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COMMITTEE ON CRIME PREVENTION AND CONTROL

Tenth session

Vienna, 22-31 August 1988

Item 4 of the provisional agenda*

IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE
SEVENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

Implementation of the United Nations safeguards guaranteeing
protection of the rights of those facing the death penalty

Report of the Secretary-General

Summary

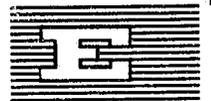
In pursuance of Economic and Social Council resolution 1986/10, section X, para. 2(a), the report reviews the status of the implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, including ways and means of their dissemination in Member States. Further, in pursuance of para. 2(b) of the resolution, the report summarizes the progress made towards the preparation of a study on the question of the death penalty and new contributions of criminal science to the matter.

*E/AC.57/1988/1.

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19 August 1988
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Tenth session
Vienna, 22-31 August 1988
Item 4 of the provisional agenda**

IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE
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AND THE TREATMENT OF OFFENDERS

Implementation of the United Nations safeguards guaranteeing
protection of the rights of those facing the death penalty

Report of the Secretary-General

Corrigendum

Page 5, paragraph 8, line 10

For and read are

Page 6, paragraph 12

The second sentence should read

Under the second question (i.e. whether an offender under sentence of death can be granted a lesser penalty if subsequent legislation imposes a less severe penalty for the crime of which the offender was found guilty) negative replies are given by Bahrain, Chad, Guyana, Senegal and Tunisia.

Page 9, paragraph 34

The first sentence should read

With regard to military cases, mention should be made of martial law courts (e.g. Canada and Malta), special criminal courts (Madagascar), military courts (Byelorussian SSR, Czechoslovakia, Morocco, Switzerland, Ukrainian SSR and Union of Soviet Socialist Republics) and State security courts (Kuwait, Mali, Senegal), all of which have jurisdiction in capital cases.

*Reissued for technical reasons.

**E/AC.57/1988/1.

Page 10, paragraph 37, line 8

For United Arab Republics read United Arab Emirates

Page 14, paragraph 61

The second sentence should read

The General Assembly, in its resolution 2393 (XXIII) on capital punishment, "recalling that article 5 of the Universal Declaration of Human Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" included the death penalty among those forms of punishment that should not be accepted in the future, regardless of the method of execution.

Page 25, entry for Egypt, right column, line 2

After State insert ;

Page 26

After the heading Madagascar delete (ADF)

Left column, line 1: For proceeded read preceded

Page 29, entry for Burma, right column

The sixth line should read

manoeuvres, the numbers involved, the particular

Page 30, right column

Lines 6 and 7 should read

or without motive to intercept messages thereby; or apparatus

Page 31, entry for Japan, left column, line 9

For inhibited read inhabited

Page 32, entry for Czechoslovakia, right column

Lines 2-5 should read

diversion; sabotage and war treason; espionage; genocide; use of prohibited weapons; war cruelty; plunder in the theatre of

Page 32, entry for Hungary, right column, line 1

Delete supporting

Page 33

Entry for the Union of Soviet Socialist Republics, right column, line 1:
for diversion read sabotage

After the heading Canada delete (AO)

After the heading Belgium delete (AC)

Page 34

After the heading Mexico delete (AO)

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1986/10, section X, requested the Secretary-General to submit to the Committee on Crime Prevention and Control, at its tenth session, a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, drawing on information provided by Member States and competent United Nations offices and intergovernmental and non-governmental organizations.

2. The Council, by resolution 1984/50, annex, had adopted nine such safeguards (see annex I), one of which referred to a number of other safeguards contained in the International Covenant on Civil and Political Rights, article 14 (General Assembly resolution 2200 A (XXI)), annex, on the understanding that they would not be invoked to delay or to prevent the abolition of capital punishment. Subsequently, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 15, established a set of implementation mechanisms for the safeguards.

3. Altogether, 74 governmental replies were received in response to the notes verbales of the Secretary-General sent on 27 February, 5 June and 28 September 1987, inviting Governments to respond to the questionnaire. Of these, 43 came from retentionist States and 31 from abolitionist States. 1/ Some of these countries (Canada, Malta, Switzerland) having abolished the death penalty, reported on the implementation of the safeguards in military law proceedings only. With regard to retentionist States, some of them (e.g. Belgium, Cyprus and Greece) have not carried out any executions for a long time. For those States, the information on the practical implementation of the safeguards should be considered mostly from a purely theoretical point of view.

4. As of 15 May 1988, the following States had replied to the inquiry: Algeria, Australia, Austria, Bahrain, Belgium, the Byelorussian Soviet Socialist Republic, Bolivia, Brazil, Bulgaria, Burma, Canada, Chad, China, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Fiji, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Guatemala, Guyana, Hungary, Italy, Iraq, Israel, Jamaica, Japan, Jordan, Kenya, Kuwait, Lesotho, Madagascar, Malawi, Mali, Malta, Mexico, Monaco, Morocco, the Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Rwanda, Senegal, Seychelles, Sri Lanka, Spain, Sweden, Switzerland, Syrian Arab Republic, Sudan, Tunisia, Turkey, United Arab Emirates, Uruguay, the Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yemen, Yugoslavia.

5. The present report contains specific observations for the consideration of the Committee on Crime Prevention and Control with respect to the implementation of existing safeguards, including a number of proposals for practical follow-up, as well as a summary of the progress made towards abolition of the death penalty.

I. REVIEW OF THE IMPLEMENTATION OF THE SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY

A. Safeguards

6. Observations on the implementation of the nine safeguards are made below.

Safeguard 1: Crimes liable to capital punishment

7. The information given below emphasizes the most relevant points made by reporting Governments and suggests that the safeguards in capital cases existing in domestic law could be stricter than in other criminal cases. Note should be taken, however, of the fact that some of the retentionist countries have rarely tried capital offenders for ordinary crimes and, even more rarely, for military crimes.

8. A wide disparity of types of capital crime exist in the world (see annex II). Only a portion of them may be clearly qualified as intentional crimes with lethal consequences (i.e. various forms of homicide), while some, for instance, rape followed by the death of the victim, seem to encroach on the question of causing negligent death. Still other offences do not have any lethal consequences, nor do they seem to have enough "other extremely grave consequences". Adultery, receiving a ransom from a kidnapped person, abduction and illegal restraint of persons, armed and highway robbery, incest etc. not only do not result in the above-named consequences, but also, in accordance with current criminological findings, and not the "most serious crimes" warranting the continuation of the application of the death penalty.

9. With reference to the concept of "other extremely grave consequences", there emerges an understanding that some acts can result in a large-scale loss of life, even though the lethal results of the offence are not necessarily proven (for instance, the provision of secret information to an enemy in wartime). 1/ In other words, this concept implies that the death penalty should not be applied for crimes not resulting in loss of life, or not likely to result in a widespread loss of life.

10. With reference to the concept of the "most serious crimes", employed also in the International Covenant on Civil and Political Rights (article 6, paragraph 2), this was qualified by the authoritative comment of the Human Rights Committee as one that "must be read restrictively to mean that the death penalty should be a quite exceptional measure". 2/ Moreover, in the same comment the Committee stated that article 6 "strongly suggested that abolition [of capital punishment] is desirable" and that "all measures of abolition should be considered as a progress in enjoyment to the right to life". Consequently, at least for those States that have ratified the Covenant, the obligation exists either to abolish the death penalty or to make efforts towards this goal by restricting its use to the category of the most serious crimes, involving loss of life.

11. The review of the capital punishment offences in the reporting countries leads to sharing the concern of the Human Rights Committee 3/ that the progress made towards abolishing or limiting the application of the death penalty is inadequate. Consequently, the Committee on Crime Prevention and Control may wish to give consideration to the further elaboration and clarification of the relevant concepts by further elucidating the meaning of such concepts as "most serious crimes" and "other extremely grave consequences".

Safeguard 2: Imposition of a lighter penalty

12. Most Governments reported that capital punishment can be imposed only for a crime for which the death penalty was prescribed by law at the time of its commission. Under the second question (i.e. whether an offender, under sentence of death, can be granted a lesser penalty if subsequent legislation imposes a less severe penalty for the crime of which the offender was found guilty) are given by Bahrain, Chad, Guyana, Senegal and Tunisia. Among those States that reply positively to the above question, Kenya reports that a lesser penalty could be imposed even without new legislation, while Jordan and Kuwait emphasize that a lesser penalty could be granted only if the death sentence has not become confirmed.

13. In view of the above, the Committee may wish to consider recommending that the final imposition of a capital sentence should not prejudice the offender's right to benefit from a lesser penalty in cases where subsequent legislation provides for it.

Safeguard 3: Exemptions from capital punishment

14. The majority of reporting Governments note that safeguard 3 has been implemented in their national legislation. Some Governments, however, indicate that portions of the safeguard have not yet been implemented at the domestic level.

15. With regard to the question of whether persons below 18 years of age at the time of the commission of the crime may receive a death sentence, Belgium, Canada, Republic of Korea, Seychelles and the Sudan give a positive reply.

16. The Republic of Korea specifies that, at present, a person may receive a death sentence if he or she is more than 16 years of age at the time of the commission of an offence. A Special Committee for the Reform of the Criminal Code, however, is considering the question of minimum age for the death penalty, as well as the abolition of the death penalty as a whole. Sri Lanka also reports that prior to new legislation introduced in 1980, persons of 16 years could be sentenced to death. The law has been amended to conform to the provisions of the International Covenant on Civil and Political Rights to which Sri Lanka acceded at that time.

17. It may be added in the above context that Mexico reports the existence of a maximum age of 60 years beyond which a person cannot be sentenced to death. Guatemala reports that persons over 70 cannot be sentenced to death, while in the Sudan they cannot be executed. Guatemala indicates also that, according to its provisions, women cannot be sentenced to capital punishment.

18. As to the question of whether the law provides that no death sentence can be carried out on a pregnant woman, with the exception of two replies all answers are positive. Canada explains that even though there is no specific provision in respect of pregnant women, it would be unlikely that approval by the Governor, which is required for carrying out a death sentence on such a woman, would be granted.

19. With an apparent reference to the provision of the Economic and Social Council concerning non-execution of new mothers, Jordan reports that a death sentence may not be carried out on a pregnant woman, but must be delayed until three months after she delivers the child. In the Sudan, a mother who kills her new-born child within eight days of its birth, because of a mental defect or for psychological reasons, cannot be executed.

20. Canada and Malta indicate that in military capital cases, when a person becomes insane before a verdict has been passed, he or she cannot be sentenced to death. If insanity occurs after the sentence, there is no specific prohibition to carrying out a death sentence in either of these countries. Also, in Lesotho, no such provision exists, but insanity can count as an extenuating circumstance. Guyana reports that if, during the trial, an accused person appears to the jury to be insane after the hearing of evidence, the court shall in that case direct the jury to abstain from a verdict upon the indictment and to invalidate a verdict that the accused is insane. However, if subsequently that person becomes of sound mind, the trial for the offence may recommence.

21. In Egypt and Turkey, the capital offender can be executed only after medical treatment. In Mali, if the person becomes insane while the proceedings are under way, prior to the delivery of the judgement, the public prosecution is suspended and the only procedure that may be carried on is one that does not implicate the accused, since he or she is unable to defend himself or herself. Chad, China, Czechoslovakia, Dominican Republic, Madagascar, Malawi, Morocco, Qatar, Senegal, Switzerland, Syrian Arab Republic and Tunisia indicate that execution of insane offenders is possible.

22. Czechoslovakia, Morocco, Qatar, Senegal, Switzerland, Syrian Arab Republic and Tunisia add that there are no official initiatives or plans to include in the domestic legislation a provision barring the execution of insane offenders.

23. In view of the recent adoption of the United Nations safeguards, which call for the prohibition of the execution of insane capital offenders, the Committee may wish to re-emphasize the need to adjust national legislation to this new standard. The Committee may also wish to consider recommending a maximum age past which a person may not be sentenced to death, as is the case, for instance, in the American Convention on Human Rights (70 years). The examples of the Mexican and Guatemalan legislations provide for an even lower maximum age (60 years).

Safeguard 4: Evidentiary requirements

24. Safeguard 4 has extensive legal and procedural implications in view of the different provisions regarding evidentiary rules in national legislations. Greece and Guyana emphasize in their replies the existence of special evidentiary requirements in capital cases in their respective legislation.

25. The rules of evidence are, depending on the legal tradition, based either on common law system ("proof beyond reasonable doubt") or continental law system (principle of objective truth) or on any similar principle, or their combination. In the above framework, the following observations may warrant attention of the Committee. In Chad, except as otherwise provided by law, any form of evidence may be brought to establish guilt and, additionally, should be based on the deep-seated conviction of the judges. In China, it is stipulated that in all cases, emphasis should be placed on the evidence and investigative research, and credence should not readily be given to oral statements. The use of evidence obtained through torture to coerce statements and the gathering of evidence by threat, enticement, deceit or other unlawful methods are strictly forbidden.

26. In Guyana, there exists a rule that hearsay evidence is admissible against the accused. However, in murder cases, where there is evidence of provocation or self-defence, the burden of proof is on the prosecution.

Further, there is a rule of evidence stipulating that wherever a change depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence alleges to be mistaken, the trial judge should warn the jury of the special need for caution in pronouncing on the guilt of the capital offender. Reference should be made to the possibility that a mistaken witness could be convincing and that a number of such witnesses could all be mistaken. In the Sudan, the testimony of infants, complainants and accomplices cannot be, without other corroborating evidence, a base for conviction. Certain crimes can be proved only on the testimony of eye-witnesses (from two to four witnesses) or on unretracted confession.

27. In Czechoslovakia, the confession of the accused does not release the authorities conducting the criminal proceedings from the obligation of examining, by all available means, all the circumstances of the case in question.

28. In Malawi, the evidence of previous bad character or a previous conviction should be disallowed. If the evidence is circumstantial, the conclusion has to be consistent only with the guilt of the accused and should not render itself to any alternative explanation; otherwise, the accused shall be acquitted. Lesotho emphasizes that in equivocal murder cases, that is, where there is any other reasonable explanation, the accused can be found guilty of culpable homicide (manslaughter) only, i.e. killing without the intent to kill.

29. In Switzerland, a sentence of death can be passed only by the unanimous decision of five judges of the first instance court. Unanimity is also required by the court of appeal, whereas, only a majority vote is required in the Military Court of Cassation. In Egypt, a criminal court may only pronounce a judgement by the unanimous decision of all its members. Before pronouncing such a judgement, however, the criminal court shall seek the legal opinion of the Grand Mufti of the Republic and must dispatch the file to him. If, within 10 days thereafter, the court does not receive the legal opinion required, the court may then pronounce its judgement.

30. The information provided in paragraphs 24-29 above suggests that in the reporting countries there is compliance with the safeguard under review.

Safeguard 5. Final judgement and procedural guarantees

31. Safeguard 5, which is extensive, emphasizes that (a) a capital offender may be executed only when a final judgement has been passed by a competent court; after (b) due legal process that provides all possible safeguards to ensure a fair trial; (c) 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. These three parts of safeguard 5 were related to the provision of article 14 of the International Covenant on Civil and Political Rights, which contains 12 additional safeguards. 4/

32. All the responding countries confirm that safeguard 5 has been implemented in their legislation. Japan, Malta, Peru and Sri Lanka emphasize that several safeguards have been incorporated into their Constitution, while others have been contained in their criminal procedure laws.

33. With regard to (a) mentioned in paragraph 31 above, in principle, criminal courts have been entrusted with sentencing in ordinary capital cases. The types of court authorized to do so, however, vary from country to country. In Burma, these are "divisional" and "township" courts. In Malawi, capital cases are tried by the High Court and regional traditional courts. In Poland, it is a provincial (voievodship) court, in the first instance, and the Supreme Court in the second instance. In Egypt, Jamaica, Lesotho, Morocco and Seychelles, the Supreme Court is authorized to try capital cases. In the federated States (e.g. Soviet Union) a death sentence may be passed by territorial country and city courts (oblast), the Supreme Courts of the Union Republics and Autonomous Republics, the Supreme Court of the Union of Soviet Socialist Republics and, also, by military courts in cases within their competence.

34. With regard to military cases, mention should be made of martial law courts (e.g. Canada and Malta), special criminal courts (Madagascar), military courts (Czechoslovakia, the Bylerorussian Soviet Socialist Republic, Morocco, Switzerland, the Ukrainian SSR, Union of Soviet Socialist Republics, Switzerland) and state security courts (Kuwait, Mali, Senegal), all of which have jurisdiction in capital cases. With regard to the martial law courts in Canada, under the National Defence Act, only General Courts Martial and Special Courts Martial may impose a death sentence. In Czechoslovakia, the military courts adjudicate penal cases of members of the armed forces and armed corps, prisoners of war and other persons, as stipulated by law. Reportedly, all these courts proceed in accordance with the provisions of the Code of Criminal Procedure, which not only covers, but also goes beyond the basic standards set forth in the International Covenant on Civil and Political Rights, articles 6, 14 and 15. The information provided, however, does not give any details on the other types of court existing in some countries (e.g. State security courts) nor on the safeguards that may be observed by them.

35. With regard to (b) in paragraph 31 above, two observations can be made.

36. First, a number of countries, such as China, Czechoslovakia, Hungary, Japan, Malawi and the Ukrainian SSR, report that the question of adequacy of time and facilities must be regarded in the wider context of the adequacy of legal defence as a whole. To illustrate this point, which may be relevant also in other legislations in their appropriate national contexts, the report of the Ukrainian Soviet Socialist Republic emphasizes that a defender must be present in the court examination of cases involving crimes for which the death penalty might be imposed. In studying the materials of the case, the accused has the right to make excerpts of them and to make petitions. The defender also has to be given the opportunity to familiarize himself or herself with all the materials of the case. In so doing, the defender has the right to make excerpts, to meet privately with the accused, to explain to the accused the substance of the charge, to discuss with the accused questions regarding the filing of petitions, to present evidence, to enter challenges, and to contest the actions and rulings of the criminal investigator and the public prosecutor. A copy of the bill of indictment and the subpoena notification must be delivered to the defendant against his or her receipt, not later than 10 days before the day on which the case is to be heard in court. If these documents have been drawn up in a language of which the defendant has no command, they must be delivered to him or her in translation into the defendant's native language or into some other language that he or she can understand.

37. Secondly, and with reference to the adequacy of time for the preparation of the defence by the offender, two approaches are followed in the responding countries. In one approach, the time available for the defence is discretionally awarded by the relevant authority. The other approach is based on fixed time limits. According to the information available, the first approach is followed in Burma, Canada, Cyprus, Jamaica, Japan, Jordan, Lesotho, Malawi, Malta, Qatar, Seychelles, Sudan, the Syrian Arab Republic, Turkey and the United Arab Republics; and the second approach, in Bulgaria, the Byelorussian SSR, Chad, Czechoslovakia, Greece, Guyana, the Republic of Korea, Switzerland, the Ukrainian SSR and the Union of Soviet Socialist Republics.

38. The fixed time limits differ, however, from State to State. In Greece, the accused person has to have due time for his or her defence (48 hours). Under the Code of Criminal Procedure of the Russian Soviet Socialist Republic, the examination of a case in a court session may not commence earlier than three days after a copy of the indictment has been given to the accused. In Switzerland, the court must observe the citation delay period, which is at least 5 days if the accused is in detention, and at least 10 days if he or she is at liberty. In China, after the court has decided to open the court session and to adjudicate the case, it must deliver to the defendant, no later than seven days before the opening of the court session, a copy of the bill of prosecution of the people's procuratorate.

39. The most extensive fixed time limit is reported by Guyana where, if the accused person is committed by the magistrate to stand trial, at least six to eight weeks must elapse before this trial takes place.

40. Obviously, the fixed time-limits set in national legislation are related to particular stages in the criminal procedure; hence, no straightforward assessment may be made of their adequacy.

41. The question of the adequacy of time at a particular stage of the proceedings seems to be better dealt with when the time is set on a discretionary basis, and if appropriate legal remedies exist. In this respect, Canada reports that if the accused is not satisfied with the adequacy of time for the preparation of his or her defence, he or she might apply to the trying court for appropriate relief. A decision or the decisions of the trying court may be renewed by the Federal Court on application of the accused, or may form the basis of an appeal. In Japan, the Code of Criminal Procedure provides that, in fixing the first day of public trial, consideration should be given to the preparations necessary for the trial by both parties to the suit. The defence counsel should be allowed to request the change of trial date if he or she needs time to inspect documentary or real evidence to be produced for examination by the opposing party.

42. The Secretary-General, in his report (E/1985/43, para. 55), notes that in cases where the life of the offender is at stake, special protection should be afforded by setting reasonably long time-limits, or longer ones than in any other case, for preparation of his or her defence and by ensuring that available facilities for the defence fully guarantee the right of adequate preparation. Consequently, the Committee may wish to recommend that the offender's right to have adequate time and facilities for the preparation of a defence should be considered in generous terms, thus allowing enough time and adequate facilities to effectively guarantee the offender more legal protection than in non-capital cases.

Safeguard 6: Right to appeal

43. Almost all the countries confirm that in their national legislation the right to appeal to a court of a higher jurisdiction is fully granted in ordinary capital cases. Algeria, however, reports that an appeal cannot be launched against acquittal. Bulgaria reports that, according to its legislation an appeal may also cover the motives and grounds for acquittal. Some respondents state explicitly, in this connection, that for procedural reasons such a right cannot be granted when the higher jurisdiction lies with the Supreme Court itself. The Union of Soviet Socialist Republics makes a similar comment, but emphasizes that in all other cases such a right to appeal exists and capital cases are subject to review through the procedure for judicial revision, which is also the case in the Ukrainian SSR. The latter reply adds that, at present, proposals to permit appeals of sentences pronounced by the Supreme Court of the Ukrainian SSR are under discussion.

44. Other arrangements are reported in case of special jurisdiction by the martial/military courts or special security courts (Chad, Czechoslovakia, Jordan, Kuwait, Mexico). As far as the latter are concerned, Chad and Kuwait report that there have been no appeals against the decisions of the Special Court of Justice. Czechoslovakia states that the death penalty can be imposed also through special, so-called martial-law proceedings. In that exceptional case, which falls within the terms of the provisions of the International Covenant on Civil and Political Rights, article 4, concerning derogation of the obligation, no right to appeal exists against the verdict of a court handing down the capital sentence. Since the establishment of the Czechoslovak State, in 1918, there has been no situation necessitating the declaration of martial law. Jordan reports that, although no right to appeal exists in the military proceedings, the sentence is submitted to the Military Governor (Prime Minister), who has the authority to confirm it, to commute it or to request a re-trial.

45. Finally, Mexico explains that an appeal may be lodged against a sentence pronounced under military justice, except for sentences handed down by a War Council. In the same country, both military and ordinary final capital cases can be challenged by the so-called constitutional trial for the protection of rights (juicio constitucional de amparo). In such a situation, it is sufficient for the admission of the application that it specifies the action under challenge, the authority that ordered it (if the appellant is able to indicate it), the whereabouts of the aggrieved party and the authority or agent carrying out or attempting to carry out the action.

46. The legal situation in the responding countries leads to the observation that although, in principle, appeals are granted in ordinary capital cases, this right may not be available in military or similar proceedings. The Economic and Social Council, in its resolution 1984/50, makes a distinction between ordinary and military criminal law procedure, even though the former is probably more frequently used than the latter. But even in the latter procedure, some possibility of legal remedies are reported, so that the capital sentence would not be final (e.g. Jordan, Malta and Mexico).

47. While it is understandable why under military proceedings the remedies that could save the offender's life are so limited, if they exist, the attention of the Committee should be drawn to resolution 1983/43 of the Commission on Human Rights, which emphasizes that "for people in the world today there is no more important question than that of preserving peace and ensuring the cardinal right of every human being, namely the right to life". It should, further, be noted that the Commission recalls "the historic

responsibility of the Governments of all countries to remove the threat of war from the lives of people, to prevent nuclear catastrophe, to preserve civilization and to ensure that everyone enjoys his inherent right to life". In view of the above, it seems that there is ample ground in the future for a more generous application of remedies with a view to strengthening the implementation of the right to life.

48. In many countries there exist various deadlines for filing an appeal. As in the case of safeguard 4 (paras. 37-41), these deadlines differ even though it seems that most of the countries have a two-week rule (Belgium, Canada, Jordan, Poland, Qatar, Seychelles, Sudan). In Madagascar, Mali and Senegal, however, appeals may be submitted within 3 days of the pronouncement of judgement; in Greece, Switzerland and Tunisia, within 5 days; in Bulgaria, Burma and United Arab Emirates, the Ukrainian SSR and the Union of Soviet Socialist Republics, within 7 days; in Algeria, within 8 days; in Cuba, within 10 days. A minor group has longer deadlines: the Republic of Korea, within 20 days; and in Bahrain, Kuwait, Malawi and the Syrian Arab Republic, within one month. A few States have discretionary deadlines: Guyana, Lesotho, Rwanda and Sri Lanka. As in the case of adequate time for the preparation of the defence, the Committee may wish to consider whether more ample time for exercising the right to appeal in death penalty cases should not be provided.

49. Obviously, the above-mentioned recommendation may not be directly relevant when appeals are mandatory; however, Kenya, Kuwait and the Syrian Arab Republic indicate that their legislation provides for such an automatic mechanism. Kuwait makes additional comments, reporting that sentences handed down by the State Security Court, which cannot be appealed, are subject to confirmation. With regard to ordinary criminal cases, the death sentence has automatically to be referred by the court of appeals, unless an appeal has been filed by the condemned person. In any circumstance, however, the public prosecutor is mandated to bring such a capital case before the circuit court of appeals within 30 days and to submit his or her opinion on the possible confirmation or amendment of the sentence. Kenya, emphasizing that in capital cases the evidence is subjected to the strictest scrutiny, indicates that there also exists an automatic appeal and, finally, the prerogative of mercy.

50. In accordance with the information received appeals are still discretionary in many countries. Hence, the Committee may wish to re-emphasize that further progress is needed world-wide to ensure that in the criminal legislation of every retentionist State appeals become mandatory, as urged also by the General Assembly in its resolution 35/172.

Safeguard 7: Right to seek pardon

51. All responding States indicate that offenders sentenced to death have the right to seek pardon or commutation of sentence. These remedies are usually granted in all cases of capital punishment. Greece, Malawi and Sri Lanka report an obligation to review the case in the light of a possible pardon or commutation of the sentence. Most countries do not have any fixed time-limit for submitting the request for pardon or clemency. Only Burma, China, Guatemala and the Sudan report a time limit for seeking pardon: in the case of Burma 6 months; in other countries, from 7 to 15 days.

52. The Sudan reports that a capital offender would not be executed in cases of murder or homicide amounting to murder if pardon were granted by the deceased heirs. In such a situation, compensation ("deja") might be given by the offender to the heirs of the deceased.

53. With reference to the right to seek pardon, the Committee may wish to take note of the recent appeal of the President of the General Assembly at its forty-second session to the President of South Africa to cancel the execution sentence and to pardon the six young South Africans known as the "Sharpsville six". It may be recalled that the subject matter was also brought to the attention of the Special Committee against Apartheid, which according to a United Nations Information Service press release "called upon Governments and people of the world to intervene and prevent this flagrant judicial murder".

Safeguard 8: Suspension of execution of capital punishment

54. Most of the responding States, except one, indicate that safeguard 8 is fully observed. Two States gave no reply.

55. Divergencies are, however, reported as to the existing legal mechanisms enabling the officials responsible for carrying out executions to be informed of any pending remedies that might stay the execution. Bulgaria, China, Czechoslovakia and Greece make general comments on the legal awareness of the officials involved in capital executions. A number of other States specify in more detail what procedures are followed in the application of the death sentence. In this group, Lesotho, Madagascar and Rwanda report that such punishment is carried out against a warrant delivered to a prison warden. In the case of Madagascar, this must be acknowledged in writing; but this provision is of a theoretical nature as no death sentence has been carried out there since 1960. Still another group of States describe in some detail the institutional mechanism for the renewal of legal remedies and a possible confirmation mechanism before carrying out a capital sentence. Powers of this kind are vested in different institutions, such as, individual or collective heads of State, Attorney-General and Supreme Court.

Safeguard 9: Reduction of suffering inflicted by execution

56. Within the framework of safeguard 9, Czechoslovakia, Cyprus, Egypt, Guyana, Japan, Jordan, Hungary, Kuwait, Lesotho, Malawi, Poland, Qatar, the Republic of Korea, Rwanda, Seychelles, Sri Lanka, Sudan and Turkey report that for ordinary crimes death is carried out by hanging. Shooting is reported as a method of execution for ordinary crimes by Algeria, Bulgaria, the Byelorussian SSR, Chad, China, Greece, Guatemala, Kuwait, Madagascar, Mali, Morocco, Qatar, Sudan, the United Arab Emirates, the Union of Soviet Socialist Republics, Yemen and Yugoslavia. For military crimes, shooting is, inter alia, reported by Hungary, Poland, the Republic of Korea and Rwanda. Belgium reports the guillotine as a method of execution for capital military crimes. Stoning is reported by the Sudan as one of the possible ways of carrying out the death sentence for ordinary crimes. Finally, Canada and Malta note that no method of execution is determined owing to the lack of capital cases liable to execution.

57. Several States reply to the question of whether consideration is given to minimizing the suffering of the offenders. Those who give a positive response include Algeria, Bulgaria, the Byelorussian SSR, Egypt, Greece, Iraq, Jamaica, Japan, Kuwait, Lesotho, Madagascar, Malawi, Mali, Morocco, Qatar, Turkey, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yugoslavia. Countries giving a negative reply include Belgium, Hungary, Poland, the Republic of Korea and Sudan. Other States do not give any specific answer.

58. Due to the very general nature of the questions, neither positive nor negative replies, nor silence are indicative of the approaches taken to minimize suffering. While for one State, shooting is a more "bearable"

measure than hanging, for others shooting is the method used and no consideration is given to minimizing the suffering of the offender. It is in this context that some States report that the implementation of the penalty should not be aimed at physical suffering or humiliation of the human dignity of the convict. Chad emphasizes that in executing the offender allowance is made for the human factor, while Madagascar stresses the psychological factor. Greece and Iraq stress, in this connection, the dignity of the individual.

59. Mali adds that, in addition to human dignity, consideration is given to the ethics of the Malian people, the majority of whom are Moslem. Jordan reports that capital punishment cannot be carried out on a holy day of the condemned person's denomination, nor on any national or official holiday. Finally, Rwanda reports that a person under sentence of death can consult a minister of the religion of his or her own choosing.

60. Technical observations are made, inter alia, by Egypt, reporting on the entire preparatory process before the execution, and by Lesotho, specifying rope strength requirements in relation to body weight for instant execution. The swiftness of execution as a factor limiting suffering is also emphasized by Iraq, Jamaica, Malawi and Sri Lanka.

61. The above observations, which address an old criminological claim of "faire mourir sans faire souffrir", though relevant to the letter of safeguard 9, seem to disregard the goal of the total abolition of the death penalty. The General Assembly, in its resolution 2393 (XXIII), declared that the death penalty is degrading and inhuman, placing it among those forms of punishment that should not be accepted in the future, regardless of the method of execution.

B. Other comments

62. A few States provide information on additional safeguards for those facing the death penalty. These include a provision in Chinese criminal law for a two-year suspension of execution. If a person sentenced to death truly repents during the period of suspension, he or she is given a reduction of sentence to life imprisonment; if the offender really shows repentance and demonstrates meritorious service, upon the expiration of the two-year period, he or she is given a reduction so that the sentence is from 15 to 20 years of fixed-term imprisonment. In Rwanda, a person under a death sentence has a mandatory one-year period before execution takes place. In practice, this has enabled condemned persons to benefit from an amnesty since 1982. 5/

63. The above provisions are in line with General Assembly resolution 2393 (XXIII), which invites Member States to consider whether a time-limit or time-limits can be established in national legislation before the expiry of which no death sentence should be carried out. This time should not, however, be confused with the time spent by the inmates on death row before execution, which depends on exhausting all legal remedies. Such arrangements are perhaps, the most agonizing ones in terms of the segregation of the capital offenders and the psychological stress they suffer. The Committee may wish to elaborate further on the above matter, which was raised by the General Assembly some years ago and, should the Committee consider it opportune, it may recommend fixed-time limits of a given duration.

II. DISSEMINATION OF THE SAFEGUARDS

A. To criminal justice administrators and the public

64. The Seventh United Nations Congress in its resolution 15 invites all States retaining the death penalty, and whose present standards fall short of the safeguards, to implement them by, inter alia, ensuring that judges, lawyers, police officers, prison officials and other persons concerned with the administration of justice (e.g. military personnel) are familiar with the safeguards and any corresponding provisions in national legislation and regulations by including them in courses of instruction, by disseminating and publicizing them, and by other appropriate means.

65. Cyprus indicates that the relevant parts of the safeguards have been published in its Official Gazette, following its ratification of the International Covenant on Civil and Political Rights in 1969. As far as resolutions adopted by United Nations organs and bodies are concerned, these have been brought to the attention of the competent departments by the Foreign Ministry. Other States report that the safeguards have been included in the national legislation, as appropriate (Algeria, Burma, Jordan, Mali, Morocco and the Syrian Arab Republic). Czechoslovakia, in addition to publishing universally binding norms in its collection of laws, also mentions a special publication on the Seventh Congress (1986). Iraq, Poland and Rwanda have separate source books and Guatemala, Morocco, Republic of Korea and Tunisia issue circulars on the subject.

66. In addition to the above-mentioned forms of dissemination, Burma, Canada, China, Jordan, Mali, Seychelles and Turkey indicate that the safeguards in question either correspond to the provisions of national laws or are incorporated into them, as reported also by Bulgaria, Greece, Guyana, Kuwait, Qatar, the Ukrainian SSR and the Union of Soviet Socialist Republics. Bahrain and Chad make no reference to any of the above forms of dissemination, while the majority of other countries use at least one of the forms mentioned by the Seventh Congress in its resolution 15.

67. Other forms of dissemination are reported as follows: (a) during courses of instruction for the officials listed in paragraph 64, above; Belgium, Burma, China, Czechoslovakia, Egypt, Hungary, Jamaica, Madagascar, Malawi, Morocco, Qatar, Poland, Rwanda, Sri Lanka, Switzerland, Turkey, the Ukrainian SSR, the Union of Soviet Socialist Republics, Yemen and Yugoslavia; or/and (b) through mass media in the Byelorussian SSR, China, Czechoslovakia, Iraq, Lesotho, Madagascar, Mali, Qatar, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yemen.

68. The above listing is most likely not exhaustive, but it exemplifies the possible approaches taken by countries towards the implementation of the safeguards. Yet, the Seventh Congress resolution emphasized that persons concerned with the administration of criminal justice should themselves be familiar with the safeguards, i.e. the text of the safeguards should be made known in its entirety to such personnel. Consequently, the Committee may wish to re-emphasize that to promote the process of implementation of the safeguards, their text, if not already incorporated in extenso or followed up in national legislation, should be made available to criminal justice administrators.

B. To those facing the death penalty

69. The Seventh Congress resolution also requests all States to draw the attention of persons facing the death penalty and of their representatives to the safeguards and to any corresponding provisions in the national legislation

and regulations, and stresses the need for disseminating the safeguards by all appropriate means. Bahrain, Guatemala, Lesotho, Senegal, the Sudan, Tunisia and the United Arab Emirates reply that no action is taken in this regard. Lesotho adds, however, that both the person facing the death penalty and his or her legal representatives are aware of the safeguards or corresponding provisions in the domestic legislation and regulations. Furthermore, except for Belgium, the Sudan and Turkey, which give no answer to whether there are any official initiatives or plans to make those persons aware of such provisions, all the other afore-mentioned States report that no such initiatives have been taken.

70. The majority of States that give a positive response stress that the provisions are made known to capital offenders and their legal representatives. Algeria states that, in the effort to ensure that these persons are aware of the safeguards or corresponding provisions, it has established an officially recognized Human Rights Association. Iraq reports that the United Nations Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners have been published and distributed to those facing the death penalty and to the criminal justice officials concerned. Egypt and Yugoslavia report that capital offenders and their legal representatives are informed of the contents of the safeguards as adopted by the General Assembly through the dissemination of the text.

71. Burma, Byelorussian SSR, Czechoslovakia, Hungary, Iraq, Kenya, Poland, the Republic of Korea, Seychelles, Switzerland, Turkey, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yemen, stress that awareness of the safeguards is manifested in the course of the criminal justice process by various parties (police, Attorney General, court, prison officials etc.). Poland and Switzerland explicitly state that, in capital cases, the assistance of a legal counsel is obligatory; Switzerland adds, in this connection, that it is up to the defence counsel to inform clients of their rights.

III. THE QUESTION OF THE ABOLITION OF THE DEATH PENALTY

A. Moves towards reduction or abolition of the death penalty

72. The Economic and Social Council adopted the safeguards on the understanding that they would not be invoked to delay or to prevent the abolition of capital punishment. In this context, a number of retentionist States have communicated their official initiatives, or their plans to abolish the death penalty or to reduce the scope of its application.

73. Official initiatives or plans to abolish the death penalty are reported by Jamaica and the Republic of Korea. In the Republic of Korea, a Special Committee for the Reform of the Criminal Code, established in the Ministry of Justice, has been discussing the abolition of the death penalty. In Jamaica, where only murder is liable to capital punishment, the Government appointed a Committee in 1979 to consider possible changes in the law and the penal system required by the abolition of capital punishment. The Committee's report is being considered by the relevant authorities. 6/ In Cyprus, this question is being studied by the Ministry of Justice.

74. The Byelorussian SSR, Czechoslovakia, Japan, the Ukrainian SSR, the Union of Soviet Socialist Republics and Yemen report on efforts being made to reduce the number of capital offences in their penal legislation. In Czechoslovakia, this process started in 1962, when new penal legislation was introduced in which the number of capital offences was reduced from 80 to 23. In connection with the amendment of the Criminal Code, a further decrease in the number of offences punishable by death is under consideration. 7/

75. In Japan, the Legislative Council of the Ministry of Justice, an advisory organ to the Minister of Justice, in its report to the Minister on the overall revision of the Criminal Code, recommended that the number of capital offences should be reduced. Under the proposed revision, the death penalty would be abolished, inter alia, for robbery causing death and for the use of explosives. 8/

76. In the Byelorussian SSR, the Ukrainian SSR and the Union of Soviet Socialist Republics, revisions of the respective criminal codes are reported to be underway. In the course of these revisions, consideration is being given to limiting the number of offences liable to capital punishment and to the abolition of this penalty for some particular types of crime.

77. In view of the above, the Committee may wish to express its view that although considerable time may be required for the abolition of the death penalty, the possibility of attaining this final objective should be continuously and uninterruptedly pursued by Member States.

B. Observations of abolitionist States

78. As mentioned in paragraph 3 above, 31 States respond that the question of the implementation of the safeguards is not relevant to their national legislation since it has abolished the death penalty. Several of them, however, express their views on capital punishment, including two newly abolitionist States: the German Democratic Republic, where this penalty has been abolished by a resolution of the Council of State, and the Philippines, where it is a provision of the new Constitution ratified in 1986 by a plebiscite. The German Democratic Republic, which abolished the death penalty in 1987, explains that until then the application of capital punishment served the historical need for the prosecution of Nazi and war crimes, crimes against

peace, humanity, human rights, as well as the most serious crimes against the security of the State and the lives of its citizens. While its criminal justice system would continue to extend all-round protection against crime, the resort to the death penalty is no longer deemed necessary. Mindful of the humanistic nature of socialist society, the German Democratic Republic courts have not imposed the death penalty for a number of years. Its abolition is in keeping with the recommendations of United Nations bodies aimed at the abolition of the death penalty on a global basis.

79. Australia emphasizes its concern with the protection of the right to life, the scope of which is narrowed when the death penalty exists. The State should act to heighten public regard for the sanctity of human life. The argument that capital punishment is a deterrent has found no statistical support. In a recent report of the Australian Institute of Criminology it is stated that the preponderance of evidence suggests that the abolition of capital punishment has not resulted in any significant increase in the rate of murder, either in Australia or in other countries. Moreover, capital punishment allows no room for corrective action where a person has been mistakenly convicted. ^{9/} The Commonwealth Government does not propose to reintroduce the death penalty as it does not consider it to be justified in principle or by considerations of deterrence and the general interests of the community. ^{10/}

80. Portugal recalls the legislative history of the abolition of capital punishment in that country. ^{11/} One of the points stressed throughout the reply is that crime has not increased in Portugal despite de facto abolition of the death penalty from 1846 onwards. Above all, however, public opinion has long called for the death penalty to be abolished in law as well as in practice. Finally, a decisive legislative role is played by the Portuguese Parliament from which the abolitionist trend receives its formalization. Parliament voted to abolish the death penalty for ordinary crimes in 1867, i.e. three years after the Government's unsuccessful attempt to abolish it for all crimes that was thwarted by veiled pressure from the military. It was only after the establishment of the Republic, in 1910, that for the first time the abolition of the death penalty for military crimes became possible in Parliament. The argument used was that capital punishment was not necessary to maintain discipline in the army and that the possibility of judicial error militated strongly against its use as a penalty. Nevertheless, Portugal's participation in the First World War led to a review of its abolitionist legislation, on the basis of which, in 1916, the death penalty was reintroduced for military crimes committed in the theatre of operations. After 1916, however, there was only one case of a known death sentence being carried out, imposed for spying for the enemy during the First World War. In 1976, the Parliament finally abolished capital punishment for military crimes in the Constitution.

81. The Netherlands, which first abolished capital punishment for ordinary crimes in 1870, indicated that in 1983 the Dutch Constitution was amended to include among its provisions an article stating that "Capital punishment may not be imposed". Thus the death penalty in the Netherlands (inasmuch as it could be imposed under special circumstances, under the military code and legislation governing offences in war time), has been completely abolished. In this way, also, a constitutional safeguard had been created against the reintroduction of the death penalty.

82. Canada, which abolished the death penalty for ordinary crimes in 1976, reports that in June 1987 a vote was held in its House of Commons on the question of whether the death penalty should be reinstated as a criminal code sanction. Reinstatement of the death penalty was rejected by a vote of

148 to 127 but, as a consequence of the debate and the views expressed therein, the House of Commons Standing Committee on Justice and the Solicitor General undertook a wide-ranging study of sentencing, parole and related correctional issues. The Committee will be holding hearings throughout the country and consulting extensively on matters of its concern. At the end of this process, the Committee plans to submit a report to the House of Commons detailing any problems it has found to exist in the sentencing and parole system, together with the Committee's proposed solutions.

83. Costa Rica reports that the death penalty was abolished there in 1882, and that a few years ago the centenary of this decision was celebrated. The Costa Rican Constitution stresses that "human life is inviolable".

IV. THE STUDY OF THE QUESTION OF THE DEATH PENALTY
AND THE NEW CONTRIBUTIONS OF THE CRIMINAL SCIENCES TO THE MATTER

84. In pursuance of Economic and Social Council resolution 1986/10, section X, the Secretariat approached a number of Governments, appealing for the extra-budgetary funds needed for the preparation of a study on the question of the death penalty. Having obtained pledges for this purpose, so far, from the Governments of Austria, Italy, the Netherlands and the United Kingdom of Great Britain and Northern Ireland, the Secretariat requested Professor Roger Hood, of the Oxford University Centre for Criminological Research, to prepare a study on the above subject for the Committee's initial comments and observations. The preliminary text of the study will be available in English as a Conference Room Paper, and will cover the following aspects:

- (a) Overview of current trends on the question of the death penalty, in law and fact, world-wide;
- (b) Analysis of trends in limiting the category of offences to which the death penalty may be applied;
- (c) Research developments concerning the deterrent value of the death penalty;
- (d) Discriminatory enforcement of the death penalty and its influence on death-row inmates;
- (e) Legislative and practical approaches in the formerly retentionist States that led to the abolition of capital punishment;
- (f) Policy-oriented conclusions and recommendations.

V. COMMENTS AND OBSERVATIONS OF NON-GOVERNMENTAL ORGANIZATIONS

85. Although relevant United Nations bodies, specialized agencies, and intergovernmental and non-governmental organizations were requested to provide information on the implementation of the safeguards, substantive comments and observations were received from only the American Correctional Association, which submitted its contribution on the management of death-row inmates in the United States of America. According to the survey data sent by this Association, the numbers of prisoners sentenced to death in the United States in recent years are as follows: 1981, 821; 1982, 999; 1983, 1,173; 1984, 1,388; 1985, 1,587; 1986, 1,772; 1987, 1,952. Depending on the state, the methods of execution ranged from lethal injection to hanging, electrocution, the firing squad and the gas chamber.

86. The International Association of Penal Law organized, under the United Nations aegis, an International Conference on the Death Penalty, held at the Higher International Institute of Criminal Sciences at Siracusa, Italy, from 17 to 22 May 1987. The Conference participants delivered a number of papers on the death penalty, focusing on the possibility of its abolishment. The proceedings of the Conference have appeared in the Review International de Droit Penal 58/3-4/1987, which will be available to the Committee.

Notes

1/ N. Rodley, The Treatment of Prisoners under International Law (Paris, United Nations Educational, Scientific and Cultural Organization, Clarendon Press, Oxford, 1987), p. 174.

2/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, para. 7. See also Marc J. Bossuyt, "The administration of justice and the human rights of detainees: Elaboration of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty - Analysis concerning the proposition to elaborate a second optional protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty" (E/CN.4/Sub.2/1987/20), para. 18.

3/ A/37/40, annex V, pp. 93-94.

4/ The remaining 12 safeguards concern the right: (a) to a fair and public hearing, (b) to be presumed innocent until proven guilty according to law, (c) to be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her, (d) to have adequate time and facilities for the preparation of his/her defense, (e) to communicate with counsel of his or her own choosing, (f) to be tried without undue delay, (g) to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing, (h) to legal assistance assigned to him or her, and without payment by him or her, if he or she does not have sufficient means to pay for it, (i) to examine or have examined, the witness of the prosecution against him or her, (j) to obtain the attendance and examination of witness on his or her behalf under the same conditions as witness against him or her, (k) to have the free assistance of an interpreter, if he or she cannot understand or speak the language used in court, (l) not to be compelled to testify against himself or herself or to confess guilt.

5/ See also "Social development questions: Capital punishment - Report of the Secretary-General" (E/1985/43), paras. 70-71.

6/ E/1985/43, para. 85 and E/1980/9/Add.3, Capital Punishment Report of the Secretary-General, para. 12.

7/ E/1985/43, para. 25.

8/ E/1985/43, para. 86.

9/ Ivan Potas and John Walker, "Trends and issues in crime and criminal justice: No. 3/1987 - Capital punishment" (Woden, Australian Institute of Criminology).

10/ See further the Australian Law Reform Commission, "Sentencing: penalties", Discussion Paper No. 30 (September 1987), para. 62.

11/ See also E/1985/43, para. 79.

Annex I

SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS
OF THOSE FACING THE DEATH PENALTY*

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

*Economic and Social Council resolution 1986/10.

a/ General Assembly resolution 1982/29, para. 1.

Annex II

CAPITAL OFFENCES IN RESPONDING COUNTRIES*

Offences punishable by death that are intentional offences with lethal consequences.	Offences punishable by death without lethal consequences but with other extremely grave consequences.
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A. North Africa and the Middle East

Algeria

Recidivist acts causing death; instigation of massacres; violence leading to death; homicide; killing of an ascendant, or poisoning; homicide associated with commission of another serious crime; beating or injuring or assaulting of a minor, if death ensues; castration causing death; murder; torture intentionally causing death; placing of an object on a public road or passage resulting in homicide.

Physical torture of a kidnapped person; receiving a ransom from a kidnapped person; armed robbery; leadership of an armed gang.

Arson (intentionally setting fire to buildings; setting fire to property; setting fire to property even if owned by the arsonist; setting fire to other objects; intentional destruction of dwellings (places of habitation); demolition by setting off mines; demolition by setting off explosives; use of violence to cause an aeroplane to deviate from its course; economic sabotage by a public official; attempts against

Treason and bearing of arms; informing and spying; forging of currency and bills; issuance, distribution or selling of forged currency; use of narcotics in a manner detrimental to the moral health of the Algerian people.

*The annex presents an overview of responses concerning existence of (a) intentional offences with lethal consequences (left-hand column) or (b) other extremely grave consequences (right-hand column) in the legislation of responding countries. Since in several replies this division was not followed, i.e. all the capital offences were listed together, the Secretariat differentiated between these offences as far as it was possible. This list is not exhaustive and, therefore, no inferences should be made as to the entire number or character of capital offences owing to an equivocal way of their reporting. While some countries provided offence-by-offence listings, others operated within broader categories of capital offences, e.g. certain property, personal or military offences. In addition, a majority of retentionist countries did not reply to the questionnaire. Thus, the responses obtained should not be taken as indicative of wider tendencies that may exist in the world.

the established order; foundation of armed forces; arrogation of military leadership.

Bahrain

Murder or voluntary or wilful homicide or homicide associated with or related to another crime, or perpetuated against a lineal ascendant of the offenders or against a public official or person assigned to a public service duty because of or on the occasion of the performance of his function or service, or if a poisonous substance or explosive is used to perpetuate it.

Certain crimes affecting the external or internal security of the State.

Chad

Parricide and poisoning; murder; abduction and illegal restraint of persons; arson resulting in the death of persons; destruction by means of explosives resulting in the death of persons.

Treason and espionage; acts of violence, conspiracy and other offences against constitutional order and the integrity and security of the national territory; participation in an insurgent movement; criminal and violent action against the high authorities of the State, the judiciary and the repositories of public authority.

Egypt

Offences against the person, including sabotage and the use of explosives resulting in a person's death.

Offences affecting the internal or external security of the State if the accused person dies as a result of torture.

Jordan

Wilful homicide (premeditated murder); arson if it causes the death of a person; obstruction of means of transport and communication during an armed rebellion or insurrection: roaming the public highways and the countryside as armed gangs with the intention of robbing passers-by and assaulting persons and property.

Bearing arms against the State in the ranks of an enemy; high treason; assault of His Majesty the King or attacking his freedom, seeking to change the Constitution of the State by unlawful means; any act to incite an armed rebellion against the authorities established by virtue of the Constitution; taking part in the rebellion; conspiracy with the intention of committing an act or acts of terrorism if such act leads to the death of a person or to the partial or complete destruction of a building in which there is a person or in which there are a number of persons; deadly assault on an official responsible for the enforcement of the provision of the dangerous drugs law.

Kenya

Murder; aggravated robbery with violence.

Treason.

Kuwait

Intentional homicide; false testimony where it leads to the imposition and execution of the death penalty on a person charged with an offence. Deliberate diversion of aeroplanes or ships with the intention of causing damage, where it leads to the death of a person; acts causing destruction to roads and damage to means of transport or the issuing of warnings with the intention of causing damage, where such acts result in the death of a person; acts of piracy at sea, where these result in the death of one or more persons among the passengers of a vessel; the deliberate use of explosives for the purpose of homicide or destruction where this results in the death of a person.

Kidnapping of a person with the use of force, threat of force or fraud, with intent to kill, cause injury to, have sexual intercourse with or indicating assault on the person, or to force the person into prostitution; rape of a female with the use of force, threat of force or fraud, but with the knowledge that she is insane or mentally deficient, under 15 years of age or unable to give consent for any reason whatsoever if the offender is an ascendant to her, a person who is responsible for rearing or taking care of her or has authority over her or is a servant to her or to those aforementioned.

Torture to force confession to a crime where this leads to death.

High treason; espionage; assault against the life, safety or freedom of the sovereign or deliberate endangerment of the life or freedom of the sovereign; aggression with the use of force to overthrow the existing régime in the country.

Resistance to and aggression against any control officials, where such aggression results in the death or the murder of such officials during or because of the performance of their duties.

Lesotho

Murder.

Treason, rape.

Madagascar (ADF)

Murder, where it is proceeded, accompanied or followed by another crime or where it is aimed at property, facilitating or perpetrating an offence or assisting the escape or securing the impunity of the perpetrators of an offence or their accomplices; assassination, parricide, poisoning, armed robbery, arson resulting in manslaughter or in such injuries or disabilities; an attempt on the life of the Head of State; an attempt inciting civil war, devastation, massacre, plunder; aggravated theft of cattle; instigation to rebellion during wartime or in a territory under siege or on board a military vessel or aircraft during a fire, or while the vessel is being stormed.

Plunder or attempted plunder of State property, public or national, by an organized gang; desertion and conspiracy in the presence of the enemy, treason, espionage; refusal to obey an order to engage the enemy; surrender in the field by the general officer or commander of an armed force; gross negligence during wartime on the part of the commander of naval airforce or land force; destruction by arson or otherwise, of equipment, structures, buildings used by the national service or playing a part in national defence.

Malawi

Murder; robbery with violence/
lethal weapon.

Treason, rape.

Mali

Assassination; parricide; poisoning;
murder.

Treason; espionage; attacks and
conspiracy against the Government;
offences impairing the internal
security of the State or its
territorial integrity through civil
war; the unlawful use of armed
force devastation and public
plunder.

Morocco

Premeditated murder, murder of an
ascendant; infanticide; murder in
the course of another crime; arson
if it causes death; torture and
brutality in the commission of a
felony; injury and beating with the
intention of causing death; felonies
committed against the well-being of
the nation.

Poisoning; violation of personal
liberty accompanied by torture;
attempt on the life of H.M. the
King; attempt on the life of a
member of the Royal family;
treason; spying; prejudice to
internal security; sabotage by
means of explosives or any
explosive material; placing
explosives on public or private
roads resulting in death.

Qatar

Murder; homicide using repulsive or
barbarous methods; if the victim is
an ascendant of the offenders; if the
victim is a public official and the crime
was committed during the performance of
his duties or because of them; if the
crime was committed in order to facilitate
the commission or perpetration of an
offence or the escape from punishment
of those committing it.

Rwanda

Assassination (murder committed with
premeditation or by ambush); parricide;
poisoning; murder; committed with a
view to preparing, facilitating or
perpetrating another offence; armed
robbery committed at night by means
of burglary; recidivism in conspiracy.

Treason; spying, subversion of the
external security of the State
during wartime; resort to terrorism,
armed force or any form of violence
with a view to undermining the
established authority and the
principles of the Constitution;
attacks against the person of the
Head of State to the same ends.

Seychelles

Treason.

Sudan

Murder; culpable homicide not amounting to murder; abetment to commit suicide by an infant or insane or intoxicated person; robbery and brigandry; permitting theft by cheating or robbery; adultery committed by a married Moslem person; incest committed by a married Moslem man; second conviction of operating premises to commit sexual offences.

Treason and spying; mutiny and abetment to it; operating a network of organized crime; destruction of the national economy; defeating the Constitution; desertion from military service; waging war against the State; compelling subordinates to surrender; disgraceful conduct before the enemy.

Syrian Arab Republic

Assault with the aim of instigating civil war or sectarian strife or inciting mass murder; commission of acts of terrorism or sabotaging of installations if the death of a human being results; murder, if committed in preparation of a crime to facilitate escape or against the ascendants or descendants of the perpetrator; assault against the safety of roads or transport, if the death of a human being results; wilful murder of a drugs-control officer.

Carrying of arms by a Syrian in enemy forces; plotting by a Syrian with a foreign State or making contacts with such a State, with the purpose of aggression against the Syrian Arab Republic, if these have effect; plotting by a Syrian with the enemy or making of contacts with a view to assisting its troops to victory; damage of installations and of any military object in time of war or when war is imminent or if the death of a human being results; repetition of duty crimes.

Turkey

Murder of legitimate relatives ascending or descending in line; murder of a member of parliament; multiple murder; assassination (premeditated murder); murder accompanied by torture and barbarous acts; murder by causing fire or flood; murder committed in furtherance of another offence; murder in order to get the fruits of a crime or to conceal the preparation made for that purpose or in the heat of anger resulting from failure to achieve the goal of a crime; murder in order to conceal a crime or to destroy the evidence and traces thereof, or to enable himself or someone to run away from punishment; murder with the motive of blood feud (vendetta murder); rape if followed by the death of the victim slander, if the victim is sentenced to death and that sentence is enforced; perjury, if the accused is sentenced

Crimes against the State: attempts against the independence, integrity or unity of the State; exercise of a senior command or directing the forces of a foreign State that is at war with Turkey; attempts to alter, modify or abolish the constitutional law or overthrow the grand national assembly organized by the said law; overthrowing or preventing the performance of duty of the council of ministers by using force or inciting others to commit this crime; inciting people to revolt against the Government by using arms, burning or poison gases or explosives and as a result of this a revolt breaks out or people are killed; usurpation of military command; crimes against the personality of the State: providing

to death and that sentence is enforced; forming or directing a gang for traffic in heroin, cocaine, morphine or hashish; cumulative offences and recidivism.

intelligence to the enemy with the intention of provoking a war against Turkey, if war breaks out; providing intelligence to the enemy in time of war; sabotage of military works in the interests of a State at war or military operations; suppression, falsification or theft or papers or documents relating to the security of the State, compromising preparations for war; military or political espionage if the act jeopardizes war preparations or war power or war capability or the military operations of the State; communication of secrets affecting the security of the State; disclosure of news for the purpose of political or military espionage, the communication of which is forbidden.

United Arab Emirates

Murder.

High treason.

Yemen

Aggravated homicide; rape or indecent assault resulting in the death or suicide of the victim; gross deliberate destruction of public property if resulting in the victim's death; causing a serious fire or explosion if there is a victim; pollution if resulting in victims; attacks on means of transport if resulting in victims.

Offences affecting the security or safety of the State, crimes against humanity or peace, gross theft of public property.

B. Asia and the Pacific

Burma

Murder with premeditation; murder in the course of committing any offence punishable under Penal Code with imprisonment of up to seven years.

High treason; giving information to any person committing high treason, or collecting or attempting to collect with intent to give such person any information relating to manoeuvres: number, particular situation etc.; concerning the operations of the Armed Forces or the Police Force; intentionally doing any act that delays or ruins the successful performance by the Armed Forces or the Police Force of the State who are performing their duties for the preservation of peace and order of the State;

intentionally or knowingly assisting a person committing high treason, in such acts as causing damage to or interfering with railway service or property relating thereto with or without the notice of intercepting messages thereby; or apparatus or thing relating to aircraft; airfield or air services; engaging or abetting, by way of organization or in collaboration, in trading, viz, buying, obtaining, milling and processing, storing, holding, transporting, selling, transferring commodities specified as those to be dealt with solely by the Government, for the purpose of reselling the same; interfering in such business as producing, trading, storing, inspecting, milling and processing, banking in socialist economic system and abetting in such interference; unlawfully importing or exporting commodities, currencies etc., and abetting in such acts; counterfeiting currency notes and coins declared by the Government to be legal tender, and hoarding, holding and using the same; hoarding, holding, using without the permission of the Government such currency notes and coins declared by the Government to be not of legal tender; holding, dealing in foreign currency without the permission of the Government; destroying public property and abetting in such acts; sabotaging the policy and the programme laid down by the Government, and any enterprise undertaken by the Government, and abetting in such acts; processing and manufacturing or importing or exporting or selling narcotic and dangerous drugs, and abetting or attempting to commit or conspiring with any person to commit such offences.

China

Intentional killing of another person;
robbery that causes person's death;
rape that causes person's death;
explosion that causes person's death.

Treason when the harm to the State and the people is especially serious, plotting to subvert the Government or dismember the State when the harm is especially serious; espionage

when the harm to the State and to the people is especially serious; manufacture, toll or transport of the narcotics when the harm is especially serious; corruption involving articles of public property and the amount involved is especially huge and the circumstances are especially serious; sabotage of means of transport or transport equipment that causes serious consequences.

Japan

Intentional homicide; robbery causing person's death; robbery and rape causing person's death; overturning of a train etc. and thereby causing people's death; endangering traffic and thereby causing people's death; killing of a hostage; causing a crash of an aircraft and thereby causing people's death; arson of inhabited structures etc.; destruction by detonation; damage to inhabited structure by use of explosives.

Inducement of foreign aggression; being a principal conspirator of insurrection; assistance to enemy.

Republic of Korea

Homicide for the purpose of insurrection; murder of an ascendant.

Leading an insurrection; inducement of foreign aggression etc.

C. Eastern Europe

Byelorussian Soviet Socialist Republic

Premeditated murder committed under aggravating circumstances; an attempt on the life of a member of the militia (police force) or of a volunteer civilian policeman under aggravating circumstances; an act of terrorism; an act of terrorism against a representative of a foreign State; aircraft hijacking resulting in the death or grave bodily injury of human beings.

High treason; spying; sabotage; banditry; actions intended to disrupt the work of a correctional labour institution; failure to respond to military call-up in time of war; manufacture or sale of counterfeit money or securities; violation of the rules governing currency transactions; embezzlement of State or public property on a particularly large scale; rape committed by an especially dangerous recidivist or resulting in particularly grave consequences, and also rape of a minor female person; the taking of bribes under particularly aggravating circumstances.

Bulgaria

Crimes against the State; qualified murders and robberies; crimes having to do with the peaceful use of atomic energy.

Crimes against the State; crimes having to do with the military; crimes against peace and humanity; genocide and apartheid; one type of transport offence with extremely grave consequences.

Czechoslovakia

Murder; terror; common menace; endangering the safety of a transport aircraft; abduction of a transport aircraft abroad.

High treason; sedition; terror; diversion; sabotage; and war; treason; espionage; genocide; use of prohibited weapons; war; cruelty; plunder in the theatre of military operations; disobedience; desertion; failure to fulfil a combat task; resistance and coercion into a breach of military duty; violence against a superior; cowardice before the enemy, abandoning combat equipment; breach of guard duty.

Hungary

Murder, attempted murder, genocide, violence against civilian population, criminal warfare.

Treason, supporting espionage, genocide, riot, act of terrorism.

Violence against truce bearer, act of terrorism, hijacking an aircraft, riot; violence against superior or organ of service.

Conspiracy; sedition; sabotage, destruction; supporting the enemy; desertion; evasion of service; refusal of doing service; failure to service duty; riot; disobedience of an order; violence against superior or organ of service, endangering readiness for combat; violation of commander's duty; evasion of duty to fight.

Poland

Murder.

High treason, sabotage, spying, refusal to execute an order in wartime conditions.

Ukrainian Soviet Socialist Republic

Murder committed with premeditation and under aggravating circumstances; an act of terrorism; an attempt on the life of a member of the militia (police force) or of a volunteer civilian policeman under aggravating circumstances; aircraft hijacking resulting in the death or grave bodily injury of human beings.

High treason under particularly aggravating circumstances; sabotage; spying under particularly aggravating circumstances; banditry; particularly grave military crimes in a combat situation; aggravated rape; the production or sale of counterfeit money or securities under aggravating circumstances; the violation of currency operation;

regulations under aggravating circumstances; the theft of State or public property, in particularly large amounts.

Union of Soviet Socialist Republics

Qualified murder; terrorist act; terrorist act against the representative of a foreign State, attempted murder on the militia man or member of the auxiliary forces in aggravating circumstances, hijacking of an aeroplane, death of a heavily injured victim.

Banditry, diversion, high treason, espionage, certain military offences in war time, forging and distribution of money and certificates in aggravating circumstances, bribery in aggravating circumstances, embezzlement of public property of a great amount.

Yugoslavia

Assassination from hostile motives against the State; extremely grave criminal offences with lethal consequences; genocide; grave criminal offences of unlawful killing or wounding of the enemy; certain qualified criminal offences of assassination related to the criminal offences against life and the body; grave cases of criminal offences of endangering security of flight of an aircraft.

Grave cases of criminal offences of recognizing capitulation and occupation; extremely grave cases of certain criminal offences without lethal consequences for one or more persons, but with other extremely dangerous social consequences; war crimes against the civilian population; war crimes against the wounded and the sick; war crimes against prisoners of war when these offences are without lethal consequences for one or more persons but with other extremely dangerous social consequences stipulated by the provisions of the above dispositions; grave cases of certain criminal offences, including criminal offences of default of duty during combat, of absconding from duty during combat; of abandoning position contrary to orders; premature abandonment of damaged ship or aircraft; grave cases of failure to secure a military unit, of weakening combat morale and the combat situation; of failure to secure a military unit; of default of duty in carrying out mobilization.

D. Western Europe

Canada (AO)

Certain military offences.

Belgium (AC)

Assassination and conspiracy to assault the King, his family or heir to the throne.

Crimes against the State's external security; crimes against the State's internal security; crimes against the person; crimes against property.

Greece

Homicide; robbery; blackmail; explosion, embezzlement of State's funds if each of the acts results in victim's death.

Attempt to kill the President of the State (high treason); offences against the internal peace of the State, if the result of the act is war; military service in the enemy army or war force; support of the war force of the enemy; espionage in war time; offences against the integrity of the State; certain military offences; aiding the enemy; communication with the enemy and injurious disclosures; mutiny; failure to suppress mutiny.

E. Latin America and the Caribbean

Guatemala

Parricide, murder, if the circumstances reveal perpetrator's exceptional dangerousness; aggravated rape, where victim is under 10 years of age; enslavement or abduction resulting in the death of abducted person.

Jamaica

Murder.

Mexico (AO)

Certain serious military crimes.