



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

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The signatory organizations¹ 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 abolished². The death penalty is only tolerated by international law and standards to the extent that it may only be imposed for the most serious crimes³ and applied in a way that causes the least possible suffering⁴. 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-treatments.

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

A. At the time of sentencing

1. 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 guarantees⁵ and the prohibition of torture⁶. Recently, both the Human Rights Committee and the Committee Against Torture expressed concerns about allegations of death sentences based on confessions obtained under

¹ Signatory organizations:

1. Paris Bar Association; 2. Bar Association of Puerto Rico (BAPR); 3. Nigerian Coalition Against the Death Penalty (CONICOPEM); 4. Capital Punishment Justice Project (CJPJ); 5. Tunisian Coalition Against the Death Penalty (CTCPM); 6. Together Against the Death Penalty (ECPM); 7. International Federation of ACAT (FIACAT); 8. International Federation for Human Rights (FIDH); 9. International Rehabilitation Council for Torture Victims (IRCT); 10. Iran Human Rights (IHR); 11. World Organisation Against Torture (OMCT); 12. Parliamentarians for Global Action (PGA); 13. Redress; 14. Syndicat national des agents de la formation et de l'éducation du Niger (SYNAFEN); 15. World Coalition Against Death Penalty (WCADP); 16. Witness to Innocence (WTI).

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

³ *International Covenant on Civil and Political Rights*, Article 6, 16 December 1966

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

⁵ *International Covenant on Civil and Political Rights*, Article 6 paragraph 2 and article 14, 16 December 1966

⁶ 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.

duress or torture in Bahrain⁷ and in Viet Nam⁸. 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 counsel of their choice at any time during the investigative phase of their detention is perceived as particularly grave when facing the death penalty⁹.

2. 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 juveniles¹⁰, pregnant women¹¹ or persons whose serious psychosocial or intellectual disabilities impede their effective defence¹². According to the United Nations High Commissioner for Human Rights, juveniles, “because of their immaturity, may not fully comprehend the consequences of their actions and should benefit from less severe sanctions than adults”¹³.

To Juan Méndez, the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (“Special Rapporteur on torture”), these prohibitions should then not be understood as attributing a different value to their right to life, but as considering 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”)¹⁴.

B. Pending execution: the death row phenomenon

According to the Special Rapporteur on torture, conditions of detention on death row may amount to torture or cruel, inhuman or degrading treatment or punishment. In 2012, he 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 suffering¹⁵. Secret detention, solitary confinement and social exclusion can also characterize the death row phenomenon and have effects on detainees ranging from various forms of anxiety, stress and

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ [International Covenant on Civil and Political Rights](#), article 6 § 5, 16 December 1966.

¹¹ *Ibidem*.

¹² 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.

¹³ UN News, [Robinson expresses concerns about scheduled execution in US of two juvenile offenders](#), 1 August 2002.

¹⁴ 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.

¹⁵ *Ibid.* para. 42.

depression to cognitive impairment and suicidal tendencies¹⁶ in violation of the prohibition of torture¹⁷.

In *Soering v. United Kingdom*, the European Court of Human Rights 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 Rights¹⁸. That jurisprudence was later reaffirmed by the European Court¹⁹ and other regional courts have also followed such as the Inter-American Commission on Human Rights²⁰.

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 abhorrent²¹. Hence, failure to provide convicts with timely notification about the scheduled date of their execution is also considered as a form of ill-treatment which renders the execution likely to be contrary to the prohibition of torture²². 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 cases²³.

Criminology confirmed as well that the death row phenomenon produces feelings of abandonment, leading to « the death of personality », whose symptoms are depression, capacity, loss of sense of reality and physical and mental deterioration, that may result in severe personality distortions and denial of reality²⁴. Thus, psychological trauma is an inevitable consequence of the imposition of the death penalty according to authors²⁵.

C. During the execution

1. General

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

¹⁶ 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.

¹⁷ 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.

¹⁸ European Court of Human Rights, [Soering v. United Kingdom](#), No. 14038/88, para. 111, 7 July 1989.

¹⁹ European Court of Human Rights, [Einhorn v. France](#), No. 71555/01, para. 26, 16 October 2001.

²⁰ 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.

²¹ Human Rights Committee of the United Nations, [Kindler v. Canada](#), No. 470/1991, para. 15.3, 30 July 1993.

²² 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.

²³ 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.

²⁴ Johnson, Robert. *Condemned to die: Life under sentence of death*, New York, Elsevier, 1981.

²⁵ 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, pp. 303-333, 2004.

suffering, whatever the method of execution²⁶. As such, the former Special Rapporteur Juan Méndez considered that States cannot guarantee that there is a pain free method of execution even when the required safeguards are in place²⁷. 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 us²⁸.

In 2015, the African Commission on Human and People's Rights recommended that States should not conduct executions in public nor use methods that cause unnecessary physical or mental suffering²⁹. 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, including peremptory norms such as prohibition of torture, States are required to abstain from proceeding with the execution « *regardless of whether there is an alternative method* »³⁰.

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 status³¹. Among the methods of execution still used to this date³², almost all have been found to be contrary to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment.

2. Various methods of execution

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 a cruel and inhuman treatment³³, since asphyxiation by cyanide gas may take more than 10 minutes. This jurisprudence was reaffirmed by the Human Rights Council in 2019³⁴.

b. Stoning

²⁶ European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, No.61498/08, para. 115, 4 October 2010.

²⁷ 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.

²⁸ 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.

²⁹ 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.

³⁰ Inter-American Commission on Human Rights, *Russell Bucklew v. United States*, No. 71/18, Case 12.958, para. 77, 10 May 2018.

³¹ 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.

³² Amnesty International, *Death sentences and executions 2020*, p. 11, 2020.

³³ Human Rights Committee of the United Nations, *Charles Chitat Ng v. Canada*, n°469/199, para. 16.4, 7 January 1994.

³⁴ 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.

In the case *Jabari v. Turkey*, 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 death³⁵. 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 stopped³⁶. The Human Rights Committee recently asked Sudan³⁷ and Mauritania³⁸ 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 treatment³⁹, which was echoed by the African Court on Human and People's Rights⁴⁰. Similarly, the Special Rapporteur on torture considered that due to conditions of imposition of the death sentence, by hanging, the execution of five men in Papua New Guinea during July 2011 “*inevitably results in cruel, inhuman or degrading treatment or even torture*”⁴¹.

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* »⁴². The Inter-American Court of Human Rights did the same in 2017, considering 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 treatment⁴³.

e. Lethal injection

In 2006, the Committee Against Torture expressed concerns that executions carried on in the United States through lethal injection could be accompanied by severe pain and suffering⁴⁴. In 2014, the concluding observations mentioned reported cases in Arizona, Oklahoma, and Ohio of

³⁵ European Court of Human Rights, *Jabari v. Turkey*, No. 40035/98, para. 33-42, 11 October 2000.

³⁶ 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, 21st April 2004, and *The question of the death penalty*, E/CN.4/RES/2005/59, 20 April 2005.

³⁷ Human Rights Committee of the United Nations, *Concluding observations on the fifth periodic report of the Sudan*, CCPR/C/SDN/CO/5, para. 30, 19 November 2018.

³⁸ Human Rights Committee of the United Nations, *Concluding observations on the second periodic report of Mauritania*, CCPR/C/MRT/CO/2, para. 25, 23 August 2019.

³⁹ High Court of the United Republic of Tanzania, *Republic v. Mbushuu alias Dominic Mnyaroje and Kalai Sangula*, 1994 TZHC 7, 22 June 1994.

⁴⁰ African Court on Human and Peoples' Rights, *Ally Rajabu and others v. United Republic of Tanzania*, No. 007/2015, para. 119, 28 November 2019.

⁴¹ 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, 1 March 2012.

⁴² 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, 9 August 2012.

⁴³ Inter-American Commission on Human Rights, *Roberto Girón and Pedro Castillo Mendoza v. Guatemala*, No. 76/17, Case 11.686, para. 111-118, 5 July 2017.

⁴⁴ 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, 25 July 2006.

« excruciating pain and prolonged suffering that procedural irregularities have caused condemned prisoners in the course of their execution » and asked the United States to review their execution methods⁴⁵. Recently, 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 anxiety⁴⁶. The 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 condition⁴⁷. 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 personnel⁴⁸.

f. Beheading

In 2019, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism denounced the particular 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 torture⁴⁹. 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 punishment⁵⁰.

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

A. 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 punishment⁵¹ even when they are lawful sanctions. Therefore, the use of the tamarind switch⁵² was found to violate article 7 of the Covenant⁵³.

⁴⁵ 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.

⁴⁶ Inter-American Commission on Human Rights, *Russell Bucklew v. United States*, No. 71/18, Case 12.958, para.78, 10 May 2018.

⁴⁷ 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, 13 August 2020.

⁴⁸ 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, 28 August 2019.

⁴⁹ 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, 13 December 2018.

⁵⁰ 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, 14 January 2009.

⁵¹ European Court of Human Rights, *Tyrer v. the United Kingdom*, No. 5856/72, para. 35, 25 April 1978.

⁵² Specific type of whip made of three strands of switches from a tamarind tree.

⁵³ Human Rights Committee of the United Nations, *George Osbourne v. Jamaica*, No. 759/1997, para.10, 13 April 2000.

Flogging, stoning and amputation of limbs⁵⁴ were also found to be clear violations of article 1 of the Convention against Torture. The African Commission on Human and Peoples' Rights also concluded that flogging constitutes a breach of the prohibition of torture⁵⁵.

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 law⁵⁶. 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 person⁵⁷. Indeed, 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*”⁵⁸. 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 punishment⁵⁹.

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-treatment⁶⁰ 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*”⁶¹. In the case of *Ng v. Canada* before the Human Rights Committee, both Fausto Pocar⁶² and Rajsoomer Lallah⁶³ 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

⁵⁴ 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.

⁵⁵ African Commission on Human and Peoples' Rights, *Curtis Francis Doebber v. Government of Sudan*, No. 236/2000, para. 42, May 2003.

⁵⁶ 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.

⁵⁷ 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

⁵⁸ Committee on the Rights of the Child of the United Nations, *General Comment No. 8, CRC/C/GC/8*, para. 11, 02 March 2007.

⁵⁹ 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.

⁶⁰ Constitutional Court of South Africa, *Makwanyane and Mchunu v. the State*, No. CCT/3/94, para. 146, 6 June 1995.

⁶¹ *Constitution of Finland*, Section 7, 11 June 1999.

⁶² Human Rights Committee of the United Nations, *Charles Chitat Ng v. Canada*, n°469/1990, 7 January 1994.

⁶³ *Ibid.*

trial and the conditions of detention⁶⁴. 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* »⁶⁵. 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 torture⁶⁶ since judicial executions involve the deliberate and premeditated destruction of a human being by the State authorities, creating inevitable physical pain and psychological suffering⁶⁷. 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 Rights⁶⁸.

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 referred⁶⁹ 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 punishment⁷⁰. 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* »⁷¹.

Furthermore, not coming to this conclusion raises questions about the logic of international law, as threatening to kill a prisoner may be illegal but its sentencing and its execution may be lawful⁷². 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 executions⁷³. As affirmed by Juan Méndez in 2012, international standards and practices are in fact moving in that direction because of the ability of States to impose the death penalty without violating the

⁶⁴ European Court of Human Rights, *Öcalan v. Turkey*, No. 46221/99, 12 March 2005.

⁶⁵ *Ibid.*

⁶⁶ European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, No.61498/08, para. 115 – 122, 4 October 2010.

⁶⁷ European Court of Human Rights, *Al Nashiri v. Poland*, No. 28761/11, para. 576 -579, 16 February 2015.

⁶⁸ European Court of Human Rights, *A.L. (X.W.) v. Russia*, No. 44095/14, para. 66, 29 October 2015.

⁶⁹ Human Rights Council of the United Nations, *The question of the death penalty*, A/HRC/RES/30/5, 12 October 2015.

⁷⁰ 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.

⁷¹ 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.

⁷² International Bar Association, *The death penalty under international law: a background paper to the IBAHRI Resolution on the Abolition of the death penalty*, 2008.

⁷³ 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.

prohibition of torture and cruel, inhuman or degrading treatment is becoming increasingly restricted⁷⁴.

As a conclusion and in the light of the present demonstration, the signatory organizations believe that it is imperative to consider the death penalty as being *per se* a violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment in line with the emerging customary rule against the death penalty that was already pointed out by Juan Méndez in 2012⁷⁵.

⁷⁴ 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.

⁷⁵ 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.