



## THE DEATH PENALTY AND THE PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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The signatory organizations<sup>1</sup> are convinced that the death penalty is incompatible with the prohibition of torture and cruel, inhuman or degrading treatment or punishment, which is a peremptory norm of international law (*jus cogens*) and should thus be abolished<sup>2</sup>. The death penalty is only tolerated by international law and standards to the extent that it may only be imposed for the most serious crimes<sup>3</sup> and applied in a way that causes the least possible suffering<sup>4</sup>. However, the signatory organizations believe that from the sentencing to the execution, the death penalty inevitably causes physical harm and psychological suffering amounting to torture or ill-treatment. Thus, in 2023, a corpus of national, regional and international jurisprudential and doctrinal sources – outlined below – attest that the death penalty, in the context of its application, falls within the definition of torture as laid out by Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of*

### <sup>1</sup> Signatory organizations:

1. ACAT Belgium ; 2. ACAT Benin ; 3. ACAT Burundi ; 4. ACAT Cameroon ; 5. ACAT Canada ; 6. ACAT Congo ; 7. ACAT Côte d'Ivoire ; 8. ACAT Germany ; 9. ACAT France ; 10. ACAT Mali ; 11. ACAT Niger ; 12. ACAT RDC ; 13. ACAT Switzerland ; 14. ACAT Sweden ; 15. ACAT Chad ; 16. ACAT Togo ; 17. ACAT United Kingdom ; 18. Academic University for Non-Violence and Human Rights (AUNOHR) ; 19. Adaleh Center for Human Rights Studies ; 20. American Constitution Society (ACS) ; 21. Association Justice and Mercy (AJEM) ; 22. Bahrain Centre for Human Rights (BCHR) ; 23. Death Penalty Focus (DPF) ; 24. Ensemble contre la peine de mort (ECPM) ; 25. International Federation of ACATs (FIACAT) ; 26. German Coalition to Abolish the Death Penalty (GCADP) ; 27. Greater Caribbean for Life (GCL) ; 28. Legal Awareness Watch (LAW) ; 29. Human Rights League (LDH) ; 30. World Organisation Against Torture (OMCT) ; 31. Omega Research Foundation ; 32. Pax Christi Uvira ; 33. Penal Reform International (PRI) ; 34. Prisoners Future Foundation (PFF) ; 35. Redress ; 36. International Academic Network for the Abolition of Capital Punishment (REPECAP) ; 37. SALAM for Democracy and Human Rights (SALAM DHR) ; 38. Syndicat national des agents de la formation et de l'éducation du Niger (SYNAFEN) ; 39. Taiwan Alliance to End the Death Penalty (TAEDP) ; 40. Human Rights Centre "Viasna" ; 41. Witness to Innocence (WTI) ; 42. World Coalition Against the Death Penalty (WCADP).

<sup>2</sup> International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundžija*, IT-95-17/1-T, para. 153 – 157, 10 December 1998.

<sup>3</sup> [International Covenant on Civil and Political Rights](#), Article 6, 16 December 1966.

<sup>4</sup> Economic and Social Council of the United Nations, *Safeguards guaranteeing protection of the rights of those facing the death penalty*, E/RES/1984/50, 25 May 1984.

*having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

## **I. The death penalty recognised as a form of torture at the different stages of its application**

The application of the death penalty is a long process which causes physical and mental suffering at every stage not only for those condemned to death, but also for their relatives. This has led to a questioning of the legitimacy of this sentence.

### **A. At the time of sentencing**

#### **1. Prohibition of the death penalty for vulnerable groups**

International law explicitly prohibits the application of the death penalty to different groups of human beings perceived as particularly vulnerable, such as juveniles<sup>5</sup>, pregnant women<sup>6</sup> or persons whose serious psychosocial or intellectual disabilities impede their effective defence<sup>7</sup>. This prohibition is also found in African<sup>8</sup> and Arab<sup>9</sup> human rights systems.

Mary Robinson, former United Nations High Commissioner for Human Rights, declared in 2002 that juveniles, “*because of their immaturity, may not fully comprehend the consequences of their actions and should therefore benefit from less severe sanctions than adults*”<sup>10</sup>. Moreover, in a recent letter addressed to the government of Saudi Arabia, several United Nations Special Procedures indicated that the death penalty for persons under 18 years was tantamount to torture<sup>11</sup>.

Furthermore, Resolution No. 22/11 of the United Nations Human Rights Council acknowledged “*the negative impact of the imposition and carrying out of the death penalty on the human rights of children of parents sentenced to the death penalty or executed*”<sup>12</sup>. This is also taken into account at the international level by the Human Rights Committee in its General Comment No. 36 and at the regional level, notably by the African Charter on the Rights and Welfare of the Child, where States are required to prohibit the death penalty for parents of “*very young*”<sup>13</sup> and “*young*”<sup>14</sup> children.

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<sup>5</sup> [International Covenant on Civil and Political Rights](#), article 6§5, 16 December 1966.

<sup>6</sup> *Ibidem*.

<sup>7</sup> Human Rights Committee of the United Nations, [General Comment No. 36 – Article 6: right to life](#), CCPR/C/GC/36, para. 49, 3 September 2019.

<sup>8</sup> [African Charter on the Rights and Welfare of the Child](#), Article 5 paragraph 3, 1 July 1990; and [Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa](#), Article 4 paragraph 2(j), 1 July 2003.

<sup>9</sup> [Arab Charter on Human Rights](#), Article 7, 15 September 1994.

<sup>10</sup> UN News, [Robinson expresses concerns about scheduled execution in US of two juvenile offenders](#), 1 August 2002.

<sup>11</sup> United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, , [ALSAU 1/2023](#), 16 February 2023.

<sup>12</sup> United Nations Human Rights Council, [Panel on the human rights of children of parents sentenced to the death penalty or executed](#), A/HRC/RES/22/11, 21 March 2013.

<sup>13</sup> [African Charter on the Rights and Welfare of the Child](#), Article 30(e), 1 July 1990.

<sup>14</sup> United Nations Human Rights Committee, [General Comment No. 36 – Article 6: right to life](#), CCPR/C/GC/36, para. 49, 3 September 2019.

Regarding those with mental disabilities, the United States Supreme Court ruled in the case *Atkins v. Virginia* that the execution of such persons constituted a form of torture<sup>15</sup>. According to the Human Rights Committee, the issuance of an execution warrant against a person whose state of mental incapacitation is detected after their conviction constitutes a violation of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibiting torture<sup>16</sup>. The Inter-American Commission on Human Rights likewise judged that the detention on death row of a mentally disabled person constitutes a form of torture<sup>17</sup>.

For Juan Méndez, the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (“Special Rapporteur on torture”), these prohibitions should not be understood as attributing a different value to their right to life, but as considering the imposition and application of the death penalty in such cases as excessive, and thus as particularly cruel, inhuman and degrading with regard to Article 7 of the Covenant and Articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention against Torture”)<sup>18</sup>.

## ***2. Fair trial guarantees***

As recalled in the General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights (“the Covenant”), a death penalty conviction based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons would violate article 6 of the Covenant regarding the right to life, but also fair trial guarantees and the prohibition of torture<sup>19</sup>. Recently, both the Human Rights Committee and the Committee against Torture expressed concerns about allegations of death sentences based on confessions obtained under duress or torture in Bahrain<sup>20</sup> and in Viet Nam<sup>21</sup>. In such situation, the imposition of the death penalty would amount to a violation of the right to life and the absolute prohibition of torture.

Moreover, the absence of legal assistance by a counsel of their choice at any time during the investigative phase of their detention is perceived as particularly grave when facing the death penalty<sup>22</sup>.

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<sup>15</sup> United States Supreme Court, *Atkins v. Virginia*, No. 00–8452, 20 June 2002.

<sup>16</sup> Human Rights Committee of the United Nations, *Sabadath v. Trinidad and Tobago*, No. 684/1996, CCPR/C/74/D/684/1996, para. 7.2, 2 April 2002.

<sup>17</sup> Inter-American Commission on Human Rights, *Gregory Thompson v. United States*, No. 455/21, case 12.832, 31 December 2021.

<sup>18</sup> General Assembly of the United Nations, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/67/279, para. 58, 9 August 2012.

<sup>19</sup> Human Rights Committee of the United Nations, *General Comment No. 36 - Article 6: right to life*, CCPR/C/GC/36, para. 54, 3 September 2019.

<sup>20</sup> Human Rights Committee of the United Nations, *Concluding observations on the initial report of Bahrain*, CCPR/C/BHR/CO/1, para. 31-32, 15 November 2018.

<sup>21</sup> Committee against Torture of the United Nations, *Concluding observations on the initial report of Viet Nam*, CAT/C/VNM/CO/1, para. 28-29, 28 December 2018.

<sup>22</sup> Working Group on Arbitrary Detention of the Human Rights Council of the United Nations, *Opinion No. 32/2019 concerning Saeed Malekpour (Islamic Republic of Iran)*, A/HRC/WGAD/2019/32, para. 47, 9 September 2019.

### **3. The death sentence as a death threat**

According to John Bessler, law professor at the University of Baltimore, a death sentence is, for the condemned person, the delivery of a credible death threat which lasts until it is either carried out or cancelled<sup>23</sup>. This link between death threats and the death penalty has already been highlighted at national and international levels. Thus, the Inter-American Court of Human Rights has employed the term “constant threat” (*constante amenaza*) with regards to a person condemned to death who may be executed at any moment<sup>24</sup>. Similarly, the Committee against Torture, when considering Iraq’s second periodic report, found that “false threats from prison guards about [...] imminent execution” also amounted to torture and ill-treatment<sup>25</sup>.

It should be noted that death threats have already been judged to be a violation of the prohibition of torture. As such, John Bessler points out that death threats such as mock executions are a classic example of psychological torture<sup>26</sup>. According to the Supreme Court of Alabama, psychological torture can be constituted when the victim, while in the grip of intense fear, is aware of the imminence of death but is powerless to prevent it<sup>27</sup>. A finalized death sentence, when all means of recourse have been exhausted, comprises an identical reality – would resemble a death threat, and would therefore be a form of psychological torture.

#### **B. Detention on death row**

On death row, the condemned person undergoes suffering which is in violation of the prohibition of torture, due to both detention conditions and the wait leading up to the execution. This is why the United Nations Secretary-General concluded in his report on a moratorium on the use of the death penalty in August 2022 that “States should urgently examine the effects of the conditions on death row to ensure that they do not constitute cruel, inhuman or degrading punishment or treatment and take immediate steps to strengthen legal safeguards.”<sup>28</sup>.

##### **1. Detention conditions on death row**

While detention conditions on death row comprise very different realities depending on the places of incarceration, whether prisoners are subjected to a specific prison regime or placed among other inmates, all are exposed to treatment considered to be incompatible with the prohibition on torture.

On the 20th World Day Against the Death Penalty in October 2022, the United Nations Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions issued a declaration on the relationship between the death penalty and the absolute prohibition of torture and other cruel, inhuman or degrading treatment, stating in particular that the death row phenomenon has

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<sup>23</sup> Death Penalty Information Centre, [SCHOLARSHIP: Is the Death Penalty Torture Under International Law?](#), 9 May 2023.

<sup>24</sup> Inter-American Court of Human Rights, [Ruiz Fuentes et al. v. Guatemala](#), para. 136, 10 October 2019.

<sup>25</sup> United Nations Committee against Torture, [Concluding observations on the second periodic report of Iraq](#), CAT/C/IRQ/CO/2, para. 30 and 31, 15 June 2022.

<sup>26</sup> Bessler, John D, "[A Torturous Practice: Prohibiting the Death Penalty's Use Through a Peremptory Norm of International Law](#)", Oxford Law Blogs, 4 May 2023.

<sup>27</sup> *Ibid.*

<sup>28</sup> United Nations Assembly General, [Secretary-General's report on a moratorium on the use of the death penalty](#), A/77/274, para. 65, 8 August 2022.

long been considered a form of inhuman treatment, as has the near total isolation of those on death row, who are often unlawfully isolated<sup>29</sup>.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) guarantee dignified and humane detention conditions for persons deprived of their liberty. However, in practice, many rules are not respected, in particular for those sentenced to death.

For example, Rule 43, prohibiting disciplinary sanctions or restrictive measures such as indefinite or prolonged solitary confinement, or the placement of a detained person in a dark or constantly lit cell<sup>30</sup>, is the subject of recurring violations in the United States. In the case *Virgilio Maldonado Rodríguez v. United States*<sup>31</sup>, the Inter-American Commission on Human Rights ruled on the case of a person who spent fifteen years on death row in solitary confinement and without any exposure to natural light and judged this to be cruel and inhuman treatment. Similarly, in the case *Pete Carl Rogovich v. United States*<sup>32</sup>, the Inter-American Commission judged that certain specific detention conditions suffered by a prisoner convicted to death amounted to cruel treatment: windowless cells with no access to daylight, with constant overhead lighting even at night and where detainees were only allowed to leave their cell three times a week for a cumulative maximum of two hours. It also highlighted that Mr. Rogovich was subjected to prolonged isolation primarily because of his status on death row, and this was constitutive of cruel, infamous and unusual punishment<sup>33</sup>. The Commission made the same assessment in the case *Ramiro Ibarra Rubi v. United States*<sup>34</sup> where the claimant was subjected to solitary confinement and deprived of social interactions. Finally, in the case *Dial et al. v. Trinidad and Tobago*<sup>35</sup>, the Inter-American Court of Human Rights judged that two people on death row had been subjected to mental suffering constituting cruel, inhuman and degrading treatment under Article 5.2 of the American Convention on Human Rights, due to detention conditions which were incompatible with international standards.

## 2. Pending execution

In 2012, the former Special Rapporteur on torture, Juan Méndez, defined the death row phenomenon as a combination of circumstances, including the “*lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held*”, which produce severe mental trauma and physical deterioration<sup>36</sup>. Incommunicado detention, solitary confinement and social exclusion can also characterize the death row

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<sup>29</sup> Press release, ["UN experts warn of associated torture and cruel punishment"](#), 10 October 2022.

<sup>30</sup> [The United Nations Standard Minimum Rules for the Treatment of Prisoners](#), Rule 43 : "1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (...)".

<sup>31</sup> Inter-American Commission on Human Rights, [Virgilio Maldonado Rodríguez v. United States](#), No. 333/21, case 12.871, para.63, 22 November 2021.

<sup>32</sup> Inter-American Commission on Human Rights, [Pete Carl Rogovich v. United States](#), No. 461/21, case 13.394, para. 96, 31 December 2021.

<sup>33</sup> Inter-American Commission on Human Rights, [Pete Carl Rogovich v. United States](#), No. 461/21, case 13.394, para. 86, 31 December 2021.

<sup>34</sup> Inter-American Commission on Human Rights, [Ramiro Ibarra Rubi v. United States](#), No. 456/21, case 13.829, para. 122, 31 December 2021.

<sup>35</sup> Inter-American Court of Human Rights, [Dial y Otro v. Trinidad y Tobago](#), para. 66 et 79, 21 November 2022.

<sup>36</sup> United Nations Assembly General, [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/67/279, para. 58, 9 August 2012.

phenomenon and have effects on detainees ranging from various forms of anxiety, stress and depression to cognitive impairment and suicidal tendencies<sup>37</sup> in violation of the prohibition of torture<sup>38</sup>.

Criminology has also confirmed that death row syndrome creates a sense of hopelessness, which leads to a “death of the personality”, of which the symptoms are depression, the loss of a sense of reality, and physical and mental deterioration, which can lead to serious distortions in personality and to a denial of reality<sup>39</sup>. Thus, according to the authors, psychological trauma is an inevitable consequence of the imposition of the death penalty<sup>40</sup>.

From 1989, in *Soering v. United Kingdom*, the European Court of Human Rights (ECHR) considered that a long period spent on death row “with the ever present and mounting anguish of awaiting execution of the death penalty” would expose the convict to “a real risk of treatment going beyond the threshold” of article 3 of the European Convention on Human Rights<sup>41</sup>. Similar cases continue to be ruled by a multitude of regional jurisdictions, notably by the ECHR<sup>42</sup>, the Inter-American Commission on Human Rights<sup>43</sup>, Inter-American Court on Human Rights<sup>44</sup> and the African Court on Human and Peoples' Rights<sup>45</sup>.

The Human Rights Committee considers that prolonged judicial proceedings, if they do not *per se* constitute cruel, inhuman or degrading treatment, especially when the convict is availing himself or herself of appellate remedies, could amount to a violation of article 7 of the Covenant depending on the author, the specific conditions of detention and whether the proposed method of execution is abhorrent<sup>46</sup>. Similarly, the Committee against Torture affirmed that the delays in recourse procedures in the United States keep prisoners sentenced to death in a situation of anguish and incertitude for many years which can amount to torture in certain cases<sup>47</sup>.

### C. At the time of the execution

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<sup>37</sup> Human Rights Council of the United Nations, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/HRC/43/49, para. 59, 20 March 2020.

<sup>38</sup> Working Group on Arbitrary Detention of the Human Rights Council of the United Nations, [Opinion No. 32/2019 concerning Saeed Malekpour \(Islamic Republic of Iran\)](#), A/HRC/WGAD/2019/32, para. 40, 9 September 2019.

<sup>39</sup> Johnson, Robert. *Condemned to die: Life under sentence of death*, New York, Elsevier, 1981.

<sup>40</sup> N Bojosi, Kealeboga, [“The death row phenomenon and the prohibition against torture and cruel, inhuman or degrading treatment”](#), African Human Rights Law Journal, vol. 4, No. 2, p. 303-333, 2004.

<sup>41</sup> European Court of Human Rights, [Soering v. United Kingdom](#), No. 14038/88, para. 111, 7 July 1989.

<sup>42</sup> European Court of Human Rights, [Einhorn v. France](#), No 71555/01, para. 26, 16 October 2001.

<sup>43</sup> Inter-American Commission on Human Rights, [Russell Bucklew v. United States](#), No. 71/18, Case 12.958, para. 91, 10 May 2018 and Inter-American Court on Human Rights, [Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago](#), para. 168, 21 June 2002. Inter-American Commission on Human Rights, [Marlin Gray v. United States](#), n°462/21, case 12.505, para. 64, 31 December 2021 ; Inter-American Commission on Human Rights, [Manuel Valle v. United States](#), n°453/21, case 13.339, para. 63, 31 December 2021 ; Inter-American Commission on Human Rights, [José Trinidad Loza Ventura v. United States](#), n°454/21, case 13.478, para.100, 31 December 2021.

<sup>44</sup> Inter-American Court of Human Rights, [Ruiz Fuentes et Al.v. Guatemala](#), para. 137, 10 October 2019 ; Inter-American Court of Human Rights, [Valenzuela Avila vs. Guatemala](#), para. 207, 11 October 2019 ; Inter-American Court of Human Rights, [Rodríguez Revolorio vs. Guatemala](#), para. 96, 14 October 2019 ; Inter-American Court of Human Rights, [Girón y otro vs. Guatemala](#), para.88, 15 October 2019.

<sup>45</sup> African Court on Human and Peoples' Rights, [Marthine Christian Msuguri v. United Republic of Tanzania](#), No. 052/2016, para. 112 – 116, 1 December 2022.

<sup>46</sup> Human Rights Committee of the United Nations, [Kindler v. Canada](#), No. 470/1991, para. 15.3, 30 July 1993.

<sup>47</sup> Committee against Torture of the United Nations, [Concluding observations on the combined third to fifth periodic reports of the United States of America](#), CAT/C/USA/CO/3-5, para. 25, 19 December 2014.

## **1. Before the execution**

Prior to execution, practices amounting to ill-treatment of condemned persons and their families have been observed in certain States. Failure to inform convicted persons of the date of their execution in due time is also considered a form of ill-treatment, meaning the execution is liable of violating the prohibition of torture<sup>48</sup>. Thus, from 2013, the African Commission on Human and Peoples' Rights judged that failure to notify the date and time at which a person will be executed constitutes a violation of Article 5 of the African Charter on Human and Peoples' Rights<sup>49</sup>. In 2015, in a letter addressed to the government of Saudi Arabia, several United Nations Special Procedures also considered that such a practice exposed condemned persons and their families to cruel, inhuman and degrading treatment<sup>50</sup>. In 2022, this assessment was again made by the United Nations Special Procedures regarding Belarus<sup>51</sup>. Also, the African Commission on Human and Peoples' Rights indicates that the condemned person and their family not having the opportunity to say their final goodbyes also amounts to inhuman treatment<sup>52</sup>.

## **2. The execution**

### ***i. General considerations***

According to the European Court of Human Rights, judicial execution involves deliberate and premeditated destruction of a human being, hence causing physical pain and psychological suffering, whatever the method of execution<sup>53</sup>. As such, the former Special Rapporteur on torture Juan Méndez considered that States cannot guarantee that there is a pain free method of execution even when the required safeguards are in place<sup>54</sup>. Indeed, evolving States' practices and international opinion highlight the difficulty of implementing the death penalty while being sure that executions carried on are not violating the prohibition of torture or ill-treatment, especially in the light of what forensic science reveals us<sup>55</sup>.

In 2015, the African Commission on Human and Peoples' Rights recommended that States should not conduct executions in public nor use methods that cause unnecessary physical or mental suffering<sup>56</sup>. The Inter-American Commission on Human Rights reaffirmed that when there is a significant risk that a specific method could cause a breach of their international obligations,

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<sup>48</sup> Human Rights Committee of the United Nations, [General Comment No. 36 - Article 6: right to life](#), CCPR/C/GC/36, para. 40, 3 September 2019.

<sup>49</sup> African Commission on Human and Peoples' Rights, [Spilg and Mack and Ditsbhanelo v. Botswana](#), n° 277/2003, para.177, 12 October 2013.

<sup>50</sup> United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA SAU 4/2015](#), 25 August 2015.

<sup>51</sup> United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [OL BLR 3/2022](#), 23 May 2022.

<sup>52</sup> African Commission on Human and Peoples' Rights, [Spilg and Mack and Ditsbhanelo v. Botswana](#), No. 277/2003, para.177, 12 October 2013.

<sup>53</sup> European Court of Human Rights, [Al-Saadoon and Mufdhi v. United Kingdom](#), No.61498/08, para. 115, 4 October 2010.

<sup>54</sup> General Assembly of the United Nations, [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/67/279, para. 41, 9 August 2012.

<sup>55</sup> Méndez, Juan E., [The death penalty and the absolute prohibition of torture and cruel, inhuman, and degrading treatment or punishment](#), Human Rights Brief, vol. 20, no. 1, pp. 2-6, 2012.

<sup>56</sup> African Commission on Human and Peoples' Rights, [General comment No. 3 on the African Charter on Human and Peoples' Rights \(article 4\)](#), para. 26, November 2015.

including peremptory norms such as the prohibition of torture, States are required to abstain from proceeding with the execution “*regardless of whether there is an alternative method*”<sup>57</sup>.

In 2019, the Human Rights Council referred to the work carried out by the Human Rights Committee in its General Comment No. 36 which underlined that various methods were prohibited because they would amount to torture or cruel, inhuman or degrading punishment, such as injection of untested lethal drugs, execution in gas chambers, stoning, burning or burying alive or public executions, while others might become torture or ill-treatment when used on convicts presenting certain personal characteristics or regarding their health status<sup>58</sup>.

## ***ii. Various methods of execution***

Among the execution methods still used today<sup>59</sup>, almost all of them have been judged as in conflict with the absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment. In 2022, all known executions were carried out using one of the methods detailed below<sup>60</sup>. At least 638 persons were executed by hanging, at least 28 by firing squad, at least 21 by lethal injection, and at least 196 by beheading<sup>61</sup>.

### ***a. Gas asphyxiation and induced hypoxia***

In the case *Ng v. Canada* in 1991, the Human Rights Committee found that execution by gas asphyxiation is contrary to article 7 of the Covenant and would constitute cruel and inhuman treatment, since asphyxiation by cyanide gas may take more than 10 minutes<sup>62</sup>. This jurisprudence was reaffirmed by the Human Rights Council in 2019<sup>63</sup>.

### ***b. Stoning***

In the case *Jabari v. Turkey* in 2000, the European Court of Human Rights considered the expulsion of the applicant to Iran to breach the prohibition of torture, due to the risk of being stoned to death<sup>64</sup>. Likewise, the Commission on Human Rights urged States to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped<sup>65</sup>. The Human

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<sup>57</sup> Inter-American Commission on Human Rights, [Russell Bucklew v. United States](#), No. 71/18, Case 12.958, para. 77, 10 May 2018.

<sup>58</sup> Human Rights Council of the United Nations, [Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty](#), A/HRC/42/28, para. 16 -17, 28 August 2019.

<sup>59</sup> Amnesty international, [Death sentences and executions 2022](#) p. 11, 2023.

<sup>60</sup> Not to mention the thousands of executions that probably took place in China, classified as state secrets. In *Ibid*.

<sup>61</sup> At least 638 people were executed by hanging, including 4 in Bangladesh, 24 in Egypt, at least 11 in Iraq, at least 576 in Iran, 1 in Japan, 4 in Myanmar, 11 in Singapore, at least 5 in South Sudan and at least 2 in Syria. At least 28 people were executed by firing squad, including at least 2 in Afghanistan, 1 in Belarus, at least 1 in China, at least 2 in North Korea, 7 in Kuwait, 5 in Palestine (State of), at least 6 in Somalia, at least 4 in Yemen. At least 21 people were executed by lethal injection, including at least 1 in China, 18 in the United States and at least 2 in Vietnam. All 196 beheadings took place in Saudi Arabia. In *Ibid*.

<sup>62</sup> Human Rights Committee of the United Nations, [Charles Chitat Ng v. Canada](#), CCPR/C/49/D/469/1991, para. 16.4, 7 January 1994.

<sup>63</sup> Human Rights Council of the United Nations, [Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty](#), para. 16, A/HRC/42/28, 28 August 2019.

<sup>64</sup> European Court of Human Rights, [Jabari v. Turkey](#), No. 40035/98, para. 33-42, 11 October 2000.

<sup>65</sup> United Nations Commission on Human Rights, [The question of the death penalty](#), E/CN.4/RES/2003/67, 24 April 2003. See also: [Question of the death penalty](#), E/CN.4/RES/2004/67, April 21, 2004, and [The question of the death penalty](#), E/CN.4/RES/2005/59, April 20, 2005.



Rights Committee recently asked Sudan<sup>66</sup> and Mauritania<sup>67</sup> to amend their criminal codes to remove all references to stoning as a method of execution.

*c. Hanging*

In 1994, the High Court of the United Republic of Tanzania affirmed that execution by hanging violated the right to dignity of the convict and constituted inherently cruel, inhuman or degrading treatment<sup>68</sup>, which was echoed by the African Court on Human and People's Rights in the ruling *Ally Rajabu et al. v. United Republic of Tanzania*, observing that “*hanging [...] is inherently degrading [and that it] inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment*”<sup>69</sup>. Similarly, the Special Rapporteur on torture considered that due to the conditions of imposition of the death sentence, by hanging, the execution of five men in Papua New Guinea in July 2011 “*inevitably results in cruel, inhuman or degrading treatment or even torture*”<sup>70</sup>. More recently, in August 2022, the Committee against Torture noted that hanging, as used in Botswana for example, is an execution method which exacerbates the cruelty of the situation<sup>71</sup>.

*d. Firing squad*

In its 2012 Interim Report, the Special Rapporteur on torture, Juan Méndez, concluded that, though the method of firing squad has been considered as the fastest way of execution and as not causing severe pain and suffering, those conducted in public often expose convicts to “*undignified and shameful displays of contempt and hatred*”<sup>72</sup>. Furthermore, the Inter-American Court of Human Rights considered, in 2017, that the execution by the Guatemalan authorities was not only organised as a public event broadcasted at the national level, but also that since the convict did not die immediately, one member of the firing squad had to kill him with a separate shot, resulting in unnecessary suffering amounting to cruel, inhuman and degrading treatment<sup>73</sup>.

*e. Lethal injection*

In 2006, the Committee against Torture expressed concerns that executions carried out in the United States through lethal injection could be accompanied by severe pain and suffering<sup>74</sup>. In 2014, its concluding observations mentioned reported cases in Arizona, Oklahoma, and Ohio of “*excruciating pain and prolonged suffering that procedural irregularities have caused condemned prisoners in the*

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<sup>66</sup> Human Rights Committee of the United Nations, [Concluding observations on the fifth periodic report of the Sudan](#), CCPR/C/SDN/CO/5, para. 30, November 19, 2018.

<sup>67</sup> Human Rights Committee of the United Nations, [Concluding observations on the second periodic report of Mauritania](#), CCPR/C/MRT/CO/2, para. 25, August 23, 2019.

<sup>68</sup> High Court of the United Republic of Tanzania, [Republic v. Mbushuu alias Dominic Mnyaroge and Kalai Sangula](#), 1994 TZHC 7, June 22, 1994.

<sup>69</sup> African Court on Human and Peoples' Rights, [Ally Rajabu and others v. United Republic of Tanzania](#), No. 007/2015, para. 119, November 28, 2019.

<sup>70</sup> Human Rights Council of the United Nations, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum](#), A/HRC/19/61/Add.3, para. 109, March 1, 2012.

<sup>71</sup> Committee against Torture of the United Nations, [Concluding observations on the initial report of Botswana](#), CAT/C/BWA/CO/1, para. 23 and 24, August 23, 2022.

<sup>72</sup> General Assembly of the United Nations, [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/67/279, para. 40, August 9, 2012.

<sup>73</sup> Inter-American Commission on Human Rights, [Roberto Girón and Pedro Castillo Mendoza v. Guatemala](#), No. 76/17, Case 11.686, para. 111-118, July 5, 2017.

<sup>74</sup> Committee against Torture of the United Nations, [Considerations of reports submitted by States Parties under article 19 of the Convention – United States of America](#), CAT /C/USA/CO/2, para. 31, July 25, 2006.

course of their execution” and asked the United States to review their execution methods<sup>75</sup>. In 2018, the Inter-American Commission on Human Rights found that the severity of the suffering could amount to torture due to the risk for the convict to choke on his or her own blood while being aware of it for a period up to a few minutes, in a context of extreme stress and anxiety<sup>76</sup>. In 2021, after five years of interrupted executions due to procedural irregularities during the last held execution, the Inter-American Commission on Human Rights noted that the uncertainty surrounding the execution of a claimant in Arizona (notably the absence of information on the origins of chemical substances, the members of the team intended for the execution, and their training) exposed the claimant to suffering and fear which violated his right not to be subjected to cruel, infamous or unusual punishment<sup>77</sup>. The Commission also maintained this position in two other cases in 2021<sup>78</sup>.

Additionally, the United Nations Secretary General echoed the concerns of the Special Rapporteur on extrajudicial, summary or arbitrary executions as to the likelihood that lethal injection might amount to ill-treatment and even torture in the case of a man with a rare and congenital medical condition<sup>79</sup>. Furthermore, in 2019, the Human Rights Council considered that execution involving the use of chemical or gases, or untested drug combinations or protocols, such as lethal injection may even raise further issues under article 7 of the Covenant, especially when applied by inexperienced personnel<sup>80</sup>.

*f. Beheading*

In 2019, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism denounced the particularly barbaric and public way the death penalty is used in Saudi Arabia. It pointed out that the circumstances surrounding the execution of the death penalty, beheadings followed by public crucifixion, stoning to death and execution by firing squad, were constituting cruel, inhuman or degrading treatment or punishment and even torture<sup>81</sup>. Similarly, the former Special Rapporteur on torture, Manfred Nowak, had underlined the obvious incoherence of considering beheading differently from a corporal punishment, such as an amputation of limbs, already qualified as torture or cruel, inhuman or degrading punishment<sup>82</sup>.

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<sup>75</sup> Committee against Torture of the United Nations, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, CAT/C/USA/CO/3-5, para. 25, December 19, 2014.

<sup>76</sup> Inter-American Commission on Human Rights, *Russell Bucklew v. United States*, No. 71/18, Case 12.958, para.78, May 10, 2018.

<sup>77</sup> Inter-American Commission on Human Rights, *Pete Carl Rogovich v. United States*, No. 461/21, case 13.394, para. 96, 31 December 2021.

<sup>78</sup> Inter-American Commission on Human Rights, *Ramiro Ibarra Rubi v. United States*, No. 456/21, case 13.829, para. 129 and 130, December 31, 2021, about the lack of information concerning the chemical substance used for the execution ; Inter-American Commission on Human Rights, *José Trinidad Loza Ventura v. United States*, n°454/21, case 13.478, para. 96, December 31, 2021, about the uncertainty surrounding execution methods.

<sup>79</sup> Human Rights Council of the United Nations, *Report of the Secretary-General on the question of the death penalty*, A/HRC/45/20, para. 45, August 13, 2020.

<sup>80</sup> Human Rights Council of the United Nations, *Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, A/HRC/42/28, para. 15, August 28, 2019.

<sup>81</sup> Human Rights Council of the United Nations, *Report of the Special Rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Saudi Arabia*, A/HRC/40/52/Add.2, para. 48-55, December 13, 2018.

<sup>82</sup> Human Rights Council of the United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/10/44, para. 38, January 14, 2009. ee also section II.A. "Prohibition of corporal punishment" below.

### 3. *After the execution*

The suffering caused by the imposition of the death penalty does not stop at the moment of the execution. In fact, the families of executed persons, on top of the grief inherent to the death of their relative, also suffer from the secrecy which characterizes many executions. Thus, in May 2022, the Human Rights Committee recognized “*the continued anguish and mental stress*” experienced by a convicted person’s mother as constitutive of torture. At the origin of this violation of Article 7 of the Covenant, the Committee identifies several elements, including the absence of information on both her son’s time of death and the place of his burial<sup>83</sup>.

The refusal to release the body of the executed person to their family also violates the prohibition of torture. In 2022, this was pointed out by the Human Rights Committee<sup>84</sup> and also by several United Nations Special Procedures in a letter to the Belarussian government<sup>85</sup>. The same year, the Committee against Torture ruled that such refusal exacerbated the cruelty of the situation<sup>86</sup>.

## II. The death penalty as a form of torture per se

The prohibition of the death penalty has experienced a significant evolution in the past years. Previously largely tolerated, the application of the death penalty has been progressively limited, and more than two thirds of countries have abolished the punishment both in law and in practice. The apprehension by national, regional, and international law of the death penalty has thus evolved by the progression of the prohibition of corporal punishment, the recognition at the national and regional level of the violation of the prohibition of torture, and the emergence of a new international customary law.

### A. The prohibition of corporal punishment

While non-lethal corporal punishments were once lawful within the confines of prisons or judicial sentencing proceedings, the international community decided that these acts amount *per se* to cruel, inhuman or degrading treatment or punishment<sup>87</sup> even when they are lawful sanctions. Therefore, the use of the tamarind switch<sup>88</sup> was found to violate article 7 of the Covenant<sup>89</sup>. Flogging, stoning and amputation of limbs<sup>90</sup> were also found to be clear violations of article 1 of the Convention

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<sup>83</sup> Human Rights Committee of the United Nations, [Tamara Sebyun v. Belarus](#), No. 2840/2016, para. 7.3, May 13, 2022.

<sup>84</sup> Human Rights Committee of the United Nations, [Tamara Sebyun v. Belarus](#), No. 2840/2016, para. 7.3, May 13, 2022.

<sup>85</sup> United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [OL BLR 3/2022](#), May 23, 2022.

<sup>86</sup> Committee against Torture of the United Nations, [Concluding observations on the initial report of Botswana](#), CAT/C/BWA/CO/1, para. 23 and 24, August 23, 2022.

<sup>87</sup> European Court of Human Rights, [Tyrer v. the United Kingdom](#), No. 5856/72, para. 35, 25 April 1978.

<sup>88</sup> Specific type of whip made of three strands of switches from a tamarind tree.

<sup>89</sup> Human Rights Committee of the United Nations, [George Osbourne v. Jamaica](#), CCPR/C/68/D/759/1997, para.10, 13 April 2000.

<sup>90</sup> Committee against Torture of the United Nations, [Considerations of reports submitted by States parties under article 19 of the Convention – Saudi Arabia](#), CAT/C/CR/28/5, para. 4 b), 12 June 2002. See also: [Consideration of reports submitted by States parties under article 19 of the Convention – Qatar](#), CAT/C/QAT/CO/1, para. 12, 25 July 2006.

against Torture. The African Commission on Human and Peoples' Rights also concluded that flogging constitutes a breach of the prohibition of torture<sup>91</sup>.

Article 1 of the Convention against torture excludes pain and suffering arising only from, inherent in or incidental to lawful sanctions which seems to mean that the death penalty could not be considered *per se* as torture. However, regarding the death penalty, the Special Rapporteur on torture already made a parallel with the jurisprudence on corporal punishments and recalled that it only refers to sanctions which are lawful under both national and international law<sup>92</sup>. According to his predecessor, the death penalty may be compared to corporal punishments due to the physical pain and suffering they might cause, but also because both concepts evolved to be considered as direct assaults on the dignity of a person<sup>93</sup>. There is indeed an obvious inconsistency in viewing beheading as different from corporal punishment, such as the amputation of a limb. More generally, all methods of execution inflict pain on the convicted person before causing death<sup>94</sup>. This suffering is particularly intense and prolonged in cases where failures occur in the implementation of the execution procedure. All methods of execution may be implicated, and several cases have been identified in particular during executions by hanging<sup>95</sup> and by lethal injection<sup>96</sup>. The Committee on the Rights of the Child defined corporal punishment as "*any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light*"<sup>97</sup>. Since the death penalty can objectively constitute a more draconian punishment than non-lethal corporal ones, part of the doctrine agrees that it should also be qualified as torture or cruel, inhuman or degrading punishment<sup>98</sup>.

## **B. The death penalty as a violation of the prohibition of torture and cruel, inhuman or degrading treatment or punishment**

Since it appears more and more clearly that the death penalty can be qualified as torture or cruel, inhuman or degrading treatment and punishment in a lot of cases, constitutional courts, such as the one of South Africa, decided that such punishment is not compatible *per se* with the protection against ill-treatment<sup>99</sup> while the Constitution of Finland expressly states that "*no one shall be sentenced to death, tortured, or otherwise treated in a manner violating human dignity*"<sup>100</sup>. In the case of *Ng v. Canada*

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<sup>91</sup> African Commission on Human and Peoples' Rights, *Curtis Francis Doebber v. Government of Sudan*, No. 236/2000, para. 42, May 2003.

<sup>92</sup> General Assembly of the United Nations, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, para. 28, 9 August 2012.

<sup>93</sup> Human Rights Council of the United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/10/44, para. 35, 14 January 2009.

<sup>94</sup> Refer to the descriptions of each of the execution methods in I.C.2.ii " Various methods of execution".

<sup>95</sup> In the case, *Interights & Diitshwanelo v. Republic of Botswana*, Application No. 319/06, paras. 85- 87, 2016, the African Commission on Human and Peoples' Rights relied on *the Republic v Mbushuu* ruling to state that several cases of improperly executed hangings had been recorded resulting in death by strangulation, removal of the skin from the face, or the need for prison guards to intervene to cause the death of the hanged person by pulling his legs or hitting his head with a hammer.

<sup>96</sup> Committee against Torture of the United Nations, *Charles Chitát Ng v. Canada*, CCPR/C/49/D/469/1991, 7 January 1994.

<sup>97</sup> Committee on the Rights of the Child of the United Nations, *General Comment No. 8, CRC/C/GC/8*, para. 11, 02 March 2007.

<sup>98</sup> Bessler, John D., *What I think about when I think about the death penalty*, Saint Louis University School of Law vol.62, no. 4, 2018.

<sup>99</sup> Constitutional Court of South Africa, *Makwanyane and Mchunu v. the State*, No. CCT/3/94, para. 146, 6 June 1995.

<sup>100</sup> *Constitution of Finland*, Section 7, 11 June 1999.

before the Human Rights Committee, both Fausto Pocar<sup>101</sup> and Rajssoomer Lallah<sup>102</sup> affirmed in dissenting opinions that every execution may be considered as violating article 7 of the Covenant.

Regional courts have also been addressing this issue. In the case of *Öcalan v. Turkey*, the European Court of Human Rights recognised that there had been a violation of article 3 of the European Convention on Human Rights regarding the imposition of the death penalty following an unfair trial and the conditions of detention<sup>103</sup>. However, the judge Lech Garlicki's dissenting opinion mentions that “*any imposition of the death penalty represents per se inhuman and degrading treatment prohibited by the Convention*”<sup>104</sup>. In 2010, the European Court of Human Rights went further by considering that, because of the evolution going towards the complete *de facto* and *de jure* abolition of the death penalty within the Member States of the Council of Europe, the death penalty should be prohibited in all circumstances, including on the basis of the prohibition of torture<sup>105</sup> since judicial executions involve the deliberate and premeditated destruction of a human being by the State authorities, creating inevitable physical pain and psychological suffering<sup>106</sup>. The European Court reaffirmed this jurisprudence in 2015 by stating that forcible return to China would expose the applicant to the death penalty, hence to a risk of treatment contrary to articles 2 and 3 of the European Convention on Human Rights<sup>107</sup>.

Since then, the Human Rights Council has urged States to comply with their international obligations when sentencing to death or proceeding to an execution, and even referred<sup>108</sup> to the Secretary-General's report which concluded that the imposition of the death penalty was incompatible with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment<sup>109</sup>. Recently, the Special Rapporteur on torture recalled during the 2017 high-level panel discussion on the question of the death penalty, that since it always led to intense physical and psychological suffering of those convicted and their relatives, whatever the methods used and whatever circumstances in which the executions were carried out, the “*increasingly rigorous conditions imposed by international human rights jurisprudence made it almost impossible to carry out the death penalty without violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*”<sup>110</sup>. Thus, although some methods of executions have been qualified as torturous in nature, there is yet to fully consider the inherent torment associated with death sentences and executions<sup>111</sup>. As affirmed by Juan Méndez in 2012, international standards and practices are in fact moving in that direction because the ability of States to impose the death penalty without violating the prohibition of torture

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<sup>101</sup> Human Rights Committee of the United Nations, *Charles Chitát Ng v. Canada*, CCPR/C/49/D/469/1991, 7 January 1994.

<sup>102</sup> *Ibid.*

<sup>103</sup> European Court of Human Rights, *Öcalan v. Turkey*, No. 46221/99, 12 March 2005.

<sup>104</sup> *Ibid.*

<sup>105</sup> European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, No.61498/08, para. 115 – 122, 4 October 2010.

<sup>106</sup> European Court of Human Rights, *Al-Nashiri v. Poland*, No. 28761/11, para. 576 -579, 16 February 2015.

<sup>107</sup> European Court of Human Rights, *A.L. (X.W.) v. Russia*, No. 44095/14, para. 66, 29 October 2015.

<sup>108</sup> Human Rights Council of the United Nations, *The question of the death penalty*, A/HRC/RES/30/5, 12 October 2015.

<sup>109</sup> Human Rights Council of the United Nations, *Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, A/HRC/30/18, para. 55, 16 July 2015.

<sup>110</sup> Human Rights Council of the United Nations, *High-level panel discussion on the question of the death penalty – Report of the UN High Commissioner for Human Rights*, A/HRC/36/27, para. 16, 4 July 2017.

<sup>111</sup> Bessler, John D., *What I think about when I think about the death penalty*, Saint Louis University School of Law vol.62, no. 4, p. 798, 2018.

and cruel, inhuman or degrading treatment is becoming increasingly restricted<sup>112</sup>. In 2022, the African Commission on Human and Peoples' Rights took up this issue, adopting a resolution on the death penalty and the prohibition of torture and cruel, inhuman or degrading treatment or punishment in which “*Urges the States Parties to the African Charter which continue to maintain the Death Penalty: To fully implement the right to life, the right to human dignity and the prohibition of torture, in accordance with the requirements of regional and international law*”<sup>113</sup>.

### C. Towards a new customary norm

As early as 2012, the previous Special Rapporteur on torture, Juan Méndez, wondered about the emergence of a new customary norm in the face of the “*evolving standard whereby States and judiciaries consider the death penalty to be a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment*” and remained “*convinced that a customary norm prohibiting the death penalty under all circumstances, if it has not already emerged, is at least in the process of formation*”<sup>114</sup>.

In its General Comment No. 36, the Human Rights Committee also noted a paradigm shift leading “*to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances*” and thus constitutes a cruel, inhuman, or degrading punishment<sup>115</sup>. At the origin of this perspective shift, the Committee observes in particular that an ever-increasing number of States, both abolitionist and retentionist, are adhering to international instruments aimed at abolishing the death penalty in law or in practice.

In their letters to governments in response to communications on the death penalty, several United Nations Special Procedures have for several years mentioned the emergence of this customary norm establishing that the death penalty is in itself a violation of the prohibition of torture and inhuman and degrading treatment. Thus, this emerging customary norm was mentioned in 2014 in a letter to Saudi Arabia<sup>116</sup>. Again, in 2015<sup>117</sup> and 2021<sup>118</sup> in letters addressed to the United States, and in 2016<sup>119</sup> in a letter addressed to Sudan, the Special Procedures draw the attention of the authorities to the development of this customary norm. In 2022, references to this emerging

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<sup>112</sup> Méndez, Juan E. [The death penalty and the absolute prohibition of torture and cruel, inhuman, and degrading treatment or punishment](#), Human Rights Brief, vol. 20, no. 1, pp. 2-6, 2012.

<sup>113</sup> African Commission on Human and Peoples' Rights, [Resolution on the Death Penalty and the prohibition of Torture and cruel, inhuman or degrading punishment or treatment](#), ACHPR/Res.544 (LXXIII), 12 December 2022.

<sup>114</sup> General Assembly of the United Nations, [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/67/279, para. 72, 9 August 2012.

<sup>115</sup> Human Rights Committee of the United Nations, [General Comment No. 36 – Article 6: right to life](#), CCPR/C/GC/36, para. 51, 3 September 2019.

<sup>116</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA G/SO 218/2 G/SO 214 \(3-3-16\) G/SO 214 \(106-10\) G/SO 214 \(33-27\) G/SO 214 \(53-24\) G/SO 214 \(89-15\) SAU 4/2014](#), 2 April 2014.

<sup>117</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [AL USA 13/2015](#), 26 June 2015.

<sup>118</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA USA 12/2021](#), 1 March 2021.

<sup>119</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA SDN 6/2016](#), 25 August 2016.

customary norm are increasingly recurrent: it appears in letters addressed to the United Republic of Tanzania<sup>120</sup>, Pakistan<sup>121</sup>, Malawi<sup>122</sup>, Saudi Arabia<sup>123</sup> and Belarus<sup>124</sup>.

Also, the terms used by the Special Procedures have evolved, confirming the view of a paradigm shift. This can be observed in the letters following communications on the death penalty for minors. To justify its prohibition in international law, reference was made in 2012<sup>125</sup> only to the emergence of a *jus cogens* norm on the execution of minors. In February 2023, the Special Procedures affirmed that the death penalty for minors is a practice which violates an existing norm of international law and renders this punishment tantamount to torture<sup>126</sup>.

In conclusion, and in the light of this demonstration, the signatory organisations recommend that a more in-depth legal study be carried out on the link between the death penalty and the prohibition of torture, and on the emergence of a customary rule prohibiting the use of capital punishment in all circumstances, in line with the recommendation made by the Special Rapporteur on torture, Juan Mendez, more than ten years ago<sup>127</sup>.

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<sup>120</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA TZA 2/2022](#), 18 May 2022.

<sup>121</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [AL PAK 3/2022](#), 27 June 2022.

<sup>122</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA MWI 4/2022](#), 23 September 2022.

<sup>123</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [AL SAU 8/2022](#), 13 June 2022.

<sup>124</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [OL BLR 3/2022](#), 23 May 2022.

<sup>125</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [UA G/SO 218/2 G/SO 214 \(33-27\) G/SO 214 \(53-24\) G/SO 214 \(89-15\) YEM 1/2012](#), 14 December 2012.

<sup>126</sup> Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council, [AL SAU 1/2023](#), 16 February 2023.

<sup>127</sup> General Assembly of the United Nations, [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), A/67/279, para. 74, 9 August 2012.