



**OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS**



The question of the death penalty

Human Rights Resolution 2005/59

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, convinced that the abolition of the death penalty is essential for the protection of this right and recalling article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Taking note that the Second Optional Protocol to the International Covenant on Civil and Political Rights provides that no one within the jurisdiction of a State party shall be executed and that each State party shall take all necessary measures to abolish the death penalty within its jurisdiction,

Recalling the entry into force, on 1 July 2003, of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances,

Recalling also its previous resolutions in which it expressed its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court are authorized to impose,

Welcoming also the abolition of the death penalty in some States since the last session of the Commission and decisions taken in other States that restrict the use of the death penalty, inter alia through excluding certain categories of persons or offences from its application,

Commending States that have recently acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights,

Welcoming the fact that many countries that still retain the death penalty in their penal legislation are applying a moratorium on executions, and also welcoming the regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

Reaffirming the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

Reaffirming also resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence,

Deeply concerned about the recent lifting of moratoriums on executions in several countries,

Noting the consideration of issues relating to the question of the death penalty by the Human Rights Committee,

Welcoming the efforts of various sectors of civil society at the national and international levels to achieve the abolition of the death penalty,

1. *Expresses its concern* at the continuing use of the death penalty around the world, alarmed in particular at its application after trials that do not conform to international standards of fairness and that several countries impose the death penalty in disregard of the limitations set

out in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and of the safeguards guaranteeing protection of the rights of those facing the death penalty;

2. *Condemns* the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices;

3. *Condemns also* cases in which women are subjected to the death penalty on the basis of gender-discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities;

4. *Welcomes* the seventh quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2005/3), submitted in accordance with Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1995/57 of 28 July 1995 and Council decision 2004/242 of 21 July 2004, which concludes that there is an encouraging trend towards the abolition and restriction of the use of the death penalty in most countries, but that much remains to be done in the implementation of the aforementioned safeguards in those countries that retain it;

5. *Calls upon* all States that still maintain the death penalty:

(a) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;

6. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

7. *Urges* all States that still maintain the death penalty:

(a) Not to impose it for crimes committed by persons below 18 years of age;

(b) To exclude pregnant women and mothers with dependent infants from capital

punishment;

(c) Not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person;

(d) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

(e) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;

(f) To ensure also that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence;

(g) To withdraw and/or not to enter any new reservations under article 6 of the Covenant that may be contrary to the object and purpose of the Covenant, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;

(h) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgements;

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

(j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

8. *Calls upon* States that no longer apply the death penalty but maintain it in their legislation to abolish it;

9. *Calls upon* States that have recently lifted or announced the lifting de facto or

de jure of moratoriums on executions once again to commit themselves to suspend such executions;

10. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that the death penalty will not be carried out, and calls upon States to provide such effective assurances if requested to do so, and to respect them;

11. *Requests* the Secretary-General to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities;

12. *Decides* to continue consideration of the matter at its sixty-second session under the same agenda item.

*58th meeting
20 April 2005*

[Adopted by a recorded vote of 26 votes to 17,
with 10 abstentions. See chap. XVII, E/CN.4/2005/L.10/Add.17]