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# ABOLITION OF THE DEATH PENALTY WORLDWIDE DEVELOPMENTS IN 1995

## 1. ABOLITION OF THE DEATH PENALTY

### SOUTH AFRICA CONSTITUTIONAL COURT RULING<sup>1</sup>

In its historic decision the South African Constitutional Court ruled on 6 June 1995 that capital punishment for ordinary crimes, as provided for under the Criminal Procedure Act, is inconsistent with the new Interim Constitution which came into force in April 1994. The Court ordered that with immediate effect

*“..the State and all its organs are forbidden to execute any person already sentenced to death under any provisions thus declared to be invalid”.<sup>2</sup>*

The death penalty was declared to be contrary to the Interim Constitution on several grounds and after detailed consideration of a wide range of issues<sup>3</sup>. Ten of the eleven judges concluded that the death penalty constitutes “cruel, inhuman or degrading treatment or punishment”. In addition eight judges found that the death penalty violates the right to life, including one who felt that this sufficed to settle the question; four also found that there had been a violation of the right to dignity, and one found that the death penalty infringed the right to equality.

When considering whether or not the death penalty is a cruel, inhuman or degrading treatment or punishment, Judge President, Arthur Chaskalson, concluded that:

*“...in the context of our Constitution the death penalty is indeed a cruel, inhuman and degrading punishment”..... “[the carrying out of the death sentence] destroys life, which is protected without reservation under section 9 of our Constitution, it annihilates human dignity which is protected under section 10, elements of arbitrariness are present in its enforcement, and it is irremediable.”<sup>4</sup>*

In reaching this conclusion the Judge President and other members of the Court emphasised those factors which make the implementation of the death penalty an arbitrary and capricious punishment. Although improvements in access to justice for all South Africans can be expected, the Judge President noted that:

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<sup>1</sup>For further information on this see “South Africa’s New Constitutional Court abolishes the Death Penalty” - by William A Schabas (an observer at the hearings) in Human Rights Law Journal Vol. 16, No. 4-6, 30 September 1995.

<sup>2</sup>The State v T Makwanyane and M Mchunu, Case No. CCT/3/95, 6 June 1995, Chaskalson, para 151

<sup>3</sup>This summary is extracted from Amnesty International’s *Open Letter to all Members of the Constitutional Assembly of South Africa*, AI Ref: TG\AFR\53\96.01. 1 February 1996

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*“...there are limits to the available financial and human resources, limits which are likely to exist for the foreseeable future, and which will continue to place the poor accused at a significant disadvantage in defending themselves in capital cases...”<sup>1</sup>*

It cannot be denied, he noted, that *“poverty, race and chance play roles in the outcome of capital cases and in the final decision as to who should live and die”*.<sup>2</sup>

In their concurring judgements, some other members of the Court emphasised section nine of the Interim Constitution whereby “Every person shall have the right to life”. Judge Langa, in explaining his emphasis upon this right, referred to

*“..the recent experiences of our people in this country. The history of the past decades has been such that the value of life and human dignity have been demeaned. Political, social and other factors created a climate of violence resulting in a culture of retaliation and vengeance. In the process, respect for life and for the inherent dignity of every person became the main casualties.”<sup>3</sup>*

The members of the Court concluded that the death penalty is, prima facie, an affront to the right to life. As Judge Sachs expresses it, the

*“Unqualified and unadorned words [of section nine] are binding on the State....and, on the face of it, outlaw capital punishment”*.<sup>4</sup>

They considered whether this right could be limited, under section 33 of the Interim Constitution, for instance, on the grounds that the death penalty is “reasonable” and “necessary” as a unique deterrent to violent crime. The judges, in considering the arguments presented on this point, acknowledged the seriousness of the problem:

*“The need for a strong deterrent to violent crime is an end the validity of which is not open to question. The state is clearly entitled, indeed obliged, to take action to protect human life against violation by others.....The level of violent crime in our country has reached alarming proportions.”<sup>5</sup>*

The Court, however, did not accept that the increased level of violent crime in the country during the previous five years was the result of the moratorium against executions first imposed by the previous government. They noted that the rise in levels of crime had begun before the moratorium had been announced; that during the period of the moratorium, death sentences continued to be imposed by the courts, and furthermore, the moratorium could have ended at any time and so criminals would not have had the assurance that they would escape the death penalty.<sup>6</sup>

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<sup>1</sup>Ibid, Chaskalson, para 50

<sup>2</sup>Ibid, Chaskalson para 51

<sup>3</sup>Ibid, Langa para 218

<sup>4</sup>Ibid, Sachs para 350

<sup>5</sup>Ibid, Chaskalson, para 117

<sup>6</sup> Ibid, Chaskalson , paras 118-110; Didcott , paras 181-182

The then Attorney-General of the Witwatersrand, Advocate Klaus von Lieres, himself conceded to the Court that

*“...there is no proof that the death sentence is in fact a greater deterrent than life imprisonment for a long period. It is,” he said “a proposition that is not capable of proof, because one never knows about those who have been deterred; we only know about those who have not been deterred, and who have committed terrible crimes.”<sup>1</sup>*

The Court noted that the upsurge in violent crime had been associated, amongst other factors, with a period of great political turmoil, conflict and social change. The Judge President concluded:

*“We would be deluding ourselves if we were to believe that the execution of a few persons sentenced to death during this period [1990-1995] and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rates of crime. There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction.....The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. Is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.”<sup>2</sup>*

*“But when all is said and done” noted Justice Kriegler “no empirical study, no statistical exercise has been able to demonstrate that capital punishment has any deterrent force greater than that of a really heavy sentence of imprisonment. That is the ineluctable conclusion to be drawn from the mass of data so thoroughly canvassed in the written and oral arguments presented to us.....it simply cannot be reasonable to sanction judicial killing without knowing whether it has any marginal deterrent value.”<sup>3</sup>*

The Court refrained from expressing views on the imposition of the death penalty for treason when the republic is in a state of war.

The ruling provoked a backlash in the form of newspaper articles, editorials and letters to newspapers. Public concern over violent crime was translated into calls for the retention of the death penalty for reasons of both deterrence and retribution. Several opinion polls were conducted which showed that, if left to public opinion, the death penalty would remain (see Item 6 below). Some writers questioned the

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<sup>1</sup>Ibid, Chaskalson, para 127

<sup>2</sup>Ibid, Chaskalson, paras 121-122

<sup>3</sup>Kriegler J, paras 212-213

“right” of the Constitutional Court judges to order an end to the death penalty in the face of public support for it. The National Party, supported by some other parties, called for a referendum on the subject but this demand was ultimately rejected by the National Assembly of the South African Parliament in June 1996. However the issue continued to be debated in the context of discussions over the final form of the South African Constitution.

Until the use of the death penalty was suspended in February 1990, South Africa had one of the highest rates of judicial executions in the world, with over 1,100 executions reported between 1981 and 1990. The 453 prisoners who were under sentence of death at the time of the ruling have remained in custody awaiting a review of their sentences by the trial court which had originally sentenced them to death.

### SPAIN ABOLISHES DEATH PENALTY FOR ALL CRIMES

On 28 November Spain became totally abolitionist when a bill signed by the King removing the death penalty from the Military Penal Code was published in the *Boletín Oficial del Estado*, the official gazette. The Senate had unanimously agreed to the bill on 15 November. Spain is the latest in a series of countries which, having abolished the death penalty for common crimes, have gone on to remove it for all crimes.

The death penalty had been in continuous use in Spain until 1932 when it was abolished for common criminal offences during the reform of the Penal Code under the Second Republic. It was reintroduced for murder and certain other common crimes by the government led by General Franco in 1938. The last executions in Spain took place on 17 September 1975 when five men, convicted of murdering public order officials, were shot by firing squad. Three years after General Franco's death a new constitution was approved by popular referendum in December 1978 which abolished the death penalty for peacetime offences but retained it for offences under the Military Penal Code in time of war.

For years, Amnesty International groups and others had been lobbying the parliaments of the 10 autonomous communities of Spain to send petitions in favour of abolition to the central parliament (*Cortes*) which is made up of the Congress of Deputies and the Senate. A motion in 1986 by parliamentary members to remove the death penalty from the Military Penal Code was defeated, but in November 1994 the Senate unanimously passed a bill asking the government to abolish the death penalty. On 25 April 1995 the Congress of Deputies passed three bills for abolition which it merged into a proposal of law on 18 September. It is this which, after the Senate's final approval, was signed by the King. The extraordinary degree of political consensus for the abolitionist cause was evidenced by the fact that no votes against abolition were cast in the last vote - either in the Congress or in the Senate.

### MAURITIUS BECOMES WHOLLY ABOLITIONIST

On 3 August 1995 the National Assembly, the parliament of Mauritius, passed by a large majority a bill which abolished the death penalty for all offences, replacing it with a mandatory sentence of 20 years' imprisonment. However, President Caseem Uteem returned the bill unsigned for further discussion of the length of sentence. The bill was presented to the National Assembly again in November and the

mandatory sentence was extended to 30 years. Following a further vote the President signed the bill into law on 28 November 1995.

The Amnesty International section in Mauritius had been heavily involved in the struggle for abolition since 1984 when the first execution in the country for over twenty years took place. When the debate took place in the National Assembly many of the members had AI documents with them and paid tribute to the organization's work.

### MOLDOVAN PARLIAMENT VOTES FOR ABOLITION

On joining the Council of Europe on 13 July, Moldova committed itself to an immediate moratorium on executions until the total abolition of capital punishment (see Item 3 below). On 8 December 1995 the parliament of Moldova voted unanimously to drop the death penalty from the country's penal code and replace it with prison terms ranging from 25 years to life imprisonment. At least 21 people were under sentence of death in December at the time of abolition.

The last execution carried out in Moldova was in 1990 when the country was still part of the Soviet Union.

## **2. MORATORIA ON EXECUTIONS**

Several European countries have introduced moratoria on executions: four of them were originally retentionist (countries which retain and use the death penalty for ordinary crimes) one has since become abolitionist, and one is de facto abolitionist (countries and territories which retain the death penalty for ordinary crimes but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years or more, or in that they have made an international commitment not to carry out executions)

### BULGARIA (retentionist)

The moratorium on executions, unanimously adopted on 20 July 1990 by the Seventh Grand National Assembly (the parliament of Bulgaria), is still in place.

### POLAND (retentionist)

Following a vote in the lower House of Parliament (*Sejm*) on 9 June a formal five-year moratorium on executions was introduced. The text of a bill to abolish the death penalty has also been agreed (see Item 3 below).

### MOLDOVA (originally retentionist, now abolitionist)

On 27 June, preparatory to joining the 34-nation Council of Europe, Moldova committed itself to an immediate moratorium on executions and to “*sign and ratify Protocol No. 6 of the European Convention on Human Rights and Fundamental Freedoms<sup>1</sup> on the abolition of the death penalty in time of peace, within three years of accession, and to uphold the moratorium on executions until the total abolition of capital punishment*”. Capital punishment was totally abolished in December 1995 (see Item 1 above).

#### UKRAINE (retentionist)

Ukraine agreed to stop executions under a commitment made in connection with its joining the Council of Europe on 9 November. The commitment was formally noted earlier on 26 September by the Parliamentary Assembly of the Council of Europe when it voted to recommend Ukraine for full membership of the Council. At a meeting in the Ukrainian capital, Kiev, on 17 October between Parliamentary Assembly delegates and government officials, the Minister of Justice, Serhiy Holovaty, said that the moratorium on executions would have immediate effect and that no executions had been carried out since September. However the head of Ukraine’s parliament, Olexander Moroz, later claimed that neither the parliament nor the majority of Ukrainians supported abolition. The then newly-appointed Procurator General, Grigory Vorsinov, reportedly claimed that executions were continuing in two regions of the country and said that he personally had filed a report on an execution recently carried out in the Dnepropetrovsk region.

In 1995, according to official statistics from the Ministry of Justice, 191 people were sentenced to death and there were 149 executions. One person was granted clemency.

#### ALBANIA (abolitionist de facto)

On 29 June, Albania committed itself to a moratorium on executions preparatory to joining the Council of Europe. In a declaration signed on that date Pjeter Arbunori, President of the Albanian Parliament, said he was willing to commit his country to “*sign, ratify and apply Protocol No. 6 of the European Convention on Human Rights on the abolition of the death penalty in time of peace, within three years of accession [to the European Convention on Human Rights] and to put into place a moratorium on executions until [the] total abolition of capital punishment*”.

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<sup>1</sup>The two relevant articles of Protocol No. 6 are:

1. The Death Penalty is abolished. No one shall be condemned to such penalty or executed.
2. A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions....

### **3. PROGRESS ON BILLS TO ABOLISH THE DEATH PENALTY**

#### POLAND

Following a vote in the Polish lower house of parliament (*Sejm*) on 9 June to introduce a five-year moratorium on executions (see Item 2 above) the Polish Government agreed in July on the text of a bill to abolish the death penalty completely. The bill must be approved by the parliament and signed by the President before becoming law. Ministry of Justice spokesman Andrzej Cubala was quoted as saying that his government wanted to abolish the death penalty before the country's planned entry into the European Union.

#### BELGIUM

The Belgian Council of Ministers on 10 November approved the text of a draft bill to abolish the death penalty for all offences in both peacetime and wartime. The bill was expected to be approved by the parliament in the first half of 1996.<sup>1</sup>

Since 1863 death sentences for common criminal offences have, with one exception, always been commuted. No executions have been carried out since August 1950.

A press release issued by the Council of Ministers in November stated that, apart from moral and ethical considerations, retaining the death penalty posed practical problems such as the refusal of certain countries to extradite criminals to Belgium because of the possibility they might face the death sentence. The draft bill also addressed the structure of penalties by replacing the death penalty with life imprisonment and life imprisonment with detention for 20 to 30 years.

### **4. REINTRODUCTION OF THE DEATH PENALTY**

#### USA: NEW YORK STATE

On 7 March 1995 the Governor of New York, George Pataki, signed a bill to reinstate the death penalty in the US state of New York. For each of the past 18 years the New York legislature had adopted bills for the reimposition of the death penalty, but each year they were vetoed by the state governor. For the previous 12 years the governor had been Mario Cuomo and, for the six years prior to that, it was Hugh Carey. Governor Cuomo was defeated in the 1994 election. His successful opponent, George Pataki, had made one of his strongest election points his support for the death penalty and his intention, if elected,

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<sup>1</sup>The bill was passed by the Chamber of Representatives on 13 June 1995. The Senate did not exercise its option to review the bill and at the time of writing it was expected to receive the royal assent and become law by the end of July 1996.

to reintroduce it in the state of New York as soon as possible. Governor Pataki took office on 1 January 1995.

### GAMBIA

The Armed Forces Provisional Ruling Council, which came to power in Gambia in July 1994 after a military coup, issued a decree on 10 August reinstating the death penalty, abolished in April 1993. No death sentences are known to have been passed by the end of 1995.

Death sentences were passed for the first time in two countries where the death penalty had recently been reintroduced. On 20 February **Papua New Guinea** passed its first death sentence since the reinstatement of the death penalty for wilful murder in 1991 in response to an escalation in violent crime in the country. Charles Ombusu was sentenced by the National Court in Popondetta after being convicted of wilful murder and rape.<sup>1</sup> In the **Philippines** more than 68 death sentences had been passed by the end of 1995 following the reinstatement of the death penalty in January 1994. No executions had taken place due to the fact that no equipment existed in the country to carry them out.

## **5. EXPANSION OF SCOPE OF THE DEATH PENALTY**

Expansion of the scope of the death penalty is inconsistent with obligations under the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee, set up under the ICCPR, has stated in its General Comment 6 that states parties are obliged to limit the use of the death penalty.

During 1995 the scope of the death penalty was expanded in several countries, contrary to the wishes expressed by various intergovernmental bodies over the years. In annual reports to the UN Commission on Human Rights, including the one produced for the 51st session (30 January - 10 March 1995)<sup>2</sup>, the Special Rapporteur on extrajudicial, summary or arbitrary executions has repeatedly emphasized that the scope of the death penalty must never be extended and has strongly urged states that have done so to reconsider (see also under Item 7, Developments in Intergovernmental Organizations).

### GUATEMALA

The Guatemalan Congress in March 1995 approved the extension of the death penalty to cover anyone convicted of kidnapping, including accomplices who threaten to kill victims of kidnapping. However, President Ramiro de Leon Carpio neither ratified nor vetoed the law within the legally-specified period, leaving its status unclear. In July new legislation was introduced making political killings by government representatives punishable by the death penalty when the victim is less than 12 years old or more than 60

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<sup>1</sup>His conviction was overturned in 1996.

<sup>2</sup>Report to the 51st session of the UN Commission on Human Rights, UN Document No: E/CN.4/1995/61, paragraph 375

years old. Forced disappearance was also made punishable by the death penalty when the victim as a consequence of forced disappearance suffers serious injury, or permanent psychological trauma, or death.

Such extensions by Guatemala of the scope of the death penalty places the country in violation of its international commitment as party to the American Convention on Human Rights. Article 4(2) of the American Convention on Human Rights states in part: “*The application [of the death penalty] shall not be extended to crimes to which it does not presently apply*”.

### KUWAIT

Under a law introduced in 1983, the death penalty is provided for drug dealers who murder or attempt to murder a member of the security forces. On 25 April 1995 the parliament of Kuwait passed a law introducing the death penalty as a mandatory punishment for certain other drug-related crimes. Under the new law the death penalty must be imposed on people using children to trade in narcotics, those repeatedly convicted of trading in drugs, and on officials assigned to fight the narcotics trade who themselves trade in drugs.

### CÔTE D’IVOIRE

A law extending the death penalty to robbery with violence was accepted by the National Assembly, the country’s parliament, on 24 June. The new law also allows for execution in public (by firing squad). However, the law has not yet been promulgated by the President and no executions have been reported.

Although Côte d’Ivoire has retained the death penalty from French colonial times, from 1960 until his death in December 1993 founding President Felix Houphouët-Boigny always commuted death sentences to jail terms.

### CHINA

The *Decision on Punishing Criminals Charged for Disrupting Financial Order* was adopted on 30 June 1995 by the National People’s Congress<sup>1</sup>. It increased the maximum penalty for this crime from life imprisonment to death. The offences now punishable by death include counterfeiting, cheating people of their deposits, defrauding banks by forging documents or making bogus insurance claims.

According to an official with the Legal Affairs Commission of the National People’s Congress Standing Committee, the new law will first be used against those involved in forging money, followed by those who fraudulently open bank accounts or forge bank documents and people faking accidents to claim insurance. Foreign investors have been warned by Hong Kong analysts that this extension of the death penalty could also apply to them.

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<sup>1</sup>South China Morning Post 6 May 1995

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In November 1995 a new law was published which increased the maximum penalty for serious value-added tax fraud from life imprisonment to death.<sup>1</sup>

## 6. OPINION POLLS

### USA

In February the US Death Penalty Information Center<sup>2</sup> issued the findings of a survey of police chiefs' views on the death penalty. The survey, entitled *On the Front Line: Law Enforcement Views on the Death Penalty*, contained the results of telephone interviews with 386 randomly chosen police chiefs in 48 states across the USA. An analysis of the findings showed that for police chiefs the death penalty came last on a list of measures which were ranked according to their likely impact on violent crime. More than 80 per cent of those questioned agreed that most offenders were not deterred by the possibility of a death sentence and 85 per cent agreed that politicians placed too much emphasis on the value of the death penalty as a crime control measure.

In another survey the National League of Cities polled 382 elected officials in various cities in the USA and asked them what governments could do to reduce urban crime. On a list of 20 categories of public safety measures for this purpose "more death penalties" was ranked last.

### SOUTH AFRICA

Three polls carried out in the course of the year showed strong public support for retention of the death penalty.

In April the Research Surveys Group, South Africa's largest consumer research company, interviewed thousands of people from metropolitan areas. According to their findings 80 per cent of whites interviewed felt the death penalty should be retained, 12 per cent wanted it abolished and 8 per cent abstained. Forty-nine per cent of blacks interviewed felt the death penalty should be retained, 34 per cent wanted it abolished and 17 per cent abstained.

In July Markinor, a market research organization, published the results of a survey conducted in five South African cities - Johannesburg, Durban, Pietermaritzburg, Bloemfontein and East London. Of the 2,000 people interviewed, half were asked if they supported the death penalty in principle and the remaining half were asked the same question but with the qualification of the crime for which the penalty was imposed - rape, child abuse, murder or treason. Sixty-two per cent of those in the first group supported the death penalty in principle. In the second group 78 per cent agreed with the death penalty for the murder of a

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<sup>1</sup>Amnesty International *China: Death Penalty Continues to Expand in 1995* AI Index: ASA 17/04/95,

<sup>2</sup>Death Penalty Information Center, 1606 20th St., NW, Washington DC 20009, USA

child, 70 per cent for the murder of an adult, 65 per cent for the murder of a policeman; 63 per cent thought rapists should be executed and 61 per cent voted for execution for serious child abuse, while only 35 per cent thought that the death penalty was a suitable punishment for treason.

In October Market Research Africa conducted a survey of 2,502 residents in non-rural households, half male and half female. The survey covered metropolitan areas, cities, towns and villages throughout South Africa including Cape Town, Durban, East London, Gauteng, Kimberley, Port Elizabeth, Uitenhage and Pietermaritzburg. According to the results 77 per cent of South Africans as a whole want the death penalty reinstated.

### CANADA

The Angus Reid Group conducted a poll in June, interviewing a representative cross-section of 1,500 adult Canadians by telephone. They found that 69 per cent of Canadians favoured the return of capital punishment with 29 per cent against. The group concluded their findings by saying that “*A clear majority of Canadians from all major population segments would like to see the return of capital punishment.*”

The Reform Party of Canada, the third largest party of the federal parliament, has been campaigning for a binding national referendum on the death penalty but the Canadian government say they have no intention of reopening the debate.

## **7. DEVELOPMENTS IN INTERGOVERNMENTAL ORGANIZATIONS**

The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, presented his third report to the United Nations Commission on Human Rights since assuming his functions in June 1992<sup>1</sup>. It covered developments in 1994. The concerns expressed in it were similar to those in his previous two reports.

Reporting that expansion of the scope of the death penalty had taken place in Peru, the USA and Nigeria the Special Rapporteur emphasized once again that “*the scope of the death penalty should never be extended*” and invited those States which had done so to reconsider (paragraph 375).

He had received reports of death sentences imposed after proceedings in which the defendants did not fully benefit from the rights and guarantees for a fair trial as contained in international instruments in: Algeria, Bosnia and Herzegovina, the Central African Republic, China, Egypt, Iran, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Myanmar, Nigeria, Sierra Leone, Singapore, Trinidad and Tobago, Ukraine, the

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<sup>1</sup>See footnote to page 8

United Arab Emirates, the USA and Yemen (paragraph 376). As in previous reports he emphasized that “*Proceedings leading to the imposition of capital punishment must confirm to the highest standards of independence, competence, objectivity and impartiality of judges and juries.*”(paragraph 377)

He reiterated his concern that special jurisdictions to speed up proceedings have been set up, often with lower standards of due process and respect for the right to life than in ordinary criminal proceedings. Special jurisdictions such as these were reported to have been set up in Algeria, Egypt and Nigeria (paragraph 379).

Persons convicted for crimes committed when they were under the age of 18 were still being sentenced to death, or legislation was still in place which allowed this, in Algeria, Pakistan and the USA. Reports had been received of defendants suffering from mental retardation being executed in Japan and USA. The Special Rapporteur once again expressed his concern (paragraph 380).

There were two cases which were new and merited special attention. The first was the execution of Glen Ashby in Trinidad and Tobago on 14 July 1994 while his appeal procedures were still pending. The Judicial Committee of the Privy Council (JCPC) in London, which serves as the final court of appeal for certain countries in the British Commonwealth, in a decision in 1993 had held that awaiting the execution of a death sentence for five years after it had been handed down constituted cruel and inhuman treatment and the sentence should be commuted. Glen Ashby was executed four years and eleven months after having been sentenced to death in June 1989 and while his appeal was still in progress. In his report to the Commission at its 50th session the Special Rapporteur had expressed his concern that the decision of the JCPC might encourage governments to carry out executions more speedily, which, in turn, was likely to affect defendants’ rights to full appeal procedures. He reiterated his view that the judgment should rather be interpreted in the light of the desirability of the abolition of capital punishment (paragraph 382).

The other case concerned the reported execution of Adzhik Aliyev in Tajikistan, one day before the signing of an agreement under which he may have been eligible for release from prison. The Special Rapporteur expressed his view that, although the death penalty is not prohibited under international law, there is no such thing as a right to capital punishment, restricted only by some limitations contained in the pertinent international instruments (paragraph 383).

## 8. UN QUINQUENNIAL REPORT ON CAPITAL PUNISHMENT<sup>1</sup>

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<sup>1</sup>Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty; Report of the Secretary-General, UN document number E/1995/78, and E/1995/78Add.1

Every five years the UN Secretary-General is mandated to produce a report on capital punishment. These reports are a unique source of information because they are based on information supplied by governments, as well as non-governmental organizations and expert studies.

The Secretary-General's latest quinquennial report, the fifth in the series, was issued on 8 June 1995, with additions on 29 June and 6 July. Sixty-three governments responded to the Secretary-General's request for information, a higher number than the 55 which supplied information for the previous report in 1990.

The report compares recent information with that from previous periods and concludes that "*an unprecedented number of countries have abolished or suspended the use of the death penalty*". It goes on to state that "*...the pace of change may be seen to have been quite remarkable. In the years since 1989, 24 countries have abolished the death penalty, 22 of them for all crimes whether in peacetime or in wartime.*" But four countries have reintroduced the death penalty since 1989, two countries that were formerly considered abolitionist *de facto* have resumed executions, and "*several countries have expanded the scope of the death penalty as a reaction to perceived upsurges in crime*"(paragraph 89).

The 1995 report covers both the question of capital punishment as such and the implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council (ECOSOC) in 1984. It notes that, contrary to the 1984 Safeguards, the death penalty is used for "*offences without intentional lethal consequences, various political offences and offences related to military discipline.*" Fair trials are not always applied and another problem is that "*mandatory death sentences, that provide no leeway for mitigating circumstances exist in a number of countries*". The report suggests providing a clearer definition of mental retardation in line with the recommendation adopted by ECOSOC in 1989 (in resolution 1989/64) that the death penalty be eliminated for "*persons suffering from mental retardation or extremely limited mental competence*" (paragraph 90).

For the first time inquiries were made about the penalties which have replaced the death penalty after abolition. "*Several trends emerged*" the report states. "*First, it was relatively rare for the length of imprisonment to be fixed mandatorily by law. Second, many countries gave the courts the discretion to pass a sentence of either imprisonment for life or a determinate period in prison that varied among countries but was most often for a period of between 15 and 25 years, although terms for economic crimes formerly subject to the death penalty tended to be shorter. Third, although at least one country had no provision for the remission of sentence, most did allow the shortening of the period in custody through various systems of conditional release, often after about two-thirds of the penalty had been served.*" (Paragraph 44).

After considering the report the Economic and Social Council adopted a resolution on 28 July setting forth the method to be used in compiling the next quinquennial report in the year 2000 and requesting the UN Commission on Crime Prevention and Criminal Justice to examine the report at its fifth session in 1996.

## 9. NEW PARTIES TO INTERNATIONAL TREATIES ON THE DEATH PENALTY

The number of countries parties to international treaties on the death penalty continued to grow. Three countries in 1995 became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, bringing the number of states parties to 29<sup>1</sup>. Twenty-three countries were parties to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the abolition of the death penalty at the end of the year. Three countries were parties to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. A number of other countries had signed one or more of the protocols, indicating their intention to become parties at a later date.

The following table shows states parties and signatories to the three anti-death penalty treaties as of 1 January 1996.

INTERNATIONAL TREATY	STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED	STATES PARTIES
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Belgium, Costa Rica, Honduras, Nicaragua	Australia, Austria, Croatia, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Macedonia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela
Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty	Belgium, Estonia, Greece	Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland
Protocol to the American Convention on Human Rights to Abolish the Death Penalty	Brazil, Costa Rica, Ecuador, Nicaragua	Panama, Uruguay, Venezuela,

## 10. DEATH SENTENCES AND EXECUTIONS

<sup>1</sup>Macedonia acceded to the Second Optional Protocol on 26 January 1995 and Croatia on 12 October 1995. Italy ratified the Protocol on 14 February 1995.

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During 1995, at least 2,931 prisoners are known to have been executed in 41 countries and 4,165 people were sentenced to death in 79 countries. These figures include only cases known to Amnesty International; the true total would certainly be higher.

Following the pattern of previous years a small number of countries accounted for the majority of executions recorded. Amnesty International received reports of 2,190 executions in China, 192 executions in Saudi Arabia and over 100 in Nigeria. These three countries alone accounted for 85 per cent of all executions recorded worldwide by the organization. Reports were also received from unofficial sources of 101 executions in Kazakhstan. Kazak officials put the figure at 63. Numerous executions were also reported in Iraq but Amnesty International has been unable to confirm most of them or to give an exact figure.<sup>1</sup>

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<sup>1</sup>Amnesty International, "Death Sentences and Executions in 1995", AI Index: ACT 51/01/96, 27 March 1996

**TABLE 1. NUMBER OF ABOLITIONIST COUNTRIES AT YEAR END,  
1980 - 1995**

<b>Year</b>	<b>No. countries abolitionist for all crimes</b>	<b>No. countries abolitionist in law or practice</b>
1981	27	63
1982	28	63
1983	28	64
1984	28	64
1985	29	64
1986	31	66
1987	35	69
1988	35	80
1989	39	84
1990	46	88
1991	46	83
1992	49	84
1993	53	90
1994	55	97
1995	56	101

**TABLE 2. RECORDED WORLDWIDE EXECUTIONS BY YEAR,  
1980 - 1995**

<b>Year</b>	<b>No. countries carrying out executions</b>	<b>No. executions recorded</b>	<b>No. countries with over 100 executions (1984-1994)</b>	<b>% of all recorded executions carried out in countries with over 100 executions (1984-1994)</b>
1980	29	1229		
1981	34	3278		
1982	42	1609		
1983	39	1399		
1984	40	1513	4	78%
1985	44	1125	3	66%
1986	39	743	3	56%
1987	39	769	3	59%
1988	35	1903	3	83%
1989	34	2229	3	85%
1990	26	2029	4	84%
1991	32	2086	2	89%
1992	35	1708	2	82%
1993	32	1831	1	77%
1994	37	2331	3	87%
1995	41	2931	3	85%