

The Death Penalty in the OSCE Area

BACKGROUND PAPER 2012

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2011*. It is intended to provide a concise update to highlight changes in the status of the death penalty in OSCE participating States since the previous publication and to promote constructive discussion of this issue. It covers the period from 1 July 2011 to 30 June 2012.

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Designed by Nona Reuter

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Overview

Pursuant to its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has monitored the use of the death penalty in the OSCE region since 1999. OSCE participating States have pledged to exchange information on the question of abolishing capital punishment at the annual Human Dimension Implementation Meeting and to keep that question under consideration. The participating States have also agreed to make information available to the public on their use of the death penalty and to co-operate within relevant international organizations on the issue.¹ Moreover, the OSCE Commitments have noted the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights and the provisions of Protocol Six to the European Convention for the Protection of Human Rights and Fundamental Freedoms, both of which seek to abolish the death penalty in peacetime.²

Participating States have agreed to restrict the use of capital punishment to the “most serious crimes” and in a manner “not contrary to their international commitments”.³ Such commitments, as referenced in Copenhagen (1990), include Article Six of the International Covenant on Civil and Political Rights among other “restrictions and safeguards...[on] the death penalty...adopted by the international community,” and those safeguards found in regional human rights instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights, as applicable.

Fifty-one of the 56 participating States of the OSCE have abolished the death penalty for all crimes. Three participating States, Kazakhstan, Russia and Tajikistan, retain the death penalty in law but have in place moratoriums on executions. Two participating States, Belarus and the United States, continue to impose the death penalty. At the last OSCE Human Dimension Implementation Meeting held in Warsaw from 26 September to 7 October 2011, participants made several recommendations relating to the death penalty. These included: to introduce a moratorium on the death penalty, and if a moratorium already exists, to abolish the death penalty and to

1 OSCE Vienna Document 1989, para. 24; and OSCE Copenhagen Document, 1990, para. 17.7, respectively. Previously, and in the Copenhagen document, the event was called the “Conference on the Human Dimension”, see Annex 1.

2 Copenhagen (1990) paragraph 17.2, 17.4. Note that 47 participating States have ratified or acceded to the Second Optional Protocol to the ICCPR. The Second Optional Protocol to the ICCPR referred to in Copenhagen (1990), abolishes capital punishment during peacetime and for wartime offenses that are not of the “most serious” nature.

3 Vienna (1989), *op. cit.*, note 1.

convert all sentences into life imprisonment; to encourage public debate on abolition; to provide adequate funding for the legal defense of capital defendants; and to ensure transparency on the death penalty and make information on its application available to the public.

This paper, which covers the period from 1 July 2011 to 30 June 2012, has been compiled on the basis of information provided by participating States through a questionnaire sent by ODIHR and information from other relevant sources. Other information was supplied by civil society, international organizations, news media and OSCE field operations.

The reporting period saw some notable developments in the OSCE region on the use of capital punishment, underscoring the global trend towards abolition.⁴ Latvia ratified Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, abolishing the use of the death penalty in all cases, entering into force in May 2012. In the United States, Connecticut abolished the death penalty for all future cases, and the governor of Oregon declared a moratorium on executions for the duration of his tenure.

A number of relevant activities were undertaken during the reporting period. On 10 October 2011, the European Union marked the Ninth annual World Day Against the Death Penalty by reiterating its strong opposition to the death penalty and by renewing its call for universal abolition. In December 2011, the European Commission made amendments to Council Regulation (EC) 1236/2005, resulting in controls on the export of certain drugs, among other goods, that could be used for capital punishment in countries that have not abolished the death penalty.⁵ In March 2012, the Human Rights Council adopted resolution 19/37 on the rights of the child. This resolution calls on states to abolish the death penalty, in law and in practice, for those under 18 years of age; to immediately release any child on death row; and, in cases of doubt surrounding a child's age, to allow for a rebuttable presumption that the accused is a juvenile.⁶ The International Commission Against the Death Penalty, an international organization established by the Spanish government in 2010, organized a symposium in June 2012 to promote a better understanding of how different criminal justice systems respond to extreme acts of violence and whether the death penalty can be part of a morally sustainable criminal justice system

4 UN Report of the Secretary General from the Twenty-first session of the Human Rights Council, "The Question of the death penalty", 2 July 2012. Approximately 150 of the 193 Member States of the United Nations had abolished the death penalty or introduced a moratorium, either in law or in practice, as of 2011.

5 "Commission extends control over goods which could be used for capital punishment or torture", European Union, 20 December 2011, <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1578&type=HTML>>.

6 U. N. Human Rights Committee, "Rights of the Child", 23 March 2012, <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/73/PDF/G1213173.pdf?OpenElement>>.

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.

Fifty one OSCE participating States are abolitionist:

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

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

No participating State is partly abolitionist.

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

Three participating States are *de facto* abolitionist:

- Kazakhstan
- Russian Federation
- Tajikistan

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

Two participating States are retentionist:

- Belarus
- United States of America

1. Abolitionist States

LATVIA

On 1 December 2011, the Latvian parliament adopted amendments to several laws, resulting in the abolition of the death penalty in all circumstances. Article 37 of the Criminal Code, which had previously provided for the death penalty in cases of aggravated murder during wartime, was removed. The amendments entered into force on 1 January 2012. Thereafter, on 26 January, Latvia ratified Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, entering into force on 1 May.⁷

POLAND

A case against Poland is pending before the European Court of Human Rights, concerning Abd al-Rahim al-Nashiri, a Saudi-national who was allegedly imprisoned and tortured in a secret CIA detention facility on Polish territory before being transferred to the United States detention camp at Guantanamo Bay. Al-Nashiri, who is currently being detained at Guantanamo Bay, faces capital charges before a military commission relating to his alleged involvement in the bombing of the warship USS Cole in Aden Harbor in 2000, among other acts. Defense counsel claim a number of violations were committed by Poland. These include violations of Articles Two and Three of the European Convention Human Rights, and Protocol Six to the Convention, by assisting in his transfer from Poland despite a real risk that he would be subjected to the death penalty. In July 2012, the Court communicated the case to the Polish government, which has until 5 September to respond.⁸

⁷ Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Latvia to the OSCE, received on 13 July 2012.

⁸ "Litigation Al-Nashiri v. Poland", Open Society Foundations, 17 July 2012, <<http://www.soros.org/litigation/al-nashiri-v-poland>>.

2. Partly Abolitionist States

Latvia's amendments to its criminal code and ratification of Protocol 13 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms mean that no OSCE participating State currently retains the death penalty solely for crimes committed in wartime.

3. De Facto Abolitionist States

KAZAKHSTAN

An indefinite moratorium on executions, declared in December 2003, remains in place.⁹ The Constitution was amended in 2007, abolishing the death penalty for all but two types of crimes, as an exceptional punishment: acts of terrorism resulting in death and grave crimes committed in wartime. All those sentenced have the right to appeal for pardon.¹⁰ The last execution took place in 2003, prior to the announcement of the moratorium. Upon the establishment of the moratorium, all death row inmates had their sentences commuted to life imprisonment without parole. Life imprisonment was subsequently established as an alternative sanction to the death penalty, with a maximum term of 25 years, and 30 years for cumulative offenses.

The 2009 to 2012 National Human Rights Action Plan of Kazakhstan, which was approved by the President, recommended ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).¹¹ One of the stipulated goals of this plan is to abolish the death penalty. According to the response to ODIHR's questionnaire received from Kazakhstan, the threat of extremism and terrorism is precluding the government from abolishing the death penalty in all circumstances. Abolition is still seen as a premature course of action within Kazakhstan.¹² Public support for the death penalty also poses an obstacle to abolition.¹³

9 Kazakhstan Presidential Decree No. 1251 "On the introduction of a moratorium on the death penalty in the Republic of Kazakhstan", 19 December 2003.

10 Constitution of the Republic of Kazakhstan, Clause 2, Article 15, as amended on 21 May 2007.

11 National Report to the Working Group on the Universal Periodic Review, A/HRC/WG.6/7/KAZ/1, 3 November 2009, para 166, <http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/KZ/A_HRC_WG.6_7_KAZ_1_E.pdf>.

12 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of Republic of Kazakhstan to the OSCE, received on 27 August 2012.,

13 "Death penalty moratorium has not led to surge in crime, CC", www.interfax.kz, 26 April 2011, <http://www.interfax.kz/?lang=eng&int_id=in_focus&news_id=567>.

In July 2011, the UN Human Rights Committee expressed concerns over inconsistencies between the extraordinary circumstances under which the death penalty is permitted under the Constitution and the wider list of crimes subject to the death penalty in the Criminal Code. The Criminal Code lists 18 offenses that fall into the two categories for which the Constitution allows the death penalty.¹⁴ The death penalty is a discretionary sentence for all of these crimes. The Committee recommended abolition and accession to the Second Optional Protocol to the ICCPR, which Kazakhstan has neither signed nor ratified.¹⁵

RUSSIAN FEDERATION

A moratorium on the application of the death penalty has been in place since 1996, as a result of Russia's accession to the Council of Europe.¹⁶ The decree establishing the moratorium required the government to draft a federal law acceding to Protocol Six to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, which abolishes the death penalty for all but wartime offenses. A draft law was submitted to parliament on 6 August 1999. However, to date, Russia has only signed Protocol Six and the ratification process remains incomplete. The last execution took place in 1996, and there are currently no prisoners on death row. A ruling by the Constitutional Court in 1999 held that the imposition of the death penalty in the absence of a jury trial violated the Constitution. A temporary moratorium on sentences and executions was imposed to allow jury trials to be established. As a result of this ruling, all inmates received a presidential pardon, and their sentences were commuted to life imprisonment. In 2009, the Constitutional Court ruled that

14 Planning, preparation, starting, or waging an aggressive war (Article 156); Application of prohibited means and methods of conducting a war (Article 159); Genocide (Article 160); Employment of mercenaries (Article 162(4)), High treason (Article 165); Attempt upon the life of the First President of the Republic of Kazakhstan (leader of the nation): (Article 166(1)); Attempt upon the life of the President of the Republic of Kazakhstan (Article 167); Subversion (Article 171); Terrorism (Article 233); Promotion of terrorism or public appeals for commission of an act of terrorism (Article 233(1)); Disobedience or other non-execution of an order (military) (Article 367); Resistance to a superior or coercion of him to violate service duties (Article 368); Violent actions with regard to a superior (Article 369)); Desertion (Article 373); Evasion of military service by way of self-mutilation or other method (Article 374); Violation of the rules for being on active duty (Article 375); Abuse of power, exceeding competence or inaction (Article 380); The surrendering or leaving to the enemy of material for waging war (Article 383).

15 Report of the Human Rights Committee, Volume I - 100th session (11 to 29 October 2010) - 101st session (14 March to 1 April 2011) - 102nd session (11 to 29 July 2011), 6 January 2012, <http://www2.ohchr.org/english/bodies/hrc/docs/A.66.40_vol.I.pdf>.

16 Council of Europe Parliamentary Assembly, "Honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions of the death penalty", 28 January 1997, <<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc97/EDOC7746.htm>>.

the moratorium be extended indefinitely until Russia has ratified Protocol Six.¹⁷ No steps towards abolition were taken during the reporting period.

Debates on ending the moratorium and reinstating the death penalty for terrorism-related acts, spurred by the 2010 Moscow Metro bombings and the 2011 bombing of Moscow Domodedovo Airport, continued during the reporting period. In March 2012, the Public Opinion Foundation, a major Russian polling centre, conducted a poll that revealed that 62 per cent of the country's residents would like the moratorium on the death penalty to be lifted, and for executions to resume. Respondents who favored the death penalty suggested using the punishment for sexual offenses against teenagers (72 per cent), murder (64 per cent), terrorism (54 per cent), drug trafficking (28 per cent) and treason (12 per cent). Meanwhile, 21 per cent of those polled felt that Russia should maintain the moratorium, and five per cent were in favor of abolition for all crimes.¹⁸ These results marked an 18 per cent reduction in approval from previous polls in 2001, when 80 per cent of respondents were in favor of capital punishment.¹⁹

TAJIKISTAN

An official moratorium on death sentences and executions has been in place in Tajikistan since 15 July 2004. Under the Criminal Code of the Republic of Tajikistan, the death penalty can be applied for five crimes: murder with aggravating circumstances; acts of terrorism that result in death; rape of a minor (under 14 years of age) not resulting in death; genocide; and biocide.²⁰ The imposition of the death penalty is discretionary for all of these offenses. In March 2005, the Criminal Code was amended, establishing alternative sanctions in the form of long-term life imprisonment, and life without parole in the case of particularly serious offenses. The last execution took place in 2004, and there are currently no prisoners on death row. All death sentences were commuted to life imprisonment following the moratorium.

17 "Russian Federation: Death Penalty Ruled Unconstitutional", The U.S. Library of Congress, 1 December 2011, <http://www.loc.gov/lawweb/servlet/lloc_news?disp3_lj205401702_text>.

18 "Capital punishment: Russians want return of death penalty", RT.com, 29 March 2012, <<http://rt.com/news/death-penalty-return-russia-787/>>.

19 Reynolds, Maura, "Russian President Takes Stand Against Reviving Death Penalty", Los Angeles Times, 11 July 2001, <<http://articles.latimes.com/2001/jul/11/news/mn-20909>>.

20 Article 104(2), Article 179(3), Article 138(3); Article 398; Article 399 of the Criminal Code, 21 May 1998, amended on 3 July 2012.

The Working Group on the Death Penalty, which was established in 2010, continued its work.²¹ The Group, which consists of key officials from the executive and the judiciary and the Commissioner of the Human Rights Ombudsman, was tasked to study the social and legal aspects of abolition.²² Specific tasks include studying international practice and the national laws of abolitionist countries, analyzing crime trends before and after the moratorium, conducting sociological studies and considering the possibility of Tajikistan ratifying the Second Optional Protocol to the ICCPR.²³ The Group was scheduled to present its findings in 2012. At the time of writing, there were no reports indicating that this had taken place.

At the Universal Periodic Review last October, the UN Human Rights Council urged Tajikistan to complete the abolition process by March 2012. Among the recommendations made to Tajikistan were the abolition of the death penalty and the signing of the Second Optional Protocol to the ICCPR.²⁴

International organizations and civil society continued to encourage abolition in Tajikistan. On 20 October 2011, international organizations and governmental representatives from Tajikistan participated in a European Union supported roundtable entitled “From Moratorium towards Abolition of the Death Penalty in Tajikistan: Problems and Prospects”.²⁵ Topics such as abolition in Tajikistan, the activities of the working group, recommendations from the Universal Periodic Review related to the death penalty and the activities of civil society organizations in promoting abolition were discussed. Penal Reform International, a penal and criminal justice reform NGO, co-hosted a roundtable on the death penalty in Dushanbe on 20 October 2011. A new website was launched at this event, containing information about issues related to abolition in Tajikistan and other countries, as well as news, videos and reports on the death penalty.²⁶

21 Full title “Working Group on the Study of Social-Legal Aspects of the Abolition of the Death Penalty in the Republic of Tajikistan”.

22 Delegation of the European Union to the Republic of Tajikistan, “From moratorium towards abolition of the death penalty in Tajikistan: Problems and prospects”, Dushanbe, 20 October 2011, (EU Delegation to Tajikistan), <http://ceas.europa.eu/delegations/tajikistan/press_corner/all_news/news/2011/20111020_en.htm>.

23 Penal Reform International, “67th Session of the UNGA: Report of the Secretary General on the implementation of a moratorium on the use of the death penalty”, 6 June 2012, (Penal Reform Report) <<http://www.penalreform.org/files/PRI%20submission%20to%20UN%20Secretary%20General%20on%20the%20implementation%20of%20a%20moratorium.pdf>>.

24 EU Delegation to Tajikistan, *op. cit.*, note 22.

25 *Ibid.*

26 Penal Reform Report, *op. cit.*, note 23.

4. Retentionist States

BELARUS

Belarus is the only country in Europe which continues to carry out the death penalty. Among the recommendations made to Belarus at the 2011 Human Dimension Implementation Meeting were to express political readiness to adopt a moratorium on the death penalty and respect its OSCE commitment to make information on the use of the death penalty publicly available. The Belarusian parliamentary working group on the death penalty, which was established in 2010, ceased its activities during the reporting period.²⁷ While the government has expressed its intention to mould public opinion in favor of abolition, no such measures appear to have been taken this year.²⁸ According to Nikolay Samoseiko, the chair of the working group on the death penalty, a moratorium could have been discussed had the terrorist attacks of April 2011 not occurred.²⁹

In response to repeated calls for a moratorium, at an annual parliamentary address in May 2012, President Alexander Lukashenko suggested that the death penalty reflected the will of the Belarusian people and that a moratorium would not be possible while this was the case.³⁰ He referred to a 1996 referendum, which revealed majority support for capital punishment. While subsequent opinion polls in 2000 and 2003 indicate majority support, results from a 2008 national poll, conducted by the Belarusian research centre NOVAK, showed that less than half of the respondents favored the death penalty, with almost 40 per cent supporting abolition.³¹

Non-governmental organizations continued to work on the death penalty in Belarus. On 26 January 2012, Penal Reform International hosted a conference on “The Development of the Criminal Justice System in Belarus”. The event brought together officials from the Belarusian parliament, the General Prosecutor’s Office and Belarusian NGOs, including the Belarusian Helsinki Committee, as well as other governmental representatives and legal practitioners. The conference discussed the prospects for abolition of the death penalty in Belarus and life imprisonment as an alternative

27 Full name: “Parliamentary working group on discussion of the death penalty issue”

28 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Belarus to the OSCE, received on 14 August 2012, (Belarus Response).

29 Penal Reform International, “Statement on the situation of the death penalty in Belarus for the International Commission against the Death Penalty”, 22 March 2012, (Penal Reform Belarus), <<http://www.penalreform.org/files/PRI%20statement%20on%20Belarus%20for%20ICDP%20March2012.pdf>>.

30 “Lukashenko: Personally I never to abolish death penalty”, *www.telegraf.by*, 8 May 2012, <<http://telegraf.by/en/2012/05/lukashenko-sam-ya-nikogda-ne-otmenyu-smertnyu-kazn>>.

31 Penal Reform Belarus, *op. cit.*, note 29.

punishment. In autumn 2011, activists from Amnesty International helped to gather signatures for a global petition, calling on President Lukashenko to impose a moratorium on executions and commute death sentences as a first step towards abolition. The petition, which was originally launched by the Belarusian human rights organization Viasna, became the focus of Amnesty International's 50th anniversary anti-death penalty campaign. Over 250,000 people around the world signed the petition. However, when Amnesty International and Belarusian campaigners attempted to deliver the petition to President Lukashenko on 9 December, they were turned away.³²

In its Concluding Observations from December 2011, the UN Committee against Torture raised numerous concerns on the issue of the death penalty in Belarus. These included reports of the poor conditions of death row inmates and the secrecy and arbitrariness surrounding executions, including reports that the families of convicts are informed days or weeks after the execution has taken place, that they are not given the opportunity for a last visit to the prisoner, that the body of the executed prisoner is not handed over to the family, and that the place of burial is not disclosed to them. The Committee also expressed concern "at reports that some death row prisoners are not provided with fundamental legal safeguards and the discrepancy between reports of the authorities and other various sources on this matter."³³

Legal framework

The death penalty is a permissible sentence under the Constitution of Belarus, so long as it is imposed in accordance with the law and as an exceptional penalty for particularly serious crimes.³⁴ The death penalty is applicable to 12 crimes in peacetime and an additional two crimes in times of war.³⁵ Under the Criminal Code, the death penalty may be imposed for severe crimes, such as the deliberate deprivation of life with aggravating circumstances, but is not a mandatory sentence for any of these crimes.³⁶ Belarusian law does not permit the execution of women and offenders under the age

32 Amnesty International, "Death sentences and executions 2011", March 2012, <http://www.amnestyusa.org/sites/default/files/ai_global_dp_2011_stats_report-act500012012en.pdf>.

33 Committee against Torture, "Concluding Observations of the Committee against Torture: Belarus", 7 December 2011, <<http://www.unhcr.org/refworld/publisher/CAT,,4f1d51c82,0.html>>.

34 Constitution of the Republic of Belarus, Article 24, 27 November 1996.

35 The death penalty is allowed for the following crimes: "unleashing or conducting a war of aggression", Criminal Code of Belarus, Article 122, part 2), "murder of a representative of a foreign state or international organization, with the intention to provoke international tension or war" (Art. 124, part 2), "international terrorism" (Art. 126), "genocide" (Art. 127), "crimes against humanity" (Art. 128), "premeditated, aggravated murder" (Art. 139, part 2), "terrorism" (Art. 289, part 3), "terrorist acts" (Art. 359), "treason accompanied by murder" (Art. 356, part 2), "conspiracy to seize power" (Art. 357, part 3), "sabotage" (Art. 360, part 2), "murder of a police officer" (Art. 362), "use of weapons of mass destruction" (Art. 134), and "murder of a person in violation of the laws and customs of war" (Art. 135, part 3).

36 Criminal Code of the Republic of Belarus, Article 59(1), 9 July 1999, amended on 17 July 2006, (Criminal Code).

of 18 when the crime was committed or over 65 at the time of sentencing.³⁷ The Constitution of Belarus gives the President authority to grant clemency and commute a death sentence to life imprisonment.³⁸ Petitions for clemency are first considered by the Clemency Commission.³⁹

Moratorium

There is no moratorium in place on either the imposition or carrying out of death sentences.

Method of execution

The death penalty is carried out by firing squad.⁴⁰

Statistics

Death sentences

The number of death row inmates is not known. Some recent reports indicate the figure to be 102.⁴¹ Vladislav Kovalev and Dmitriy Konovalov were sentenced to death on 30 November 2011 by the Supreme Court of Belarus. According to the response received from Belarus, they were convicted in connection with the bombing of the Minsk metro station in April 2011, which killed 15 and injured over 200 others.⁴² However, reports suggest that Konovalov was also convicted of perpetrating the bomb attacks in 2005 in Vitebsk and in 2008 in Minsk.⁴³ The men, aged 25 at the time of sentencing, were unable to appeal their conviction and sentence because the judicial institution that found them guilty and handed down the death sentence was the Supreme Court, the highest appellate court. According to Belarus's response to ODIHR's questionnaire, Kovalev, who had retracted his confession and pleaded not-guilty to the charges, filed a supervisory complaint, following the decision of the Supreme Court.⁴⁴ The grounds for complaint were not stipulated in the response,

37 *Ibid.*

38 Constitution of the Republic of Belarus, Art.84 (19).

39 Belarusian Presidential Decree No. 250, "On the introduction of the regulation of provisions for pardoning procedures in the Republic of Belarus", 3 December 1994.

40 Criminal Code, *op. cit.*, note 36.

41 Penal Reform Report, *op. cit.*, note 23.

42 Belarus Response, *op. cit.*, note 28.

43 European Parliament Resolution, "Death penalty in Belarus, in particular the cases of Dzmitry Kanavalau and Uladzislau Kavalyou", 16 February 2012, (E.U. Parliament Resolution), <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0063+0+DOC+XML+V0//EN>>.

44 Belarus Response, *op. cit.*, note 28.

though ODIHR was informed that the complaint was rejected and the decision, together with the reasons for rejection, were communicated to Kovalev and his lawyer.⁴⁵

Executions

According to statistics provided by the Permanent Delegation of the Republic of Belarus to the OSCE, five individuals were executed during the reporting period.⁴⁶ Dates of execution were not supplied in the response and were unknown at the time of writing.

Igor Myalik, who was sentenced by the Mogilev Oblast Court on 14 September 2010, was executed during the reporting period. Myalik, who was aged 41 at the time of sentencing, had been convicted of the murder of four individuals, committed during an armed robbery as part of a gang.⁴⁷ The conviction and sentence were upheld by the Supreme Court on 11 February 2011. It is assumed that his execution took place sometime in January 2012; one human rights defender reported that Myalik ceased correspondence with his family in January 2012.⁴⁸

Oleg Gryshkovtsov and Andrei Burdyko were sentenced to death by the Grodno Regional Court on 14 May 2010. Gryshkovtsov and Burdyko, who were aged 28 and 29, respectively, at the time of sentencing, had been found guilty of murdering three individuals during a robbery.⁴⁹ In addition to murder, they were reportedly also convicted of armed assault, arson, the kidnapping of a minor, theft and robbery.⁵⁰ The conviction and sentence were upheld by the Supreme Court on 17 September 2010. Reports suggest that the executions took place between 14 and 16 July last year.⁵¹

Vladislav Kovalev and Dmitriy Konovalov were also executed during the reporting period. Mr Kovalev's mother received a letter from the Supreme Court dated 16 March 2012, stating that her son's execution had been carried out. The executions were confirmed by state-owned media.⁵²

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ "Belarus: no religious burials for executed prisoners", Forum 18, 15 May 2012, <http://www.forum18.org/Archive.php?article_id=1700>.

⁴⁹ Belarus Response, *op. cit.*, note 28.

⁵⁰ United Nations, "UN Committee says executions in Belarus violate international obligations", 27 July 2011, (U.N. Belarus), <<http://www.un.org/apps/news/story.asp?NewsID=39160&Cr=belarus&Cr1>>.

⁵¹ Amnesty International, "Annual Report 2012: The state of the world's human rights", <<http://www.amnesty.org/en/region/belarus/report-2012#section-13-3>>.

⁵² Radio Free Europe, "Two Executed for 2011 Minsk Metro Bomb Attack", 18 March 2012, <http://www.rferl.org/content/minsk_bomber_said_executed/24518588.html>.

International Safeguards

At the 2011 Human Dimension Implementation Meeting, representatives of Belarus stated that the death penalty is used as an exceptional measure, applied only for serious crimes and in compliance with its international obligations.

Fair trial guarantees

Both Oleg Gryshkovtsov and Andrei Burdyko filed petitions before the UN Human Rights Committee. The Committee issued interim measures of protection under Rule 92 of its Rules of Procedure, requiring Belarus to stay the executions.⁵³ According to a press statement issued by the Committee in July 2011, both men had claimed that they were subjected to torture at the pre-trial investigation stage and did not receive a fair trial. The Committee condemned the executions, which it said amounted to a violation of the Optional Protocol to the ICCPR, having ignored interim measures. It reiterated the need for death sentences to be imposed only pursuant to a fair trial, in compliance with articles Six and 14 of the ICCPR.⁵⁴

Reports by human rights groups such as Human Rights Watch and the International Federation of Human Rights suggest that Vladislav Kovalev and Dmitriy Konovalov were also sentenced following a trial that violated fair trial guarantees. The human rights groups found that the investigation was marred by serious human rights abuses and that important information on the innocence of the two men was disregarded.⁵⁵ There were allegations of forced confessions, extracted through the use of torture. Kovalev had claimed that both men were beaten during interrogation.⁵⁶ Trial monitors reported serious procedural violations during the preliminary investigation and the judicial examination of the case.⁵⁷ According to international observers, there was no forensic evidence linking the men to the explosion, and no traces of explosive material were found on the clothes or bodies of the men. The prosecutors did not present a motive for the crimes, which were allegedly of a terrorist nature.⁵⁸

53 U.N. Belarus, *op. cit.*, note 50.

54 *Ibid.*

55 E.U. Parliament Resolution, *op. cit.*, note 43.

56 Amnesty International, "Belarus: two sentenced to death over Minsk bombings", 30 November 2012, <<http://www.amnesty.org/en/news/belarus-two-sentenced-death-over-minsk-metro-bombing-2011-11-30>>.

57 *Ibid.*

58 Amnesty International, "Belarus must release bodies of men executed over Minsk metro bombing", 19 March 2012, (Amnesty Belarus), <http://www.amnesty.org.uk/news_details.asp?NewsID=20010>; and Radio Free Europe, "In Wake Of Belarus Executions, Doubts About Judicial Process", 14 September 2012, <http://www.rferl.org/content/in_wake_of_belarus_executions_doubts_about_judicial_process/24520661.html>.

Kovalev filed a supervisory complaint with the Supreme Court, stating his disagreement with the Court's sentence. This complaint was received by the Belarusian authorities who, according to their response to ODIHR's questionnaire, considered the arguments made therein. Reasons for rejecting the complaint were not stipulated in the response, which simply stated that the arguments put forward by Kovalev were not corroborated by evidence. The Belarusian response also stated that the prisoner and his lawyer were notified of the decision, though a date was not provided. According to Viasna, a Minsk-based human rights NGO, the execution took place before the supervisory complaint was reviewed.⁵⁹ Kovalev also submitted a petition to the UN Human Rights Committee, after which the Committee requested that Belarus stay the executions while it reviewed and issued a decision on the case.⁶⁰ The Committee criticized the executions, stating that Belarus violated its international obligations by imposing death sentences on individuals whose right to fair trial may have been violated.⁶¹

A report published by ODIHR in November 2011, pursuant to trial monitoring conducted in Minsk between March and July of that year, raised a number of concerns with regards to Belarus's compliance with fair trial standards and OSCE commitments. The trials covered in ODIHR's report were of individuals who were charged with crimes in the aftermath of the events in central Minsk following the elections on 19 December 2010 and did not include capital cases.⁶²

Amnesty, pardon or commutation

No clemencies or commutations were granted during the reporting period. No death sentences were overturned on appeal.⁶³ The President rejected a request for clemency by Igor Myalik. On 25 February 2011 the President rejected requests for clemency

59 "Europe condemns executions of Kovalev and Kononov", [www.telegraf.by](http://www.telegraf.by/en/2012/03/evropa-osudila-rasstrel-kovaleva-i-kononova), 18 March 2012, <<http://www.telegraf.by/en/2012/03/evropa-osudila-rasstrel-kovaleva-i-kononova>>.

60 "Belarus: abolish death penalty", Human Rights Watch, 19 March 2012, <<http://www.hrw.org/news/2012/03/19/belarus-abolish-death-penalty>>.

61 "World report 2012: Belarus", Human Rights Watch, <<http://www.hrw.org/world-report-2012/world-report-2012-belarus>>; The European Union also condemned the executions. The EU foreign policy chief, Catherine Ashton, criticized the executions, stating that the accused individuals were not accorded their due process rights, including the right to defend themselves. Ashton urged Belarus to impose a moratorium, emphasizing the European Union's opposition to the death penalty, which it considers a form of cruel and inhuman punishment. See: "Statement by the Spokesperson of High Representative Catherine Ashton on the execution of Uladzislaw Kavalyow in Belarus", [www.ec.europa.eu](http://ec.europa.eu/delegations/belarus/press_corner/statements_belarus/spanish_statement_on_belarus/statements/17_03_2012_en.htm), 17 March 2012, <http://ec.europa.eu/delegations/belarus/press_corner/statements_belarus/spanish_statement_on_belarus/statements/17_03_2012_en.htm>.

62 "OSCE/ODIHR report on trial monitoring in Belarus(March-July 2011)", 10 November 2011, <<http://www.osce.org/odihr/84873>>.

63 Belarus Response, *op. cit.*, note 28.

from Oleg Gryshkovtsov and Andrei Burdyko.⁶⁴ The two men had previously argued that investigators had violated procedural regulations and the ICCPR, through extracting forced confessions. The Chairperson of the UN Human Rights Committee, Zonke Zanele Majodina, expressed concerns that the executions violated Belarus's international obligations, particularly those under articles Six and 14 of the ICCPR.⁶⁵

Vladislav Kovalev's petition for clemency was also rejected by the President, according to information provided by Belarus.⁶⁶ This was reportedly rejected on 14 March 2012. According to official information received from the Belarus delegation to the OSCE, Dmitriy Konovalov did not file a clemency request.

Information to families and return of bodies

In Belarus, the death penalty is classified as a "state secret" and, under the Belarusian Criminal Executive Code, death row inmates, the families of the convicted and the public are not notified about the dates of executions.⁶⁷ The bodies of those executed are not handed over to their families for burial and the place of burial is kept secret, in accordance with Article 175(5) of the Code.

Belarus did not inform ODIHR about any information it may have supplied to the families of the five men it executed. According to Amnesty International, Burdyko's mother received official confirmation of his death three months later.⁶⁸ The Supreme Court refused to provide confirmation of Myalik's execution to his relatives, stating that the relevant body for such information is the Ministry of Internal Affairs. According to media reports, the families of Kovalev and Konovalov received letters from the Supreme Court, dated 16 March, informing them that the executions had been carried out.⁶⁹ This notification was unusual for Belarus, which has previously contacted families weeks or months after executions. The executions of the two men were also confirmed by state-owned media.⁷⁰

Kovalev's relatives petitioned President Lukashenko for the return of his body.⁷¹ The Department of Corrections and the presidential administration refused the request, in

64 "Belarus: President Lukashenko denies clemency to two death row inmates", BBC, 25 February 2011, <http://www.handsoffcain.info/archivio_news/201102.php?iddocumento=15302565&mover=0>.

65 UN Belarus, *op. cit.*, note 50.

66 Belarus Response, *op. cit.*, note 28.

67 Article 175 of the Criminal Executive Code of the Republic of Belarus, 16 July 1999, amended on 25 July 2012.

68 Amnesty Belarus, *op. cit.*, note 58.

69 "In a wake of Belarus executions, doubts about judicial process", Radio Free Europe, 19 March 2012, <http://www.rferl.org/content/in_wake_of_belarus_executions_doubts_about_judicial_process/24520661.html>.

70 Amnesty Belarus, *op. cit.*, note 58.

71 "Kavalyou's relatives appealed prohibition of extradition of his body to the UN Human Rights Committee", Naviny.by, 14 May 2012, <http://naviny.by/rubrics/computer/2012/05/14/ic_news_116_393024/>.

accordance with paragraph 5 of Article 175 of the Penal Code, which states that the bodies of the executed are not to be returned to relatives and the place of burial shall remain undisclosed.⁷² At the time of writing, the bodies of the five men had not been returned to their families and the places of burial had not been disclosed.⁷³

UNITED STATES

In the United States, there is no prohibition on the death penalty. Currently, the Federal Government, 33 states and the military allow this form of punishment. According to a recent survey by Gallup, 58 per cent of Americans felt that the death penalty was morally acceptable; the figure marked the lowest approval rating for capital punishment since the survey was first conducted 12 years ago. In general, support for the death penalty has fallen below 50 per cent when the public were offered alternative sanctions.⁷⁴ In December 2011, the Death Penalty Information Center reported that the number of new death sentences nationally fell sharply in the course of the same year, dropping below 100 for the first time since the death penalty was reintroduced in 1976.

Connecticut abolished the death penalty for all crimes on 25 April 2012. This applies to all future cases and not to the 11 prisoners on death row at the time of the announcement. Moreover, California announced its decision to hold a referendum to determine whether life imprisonment without parole should replace the death penalty. The referendum is scheduled to take place in November 2012. The decision would be applied to the 700 inmates at the time of the announcement.

New Mexico and New Jersey saw attempts to reinstate the death penalty. Attempts were also made to expand the scope of crimes to which the death penalty currently applies, for instance in Virginia and South Carolina.⁷⁵ In other states, steps were taken to repeal the death penalty, with measures being proposed in Florida, Georgia, Kansas, Maryland, Nebraska and Washington. At the time of writing, Ohio, Oregon and Pennsylvania were reviewing their death penalty laws.

72 "Relatives of the executed demand amendments to Belarusian Penal Code", Human Rights House, 14 May 2012, <<http://humanrightshouse.org/Articles/18025.html>>.

73 "Death sentences and executions 2011", Amnesty International Report, March 2012, <http://www.amnestyusa.org/sites/default/files/ai_global_dp_2011_stats_report_act500012012en.pdf>. (Amnesty International 2011)

74 In 2010, Gallup asked which is better punishment for murder: the death penalty or life in prison without parole. Forty-nine per cent chose the death penalty, while 46 per cent chose life without parole.

75 Details of legislative activity during 2011 and 2012, concerning the death penalty in the United States can be found at "Recent Legislative Activity", Death Penalty Information Center, 2012, <<http://www.deathpenaltyinfo.org/recent-legislative-activity>>.

On 8 September 2011, Ohio announced that it would establish a task force to review the administration of the state's death penalty.⁷⁶ The task force, which comprises the Ohio Supreme Court and the state bar association, is examining current death penalty laws in Ohio and other states, the statistics on its application and the costs. In December 2011, the American Bar Association released a report on Kentucky's use of the death penalty following a two-year study that looked at issues of fairness and accuracy in capital cases. The report stated that more than 60 per cent of all death penalty sentences since 1976 have been overturned on appeal by Kentucky or federal courts as a result of significant legal errors. Subsequently, in March 2012, eleven current and former Kentucky prosecutors endorsed the recommendations made in the report. Among the recommendations was the adoption of legislation exempting the severely mentally ill from the death penalty.⁷⁷ Kentucky has not implemented this recommendation, despite the submission of a bill on the issue of exempting the severely mentally ill.⁷⁸

In December 2011, a study was released by Michigan State University analyzing the exercise of peremptory challenges during jury selection in trials of North Carolina's death row inmates.⁷⁹ This study will be discussed in more detail in the non-discrimination section. The Pennsylvania Senate passed a resolution in December 2011 requiring a task force to conduct a study into the state's use of the death penalty.⁸⁰ The study would focus on issues of fairness, equality and the costs of capital punishment. In the United States, an argument frequently cited in support of capital punishment is that the threat of execution influences criminal behavior more effectively than imprisonment. In April 2012, the National Research Council released a report, which stated that studies claiming that the death penalty has a deterrent effect on homicide rates are "flawed" and should not be used when making policy decisions.⁸¹

76 "Ohio justices, lawyers task force to study death penalty", *The Raw Story*, 8 September 2011, <<http://www.rawstory.com/rs/2011/09/08/ohio-justices-lawyer-task-force-to-study-death-penalty/>>.

77 "Kentucky Prosecutors Call for Death Penalty Reform", *Death Penalty Information Center*, 7 March 2012, <<http://www.deathpenaltyinfo.org/new-voices-kentucky-prosecutors-call-death-penalty-reform>>.

78 "Life and death: individuals impacted by capital punishment push for reform", *Witness to Innocence*, 12 June 2012, <http://www.witness-to-innocence.org/view_news.php?Leo-Weekly-Life-and-death-Individuals-impacted-by-capital-punishment-push-for-reform-290>.

79 The study considered the trials of all those on North Carolina's death row as of 1 July 2010, <<http://digitalcommons.law.msu.edu/facpubs/331/>>.

80 "Pennsylvania Senate initiates study of State's death penalty", *Death Penalty Information Center*, 2 January 2012, <<http://www.deathpenaltyinfo.org/pennsylvania-senate-initiates-study-states-death-penalty>>.

81 D. Nagin and J. Pepper, "Deterrence and the Death Penalty," Committee on Law and Justice at the National Research Council, April 2012; D. Vergano, "NRC: Death penalty effect research 'fundamentally flawed'," *USA Today*, 18 April 2012, <<http://www.deathpenaltyinfo.org/deterrence-national-research-council-concludes-deterrence-studies-should-not-influence-death-penalty>>.

In South Dakota, the legislature passed a bill aimed at expediting appeals in criminal cases, including capital cases. It was signed by the Governor on 1 March 2012.⁸² The Attorney General proposed the measure, saying limits were needed in death penalty cases because some have been tied up in appeals for two decades.⁸³ It is unclear what effect this law will have and, specifically, whether it will jeopardize the accused's right to a fair trial.

Also in March 2012, the Supreme Court of the United States granted review in two cases that will decide whether establishing a defendant's mental competency is necessary in order for a capital appeal to proceed.⁸⁴ If this is deemed necessary, mentally incompetent inmates could be entitled to an indefinite stay on federal habeas corpus proceedings, as they cannot assist in their defence. The states that asked the Court to review this question, Arizona and Ohio, asserted that appeals should proceed, regardless of the defendant's ability to participate. The cases will be argued before the Court during its next term, beginning in October 2012.

Legal Framework

In the United States, 33 states, the Federal Government and the military retain the death penalty in their statutes. Currently, the jurisdictions without the death penalty are Alaska, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin and the District of Colombia.⁸⁵ Of these 18 jurisdictions, New Mexico and Connecticut's moratoriums are not retroactive. There are still inmates on death row in both states.

The death penalty is imposed almost exclusively for murder convictions. In *Kennedy v Louisiana*, the Supreme Court struck down a law allowing the death penalty for the non-homicidal rape of a child, finding that execution constituted excessive punishment in such cases.⁸⁶ The Court stated that the Eighth Amendment to the Constitution, which prohibits cruel and unusual punishment, is defined by "evolving

82 Journal of the Senate, State of South Dakota, www.legis.state.sd.us, 2 March 2012, <<http://www.legis.state.sd.us/sessions/2012/Journals.aspx?Committee=29&File=jrnS03021000.htm#10929>>.

83 "Legislature approves bill preventing appeals for death-row inmates", The Associated Press, 21 February 2012, <<http://www.ksfy.com/story/16985668/legislature-approves-bill-preventing-appeals-for-death-row-inmates>>.

84 "United States Supreme Court decisions: 2012-2013 term", The Death Penalty Information Center, 4 September 2012, <<http://www.deathpenaltyinfo.org/united-states-supreme-court-decisions-2012-2013-term>>.

85 The New York Court of Appeals found that the state's death penalty statute was unconstitutional due to how the jury was to be instructed in the case of a deadlock. Notwithstanding some attempts, the state's legislature has not corrected these errors. New York is thus considered an abolitionist state.

86 *Kennedy v. Louisiana*, 554 U.S. 407 (2008), as cited by, Cornell University Law School Legal Information Institute, <<http://www.law.cornell.edu/supct/html/07-343.ZO.html>>.

standards of decency that mark the progress of a maturing society”. This principle, it said, requires that the use of the death penalty be “reserved for the worst of crimes and limited in its instances of application”. The Court went on to state that the “[d]ifficulties in administering the penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in cases of crimes against individuals, for *crimes that take the life of the victim*”.⁸⁷

While no individual has been executed in the United States for a non-death-related offense since the death penalty’s reinstatement in 1976, several jurisdictions still retain capital punishment for such crimes: Arkansas (treason); California (sabotage, treason); Colorado (treason, aggravated kidnapping); Florida (capital drug trafficking, capital sexual battery); Georgia (aircraft hijacking, treason); Idaho (aggravated kidnapping); Kentucky (kidnapping with aggravating factors); Louisiana (treason); Mississippi (aircraft piracy, treason); Missouri (treason, aggravated kidnapping, drug trafficking, aircraft hijacking, placing a bomb near a bus terminal); Montana (aggravated sexual intercourse without consent, aggravated kidnapping); Washington (treason); Federal (espionage, treason, drug trafficking, attempting to kill an officer, juror or witness in a continuing criminal investigation). There are 14 offenses for which a military service member may receive the death penalty, many of which must occur during wartime.⁸⁸

The U.S. Supreme Court has held that the Eighth and Fourteenth Amendments to the Constitution bar the execution of offenders who were under 18 years of age when the crime was committed.⁸⁹ It has also prohibited, under the Eighth Amendment, the execution of death row inmates who are considered to be “insane” or “mentally retarded”.⁹⁰

The United States’ response to ODIHR’s questionnaire stated that 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. The law provides for “the appointment of highly qualified counsel to represent federal capital defendants at all stages of a capital prosecution, from indictment

87 Emphasis added.

88 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the United States of America to the OSCE, 24 August 2012, (U.S. Response).

89 *Roper v Simmons*, 543 U.S. 551 (2005), as cited by, Cornell University Law School Legal Information Institute, <<http://www.law.cornell.edu/supct/html/03-633.ZS.html>>.

90 *Ford v. Wainwright*, 477 U.S. 399 (1986), as cited by, Cornell University Law School Legal Information Institute, <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0477_0399_ZS.html>; *Atkins v Virginia*, 536 U.S. 304 (2002), as cited by, Cornell University Law School Legal Information Institute, <<http://www.law.cornell.edu/supct/html/00-8452.ZS.html>>.

through post-conviction review”.⁹¹ The response further stated that the Federal Government provides counsel for defendants in state capital trials when their convictions are reviewed in federal court and that all death penalty states have adopted procedures to provide experienced, competent counsel to represent indigent capital defendants in state courts.

Following a U.S. Supreme Court ruling in 2009, federally appointed counsel may represent indigent clients in state clemency procedures.⁹² Only the President has the power to grant clemency to federal death row inmates. State law provides for clemency, the process of which varies from state to state, involving the governor, a board of advisers, or both. In all cases, a formal petition for clemency must be filed.

To be sentenced to death by a military commission, the Convening Authority of the U.S. Department of Defense must make an independent decision to refer capital charges to a military commission and jurors must vote unanimously in favor of the death sentence.⁹³ Under the Military Commissions Act of 2009, all death sentences must be explicitly approved by the President, who may also “commute, remit, or suspend the sentence, or any part thereof”.⁹⁴ For members of the uniformed services, the President has the power to commute a death sentence, and no such individual can be executed unless the President personally confirms the death penalty.⁹⁵

Method of Execution

The vast majority of states use lethal injection as the primary method of execution. Some states use a three-drug protocol, others use a single drug. The three-drug protocol consists of an anesthetic, pancuronium bromide to paralyze the inmate, and potassium chloride to stop the inmate’s heart.⁹⁶

Other methods of execution include electrocution, lethal gas, hanging and firing squad. A number of states provide for alternatives in the event that the primary method of execution is declared unconstitutional or if the individual was sentenced before a certain, specified date.

91 U.S. Response, *op. cit.*, note 88.

92 Harbison v. Bell, 556 U.S. 180 (2009), as cited by, Supreme Observer <<http://www.supremeobserver.com/case-report/?id=30936>>.

93 U.S. Response, *op. cit.*, note 88.

94 Military Commissions Act of 2009, § 950i(b) Execution of sentence; suspension of sentence

95 The Uniform Military Justice Code applies to all members of the uniformed services of the United States: the Air Force, Army, Coast Guard, Marine Corps, Navy, National Oceanic and Atmospheric Administration Commissioned Corps, and Public Health Service Commissioned Corps.

96 “Lethal injection”, Death Penalty Information Center, <<http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-supreme-court-decision>>

Moratorium

At the time of writing, the Food and Drug Administration (FDA) was appealing a case concerning its importation of sodium thiopental, a lethal injection drug. In 2011, the sole U.S. manufacturer of sodium thiopental ceased production of the drug, which was being used as an anesthetic in lethal injection executions. Shortage of the drug caused states to seek foreign suppliers. Death row inmates in Arizona, California and Tennessee subsequently filed a suit against the FDA, alleging that it had breached its responsibility to prevent unapproved sodium thiopental from entering the United States. In February 2012, the Federal District Court in Washington D.C. barred the import of the drug, finding that the FDA had not approved it for safety and effectiveness, as required by law. District Judge Richard Leon stated that this would create an “unnecessary risk” that prisoners “will not be anesthetized properly prior to execution”.⁹⁷ The Court ordered the FDA to immediately inform any state correctional departments with foreign-manufactured thiopental that its use is prohibited by law and that the drug must be returned to the FDA.

In June 2012, the Arkansas Supreme Court struck down the state’s Methods of Execution Act (2009), after finding that the state’s Corrections Department had unfettered discretion as to how it administered the death penalty.⁹⁸ The Court ruled that the Legislature must set the quantity and type of drugs in a lethal injection. The state’s 37 death row inmates will not be executed until the ruling is implemented.

The Federal Government has not carried out an execution since 2003. In 2006, three federal co-defendants were granted indefinite stays of execution, after alleging that the federal lethal injection practice violated the Eighth Amendment, which prohibits cruel and unusual punishment. Another stay was granted in 2007. Since then, no new execution dates have been set for these individuals. In July 2011, the Federal Government announced that it would revise its death penalty procedures.⁹⁹ A U.S. Department of Justice official reportedly stated that the modification of the protocol was due to the lack of availability of sodium thiopental. No indication was given at the time as to when the new protocol would be completed.¹⁰⁰

The United States military has not executed anyone since 1961.¹⁰¹

97 “FDA is appealing court bar to drug used in executions”, Bloomberg, 25 May 2012, <<http://www.bloomberg.com/news/2012-05-25/fda-to-appeal-court-ruling-banning-drug-used-in-execution.html>>.

98 “Arkansas court upends death penalty”, 22 June 2012, The New York Times, <<http://www.nytimes.com/2012/06/23/us/arkansas-justices-strike-down-death-penalty.html>>.

99 “Feds plan changes to death penalty procedure”, Politico, 29 July 2011, <http://www.politico.com/blogs/joshgerstein/0711/Feds_plan_changes_to_death_penalty_procedure.html>.

100 *Ibid.*

101 U.S. Response, *op. cit.*, note 88.

Statistics

The Bureau of Justice Statistics is the unit of the United States Department of Justice responsible for collecting and disseminating information on death sentences and executions.

Death sentences

According to the most recent data released by the Bureau of Justice Statistics, there were 3,158 inmates on death row as of 31 December 2010. The U.S. response to ODIHR's questionnaire did not provide more recent statistics. However as of April 2012, the number of known death row inmates reported by NGOs was 3,170.¹⁰² Reports suggest that, on average, inmates spend 15 years on death row.¹⁰³

Executions

The response to ODIHR's questionnaire stated that there were 43 executions carried out in 2011: 13 in Texas, six in Alabama, five in Ohio, four each in Arizona and Georgia, two each in Florida, Mississippi and Oklahoma, and one each in Delaware, Idaho, Missouri, South Carolina and Virginia. According to the Death Penalty Information Center, 41 individuals were executed during the exact reporting period. Texas performed the most executions during the reporting period, according to this report.

Of the individuals executed during the reporting period, 58.5 per cent were "White", 21.95 per cent were "Latino" and 19.5 per cent were "Black".¹⁰⁴ According to the 2010 United States Census, the respective shares in total U.S. population are 72.4 per cent "White", 16.3 per cent "Hispanic or Latino", 12.6 per cent "Black or African American".¹⁰⁵

102 "Report by the Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc", 2012, <<http://www.deathpenaltyinfo.org/documents/DRUSASpring2012.pdf>>.

103 Jacqueline Macalesher, "Death row phenomenon and the circumstances under which it could amount to torture or other cruel, inhuman or degrading treatment or punishment", Expert consultation "The death penalty: 'Most serious crimes', complicity and the question of torture", 25-26 June 2012, <<http://www.penalreform.org/files/Expert%20Consultation%20-%20death%20row%20phenomenon%20presentation%2026June2012.pdf>>.

104 The categorization of the race of death row inmates executed during the reporting period was taken from information supplied by the Death Penalty Information Center. The DPIC's execution database can be found here: <<http://www.deathpenaltyinfo.org/views-executions>>.

105 "The Black Population 2010, 2010 Census Briefs", www.census.gov, September 2011, <<http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>>; "The Hispanic Population 2010, 2010 Census Briefs", www.census.gov, May 2011, <<http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>>; "The White Population 2010, 2010 Census Briefs", www.census.gov, September 2011, <<http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>>.

International Safeguards

At the 2011 Human Dimension Implementation Meeting, representatives of the United States stated that the death penalty is only exceptionally used and in full compliance with the ICCPR, the United States Constitution and OSCE Commitments.

Amnesty, pardon and commutation

No details of any cases involving amnesty, pardon or commutation were provided to ODIHR in the response to the questionnaire. Two individuals, Gussie Vann and Joe D'Ambrosio, were exonerated during the reporting period, according to the Death Penalty Information Center's Innocence Database. Reasons for their exoneration relate to poor quality legal defense and prosecutorial misconduct, respectively.

Fair trial guarantees

In its response to the ODIHR questionnaire, the United States stated that its judicial system "provides an exhaustive system of protections to ensure that the death penalty is not applied in an extra-judicial, summary or arbitrary manner".¹⁰⁶

One particular case that raised fair-trial concerns during the reporting period was that of Troy Davis. On 21 September 2011, Georgia executed Davis, despite serious doubts about his guilt for the 1989 murder of a police officer. According to Amnesty International, the case rested largely on inconsistent witness testimony, where seven of the nine witnesses had either recanted or changed their testimonies.¹⁰⁷ A request for Davis to undergo a lie-detector test was rejected by Georgia prison officials. A Georgia judge then refused an appeal, after which the state supreme court followed suit. The U.S. Supreme Court ordered a temporary stay, before ruling that the execution could go ahead.¹⁰⁸ Human rights groups, such as Amnesty International, and international organizations, including the European Union and the International Commission Against the Death Penalty, urged the execution to be halted.¹⁰⁹ Following the execution, the Director of ODIHR voiced his "concern about reports suggesting that due process was not fully respected in the case of Troy Davis, and that his guilt could not

¹⁰⁶ U.S. Response, *op. cit.*, note 88.

¹⁰⁷ "I am Troy Davis: The Fight for Abolition Continues", Amnesty International, September 2011, <<http://www.amnestyusa.org/our-work/cases/usa-troy-davis>>.

¹⁰⁸ "Troy Davis execution goes ahead despite serious doubts about his guilt", The Guardian, 22 September 2011, <<http://www.guardian.co.uk/world/2011/sep/22/troy-davis-execution-last-words>>.

¹⁰⁹ "World shocked by U.S. execution of Troy Davis", CNN, 22 September 2011, <http://articles.cnn.com/2011-09-22/world/world_davis-world-reaction_1_execution-date-death-by-lethal-injection-capital-punishment?_s=PM:WORLD>. The EU High-Representative Catherine Ashton called on the US to commute Mr Davis's sentence.

be proven beyond reasonable doubt”.¹¹⁰ He went on to express his hope that the case would reinvigorate debate on capital punishment at both the federal and state levels.

In May 2012, Darold Stenson’s murder conviction was overturned by the Washington State Supreme Court, after it was shown that the state had withheld favorable evidence at the time of his trial. The Court ordered a new trial, having concluded that the result of the initial trial may have been different had a key FBI file and photographs been disclosed to the defence. Stenson had spent 18 years on death row prior to the ruling.¹¹¹

Foreign Nationals

According to the United State’s response to the questionnaire, there were 135 reported foreign nationals, comprising 37 nationalities, on death row in the United States as of 26 July 2012. On 1 July 2011, the Inter-American Commission on Human Rights issued precautionary measures on behalf of Humberto Leal Garcia, requesting the United States suspend his execution until a process could be established to arrange for a review of his case. The same day, the U.S. Department of Justice filed an amicus brief with the U.S. Supreme Court in an attempt to stay the execution.¹¹² The justice department argued that the execution would breach the United States’ obligations under international law to afford Leal Garcia a review and reconsideration of his conviction and sentence, in light of its failure to provide consular notification and assistance under the Vienna Convention on Consular Relations. Also on 1 July, the U.S. Department of State sent letters to the Texas authorities requesting that they refrain from executing Leal Garcia.¹¹³ The State Department drew attention to the fact that the draft “Consular Notification Compliance Act of 2011” was under consideration at the time and asked for a temporary delay in execution. This legislation would allow for post-conviction review of cases concerning Vienna Convention violations, including Leal Garcia’s case.¹¹⁴ On 7 July the U.S. Supreme Court denied the application for a stay of execution, shortly after which Leal Garcia was executed. The International Commission Against the Death Penalty, which had written to the governor of Texas

110 “OSCE human rights chief expresses dismay about execution of Troy Davis, hopes case will revive capital punishment debate in the US”, OSCE Office for Democratic Institutions and Human Rights, 17 May 2011, <<http://www.osce.org/odihr/82781>>.

111 “After 18 years, death sentence and murder conviction overturned”, American Civil Liberties Union of Washington State, 11 May 2012, <<http://www.aclu-wa.org/blog/after-18-years-death-sentence-and-murder-conviction-overturned>>.

112 “Brief for the United States as Amicus Curiae in Support of Applications for a Stay”, U.S. Justice Department, July 2011, <<http://sblog.s3.amazonaws.com/wp-content/uploads/2011/07/SG-amicus-in-Leal-execution-7-1-11.pdf>>.

113 *Ibid.*

114 Avena and other Mexican Nationals (Mexico v. United States), March 31, 2004, <<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&ck=18&p3=4&case=128>>.

to commute the sentence, strongly condemned the execution.¹¹⁵ The Inter-American Commission on Human Rights condemned the execution, which it described as taking place “in defiance of the precautionary measures the IACHR granted in his favor and without having complied with the recommendations issued by the Commission in the Merits Report on his case.”¹¹⁶

On November 2011, a petition was filed against the United States with the Inter-American Commission on Human Rights on behalf of Ivan Teleguz. It was claimed that Teleguz, a death row inmate in Virginia, did not receive an effective and adequate defence, that his due process rights were violated and that he was arrested, tried and sentenced to death without having been informed of his right to contact Ukrainian consular officials, in accordance with the Vienna Convention on Consular Relations. On 22 December 2011, the Inter-American Commission granted precautionary measures for Teleguz and requested that the United States refrain from executing him until the merits of the petition are considered.¹¹⁷

In April 2012, the Department of Defense of the United States announced that Kuwaiti-born Khalid Sheikh Mohammed and his four co-defendants – of whom two are Yemeni, one Saudi and one Pakistani – would face capital charges before military commissions for their alleged participation in the 11 September 2001 attacks in the United States.

The response to ODIHR’s questionnaire stated that the United States “takes its consular notification obligations very seriously and is committed to continuing its work to uphold those obligations”. The government pledged its commitment to securing the timely enactment of the Consular Notification Compliance Act of 2011.¹¹⁸

Individuals with mental illness or disability

At the 2011 ODIHR Human Dimension Implementation Meeting, recommendations were made to the United States to abolish the death penalty for the mentally ill. In November 2011, Reginald Brooks, a 66 year-old man diagnosed with paranoid schizophrenia, was executed in Ohio after spending almost 30 years on death row.¹¹⁹ Edwin Turner was executed in February 2012 in Mississippi, for a crime that was

115 Statement of the International Commission against Death Penalty on the execution of Humberto Leal García, Madrid, 9 July 2011, <<http://www.icomdp.org/cms/wp-content/uploads/2011/07/09.07.2011.-Declaración-ejecución-Humberto-Leal-scan-.pdf>>.

116 Organization of American States, “Press Release: IACHR Condemns Execution of Leal García in the United States”, 8 July 2011 <http://www.oas.org/en/iachr/media_center/PReleases/2011/067.asp>

117 IACHR precautionary measures can be found at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>

118 U.S. Response, *op. cit.*, note 88.

119 Amnesty International Death Penalty 2011, *op. cit.*, note 73.

committed shortly after his release from a mental hospital.¹²⁰ He had a long family history of mental illness and made a number of suicide attempts.¹²¹ In February 2012, Robert Moorman was executed by Arizona, despite suffering from mental retardation and attending special education classes as a child.¹²²

At the time of writing, the Inter-American Commission on Human Rights was considering the merits of two cases against the United States concerning the imposition of the death penalty on persons with mental or intellectual disabilities.¹²³

Non-discrimination

Studies have shown that race can play a significant role in capital proceedings in the United States, including in charging decisions, sentencing and jury selection. In September 2011, Michigan State University released a study into jury selection in North Carolina that revealed that race was a significant factor in prosecutorial decisions to exercise peremptory challenges in jury selection in capital cases. Peremptory challenges allow a party to remove a juror without providing reasons for the objection. Prosecutors used such challenges to remove qualified “African-American” jurors at more than twice the rate that they excluded “white” jurors. Of the 159 death row inmates in North Carolina, 31 were sentenced by all-white juries, and another 38 had only one member of a minority on their jury when sentenced.¹²⁴

This study was used as a basis for the first ruling under North Carolina’s Racial Justice Act. The landmark law, which passed in August 2009, allows capital defendants to challenge their sentence by showing that racial bias was a significant factor in decisions to seek or impose the death penalty. The Act does not require the inmate to prove discrimination in his or her particular case; it is sufficient for him or her to show evidence of statewide racial discrimination. In the first hearing in April 2012, Judge Gregory Weeks found statistical evidence of racial bias in the judicial system, as part of his deliberations concerning the case of Marcus Robinson, who was sentenced to death in 1994. The judge concluded that “race was a significant factor in decisions of prosecutors to exercise peremptory strikes in Cumberland County, the former Second

120 “Question of the Death Penalty”, U.N. Secretary General,, 2 July 2012, (U.N. Secretary General Report 2012)<<http://www.unhcr.org/refworld/docid/5051d31a2.html>>.

121 “Mental Illness: Mississippi Inmate with Severe Mental Illness Faces Imminent Execution”, Death Penalty Information Center, 2 February 2012, <<http://www.deathpenaltyinfo.org/mental-illness-mississippi-inmate-severe-mental-illness-faces-imminent-execution>>.

122 U.N. Secretary General Report 2012, *op. cit.*, note 120.

123 Inter-American Commission on Human Rights, “Report No. 63/12 on admissibility petition 1762-11, Virgilio Maldonado Rodríguez v. United States, 29 March 2012; No. 132/11 on admissibility petition No. 194-04, Gregory Thompson v. United States, 19 October 2011, <www.oas.org/en/iachr/decisions/admissibilities.asp>.

124 Barbara O’Brien & Catherine M Grosso, “Report on Jury Selection”, 29 September 2011, <http://www.aclu.org/files/assets/jsr_revised_report_with_appendix_29_sept_2011.pdf>.

Judicial Division, and the State of North Carolina” at the time of Robinson’s trial in 1994.¹²⁵ Central to Robinson’s case was the jury selection study by Michigan State University, which was presented by his defense.¹²⁶ Robinson’s death sentence was consequently commuted to life imprisonment without possibility of parole. Following this hearing, attempts have been made to weaken the Act. A bill that would require inmates to show discrimination in the county or prosecutorial district at the time the death sentence was sought or imposed passed the North Carolina State House in June 2012.¹²⁷ ODIHR continues to monitor developments on this bill.

125 “State of North Carolina v Marcus Reymond Robinson”, Superior Court, Judge Gregory Weeks, 22 April 2012, <<http://www.deathpenaltyinfo.org/documents/RobinsonRJAOrder.pdf>>.

126 *Ibid.*

127 Senate Bill 416 (Ratified Bill), 21 June 2012. <<http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S416v5.pdf>>.

Annexes

Annex 1

OSCE Commitments

Document of the Sixteenth Meeting of the Ministerial Council (Helsinki 2008)

We stress that everyone has the right to life, liberty and security of person; no one shall be held in slavery, and no one shall be subjected to torture or cruel inhuman or degrading treatment or punishment.

Budapest Document: Towards a Genuine Partnership in a New Era (Budapest 1994)

Capital Punishment

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

Helsinki Document: The Challenges of Change (Helsinki 1992)

The participating States

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

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow 1991)

(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.

**Document of the Copenhagen Meeting of the Conference
on the Human Dimension of the CSCE
(Copenhagen 1990)**

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.

**Concluding Document of the Vienna Meeting
(Vienna 1989)**

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.

Annex 2

OSCE Parliamentary Assembly

OSCE Parliamentary Assembly Annual Session, Oslo, 6 to 10 July 2010,

Resolution on the Death Penalty

(...)

The OSCE Parliamentary Assembly:

45. *Condemns* all executions wherever they take place;

46. *Calls upon* participating States applying the death penalty to declare an immediate moratorium on executions;

47. *Encourages* the participating States that have not abolished the death penalty to respect safeguards protecting the rights of those facing the death penalty, as laid down in the United Nations Economic and Social Council Safeguards;

48. *Condemns* in particular the resumption of executions in Belarus, despite the political initiatives of the European Union towards the Government, made also with a view to encouraging reforms in the field of human rights;

49. *Calls on* Belarus to take immediate steps towards abolition of the death penalty by promptly establishing a moratorium on all death sentences and executions with a view to abolishing the death penalty, as provided by United Nations General Assembly resolution 62/149, adopted on 18 December 2007, and resolution 63/168, adopted on 18 December 2008;

50. *Calls upon* the Government of the United States of America to adopt a moratorium on executions leading to the complete abolition of the death penalty in federal legislation and to withdraw its reservation to Article 6(5) of the International Covenant on Civil and Political Rights;

[...]

52. *Calls upon* the retentionist participating States to encourage the Office for Democratic Institutions and Human Rights and OSCE Missions, in co-operation with the Council of Europe, to conduct awareness-raising activities against recourse to the death penalty, particularly with the media, law enforcement officials, policy-makers and the general public;

53. Further *encourages* the activities of non-governmental organizations working for the abolition of the death penalty;

54. *Commits* to monitoring the issue of the death penalty and to considering possible initiatives and ad hoc missions in retentionist countries, so as to urge government authorities to adopt a moratorium on executions with a view to completely abolishing them.

Annex 3

United Nations Standards

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.

7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

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.

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.

Economic and Social Council Resolution 1989/64 of 24 May 1989: Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

The Economic and Social Council,

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:
 - (a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings,

above and beyond the protection afforded in non-capital cases;

- (b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;
- (c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;
- (d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. Invites Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. Also invites Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. Invites Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50;

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

Economic and Social Council Resolution 1984/50 of 25 May 1984: 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.

**UN General Assembly Resolution 65/206 of 21 December 2010:
Moratorium on the use of the death penalty**

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

[...]

3. Calls upon all States:

- (a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;
- (b) To make available relevant information with regard to their use of the death penalty, which can contribute to possible informed and transparent national debates;
- (c) To progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed;
- (d) To establish a moratorium on executions with a view to abolishing the death penalty;

4. Calls upon States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;

5. Requests the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the present resolution;

6. Decides to continue its consideration of the matter at its sixty-seventh session under the item entitled "Promotion and protection of human rights".

**UN General Assembly Resolution 62/149 of 18 December 2007:
Moratorium on the use of the death penalty¹²⁸**

The General Assembly,
[...]

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,

1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Calls upon* all States that still maintain the death penalty to:
 - (a) Respect international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
 - (b) Provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
 - (c) Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
 - (d) Establish a moratorium on executions with a view to abolishing the death penalty;
3. *Calls upon* States which have abolished the death penalty not to reintroduce it;
4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
5. *Decides* to continue consideration of the matter at its sixty-third session under the same agenda item.

¹²⁸ Resolution 63/168 was adopted by the UN General Assembly on 18 December 2008, on the implementation of Resolution 62/149.

**General Comment No. 06: The right to life (art. 6) of 30 April 1982 by 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). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. 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.

UN Commission on Human Rights Resolution 2005/59

Question of the death penalty

The Commission on Human Rights,

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;
- (h) 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 re-

port 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.

Annex 4

Council of Europe Standards

Extract from the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950

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.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty of 28 April 1983

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 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.

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 of 3 May 2002

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 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.

Annex 5

European Union Standards

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.

Extract from EU Guidelines on the Death Penalty: revised and updated version of 16 June 2008

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 acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.
- 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 an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, 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; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

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.

**Extract from European Parliament Resolution of 7 October 2010 on the
World Day Against the Death Penalty**

The European Parliament,

...

1. *Reiterates* its long-standing opposition to the death penalty in all cases and under all circumstances and *emphasises* once again that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights;
2. *Condemns* all executions wherever they take place; strongly calls on the EU and its Member States to enforce the implementation of the UN resolution on a universal moratorium on executions with a view to total abolition in all states which still practice the death penalty; calls on the Council and the Commission to take action in order to progressively restrict its use while insisting that it be carried out according to international minimum standards; expresses its deep concern regarding the imposition of the death penalty on minors and on persons with mental or intellectual disability and calls for their immediate and definitive ending;
3. *Urges* the EU to use all tools of diplomacy and cooperation assistance available to it to work towards the abolition of the death penalty;
4. *Calls upon* states applying the death penalty to declare an immediate moratorium on executions;
(...)
6. Encourages the states that have not abolished the death penalty to respect safeguards protecting the rights of those facing the death penalty, as laid down in the United Nations Economic and Social Council Safeguards; calls on the Council and the Commission to encourage those remaining countries which have not signed and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights to do so, and those Member States that have not signed Protocol No 13 to the European Convention on Human Rights on the death penalty to do so;
7. *Calls on* OSCE member states, in particular the United States and Belarus, to adopt an immediate moratorium on executions;
8. *Calls on* Kazakhstan and Latvia to amend provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances;
9. *Strongly encourages* EU Member States and all co-sponsors of the 2007 and 2008 UNGA resolutions to introduce, in the framework of a reinforced cross-regional al-

liance, a third resolution on the death penalty at UNGA65 which should in priority address:

- the abolition of ‘State secrets’ regarding the death penalty;
- the position of a Special Envoy who would not only monitor the situation and apply pressure with a view to increased transparency within the systems of capital punishment, but also continue to persuade those who still maintain the death penalty to adopt the UN line for a moratorium on executions with a view to abolishing the death penalty;
- the ‘most serious crimes’ threshold for the lawful application of capital punishment;

10. *Calls on* the OSCE participating states to encourage the Office for Democratic Institutions and Human Rights and OSCE Missions, in cooperation with the Council of Europe, to conduct awareness-raising activities against recourse to the death penalty, particularly with the media, law enforcement officials, policy-makers and the general public;

11. *Calls on* retentionist OSCE states to treat information concerning the death penalty in a transparent manner, providing public information on the identity of individuals sentenced to death or executed and statistics on the use of the death penalty, in accordance with OSCE commitments;

12. *Urges* the Council and the Commission, notably in view of the setting-up of the EEAS, to provide guidance for a comprehensive and effective European death penalty policy with regard to dozens of confirmed European nationals facing execution in third countries, which should include strong and reinforced mechanisms in terms of the identification system, the delivery of legal assistance, EU legal interventions and diplomatic representations;

13. *Further encourages* the activities of non-governmental *organisations* working for the abolition of the death penalty, including Hands Off Cain, Amnesty International, Penal Reform International, the World Coalition Against the Death Penalty and the International Helsinki Federation for Human Rights, Sant’Egidio and Reprieve; welcomes and supports the recommendations on EU instruments in the fight against the death penalty made at the 12th EU-NGO Forum on Human Rights;

14. *Undertakes* to monitor the issue of the death penalty, to raise specific cases with the relevant national authorities and to consider possible initiatives and ad hoc missions in retentionist countries, so as to urge government authorities to adopt a moratorium on executions with a view to completely abolishing them;

15. *Requests* the Council and the Commission, when it comes to concluding agreements with countries that still apply the death penalty or with countries which have not signed the moratorium with a view to abolishing the death penalty to strongly encourage them to do so;

16. *Requests* the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission and the Members States to continue to speak with one voice and to keep in mind that the main political content of the resolution must be the adoption of a worldwide moratorium as a crucial step towards the abolition of the death penalty;

17. *Calls in particular on* the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission to demonstrate the political priority she attaches to the abolition of the death penalty by systematically raising the issue in political contacts with retentionist countries and through regular personal interventions on behalf of those at risk of imminent execution;
(...)

19. *Encourages* regional cooperation to this end; points out, for example, that Mongolia formally established a moratorium on executions in January 2010 and that, as a positive consequence of this, several retentionist countries have been considering the constitutionality of this form of punishment;

20. *Calls on* the Council and Commission to identify ways in which to improve the implementation and effectiveness of the EU Guidelines on the Death Penalty during the current review of the EU's human rights policy, in particular in view of the planned revision of the Guidelines in 2011;

**Extract from European Parliament resolution of 26 April 2007 on the
initiative for a universal moratorium on the death penalty**

The European Parliament,

...

1. Reiterates its call to the EU Member States to gather third-country support for the statement;
2. Encourages the EU to seize the existing opportunities and press its case and calls on the EU Member States and the EU to immediately submit - seeking the co-sponsorship of countries in other continents - a resolution for a universal moratorium on the death penalty to the current UN General Assembly;
3. Calls on the EU Presidency to encourage those remaining countries which have not signed and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights to do so, and those Member States that have not signed Protocol No 13 to the European Convention on Human Rights on the death penalty to do so;
4. Fully endorses the final declaration of the third World Congress and intends to follow up the Congress, notably by developing the parliamentary dimension of the global campaign against the death penalty and raising the matter through its inter-parliamentary delegations and participation in the ACP-EU Joint Parliamentary Assembly and the Euro-Mediterranean Parliamentary Assembly;
5. Calls on the Council and the Commission to take every possible opportunity to support the establishment of regional abolitionist coalitions;
6. Calls on all institutions of the European Union, together with the Council of Europe, to support the World Day against the Death Penalty by declaring 10 October a European Day against the Death Penalty, from 2007 onwards, and endorses the initiative of organising a high-profile European conference against the death penalty in connection with that day; mandates its President to represent the European Parliament, together with the relevant delegation, on that occasion;
7. Instructs its President to forward this resolution to the Council, the Commission, the EU Member States, the UN Secretary-General, the Chair of the UN General Assembly and the UN Member States.

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 6

Organization of American States Standards

Extract from the American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32) of 22 November 1969

Chapter II – Civil and Political 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 reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses 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.

**Protocol to the American Convention on Human Rights
to Abolish the Death Penalty of 1990 (A-53)**

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.

Annex 7

Relevant Recommendations made at the 2011 OSCE Human Dimension Implementation Meeting

During the 2011 OSCE Human Dimension Implementation Meeting, held in Warsaw from 26 September to 7 October 2011 views were exchanged on the question of the abolition of the death penalty. *Working Session 5: Rule of Law II* addressed the issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism.

The ODIHR Director noted that capital punishment was slowly but steadily disappearing, but that the trend had slowed down during the last year. Many speakers called for the abolition of the death penalty, which is still carried out in two participating States, and for a moratorium on its use. In addition to the recommendations listed below, participants expressed concerns on the discriminatory application of the death penalty and the alleged deterrent effect.

The following recommendations were made:

- To introduce a moratorium on the death penalty and, if a moratorium already exists, to abolish the death penalty and to convert all sentences into life-long imprisonment;
- To encourage public debate on the abolition of death penalty if capital punishment still exists;
- To provide adequate funding for the legal defense of persons who might be sentenced to death;
- To ensure transparency regarding the use of the death penalty and to make information on it available to the public.

Annex 8

ODIHR Questionnaire on the Death Penalty

- 1) Please inform us of any developments with regard to the death penalty in your country since 1 July 2011.

LEGAL FRAMEWORK

- 2) The attached paper is a copy of the entry related to your country in the publication of 2011. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
- 3) Has the number of crimes that carry the death penalty increased or decreased since the last publication?
- 4) Do any crimes under your country's Code of Military Law carry the death penalty? Have there been any changes since the last publication?
- 5) Have any steps been taken to introduce, retain or remove a moratorium on executions? If yes, please provide details and the legal basis for those changes and please attach copies of relevant legislation or presidential decrees.
- 6) If a moratorium is in place, have there been any changes since last year's publication in the specific procedure regulating the treatment and rights of persons subjected to the moratorium? If yes, 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 1 July 2011 to 30 June 2012.
- 9) Please provide us with the full name and age of persons who have been sentenced to death in the period 1 July 2011 to 30 June 2012.
- 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 1 July 2011 to 30 June 2012 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; or
 - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 14) If there have been changes since the last year's publication, 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 1 July 2011 to 30 June 2012. 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 1 July 2011 to 30 June 2012 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; or
 - 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 the death penalty who have been granted clemency or had their sentence commuted since 1 July 2011.

SAFEGUARDS

- 19) Please describe if there have been any changes in 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 is 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? Have there been any changes in this system since last year's publication?
- 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) If there have been changes since last year's publication, 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) If there have been changes since last year's publication, please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out, as well as of the place of burial of executed persons.

MISCELLANEOUS

- 25) Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue in the period 1 July 2011 to 30 June 2012.

Annex 9

Status of Ratifications of Relevant Treaties

Status of Ratifications as of: 30 August 2012

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Albania	A	r	r	r	r	r
Andorra	A	r	r	r	r	r
Armenia	A	r	not ratified	r	r	signed
Austria	A	r	r	r	r	r
Azerbaijan	A	r	r	r	r	not ratified
Belarus	R	r	not ratified	n/a	n/a	n/a
Belgium	A	r	r	r	r	r
Bosnia and 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	r	r
Georgia	A	r	r	r	r	r
Germany	A	r	r	r	r	r
Greece	A	r	r	r	r	r
Holy See	A	not ratified	not ratified	n/a	n/a	n/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	r
Kazakhstan	DA	r	not ratified	n/a	n/a	n/a
Kyrgyzstan	A	r	ratified	n/a	n/a	n/a
Latvia	PA	r	not ratified	r	r	ratified
Liechtenstein	A	r	r	r	r	r

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Lithuania	A	r	r	r	r	r
Luxembourg	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	signed	r	r	signed
Portugal	A	r	r	r	r	r
Romania	A	r	r	r	r	r
Russian Federation	DA	r	not ratified	r	signed	not ratified
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	r
Sweden	A	r	r	r	r	r
Switzerland	A	r	r	r	r	r
Tajikistan	DA	r	not ratified	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	r
United Kingdom	A	r	r	r	r	r
United States of America	R	r	not ratified	n/a	n/a	n/a
Uzbekistan	A	r	r	n/a	n/a	n/a
Former Yugoslav Republic of Macedonia	A	r	r	r	r	r

Notes:

r = ratification or accession

signed = signature only

not ratified = neither signed not ratified

n/a = non-applicable as not member of
the Council or Europe

A = abolitionist

DA = *de facto* abolitionist