



# General Assembly

Distr.: Limited  
23 September 2019

Original: English

## Human Rights Council

### Forty-second session

9–27 September 2019

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Albania,\* Australia, Austria, Belgium,\* Benin,\* Brazil, Bulgaria, Chile, Colombia,\*  
Costa Rica,\* Croatia, Cyprus,\* Czechia, Denmark, Fiji, Finland,\* France,\* Georgia,\*  
Germany,\* Greece,\* Haiti,\* Hungary, Iceland, Ireland,\* Italy, Latvia,\*  
Liechtenstein,\* Lithuania,\* Luxembourg,\* Malta,\* Mexico, Monaco,\* Mongolia,\*  
Montenegro,\* Netherlands,\* North Macedonia,\* Norway,\* Paraguay,\* Poland,\*  
Portugal,\* Republic of Moldova,\* Romania,\* Slovakia, Slovenia,\* Spain, Sweden,\*  
Switzerland\* and Ukraine: draft resolution**

### 42/... The question of the death penalty

*The Human Rights Council,*

*Guided by the purposes and principles of the Charter of the United Nations,*

*Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other relevant international human rights instruments, and reaffirming that all States must implement their obligations under international human rights law,

*Recalling also* the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

*Recalling further* General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012, 69/186 of 18 December 2014, 71/187 of 19 December 2016 and 73/175 of 17 December 2018 on the question of a moratorium on the use of the death penalty,

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

*Recalling* all resolutions of the Commission on Human Rights on the question of the death penalty, the last of which was resolution 2005/59 of 20 April 2005,

*Recalling also* Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to

\* State not a member of the Human Rights Council.



the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level panel discussion on the question of the death penalty, and Council resolutions 26/2 of 26 June 2014, 30/5 of 1 October 2015 and 36/17 of 29 September 2017 on the question of the death penalty,

*Taking note* of the reports of the Secretary-General on the question of the death penalty, in the latest of which the Secretary-General examined the impact of the resumption of the use of the death penalty on human rights, paying specific attention to the incompatibility of the use of the death penalty with international human rights obligations, the restriction of the use of the death penalty to “the most serious crimes”, the disproportionality of applying it for any other crimes not resulting directly and intentionally in death, and the due process guarantees affected by resumption,<sup>1</sup>

*Acknowledging* the report of the Office of the United Nations High Commissioner for Human Rights on the high-level panel discussion on the question of the death penalty,<sup>2</sup> according to which the panel had concluded by noting that it was nearly impossible to apply the death penalty without discrimination and so, to avoid irreversible miscarriages of justice and arbitrary killing, it should not be applied,

*Mindful* of the work of the special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

*Mindful also* of the work undertaken by the treaty bodies to address human rights issues related to the death penalty,

*Recognizing* the role of regional and subregional instruments and initiatives towards the abolition of the death penalty, which in some cases have led to the prohibition of the use of the death penalty,

*Welcoming* the fact that the international trend towards the abolition of the death penalty is continuing,

*Welcoming also* the fact that many States are applying a moratorium on the use of the death penalty,

*Noting* that States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use,

*Strongly deploring* the fact that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons,

*Noting* that, according to the Human Rights Committee, States parties to the International Covenant on Civil and Political Rights that have abolished the death penalty are barred from reintroducing it, and the abolition of the death penalty is legally irrevocable,

*Noting also* that the reinstatement of the death penalty by a State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights is a violation of international law,

*Recalling* article 6 (6) of the International Covenant on Civil and Political Rights, which states that nothing in that article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the Covenant, and bearing in mind that, according to the Human Rights Committee, States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future,

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<sup>1</sup> A/HRC/42/28.

<sup>2</sup> A/HRC/42/25.

*Noting* that, according to the Human Rights Committee, the term “the most serious crimes” must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing, and that crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, and drug and sexual offences, although serious in nature, can never serve as the basis for the imposition of the death penalty,

*Expressing concern* that several States have widened their application of the death penalty to include terrorist offences not resulting directly and intentionally in death, which may not reach the high bar of “the most serious crimes”,

*Stressing* that under no circumstances can the death penalty ever be applied as a sanction against specific forms of conduct, such as adultery, blasphemy, homosexuality, apostasy, establishing political opposition groups or offending a head of State, and that States parties that retain the death penalty for such offences commit a violation of their international obligations,

*Stressing also* that the Secretary-General, in his report on the question of the death penalty,<sup>3</sup> states that there is no evidence that the death penalty deters drug-related or other crime more than other methods of punishment,

*Condemning* the resumption of the death penalty, in particular for any crimes that do not qualify as “the most serious crimes”,

*Recalling* that, particularly in capital punishment cases, States are required to ensure that all persons benefit from a fair trial and a guarantee of due process and to provide adequate assistance of legal counsel at every stage of the proceedings, including during detention and arrest, without discrimination of any kind,

*Emphasizing* that access to consular assistance for foreign nationals, provided for in the Vienna Convention on Consular Relations, is an important aspect of the protection of those facing the death penalty abroad,

*Emphasizing also* that lack of transparency in the use of the death penalty has direct consequences for the human rights of the persons sentenced to death as well as for other affected persons,

*Acknowledging* the interest in studying the question of the death penalty, as well as in holding local, national, regional and international debates related thereto,

1. *Urges* all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations;
2. *Calls upon* States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, to consider doing so;
3. *Calls upon* States that have abolished the death penalty or apply a moratorium on its use not to resume the use of the death penalty and reminds States that are States parties to the International Covenant on Civil and Political Rights and have abolished the death penalty that they are barred from reintroducing it;
4. *Calls upon* States that still apply the death penalty to limit its use to “the most serious crimes” and to remove from national laws any application of the death penalty to crimes not involving intentional killing, such as drug-related offences or terrorism-related crimes not involving intentional killing;
5. *Calls upon* States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, and to inform foreign nationals of their right to contact the relevant consular post;
6. *Calls upon* States that have not yet abolished the death penalty to make available relevant information, disaggregated by gender, age, nationality and other

<sup>3</sup> A/HRC/42/28.

applicable criteria, with regard to their use of the death penalty, inter alia, the charges, number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;

7. *Requests* the Secretary-General to dedicate the 2021 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to consequences of the lack of transparency in the application and imposition of the death penalty on the enjoyment of human rights, and to present it to the Human Rights Council at its forty-eighth session;

8. *Decides* that the upcoming biennial high-level panel discussion to be held at the forty-sixth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to whether the use of the death penalty has a deterrent effect on crime rate;

9. *Requests* the Office of the United Nations High Commissioner for Human Rights to organize the high-level panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions with a view to ensuring their participation in the panel discussion;

10. *Also requests* the Office of the High Commissioner to prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its forty-eighth session;

11. *Decides* to continue its consideration of this issue in accordance with its programme of work.

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