

# The Death Penalty in the OSCE Area

**BACKGROUND PAPER 2007**

HUMAN DIMENSION IMPLEMENTATION MEETING  
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This paper updates Background Paper 2006 of October 2006. It is intended to provide a comparative overview of the developments concerning the use of the death penalty in the period 30 June 2006 to 30 June 2007 in the OSCE participating States and to promote constructive discussion. The content of this paper does not necessarily reflect the policy or position of the OSCE or the ODIHR.

Any comments or suggestions should be addressed to the ODIHR Human Rights Department.

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# *Contents*

|   |            |
|---|------------|
| <i>Foreword</i>   | <i>vii</i> |
| <b>1. The Status of the Death Penalty in the OSCE Area</b>                                      | <b>1</b>   |
| <b>2. International Standards on the Death Penalty</b>  | <b>3</b>   |
| 2.1 International Standards Restricting the Use of<br>the Death Penalty                         | 3          |
| 2.2 International Standards Abolishing the Death Penalty  | 7          |
| <b>3. The Death Penalty in the OSCE Area</b>  | <b>11</b>  |
| 3.1 Belarus   | 13         |
| 3.2 Kazakhstan  | 17         |
| 3.3 Kyrgyzstan  | 20         |
| 3.4 Latvia  | 22         |
| 3.5 Russian Federation  | 23         |
| 3.6 Tajikistan  | 27         |
| 3.7 United States of America  | 31         |
| 3.8 Uzbekistan  | 40         |
| <i>Annexes</i>  | <i>45</i>  |
| 1. OSCE Commitments on the Death Penalty  | 47         |
| 2. Other International Standards on the Death Penalty   | 50         |
| 3. Relevant Recommendations Made at OSCE Human<br>Dimension Implementation Meetings (2002-2006) | 69         |
| 4. Questionnaire on the Death Penalty   | 71         |
| 5. Status of Ratifications  | 74         |



# Foreword

The overwhelming majority of the 56 participating States of the OSCE have abolished the death penalty for all crimes. In accordance with its mandate to monitor developments regarding the death penalty in the OSCE area, the ODIHR reports on this issue to the annual Human Dimension Implementation Meeting.<sup>3</sup>

**The background paper presents analysis and recent data.** Last year, five essays were included on different approaches to the death penalty that continue to provide useful and topical viewpoints on the developments in the use of the death penalty in the context of the OSCE region. **Chapter 1** of this background paper classifies the participating States according to the categories of abolitionist, partly abolitionist, *de facto* abolitionist, or retentionist. In the past year, there has been a trend towards abolition and reduction of the use of the death penalty. Albania and Kyrgyzstan joined the abolitionist states. In February 2007, Albania ratified Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, including time of war or of imminent threat and thereby moved from being a partly abolitionist to an abolitionist state.<sup>4</sup> On 27 June 2007, Kyrgyzstan enacted a law abolishing the death penalty in all circumstances and replacing it with life imprisonment. Kazakhstan, which had been *de facto* abolitionist, joined the group of partly abolitionist states. On 21 May 2007, Kazakhstan promulgated amendments to the Constitution restricting the imposition of the death penalty to acts of terrorism leading to the death of people and grave crimes committed in wartime. In 2006 and 2007, Moldova, Georgia, and France removed death-penalty provisions from their constitutions.

While OSCE participating States are not required to abolish the death penalty, they have made a number of commitments regarding its use. In particular, participating States have committed themselves to impose the death penalty only in a manner that is not contrary to their international commitments and to make information

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3 This paper updates Background Paper 2006. The reporting period covered by this paper is from 30 June 2006 to 30 June 2007.

4 Since it did not use the death penalty during the reporting period, no entry for Albania appears in this paper.

on its use available to the public. **Chapter 2** thus provides an overview of the international standards on the death penalty that have been developed by the OSCE, the United Nations, the Council of Europe, and the European Union. **Chapter 3** includes information on each relevant country's legal framework, statistics on sentences and executions, and information on compliance with international standards. This chapter is based primarily on information received from the participating States.

Finally, a copy of the questionnaire that was sent to the participating States requesting information on the use of the death penalty is attached as an annex together with the relevant OSCE commitments and other international standards and a ratifications table. Recommendations made at OSCE Human Dimension Implementation Meetings are also annexed.

I hope that this background paper will be useful to governments and civil society alike in the further debate on issues related to capital punishment and its possible abolition.



*Ambassador Christian Strohal*  
*ODIHR Director*

# The Status of the Death Penalty in the OSCE Area

For the purpose of this paper, each participating State has been classified as **abolitionist**, **partly abolitionist**, *de facto* **abolitionist**, or **retentionist** according to the status of the death penalty in the relevant state's law and practice.

**Abolitionist:** The death penalty has been abolished for all crimes.

**Forty-nine** OSCE participating States are abolitionist:

- Albania
- Andorra
- Armenia
- Austria
- Azerbaijan
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Croatia
- Cyprus
- The Czech Republic
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- The Holy See
- Hungary
- Iceland
- Ireland
- Italy
- Kyrgyzstan
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Moldova
- Monaco
- Montenegro
- The Netherlands
- Norway
- Poland
- Portugal
- Romania
- San Marino
- Serbia
- The Slovak Republic
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- Turkmenistan
- Ukraine
- The United Kingdom
- The former Yugoslav Republic of Macedonia

**Partly abolitionist:** The death penalty has been abolished for crimes committed in peacetime but is retained for crimes committed in wartime.

**Two** participating States are partly abolitionist:

- Latvia
- Kazakhstan

*De facto* **abolitionist:** The death penalty is retained for crimes committed in peacetime, but executions are not carried out.

**Two** participating States are *de facto* abolitionist:

- The Russian Federation
- Tajikistan

**Retentionist:** The death penalty is retained for crimes committed in peacetime, and executions are carried out.

**Three** participating States are retentionist:

- Belarus
- The United States of America
- Uzbekistan



# 2

## International Standards on the Death Penalty

This chapter provides an overview of the international standards on the death penalty that have been developed by the OSCE, the United Nations, the Council of Europe, the Organization of American States, and the European Union.<sup>3</sup> For the purposes of this overview, international standards have been divided into two categories:

- International standards restricting the use of the death penalty; and
- International standards abolishing the death penalty.

### 2.1 International Standards Restricting the Use of the Death Penalty

#### OSCE

OSCE commitments, which are of a politically binding nature, do not require the abolition of the death penalty. However, OSCE participating States have committed themselves to carry out the death penalty only for the **most serious crimes** and **in a manner not contrary to their international commitments**.<sup>4</sup>

#### United Nations

The International Covenant on Civil and Political Rights (ICCPR), which is of a legally binding nature, does not require the abolition of the death penalty.<sup>5</sup> Article 6 of the ICCPR provides for the right to life but recognizes the death penalty as a permissible exception to the right to life. The text of the ICCPR provides that no one shall be deprived of the right to life arbitrarily and lists a number of specific restrictions and limitations on the use of the death penalty. Article 6 (2) provides that:

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3 For a comprehensive outline of international instruments related to death penalty, see Amnesty International's online publication "International Standards on the Death Penalty", which can be found at <http://web.amnesty.org/library/index/engact500012006>.

4 Concluding Document of the 1989 Vienna Follow-up Meeting, "Questions relating to Security in Europe", para. 24. OSCE commitments also place a number of positive obligations on participating States that choose to retain the death penalty. A full-text reproduction of the OSCE commitments on the death penalty can be found in Annex 1.

5 UN General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976.

- A death sentence may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime;
- A death sentence may be imposed only in a manner not contrary to the provisions of the ICCPR, and the death penalty may be carried out only pursuant to a final judgement rendered by a competent court;
- Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence;
- The death penalty shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

The limitations set out in Article 6 (2) have been interpreted by the UN Human Rights Committee in its concluding observations on state party reports, in its General Comment No. 6, and in its jurisprudence on individual complaints.<sup>6</sup> In addition, the limitations set out in Article 6 (2) have also been interpreted and expanded upon in documents produced by other UN bodies, in particular, in the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>7</sup> and in the annual resolutions of the UN Commission on Human Rights on the question of the death penalty.<sup>8</sup> The following is a brief overview of the nature of the restrictions set out in Article 6 (2) on the basis of the documentation produced by the above-mentioned bodies.<sup>9</sup>

### ***Most serious crimes***

General Comment No. 6 states that the term *most serious crimes* must be read restrictively to mean that the death penalty should be an exceptional measure. The ECOSOC Safeguards specify that the scope of the crimes punishable by the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The UN Human Rights Committee has gone further than this, stating that the imposition of the death penalty for crimes that do not result in loss of life

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6 General Comment No. 6, adopted at the 16th session of the Human Rights Committee, 1982.

7 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, UN Economic and Social Council Resolution 1984/50, adopted on 25 May 1984.

8 In 2006, the UN Commission on Human Rights was replaced by the Human Rights Council. The procedures used by the Commission to promote and protect human rights, such as the work of the Sub-commission and the special rapporteurs, are to continue under the new Council. This background paper therefore focuses on the procedures and approach of the old Commission, which retain their status.

9 Unless otherwise indicated, the documents referred to in the following overview are not of a legally binding nature.

would be contrary to the ICCPR.<sup>10</sup> Resolution 2005/59 of the UN Commission on Human Rights states that the death penalty should neither be imposed for non-violent acts – such as financial crimes, religious practice or expression of conscience, or sexual relations between consenting adults – nor as a mandatory sentence.<sup>11</sup>

***In a manner not contrary to the provisions of the ICCPR and pursuant to a final judgement rendered by a competent court***

States parties are obliged to rigorously observe all the fair-trial guarantees set out in Article 14 of the ICCPR. The UN Human Rights Committee is of the opinion that a violation of the right to life would result from an execution following a trial that fails to ensure the right to a fair hearing by an independent tribunal, the presumption of innocence, minimum guarantees for the defence, and the right to review by a higher tribunal.<sup>12</sup> The ECOSOC Safeguards and Resolution 2005/59 of the UN Commission on Human Rights also state that all legal proceedings should comply with Article 14 of the ICCPR.

***Right to seek pardon or commutation***

The term *pardon* means the removal of a death sentence and release, while the term *commutation* means the substitution of a death sentence with a less severe sentence. The right to seek pardon or commutation has been reaffirmed by General Comment No. 6, the ECOSOC Safeguards, and Resolution 2005/59 of the UN Commission on Human Rights.

***Persons below the age of 18 and pregnant women***

The prohibition on the death penalty for crimes committed by persons below the age of 18 is reiterated in the Convention on the Rights of the Child, which is of a legally binding nature.<sup>13</sup> This principle has been reaffirmed by the ECOSOC Safeguards<sup>14</sup>

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10 “Concluding observations of the Human Rights Committee: Iran (Islamic Republic of)”, CCPR/C/79/Add. 25, 3 August 1993, para. 8.

11 Resolution of the UN Commission on Human Rights 2005/59, 20 April 2005, para. 10 (f). By this resolution, the Commission requested that the secretary-general submit an annual report on capital punishment. By Decision 2/102, the Human Rights Council requested that the secretary-general and the high commissioner for human rights continue this task. The 2007 report of the secretary-general can be found online at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A.HRC.4.78.pdf>.

12 General Comment No. 6, *op. cit.*, note 6.

13 Article 37 of the Convention on the Rights of the Child, UN General Assembly Resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990.

14 ECOSOC Safeguards, *op. cit.*, note 7.

and Resolution 2005/59 of the UN Commission on Human Rights.<sup>15</sup> In addition, the Sub-Commission on the Promotion and Protection of Human Rights has stated that the imposition of the death penalty for crimes committed by persons below the age of 18 is contrary to customary international law.<sup>16</sup> The prohibition on the execution of pregnant women has been reaffirmed by a number of resolutions of the UN Commission on Human Rights and the ECOSOC Safeguards. The Human Rights Committee has expressed the opinion that the prohibition on the execution of children and pregnant women represents a norm of customary international law.<sup>17</sup>

Although Article 6 (2) prohibits the execution of only two specific categories of people, this list should not be considered exhaustive. Indeed, the ECOSOC Safeguards extend this restriction to the elderly, mothers with dependent infants, the insane, and the mentally disabled.

Finally, it should be noted that the use of the death penalty also raises issues under Article 7 of the ICCPR on the prohibition of torture and inhuman or degrading treatment. The Human Rights Committee has found violations of Article 7 in certain cases concerning detention on death row, the method of execution, and the issuance of execution warrants for mentally incapable persons.

### **Council of Europe**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is of a legally binding nature, does not require the abolition of the death penalty.<sup>18</sup> Article 2 of the ECHR, which enshrines the right to life, provides that: “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

The text of the ECHR itself places no explicit restrictions on the use of the death penalty, save that it can only be carried out following conviction by a court of a crime for which the death penalty is provided for by law. However, the European Court of Human Rights has interpreted both Article 2 and Article 3 of the ECHR as placing certain limitations on the use of the death penalty.<sup>19</sup>

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15 Resolution of the UN Commission on Human Rights 2005/59, *op. cit.*, note 11.

16 Resolution of the UN Sub-Commission on Human Rights 2000/17, 17 August 2000.

17 On this basis, the Human Rights Committee has stated that states parties may not reserve the right to execute children or pregnant women. See General Comment No. 24, adopted at the 52nd session of the Human Rights Committee, 1994.

18 Entered into force on 3 September 1953.

19 Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment.

### **Organization of American States**

The American Convention on Human Rights (ACHR), which is of a legally binding nature, does not abolish the death penalty.<sup>20</sup> Article 4, which enshrines the right to life, places severe restrictions on states' ability to impose the death penalty. The latter is only applicable for the most serious crimes. Once the death penalty is abolished, it cannot be reinstated. It cannot be used for political offences or common crimes. It also cannot be imposed on those under 18 or over 70 at the time the crime was committed, or on pregnant women.

### **European Union**

The European Union takes an active stance against the death penalty in its relations with accession countries and third countries. First, the abolition of the death penalty is a prerequisite to accession to the EU.<sup>21</sup> Second, the EU has developed "Guidelines on European Union policy towards third countries on the death penalty".<sup>22</sup> These Guidelines, which are reproduced in Annex 2, contain a list of minimum standards on the use of the death penalty.

## **2.2 International Standards Abolishing the Death Penalty**

### **United Nations**

Since the adoption of the ICCPR, steps have been taken to develop a legally binding instrument that requires the abolition of the death penalty. Accordingly, the UN has adopted the Second Optional Protocol to the ICCPR,<sup>23</sup> which abolishes the death penalty during peacetime.

Forty-three OSCE participating States have ratified the Second Optional Protocol. In the period from 30 June 2006 to 30 June 2007, three participating States ratified the Second Optional Protocol: Andorra, Moldova, and Montenegro.

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20 Entered into force 18 July 1978. At present, 24 of the 35 member states of the Organization of American States are parties to the ACHR. The United States of America and Canada are not parties to the ACHR.

21 The abolition of the death penalty for peacetime crimes is an element of the Copenhagen Criteria for accession countries to the European Union.

22 General Affairs Council, "Guidelines on European Union policy towards third countries on the death penalty", Luxembourg, 29 June 1998.

23 UN General Assembly Resolution 44/128 of 15 December 1989. Entered into force on 11 July 1991. Article 2 of the Second Optional Protocol provides that no reservation is admissible except for reservations made at the time of ratification or accession that provide for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

Resolution 2005/59 of the Commission on Human Rights called upon all states that still retain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions.<sup>24</sup>

### **Council of Europe**

Since the adoption of the ECHR, steps have been taken to develop legally binding instruments that abolish the death penalty.

The Council of Europe has adopted Protocol No. 6 to the ECHR,<sup>25</sup> which abolishes the death penalty during peacetime. All new member states of the Council of Europe are required to ratify Protocol No. 6 within a certain time limit.<sup>26</sup> In addition, the Council of Europe has also adopted Protocol No. 13 to the ECHR,<sup>27</sup> which is the first legally binding instrument that abolishes the death penalty in all circumstances, including in time of war.

- Forty-six OSCE participating States have ratified Protocol No. 6.<sup>28</sup>
- Forty OSCE participating States have ratified Protocol No. 13. In the period from 30 June 2006 to 30 June 2007, three participating States ratified Protocol No. 13: Albania, Luxembourg, and Moldova.

### **Organization of American States**

Article 1 of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty<sup>29</sup> provides for the total abolition of the death penalty.<sup>30</sup>

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24 Resolution 2005/59, *op. cit.*, note 11, para. 5 (a).

25 ETS No. 114. Entered into force on 1 March 1985. Article 2 of Protocol No. 6 provides that a state may make provision in its law for the death penalty in respect of acts committed in times of war or of imminent threat of war.

26 Resolution 1044 (1994) of the Parliamentary Assembly of the Council of Europe on the Abolition of Capital Punishment, 4 October 1994.

27 ETS No. 187. Entered into force on 1 July 2003.

28 Of the 56 OSCE participating States, 47 are member states of the Council of Europe.

29 Adopted on 8 June 1990. Article 2 of the Protocol provides that states are allowed to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol.

30 As of August 2007, neither Canada nor the United States had ratified the Protocol.

### **European Union**

Article 2 of the Charter of Fundamental Rights of the European Union,<sup>31</sup> which is politically binding on EU member states, provides that no one shall be condemned to death or executed.

On 1 February 2007, the European Parliament passed a resolution, in which it reiterated its long-standing position against the death penalty in all cases and in all circumstances, and called for a worldwide moratorium on executions to be established immediately and unconditionally with a view to the worldwide abolition of the death penalty.<sup>32</sup>

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31 The presidents of the European Parliament, European Council, and European Commission signed and proclaimed the Charter on behalf of their respective institutions on 7 December 2000 in Nice, France.

32 European Parliament resolution on the initiative in favour of a universal moratorium on the death penalty, adopted on 1 February 2007, P6\_TA-PROV (2007) 0018.





# 3.

## The Death Penalty in the OSCE Area

The participating States that retain the death penalty in some form have committed to ensuring transparency by making information about its use available to the public.<sup>33</sup> This publication facilitates compliance with this commitment by providing a forum for participating States to make such information available on an annual basis. This chapter is comprised of country entries on the eight participating States that retained the death penalty in some form during the reporting period.

Each country entry contains information on relevant international instruments, the country's legal framework, statistics, and compliance with international safeguards. First, the section on "relevant international instruments" lists the legally binding instruments the state has ratified. Second, the section on the "legal framework" outlines those crimes for which a death sentence can be imposed. It is in this section that trends towards reduction in scope or abolition are presented. Third, the section on "statistics" indicates the number of death sentences that were imposed and executed during the reporting period. Fourth, the section on "international safeguards" provides information on compliance with the international standards that were outlined in Chapter 2.

### *Methodology*

It is the ODIHR's intention that the content of each country entry should be based primarily on information provided by the participating States themselves. Accordingly, in the first half of June 2007, a questionnaire on the use of the death penalty was sent to each of the nine participating States for which there were country entries in the 2006 edition of *The Death Penalty in the OSCE Area*.<sup>34</sup> The questionnaire, which is reproduced in Annex 4, requested detailed information on each state's legal framework, statistics on sentences and executions, and information on compliance with the international standards outlined in Chapter 2. Of the nine participating

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<sup>33</sup> Copenhagen Document 1990, para. 17.8.

<sup>34</sup> *The Death Penalty in the OSCE Area: Background Paper 2006* (Warsaw: OSCE/ODIHR, 2006). The nine participating States that retained the death penalty in some form in 2006 were Albania, Belarus, Kazakhstan, Kyrgyzstan, Latvia, the Russian Federation, Tajikistan, the United States of America, and Uzbekistan.

States that the questionnaire was sent to, four responded: Belarus, Kazakhstan, Latvia, and the United States.

In some instances, where no information was provided by a participating State or the information received was incomplete, it has been supplemented by information derived from other sources, including OSCE field presences, intergovernmental organizations, non-governmental organizations, and media reports.

# 3.1

## Belarus

### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |

**Status:** retentionist

### LEGAL FRAMEWORK

The Constitution of the Republic of Belarus provides that, until the abolition of the death penalty, it may be applied in accordance with the law as an exceptional penalty for particularly serious crimes and only in accordance with the verdict of a court of law.<sup>35</sup> The Criminal Code provides that the death penalty may be imposed for severe crimes connected with the deliberate deprivation of life with aggravating circumstances.<sup>36</sup>

The death penalty is envisaged for 14 crimes: acts of aggression, murder of a representative of a foreign state or international organization with the intention of provoking international tension or war, international terrorism, genocide, crimes against the security of humanity, use of weapons of mass destruction, violations of the laws and customs of war, murder with aggravating circumstances, terrorism, terrorist acts, treason that results in loss of life, conspiracy to seize state power, sabotage, and murder of a police officer.<sup>37</sup> Alternatives to the death penalty are provided for.

On 11 March 2004, the Constitutional Court concluded its assessment of the compliance of the death-penalty provisions in the Criminal Code with the Constitution, following a request from the House of Representatives of the National Assembly. The Court found a number of provisions of the Criminal Code to be inconsistent with the

<sup>35</sup> Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

<sup>36</sup> Article 59 (1) of the Criminal Code, 9 July 1999, amended on 17 July 2006.

<sup>37</sup> Articles 122 (2), 124 (2), 126, 127, 128, 134, 135 (3), 139 (2), 289 (3), 359, 356 (2), 357 (3), 360 (2), and 362 of the Criminal Code.

Constitution,<sup>38</sup> thus providing for the possibility of either the abolition of the death penalty or the imposition of a moratorium on executions as a first step towards full abolition. The Court recalled that such measures may be enacted by the head of state and the Parliament.

On 24 June 2005, the president submitted a draft law to the Parliament that, *inter alia*, supplements the Criminal Code with a reference to the temporary character of the death penalty, which, until its abolition, may be applied as an exceptional measure for cases of premeditated murder with aggravating circumstances. On 23 June 2006, the law was adopted by the Parliament.

### **Moratorium**

No official moratorium on death sentences or on executions is in place in Belarus.

### **Method of execution**

Shooting<sup>39</sup>

## **STATISTICS**

### **Death sentences**

According to official statistics provided by the Supreme Court, during the period from 30 June 2006 to 30 June 2007, six individuals were sentenced to death for murder with aggravating circumstances. All convictions are final (i.e., all appeals stages have been exhausted).

### **Executions**

Official statistics provided by the Supreme Court indicate that, during the period from 30 June 2006 to 30 June 2007, one individual was executed.

## **INTERNATIONAL SAFEGUARDS**

### **Pregnant women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>40</sup>

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38 Articles 48 (Part 1, para. 11) and 59 were found to be inconsistent with the Constitution due to their lack of reference to the temporary character of the death penalty.

39 Article 59 (1) of the Criminal Code.

40 Article 59 (2)(1) of the Criminal Code. In addition, Article 59 (2)(3) also stipulates that men who are over the age of 65 at the time when the sentence is pronounced are exempt from the death penalty.

### **Fair-trial guarantees**

In November 2004, after a visit to Belarus, the UN Working Group on Arbitrary Detention noted with concern the excessive power given to prosecutors and investigators during the period of pre-trial detention, and that investigations are carried out without effective oversight by a judge.<sup>41</sup> The Working Group also expressed concern regarding the procedure used for appointing and dismissing judges, which does not guarantee their independence from the executive branch, and also regarding the lack of independence of lawyers and of the National Bar Association.<sup>42</sup> In January 2007, the UN special rapporteur on the situation of human rights in Belarus expressed his concern that Belarus is the last country in Europe to apply the death penalty. He noted that “[t]rials are often held behind closed doors without adequate justification, and representatives of human rights organizations are denied access to courts to monitor hearings. Punishments are often totally disproportionate. The right to appeal is limited as the Supreme Court acts in many cases as the court of first instance, leaving no possibility for appeal.”<sup>43</sup>

### **Pardon or commutation**

The Constitution gives the president authority to grant clemency, and the death penalty may be commuted to life imprisonment.<sup>44</sup> Appeals are initially considered by the Clemency Commission. The cases of all individuals sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency.<sup>45</sup> In the period from 30 June 2006 to 30 June 2007, the president did not grant clemency.

### **Relatives**

Relatives are not informed in advance of the date of execution. The administration of the institution where the execution is carried out is obliged to notify a close relative about the execution. The body is not returned, and the place of burial is

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41 Report of the Working Group on Arbitrary Detention (Mission to Belarus), U.N. Doc. E/CN.4/2005/6/Add.3, 25 November 2004, p. 2.

42 *Ibid.*

43 Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin, U.N. Doc. A/HRC/4/16, 15 January 2007, para. 14. On 18 June 2007, the UN Human Rights Council removed Belarus from the list of countries whose human rights records receive special scrutiny; accordingly, the special rapporteur on the situation of human rights in Belarus was not reappointed.

44 Article 84 (19) of the Constitution.

45 Presidential Decree No. 250 “On the introduction of the regulation of provisions for pardoning procedure in the Republic of Belarus”, 3 December 1994.

not disclosed.<sup>46</sup> The UN Human Rights Committee has found the treatment of the relatives of individuals sentenced to death in Belarus to amount to inhuman treatment in violation of Article 7 of the ICCPR.<sup>47</sup>

The Human Rights Committee has stated that the complete secrecy surrounding the date of execution, the place of burial, and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.

In addition, the UN Committee against Torture has also expressed concern about the reported refusal to return the bodies of those executed to their relatives.<sup>48</sup>

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<sup>46</sup> Article 175 of the Criminal Execution Code.

<sup>47</sup> U.N. Doc. CCPR/C/77/D/887/1999, 24/04/2003, Communication No. 887/1999 and U.N. Doc. CCPR/C/77/D/886/1999, 28/04/2003, Communication No. 886/1999.

<sup>48</sup> Concluding observations of the Committee against Torture: Belarus. 20/11/2000. A/56/44.

## 3.2

### Kazakhstan

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |

**Status:** *de facto* abolitionist

#### LEGAL FRAMEWORK

An amendment of 21 May 2007 to the Constitution of the Republic of Kazakhstan abolished the death penalty in all cases save for acts of terrorism entailing loss of life and for especially grave crimes committed in wartime. The Criminal Code needs to be amended in accordance with this constitutional amendment, as it provides that the following 10 offences carry the death penalty:<sup>49</sup> murder with aggravating circumstances; terrorism; attempt on the life of a person administering justice or preliminary investigations; attempt on the life of the president; state treason; sabotage; planning, preparation, or conduct of aggressive war; use of prohibited means and methods of conducting war; genocide; and mercenary participation in armed conflict. The death penalty is also envisaged for eight military crimes committed in time of war.<sup>50</sup> The Criminal Code provides for alternatives to the death penalty.

#### Moratorium

In December 2003, a presidential decree placed a moratorium on executions until the full abolition of the death penalty.<sup>51</sup> Subsequent amendments to the Criminal Code

<sup>49</sup> Article 15 of the Constitution of the Republic of Kazakhstan, 30 August 1995. Also see Article 49 (1) of the Criminal Code, 1 January 1998.

<sup>50</sup> Articles 96 (2), 156 (2), 159 (2), 160, 162 (4), 165, 167, 171, 233, 340, 367 (2), 368 (3), 369 (3), 373 (3), 374 (3), 375 (3), 380 (3), 383 of the Criminal Code.

<sup>51</sup> Presidential Decree No. 1251 "On the introduction of a moratorium on the death penalty in the Republic of Kazakhstan", 17 December 2003.

provide for the suspension of all executions while the moratorium is in place and set out the status of those individuals who are subject to the moratorium.<sup>52</sup> Everyone who is subject to the moratorium has the right to appeal to the Clemency Commission for commutation of their sentence.<sup>53</sup>

### **Method of execution**

Shooting<sup>54</sup>

## **STATISTICS**

### **Death sentences**

According to official statistics provided by the Ministry of Foreign Affairs, three individuals were sentenced to death by first-instance courts during the period from 30 June 2006 to 30 June 2007. These convictions are not final, as all appeals stages have not been exhausted. The sentences were applied in cases of deliberate deprivation of two or more lives with aggravating circumstances.

### **Executions**

None

## **INTERNATIONAL SAFEGUARDS**

### **Pregnant women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>55</sup>

### **Fair-trial guarantees**

On 11 January 2005, after his visit to Kazakhstan, the special rapporteur on the independence of judges and lawyers noted with concern the dominant role prosecutors

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52 Law of the Republic of Kazakhstan No. 514-II “On the introduction of amendments and additions to legislative acts of the Republic of Kazakhstan on the introduction of life imprisonment”, 31 December 2003; Law of the Republic of Kazakhstan No. 529-II “On the introduction of amendments and additions to the Criminal Code and Criminal Procedure Code of the Republic of Kazakhstan in connection with the introduction of a moratorium on the execution of death penalty”, 10 March 2004.

53 Article 49 of the Criminal Code; Article 166(1) of the Criminal Procedure Code.

54 Article 49 of the Criminal Code; Article 167 of the Criminal Execution Code, 13 December 1997. The death penalty cannot be executed until one year after all appeals have been exhausted.

55 Article 49 (2) of the Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time the sentence is pronounced.



continue to play in the entire judicial process, which results in a very low number of acquittals, around 1 per cent.<sup>56</sup> The special rapporteur called for legislative changes to reduce prosecutors' dominant role throughout the judicial process and to secure, in both law and practice, a balance between the respective roles of prosecutors, defence lawyers, and judges. He also urged the national authorities to ratify the Optional Protocol on the abolition of the death penalty.<sup>57</sup>

### **Pardon or commutation**

All individuals sentenced to death have the right to appeal for commutation of their sentence to life imprisonment or 25 years' imprisonment.<sup>58</sup> Appeals are initially considered by the Clemency Commission. The cases of all individuals sentenced to death are considered regardless of whether the convicted individual submits an appeal for clemency.<sup>59</sup>

### **Relatives**

Relatives are not informed in advance of the date of execution, the body is not returned, and the place of burial is not disclosed to the relatives until at least two years after the burial has taken place.<sup>60</sup>

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56 Report of Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kazakhstan, 11-17 June 2004, U.N. Doc. E/CN.4/2005/60/Add.2.

57 *Ibid.*

58 Article 49 (3) of the Criminal Code; Article 31 (2) of the Criminal Procedure Code; and Article 166 (1) of the Criminal Execution Code.

59 Presidential Decree No. 2975 "On provisions for pardoning procedure by the president of the Republic of Kazakhstan", 7 May 1996.

60 Article 167 of the Criminal Execution Code.

## 3.3

### Kyrgyzstan

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |

**Status:** abolitionist since June 2007<sup>61</sup>

#### LEGAL FRAMEWORK

On 9 November 2006, Kyrgyzstan adopted a new Constitution that abolishes the death penalty.<sup>62</sup>

On 27 June 2007, a number of laws were promulgated that abolish the death penalty in all circumstances and replace it with life imprisonment. The Ministry of Justice has also developed a draft law on accession to the Second Optional Protocol to the ICCPR.

#### **Moratorium**

Prior to the abolition of the death penalty, a moratorium on executions had been in force since 8 December 1998. It was renewed on an annual basis. On 29 December 2005, it was extended indefinitely until the complete abolition of the death penalty.<sup>63</sup>

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<sup>61</sup> This background paper contains an entry on Kyrgyzstan, as death sentences were imposed prior to the abolition of the death penalty in 2007.

<sup>62</sup> Article 14 of the Constitution, 15 January 2007.

<sup>63</sup> Presidential Decree No. 667 “On prolongation of the term of the moratorium on execution of the death penalty in the Kyrgyz Republic”, 29 December 2005.

## STATISTICS

### **Death sentences**

Official statistics were not provided. The government treats information on the number and identity of individuals subject to the moratorium as confidential.<sup>64</sup>

## INTERNATIONAL SAFEGUARDS

### **Pregnant women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>65</sup>

### **Fair-trial guarantees**

On 30 December 2005, after his visit to Kyrgyzstan, the special rapporteur on the independence of judges and lawyers welcomed reforms related to the administration of the justice sector in Kyrgyzstan, but expressed concerns in a number of areas. In particular, he noted that prosecutors played a dominant, including a supervisory, role in the administration of justice and exerted a disproportionate amount of influence over the pre-trial and trial stages of judicial proceedings. He noted that higher-level prosecutors had the executive power to instigate a supervisory review once a case had been closed. He concluded that the procedures related to the appointment, length of tenure, and dismissal of judges prevented the judiciary from operating in a fully independent manner. He also noted the failure to implement the principle of equality of arms. Widespread corruption among the judiciary was also pointed out.<sup>66</sup>

### **Pardon or commutation**

Official statistics on clemencies granted by the president were not provided.

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64 According to the Institute for War and Peace Reporting, there were 174 people on death row as of July 2007. See Institute for War and Peace Reporting, "Kyrgyzstan Abolishes Death Penalty", [http://iwpr.net/?p=bkg&s=b&o=336755&apc\\_state=henbbkgdate2007](http://iwpr.net/?p=bkg&s=b&o=336755&apc_state=henbbkgdate2007).

65 Article 50 (2) of the Criminal Code.

66 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to Kyrgyzstan, U.N. Doc. E/CN.4/2006/52/Add.3, 30 December 2005.

## 3.4

### Latvia

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |
| ECHR                                  | Ratified            |
| Protocol No. 6 to the ECHR            | Ratified            |
| Protocol No. 13 to the ECHR           | Signed              |

**Status:** partly abolitionist

#### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime. However, the Criminal Code envisages the death penalty for murder with aggravating circumstances if committed during wartime.<sup>67</sup> Draft laws on ratification of the Second Optional Protocol to the ICCPR and Protocol No. 13 to the ECHR were submitted to Parliament on 21 February 2002 and 17 October 2002, respectively. During the reporting period, no steps were taken to fully remove the death penalty from national legislation.

#### STATISTICS

##### Death sentences

None

##### Executions

None

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<sup>67</sup> Article 37 of the Criminal Code, 15 October 1998, with amendments of 18 May 2000. This article also provides that the death penalty may not be applied to individuals below the age of 18 at the time of the crime, or to women.

## 3.5

### Russian Federation

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |
| ECHR                                  | Ratified            |
| Protocol No. 6 to the ECHR            | Signed              |
| Protocol No. 13 to the ECHR           | Not signed          |

**Status:** *de facto* abolitionist

#### LEGAL FRAMEWORK

The Constitution of the Russian Federation provides for the death penalty, until its abolition, as an exceptional punishment for especially grave crimes against life.<sup>68</sup> The Criminal Code of the Russian Federation envisages the death penalty for five crimes: murder with aggravating circumstances, assassination attempt against a state or public figure, attempt on the life of a person administering justice or preliminary investigations, attempt on the life of a law-enforcement officer, and genocide.<sup>69</sup>

Upon accession to the Council of Europe on 28 February 1996, the Russian Federation committed itself to introducing a moratorium on executions and to ratifying Protocol No. 6 to the ECHR within three years. A presidential decree was issued on 16 May 1996 that requested the government to draft legislation on ratification of Protocol No. 6.<sup>70</sup> A draft law was submitted to Parliament on 6 August 1999. As of 30 June 2007, the Russian Federation had still not ratified Protocol No. 6.

The Parliamentary Assembly of the Council of Europe has continuously urged

<sup>68</sup> Article 20 (2) of the Constitution of the Russian Federation, 25 December 1993.

<sup>69</sup> Articles 105 (2), 277, 295, 317, and 357 of the Criminal Code, 13 June 1996.

<sup>70</sup> Presidential Decree No. 724 “On the gradual decrease of the application of the death penalty in connection with accession to the Council of Europe”.

the Russian Federation to abolish the death penalty and to conclude its ratification of Protocol No. 6 to the ECHR.<sup>71</sup> The Commissioner for Human Rights of the Council of Europe has called on the Russian Federation to ratify Protocol No. 6 to the ECHR as soon as possible.<sup>72</sup>

The Russian Federation confirms that the legislative abolition of the death penalty is one of the goals of the juridical and legal reforms currently under way and that government departments are currently engaged in intensive preparations for the State Duma's ratification of Protocol No. 6 and the introduction of the relevant amendments and additions to the Criminal Code, the Code of Criminal Procedure, and the Criminal Execution Code of the Russian Federation.<sup>73</sup>

### **Moratorium**

In 1996, the president instituted a moratorium on both the imposition and carrying out of the death penalty.<sup>74</sup> Furthermore, a ruling of the Constitutional Court placed a temporary prohibition on the passage of death sentences on 2 February 1999. On 15 November 2006, the State Duma extended the moratorium on the death penalty by three years, until early 2010.<sup>75</sup>

The Russian Constitution guarantees the right to trial by jury in cases where the death penalty is a potential sentence.<sup>76</sup> Accordingly, the Constitutional Court adopted a resolution prohibiting the passage of death sentences until such time as jury trials are introduced throughout the Russian Federation. At the time of the resolution, jury trials were available in only nine of Russia's 89 constituent entities. The introduction of jury trials will remove the bar that the Constitutional Court has placed upon the passage of death sentences.

The UN Human Rights Committee has expressed its concern that the current moratorium will automatically end once the jury system has been introduced and has called upon the Russian Federation to abolish the death penalty *de jure* before the

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71 Resolution 1277, 23 April 2002; Parliamentary Assembly session: 24 to 30 June 2006, 29 June 2006.

72 Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation on 15 to 30 July 2004, and from 19 to 29 September 2004, document CommDH(2005)2 of 20 April 2005.

73 Comments by the Government of the Russian Federation to the concluding observations of the Human Rights Committee, U.N. Doc. CCPR/CO/79/RUS/Add.1, 2 February 2005, para. 11.

74 Presidential Decree No. 724, *op. cit.*, note 70.

75 Lenta.ru, "Gosduma otsrochila vvedenie smertnoi kazni v Rossii", ["State Duma delays the introduction of the death penalty in Russia"], 15 November 2006, <http://lenta.ru/news/2006/11/15/court2>.

76 Article 20 (2) of the Constitution.

expiration of the moratorium and to accede to the Second Optional Protocol to the ICCPR.<sup>77</sup>

On 3 June 1999, the president commuted the sentences of all individuals on death row to either life or 25 years' imprisonment.

### **Method of execution**

Shooting<sup>78</sup>

## **STATISTICS**

### **Death sentences**

None

### **Executions**

None

## **INTERNATIONAL SAFEGUARDS**

### **Pregnant women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>79</sup>

### **Pardon or commutation**

The Constitution gives the president authority to grant clemency.<sup>80</sup> The death penalty can be commuted to life imprisonment or deprivation of liberty for 25 years.<sup>81</sup> Clemency commissions in each of the constituent entities consider appeals for clemency and make recommendations to the president.<sup>82</sup> All cases concerning individuals sentenced to death are automatically considered regardless of whether the

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77 Concluding observations of the Human Rights Committee: Russian Federation, 6 November 2003, U.N. Doc. CCPR/CO/79/RUS, 6 November 2003, para. 11.

78 Article 186 of the Criminal Execution Code.

79 Article 59 (2) of the Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

80 Article 89 (c) of the Constitution.

81 Article 59 (3) of the Criminal Code.

82 A single Presidential Pardon Commission was replaced by regional commissions in each of the constituent entities by Presidential Decree No. 1500 "On the procedure for consideration of clemency appeals in the Russian Federation", 28 December 2001.

sentenced person has submitted an appeal for clemency. Sentences are not executed until a decision on clemency has been issued.<sup>83</sup>

**Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed.<sup>84</sup>

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83 Article 184 of the Criminal Execution Code.

84 Article 186 (4) of the Criminal Execution Code.



## 3.6

### Tajikistan

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |

**Status:** *de facto* abolitionist

#### LEGAL FRAMEWORK

The Constitution provides that: “Everyone has the right to life. No one shall be deprived of life except by order of the court for exceptionally grave crimes.”<sup>85</sup> In August 2003, the president signed legislation abolishing the death penalty for 10 crimes.<sup>86</sup> The death penalty was retained for five crimes: murder with aggravating circumstances, rape with aggravating circumstances, terrorism, biocide, and genocide.<sup>87</sup> On 30 November 2004, the lower chamber of Parliament adopted amendments to the Criminal Code that provide for life imprisonment for these five crimes.<sup>88</sup> These amendments were endorsed by the upper chamber of Parliament on 11 February 2005 and signed by the president on 1 March 2005. The Criminal Execution Code has also been amended.<sup>89</sup> The amendments introduce life imprisonment as an alternative to the death penalty for men between 18 and 63 years of age.

#### **Moratorium**

On 30 April 2004, the president announced the introduction of a moratorium on both the imposition and carrying out of death sentences and signed a subsequent law

<sup>85</sup> Article 18 of the Constitution of the Republic of Tajikistan, 6 November 1994.

<sup>86</sup> Law No. 45 “On amendments to the Criminal Code”, 1 August 2003.

<sup>87</sup> Articles 104 (2), 138 (3), 179 (4), 399, and 398 of the Criminal Code, 21 May 1998, with amendments of 1 August 2003.

<sup>88</sup> Law “On the introduction of amendments to the Criminal Code”, 30 November 2004.

<sup>89</sup> Law No. 86 “On amendments to the Criminal Code” and Law No. 87 “On amendments to the Criminal Execution Code”, 1 March 2005.

to that effect on 15 July 2004. The moratorium, which was applicable from the day of its announcement, is not limited to a specific time frame.

The moratorium applies to those who were sentenced to death prior to 30 April 2004 and to those convicted of crimes for which the death penalty is envisaged after 30 April 2004. In the former case, death sentences were to be commuted to 25 years' imprisonment; in the latter case, a sentence of 25 years' imprisonment was to be passed as opposed to the death penalty. As indicated above, however, life imprisonment was also introduced on 1 March 2005 as an alternative to the death penalty.

Official statistics on people currently subjected to the moratorium were not provided.<sup>90</sup>

### **Method of execution**

Shooting<sup>91</sup>

## **STATISTICS**

### **Death sentences**

None

### **Executions**

None

## **INTERNATIONAL SAFEGUARDS**

### **Pregnant women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>92</sup>

### **Fair-trial guarantees**

In its concluding observations on the initial report submitted by Tajikistan, the UN Human Rights Committee expressed its concern about a number of relevant areas, including the widespread use of ill-treatment and torture by investigative and other officials to obtain information; testimony or self-incriminating evidence from

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90 Statistics on death sentences and executions are classified. See Article 9 (22) of the Law "On the enumeration of information constituting a state secret", 10 May 2002.

91 Article 219 (2) of the Criminal Execution Code, 6 August 2001. This article also provides that executions shall not be carried out in public.

92 Article 59 (2) of the Criminal Code, and Law No. 45 "On amendments to the Criminal Code", 1 August 2003.

suspects, witnesses or arrested persons; the absence of any provision prohibiting the use of unlawfully obtained evidence in Tajikistan's criminal procedure law; widespread reports of the obstruction of detainees' access to a lawyer; the lack of equality of arms between the suspect/accused or defence counsel and the prosecution both during a criminal investigation and in court, in particular that a prosecutor, rather than a judge, remained responsible for authorizing arrests; the lack of independence of the judiciary, as reflected in the process of appointment and dismissal of judges, as well as in their economic status; the military courts having jurisdiction to try criminal cases concerning both military personnel and civilians; and reports of several convictions *in absentia*, notwithstanding the prohibition by law of trials *in absentia*.<sup>93</sup>

On 30 December 2005, after his visit to Tajikistan, the special rapporteur on the independence of judges and lawyers welcomed a number of significant and far-reaching reforms affecting the judiciary that had been introduced in Tajikistan. However, he expressed his concerns about the dominant role of the prosecutor in the judicial process. He also noted the vulnerable position of lawyers, the lack of appropriate training on international standards governing the independence of the judiciary for all legal professions, and that the executive branch remained very influential in the selection and appointment procedures for judges.<sup>94</sup>

### **Pardon or commutation**

The Constitution gives the president authority to grant clemency.<sup>95</sup> Death sentences may be commuted to 25 years' imprisonment.<sup>96</sup> The cases of all individuals sentenced to death are automatically considered by the Clemency Commission regardless of whether the person sentenced to death has submitted an appeal for clemency.<sup>97</sup> Sentences are not executed until a decision on clemency has been issued.

All existing death sentences imposed prior to the moratorium have been commuted.<sup>98</sup>

93 Concluding observations of the Human Rights Committee: Tajikistan, U.N. Doc. CCPR/CO/84/TJK, 18 July 2005, paras. 10, 11, 12, 15, 16, 17, 18, and 19.

94 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to Tajikistan, E/CN.4/2006/52/Add.4, 30 December 2005, paras. 85, 86, and 87.

95 Article 69 (27) of the Constitution. Article 216 of the Criminal Execution Code provides that individuals sentenced to death can apply to the president for clemency.

96 Article 59 of the Criminal Code.

97 The Commission was established by Presidential Decree No. 721, 8 May 1997.

98 Initial Report of Tajikistan submitted under Article 40 of the ICCPR, U.N. Doc. CCPR/C/TJK/2004/1, 11 April 2005.

### **Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of execution and the place of burial are not disclosed.<sup>99</sup> The Criminal Execution Code provides that the court that passed the death sentence should inform the relatives of the fact that the execution has taken place; however, it does not indicate the time frame after execution during which this information should be made available to the relatives.

The UN Human Rights Committee expressed its concern about the fact that, when prisoners under sentence of death were executed, the authorities systematically failed to inform the families and relatives of the date of execution or to reveal the place of burial of the executed person. The Committee concluded that these practices amounted to a violation of Article 7 of the ICCPR (prohibition against torture or other ill-treatment) with respect to the family and relatives of the executed individuals. The Committee also concluded that those practices had the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental stress.<sup>100</sup>

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99 Article 221 of the Criminal Execution Code. Information of this nature is treated as a state secret. Article 9 (22) of the Law "On the enumeration of information constituting a state secret", 10 May 2002.

100 Concluding observations of the Human Rights Committee: Tajikistan, U.N. Doc. CCPR/CO/84/TJK, 18 July 2005, para. 9.

## 3.7

### United States of America

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments  | Ratification Status |
|--|---------------------|
| ICCPR  | Ratified            |
| Second Optional Protocol to the ICCPR  | Not signed          |
| American Convention on Human Rights  | Signed              |
| Protocol to the American Convention on Human Rights to Abolish the Death Penalty | Not signed          |

**Status:** retentionist

#### LEGAL FRAMEWORK

The death penalty is retained in 38 of the 50 states. Abolitionist states include Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin, as well as the District of Columbia.<sup>101</sup> The crimes that carry the death penalty vary from state to state.<sup>102</sup> Capital punishment is generally permitted for the crimes of murder or felony murder, and generally only when aggravating circumstances are present in the commission of the crime, e.g., if there are multiple victims, if a victim was raped, or if a murder was a contract killing. Capital punishment is permitted for some crimes other than murder, e.g., for sexually assaulting a child. Georgia, Louisiana, and Florida allow the death penalty as punishment for the sexual assault of a child. Oklahoma, South Carolina, and Montana allow the death penalty for individuals convicted of repeated sexual assaults

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<sup>101</sup> Although New York's highest court held in 2004 that the state's death-penalty statute violates the state constitution and is therefore invalid, the statute technically remains on the books, and the legislature may revise the law and thereby reinstate the death penalty. One inmate remains on death row in New York. Accordingly, New York is technically one of the 38 states in the United States in which the death penalty is permitted, while, at the same time, the death penalty is prohibited under state law, and executions cannot currently be carried out.

<sup>102</sup> A complete list of capital crimes can be found at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).

against children. Montana allows the death penalty for a second rape conviction. Texas policy makers are considering a provision to allow for the death penalty for repeat sex offenders whose victims are children. No one convicted only of a sex offence has been executed since the death penalty was reinstated in 1976; in 2007, however, the Louisiana Supreme Court upheld a death sentence for one person for the rape of his step-daughter. The constitutionality of his sentence has not been reviewed by the US Supreme Court.

The death penalty is retained at the federal level. The United States Code identifies 42 crimes (38 homicide and four non-homicide) for which the death penalty may be used.

The Uniform Code of Military Justice provides for the death penalty as a possible punishment for 15 offences, many of which must occur during a time of war.

In March 2006, Congress enacted the USA Patriot Act Improvement and Reauthorization Act of 2005.<sup>103</sup> The Act created a number of new offences, including some for which death is a potential punishment, and shortened the appeals process by expediting capital *habeas corpus* petitions in federal court. In addition, the Act clarifies appropriate death-penalty procedures for certain cases under the Controlled Substances Act,<sup>104</sup> and expands on the regulations governing provision of counsel to defendants liable to the death penalty and who are unable to afford counsel.

The death penalty may be imposed in accordance with the military order establishing military commissions to prosecute individuals currently detained at Guantanamo Bay.<sup>105</sup> On 29 June 2006, the Supreme Court ruled that the military commissions were illegal under both military law and the Geneva Conventions.<sup>106</sup>

Legislation to abolish capital punishment was recently considered and subsequently defeated in Colorado, Kansas, Maryland, Missouri, Montana, Nebraska, New Hampshire, New Mexico, and South Dakota. Abolition bills remain under consideration in Arizona, Connecticut, Illinois, Kentucky, New Jersey, and New York.

## **Moratorium**

There is no moratorium on executions in place at the federal level. At the state level, Illinois instituted a moratorium on the use of the death penalty in 2000. In January

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103 109th Congress: Bill H.R. 3199.

104 The Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) is the legal basis by which the manufacture, importation, possession, and distribution of certain drugs are regulated by the federal government of the United States.

105 Military Commission Order No. 1, "Procedures for trials by military commissions of certain non-United States citizens in the war against terrorism", 21 March 2002, Part 6 (g).

106 *Hamdan v. Rumsfeld*, 548 U.S. \_\_\_\_ (2006); 126 S. Ct. 2749, 29 June 2006.

2006, the New Jersey state legislature passed a one-year moratorium on executions by the state, making New Jersey the first state to pass a moratorium pertaining to the death penalty through legislation, rather than by executive order. In December 2006, the one-year moratorium ended, and in January a report by the New Jersey Death Penalty Study Commission recommended abolishing the death penalty. New Jersey has not executed anyone since restoring the death penalty in 1982.

Moratorium bills are under consideration in North Carolina, Oregon, Pennsylvania, and Texas. The Washington state legislature will consider a moratorium on executions in 2008. Capital punishment by lethal injection has been suspended in several states amid concerns about both the constitutionality of currently used lethal-injection protocols and whether the process is operating properly.

In June 2004, New York's highest court, the Court of Appeals, held that the central provision of the state's law on capital punishment violated the state Constitution,<sup>107</sup> and the state's death penalty was overturned. Sustaining the court-ordered moratorium, in June 2006, members of the New York Assembly's Codes Committee voted against a bill to reinstate the death penalty.

### **Method of execution**

Although methods of execution vary from state to state, they include lethal injection, electrocution, the gas chamber, hanging, and shooting. The most common method of execution is lethal injection, which is either the sole method or a possible method of execution in all states except Nebraska, where the sole method of execution is electrocution. In 2006, 52 inmates were executed using lethal injection, and one inmate was executed by electrocution. All 26 executions that have taken place in the United States since January 2007 were carried out using lethal injection.

On 12 June 2006, the United States Supreme Court ruled in *Hill v. McDonough* that convicted individuals could bring civil rights challenges against lethal injection as a method of execution. Although the Court did not rule on the constitutionality of lethal injection as an execution procedure, it determined that convicted individuals who believed that the protocol most commonly used for lethal injections caused unnecessary pain and suffering could pursue a claim under a civil rights statute.

In December 2006, the governor of Florida suspended executions following a botched execution in which improper administration of the drugs in the lethal-injection protocol resulted in an execution that lasted about twice the usual time. In

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<sup>107</sup> The court found that the sentencing provisions were coercive because they required judges to tell juries in capital cases that, if they deadlocked and failed to reach a verdict during the sentencing phase of a trial, the judge would impose a more lenient sentence.

response to a request from the governor, a commission made 37 recommendations on lethal injection in the state. Florida says that it has followed the recommendations and will now resume executions. The Tennessee governor ordered a moratorium on executions in February 2007 pending a review by the Department of Corrections on the administration of death sentences. Lethal-injection protocols were subsequently revised in May 2007, and executions have resumed. Executions scheduled in 2006 were also suspended in Arkansas, California, Delaware, Maryland, and Missouri amid concerns about the practice of lethal injection. In Missouri, a district-court decision originally resulting in the suspension of executions was overruled in June 2007 by the Court of Appeal for the Eighth Circuit, which held that Missouri's lethal-injection protocol does not violate the Eighth Amendment prohibition against cruel and unusual punishment.

In Nebraska, which uses electrocution as the sole means of carrying out the death penalty, the state's Supreme Court stayed the execution of an inmate in May 2007 pending the Court's determination of whether death by electrocution constitutes cruel and unusual punishment. Court hearings on electrocution are scheduled for September 2007.

## STATISTICS

### **Death sentences**

The civilian death-row population by mid-2007 was 3,350 (3,291 men and 59 women), down from 3,373 during the same period in 2006.

### **Executions**

Recently, the death penalty has primarily been exercised at the state level; there have been no executions at the federal level since 2003. Similarly, since 1961, there have been no executions under the Uniform Code of Military Justice.

In 2006, 53 inmates were executed. Of these, 24 executions were carried out in Texas, four in Oklahoma, four in Virginia, four in Florida, four in North Carolina, one in South Carolina, one in Alabama, five in Ohio, one in Indiana, one in California, one in Nevada, one in Mississippi, one in Montana, and one in Tennessee. Executions continued to decline in 2006, dropping to their lowest level in 10 years. The number of inmates sentenced to death also declined in 2006, consistent with a pattern of decreasing death sentences since 2000.

From January to mid-July 2007, 30 inmates were executed. Of these, 18 executions were carried out in Texas, two in Oklahoma, one in Georgia, one in South



Carolina, one in Alabama, one in Arizona, two in Ohio, two in Indiana, one in Tennessee, and one in South Dakota.

## INTERNATIONAL SAFEGUARDS

### **Pregnant women and minors**

Pregnant women cannot be executed under federal or state law.

At the federal level, individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>108</sup>

On 1 March 2005, the United States Supreme Court took a decision to abolish the death penalty for defendants who were under the age of 18 when they committed their crimes.<sup>109</sup> In *Roper v. Simmons*, the Supreme Court held that the execution of minors constitutes cruel and unusual punishment within the meaning of the Eighth Amendment to the Constitution. The Court found that a national consensus had emerged that such executions are a disproportionate punishment for juveniles, whom society views as categorically less culpable than adult criminals.

In July 2006, after having considered the second and third periodic reports submitted by the United States, the UN Human Rights Committee noted with concern reports that 42 states and the federal government had laws allowing individuals under the age of 18 at the time the offence was committed to receive sentences of life in prison without the possibility of parole, and that some 2,225 youth offenders were serving such sentences in US prisons. The Committee found that sentencing children to life sentences without the possibility of parole was not in compliance with Article 24 (1) of the ICCPR (provision on the protection of children).<sup>110</sup>

### **Individuals suffering from any form of mental disorder**

The United States Supreme Court has ruled that the execution of an insane person – somebody who is not aware of the impending execution or the reasons for it – violates the US Constitution.<sup>111</sup> Furthermore, the Supreme Court has also ruled that the execution of a mentally retarded person violates the Constitution.<sup>112</sup> The American Association of Mental Retardation defines mental retardation as substantial intellectual impairment appearing at birth or during childhood that impacts on the everyday

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108 18 U.S.C. § 3591(a)(2)(D), 18 U.S.C. § 3591 (b)(2).

109 *Roper v. Simmons*, 543 U.S. (2005).

110 Concluding observations of the Human Rights Committee: United States of America, advance unedited version, U.N. Doc. CCPR/C/USA/Q/3/CRP.4, 27 July 2006, para. 34.

111 *Ford v. Wainwright*, 477 U.S. 399 (1986).

112 *Atkins v. Virginia*, 536 U.S. (2002).

life of the individual, although definitions of mental retardation differ from state to state. However, there is no constitutional bar against the execution of individuals who are mentally ill but are not classified as “insane”, e.g., persons diagnosed with schizophrenia.

### **Fair-trial guarantees**

By statute, Congress provides for the appointment of highly qualified counsel to represent federal capital defendants at all stages of a capital prosecution, from indictment through post-conviction review.<sup>113</sup> In addition, the federal government provides counsel for state capital defendants when their convictions are reviewed in federal court.<sup>114</sup> All death-penalty states have adopted procedures of their own to provide experienced, competent counsel to represent indigent capital defendants in state court.

The federal government maintains a system for carefully examining each potential federal death-penalty case, without consideration of the defendant’s race, to ensure that the federal death penalty is sought in a fair, uniform, and non-discriminatory manner nationwide.<sup>115</sup> Federal law specifically prohibits relying on a defendant’s race or national origin in deciding to seek or impose the death penalty, and the federal death-penalty statute additionally requires a sentencing authority to certify that the defendant’s race was not considered in deciding the defendant’s sentence.<sup>116</sup>

In its concluding observations on the periodic report of the United States in 2006, the Human Rights Committee observed that, despite the Committee’s previous concluding observations, the United States had extended the number of offences for which the death penalty is applicable. The Committee urged the United States to review federal and state legislation with a view to restricting the number of offences carrying the death penalty; to assess the extent to which the death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this; and to adopt all appropriate measures to address the problem. The Committee recommended that the United States place a moratorium on capital sentences, bearing in mind the desirability of abolishing the death penalty.<sup>117</sup>

In its concluding observations on the periodic report of the United States in

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113 18 U.S.C. §§ 3005, 3599.

114 18 U.S.C. § 3599.

115 18 U.S.C. §§ 3591-3598.

116 18 U.S.C. § 3593.

117 Concluding observations of the Human Rights Committee: United States of America, U.N. Doc. CCPR/C/USA/CO/3, 15 September 2006, para. 29.

2001, the Committee for the Elimination of Racial Discrimination noted with concern that, according to the special rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary, or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. The Committee urged the state party to ensure, possibly by imposing a moratorium, that the death penalty is not imposed as a result of racial bias.<sup>118</sup>

In its concluding observations on the periodic report of the United States in 2006, the Committee against Torture noted with concern the allegations that the United States had established secret detention facilities that were not accessible to the International Committee of the Red Cross and that detainees were allegedly deprived of fundamental legal safeguards, including an oversight mechanism with regard to their treatment and review procedures with respect to their detention. The Committee considered the “no comment” policy of the state party regarding the existence of such secret detention facilities, as well as on its intelligence activities, to be regrettable.<sup>119</sup>

### **Foreign nationals**

The Vienna Convention on Consular Relations provides that state authorities must inform foreign nationals without delay of their right to have their consulate notified of their detention.<sup>120</sup>

On 31 March 2004, the International Court of Justice (ICJ) ruled that the United States had violated its obligation to inform foreign nationals without delay of their right to have their consulate notified of their detention in 51 of the 52 cases of Mexican nationals brought before it by Mexico.<sup>121</sup> The ICJ held that the United States should review the convictions and sentences in each case and determine whether the failure to provide consular notification caused actual prejudice to the defendant in the process of administration of criminal justice. On 28 February 2005, the US president issued a memorandum to the US attorney general affirming that the United States would comply with the ICJ judgement.<sup>122</sup> The result has been a number of cases

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118 Concluding observations of the Committee on the Elimination of Racial Discrimination: the United States of America, U.N. Doc. A/56/18, 14 August 2001, para. 396.

119 Conclusions and recommendations of the Committee against Torture: United States of America, U.N. Doc. CAT/C/USA/CO/2, 25 July 2006, para. 17.

120 Article 36 of the Vienna Convention on Consular Relations, 1963.

121 Case concerning Avena and other Mexican nationals (*Mexico v. United States of America*), 31 March 2004. The International Court of Justice made a similar ruling in the LaGrande case (*Germany v. United States*), 27 June 2001.

122 *Mexico v. United States of America*, 31 March 2004.

before US courts for review and reconsideration of the imposition of the death penalty.

On 13 May 2004, the governor of Oklahoma commuted the death sentence of a Mexican national, whose case was one of those before the ICJ, to life imprisonment without the possibility of parole. On 6 September 2005, the Oklahoma Court of Criminal Appeals found that the appellant had actually suffered prejudice by the failure to inform him of his rights under the Vienna Convention on Consular Relations, but only in the context of his capital sentence. In light of the governor's granting of clemency and limitation of the appellant's sentence to life without the possibility of parole, the court found that no further relief was required.<sup>123</sup>

A final judgement is still expected in *Medellin v. Texas*, another death-penalty case mentioned in the ICJ decision. On 30 April 2007, the United States Supreme Court agreed to hear an appeal in this case. The US Government's amicus brief urged the Court to overturn the Texas Court of Criminal Appeals' decision barring reconsideration of the appellant's conviction and sentence. The United States argued that the Texas court must follow the president's determination and thereby fulfil the United States' international obligation to comply with the ICJ decision.

On 28 June 2006, the US Supreme Court issued a decision in the cases of Sanchez Llamas and Bustillo involving breaches of the Vienna Convention on Consular Relations in the cases of two individuals sentenced to the death penalty. These cases were not covered by any of the existing ICJ decisions. Both cases involved failures to inform arrested or detained foreign nationals that they may request consular notification and access. The Court did not decide whether Article 36 of the Vienna Convention on Consular Relations was justiciable upon an individual complaint, but stated that, even if it was, exclusion of evidence was not an appropriate remedy for any failure to inform the detainee of his right to notify and request access to consular authorities. The Court pointed out that defendants have other alternatives for breaches of Article 36, such as diplomatic remedies. The Court also decided that the defendants could be procedurally barred from making Article 36 claims if they did not raise them at trial.

As of March 2007, there were 124 foreign nationals from 33 countries who had been sentenced to death in the United States.

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123 *Torres v. State*, 2005 OK CR 17, 120 P.3d 1184.

**Pardon or commutation**

For federal death-row inmates, the president alone has the power to grant clemency. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. New guidelines also require that an inmate be given 120 days of notice of an execution date. The clemency process varies from state to state, usually involving the governor or a board of advisors, or both. In all cases, a formal petition for clemency must be filed. Under the Uniform Code of Military Justice, only the president has the power to commute a death sentence. Furthermore, no service member can be executed unless the president confirms the death penalty.

Since 2004, 10 inmates have had their death sentences overturned and were acquitted on re-trial or all charges were dropped, including two in 2005, one in 2006, and one in the first half of 2007. Since 2004, an additional eight people sentenced to death have had their sentences commuted on humanitarian grounds.

## 3.8

### Uzbekistan

#### RELEVANT INTERNATIONAL INSTRUMENTS

| International Instruments             | Ratification Status |
|---------------------------------------|---------------------|
| ICCPR                                 | Ratified            |
| Second Optional Protocol to the ICCPR | Not signed          |

**STATUS:** retentionist

#### LEGAL FRAMEWORK

The death penalty is currently envisaged for two crimes:<sup>124</sup> murder with aggravating circumstances and terrorism.<sup>125</sup> On 29 June 2007, Uzbekistan's Senate adopted amendments to the Criminal Code that provide for the abolition of the death penalty as of 1 January 2008. The amendments substitute life imprisonment for capital punishment.<sup>126</sup> Life imprisonment and long-term imprisonment are only to be applied to first-degree murder and terrorism. Life imprisonment is not to be applied to women, juveniles, or men over 60 years of age. Those serving life imprisonment will be permitted to appeal after serving 25 years; those sentenced to long prison terms, though not life, can appeal after serving 20 years.<sup>127</sup>

#### **Moratorium**

There is no moratorium on either the imposition or the carrying out of death sentences. The UN special rapporteur on the question of torture has called for the introduction of a moratorium on executions in Uzbekistan.<sup>128</sup>

124 Article 51 of the Criminal Code, 22 September 1994, with further amendments of 29 September 2004.

125 Articles 97 (2) and 155 (3) of the Criminal Code.

126 Article 1, para. 1, of the Law "On changes and amendments in some legislative acts of the Republic of Uzbekistan in connection with the abolishment of the death penalty".

127 *Ibid.*, para. 11.

128 Report of the Special Rapporteur on the Question of Torture, Theo van Boven, Addendum, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, para. 70 (s).

On 11 May 2007, the justice minister stated publicly that no executions had taken place in Uzbekistan since 2005.<sup>129</sup>

### **Method of execution**

Shooting<sup>130</sup>

## **STATISTICS**

### **Death sentences**

Official statistics were not provided.<sup>131</sup>

### **Executions**

Official statistics were not provided.

## **INTERNATIONAL SAFEGUARDS**

### **Women and minors**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>132</sup>

### **Fair-trial guarantees**

In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee expressed its concern about the lack of information on the number of prisoners sentenced to death, grounds for conviction, and the number of executions. The Committee has urged Uzbekistan to “publish such information periodically and make it accessible to the public”.<sup>133</sup>

The UN special rapporteur on torture has described the use of torture in Uzbekistan as systematic. He has also reported a lack of respect for the principle of presumption of innocence, a lack of independence of the judiciary, and discretionary powers of the prosecutor with respect to access to detainees by legal counsel and

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129 Hands Off Cain, “Uzbekistan”, <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=9000424&idcontinente=23>.

130 Article 51 of the Criminal Code. Article 140 of the Criminal Execution Code of 1 April 1995 provides that executions shall not be carried out in public.

131 According to information received from non-governmental organizations, at least seven individuals were sentenced to death during the period from 30 June 2006 to 30 June 2007.

132 Article 51 of the Criminal Code. This article also stipulates that men over the age of 60 at the time of sentencing cannot be sentenced to death.

133 Concluding observations of the Human Rights Committee: Uzbekistan, U.N. Doc. CCPR/CO/83/UZB, 26 April 2005, para. 7.

relatives.<sup>134</sup> Both the UN Human Rights Committee and the UN Committee against Torture have expressed their concern about the lack of independence of the judiciary in Uzbekistan.<sup>135</sup> In addition, the UN Human Rights Committee has also expressed its concern about “the continuing high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the Covenant [prohibition against torture or other ill-treatment]”.<sup>136</sup>

On 27 March 2006, in a report on the situation in specific countries or territories, the special rapporteur on the independence of judges and lawyers reiterated his serious concern about the generally deteriorating human rights situation in Uzbekistan. He expressed particular concern regarding the conduct of the executive and prosecutorial authorities and the legislative framework in relation to the conduct of trials. He stressed the need for in-depth reforms of the judiciary, including the role of prosecutors, judges, and lawyers in the judicial process.<sup>137</sup>

In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee recalled that, in several cases, Uzbekistan had executed prisoners under sentence of death while their cases were pending before the Committee. The Committee reminded Uzbekistan that “disregard of the Committee’s requests for interim measures constitutes a grave breach of the state party’s obligations under the Covenant and the Optional Protocol”.<sup>138</sup>

In the reporting period, the UN Human Rights Committee examined four communications concerning the imposition of death penalty in 1999, 2000, and 2001.<sup>139</sup> It found that the death sentences had been pronounced without meeting the requirements of a fair trial, as the accused were not provided with a lawyer at any stage of the proceedings. In addition, it found that the authorities had failed to adequately

134 Report of the UN Special Rapporteur on torture, Mission to Uzbekistan, U.N. Doc. E/CN.4/2003/68/Add.2, 3 February 2003.

135 Concluding observations of the Human Rights Committee: Uzbekistan, U.N. Doc. CCPR/CO/71/UZB, 26 April 2001; Concluding observations and recommendations of the Committee against Torture: Uzbekistan, U.N. Doc. CAT/C/CR/28/7, 6 June 2002; Concluding observations, *op. cit.*, note 133.

136 Concluding observations, *op. cit.*, note 133, para. 10.

137 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Corrigendum, Situation in specific countries or territories, U.N. Doc. E/CN.4/2006/52/Add.1, 27 March 2006, para. 297.

138 Concluding observations, *op. cit.*, note 133, para. 6.

139 U.N. Doc. CCPR/C/87/D/959/2000, 8/08/2006, Communication No. 959/2000; CCPR/C/89/D/1043/2002, 3/04/2007 Communication No. 1043/2002; U.N. Doc. CCPR/C/89/D/1071/2002, 3/03/2007, Communication No. 1071/2002; U.N. Doc. CCPR/C/88/D/1057/2002, 10/11/2006, Communication No. 1057/2002.



address allegations of torture,<sup>140</sup> that one individual sentenced to death was executed prior to the consideration of his request for a pardon,<sup>141</sup> and that the public prosecutors may not be regarded as having the institutional objectivity and impartiality necessary to examine the legality of decisions for pre-trial detention.<sup>142</sup> The Committee held that the authors of one communication were victims of inhuman treatment as a result of the authorities' failure to notify them of the execution of their son and the failure to inform them of his burial place.<sup>143</sup> The Committee found a number of violations of the ICCPR, including of Article 6 (right to life), Article 7 (prohibition against torture and other ill-treatment), Article 10 (1) (right of persons deprived of their liberty to be treated with humanity), and Article 14 (right to a fair trial).

### **Pardon or commutation**

Death sentences can be commuted to 25 years' imprisonment.<sup>144</sup> The cases of all individuals sentenced to death are automatically considered by the Clemency Commission under the Office of the President regardless of whether the sentenced person has submitted an appeal for clemency. Sentences should not be executed until a decision on clemency has been issued.

### **Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed.<sup>145</sup> Following his mission to Uzbekistan, the special rapporteur on torture expressed serious concern regarding the situation of the relatives of people sentenced to death: "The complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved ones. The practice of maintaining families in a state of uncertainty with a

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140 U.N. Doc. CCPR/C/88/D/1057/2002, para. 7.1; U.N. Doc. CCPR/C/89/D/1043/2002, para. 7.2; U.N. Doc. CCPR/C/89/D/1071/2002, para. 7.2.

141 U.N. Doc. CCPR/C/89/D/1043/2002, para. 7.6.

142 U.N. Doc. CCPR/C/87/D/959/2000, para. 8.2.

143 U.N. Doc. CCPR/C/87/D/959/2000, para. 8.5.

144 Article 93 of the Constitution and Article 51 (3) of the Criminal Code. Regulation "On the procedure for granting clemency in the Republic of Uzbekistan", approved by Decree of the President of the Republic of Uzbekistan NYII-1839, 11 September 1997.

145 This information is regarded as a state secret in accordance with Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 239-33 "On measures of protection of state secrets of the Republic of Uzbekistan", 5 May 1994, and Article 140 of the Criminal Execution Code.

view to punishing or intimidating them or others must be considered malicious and amounting to cruel and inhuman treatment.”<sup>146</sup>

In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee remained concerned that, “when prisoners under sentence of death are executed, the authorities systematically fail to inform the relatives of the execution, defer the issuance of a death certificate and do not reveal the place of burial of the executed persons”. The Committee stated that, “these practices amount to a violation of article 7 of the Covenant [prohibition against torture or other ill-treatment] with respect to the relatives of the executed persons”. The Committee urged Uzbekistan to change its practice in this regard in order to comply fully with the Covenant’s provisions.<sup>147</sup>

On 21 March 2006, the special rapporteur on torture noted that information about executions and the burial place of those executed is still considered a state secret and that in many cases the relatives of persons sentenced to death were informed about the execution of the sentence after they had submitted communications to the UN Human Rights Committee.<sup>148</sup>

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146 See note 153 in Report of the UN Special Rapporteur on torture, *op. cit.*, note 128.

147 Concluding observations, *op. cit.*, note 133, para. 8.

148 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, E/CN.4/2006/6/Add.2, notes 393 and 399.

# *Annexes*



# *Annex 1*

## **OSCE Commitments on the Death Penalty**

### **CONCLUDING DOCUMENT OF THE 1989 VIENNA FOLLOW-UP MEETING**

#### **Questions relating to security in Europe**

(24) With regard to the question of capital punishment, the participating States note that capital punishment has been abolished in a number of them. In participating States where capital punishment has not been abolished, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments. This question will be kept under consideration. In this context, the participating States will co-operate within relevant international organizations.

### **DOCUMENT OF THE 1990 COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE**

#### 17. The participating States

17.1 recall the commitments undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate within relevant international organizations;

17.2 recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

17.3 note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular Article 6 of the International Covenant on Civil and Political Rights;

17.4 note the provisions of the Sixth Protocol to the European Convention for the

Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;

17.5 note recent measures taken by a number of participating States towards the abolition of capital punishment;

17.6 note the activities of several non-governmental organizations on the question of the death penalty;

17.7 will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

17.8 will make available to the public information regarding the use of the death penalty.

**DOCUMENT OF THE 1991 MOSCOW MEETING OF THE CONFERENCE  
ON THE HUMAN DIMENSION OF THE CSCE**

(36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and reaffirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.

(36.1) They note

(i) that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on 11 July 1991;

(ii) that a number of participating States have recently taken steps towards the abolition of capital punishment;

(iii) the activities of several non-governmental organizations concerning the question of the death penalty.

**CONCLUDING DOCUMENT OF THE 1992 HELSINKI SUMMIT**

The participating States

(58) Confirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

**CONCLUDING DOCUMENT OF THE 1994 BUDAPEST SUMMIT**

Capital Punishment

19. The participating States reconfirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

# *Annex 2*

## Other International Standards on the Death Penalty

### UNITED NATIONS

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#### EXTRACT FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

##### **Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.



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**SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS**

**Article 1**

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

**Article 2**

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

**Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

**Article 4**

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 5**

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

### **Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### **Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

### **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### **Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

### **Article 11**

- 1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
- 2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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## **EXTRACT FROM THE CONVENTION ON THE RIGHTS OF THE CHILD**

### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

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## **ECONOMIC AND SOCIAL COUNCIL: SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY**

- 1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope

should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

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**EXTRACTS FROM GENERAL COMMENT 6 OF THE HUMAN RIGHTS COMMITTEE**

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even

in time of public emergency which threatens the life of the nation (art. 4)... It is a right which should not be interpreted narrowly.

...

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes”. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the “most serious crimes”. The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States’ reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.
7. The Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

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#### UN COMMISSION ON HUMAN RIGHTS RESOLUTION 2005/59

##### **Question of the death penalty**

*The Commission on Human Rights,*

*Recalling* article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, convinced that the abolition of the death penalty is essential for the protection of this right and recalling article 6 of the International

Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

*Taking note* that the Second Optional Protocol to the International Covenant on Civil and Political Rights provides that no one within the jurisdiction of a State party shall be executed and that each State party shall take all necessary measures to abolish the death penalty within its jurisdiction,

*Recalling* the entry into force, on 1 July 2003, of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances,

*Recalling also* its previous resolutions in which it expressed its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

*Welcoming* the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court are authorized to impose,

*Welcoming also* the abolition of the death penalty in some States since the last session of the Commission and decisions taken in other States that restrict the use of the death penalty, inter alia through excluding certain categories of persons or offences from its application,

*Commending* States that have recently acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights,

*Welcoming* the fact that many countries that still retain the death penalty in their penal legislation are applying a moratorium on executions, and also welcoming the regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

*Reaffirming* the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

*Reaffirming also* resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence,

*Deeply concerned* about the recent lifting of moratoriums on executions in several countries,

*Noting* the consideration of issues relating to the question of the death penalty by the Human Rights Committee,

*Welcoming* the efforts of various sectors of civil society at the national and international levels to achieve the abolition of the death penalty,

1. *Expresses its concern* at the continuing use of the death penalty around the world, alarmed in particular at its application after trials that do not conform to international standards of fairness and that several countries impose the death penalty in disregard of the limitations set out in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and of the safeguards guaranteeing protection of the rights of those facing the death penalty;
2. *Condemns* the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices;
3. *Condemns also* cases in which women are subjected to the death penalty on the basis of gender-discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities;
4. *Welcomes* the seventh quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2005/3), submitted in accordance with Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1995/57 of 28 July 1995 and Council decision 2004/242 of 21 July 2004, which concludes that there is an encouraging trend towards the abolition and restriction of the use of the death penalty in most countries, but that much remains to be done in the implementation of the aforementioned safeguards in those countries that retain it;
5. *Calls upon* all States that still maintain the death penalty:
  - (a) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;
  - (b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

- (c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;
  - (d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;
6. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;
7. *Urges* all States that still maintain the death penalty:
- (a) Not to impose it for crimes committed by persons below 18 years of age;
  - (b) To exclude pregnant women and mothers with dependent infants from capital punishment;
  - (c) Not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person;
  - (d) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;
  - (e) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;
  - (f) To ensure also that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence;
  - (g) To withdraw and/or not to enter any new reservations under article 6 of the Covenant that may be contrary to the object and purpose of the Covenant, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;



- (b) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgements;
  - (i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;
  - (j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;
- 8. *Calls upon* States that no longer apply the death penalty but maintain it in their legislation to abolish it;
- 9. *Calls upon* States that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend such executions;
- 10. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that the death penalty will not be carried out, and calls upon States to provide such effective assurances if requested to do so, and to respect them;
- 11. *Requests* the Secretary-General to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities;
- 12. *Decides* to continue consideration of the matter at its sixty-second session under the same agenda item.

## COUNCIL OF EUROPE

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### EXTRACT FROM THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

#### **Article 2**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

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### PROTOCOL NO. 6 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONCERNING THE ABOLITION OF THE DEATH PENALTY

#### **Article 1 – Abolition of the death penalty**

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

#### **Article 2 – Death penalty in time of war**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

#### **Article 3 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

#### **Article 4 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

#### **Article 5 – Territorial application**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

#### **Article 6 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

#### **Article 7 – Signature and ratification**

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 8 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month

following the date of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 9 – Depositary functions**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- (d) any other act, notification or communication relating to this Protocol.

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### **PROTOCOL NO. 13 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES**

#### **Article 1 – Abolition of the death penalty**

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

#### **Article 2 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

#### **Article 3 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

#### **Article 4 – Territorial application**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of

three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 5 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

#### **Article 6 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 7 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 8 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- (d) any other act, notification or communication relating to this Protocol.

## ORGANIZATION OF AMERICAN STATES

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### AMERICAN CONVENTION ON HUMAN RIGHTS

#### **Article 4. Right to Life**

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

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### PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

#### **Preamble**

*The States parties to this protocol, considering:*

That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty;

That everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason;

That the tendency among the American States is to be in favor of abolition of the death penalty;

That application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted;

That the abolition of the death penalty helps to ensure more effective protection of the right to life;

That an international agreement must be arrived at that will entail a progressive development of the American Convention on Human Rights, and

That States Parties to the American Convention on Human Rights have expressed their intention to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas,

*Have agreed to sign the following Protocol to the American Convention on Human Rights to Abolish the Death Penalty*

#### **Article 1**

The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.

#### **Article 2**

1. No reservations may be made to this Protocol. However, at the time of ratification or accession, the States Parties to this instrument may declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.
2. The State Party making this reservation shall, upon ratification or accession, inform the Secretary General of the Organization of American States of the pertinent provisions of its national legislation applicable in wartime, as referred to in the preceding paragraph.
3. Said State Party shall notify the Secretary General of the Organization of American States of the beginning or end of any state of war in effect in its territory.

#### **Article 3**

1. This Protocol shall be open for signature and ratification or accession by any State Party to the American Convention on Human Rights.
2. Ratification of this Protocol or accession thereto shall be made through the deposit

of an instrument of ratification or accession with the General Secretariat of the Organization of American States.

#### **Article 4**

This Protocol shall enter into force among the States that ratify or accede to it when they deposit their respective instruments of ratification or accession with the General Secretariat of the Organization of American States.

### **EUROPEAN UNION**

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#### **EXTRACT FROM THE CHARTER OF THE FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

#### **Article 2**

Right to Life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

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#### **EXTRACT FROM THE GUIDELINES ON EU POLICY TOWARDS THIRD COUNTRIES ON THE DEATH PENALTY**

### **III Minimum standards paper**

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

- (i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience.
- (ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the



imposition of a lighter penalty, the offender shall benefit thereby.

- (iii) Capital punishment may not be imposed on:
  - persons below 18 years of age at the time of the commission of their crime;
  - pregnant women or new mothers;
  - persons who have become insane.
- (iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.
- (v) Capital punishment must only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.
- (vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.
- (vii) Where applicable, anyone sentenced to death shall have the right to submit an individual complaint under international procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures.
- (viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.
- (ix) Capital punishment may not be carried out in contravention of a state's international commitments.
- (x) The length of time spent after having been sentenced to death may also be a factor.
- (xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.
- (xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g. against coup plotters.

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**EXTRACT FROM EUROPEAN PARLIAMENT RESOLUTION OF 1 FEBRUARY 2007 ON THE  
INITIATIVE IN FAVOUR OF A UNIVERSAL MORATORIUM ON THE DEATH PENALTY**

*The European Parliament,*

....

1. Reiterates its long-standing position against the death penalty in all cases and under all circumstances and expresses once more its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights;
2. Calls for a worldwide moratorium on executions to be established immediately and unconditionally with a view to the worldwide abolition of the death penalty, through a relevant resolution of the current UN General Assembly, whose actual implementation the UN Secretary-General should be able to monitor;

...

## *Annex 3*

### **Relevant Recommendations Made at OSCE Human Dimension Implementation Meetings (2002-2006)**

#### *Recommendations to OSCE participating States:*

- The death penalty should be abolished;
- Belarus, the United States, and Uzbekistan should institute a moratorium on executions;
- Those OSCE participating States that have moratoria in place should take steps to abolish the death penalty;
- The death penalty should only be imposed for the most serious crimes and in a manner not contrary to the states' international commitments, including fair-trial guarantees;<sup>149</sup>
- Those states that have not yet abolished the death penalty should not impose it on people who, at the time of the crime, were under 18 years of age or suffering from any form of mental disorder;
- Those OSCE participating States that have not yet done so should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Those OSCE participating States that are members of the Council of Europe and have not done so should ratify Protocol 6 and Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Those OSCE participating States that retain the death penalty should be guided by the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty and UN Commission on Human Rights Resolution 2005/59 on the Question of the Death Penalty;
- OSCE participating States in which the death penalty is not used should not extradite anyone to a state where there is a risk of their being condemned to death;

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149 Vienna Document of 1989.

- OSCE participating States should make information about their use of the death penalty available to the public.<sup>150</sup> This information should include legislative changes to the scope or use of the death penalty, the number and identity of people sentenced to death, the exact crime for which the death sentence is imposed, the number of people on death row, the number of acts of clemency, and the number of people executed;
- OSCE participating States should allow NGOs to visit prisons, including death row and execution chambers.

***Recommendations to the OSCE, its institutions and field operations:***

- The OSCE should continue to condemn the veil of secrecy surrounding the use of the death penalty in some of those states that still apply it, and should continue to explore ways of assisting the authorities in those states to ensure that statistical and other information on the death penalty is made public;
- The OSCE should develop guidelines for participating States as to what exactly the commitment to make information on the use of the death penalty available to the public entails;
- The OSCE should condemn disregard for existing standards on the use of the death penalty and explore ways of assisting those states that still use the death penalty in order to ensure compliance with these standards;
- The OSCE political bodies should strongly support the efforts of relevant OSCE field operations to place the issue of the death penalty on the agenda for dialogue with their host governments;
- The ODIHR should continue to facilitate exchange of information on the question of the abolition of the death penalty through dissemination of information, publications, and the organization of roundtables and conferences;
- Upon request, the ODIHR should provide technical assistance and expertise to the OSCE participating States on the implementation of international standards on the use of the death penalty.

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150 Copenhagen Document of 1990.

## *Annex 4*

### **Questionnaire on the Death Penalty**

#### **LEGAL FRAMEWORK**

- 1) The attached paper is a copy of the entry that was made on your country in the publication of 2006. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
- 2) Has the number of crimes that carry the death penalty increased or decreased since the last publication?
- 3) Do any crimes under your country's Code of Military Law carry the death penalty? Please attach a copy of the complete text of all military criminal offences that carry the death penalty.
- 4) Have any steps been taken to introduce, retain or remove a moratorium on executions since last year's publication?
- 5) If a moratorium is in place, please indicate the legal basis of the moratorium, and explain in detail how it works in practice. Please attach copies of relevant legislation or presidential decrees.
- 6) If a moratorium is in place, please detail the specific procedure regulating the treatment and rights of persons subjected to the moratorium. Please attach copies of relevant legislation or presidential decrees.
- 7) If a moratorium is in place, please list the name and place of detention of all persons currently subjected to the moratorium.

#### **STATISTICS**

- 8) Please provide us with statistics on the number of persons who have been sentenced to death in the period 30 June 2006 to 30 June 2007.
- 9) Please provide us with the full name and age of persons who have been sentenced to death in the period 30 June 2006 to 30 June 2007.

- 10) Please indicate the specific crime for which each of these persons was sentenced.
- 11) Please list which of these sentences has entered into force (i.e., all appeal stages have been exhausted).
- 12) Please list which court passed each of the sentences.
- 13) Please indicate if any of the persons sentenced to death in the period from 30 June 2006 to 30 June 2007 were:
  - Under the age of 18 at the time the crime was committed;
  - Pregnant women or women with dependent infants;
  - Diagnosed as having any form of mental disorder;
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 14) Please detail the regulations in place regarding the treatment of persons on death row and attach copies of the relevant legislation and regulations.
- 15) Please provide us with the full name and age of persons who have been executed in the period 30 June 2006 to 30 June 2007. Please also indicate the specific crime for which each of these persons was executed.
- 16) Please indicate if any of the persons executed in the period from 30 June 2006 to 30 June 2007 were:
  - Under the age of 18 at the time the crime was committed;
  - Pregnant women or women with dependent infants;
  - Diagnosed as having any form of mental disorder;
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 17) Which state body is responsible for keeping statistics on sentences, executions and commutations?
- 18) Please provide us with the full name and age of any persons sentenced to death who have been granted clemency and had their sentence commuted since 30 June 2006.

### **SAFEGUARDS**

(In your answers to these questions, please provide us with separate answers with regard to civilian and military crimes.)

- 19) Please describe the procedure for informing all non-nationals who have been accused of committing a crime for which the death penalty is a potential sentence of their right to receive consular assistance. Is this procedure mandatory?
- 20) Please list all cases regarding the use of the death penalty that have been decided since the last publication, or are currently ongoing, before international bodies (e.g., UN Human Rights Committee, International Court of Justice, European Court of Human Rights).
- 21) What system do you have in place to ensure that interim stays by the UN Human Rights Committee are complied with and transmitted to all the relevant actors at the national level?
- 22) Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.
- 23) Please describe the procedural process of considering a request for clemency, including the factors that are taken into account when considering such a request.
- 24) Please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out.
- 25) Please indicate the procedure for informing relatives of the place of burial of executed persons.

### **MISCELLANEOUS**

- 26) Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue in the period 30 June 2006 to 30 June 2007.

# *Annex 5*

## Status of Ratifications

| Status of ratifications as of: |        |       | ICCPR, 2nd Optional Protocol:<br>18 July 2007          |      |                   |                    |
|--------------------------------|--------|-------|--|------|-------------------|--------------------|
|                                |        |       | ECHR, Protocol No. 6, Protocol No. 13:<br>27 July 2007 |      |                   |                    |
| Participating State            | Status | ICCPR | 2nd<br>Optional<br>Protocol                            | ECHR | Protocol<br>No. 6 | Protocol<br>No. 13 |
| Albania                        | A      | r     |  | r    | r                 | r                  |
| Andorra                        | A      | r     | r  | r    | r                 | r                  |
| Armenia                        | A      | r     |  | r    | r                 | s                  |
| Austria                        | A      | r     | r  | r    | r                 | r                  |
| Azerbaijan                     | A      | r     | r  | r    | r                 |                    |
| Belarus                        | R      | r     |  |      |                   |                    |
| Belgium                        | A      | r     | r  | r    | r                 | r                  |
| Bosnia and<br>Herzegovina      | A      | r     | r  | r    | r                 | r                  |
| Bulgaria                       | A      | r     | r  | r    | r                 | r                  |
| Canada                         | A      | r     | r  | n/a  | n/a               | n/a                |
| Croatia                        | A      | r     | r  | r    | r                 | r                  |
| Cyprus                         | A      | r     | r  | r    | r                 | r                  |
| Czech Republic                 | A      | r     | r  | r    | r                 | r                  |
| Denmark                        | A      | r     | r  | r    | r                 | r                  |
| Estonia                        | A      | r     | r  | r    | r                 | r                  |
| Finland                        | A      | r     | r  | r    | r                 | r                  |
| France                         | A      | r     |  | r    | r                 | s                  |
| Georgia                        | A      | r     | r  | r    | r                 | r                  |
| Germany                        | A      | r     | r  | r    | r                 | r                  |
| Greece                         | A      | r     | r  | r    | r                 | r                  |
| Holy See                       | A      |       |  |      |                   |                    |
| Hungary                        | A      | r     | r  | r    | r                 | r                  |
| Iceland                        | A      | r     | r  | r    | r                 | r                  |
| Ireland                        | A      | r     | r  | r    | r                 | r                  |



|   |    |   |   |     |     |     |
|---|----|---|---|-----|-----|-----|
| Italy                                       | A  | r | r | r   | r   | s   |
| Kazakhstan                                  | PA | r |   | n/a | n/a | n/a |
| Kyrgyzstan                                  | A  | r |   | n/a | n/a | n/a |
| Latvia                                      | PA | r |   | r   | r   | s   |
| Liechtenstein                               | A  | r | r | r   | r   | r   |
| Lithuania                                   | A  | r | r | r   | r   | r   |
| Luxembourg                                  | A  | r | r | r   | r   | r   |
| Former Yugoslav<br>Republic of<br>Macedonia | A  | r | r | r   | r   | r   |
| Malta                                       | A  | r | r | r   | r   | r   |
| Moldova                                     | A  | r | r | r   | r   | r   |
| Monaco                                      | A  | r | r | r   | r   | r   |
| Montenegro                                  | A  | r | r | r   | r   | r   |
| Netherlands                                 | A  | r | r | r   | r   | r   |
| Norway                                      | A  | r | r | r   | r   | r   |
| Poland                                      | A  | r | s | r   | r   | s   |
| Portugal                                    | A  | r | r | r   | r   | r   |
| Romania                                     | A  | r | r | r   | r   | r   |
| Russian<br>Federation                       | DA | r |   | r   | s   |     |
| San Marino                                  | A  | r | r | r   | r   | r   |
| Serbia                                      | A  | r | r | r   | r   | r   |
| Slovak Republic                             | A  | r | r | r   | r   | r   |
| Slovenia                                    | A  | r | r | r   | r   | r   |
| Spain                                       | A  | r | r | r   | r   | s   |
| Sweden                                      | A  | r | r | r   | r   | r   |
| Switzerland                                 | A  | r | r | r   | r   | r   |
| Tajikistan                                  | DA | r |   | n/a | n/a | n/a |
| Turkey                                      | A  | r | r | r   | r   | r   |
| Turkmenistan                                | A  | r | r | n/a | n/a | n/a |
| Ukraine                                     | A  | r |   | r   | r   | r   |
| United Kingdom                              | A  | r | r | r   | r   | r   |
| United States of<br>America                 | R  | r |   | n/a | n/a | n/a |
| Uzbekistan                                  | R  | r |   | n/a | n/a | n/a |

**Notes:**

r = ratification

s = signature only

n/a = non-applicable

A = abolitionist

DA = *de facto* abolitionist

PA = partly abolitionist

R = retentionist

## *Notes*

## *Notes*

