

of the Human Rights Committee; the general context of the death penalty in the U.S.; current practices in the application of the death penalty; the administration of the death penalty; the lack of awareness of international obligations relative to the U.S.; and deaths resulting from excessive use of force by law enforcement officials. The annex to the report reproduces a recommendation by the American Bar Association (ABA) which was approved by the ABA House of Delegates in February 1997.

Reviewing provisions in the ICCPR, the report recalls that the U.S. ratified the Covenant on 8 June 1992 — with reservations, declarations and understandings — and that the treaty entered into force on 8 September 1992. The report notes limitations imposed by article 6 of the ICCPR, including that: the death sentence can only be imposed for the most serious crimes, viz. as an exceptional measure for intentional crimes in which the intention was to kill; a death sentence can only be imposed following the strictest observance of the highest procedural safeguards; and a death sentence may not be imposed on minors and may not be carried out on pregnant women.

The commentary on the reservations filed by the U.S. to the ICCPR notes that a reservation has been entered to the death penalty provision of article 6, stating that the U.S. reserves the right, subject to constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below 18 years of age. The report notes that 11 States parties to the ICCPR objected to the reservation and, further, that the Human Rights Committee expressed concern that the reservation is incompatible with the object and purpose of the Covenant, partly on the basis that article 4 of the Covenant declares article 6 to be a non-derogable right, thereby placing a state which makes a reservation to the right to life under a “heavy onus”.

The report also refers to an understanding and several declarations made by the government related to the Covenant according to which: the Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered, and otherwise by the state and local governments; the provisions of articles 1 through 27 of the Covenant are not self-executing, i.e., the Covenant does not, by itself, create private rights directly enforceable in U.S. courts; and special legislation to give effect to the provisions of the ICCPR in domestic law is not necessary since the fundamental rights and freedoms protected by the ICCPR are already guaranteed in law, either by virtue of constitutional protections or enacted statutes, and can be effectively asserted and enforced by individuals in the judicial system on those bases. The report notes that in its concluding observations on the initial report of the U.S., the Human Rights Committee regretted the extent of the reservations, declarations and understandings to the Covenant as, taken together, they intended to ensure that the U.S. has accepted only what is already in its law.

The description of the general context for the death penalty sets out a number of points including, *inter alia*, that: forty jurisdictions have death penalty statutes; information indicated that 3,269 persons were on death row, with more than 98 per cent of those individuals being men; since the reinstatement of death penalty statutes, more than 47 persons have been released from death row because of later evidence of their innocence; nine juvenile offenders — individuals aged less than 18 at the time they committed the crime for which they were convicted — have been executed; information indicated that a significant degree of unfairness and arbitrariness in the administration of the death penalty still prevails and, in February 1997, the ABA called for a moratorium on executions until jurisdictions implement procedures and policies intended to ensure that death penalty cases are administered fairly and impartially; the guarantee of due process in capital cases has been seriously jeopardized following the adoption of the federal 1996 Anti-Terrorism and Effective Death Penalty Act which severely limits federal review of state court convictions and curtails the availability of *habeas corpus* at the federal level; and the withdrawal of funding for post-conviction defender organizations has seriously limited the extent to which fair trial standards are fully available during the process leading to the imposition of a death sentence.

The findings of the mission included, *inter alia*, that: the Senate was considering a proposal to reinstate the death penalty in Washington D.C. for those convicted of killing law enforcement officials; a number of states — including Alabama, Colorado, Delaware, Georgia, Indiana, New Hampshire, North Carolina and Tennessee — enacted laws increasing the number of aggravating circumstances which qualify a murder as a capital case; at the federal level, the Federal Death Penalty Act expanded the federal death penalty to more than 50 new offences, including a range of crimes involving murder of federal officials, attempted assassination of the President, treason, espionage and major drug-trafficking; the U.S. is one of the few countries where legislation at the state level, in those states permitting the death penalty, allows for the imposition of the death penalty on, and execution of, juveniles; information received from non-governmental sources indicated that at least 29 persons with severe mental disabilities had been executed in the U.S. since the death penalty was reinstated in 1976, and 28 capital jurisdictions at the state level were reported to permit the execution of mentally retarded defendants; the majority of death penalty sentences are imposed at the state level and the small percentage of defendants who receive a death sentence are not necessarily those who committed the most heinous crimes.

The SR also found that: many factors, other than the crime itself, appear to influence the imposition of a death sentence with class, race and economic status — both of the victim and the defendant — considered to be key elements as well as the influence of public opinion and political pressure and the racial attitudes of lawyers, prosecutors, juries and judges; allegations of racial discrimina-