

Department of Justice
National Institute of Justice
Office of the Director

145606

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been

granted by
Public Information
United Nations

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.



Introduction

The Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty were adopted by the Economic and Social Council in 1984, on the recommendation of the United Nations Committee on Crime Prevention and Control. They were endorsed in 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy from 26 August to 6 September 1985.

The Safeguards consist of nine provisions covering the basic guarantees to be respected in criminal justice proceedings, in the context of the rights of the offenders charged with a capital offence. These deal, *inter alia*, with the right to benefit from lighter penalties under certain conditions, to appeal and seek pardon; with exemptions from capital punishment (for persons below 18 years of age, pregnant women, new mothers and persons who have become insane); with the necessary evidentiary requirements and with suspension of capital executions. They also state that capital punishment can be imposed only for the most serious crimes, i.e. intentional crimes with lethal or other extremely grave consequences.

The Safeguards were approved by the Economic and Social Council on the understanding that they should not be invoked to delay or prevent the abolition of capital punishment. In fact, the abolition of capital punishment is an objective to be pursued by the State Parties to the International Covenant on Civil and Political Rights, in accordance with article 6, paragraph 6 of the International Covenant.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 15, invited those States retaining the death penalty to adopt the Safeguards and to take the necessary steps to implement them by:

- incorporating the Safeguards in national legislation and regulations;
- ensuring that judges, lawyers and law enforcement officials are aware of their provisions;
- drawing the attention of those facing the death penalty to their content; and
- providing for their dissemination to the public.

The Congress also requested the United Nations Secretary-General to publicize widely the Safeguards and the mechanisms for their implementation.

Progress on the implementation of the Safeguards is kept under review by the Economic and Social Council through the Committee on Crime Prevention and Control.

Economic and Social Council resolution 1984/50

The Economic and Social Council,

Having regard to the provisions bearing on capital punishment in the International Covenant on Civil and Political Rights, in particular article 2, paragraph 1, and articles 6, 14 and 15 thereof,

Recalling General Assembly resolution 38/96 of 16 December 1983, in which, *inter alia*, the Assembly expressed its deep alarm at the occurrence on a large scale of summary or arbitrary executions,

Recalling also General Assembly resolution 36/22 of 9 November 1981, in which the Committee on Crime Prevention and Control was requested to examine the problem with a view to making recommendations,

Recalling further Council resolution 1983/24 of 26 May 1983, in which it decided that the Committee on Crime Prevention and Control should further study the question of death penalties that did not meet the acknowledged minimum legal guarantees and safeguards, as contained in the International Covenant on Civil and Political Rights and other international instruments, and welcomed the intention of the Committee that the issue should be discussed at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Acknowledging the work done by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the areas of summary or arbitrary executions, including the reports of the Special Rapporteur,

Considering the relevant views and comments of the Human Rights Committee established under the International Covenant on Civil and Political Rights,

Expressing its concern at the tragic incidence of arbitrary or summary executions in the world,

Having considered the note by the Secretary-General on arbitrary and summary executions,

Guided by the desire to continue to contribute to the strengthening of the international instruments relating to the prevention of arbitrary or summary executions,

1. *Takes note* of the note by the Secretary-General on arbitrary and summary executions;

2. *Again strongly condemns and deplors* the brutal practice of arbitrary or summary executions in various parts of the world;

3. *Approves* the safeguards guaranteeing protection of the rights of those facing the death penalty, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution, on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment;

4. *Invites* the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the safeguards with a view to establishing an implementation mechanism, within the framework of the item of its provisional agenda entitled "Formulation and application of United Nations standards and norms in criminal justice".

*21st plenary meeting
25 May 1984*

Annex

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

Resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders:

Bearing in mind the provisions set out in article 2, paragraph 1, and articles 14 and 15 of the International Covenant on Civil and Political Rights and, in particular, those on the death penalty contained in article 6,

Recalling General Assembly resolution 32/61 of 8 December 1977,

Welcoming Economic and Social Council resolution 1984/50 of 25 May 1984, to which the annex contains safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Endorses* the safeguards approved by the Economic and Social Council in its resolution 1984/50;

2. *Invites* all States retaining the death penalty and whose present standards fall short of the safeguards to adopt the safeguards and to take the necessary steps to implement them by:

(a) Incorporating or making provision for the safeguards in national legislation and regulations;

(b) Ensuring that judges, lawyers, police officers, prison officials and other persons, including military personnel who may be concerned with the administration of criminal justice, are familiar with the safeguards, and any corresponding provisions in national legislation and regulations, by including them in courses in instruction, by disseminating and publicizing them and by other appropriate means;

(c) Drawing the attention of persons facing the death penalty, and their representatives, to the safeguards and to any corresponding provisions in national legislation and regulations, and disseminating to the public those safeguards by all appropriate means;

3. *Invites* the General Assembly to request the criminal justice and human rights bodies of the United Nations to promote the safeguards and to take them fully into account in their work;

4. *Requests* intergovernmental organizations, including regional organizations, specialized agencies and other bodies within the United Nations system having responsibilities in the field of criminal justice and human rights, as well as the relevant non-governmental organizations, to promote the safeguards and to take them fully into account in their work;

5. *Requests* the Secretary-General of the United Nations:

(a) To use his best endeavours to ensure as far as possible the effective implementation of the safeguards in all States;

(b) To include a statement on the implementation of the safeguards in the quinquennial reports on capital punishment submitted to the Economic and Social Council, in accordance with Council resolution 1745 (LIV) of 16 May 1973;

(c) To bring the text of the safeguards and of the mechanism for their implementation to the attention of all States, the General Assembly, the appropriate intergovernmental organizations, including regional organizations and specialized agencies, and other appropriate bodies within the United Nations system, as well as non-governmental organizations;

(d) To disseminate and publicize widely the safeguards and the mechanism for their implementation, and to publish the texts in as many languages as possible.

1000 1000 1000 1000