

ARMENIA

Time to abolish the death penalty

Introduction

Independent Armenia¹ retained the death penalty following the demise of the Soviet Union, and currently has some 18 men on death row. No judicial executions have been carried out, however, under President Levon Ter-Petrossian. First elected in 1991, President Ter-Petrossian is personally opposed to the death penalty and has refused to sign any death warrants. Advancing one step further from this *de facto* moratorium, the Armenian parliament recently passed at first reading a bill which would abolish the death penalty completely.

Amnesty International greatly welcomes these steps, trusting that final parliamentary approval will soon be given for abolition and that Armenia will thereby join over half the countries in the world today which have abolished the death penalty in law or practice.

Amnesty International remains concerned, however, about a number of issues connected with the death penalty in Armenia. Chief among these are allegations that law enforcement officials have used physical or other means of duress in seeking to obtain confessions in cases where the offence carries a possible death sentence, including, in 1996, one case in which three defendants received the death penalty.

Amnesty International considers that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. Amnesty International opposes its use in all cases without reservation. This paper reviews the use of the death penalty in Armenia, and ends with recommendations on the abolition of this punishment totally and permanently.

The death penalty in law

The new Armenian Constitution, adopted in 1995², retains the death penalty “until its complete abolition as an exceptional measure of punishment ...for the most serious crimes”.³ Application of the death penalty is regulated by provisions in the Armenian Criminal Code. Pending the adoption of a new criminal code, Armenia is continuing to use the one inherited

¹ Previously a constituent republic of the Soviet Union, Armenia declared independence in 1991. It joined the Conference on Security and Co-operation in Europe (CSCE, now the Organization for Security and Co-operation in Europe - OSCE) in January 1992, and became a member of the United Nations in March that year.

² The Constitution was approved in a popular referendum on 5 July 1995, and entered into force five days later upon publication of the referendum result by the Central Electoral Commission.

³ Article 17 of the Constitution.

Human rights and the death penalty - why do states kill?

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights.

Many governments share this view, and have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. The Council of Europe has included a moratorium on executions and moves towards complete abolition among its provisions of entry for states of the former Soviet Union. Ninety nine countries in the world today have abolished the death penalty in law or practice.

Why then do other states retain the death penalty? One of the most common justifications is that, terrible as it is, the death penalty is necessary as a *deterrent* against crime. Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

There is another serious flaw in the deterrence argument. People who plan serious crimes in a calculated manner may decide to proceed, despite the risk, in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment but to increase the likelihood of detection and conviction.

The death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify or incriminate them.

Furthermore, crime figures from abolitionist countries fail to show that the abolition of the death penalty produces a rise in the crime rate. A study of research

findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention in 1988, concluded that “this research has failed to provide scientific support that executions have a greater effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis”. Every society seeks protection from crime, but the argument that the death penalty is a better protection than other punishments is illusory.

Another argument is that permanently *incapacitating* a prisoner - by killing them - prevents that person from repeating the crime. But there is no way to be sure that the prisoner would have repeated the crime if allowed to live, nor is there any need to take the prisoner’s life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries. The death penalty takes the lives of offenders who might have been rehabilitated as well as the lives of the innocent. Incarceration in prisons and other institutions which isolate offenders from society also has another great advantage over the death penalty as a means of incapacitation: the mistakes which result from fallible judicial systems can be corrected, at least partially.

When the arguments of deterrence and incapacitation are discounted, there is a more deep-seated motivation for the death penalty: that of just *retribution* for the particular crime committed. According to this argument, certain people deserve to be killed as a repayment for the evil done: there are crimes so offensive that killing the offender is the only just response. Basing the death penalty on retribution, however, makes impossible demands on the criminal justice system. Risks of error and unfairness exist in all such systems. No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

In its simplest form the argument for retribution is also often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction, in public policy and legal codes, of personal vengeance.

The argument for retribution is an emotionally powerful one. It is also one which, if valid, would invalidate the basis for human rights. Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect all of us.

In practice the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death removes not only the victim's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

from its time as a republic of the USSR, with numerous amendments. In Soviet times this code contained some 18 peacetime offences carrying a possible death sentence, including some which did not involve the use of violence. Sixteen other offences carried a death sentence as a maximum punishment if committed during a time of war or combat operation. To Amnesty International's knowledge the death penalty has been abolished for only three of these offences since independence, and so it appears that the code still in use at present continues to contain in total 31 offences punishable by a possible death sentence (see Appendix I for a list of these offences). A death sentence may not be passed on anyone under 18, or ruled to have been insane, at the time of the offence or when sentence is passed. Women are also exempt if pregnant. Execution is by shooting.

Currently the Supreme Court is acting as the court of first instance, and appeals in such cases go to the Plenum and Presidium of the Supreme Court. Following the adoption of the new Armenian Constitution in 1995, however, changes are under way in the court structure. As the Procurator General explained to an Amnesty International delegation in October 1995, when fully implemented these changes will mean that the Supreme Court will be replaced by a Constitutional Court (which held its first session in March 1996) and an Appeal Court (which is yet to be formed). Local courts will be empowered to hear cases involving a possible death sentence, and pass such a sentence. Appeals will then go to the Appeal Court, a higher body.

If the death sentence is upheld on appeal, and no other judicial protests are pending, the last resort against execution is a petition for clemency to the President of Armenia, who has the constitutional authority to exercise pardon and grant clemency.⁴ All death sentences are passed automatically to a presidential clemency commission, which prepares recommendations for consideration by the President, regardless of whether the prisoner concerned has submitted a petition. A dossier on the case is then passed to the President, who issues a decree containing the decision.

The death penalty in practice

Death sentences are passed regularly in Armenia although the numbers each year appear to be comparatively low - since 1990 a total of 21 death sentences are reported to have been handed down.⁵ From the seemingly limited information available in the public domain, it appears that most of these have been for premeditated, aggravated murder (Article 99 of the Criminal Code). The majority of such sentences have been passed in purely criminal cases, although some have had a political aspect. Two Azerbaijani citizens named Bakhtiar Khanali oglu Shabiev and

⁴ Article 55, subsection 17 of the Constitution.

⁵ Noyan Tapan news agency, 24 March 1997. Amnesty International has repeatedly requested, but not received, information on the application of the death penalty according to the breakdown as recommended by the United Nations Economic and Social Council Resolution 1989/64 (see Appendix II).

Garay Muzafar oglu Nagiev, for example, were sentenced to death in 1994 for offences alleged to have been committed in connection with the conflict over the disputed region of Karabakh in neighbouring Azerbaijan.⁶ They were convicted by the Armenian Supreme Court in the capital, Yerevan, on 5 April that year, of murdering three ethnic Armenians and of attempting to poison a reservoir.⁷ Six other defendants, all Azerbaijanis, received terms of imprisonment of from 12 to 15 years.⁸ Bakhtiar Shabiev and Garay Nagiev were handed over to Azerbaijan in May 1995 as part of an exchange of prisoners to mark the first anniversary of the current cease-fire in the Karabakh region.

In a more recent case, three political prisoners⁹ from a group of 11 on trial were sentenced to death by the Supreme Court in Yerevan on 10 December 1996, accused of murder while part of an alleged clandestine terrorist organization known as "Dro". Arsen Artsruni, Armen Grigorian and Armenak Mnjoyan were convicted amid continuing allegations that their trial was unfair, and that confessions had been obtained under physical and mental duress (see below).

⁶ Intercommunal violence in the disputed Karabakh region of Azerbaijan, populated now almost exclusively by ethnic Armenians, escalated from 1988 into a large-scale armed conflict between Azerbaijani forces and those fighting on behalf of the self-proclaimed Nagorno-Karabakh Republic. A cease-fire has been in force in the conflict since May 1994.

⁷ Some press reports at the time indicated that the killings had taken place in the Kelbajar district of Azerbaijan - which has been under the *de facto* control of ethnic Armenian forces from Karabakh since 1993. In a letter to Amnesty International of 15 August 1994, however, Gerard Libaridian, advisor to the President, claimed that the killings had taken place in the Martuni district of Armenia and that the convicted men were on Armenian territory when arrested.

⁸ Three other men held as suspects in this case - Faig Gabil oglu Guliev, Rustam Ramazan oglu Agaev and Bakhrat Akif oglu Giasov - were among a group of eight Azerbaijani prisoners who died on 29 January 1994 in Ministry of Defence custody in Yerevan. The Armenian authorities had alleged the men committed suicide after a failed escape bid during which an Armenian guard was killed, although an independent forensic expert reported that the pattern of their injuries suggested "execution-type shootings". See *Amnesty International Report 1995* and *Amnesty International Report 1996*.

⁹ Amnesty International uses a broad interpretation of the term "political prisoner" so as to cover all cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Governments are, however, obliged to ensure that such prisoners receive a fair trial in line with international standards, and Amnesty International opposes the use of torture and the death penalty in all cases - both political and criminal - without reservation.

To Amnesty International's knowledge all the death sentences passed in recent years have been for offences involving violence, usually premeditated, aggravated murder.

Procedures for executions

Even when executions were carried out during Soviet times as a result of death sentences passed in Armenia, it appears that prisoners were not actually shot in Armenia but transferred to neighbouring republics of the Soviet Union for execution. The Russian newspaper *Izvestiya*, for example, reported in an article on 9 September 1995 that the last execution of an Armenian had taken place in 1991 in Saratov, in the Russian Federation.¹⁰ Quoting "informed sources", the newspaper said that the day on which the prisoner was to be transferred for execution to such a prison was known only to the Armenian Minister of the Interior, who alone had the right to open the relevant instructions from Moscow, but who was not informed subsequently about the fate of the prisoner.

The whole procedure surrounding executions was regarded as a state secret in Soviet times, and most details only emerged after the demise of the USSR. Such information on executions gathered by Amnesty International from various republics of the former Soviet Union paints a grim picture. Upon receiving notification that a prisoner's petition for pardon had been turned down the prison director would convene a special commission which consisted of himself, a prosecutor and a doctor. The condemned person would be summoned from the cell, and in the presence of the commission the text of the decree refusing clemency would be read out. The prisoner would then be taken immediately to a cell a short distance away and shot by a single executioner with a revolver.

Neither the prisoner nor his or her relatives were given any advance notice of the date of execution, or an opportunity for a last visit, and the prisoner had barely minutes to come to terms with imminent execution after the clemency refusal had been announced. The prisoner would be removed and buried in secret, with relatives having no right to the return of the body or even to know where their loved one was buried.

Moves towards abolition

Apart from the *de facto* moratorium on executions, and prior to the recent proposal to remove the death penalty entirely from the criminal code, concrete moves towards abolition in Armenia since independence had been very few and appear to have been limited to removing the death penalty as a possible punishment from three of 34 offences in the criminal code. These were two economic offences - "violating the rules on currency transactions" (Article 83) and "theft of state or social property on an especially large scale" (Article 99-1) - for which the death

¹⁰ In March 1992 the Armenian representative to the Russian Federation told Amnesty International in Moscow that two men sentenced to death in Armenia had been executed on 30 August 1991.

penalty was abolished by a law of 11 May 1992, and the military offence of “desertion”, Article 255, which no longer carries a possible maximum sentence of death following an amendment passed by the National Assembly (parliament) on 13 December 1995. Although welcome as first steps, these amendments would appear to have had little direct impact on the number of death sentences passed, virtually all of which are believed to be for premeditated, aggravated murder.

The death penalty was retained as a possible punishment when the new Constitution was adopted in 1995, and apparently did not provoke wide public discussion at the time. Recently, however, this issue has come to the fore in connection with Armenia’s application to join the Council of Europe¹¹: as a condition for admitting new members, the Council of Europe has required of such countries that they impose a moratorium on executions as part of moves towards total abolition within a specific time frame.

On 19 March 1997 the Armenian National Assembly (parliament) began discussing a new draft criminal code in which there would be no capital crimes, whether in time of peace or war, and in which the death penalty would be replaced by the maximum punishment of life imprisonment. Life imprisonment would not be imposed on women or minors. The draft version was passed in its first reading on 3 April, although the issue of abolition is said to have caused lively debates, and the second reading will reportedly take place within approximately three months.¹² Most opponents of the bill were said to be those who were specifically against abolition, with some wanting to retain the death penalty for crimes such as premeditated, aggravated murder, or to hold a referendum on the issue of abolition.¹³

Amnesty International’s concerns

While Amnesty International welcomes any moves towards reducing the scope and range of the death penalty, and welcomes the existence of a moratorium on executions, the organization still has a number of concerns about the death penalty in Armenia pending the adoption of legal moves for its complete abolition.

Alleged use of physical and mental duress to obtain confessions in capital cases

One of the foremost concerns is the possibility of judicial error, linked with allegations of unfair trials and with a number of reports that law enforcement officials have used physical and other means of duress in seeking to obtain confessions in cases where the offence carries a possible

¹¹ Armenia was granted special guest status at the Council of Europe in January 1996.

¹² *Asbarez on line*, quoting *Azg* newspaper, 7 April 1997.

¹³ *Armenpress* news agency, 20 March 1997, *Noyan Tapan* news agency 3 April 1997.

death sentence. Torture or cruel treatment is prohibited under the Armenian Constitution¹⁴, and evidence obtained through violation of legal proceedings has no legal force.¹⁵ It is also a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions.¹⁶ Nevertheless it has been alleged by some prisoners facing charges carrying a possible death sentence, and by at least one actually sentenced to death, that testimony was obtained from them under duress and also that such testimony was not excluded at their trial although they repudiated it in court.¹⁷ One such instance is that of the so-called “Dro” case (known officially as case No. 62200395), in which 11 men from a larger number originally arrested stood trial on charges ranging from withholding information to murder. They were accused of membership in an alleged clandestine terrorist group known as “Dro” within the currently-suspended opposition Armenian Revolutionary Federation (ARF or Dashnak) party. The trial began in July 1995, and concluded on 10 December 1996 when three defendants were sentenced to death and the rest to terms of imprisonment of from three to 15 years.

Several of the men reported great difficulties in meeting freely and promptly with a defence lawyer of their own choice, especially in the period shortly after their arrest in late 1994 or early 1995. Several of their lawyers also reported problems in gaining full access to relevant case materials during the investigation, and alleged numerous other procedural violations. In addition several prisoners alleged that they had been beaten in pre-trial detention in order to extract confessions. They included one of the defendants who was subsequently sentenced to death, Arsen Artsruni, who was reportedly beaten on 27 December 1994, 9 January 1995 and 22 April 1995. On 26 April 1995 Arsen Artsruni’s lawyer requested a medical examination of his client, but this was conducted formally only eight days later, and without the lawyer being present, by which time traces of the alleged beatings were no longer visible. In court Arsen Artsruni repudiated much of his testimony, on the grounds that it had been extracted under duress. Another prisoner named Armen Momjian, arrested in connection with the case but released a year later, is said to have sustained a broken lower jaw and right arm as a result of

¹⁴ Article 19 of the Constitution.

¹⁵ Article 42 of the Constitution.

¹⁶ Article 193 of the Criminal Code states: “The compelling to give testimony by means of application of threats or other illegal actions on the part of a person conducting an inquiry or preliminary investigation shall be punished by deprivation of freedom for a term not exceeding three years. The same actions combined with the application of force or with humiliation of the person interrogated shall be punished by deprivation of freedom for a term of three to 10 years.”

¹⁷ For further information on AI’s concern about alleged ill-treatment in detention see the documents *Armenia: Comments on the Initial Report submitted to the United Nations Committee against Torture*, AI Index: EUR 54/04/95, *Armenia: Allegations of ill-treatment: an update*, AI Index EUR 54/05/95 and *Armenia: Further allegations of ill-treatment in detention*, AI Index: EUR 54/03/96.

ill-treatment in detention; the investigator is also alleged to have threatened to put him in a cell with homosexuals in order to force him to confess.

Similar claims of ill-treatment also came to light following the opening on 5 March 1996 of the trial of a senior member of the ARF, Vahan Hovanesian, and 30 others accused of attempting to stage an armed coup. Charges in the trial, which is still under way, range from illegal possession of firearms to treason, which carries a possible death sentence. As in the "Dro" case, the defendants have alleged that they were beaten or otherwise placed under physical and mental duress to sign confessions, and that they have at times been denied full and proper access to a defence lawyer of their own choice, especially in pre-trial detention. Manvel Yeghiazarian, for example, alleged that he was assaulted during his arrest on the night of 29 to 30 July 1995, and was interrogated immediately after he had been taken to a prison hospital suffering from concussion, bruising and fractured ribs. He also claimed that his wife and child had been assaulted by law enforcement officials.¹⁸ Ashot Avetisian repudiated all his statements made during the preliminary investigation of the case, stating that they had been made under extreme physical and psychological duress. It is claimed that he was beaten with metal rods and subjected to electric shocks, and that six of his relatives were detained in order to put pressure on him to confess.¹⁹ Others, such as Gagik Karapetian, allege that pressure was exerted on them via threats to their families, and have also retracted their previous testimony.²⁰ In Vahan Hovanesian's case his lawyer reported that between August and October 1995 she had only been able to meet her client three times, and never in private.²¹

Possible sources of error and inconsistency are inherent in any criminal justice system devised and administered by fallible human beings. Judicial errors which deprive people of their liberty are unacceptable and should be corrected. Judicial errors which can deprive people of their lives are intolerable and without remedy. If accepted standards for a fair trial are set aside or ignored, the risk of executing the innocent is further increased.

Lack of appeal to a court of clearly higher jurisdiction

In both the above cases the Supreme Court of Armenia is the court of first instance. Although decisions by this court may be appealed, such appeals are lodged with the Presidium or Plenum of the Supreme Court, that is the same body of people from which the original judges were drawn. International standards are clear that anyone convicted of a crime should have the right

¹⁸ *Asbarez on line*, 7 May 1996.

¹⁹ *Asbarez on line*, 28 May and 5 June 1996.

²⁰ *Asbarez on line*, 8 July 1996.

²¹ Interview with Amnesty International delegates in Yerevan, October 1995.

to their conviction and sentence being reviewed by a *higher* tribunal.²² In April 1997 the United Nations Human Rights Committee, reviewing Georgia's initial report under the International Covenant on Civil and Political Rights, commented on the similar arrangements in that country, also left with its Supreme Court as the court of first instance in some cases following the demise of the Soviet federal system which provided a higher, federal, USSR Supreme Court. The Committee members expressed concern that an appeal heard by other bodies within the Supreme Court, against a sentence passed by the Supreme Court, did not fully respect the right to have a case reviewed by a higher court.²³

Continued passing of death sentences

Although there is a *de facto* moratorium on executions, courts have continued to pass death sentences. At the time of writing 21 are said to have been handed down since 1990, with 18 of those sentenced to death still alive (two men are said to have died of natural causes, and one was murdered by a fellow-inmate while on death row)²⁴.

The numbers on death row have steadily accumulated (from the three men, for example, who were visited by an Amnesty International delegation in 1992) to the present total, in part due to the moratorium but also because, in the absence of any information on pardons, it appears that President Ter-Petrosian has not actually been commuting pending death sentences. This means that some of those currently on death row in Yerevan may have been waiting years without knowing when they may expect their clemency appeals to be heard and in a state of continued uncertainty as to their ultimate fate. Several studies have indicated that the cruelty of the death penalty is not restricted to the actual moment of execution; the waiting period with its prolonged periods of isolation and enforced idleness can lead to severe depression, apathy, and both physical and mental deterioration.²⁵

²² See for example Article 14 paragraph 5 of the International Covenant on Civil and Political Rights, to which Armenia acceded formally on 23 June 1993, and United Nations Economic and Social Council (ECOSOC) Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty, Article 6.

²³ *Concluding Observations of the Human Rights Committee*, United Nations reference: CCPR/C/79/Add. 74, paragraph 13, 11 April 1997.

²⁴ *Noyan Tapan* news agency, 24 March 1997.

²⁵ See for example the Amnesty International publication *When the State Kills...The death penalty v. human rights*, AI Index: ACT 51/07/89 (ISBN 0 86210 164 6), 1989.

Public opinion and the death penalty

One reason sometimes given for retaining the death penalty - and put forward even by officials who say that they personally oppose the punishment - is that public opinion demands it. They cite polls apparently showing strong support for the death penalty, then argue that the time is not ripe for abolition, and even that it would be undemocratic in the face of such support for the punishment.

The first response to this argument is that respect for human rights must never be dependent on public opinion. Torture, for example, would never be permissible even if there were public support for its use in certain cases.

Secondly, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts, and the results of polls can vary according to the way questions are asked. Amnesty International believes it is incumbent on officials responsible for policy on this matter not only to listen to the public but also to ensure that the public is fully informed. Many more people might well support abolition if they were properly informed of the facts surrounding the use of the death penalty and the reasons for abolition.

One of the strongest reasons often put forward in opinion polls for retaining the death penalty is its supposed deterrent qualities, especially in the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty is a more effective deterrent against crime than other punishments (see page 3 above). Criminologists have long argued that the way to deter would-be criminals is not to increase the severity of the punishment but to increase the likelihood of detection and conviction. Increased public confidence in such measures in Armenia would greatly help to combat what some fear - in the absence of the death penalty - would otherwise be a tendency to take the law into one's own hands.

Amnesty International's recommendations

The death penalty requires the state to carry out the very act which the law most strongly condemns. In virtually every legal system the severest sanctions are provided for the deliberate and premeditated killing of a human being; but no killing is more premeditated or cold-blooded than an execution, and just as it is not possible to create a death penalty system free of caprice, discrimination or error, so it is not possible to find a way to execute a person which is not cruel, inhuman and degrading.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. For example, the most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded that:

*“Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. **The evidence as a whole still gives no positive support to the deterrent hypothesis** [emphasis added].²⁶”*

Similarly, the South African Constitutional Court, whose judges were appointed by President Nelson Mandela, in its judgment of June 1995²⁷, expressly rejected the contention that the death penalty was an effective specific deterrent.

The majority of the countries in the world have now abolished the death penalty in law or practice. In addition, the United Nations Security Council, when it established the International Criminal Tribunals for the former Yugoslavia and Rwanda, expressly ruled out the death penalty for the gravest of crimes: genocide, other crimes against humanity, and serious violations of humanitarian law. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has also stated that "the abolition of capital punishment is most desirable in order fully to respect the right to life."²⁸

In the light of this, Amnesty International is calling on the Armenian authorities to:

- , Commute all existing death sentences, as well as any that may be imposed in the future, pending full abolition;
- , Declare officially a moratorium on all executions;
- , Prepare public opinion for abolition of the death penalty;
- , Sign the second Optional Protocol to the International Covenant on Civil and Political Rights. Signing this instrument, the first treaty of worldwide scope aimed at abolition of the death penalty, would be a very significant sign of Armenia's commitment to abolition;
- , Enact as soon as possible the legislation already prepared on removing the death penalty completely as a possible punishment from the Armenian Criminal Code and Constitution;

²⁶ See the Amnesty International report *When the State Kills...The death penalty v. human rights*, AI Index: ACT/51/07/89 and Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, 1996.

²⁷ State v. MaKwanyane and Mchunu, Case No. CCT/4/94.

²⁸ Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document No. A/51/457, 7 October 1996, paragraph 107.

, Publish timely, accurate and comprehensive statistics for the application of the death penalty, in accordance with Armenia's commitments as a member of the Organisation for Security and Co-operation in Europe (OSCE)²⁹ and as requested by international bodies³⁰.

²⁹ As a member of the Organisation for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), Armenia has undertaken to “exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration”, and to “make available to the public information regarding the use of the death penalty” (document of the Copenhagen Meeting of the Conference on the Human Dimension of the Death of the CSCE, 29 June 1990, paragraphs 17.7-17.8).

³⁰ See for example United Nations Economic and Social Council (ECOSOC) Resolution 1989/64 (extract in Appendix III).

APPENDIX I - Offences carrying a possible death sentence

The following offences carried a possible death sentence under the Criminal Code of the Republic of Armenia (first adopted on 7 March 1961, entered into force on 1 July 1961), as of 15 June 1994:

Article 59	Treason.
Article 60	Espionage.
Article 61	Terrorist act.
Article 62	Terrorist act against a representative of a foreign state.
Article 63	Sabotage.
Article 67	Organizational activity directed to commission of especially dangerous crimes against the state.
Article 68	Especially dangerous crimes against another workers' state.
Article 72	Banditry.
Article 72-1	Activities causing disruption to the work of corrective labour institutions.
Article 76	Evasion of mobilisation.
Article 82	Making or passing counterfeit money or securities.
Article 99	Premeditated murder under aggravated circumstances.
Article 112	Aggravated rape.
Article 180-1	Hijacking.
Article 185	Bribe taking.
Article 209-1	Infringing the life of a policeman or people's guard.

The following articles, from the military crimes section of the criminal code, carried a possible death sentence if the offence is committed in a combat situation (although Article 248 also carried a possible death sentence in peacetime if the offence included premeditated murder).

Article 246	Insubordination.
Article 248	Offering resistance to a superior or forcing him to violate official duties.
Article 250	Forcible actions against a superior officer.
Article 255	Desertion.
Article 256	Unwarranted abandonment of unit in a combat situation.
Article 257	Evasion of military service by maiming or any other method.
Article 259	Intentional destruction or damaging of military property.
Article 263	Violation of service regulations for guard duty.
Article 265	Violation of rules for performing combat lookout.
Article 268	Abuse of authority, exceeding authority, and neglectful attitude toward duty.

Article 269	Surrendering or abandoning to the enemy of means of waging war.
Article 270	Abandonment of a sinking warship.
Article 271	Unwarranted abandonment of battlefield or refusal to use a weapon.
Article 272	Voluntary surrender into captivity.
Article 274	Pillage.
Article 275	Use of force against the population in an area of military operations.

Since independence the death penalty has been abolished for the following crimes (the first two by an amendment of 11 May 1992, and the last by an amendment of December 1995):

Article 83	Speculation.
Article 90-1	Large scale theft of state or social property.
Article 255	Desertion.

APPENDIX II - Extracts from international human rights standards relating to the death penalty

1. *Universal Declaration of Human Rights (selected articles)*

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. *International Covenant on Civil and Political Rights (selected articles)*

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

3. *United Nations Economic and Social Council (ECOSOC) Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)*

Annex

4. Capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.
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.
8. Capital punishment should not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

4. ECOSOC Resolution 1989/64: Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)

Article 1

Recommends that Member States take steps to implement the safeguards and strengthen further the protection of rights of those facing the death penalty, where applicable, by:

- b) Providing for mandatory appeals or review with provision for clemency or pardon in all cases of capital offence:
- c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

Article 5

Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted.

5. United Nations General Assembly Resolution 32/61 of 8 December 1977 (selected article)

Article 1

[The General Assembly] Reaffirms that...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment.

6. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty (selected extracts)

The States parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights;

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Have agreed as follows:

Article 1

No one within the jurisdiction of a State party to the present Optional Protocol shall be executed.

Article 2

Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction.

7. Council of Europe: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (selected article)

Article 1

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.