People's Republic of Korea²⁶⁸ and Saudi Arabia.²⁶⁹

3. Secrecy

116. In a few countries, executions are carried out secretly, or with little prior warning. In its resolution 30/5, the Human Rights Council recalled that secret executions or those with short or no prior warning added to the suffering of the persons sentenced to death, as well as of other affected persons, and called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform on where the body was located, unless this was not in the best interests of the child. According to the Human Rights Committee, failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment.²⁷⁰ The Committee has expressed concern about death row inmates in Japan who were kept in solitary confinement for periods of up to 40 years before execution, and the fact that neither the inmates nor their families were given prior notice of the day of execution.²⁷¹

117. The Committee against Torture has also commented on the unnecessary secrecy and uncertainty surrounding executions. It noted that refusing to provide convicted persons and their family members with advance notice of the date and time of execution was a clear human rights violation.²⁷² The Committee has called upon Belarus to remedy the secrecy and arbitrariness surrounding executions,²⁷³ and to provide prompt notification to relatives about the date and place of any execution.²⁷⁴ The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe has stated that the lack of transparency and secrecy surrounding executions in Belarus may constitute cruel, inhuman or degrading treatment, or even torture.²⁷⁵

²⁶⁶ A/70/352, para. 11.

²⁶⁷ Ibid., para. 11–12. See also A/73/398, para. 15, and CRC/C/IRN/CO/3-4, paras. 53–54.

²⁶⁸ A/HRC/25/CRP.1, para. 845. See also A/HRC/42/10, para. 126.125, and A/HRC/WG.6/33/PRK/3, para. 29.

²⁶⁹ CRC/C/SAU/CO/3-4, paras. 26–27.

²⁷⁰ CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015, para. 8.2.

²⁷¹ CCPR/C/JPN/CO/6, para. 13.

²⁷² CAT/C/JPN/CO/2, para. 15.

²⁷³ CAT/C/BLR/CO/4, para. 27.

²⁷⁴ CAT/C/BLR/CO/5, para. 55.

²⁷⁵ Organization for Security and Cooperation in Europe, *The Death Penalty in the OSCE Area: Background Paper 2019* (Warsaw, Office for Democratic Institutions and Human Rights, 2019), p. 40.

118. Some legal systems make special provisions for minimizing the consequences for relatives of persons sentenced to death. For example, in its reply to the survey questionnaire, Egypt said that article 472 of the Code of Criminal Procedure gave relatives of the condemned person the right to be informed of the date set for the execution. Kuwait responded that the relatives of condemned person might have a visit before the execution date, and that the prison administration was required to inform them of this. In a decision concerning Belarus, the Human Rights Committee noted that the authorities had refused to inform the mother of a convicted man of the date of execution, refused to release the body and refused to inform her of his burial site. The Committee stated that it could not agree with the explanation from the Government that this practice was intended to reduce suffering and said that, on the contrary, in most circumstances, it would have an opposite effect. Concluding that this amounted to inhuman treatment, the Committee said that it understood the continued anguish and mental stress caused to the mother of the convicted man by this absence of information.²⁷⁶

4. Death row

119. The requirement in the ninth safeguard that capital punishment be carried out so as to inflict the minimum possible suffering is relevant to the period between the pronouncement of a sentence of death and its imposition. Issues arise with respect to both the conditions of detention and the length of detention.

120. Japan reported in the survey questionnaire that the average time from conviction to execution was 8.75 years. It said it was unable to indicate the longest period of time that a convicted person had been on death row. Qatar reported that time spent on death row was “often prolonged” and that the longest period between conviction and execution had been 23 years. Statistics published by the United States Department of Justice for the year 2017 state an average period of detention from imposition of sentence to execution of 243 months, that is, a little more than 20 years. This was an increase of 3 years and 3 months from the previous year, and of 7 years and 6 months from 2007. Of 23 prisoners executed in the United States in 2017, 16 had been sentenced to death in 1999 or earlier. At the end of 2017, there were 2,703 prisoners under sentence of death. That number has declined every year since 2000.²⁷⁷

121. In the case of a prisoner who had spent 20 years on death row, the Inter-American Commission on Human Rights noted that that period greatly exceeded the length of time that other international and national courts had characterized as cruel, inhuman and degrading treatment, adding that the very fact of spending 20 years on death row was, by any account, excessive and inhuman. It noted that this constituted a violation of the right to humane treatment and the right not to receive cruel, infamous or unusual punishment established in articles XXV and XXVI of the American Declaration of the Rights and Duties of Man.²⁷⁸ In another case, it found that the American Declaration had been violated in the case of a person sentenced to death who had spent more than 20 years in solitary confinement. The Commission concluded that measures of general application, such as prohibiting any form of physical contact with family members, attorneys and other inmates, were in such a circumstance disproportionate, illegitimate and unnecessary.²⁷⁹

5. Children of persons sentenced to death or executed

122. The impact of the imposition and execution of the death penalty on the human rights of children received increasing attention during the quinquennium. In its

²⁷⁶ CCPR/C/123/D/2375/2014-CCPR/C/123/D/2690/2015, para. 8.7.

²⁷⁷ Davis and Snell, “Capital punishment, 2017”.

²⁷⁸ Inter-American Commission on Human Rights, “Report on the merits: Rusell Bucklew–United States”, Report No. 71/18, Case No. 12.958 (10 May 2018), para. 91. See also “Report on the merits: Victor Saldaño – United States”, Report No. 24/17, Case No. 12.254 (18 March 2017), para. 252.

²⁷⁹ Inter-American Commission on Human Rights, “Report on the merits: Edgar Tamayo Arias – United States”, Report No. 44/14, Case No. 12.873 (17 July 2014), para. 182.

resolution 68/147, adopted in 2013, the General Assembly had already acknowledged that the sentencing to death of a parent had a serious impact on children's development, and urged States, in the framework of their national child protection efforts, to provide the assistance and support that those children might require. In a statement delivered in March 2014, the Special Representative of the Secretary-General on Violence against Children noted that, while the loss of a parent was traumatic and irreversible, the loss officially performed by the authorities of a country became particularly confusing and frightening for a child. Children found it hard to explain their situation and were increasingly tempted to deny it and hide their feelings. In that regard, the Special Representative underscored that the sentencing of a parent to the death penalty compromised the enjoyment of a wide spectrum of children's rights. She also mentioned that there was enough evidence to recognize the urgency of ensuring a protective environment for children of parents sentenced to death or executed.²⁸⁰

123. The Special Rapporteur on the independence of judges and lawyers stated that children of parents sentenced to death often suffered a particularly devastating ordeal. She said that the trauma caused by both the anxiety relating to the anticipation of the execution and the actual execution itself must be taken into account by prosecutors and judges before requesting or imposing the death penalty on defendants with children. Despite the particular emotional and psychological distress of children of parents sentenced to death, who also often experienced social isolation and stigmatization, the Special Rapporteur was extremely concerned that those children were given little attention and support. She said that prosecutors and judges should consider the best interests of the defendant's children before requesting and ordering the death penalty.²⁸¹

124. The Committee on the Rights of the Child expressed concern about the impact on children when the death penalty was imposed on their parents and the lack of attention paid to providing psychological support for such children. It recommended that States take into consideration the existence of children and their best interests when considering the death penalty and provide psychological and other support necessary to children whose parents had been sentenced to death.²⁸²

VI. Conclusions and recommendations

125. The tenth quinquennial report of the Secretary-General marks half a century of submitting and analysing information on the subject of capital punishment and thus provides an opportunity for considering the evolution of the issue. It was noted in the first quinquennial report that only 22 States had removed capital punishment from their criminal law since 1863, when the death penalty was first abolished by a country, and that, by 1972, seven States had abolished the death penalty since the signing of the Charter of the United Nations, in 1945. It was also noted that, at the time of reporting, only 9 Member States were abolitionist by law, 23 were abolitionist by law for ordinary crimes only, and 3 were abolitionist by custom, meaning that, although their laws provided for capital punishment, they had not executed anyone or sentenced anyone to death for at least 40 years. This compared with 101 States where the death penalty was retained for ordinary offences, although the total number of offences for which it could be imposed had been declining progressively in many parts of the world.²⁸³

²⁸⁰ Statement delivered at a side event on "Children of parents sentenced to the death penalty or executed: developments, good practices and next steps" organized by Belgium, Mexico, Montenegro and Norway, in collaboration with the Quaker United Nations Office during the twenty-fifth session of the Human Rights Council, held from 3 to 28 March 2014.

²⁸¹ [A/HRC/29/26](#), para. 77.

²⁸² [CRC/C/ARE/CO/2](#), paras. 51–52. See also [CRC/C/KWT/CO/2](#), paras. 31–32, and [A/HRC/27/23](#), paras. 65–71.

²⁸³ [E/5616](#), paras. 18–19.

126. Since the beginning of the 1970s, the situation has evolved. The number of States that are abolitionist in law or in practice has grown from 32 to 167. The number of States that retain the death penalty is now 30, compared with 101 at the time of the first report. In the 1970s, the rate of abolition was about one State every three years. It is now about two every year. In retentionist States, the trend to reduce the number of offences for which the death penalty may be imposed is also apparent.

127. During the five-year period covered by the present report, there was a significant increase in the total number of executions and suggestions for a generalized revival of capital punishment. By the end of the quinquennium, however, the pattern had stabilized and returned to one consistent with the trend over several decades. Moreover, the number of recorded executions in the final year, 2018, was the lowest in many years.

128. The changes in practice have been paralleled by a process of dynamic legal development. At the end of the quinquennium, 107 States were bound by treaty obligations not to implement the death penalty. International human rights courts and tribunals, treaty bodies and special procedures are constantly tightening the restrictions on the use of capital punishment. Some retentionist States have accepted to comply with relevant international standards, as stated in their reports on their compliance with international human rights law submitted under the universal periodic review of the Human Rights Council. In its general comment No. 36, the Human Rights Committee insisted that any references to the recognition of the limited use of capital punishment as an exception to the right to life that appeared in paragraph 2 of article 6 of the International Covenant on Civil and Political Rights must not overlook paragraph 6 of the same article, which provides that: “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.” According to the Committee, article 6, paragraph 6, reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future.²⁸⁴

129. In the same general comment, the Committee observed that the increasing number of States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, other international instruments prohibiting the imposition or carrying out of the death penalty and the growing number of non-abolitionist States that had nonetheless introduced a *de facto* moratorium on the exercise of the death penalty suggested that considerable progress had been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.²⁸⁵

130. The Economic and Social Council may in that spirit wish to recommend that:

(a) States that continue to apply the death penalty report on the number of persons sentenced to death or executed and the crimes for which it is applied, taking into account that transparency is a requirement for fair and effective criminal justice;

(b) Abolitionist States ensure that they have an adequate legislative framework on extradition and deportation to prohibit specifically the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed, unless adequate assurances are obtained that the death penalty will not be carried out;

(c) States that have not yet abolished the death penalty in law but that have ceased executions be encouraged to ratify or accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights;

²⁸⁴ CCPR/C/GC/36, para. 50.

²⁸⁵ *Ibid.*, para. 51.

(d) States ensure that prisoners on death row benefit from all the guarantees provided in the Standard Minimum Rules for the Treatment of Prisoners and are not subjected to discrimination resulting from their status as prisoners on death row;

(e) Retentionist States ensure that the absolute prohibition of the execution of juvenile offenders and pregnant women is respected;

(f) Retentionist States prohibit the application of the death penalty to mothers of young children, persons with psychosocial or intellectual disabilities and older persons;

(g) Retentionist States ensure adequate access to clemency or pardon procedures;

(h) Retentionist States in the process of reforming their laws to reduce the number of offences punishable by the death penalty limit the application of the death penalty to the most serious crimes and ensure that the death penalty is discretionary, to allow consideration of the specific circumstances of the offender and the offence;

(i) In any criminal justice reform that involves the death penalty, States be guided by the full scope of standards and norms relating to the criminal justice system, including those relating to the treatment of prisoners, the treatment of children in the criminal justice system, special measures for female offenders, due process guarantees and the right to legal assistance, which provide detailed guidance to Member States on how to comply with their obligations under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant conventions.

Annex

Supplementary data and tables

Table 1
Status of capital punishment as of December 2018: retentionist States (30)

<i>State</i>	<i>Date of last execution</i>
Afghanistan	2018
Bahrain	2017
Bangladesh	2017
Belarus	2018
Botswana	2018
China	2018
Democratic People's Republic of Korea	2018
Egypt	2018
India	2015
Indonesia	2016
Iran (Islamic Republic of)	2018
Iraq	2018
Japan	2018
Jordan	2017
Kuwait	2018
Libya	2012
Malaysia	2017
Nigeria	2016
Pakistan	2018
Saudi Arabia	2018
Singapore	2018
Somalia	2018
South Sudan	2018
Sudan	2018
Syrian Arab Republic	2011
Thailand	2018
United Arab Emirates	2017
United States of America	2018
Viet Nam	2018
Yemen	2018

Note: On 18 March 2019, the State of Palestine acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, thereby becoming a de jure abolitionist State.

Table 2
Status of capital punishment as of December 2018: fully abolitionist States (109)

<i>State</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Albania	1999		
Andorra	1993		1943
Angola	1992		..
Argentina	2008	1984	1916
Armenia	2003		1991
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Benin	2016		1987
Bhutan	2004		1974
Bolivia (Plurinational State of)	1997	1991	1974
Bosnia and Herzegovina	2001	1997	..
Bulgaria	1998		1989
Burundi	2009		1997
Cabo Verde	1981		..
Cambodia	1989		..
Canada	1998	1976	1962
Colombia	1910		1909
Congo	2015		1982
Cook Islands	2007		..
Costa Rica	1877		..
Côte d'Ivoire	2000		1960
Croatia	1991		1987
Cyprus	2002	1983	1962
Czechia	1990		..
Denmark	1978	1933	1950
Djibouti	1995		1977 ^a
Dominican Republic	1966		..
Ecuador	1906		..
Estonia	1998		1991
Fiji	2015	1979	..
Finland	1972	1949	1944
France	1981		1977
Gabon	2010		1989
Gambia	2018		2012
Georgia	1997		1994
Germany	1987		..
Greece	2004	1993	1972
Guinea	2016		2001

<i>State</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Guinea-Bissau	1993		1986
Haiti	1987		1972
Holy See	1969		..
Honduras	1956		1940
Hungary	1990		1988
Iceland	1928		1830
Ireland	1990		1954
Italy	1994	1944	1947
Kiribati	1979		1979 ^a
Kyrgyzstan	2006		1998
Latvia	2012	1999	1996
Liberia	2005		2000
Liechtenstein	1989		1785
Lithuania	1998		1995
Luxembourg	1979		1945
Madagascar	2014		..
Malta	2000		1943
Marshall Islands	1986		1986 ^a
Mauritius	1995		1987
Mexico	2005		1961
Micronesia (Federated States of)	1986		1986 ^a
Monaco	1962		1847
Mongolia	2017		2008
Montenegro	2002		2006 ^a
Mozambique	1990		1986
Namibia	1990		1988
Nauru	2016		..
Nepal	1990		1979
Netherlands	1983	1970	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Niue	..		..
North Macedonia	1991		..
Norway	1979	1905	1948
Palau	1994		1994 ^a
Panama	1917		1903 ^a
Paraguay	1992		1928
Philippines	2006		2000
Poland	1998		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1990		1989

<i>State</i>	<i>Date of abolition for all crimes</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Russian Federation	2009		1996
Rwanda	2007		1998
Samoa	2004		1962 ^a
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975 ^a
Senegal	2004		1967
Serbia	2002		1980
Seychelles	1993		1976
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966 ^a
South Africa	1995	1995	1991
Spain	1995	1978	1975
Suriname	2015		1927
Sweden	1973	1921	1910
Switzerland	1992	1942	1944
Timor Leste	1999		1999 ^a
Togo	2009		1979
Turkey	2004	2002	1984
Turkmenistan	1999		1997
Tuvalu	1976		1976 ^a
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1969 ^b	1964
Uruguay	1907		..
Uzbekistan	2008		2005
Vanuatu	1980		1980 ^a
Venezuela (Bolivarian Republic of)	1863		..

Note: Two dots (..) indicate that the information is not available.

^a Year in which independence was achieved. No executions have taken place since that time. The date of the last execution prior to independence is not available.

^b Capital punishment for ordinary crimes was abolished in Northern Ireland in 1973.

Table 3
Status of capital punishment as of December 2018: abolitionist States for ordinary crimes only (9)

<i>State</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Brazil	1979	1855
Burkina Faso	2018	1988
Chad	2017	2015
Chile	2001	1985
El Salvador	1983	1973
Guatemala	2017	2000
Israel	1954	1962

<i>State</i>	<i>Date of abolition for ordinary crimes</i>	<i>Date of last execution</i>
Kazakhstan	2007	2003
Peru	1979	1979

Table 4
Status of capital punishment as of December 2018: de facto abolitionist States (50)

<i>State</i>	<i>Date of last execution</i>
Algeria	1993
Antigua and Barbuda	1989
Bahamas	2000
Barbados	1984
Belize	1986
Brunei Darussalam	1957
Cameroon	1997
Central African Republic	1981
Comoros	1999
Cuba	2003
Democratic Republic of the Congo	2008
Dominica	1986
Equatorial Guinea	2014 ^a
Eritrea	1989
Eswatini	1983
Ethiopia	2007
Ghana	1993
Grenada	1978
Guyana	1997
Jamaica	1988
Kenya	1987
Lao People's Democratic Republic	1989
Lebanon	2004
Lesotho	1995
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1989
Morocco	1993
Myanmar	1989
Nauru	1968
Niger	1976
Oman	2001
Papua New Guinea	1950
Qatar	2003
Republic of Korea	1997
Saint Kitts and Nevis	2008
Saint Lucia	1995

<i>State</i>	<i>Date of last execution</i>
Saint Vincent and the Grenadines	1995
Sierra Leone	1998
Sri Lanka	1976
State of Palestine ^b	2003
Tajikistan	2003
Tonga	1982
Trinidad and Tobago	1999
Tunisia	1981
Uganda	2004
United Republic of Tanzania	1994
Zambia	1997
Zimbabwe	2003

^a An official moratorium was announced in 2014.

^b Executions conducted by Hamas in the Gaza Strip were not authorized by the President of the State of Palestine (see table 2, note a, in the main report).
