

**EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS – THE  
SCOPE OF THE MANDATE OF THE SPECIAL RAPPORTEUR**

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**CONTENTS:**

CONTENTS: .....	2
1. THE CONCEPT OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS .....	3
1.1 Definitions .....	3
1.2 The current scope of extrajudicial, summary or arbitrary executions .....	4
2. IMPUNITY & NON-STATE ACTORS .....	7
2.1 State responsibility for private actions .....	7
2.1 Conclusions .....	8
3. HONOUR KILLINGS .....	9
3.1 Background .....	9
3.2 Honour killings and women’s human rights .....	11
3.3 Conclusions .....	12
4. DEATH PENALTY .....	12
4.1 When does the imposition of capital punishment amount to an extrajudicial, summary or arbitrary execution? .....	12
4.2 The desirability of the abolition of the death penalty .....	14
5. EVALUATION OF THE PRESENT RELEVANT SCOPE OF THE MANDATE .....	15
ANNEX I .....	18
RESERVATIONS TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	
ANNEX II .....	26
DECLARATIONS RECOGNIZING THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 41 ICCPR 26	
ANNEX III .....	34
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS – PARTIES AND RESERVATIONS	
ANNEX IV .....	42
HUMAN RIGHTS COMMITTEE, GENERAL COMMENT 6	
ANNEX V .....	44
PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS	

## 1. THE CONCEPT OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

### 1.1 Definitions

The Economic and Social Council (Ecosoc) resolution 1982/35 which originally gave the Special Rapporteur his mandate contains no definition of what amounts to 'summary' or 'arbitrary' execution. Neither are the concepts defined in international treaties which are relevant to the topic.<sup>1</sup> The first Special Rapporteur, Mr. Amos Wako, therefore attempted to define the concepts and presented the following tentative definitions:

- 'Summary executions' is the arbitrary deprivation of life as a result of a sentence imposed by the means of summary procedure in which the due process of law and in particular the minimum procedural guarantees as set out in Article 14 of the Covenant are either curtailed, distorted or not followed.
- 'Arbitrary execution' is the arbitrary deprivation of life as a result of the killing of persons carried out by the order of a government or with its complicity or tolerance or acquiescence without any judicial or legal process.
- 'Extra legal execution' refers to killings committed outside the judicial or legal process, and at the same time, illegal under relevant national and international laws. Accordingly, in certain circumstances 'arbitrary execution' as defined above can be an 'extra legal execution'.<sup>2</sup>

Professor Nigel Rodley has defined extrajudicial executions as "killings committed outside the judicial process by, or *with the consent of, public officials*, other than as necessary measures of law enforcement to protect life or as acts of armed conflict carried out in conformity with the rules of international humanitarian law."<sup>3</sup>

Another attempt to definition has been offered by the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions according to which extrajudicial, summary and arbitrary executions shall "not be carried out under any circumstances including, but not limited to situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in official capacity or by a person acting at the instigation, or *with the consent or acquiescence of such a person*, and situations in which deaths occur in custody."<sup>4</sup>

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary executions were adopted by Ecosoc resolution 1989/65. Although the instrument is of itself not legally binding, it is relevant in determining the scope of what constitutes unlawful deprivations of life.<sup>5</sup> The principles have accordingly been

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<sup>1</sup> See *Report - Summary or Arbitrary Executions*, UN Doc. E/EC.4/1983/16, para. 53.

<sup>2</sup> See *Report - Summary or Arbitrary Executions*, UN Doc. E/EC.4/1983/16, para. 66.

<sup>3</sup> Rodley, N. 1999, *The Treatment of Prisoners under International Law*, 2<sup>nd</sup> ed., Clarendon Press, Oxford, p. 182 (emphasis added).

<sup>4</sup> *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Ecosoc res. 1989/65, para. 1 (emphasis added).

<sup>5</sup> Rodley 1999, p. 180.

referred to in Commission on Human Rights (CHR) resolutions concerning extrajudicial, arbitrary or summary executions since 1992. In res. 1992/72 the CHR recalled the standards which form the legal justification of the mandate of the Special Rapporteur. One of these standards is Ecosoc res. 1989/65 concerning the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary executions. In subsequent resolutions the CHR has recalled these standards, most recently in res. 2000/31: “*having regard* to the legal framework of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions, including the provisions contained in Commission resolution 1992/72 of 5 March 1992 and General Assembly resolution 47/136 of 18 December 1992”. The Principles are divided in three section that issue principles on the prevention, investigation and the legal proceeding as regards extrajudicial, summary and arbitrary executions. See annex V for more details.

## **1.2 The current scope of extrajudicial, summary or arbitrary executions**

The shortage of definitions of the concepts extrajudicial, summary and arbitrary executions indicates the difficulties in providing comprehensive definitions of these concepts. Consequently, the Special Rapporteurs following Mr. Wako, Mr. Bacre Waly Ndiaye and Ms. Asma Jahangir, have not attempted to define the concepts concerned. Instead they have clarified the concepts by listing types of executions. The most recent of such lists is the one presented by the Special Rapporteur on summary, extrajudicial and arbitrary executions in her latest report, which states the situations involving violations of the right to life upon which the Special Rapporteur takes action<sup>6</sup>:

- Genocide;
- Violations of the right to life during armed conflict, especially of the civilian population and other non-combatants, contrary to international humanitarian law;
- Deaths due to attacks or killings by security forces of the State, or paramilitary groups, death squads, or other private forces cooperating with or tolerated by the state;
- Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- Deaths in custody owing to torture, neglect, or use of force, or life-threatening conditions of detention;
- Deaths threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals, or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;

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<sup>6</sup> *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, submitted pursuant to Commission on Human Rights resolution 2000/31, section I B.

- Expulsion, *refoulement*, or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;
- Deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the State fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;
- Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;
- Breach of the additional obligation to provide adequate compensation to victims of violations of the right to life, and failure on the part of Governments to recognize compensation as an obligation;
- Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes where capital punishment is imposed in violation of article 6(2) and 15 of the International Covenant on Civil and Political Rights and article 37(a) of the Convention of the Rights of the Child, article 77(5) and relevant articles of the Geneva Conventions of 1949 and the Additional Protocols of 1977. In addition, the Special Rapporteur is guided by various resolutions of United Nations organs and bodies, in particular:
  - General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 regarding capital punishment;
  - General Assembly resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
  - Commission on Human Rights resolutions 1997/12, 1998/8, 1999/61 and 2000/65 regarding the death penalty;
  - The Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council in resolution 1984/50 on 25 May 1984, and endorsed by the United Nations General Assembly in resolution 39/118, adopted on 14 December 1984;
  - United Nations Economic and Social Council resolution 1989/64 adopted on 24 May 1989.

In view of these guidelines and international standards, the Special Rapporteur acts where:

- The crime concerned cannot be considered 'most serious' as stipulated under article 6(6) of the International Covenant on Civil and Political Rights.
- The death penalty is imposed retroactively.
- Persons are sentenced to death for crimes committed when they were less than 18 years of age.

- Expectant or recent mothers face the death penalty.
- Persons suffering from mental illness or handicap or those with extremely limited mental competence who are facing the death penalty.
- When a death sentence which has been implemented is posthumously overturned.
- Consular assistance is denied or not made available to a person facing the death penalty.
- The accused is denied his or her right to appeal or seek pardon or commutation of a death sentence.
- When a death sentence is imposed following a trial where international standards of impartiality, competence, objectivity and independence of the judiciary were not met.
- When the legal system does not conform to minimum fair trial standards.
- When the death penalty is imposed as a mandatory measure without due regard to the safeguards enumerated above and where compelling mitigating circumstances are not taken into consideration.

The situations of extrajudicial, summary and arbitrary executions which the Special Rapporteur is requested to examine include all acts and omissions of state representatives that constitute a violation of the general recognition to the right to life embodied in the universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>7</sup> The Special Rapporteur may thus take action *inter alia* in the event of “deaths, threats and fear of imminent extrajudicial executions by ... private individuals ... tolerated by the Government” and “deaths due to acts of omission on part of the authorities, including mob killings” as well as in cases where the State “fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction”<sup>8</sup> The former Special Rapporteur defined arbitrary executions as “the arbitrary deprivation of life as a result of the killing of persons carried out by the order of a government or with its *complicity or tolerance or acquiescence* without any judicial or legal process”.<sup>9</sup> The first Special Rapporteur, Mr. Amos Wako, noted in his first report that “although the resolutions leading to the mandate of the present study limit the concept of summary and arbitrary executions to acts or omissions attributable to Governments or government agents, the Special Rapporteur considers that further thought should be given to responsibility on non-governmental groups for acts or omissions leading to deprivation of life in a manner equivalent to that resulting from summary or arbitrary executions.”<sup>10</sup> Also the other definitions mentioned above include violations of the right to life by private actors in the event of *consent or acquiescence* on part of the authorities. It may therefore be concluded that violations of the right to life by

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<sup>7</sup> *Extrajudicial, summary or arbitrary executions, Fact Sheet No. 11* (rev. 1) 1997, p. 5.

<sup>8</sup> *Extrajudicial, summary or arbitrary executions - Report by the Special Rapporteur*, submitted pursuant to Commission on Human Rights resolution 2000/31, section I B (h).

<sup>9</sup> See *Report - Summary or Arbitrary Executions*, UN Doc. E/EC.4/1983/16, para. 66 (emphasis added).

<sup>10</sup> *Summary or arbitrary executions – Report by the Special Rapporteur*, UN Doc. E/CN.4/1983/16, para. 68.

private actors fall within the mandate in the event of the state's complicity, tolerance or acquiescence.

## 2. IMPUNITY & NON-STATE ACTORS

The basis of impunity may lie in legislation that exempts perpetrators of human rights violations from prosecution. In other cases impunity exists in practice despite the existence of legal provisions for the prosecution of human rights violators.<sup>11</sup> States are obliged to carry out "exhaustive measures and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant compensation to the victims or their families, and to take effective measures to avoid future recurrence of such violations."<sup>12</sup> The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provide a detailed description of these obligations.

### 2.1 State responsibility for private actions

The doctrine of state responsibility holds a state accountable for breaches of international obligations committed by or attributable to the state.<sup>13</sup> There are, however, principles recognised by international law that attach legal responsibility to a state for acts committed by private persons not acting on behalf of a state. Different authors identify slightly differing principles<sup>14</sup> but these principles could be summarised as follows: *state agency*, i.e., a person is in fact acting on behalf of a state or exercises governmental authority in the absence of official authority, *ratification or adoption* of harmful acts, *state complicity* in wrongs committed by private persons and *state failure to exercise due diligence* in the control of private persons. The state may also be held accountable in exceptional situations where certain conduct is carried out in the absence of the official authorities due to the partial or total collapse of the state.<sup>15</sup>

With respect to the present context the principle of failure to exercise due diligence is perhaps of most relevance. The term 'failure to exercise due diligence' refers to those reasonable measures of prevention that a well-administered government could be expected to exercise under certain circumstances.<sup>16</sup> The state is therefore not

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<sup>11</sup> UN Doc. A/51/457, para. 121-122.

<sup>12</sup> See, e.g., *Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions*, 7 October 1996, UN Doc. A/51/457, para. 75 and Commission on Human Rights Resolution 1995/73, UN Doc. E/CN.4/RES/1995/73, para. 3.

<sup>13</sup> See eg. Cook, R. 1994, *Violations of Women's Human Rights*, *Harvard Human Rights Journal*, vol. 7, pp. 125-176, at p. 127.

<sup>14</sup> See eg. Brownlie, I. 1983, *System of the law of nations: State responsibility part I*, Clarendon Press, Oxford, pp. 160-163; Cook 1994, pp. 142-143 and Kamminga, M. 1992, *Inter-state accountability for violations of human rights*, University of Pennsylvania Press, Philadelphia, p. 143.

<sup>15</sup> See Chinkin, C. 1999, *A Critique of the Public/Private Distinction*, *European Journal of International Law*, vol. 10, no. 2, pp. 387-395, at p. 388 and UN Doc. A/CN.4/L.569, 4.8.1998.

<sup>16</sup> Shelton, D. 1993, *State Responsibility for Covert and Indirect Forms of Violence*, pp. 265-276, at p. 272 in Mahoney, K. and Mahoney, P. 1993, *Human Rights in the 21<sup>st</sup> Century: A Global Challenge*, Martinus Nijhoff Publ., Dordrecht.

responsible for human rights violations carried out by private persons *per se* but is bound to exercise due diligence to eliminate, reduce, and mitigate private discrimination and harmful acts. Similar responsibility arises when a state fails to prevent anticipated violations of human rights.<sup>17</sup> In the *Velasquez Rodriguez* case the Inter-American Court of Human Rights held that an illegal act which violates human rights and which initially is not directly imputable to the state, for example because it is an act of a private person, can lead to international responsibility of the state, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it.<sup>18</sup> The UN Human Rights Committee has taken a similar approach to the issue, amongst others, in the case of *Herrera Rubio v. Colombia* where the Committee held that Colombia was responsible for failure to take effective measures in order to prevent the disappearances and subsequent executions of the victims as well as for failing to effectively investigate and remedy the violations suffered.<sup>19</sup>

## **2.1 Conclusions**

States are thus “obliged to accept the ‘privatisation’ of human rights as a juridical fact” and may not argue that international treaties do not have relevance for the activities of private actors.<sup>20</sup> The state is also obliged to protect individuals against violations carried out by other private persons. Failure of the state to prosecute, arrest or imprison persons who have committed human rights violations against other private persons can be seen as consent to the acts of the private actors and the state can thus be held responsible for such failure to act. Failure to effectively investigate private violations of human rights and failure to effectively remedy the violations suffered as well as failure to take appropriate action in order to prevent private violations of human rights also constitute breaches of the state’s obligation to protect its citizens. States are also responsible to “organize the governmental apparatus and, in general, all the structure through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”<sup>21</sup> Similarly, the state should “through judicial and other means” guarantee effective protection to individuals and groups who are in danger of extrajudicial executions or receive death threats.<sup>22</sup>

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<sup>17</sup> Cook 1994, p. 151.

<sup>18</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez case* (Forced Disappearance and Death of Individual in Honduras) 27.7.1988, 28 I.L.M. 291 (1989), para. 172.

<sup>19</sup> *Herrera Rubio v. Colombia*, Human Rights Committee, Communication no. 161/1983, UN Doc. CCPR/C/OP/2, pp. 192-195.

<sup>20</sup> Clapham, A. 1993, *Human Rights in the Private Sphere*, Clarendon Press, Oxford, p. 111.

<sup>21</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez case* (Forced Disappearance and Death of Individual in Honduras) 27.7.1988, 28 I.L.M. 291 (1989), para. 166.

<sup>22</sup> *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Ecosoc res. 1989/65, para. 4.



### 3. HONOUR KILLINGS

#### 3.1 Background

The Special Rapporteur has drawn attention to so-called ‘honour killings’ where husbands, fathers or brothers have gone unpunished after having murdered their wives, daughters or sister in order to defend the honour of the family. Such killings have been reported to take place in countries in the Middle East, Latin America and South Asia. The practice is usually resorted to when a woman is believed to have engaged in a sexual relationship with a man. In other cases women have reportedly been killed by their husbands after having demanded a divorce.<sup>23</sup> Young girls and women have also been forced to commit suicide after public denunciation of their behaviour and open threats to their lives. Girls and women may also be victims of acid attacks; many of these women die as a result of their injuries.<sup>24</sup> The ‘honour killing’ is usually a decision by an improvised tribunal consisting of male family members, and is as a rule carried out by an under-age male relative of the woman. Such offenders are given special consideration of mitigation on the plea of cultural sensitivity. According to information received by the Special Rapporteur, men who commit ‘honour killings’ normally receive considerably shorter sentences, as courts view defence of the honour of the family as a mitigating circumstance. It is also alleged that the police often fails to intervene to stop ‘honour killings’ they are aware of.<sup>25</sup>

In Pakistan the 1990 law of Qisas and Diyat covers offences relating to physical injury, manslaughter or murder. In a Supreme Court case a judge explained: “In Islam, the individual victim or his heirs retain from the beginning to the end entire control over the matter including the crime and the criminal. They may not report it, they may not prosecute the offender. They may abandon prosecution of their free will. They may pardon the criminal at any stage before the execution of the sentence. They may accept monetary or other compensation to purge the crime and the criminal. They may compromise. They may accept *quisas* [punishment equal to the offence] from the criminal. The state cannot impede but must do its best to assist them in achieving their object and in appropriately exercising their rights.”<sup>26</sup> Prior to this law Section 300(1) of the Pakistan Penal Code read: “Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation...” The interpretation by the courts of this law was that if the ‘provocation’ – to a man’s honour – is grave and sudden as when someone tells him that his wife has an ‘illicit’ relationship, he loses all power of self-control and is not fully responsible for his

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<sup>23</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/1999/39, para. 74.

<sup>24</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/2000/3, para. 78.

<sup>25</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/1999/39, para. 74.

<sup>26</sup> *Federation of Pakistan through Sec. Min. of Law vs. S. Gul Hassan Khan*, PLD 1989 SC 633, quoted in *Amnesty International: Pakistan: Honour killings of girls and women*, ASA 33/18/99, p. 12.

actions. This provision was omitted when the 1990 law of *Disas and Qiyat* was introduced but judicial practice still allows such mitigating circumstances.

In some cases courts have found extenuating circumstances even when the murderer did not claim to have been suddenly and severely provoked. In one case a man killed his wife alleging that he had caught her committing adultery. Although the facts, including medical evidence, spoke against his assertion, the court accepted mitigating circumstances: “The appellant had two children from his deceased wife and when he took the extreme step of taking her life giving her repeated knife blows on different parts of her body, she must have done something unusual to enrage him to that extent.”<sup>27</sup> In another case two men were sentenced to life imprisonment for killing their sister who had married a man of her choice. The Lahore High Court reduced the sentence (already undergone) to 18 months, saying that “in our society nobody forgives a person who marries his sister or daughter without the consent of parents of near relatives.”<sup>28</sup> It must be stressed, however, that more recently a constitutional body in Pakistan, the Council of Islamic Ideology, has categorically stated that ‘honour killings’ are not in conformity with Islamic injunctions.<sup>29</sup>

In Jordan, article 340 of Jordanian Penal Code includes several articles providing for reduced penalties for men who kill their wives or female relatives because of adulterous relationships. Jordanian courts often pass reduced sentences ranging from two years to six months of imprisonment.<sup>30</sup> The Governments of Jordan and Turkey have taken initiatives to abolish or amend their legislation in order to bring it into conformity with international standards with regard to ‘honour killings’. The Government drafted a bill to repeal article 340 and terminate the absolving excuse. The bill failed twice to be adopted by the Lower House of Parliament.<sup>31</sup> His Majesty King Abdullah, Her Majesty Queen Noor and the Minister of Justice of Jordan have made public statements in support of amending the penal laws discriminating against women.<sup>32</sup>

In Sweden two brothers were recently sentenced to life imprisonment for killing their 19-year-old niece during a stay in Iraq. The girl’s father and uncles did not accept that the girl did not live accordingly to strict rules imposed by her father and therefore killed her. The girl’s younger sister witnessed the murder and contacted the police in Sweden. The two men were on trial in Iraq for the crime but were released

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<sup>27</sup> *Muhammed Younis vs. the State*, 1989 Pcr LJ 1747, quoted in *Amnesty International: Pakistan: Honour killings of girls and women*, ASA 33/18/99, p. 14.

<sup>28</sup> *Mohammed Riaz and Mohammed Feroze vs. the State*, Lahore High Court, 1998, quoted in *Amnesty International: Pakistan: Honour killings of girls and women*, ASA 33/18/99, p. 15.

<sup>29</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, submitted pursuant to Commission on Human Rights resolution 2000/31 (2001), section IV A.

<sup>30</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/1999/39, para. 74 and Human Rights Watch homepage ([www.hrw.org](http://www.hrw.org)) press release 27 January 2000.

<sup>31</sup> Summary records of the 32<sup>nd</sup> meeting of the Commission on Human Rights, UN Doc. E/CN.4/2000/SR.32, 3 October 2000, para. 1.

<sup>32</sup> *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/2000/3, para. 82.

due to mitigating circumstances. The two men appealed the sentence and the case is now under consideration in the court of appeal in Stockholm.<sup>33</sup>

### **3.2 Honour killings and women's human rights**

According to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" and to this end, undertake "to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women" (2(b)). States Parties are also obliged to "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation" (2(d)) and they are required to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" (2(e)). Article 2(f) provides that states shall undertake "appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". According to article 5(a) states shall take all appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". In its general recommendation on violence against women the Committee on the Elimination of Discrimination against Women held that discrimination in the sense of the CEDAW is not limited to acts carried out by or on behalf of governments, and points out that states can be held responsible for the acts of private persons if they fails to exercise due diligence in order to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.<sup>34</sup> The Human Rights Committee has in its general comment on equality of rights between men and women considered that "States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardise, or may jeopardise, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors."<sup>35</sup> According to article 4 of the declaration of violence against women "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination." States should "exercise due diligence to prevent, investigate and, in accordance with national

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<sup>33</sup> See e.g., the homepage of the Swedish television [www.svt.se/nyheter](http://www.svt.se/nyheter) - 14 mars 2001.

<sup>34</sup> CEDAW, *General Recommendation No. 19: Violence against women*, UN GAOR, 47<sup>th</sup> session, UN Doc. A/47/38 (1992), para. 9.

<sup>35</sup> Human Rights Committee, *CCPR General Comment 28: Equality of rights between men and women*, 29.3.2000, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 5.

legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons” (article 4(c)).

### **3.3 Conclusions**

Taking into consideration the abovementioned and the recent developments of the international law of state responsibility discussed above one can conclude that states have an obligation to protect individuals against violations carried out by other private persons. This obligation includes the obligation to prosecute, arrest or imprison persons who have committed human rights violations against other private persons, including so-called honour killings of women.

The states should effectively investigate private violations of human rights and failure to effectively remedy such violations. These measures should include ensuring legislation that criminalizes so-called honour killings of women as well as effective implementation of such legislation, both in regard to investigations and remedies.

If the state fails to comply with these obligations in the event of an ‘honour killing’ the honour killing may be regarded as an extrajudicial execution. The decision of an improvised ‘tribunal’ to ‘execute’ a woman is always an extrajudicial execution. If the state has delegated certain matters to religious courts and if honour killings are included in religious laws, an honour killing is an arbitrary execution due to lack of legislation. This is also the case if the state does not take measures to prevent mob killings, lynching or private exercise of judicial power including death ‘penalties’.

According to her most recent report the Special Rapporteur has limited herself to act where the state either approves of or supports killings of women in the name of honour, or extends impunity to the perpetrators by giving tacit support to the practice.<sup>36</sup> Taking the abovementioned into account it may be concluded that the actions of the Special Rapporteur in regard to honour killings of women lie within the mandate of the Special Rapporteur.

## **4. DEATH PENALTY**

### **4.1 When does the imposition of capital punishment amount to an extrajudicial, summary or arbitrary execution?**

In order for a death penalty to be compatible with article 6 ICCPR the imposition of capital punishment needs to satisfy certain conditions. *First*, the death penalty must be prescribed by law (art. 6(1)).

*Second*, capital punishment may only be imposed for ‘the most serious crimes’ (art. 6(2)). In the absence of a definition of ‘most serious crimes’ it is often thought that the death penalty is reserved for crimes involving loss of life. Ecosoc has interpreted the scope of the term not to “go beyond intentional crimes, with lethal or other extremely

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<sup>36</sup> *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, submitted pursuant to Commission on Human Rights res. 2000/31, section IV A.

grave consequences.”<sup>37</sup> The Human Rights Committee has stated merely that the term “must be read restrictively to mean that the death penalty should be a quite exceptional measure.”<sup>38</sup> The Committee has, however, in its reviews of state’s reports been critical of using capital punishment for crimes not resulting in death, notably political crimes, crimes against property and some drug offences.<sup>39</sup> The Special Rapporteur has considered that the death penalty should be “eliminated for crimes such as economic crimes and drug-related offences<sup>40</sup> and that the abovementioned restrictions “exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature – including acts of treason, espionage and other vaguely defined acts usually described as ‘crimes against the State’ or ‘disloyalty’”<sup>41</sup>. The Special Rapporteur has also stated that “actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation” should be excluded from capital punishment.<sup>42</sup> The Commission on Human Rights has in its most recent resolution on the question on the death penalty urged states to ensure that “the death penalty is not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience”.<sup>43</sup>

*Third*, no other human rights violations should be involved (art. 6(2) “must not be contrary to the provisions of the present Covenant”).

*Fourth*, the death sentence may not be imposed retroactively (art. 6(2)).

*Fifth*, all procedural requirements of a fair trial, interpreted strictly in any case of death penalty, i.e., fair trial, right to appeal, right to petition for clemency, non-execution pending appeal and clemency procedures as well as humane treatment, must be met.<sup>44</sup>

*Sixth*, certain persons may not be executed in any circumstances. These categories of persons are persons under 18 years old, pregnant women and mothers as well as insane persons.<sup>45</sup> The Special Rapporteur has accordingly intervened “when capital punishment is imposed after an unfair trial or in the case of a breach of the right to appeal, or the right to seek pardon, or commutation of the sentence, and in cases where mandatory death sentences are imposed. The Special Rapporteur also undertakes action when capital punishment is imposed for crimes which cannot be considered “most serious crimes” as stipulated in article 6, paragraph 2, of the

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<sup>37</sup> *Safeguards Guaranteeing Protections of the Rights of Those Facing the Death Penalty*, Ecosoc res. 1984/50, Annex I, para. 1.

<sup>38</sup> Human Rights Committee, *CCPR General Comment 6*, para. 7.

<sup>39</sup> See Rodley 1999, pp. 218-220.

<sup>40</sup> UN Doc. E/CN.4/1998/68, para. 94.

<sup>41</sup> UN Doc. E/CN.4/1999/39, para. 63.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Commission on Human Rights resolution 2000/65*, UN Doc. E/CN.4/RES/2000/65, para. 3(b).

<sup>44</sup> Rodley 1999, pp. 225-236.

<sup>45</sup> Rodley 1999, pp. 236-239 and Schabas, W. 1993, *The abolition of the death penalty in international law*, Grotius Publ. Ltd, Cambridge, pp. 119-226.

International Covenant on Civil and Political Rights. The Special Rapporteur may, moreover, intervene if the convicted person is a minor, mentally handicapped or ill, a pregnant woman, or a recent mother.”<sup>46</sup>

If the death penalty is imposed without regard to the abovementioned restrictions and safeguards, the imposition of the death penalty is in violation of international law and thus the person concerned has been illegally deprived of his or her life. This deprivation and thus the imposition of capital punishment constitutes an arbitrary execution.<sup>47</sup> The Human Rights Committee has recently stated that re-introduction of the death penalty may be in violation of obligations under article 6(1), (2) and (6) of the Covenant<sup>48</sup> and that mandatory death penalty may be regarded as arbitrary deprivation of life<sup>49</sup>. These statements seem to indicate an increasingly strict interpretation of the right to life in article 6 of the Covenant.

Thus it is compatible with the mandate of the Special Rapporteur to deal with questions relating to the death penalty when the restrictions and fair trial standards pertaining to capital punishment are not respected.

#### **4.2 The desirability of the abolition of the death penalty**

In the latest Commission on Human Rights resolution on extrajudicial, summary or arbitrary executions (2000/31) the Commission calls upon the Special Rapporteur to “continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto”.<sup>50</sup> The Human Rights Committee has in its interpretation of article 6 CCPR held that “all measures of abolition should be considered as progress in the enjoyment of the right to life”.<sup>51</sup>

The Commission on Human Rights has repeatedly expressed its conviction “that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights”<sup>52</sup> The Commission on Human Rights has also called upon the states that still maintain the death penalty to restrict the number of offence for which capital punishment may be imposed and to “establish a moratorium on executions, with a view to completely abolishing the

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<sup>46</sup> UN Doc. E/CN.4/2000/3, para. 6(a).

<sup>47</sup> See *Report - Summary or Arbitrary Executions*, UN Doc. E/EC.4/1983/16, para. 55.

<sup>48</sup> See Human Rights Committee, *Communication No 869/1999*, UN Doc. CCPR/C/70/D/869/1999, 19 October 2000, para. 7.4. The HRC did not, however, address this issue in the instant case as neither counsel nor state party had made submissions in this respect.

<sup>49</sup> Human Rights Committee, *Communication No 806/1998*, UN Doc. CCPR/C/70/D/806/1998, 5 December 2000, para. 8.2.

<sup>50</sup> *Commission on Human Rights resolution 2000/31*, UN Doc. E/CN.4/RES/2000/31, para. 12(f).

<sup>51</sup> Human Rights Committee, *CCPR General Comment 6*, para. 6.

<sup>52</sup> See *Commission on Human Rights resolution 1997/12*, UN Doc. E/CN.4/RES/1997/12 and subsequent resolutions on the question of the death penalty 1998/8, 1999/61 and 2000/65.

death penalty”.<sup>53</sup> It should furthermore be noted that capital punishment is excluded from the penalties that the International Criminal Tribunal for the former Yugoslavia, International Tribunal for Rwanda and the International Criminal Court are authorised to impose. (The Third Committee of the General Assembly did not, however, take action on draft resolution on the question of the death penalty (A/C.3/54/L.8) which would have called on all states that still maintain the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty.)

These developments may be seen as “reaffirming a growing international consensus in favour of the abolition of the death penalty”.<sup>54</sup> Although there still are states that have not abolished capital punishment it seems reasonable that such developments should offer guidance for developing the mandate of the Special Rapporteur and that the Special Rapporteur should not overlook such trends.

## 5. EVALUATION OF THE PRESENT RELEVANT SCOPE OF THE MANDATE

In the Ecosoc resolution establishing the mandate of the Special Rapporteur, the Special Rapporteur was appointed to “examine the questions related to summary or arbitrary executions” and he was to submit reports on the “occurrence and extent of the practice of such executions together with his conclusions and recommendations”.<sup>55</sup> In resolution 1983/24 the Ecosoc “strongly condemns and deplors the lack of non-observance in certain cases of the minimum legal guarantees and safeguards in respect of the use of capital punishment, which can lead to sham trials and arbitrary executions”(para. 2).

In resolution 1992/72 the Commission on Human Rights requests the Special Rapporteur to “continue to examine situations of extrajudicial, summary and arbitrary executions” (para. 7). The Special Rapporteur at that time, Mr. Bacre Waly Ndiaye, interpreted this to “indicate that the members of the Commission have adopted a broad approach to the mandate on executions which encompasses all violations of the right to life as guaranteed by a large number of international human rights instruments”.<sup>56</sup> In the same resolution the Special Rapporteur was requested to “pay special attention to extrajudicial, summary and arbitrary executions of children (para. 8). In resolution 1993/71 the Commission requested the Special Rapporteur “to pay special attention to extrajudicial, summary or arbitrary executions of children and to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations” (para. 6) and “to continue monitoring the implementation of existing international standards

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<sup>53</sup> *Commission on Human Rights resolution 1998/8*, UN Doc. E/CN.4/RES/1998/8, para. 4(b) and subsequent resolutions 1999/61 and 2000/65.

<sup>54</sup> See *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, submitted pursuant to Commission on Human Rights res. 2000/31, section V(F)3.

<sup>55</sup> *Economic and Social Council resolution 1982/35*, UN Doc. E/RES/1982/35, paras. 2 and 5.

<sup>56</sup> *Extrajudicial, summary or arbitrary executions – Report of the Special Rapporteur*, UN Doc. E/CN.4/1993/46, para. 7.

on safeguards and restrictions relating to the imposition of capital punishment” (para. 9).

In resolution 1994/82 the Commission requested the Special Rapporteur to “continue to pay special attention to extrajudicial, summary and arbitrary executions of children and women and the allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to national or ethnic, religious and linguistic minorities” (para. 8) as well as “continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto” (para. 10). In resolution 1995/73 the phrase “national or ethnic, religious and linguistic minorities” in res. 1994/82 para. 8 was changed to “minorities” (para. 5(d)).

In resolution 1996/74 the Commission asked the Special Rapporteur to “pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals who are carrying out peaceful activities in defence of human rights and fundamental freedoms” (para. 7(e)) and to “apply a gender perspective to his work” (para. 7(g)). In its resolution 2000/31 the Commission “notes with concern the large number of cases in various parts of the world of killings committed in the name of passion or in the name of honour, persons killed because of their sexual orientation and persons killed for reasons related to their peaceful activities as human rights defenders or as journalists” and “calls upon Governments concerned to investigate such killings promptly and thoroughly, to bring those responsible to justice and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel” (para. 6).

Most recently the Commission on Human Rights requested the Special Rapporteur, in carrying out her mandate:

- (a) To continue to examine situations of extrajudicial, summary or arbitrary executions and to submit her findings on an annual basis, together with conclusions and recommendations, to the Commission, as well as such other reports as the Special Rapporteur deems necessary in order to keep the Commission informed about serious situations of extrajudicial, summary or arbitrary executions that warrant its immediate attention;
- (b) To respond effectively to information which comes before her, in particular when an extrajudicial, summary or arbitrary execution is imminent or seriously threatened or when such an execution has occurred;
- (c) To enhance further her dialogue with Governments, as well as to follow up recommendations made in reports after visits to particular countries;
- (d) To continue to pay special attention to extrajudicial, summary or arbitrary executions of children and to allegations concerning violations of the right to life in



the context of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to minorities;

(e) To pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals carrying out peaceful activities in defence of human rights and fundamental freedoms;

(f) To continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto;

(g) To apply a gender perspective in her work.<sup>57</sup>

The mandate of the Special Rapporteur has thus been developed and extended considerably during the 1990s. Resolution 2000/31 includes the provisions of the earlier resolutions and may thus be said to represent the current mandate of the Special Rapporteur. The attention given to honour killings (para. 6) and extrajudicial, summary or arbitrary executions of women (para. 12(d)) in res. 2000/31 indicates the Commission's concern about the right to life of all groups of persons, including women. As "situations of extrajudicial, summary or arbitrary executions" include "*all acts and omissions* of state representatives that constitute violations of the right to life".<sup>58</sup> Thus, as has been mentioned above, violations of the right to life by private actors fall within the mandate in the event of the state's omission to exercise due diligence in order to, e.g., prevent violations and to effectively remedy the violations suffered. The present Special Rapporteur has interpreted her mandate to include the violations of the right to life enumerated above in chapter 1.2. This interpretation can be said to incorporate the present scope of the mandate of the Special Rapporteur.

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<sup>57</sup> *Commission on Human Rights res. 2000/31*, UN Doc. E/CN.4/RES/2000/31, 20 April 2000, para. 12.

<sup>58</sup> *Extrajudicial, summary or arbitrary executions Fact Sheet No. 11*, 1997, p. 5 (emphasis added).

## ANNEX I

### RESERVATIONS TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

#### **To article 6 ICCPR:**

Thailand and the United States of America\*.

#### **To article 9 ICCPR:**

France, Italy, India, Mexico and Thailand.

#### **To article 14 ICCPR:**

Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Denmark, Finland, France, Gambia, Germany, Guyana, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Republic of Korea, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom and the USA.

#### **To article 15 ICCPR:**

Germany, Italy, Trinidad and Tobago and the USA.

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#### **Article 6**

##### *Thailand:*

With respect to article 6, paragraph 5 of the Covenant, the Thai Penal Code enjoins, or in some cases allows much latitude for, the Court to take into account the offender's youth as a mitigating factor in handing down sentences. Whereas Section 74 of the code does not allow any kind of punishment levied upon any person below fourteen years of age, Section 75 of the same Code provides that whenever any person over fourteen years but not yet over seventeen years of age commits any act provided by the law to be an offence, the Court shall take into account the sense of responsibility and all other things concerning him in order to come to decision as to whether it is appropriate to pass judgment inflicting punishment on him or not. If the court does not deem it appropriate to pass judgment inflicting punishment, it shall proceed according to Section 74 (viz. to adopt other correction measures short of punishment) or if the court deems it appropriate to pass judgment inflicting punishment, it shall reduce the scale of punishment provided for such offence by one half. Section 76 of the same Code also states that whenever any person over seventeen years but not yet over twenty years of age, commits any act provided by the law to be an offence, the Court may, if it thinks fit, reduce the scale of the punishment provided for such offence by one third or one half. The reduction of the said scale will prevent the Court from passing any sentence of death. As a result, though in theory, sentence of death may be imposed for crimes committed by persons below eighteen years, but not below seventeen years of age, the Court always exercises its discretion under Section 75 to reduce

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\* The Human Rights Committee has, in its final comments on the first United States periodic report (UN Doc. A/50/40 (1995) para. 279), considered the reservations to be "incompatible with the object and purpose of the Covenant", called for its withdrawal and "exhort[ed] the authorities to take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18" (para. 296). The Special Rapporteur has shared these views, see UN Doc. E/CN.4/1998/68, Add.3, para. 140.

the said scale of punishment, and in practice the death penalty has not been imposed upon any persons below eighteen years of age. Consequently, Thailand considers that in real terms it has already complied with the principles enshrined herein.

***United States of America:***

That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

**Article 9**

***France:***

The Government of the Republic enters a reservation concerning articles 9 and 14 to the effect that these articles cannot impede enforcement of the rules pertaining to the disciplinary régime in the armies.

***Italy:***

The Italian Republic, considering that the expression “unlawful arrest or detention” contained in article 9, paragraph 5, could give rise to differences of interpretation, declares that it interprets the aforementioned expression as referring exclusively to cases of arrest or detention contrary to the provisions of article 9, paragraph 1.

***India:***

With reference to article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.

***Mexico:***

Article 9, paragraph 5: Under the Political Constitution of the United Mexican States and the relevant implementing legislation, every individual enjoys the guarantees relating to penal matters embodied therein, and consequently no person may be unlawfully arrested or detained. However, if by reason of false accusation or complaint any individual suffers an infringement of this basic right, he has, *inter alia*, under the provisions of the appropriate laws, an enforceable right to just compensation.

***Thailand:***

With respect to article 9, paragraph 3 of the Covenant, Section 87, paragraph 3 of the Criminal Procedure Code of Thailand provides that the arrested person shall not be kept in custody for more than forty-eight hours from the time of his arrival at the office of the administrative or police official, but the time for bringing the arrested person to the Court shall not be included in the said period of forty-eight hours. In case it is necessary for the purpose of conducting the inquiry, or there arises any other necessity, the period of forty-eight hours may be extended as long as such necessity persists, but in no case shall it be longer than seven days.

**Article 14**

***Australia:***

“Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision.”

***Austria:***

Article 14 of the Covenant will be applied provided that the principles governing the publicity of trials as set forth in article 90 of the Federal Constitutional Law as amended in 1929 are in no way prejudiced and that

(a) paragraph 3, sub-paragraph (d) is not in conflict with legal regulations which stipulate that an accused person who disturbs the orderly conduct of the trial or whose presence would impede the questioning of another accused person, of a witness or of an expert can be excluded from participation in the trial;

(b) paragraph 5 is not in conflict with legal regulations which stipulate that after an acquittal or a lighter sentence passed by a court of the first instance, a higher tribunal may pronounce conviction or a heavier sentence for the same offence, while they exclude the convicted person's right to have such conviction or heavier sentence reviewed by a still higher tribunal;

(c) paragraph 7 is not in conflict with legal regulations which allow proceedings that led up to a person's final conviction or acquittal to be reopened.

***Bangladesh:***

"The Government of the People's Republic of Bangladesh reserves the right not to apply paragraph 3 (d) of Article 14 in view of the fact, that, while the existing laws of Bangladesh provide that, in the ordinary course a person, shall be entitled to be tried in his presence, it also provides for a trial to be held in his absence if he is a fugitive offender, or is a person, who being required to appear before a court, fails to present himself or to explain the reasons for non-appearance to the satisfaction of the court."

***Barbados:***

"The Government of Barbados states that it reserves the right not to apply in full, the guarantee of free legal assistance in accordance with paragraph 3 (d) of Article 14 of the Covenant, since, while accepting the principles contained in the same paragraph, the problems of implementation are such that full application cannot be guaranteed at present."

***Belgium:***

With respect to article 14, the Belgian Government considers that the last part of paragraph 1 of the article appears to give States the option of providing or not providing for certain derogations from the principle that judgements shall be made public. Accordingly, the Belgian constitutional principle that there shall be no exceptions to the public pronouncements of judgements is in conformity with that provision. Paragraph 5 of the article shall not apply to persons who, under Belgian law, are convicted and sentenced at second instance following an appeal against their acquittal of first instance or who, under Belgian law, are brought directly before a higher tribunal such as the Court of Cassation, the Appeals Court or the Assize Court.

***Belize:***

The Government of Belize reserves the right not to apply in full the guarantee of free legal assistance in accordance with paragraph 3 (d) of article 14, since, while it accepts the principle contained in that paragraph and at present applies it in certain defined cases, the problems of implementation are such that full application cannot be guaranteed at present;

The Government of Belize recognizes and accepts the principle of compensation for wrongful imprisonment contained in paragraph 6 of article 14, but the problems of implementation are such that the right not to apply that principle is presently reserved.

***Denmark:***

Article 14, paragraph 1, shall not be binding on Denmark in respect of public hearings. In Danish law, the right to exclude the press and the public from trials may go beyond what is permissible under this Covenant, and the Government of Denmark finds that this right should not be restricted.

Article 14, paragraphs 5 and 7, shall not be binding on Denmark.

The Danish Administration of Justice Act contains detailed provisions regulating the matters dealt with in these two paragraphs. In some cases, Danish legislation is less restrictive than the Covenant

(e.g. a verdict returned by a jury on the question of guilt cannot be reviewed by a higher tribunal, cf. paragraph 5); in other cases, Danish legislation is more restrictive than the Covenant (e.g. with respect to resumption of a criminal case in which the accused party was acquitted, cf. paragraph 7).

***Finland:***

With respect to article 14, paragraph 7, of the Covenant, Finland declares that it is going to pursue its present practice, according to which a sentence can be changed to the detriment of the convicted person, if it is established that a member or an official of the court, the prosecutor or the legal counsel have through criminal or fraudulent activities obtained the acquittal of the defendant or a substantially more lenient penalty, or if false evidence has been presented with the same effect, and according to which an aggravated criminal case may be taken up for reconsideration if within a year until then unknown evidence is presented, which would have led to conviction or a substantially more severe penalty;

***France:***

The Government of the Republic enters a reservation concerning articles 9 and 14 to the effect that these articles cannot impede enforcement of the rules pertaining to the disciplinary régime in the armies.

The Government of the Republic interprets article 14, paragraph 5, as stating a general principle to which the law may make limited exceptions, for example, in the case of certain offences subject to the initial and final adjudication of a police court and of criminal offences. However, an appeal against a final decision may be made to the Court of Cassation which rules on the legality of the decision concerned.

***Gambia:***

“For financial reasons free legal assistance for accused persons is limited in our constitution to persons charged with capital offences only. The Government of the Gambia therefore wishes to enter a reservation in respect of article 14 (3) (d) of the Covenant in question.”

***Germany:***

Article 14 (3) (d) of the Covenant shall be applied in such manner that it is for the court to decide whether an accused person held in custody has to appear in person at the hearing before the court of review (Revisionsgericht).

Article 14 (5) of the Covenant shall be applied in such manner that:

(a) A further appeal does not have to be instituted in all cases solely on the grounds the accused person having been acquitted by the lower court-was convicted for the first time in the proceedings concerned by the appellate court.

(b) In the case of criminal offences of minor gravity the re- view by a higher tribunal of a decision not imposing imprisonment does not have to be admitted in all cases.

***Guyana:***

In respect of sub-paragraph (d) of paragraph 3 of article 14: “While the Government of the Republic of Guyana accept the principle of Legal Aid in all appropriate criminal proceedings, is working towards that end and at present apply it in certain defined cases, the problems of implementation of a comprehensive Legal Aid Scheme are such that full application cannot be guaranteed at this time.”

In respect of paragraph 6 of article 14: “While the Government of the Republic of Guyana accept the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle.”

***Iceland:***

Article 14, paragraph 7, with respect to the resumption of cases which have already been tried. The Icelandic law of procedure has detailed provisions on this matter which it is not considered appropriate to revise.

***Ireland:***

Ireland reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures, which may not, in all respects, conform to the requirements of article 14 of the Covenant.

***Italy:***

The provisions of article 14, paragraph 3 (d), are deemed to be compatible with existing Italian provisions governing trial of the accused in his presence and determining the cases in which the accused may present his own defence and those in which legal assistance is required.

Article 14, paragraph 5, shall be without prejudice to the application of existing Italian provisions which, in accordance with the Constitution of the Italian Republic, govern the conduct, at one level only, of proceedings instituted before the Constitutional Court in respect of charges brought against the President of the Republic and its Ministers.

***Liechtenstein:***

“The Principality of Liechtenstein reserves the right to apply the provisions of article 14, paragraph 1 of the Covenant, concerning the principle that hearings must be held and judgments pronounced in public, only within the limits deriving from the principles at present embodied in the Liechtenstein legislation on legal proceedings.”

***Luxembourg:***

The Government of Luxembourg declares that it is implementing article 14, paragraph 5, since that paragraph does not conflict with the relevant Luxembourg legal statutes, which provide that, following an acquittal or a conviction by a court of first instance, a higher tribunal may deliver a sentence, confirm the sentence passed or impose a harsher penalty for the same crime.

However, the tribunal’s decision does not give the person declared guilty on appeal the right to appeal that conviction to a higher appellate jurisdiction.

The Government of Luxembourg further declares that article 14, paragraph 3, shall not apply to persons who, under Luxembourg law, are remanded directly to a higher court or brought before the Assize Court.

***Malta:***

The Government of Malta declares that it interprets paragraph 2 of article 14 of the Covenant in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts;

While the Government of Malta accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with article 14, paragraph 6, of the Covenant;

***Monaco:***

The Princely Government interprets article 14, paragraph 5, as embodying a general principle to which the law can introduce limited exceptions. This is particularly true with respect to certain offences that, in the first and last instances, are under the jurisdiction of the police court, and with respect to offences of a criminal nature. Furthermore, verdicts in the last instance can be appealed before the Court of Judicial Review, which shall rule on their legality.

***Netherlands:***

Article 14, paragraph 3 (d): The Kingdom of the Netherlands reserves the statutory option of removing a person charged with a criminal offence from the court room in the interests of the proper conduct of the proceedings.

Article 14, paragraph 5: The Kingdom of the Netherlands reserves the statutory power of the Supreme Court of the Netherlands to have sole jurisdiction to try certain categories of persons charged with serious offences committed in the discharge of a public office.

Article 14, paragraph 7: The Kingdom of the Netherlands accepts this provision only insofar as no obligations arise from it further to those set out in article 68 of the Criminal Code of the Netherlands and article 70 of the Criminal Code of the Netherlands Antilles as they now apply. They read:

“1. Except in cases where court decisions are eligible for review, no person may be prosecuted again for an offence in respect of which a court in the Netherlands or the Netherlands Antilles has delivered an irrevocable judgement.”

“2. If the judgement has been delivered by some other court, the same person may not be prosecuted for the same offence in the case of (I) acquittal or withdrawal of proceedings or (II) conviction followed by complete execution, remission or lapse of the sentence.”

***New Zealand:***

The Government of New Zealand reserves the right not to apply article 14 (6) to the extent that it is not satisfied by the existing system for ex gratia payments to persons who suffer as a result of a miscarriage of justice.

***Norway:***

[The Government of Norway declares that] the entry into force of an amendment to the Criminal Procedure Act, which introduces the right to have a conviction reviewed by a higher court in all cases, the reservation made by the Kingdom of Norway with respect to article 14, paragraph 5 of the Covenant shall continue to apply only in the following exceptional circumstances:

1. “Riksrett” (Court of Impeachment)

According to article 86 of the Norwegian Constitution, a special court shall be convened in criminal cases against members of the Government, the Storting (Parliament) or the Supreme Court, with no right of appeal.

2. Conviction by an appellate court

In cases where the defendant has been acquitted in the first instance, but convicted by an appellate court, the conviction may not be appealed on grounds of error in the assessment of evidence in relation to the issue of guilt. If the appellate court convicting the defendant is the Supreme Court, the conviction may not be appealed whatsoever.

***Republic of Korea:***

The Government of the Republic of Korea [declares] that the provisions of paragraph 5 [...] of article 14, article 22 [...] of the Covenant shall be so applied as to be in conformity with the provisions of the local laws including the Constitution of the Republic of Korea.

***Sweden:***

Sweden reserves the right not to apply the provisions of article 10, paragraph 3, with regard to the obligation to segregate juvenile offenders from adults, the provisions of article 14, paragraph 7, and the provisions of article 20, paragraph 1, of the Covenant.

***Switzerland:***

Reservations concerning article 14, paragraph 1: The principle of a public hearing is not applicable to proceedings which involve a dispute relating to civil rights and obligations or to the merits of the prosecution's case in a criminal matter; these, in accordance with cantonal laws, are held before an administrative authority. The principle that any judgement rendered shall be made public is adhered to without prejudice to the cantonal laws on civil and criminal procedure, which provide that a judgement shall not be rendered at a public hearing, but shall be transmitted to the parties in writing.

The guarantee of a fair trial has as its sole purpose, where disputes relating to civil rights and obligations are concerned, to ensure final judicial review of the acts or decisions of public authorities which have a bearing on such rights or obligations. The Term “final judicial review” means a judicial examination which is limited to the application of the law, such as a review by a Court of Cassation.

(d) Reservation concerning article 14, paragraph 3, sub-paragraphs (d) and (f):

The guarantee of free legal assistance assigned by the court and of the free assistance of an interpreter does not definitively exempt the beneficiary from defraying the resulting costs.

(e) Reservation concerning article 14, paragraph 5:

The reservation applies to the federal laws on the organization of criminal justice, which provide for an exception to the right of anyone convicted of a crime to have his conviction and sentence reviewed by a higher tribunal, where the person concerned is tried in the first instance by the highest tribunal.

***Trinidad and Tobago:***

The Government of the Republic of Trinidad and Tobago reserves the right not to apply paragraph 5 of article 14 in view of the fact that section 43 of its Supreme Court of Judicature Act No. 12 of 1962 does not confer on a person convicted on indictment an unqualified right of appeal and that in particular cases, appeal to the Court of Appeal can only be done with the leave of the Court of Appeal itself or of the Privy Council;

While the Government of the Republic of Trinidad and Tobago accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with paragraph 6 of article 14 of the Covenant.

***United Kingdom of Great Britain and Northern Ireland:***

In relation to Article 14 of the Covenant, they must reserve the right not to apply, or not to apply in full, the guarantee of free legal assistance contained in sub-paragraph (d) of paragraph 3 in so far as the shortage of legal practitioners and other considerations render the application of this guarantee in British Honduras, Fiji and St. Helena impossible;

The Government of the United Kingdom reserve the right not to apply or not to apply in full the guarantee of free legal assistance in sub-paragraph (d) of paragraph 3 of article 14 in so far as the shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies and Tuvalu.

***United States of America:***

That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.

**Article 15**

***Germany:***

Article 15 (1) of the Covenant shall be applied in such manner that when provision is made by law for the imposition of a lighter penalty the hitherto applicable law may for certain exceptional categories of cases remain applicable to criminal offences committed before the law was amended.

***Italy:***

With reference to article 15, paragraph 1, last sentence: "If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby", the Italian Republic deems this provision to apply exclusively to cases in progress. Consequently, a person who has already been convicted by a final decision shall not benefit from any provision made by law, subsequent to that decision, for the imposition of a lighter penalty.

***Trinidad and Tobago:***

With reference to the last sentence of paragraph 1 of article 15: "If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby", the Government of the Republic of Trinidad and Tobago deems this provision to apply exclusively to cases in progress. Consequently, a person who has already been convicted by a final decision shall not benefit from any provision made by law, subsequent to that decision, for the imposition of a lighter penalty.



***United States of America:***

That because U.S. law generally applies to an offender the penalty in force at the time the offence was committed, the United States does not adhere to the third clause of paragraph 1 of article 15.

## ANNEX II

### DECLARATIONS RECOGNIZING THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 41 ICCPR

Algeria, Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Congo, Croatia, Czech Republic, Denmark, Ecuador, Finland, Gambia, Ghana, Germany, Guyana, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Ukraine, UK, USA, Zimbabwe.\*

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#### *Algeria*

[The Government of the Democratic People's Republic of Algeria] recognizes the competence of the Human Rights Committee referred to in article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

#### *Argentina*

The instrument contains a declaration under article 41 of the Covenant by which the Government of Argentina recognizes the competence of the Human Rights Committee established by virtue of the International Covenant on Civil and Political Rights.

#### *Australia*

28 January 1993

"The Government of Australia declares that it recognizes, for and on behalf of Australia, the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforesaid Convention."

#### *Austria*

10 September 1978

[The Government of the Republic of Austria] declares under article 41 of the Covenant on Civil and Political Rights that Austria recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant on Civil and Political Rights.

#### *Belarus*

30 September 1992

The Republic of Belarus declares that it recognizes the competence of the Committee on Human Rights in accordance with article 41 of the International Covenant on Civil and Political Rights to receive and consider communications to the effect that a State Party to the International Covenant on Civil and Political Rights claims that another State Party is not fulfilling its obligations under the Covenant.

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\* *Jamaica* denounced the Optional Protocol on 23.10.1997 and *Trinidad and Tobago* denounced the Optional Protocol on 26.5.1998, re-ratified the Protocol on the same day but with a reservation excluding death sentence related cases. 48 of the 189 member states of the UN have made declarations recognizing the competence of the HRC.

***Belgium***

5 March 1987

The Kingdom of Belgium declares that it recognizes the competence of the Human Rights Committee under article 41 of the International Covenant on Civil and Political Rights.

18 June 1987

The Kingdom of Belgium declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee established under article 28 of the Covenant to receive and consider communications submitted by another State Party, provided that such State Party has, not less than twelve months prior to the submission by it of a communication relating to Belgium, made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself.

***Bosnia and Herzegovina***

"The Republic of Bosnia and Herzegovina in accordance with article 41 of the said Covenant, recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Bulgaria***

12 May 1993

"The Republic of Bulgaria declares that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party which has made a declaration recognizing in regard to itself the competence of the Committee claims that another State Party is not fulfilling its obligations under the Covenant."

***Canada***

29 October 1979

"The Government of Canada declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee referred to in article 28 of the said Covenant to receive and consider communications submitted by another State Party, provided that such State Party has, not less than twelve months prior to the submission by it of a communication relating to Canada, made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself."

***Chile***

7 September 1990

As from the date of this instrument, the Government of Chile recognizes the competence of the Human Rights Committee established under the International Covenant on Civil and Political Rights, in accordance with article 41 thereof, with regard to all actions which may have been initiated since 11 March 1990.

***Congo***

6 July 1989

Pursuant to article 41 of the International Covenant on Civil and Political Rights, the Congolese Government recognizes, with effect from today's date, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State party is not fulfilling its obligations under the above-mentioned Covenant.

***Croatia***

12 October 1995

The Government of the Republic of Croatia declares under article 41 of the Covenant on Civil and Political Rights that the Republic of Croatia recognizes the competence of the Human Rights

Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant on Civil and Political Rights.

***Czech Republic***

Czechoslovakia had signed and ratified the Convention on 7 October 1968 and 23 December 1975, respectively, with reservations and declarations. For the texts of the reservations and declarations made upon signature and ratification, see United Nations, Treaty Series, vol. 999, pp. 283 and 289.

Subsequently, on 12 March 1991, the Government of Czechoslovakia had declared the following: [The Czech and Slovak Federal Republic] recognizes the competence of the Human Rights Committee established on the basis of article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

Further, on 7 June 1991, the Government of Czechoslovakia had made the following objection: "The Government of the Czech and Slovak Federal Republic considers the reservations entered by the Government of the Republic of Korea to the provisions of paragraphs 5 and 7 of article 14 and article 22 of the International Covenant on Civil and Political Rights as incompatible with the object and purpose of the Covenant. In the opinion of the Czechoslovak Government these reservations are in contradiction to the generally recognized principle of international law according to which a state cannot invoke the provisions of its own internal law as justification for its failure to perform a treaty.

"Therefore, the Czech and Slovak Federal Republic does not recognize these reservations as valid. Nevertheless the present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the Czech and Slovak Federal Republic and the Republic of Korea."

See also note 11 in chapter I.2 .

***Denmark***

A previous declaration received on 6 April 1978 expired on 23 March 1983.

19 April 1983

"[The Government of Denmark] recognizes, in accordance with article 41 of the International Covenant on Civil and Political Rights, opened for signature in New York on December 19, 1966, the competence of the Committee referred to in article 41 to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Ecuador***

6 August 1984

The Government of Ecuador recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforementioned Covenant, as provided for in paragraph 1 (a), (b), (c), (d), (e), (f), (g) and (h) of that article.

This recognition of competence is effective for an indefinite period and is subject to the provisions of article 41, paragraph 2, of the International Covenant on Civil and Political Rights.

***Finland***

"Finland declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee referred to in article 28 of the said Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Covenant."

***Gambia***

9 June 1988

"The Government of the Gambia hereby declares that the Gambia recognises the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant."

***Ghana***

7 September 2000

"The Government of the Republic of Ghana recognizes the competence of the Human Rights Committee to consider complaints brought by or against the Republic in respect of another State Party which has made a Declaration recognising the competence of the Committee at least twelve months before Ghana becomes officially registered as Party to the Covenant.

[The Government of the Republic of Ghana] interprets Article 41 as giving the Human Rights Committee the competence to receive and consider complaints in respect of violations by the Republic of any rights set forth in the said Covenant which result from decisions, acts, commissions, developments or events occurring AFTER the date on which Ghana becomes officially regarded as party to the said Covenant and shall not apply to decisions, acts, omissions, developments or events occurring before that date."

***Germany***

22 January 1997

The Federal Republic of Germany, in accordance with article 41 of the said Covenant, recognizes for a further five years from the date of expiry of the declaration of 10 May 1991 the competence of the Human Rights Committee to receive and consider communications from the State Party insofar as that State Party has recognized in regard to itself the competence of the Committee and corresponding obligations have been assumed under the Covenant by the Federal Republic of Germany and by the State Party concerned.

***Guyana***

10 May 1993

"The Government of the Co-operative Republic of Guyana hereby declares that it recognises the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the aforementioned Covenant."

***Hungary***

7 September 1988

The Hungarian People's Republic [...] recognizes the competence of the Human Rights Committee established under article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

***Iceland***

22 August 1979

"The Government of Iceland [...] recognizes in accordance with article 41 of the International Covenant on Civil and Political Rights the competence of the Human Rights Committee referred to in article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Ireland***

"The Government of Ireland hereby declare that in accordance with article 41 they recognise the competence of the Human Rights Committee established under article 28 of the Covenant."

***Italy***

15 September 1978

The Italian Republic recognizes the competence of the Human Rights Committee, elected in accordance with article 28 of the Covenant, to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant.

***Liechtenstein***

"The Principality of Liechtenstein declares under article 41 of the Covenant to recognize the competence of the Human Rights Committee, to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant."

***Luxembourg***

18 August 1983

"The Government of Luxembourg recognizes, in accordance with article 41, the competence of the Human Rights Committee referred to in article 28 of the Covenant to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant."

***Malta***

"The Government of Malta declares that under article 41 of this Covenant it recognises the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than twelve months prior to the submission by it of a communication relating to Malta, made a declaration under article 41 recognising the competence of the Committee to receive and consider communications relating to itself."

***Netherlands***

11 December 1978

"The Kingdom of the Netherlands declares under article 41 of the International Covenant on Civil and Political Rights that it recognizes the competence of the Human Rights Committee referred to in article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***New Zealand***

28 December 1978

"The Government of New Zealand declares under article 41 of the International Covenant on Civil and Political Rights that it recognises the competence of the Human Rights Committee to receive and consider communications from another State Party which has similarly declared under article 41 its recognition of the Committee's competence in respect to itself except where the declaration by such a state party was made less than twelve months prior to the submission by it of a complaint relating to New Zealand."

***Norway***

31 August 1972

"Norway recognizes the competence of the Human Rights Committee referred to in article 28 of the Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Peru***

9 April 1984

Peru recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant on Civil and Political Rights, in accordance with article 41 of the said Covenant.

***Philippines***

"The Philippine Government, in accordance with article 41 of the said Covenant, recognizes the competence of the Human Rights Committee set up in the aforesaid Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Poland***

25 September 1990

"The Republic of Poland recognizes, in accordance with article 41, paragraph 1, of the International Covenant on Civil and Political Rights, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Republic of Korea***

[The Government of the Republic of Korea] recognizes the competence of the Human Rights Committee under article 41 of the Covenant.

***Russian Federation***

1 October 1991

The Union of Soviet Socialist Republics declares that, pursuant to article 41 of the International Covenant on Civil and Political Rights, it recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, in respect of situations and events occurring after the adoption of the present declaration, provided that the State Party in question has, not less than 12 months prior to the submission by it of such a communication, recognized in regard to itself the competence of the Committee, established in article 41, in so far as obligations have been assumed under the Covenant by the USSR and by the State concerned.

***Senegal***

5 January 1981

The Government of Senegal declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee referred to in article 28 of the said Covenant to receive and consider communications submitted by another State Party, provided that such State Party has, not less than twelve months prior to the submission by it of a communication relating to Senegal, made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself.

***Slovakia***

Czechoslovakia had signed and ratified the Convention on 7 October 1968 and 23 December 1975, respectively, with reservations and declarations. For the texts of the reservations and declarations made upon signature and ratification, see United Nations, Treaty Series, vol. 999, pp. 283 and 289.

Subsequently, on 12 March 1991, the Government of Czechoslovakia had declared the following: [The Czech and Slovak Federal Republic] recognizes the competence of the Human Rights Committee established on the basis of article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

Further, on 7 June 1991, the Government of Czechoslovakia had made the following objection: "The Government of the Czech and Slovak Federal Republic considers the reservations entered by the Government of the Republic of Korea to the provisions of paragraphs 5 and 7 of article 14 and article 22 of the International Covenant on Civil and Political Rights as incompatible with the object and purpose of the Covenant. In the opinion of the Czechoslovak Government these reservations are in contradiction to the generally recognized principle of international law according to which a state cannot invoke the provisions of its own internal law as justification for its failure to perform a treaty.

"Therefore, the Czech and Slovak Federal Republic does not recognize these reservations as valid. Nevertheless the present declaration will not be deemed to be an obstacle to the entry into force of the Covenant between the Czech and Slovak Federal Republic and the Republic of Korea."

See also note 11 in chapter I.2.

***Slovenia***

"[The] Republic of Slovenia, in accordance with article 41 of the said Covenant, recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***South Africa***

"The Republic of South Africa declares that it recognises, for the purposes of article 41 of the Covenant, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under present the Covenant."

***Spain***

30 January 1998

The Government of Spain declares that, under the provisions of article 41 of the [Covenant], it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

***Sri Lanka***

"The Government of the Democratic Socialist Republic of Sri Lanka declares under article 41 of the International Covenant on Civil and Political Rights that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant, from another State Party which has similarly declared under article 41 its recognition of the Committee's competence in respect to itself."

***Sweden***

26 November 1971

"Sweden recognizes the competence of the Human Rights Committee referred to in article 28 of the Covenant to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

***Switzerland***

25 April 1997

The Swiss Government declares, pursuant to article 41 (1) of the [said Covenant], that it shall recognize for a further period of five years, as from 18 September 1997, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.

***Tunisia***

24 June 1993

The Government of the Republic of Tunisia declares that it recognizes the competence of the Human Rights Committee established under article 28 of the [said Covenant] ..., to receive and consider communications to the effect that a State Party claims that the Republic of Tunisia is not fulfilling its obligations under the Covenant.

The State Party submitting such communications to the Committee must have made a declaration recognizing in regard to itself the competence of the Committee under article 41 of the [said Covenant].

***Ukraine***

28 July 1992

In accordance with article 41 of the International Covenant on Civil and Political Rights, Ukraine recognizes the competence of the Human Rights Committee to receive and consider communications



to the effect that any State Party claims that another State Party is not fulfilling its obligations under the Covenant.

***United Kingdom of Great Britain and Northern Ireland***

"The Government of the United Kingdom declare under article 41 of this Covenant that it recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than twelve months prior to the submission by it of a communication relating to the United Kingdom made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself."

***United States of America***

"The United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

***Zimbabwe***

20 August 1991

"The Government of the Republic of Zimbabwe recognizes with effect from today's date, the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another state party is not fulfilling its obligations under the Covenant [provided that such State Party has, not less than twelve months prior to the submission by it of a communication relating to Zimbabwe, made a declaration under article 41 recognizing the competence of the Committee to receive and consider communications relating to itself]."

### ANNEX III

#### OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS – PARTIES AND RESERVATIONS

**Parties (98):** Ratification, Accession (a), Succession (d):

Algeria	12 Sep 1989 a
Angola	10 Jan 1992 a
Argentina	8 Aug 1986 a
Armenia	23 Jun 1993 a
Australia	25 Sep 1991 a
Austria	10 Dec 1987
Barbados	5 Jan 1973 a
Belarus	30 Sep 1992 a
Belgium	17 May 1994 a
Benin	12 Mar 1992 a
Bolivia	12 Aug 1982 a
Bosnia and Herzegovina	1 Mar 1995
Bulgaria	26 Mar 1992 a
Burkina Faso	4 Jan 1999 a
Cameroon	27 Jun 1984 a
Canada	19 May 1976 a
Cape Verde	19 May 2000 a
Central African Republic	8 May 1981 a
Chad	9 Jun 1995 a
Chile	27 May 1992 a
China	
Colombia	29 Oct 1969
Congo	5 Oct 1983 a
Costa Rica	29 Nov 1968
Côte d'Ivoire	5 Mar 1997 a
Croatia	12 Oct 1995 a
Cyprus	15 Apr 1992
Czech Republic	22 Feb 1993 d
Democratic Republic of the Congo	1 Nov 1976 a
Denmark	6 Jan 1972
Dominican Republic	4 Jan 1978 a
Ecuador	6 Mar 1969
El Salvador	6 Jun 1995
Equatorial Guinea	25 Sep 1987 a
Estonia	21 Oct 1991 a
Finland	19 Aug 1975
France	17 Feb 1984 a
Gambia	9 Jun 1988 a
Georgia	3 May 1994 a
Germany	25 Aug 1993 a
Ghana	7 Sep 2000
Greece	5 May 1997 a
Guatemala	28 Nov 2000 a
Guinea	17 Jun 1993
Guinea-Bissau	12 Sep 2000 (signature)
Guyana	10 May 1993 a

*The Government of Guyana had initially acceded to the Optional Protocol on 10 May 1993. On 5 January 1999, the Government of Guyana notified the Secretary-General that it had decided to denounce the said Optional Protocol*

*with effect from 5 April 1999. On that same date, the Government of Guyana re-acceded to the Optional Protocol with a reservation.\**

Honduras	19 Dec 1966
Hungary	7 Sep 1988 a
Iceland	22 Aug 1979 a
Ireland	8 Dec 1989 a
Italy	15 Sep 1978
Jamaica	[3 Oct 1975] <i>On 23 October 1997, the Government of Jamaica notified the Secretary-General of its denunciation of the Protocol.</i>
Kyrgyzstan	7 Oct 1994 a
Latvia	22 Jun 1994 a
Lesotho	6 Sep 2000 a
Libyan Arab Jamahiriya	16 May 1989 a
Liechtenstein	10 Dec 1998 a
Lithuania	20 Nov 1991 a
Luxembourg	18 Aug 1983 a
Madagascar	21 Jun 1971
Malawi	11 Jun 1996 a
Malta	13 Sep 1990 a
Mauritius	12 Dec 1973 a
Mongolia	16 Apr 1991 a
Namibia	28 Nov 1994 a
Nepal	14 May 1991 a
Netherlands	11 Dec 1978
New Zealand	26 May 1989 a

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\* **Finland (17 March 2000)**: “The Government of Finland is of the view that denying the rights recognised in the Optional Protocol from individuals under the most severe sentence is in contradiction with the object and purpose of the said Protocol. Furthermore, the Government of Finland wishes to express its serious concern as to the procedure followed by Guyana, of denouncing the Optional Protocol (to which it did not have any reservations) followed by an immediate re-accession with a reservation. The Government of Finland is of the view that such a procedure is highly undesirable as circumventing the rule of the law of treaties that prohibits the formulation of reservations after accession. The Government of Finland therefore objects to the reservation made by the Government of Guyana to the said Protocol. This objection does not preclude the entry into force of the Optional Protocol between Guyana and Finland. The Optional Protocol will thus become operative between the two states without Guyana benefiting from the reservation”.

**Sweden (27 April 2000)**: “The Government of Sweden has examined the reservation to article 1 made by the Government of Guyana at the time of its re-accession to the Optional Protocol. The Government of Sweden notes that the Government of Guyana accepts the principle that States cannot use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, and that it stresses that its reservation in no way detracts from its obligations and engagements under the Covenant. Nevertheless, the Government of Sweden has serious doubts as to the propriety of the procedure followed by the Government of Guyana. While article 12, paragraph 1 of the Protocol provides that any State Party may denounce the Protocol “at any time”, the denunciation may in no case be used by a State Party for the sole purpose of formulating reservations to that instrument after having re-acceded to it. Such a practice would constitute a misuse of the procedure and would be manifestly contrary to the principle of good faith. It further contravenes the rule of *pacta sunt servanda*. As such, it undermines the basis of international treaty law and the protection of human rights. The Government of Sweden therefore wishes to declare its grave concern over this method of proceeding. Furthermore, the reservation seeks to limit the international obligations of Guyana towards individuals under sentence of death. The Government of Sweden is of the view that the right to life is fundamental and that the death penalty cannot be accepted. It is therefore of utmost importance that states that persist in this practice refrain from further weakening the position of that group of individuals.”

Nicaragua	12 Mar 1980 a
Niger	7 Mar 1986 a
Norway	13 Sep 1972
Panama	8 Mar 1977
Paraguay	0 Jan 1995 a
Peru	3 Oct 1980
Philippines	22 Aug 1989
Poland	7 Nov 1991 a
Portugal	3 May 1983
Republic of Korea	10 Apr 1990 a
Romania	20 Jul 1993 a
Russian Federation	1 Oct 1991 a
Saint Vincent and the Grenadines	9 Nov 1981 a
San Marino	18 Oct 1985 a
Sao Tome and Principe	6 Sep 2000
Senegal	13 Feb 1978
Seychelles	5 May 1992 a
Sierra Leone	23 Aug 1996 a
Slovakia	28 May 1993 d
Slovenia	16 Jul 1993 a
Somalia	24 Jan 1990 a
Spain	25 Jan 1985 a
Sri Lanka	3 Oct 1997 a
Suriname	28 Dec 1976 a
Sweden	6 Dec 1971
Tajikistan	4 Jan 1999 a
The Former Yugoslav Republic of Macedonia	12 Dec 1994
Togo	30 Mar 1988 a
Trinidad and Tobago	[14 Nov 1980 a]

*The Government of Trinidad and Tobago acceded to the Optional Protocol on 14 November 1980. On 26 May 1998 the Government of Trinidad and Tobago informed the Secretary-General of its decision to denounce the Optional Protocol with effect from 26 August 1998. On 26 August 1998, the Government of Trinidad and Tobago re-acceded to the Optional Protocol with a reservation. On 27 March 2000, the Government of Trinidad and Tobago notified the Secretary-General that it had decided to denounce the Optional Protocol for the second time with effect from 27 June 2000.\*\**

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**\*\* Sweden (17 August 1999):** “The Government of Sweden notes that the Government of Trinidad and Tobago accepts the principle that States cannot use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, and it stresses that its reservation in no way detracts from its obligations and engagements under the Covenant. Nevertheless the Government of Sweden has serious doubts as to the propriety of the procedure followed by the Government of Trinidad and Tobago in that denunciation of the Optional Protocol succeeded by re-accession with a reservation undermines the basis of international treaty law as well as the international protection of human rights. The Government of Sweden therefore wishes to declare its grave concern over this method of proceeding. Furthermore the reservation seeks to limit the international obligations of Trinidad and Tobago towards individuals under sentence to death. The Government of Sweden is of the view that the right to life is fundamental and that the death penalty cannot be accepted. It is therefore of utmost importance that states that persist in this practice refrain from further weakening the position of that group of individuals.”

**Germany (13 August 1999):** “The purpose of the Protocol is to strengthen the position of the individual under the Covenant. While the Government of the Federal Republic of Germany welcomes the decision of the Government of Trinidad and Tobago to re-accede to the Optional Protocol it holds the view that the benefits of the Optional Protocol should not be denied to individuals who are under the most severe sentence, the sentence of death. Furthermore, the Government of the Federal Republic of Germany is of the view that denunciation of

Turkmenistan	1 May 1997 a
Uganda	14 Nov 1995 a
Ukraine	25 Jul 1991 a
Uruguay	1 Apr 1970
Uzbekistan	28 Sep 1995 a
Venezuela	10 May 1978
Yugoslavia	14 Mar 1990
Zambia	10 Apr 1984 a

## **Declarations and Reservations**

### ***Austria***

“On the understanding that, further to the provisions of article 5 (2) of the Protocol, the Committee provided for in Article 28 of the Covenant shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms.”

### ***Chile***

#### Declaration:

In recognizing the competence of the Human Rights Committee to receive and consider communications from individuals, it is the understanding of the Government of Chile that this competence applies in respect of acts occurring after the entry into force for that State of the Optional Protocol or, in any event, to acts which began after 11 March 1990.

### ***Croatia***

#### Declaration:

“The Republic of Croatia interprets article 1 of this Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the Republic of Croatia who claim to be victims of a violation by the Republic of any rights set forth in the Covenant which results either from acts, omissions or events occurring after the date on which the Protocol entered into force for the Republic of Croatia.”

“With regard to article 5, paragraph 2 (a) of the Protocol, the Republic of Croatia specifies that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been examined under another procedure of international investigation or settlement.”

### ***Denmark***

“With reference to article 5, paragraph 2 (a), the Government of Denmark makes a reservation with respect to the Competence of the Committee to consider a communication from an individual if the matter has already been considered under other procedures of international investigation.”

### ***El Salvador***

#### Reservation:

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an international human rights instrument followed by immediate reaccession under a far reaching reservation may set a bad precedent. The Government of the Federal Republic of Germany objects to the reservation. This objection shall not preclude the entry into force of the Optional Protocol between the Federal Republic of Germany and Trinidad and Tobago.”

... That its provisions mean that the competence of the Human Rights Committee is recognized solely to receive and consider communications from individuals solely and exclusively in those situations, events, cases, omissions and legal occurrences or acts the execution of which began after the date of deposit of the instrument of ratification, that is, those which took place three months after the date of the deposit, pursuant to article 9, paragraph 2, of the Protocol; the Committee being also without competence to examine communications and-or complaints which have been submitted to other procedures of international investigation or settlement.

## ***France***

### Declaration:

France interprets article 1 of the Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the French Republic who claim to be victims of a violation by the Republic of any of the rights set forth in the Covenant which results either from acts, omissions, developments or events occurring after the date on which the Protocol entered into force for the Republic, or from a decision relating to acts, omissions, developments or events after that date. With regard to article 7, France's accession to the Optional Protocol should not be interpreted as implying any change in its position concerning the resolution referred to in that article.

### Reservation:

France makes a reservation to article 5, paragraph 2(a), specifying that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement.

## ***Germany***

### Reservation:

"The Federal Republic of Germany formulates a reservation concerning article 5 paragraph 2 (a) to the effect that the competence of the Committee shall not apply to communications a) which have already been considered under another procedure of international investigation or settlement, or b) by means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany c) by means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant."

## ***Guatemala***

### Declaration:

The Republic of Guatemala recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Republic who claim to be victims of a violation by Guatemala of any of the rights set forth in the International Covenant relating to acts, omissions, situations or events occurring after the date on which the Optional Protocol entered into force for the Republic of Guatemala or to decisions resulting from acts, omissions, situations or events after that date.

## ***[Guyana***

### Reservation:

"[...] Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any persons who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith.

Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations

and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognised in the Covenant (in so far as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40 thereof.”]

### ***Iceland***

Iceland ... accedes to the said Protocol subject to a reservation, with reference to article 5, paragraph 2, with respect to the competence of the Human Rights Committee to consider a communication from an individual if the matter is being examined or has been examined under another procedure of international investigation or settlement. Other provisions of the Covenant shall be inviolably observed.

### ***Ireland***

Article 5, paragraph 2

Ireland does not accept the competence of the Human Rights Committee to consider a communication from an individual if the matter has already been considered under another procedure of international investigation or settlement.

### ***Italy***

The Italian Republic ratifies the Optional Protocol to the International Covenant on Civil and Political Rights, it being understood that the provisions of article 5, paragraph 2, of the Protocol mean that the Committee provided for in article 28 of the Covenant shall not consider any communication from an individual unless it has ascertained that the same matter is not being and has not been examined under another procedure of international investigation or settlement.

### ***Luxembourg***

#### Declaration:

“The Grand Duchy of Luxembourg accedes to the Optional Protocol to the International Covenant on Civil and Political Rights, on the understanding that the provisions of article 5, paragraph 2, of the Protocol mean that the Committee established by article 28 of the Covenant shall not consider any communications from an individual unless it has ascertained that the same matter is not being examined or has not already been examined under another procedure of international investigation or settlement.”

### ***Malta***

#### Declarations:

“1. Malta accedes to the Optional Protocol to the International Covenant on Civil and Political Rights, on the understanding that the provisions of article 5, paragraph 2, of the Protocol mean that the Committee established by article 28 of the Covenant, shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined or has not already been examined under another procedure of international investigation or settlement.

2. The Government of Malta interprets Article 1 of the Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of Malta who claim to be victims of a violation by Malta of any of the rights set forth in the Covenant which results either from acts, omissions, developments or events occurring after the date on which the Protocol enters into force for Malta, or from a decision relating to acts, omissions, developments or events after that date.”

### ***Norway***

Subject to the following reservation to article 5, paragraph 2: “... The Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement.”

## ***Poland***

Poland accedes to the Protocol while making a reservation that would exclude the procedure set out in article 5 (2) (a), in cases where the matter has already been examined under another procedure of international investigation or settlement.

## ***Romania***

### Declaration:

Romania considers that, in accordance with article 5, paragraph 2(a) of the Protocol, the Human Rights Committee shall not have competence to consider communications from an individual if the matter is being or has already been examined under another procedure of international investigation or settlement.

## ***Russian Federation***

### Declaration:

The Union of Soviet Socialist Republics, pursuant to article 1 of the Optional Protocol, recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Union of Soviet Socialist Republics, in respect of situations or events occurring after the date on which the Protocol entered into force for the USSR. The Soviet Union also proceeds from the understanding that the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the individual in question has exhausted all available domestic remedies.

## ***Slovenia***

### Declaration:

“The Republic of Slovenia interprets article 1 of the Protocol as giving the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the Republic of Slovenia who claim to be victims of a violation by the Republic of any of the rights set forth in the Covenant which results either from acts or omissions, developments or events occurring after the date on which the Protocol entered into force for the Republic of Slovenia, or from a decision relating to acts, omissions, developments or events after that date.”

### Reservation:

“With regard to article 5, paragraph 2(a) of the Optional Protocol, the Republic of Slovenia specifies that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement.”

## ***Spain***

The Spanish Government accedes to the Optional Protocol to the International Covenant on Civil and Political Rights, on the understanding that the provisions of article 5, paragraph 2, of that Protocol mean that the Human Rights Committee shall not consider any communication from an individual unless it has ascertained that the same matter has not been or is not being examined under another procedure of international investigation or settlement.

## ***Sri Lanka***

### Declaration:

“The Government of the Democratic Socialist Republic of Sri Lanka pursuant to article (1) of the Optional Protocol recognises the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Democratic Socialist Republic of Sri Lanka, who claim to be victims of a violation of any of the rights set forth in the Covenant which results either from acts, omissions, developments or events occurring after the date on which the Protocol entered into force for the Democratic Socialist Republic of Sri Lanka or from a decision



relating to acts, omissions, developments or events after that date. The Democratic Socialist Republic of Sri Lanka also proceeds on the understanding that the Committee shall not consider any communication from individuals unless it has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement.”

### ***Sweden***

On the understanding that the provisions of article 5, paragraph 2, of the Protocol signify that the Human Rights Committee provided for in article 28 of the said Covenant shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined or has not been examined under another procedure of international investigation or settlement.

### **[Trinidad and Tobago**

#### Reservation:

“[...] Trinidad and Tobago re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 1 thereof to the effect that the Human Rights Committee shall not be competent to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith.

Accepting the principle that States cannot use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Trinidad and Tobago stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Trinidad and Tobago and subject to its jurisdiction the rights recognised in the Covenant (in so far as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40 thereof.”]

### ***Uganda***

#### Reservation:

Article 5: “The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under the provisions of article 5 paragraph 2 from an individual if the matter in question has already been considered under another procedure of international investigation or settlement.”

### ***Venezuela***

[Same reservation as the one made by Venezuela in respect of article 14(3)(d) of the International Covenant on Civil and Political Rights: Article 60, paragraph 5, of the Constitution of the Republic of Venezuela establishes that: “No person shall be convicted in criminal trial unless he has first been personally notified of the charges and heard in the manner prescribed by law. Persons accused of an offence against the res publica may be tried in absentia , with the guarantees and in the manner prescribed by law”. Venezuela is making this reservation because article 14, paragraph 3 (d), of the Covenant makes no provision for persons accused of an offence against the res publica to be tried in absentia.

## ANNEX IV

### HUMAN RIGHTS COMMITTEE, GENERAL COMMENT 6



UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS



#### *The right to life (art. 6) : . 30/07/82. CCPR General comment 6. (General Comments)*

#### GENERAL COMMENT 6

#### The right to life

#### (Article 6)

#### (Sixteenth session, 1982)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

2. The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between article 6 and article 20, which states that the law shall prohibit any propaganda for war (para. 1) or incitement to violence (para. 2) as therein described.

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the

utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

## ANNEX V

### **PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS**

*(recommended by United Nations Economic and Social Council resolution 1989/65 of 24 May 1989)\**

#### *Prevention*

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions. Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders.

Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

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\* In resolution 1989/65, paragraph I, the Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions should be taken into account and respected by Governments within the Framework of their national legislation and practices.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognised places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports or any such executions and to take effective action against such practices.

Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

#### *Investigation*

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable report suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigations shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigations. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission

shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time of the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

*Legal proceedings*

18. Governments shall ensure that persons identified by the investigations as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.