



Promoting penal
reform worldwide

**Organisation for Security and Co-operation in Europe (OSCE):
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Statement of Penal Reform International Exchange of views on the Question of abolition of capital punishment

26 September 2012

Penal Reform International (PRI)¹ would like to congratulate the OSCE's commitment to the abolition of the death penalty within the region. We highly welcome the Office for Democratic Institutions and Human Rights (ODIHR)'s annual reports on the Status of the Death Penalty in the OSCE region, and see these reports as adding to the global debate on the fight against the death penalty by documenting changes in the status of the death penalty in OSCE participating States.

PRI recalls the 2009 Vilnius Declaration which adopted the *Resolution on a Moratorium on the Death Penalty and Towards its Abolition*.² PRI recalls the Resolution on the implementation of OSCE commitment adopted in Kyiv at the Sixteenth Annual Session in July 2007, which "reaffirms the value of human life and calls for the abolition in the participating States of the death penalty replacing it with a more just and humane means of delivering justice."³ PRI also recalls the commitment undertaken in the 1990 Copenhagen Document to exchange information on the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.⁴

¹ Penal Reform International (PRI) is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment, for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

² *Resolution on A Moratorium on the Death Penalty and Towards its Abolition*, adopted at the Eighteenth OSCE Parliamentary Assembly Annual Session in Vilnius, 29 June to 3 July 2009.

³ *Kyiv Declaration of the OSCE Parliamentary Assembly and Resolutions adopted at the Sixteenth Annual Session*, 5-9 July 2007, para. 114.

⁴ *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE)*, 5 to 29 June 1990, para. 17.7.

PRI notes that fifty-one OSCE participating States have abolished the death penalty in law for all crimes; one participating state has abolished the death penalty in law for ordinary crimes (Kazakhstan); two participating states are *de facto* abolitionists (Russia and Tajikistan); and two participating states retain the death penalty (Belarus and USA).

PRI welcomes the decision by Latvia on 13 October 2011 to ratify Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the abolition of the death penalty in all circumstances, and to remove the death penalty for all remaining crimes with effect from 1 January 2012.

We recall that the death penalty was abolished in law for all crimes in the states of Illinois, on 9 March 2011, and in Connecticut, on 5 April 2012, and note that on 6 November 2012, California will vote on Proposition 34 aiming at the abolition of the death penalty. If Proposition 34 succeeds, California would become the 18th abolitionist state in the USA.

However, executions continue to be carried out in the USA, with 43 recorded executions in 2011, and at least 27 executions up to the end of August 2012.⁵ Belarus also continues to carry out executions, averaging two per year; the last two executions reportedly took place in March 2012.⁶

Belarus and the USA go against the global trend toward abolition of the death penalty; according to the United Nations Secretary General, approximately 150 of the 193 Member States of the UN have abolished the death penalty or introduced a moratorium, either in law or in practice. Reportedly, 175 of the 193 Member States of the United Nations were execution-free in 2011.⁷

The tenth World Day against the Death Penalty, 10 October 2012, aims to encourage and consolidate the political and general awareness of the movement against the death penalty internationally.⁸ With this in mind, PRI recommends that Belarus and the USA implement the 2009 *Resolution on a Moratorium on the Death Penalty and Towards its Abolition* and the UN General Assembly Resolution 65/206 which calls for a moratorium on the use of the death penalty, as a step towards full abolition. We also call upon Russia and Tajikistan to become abolitionist in law, and Kazakhstan to abolish provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances. We call upon all States that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty.

PRI also notes that states that have abolished the death penalty in the OSCE area, or those that institute moratoria, do not always create humane conditions for prisoners held indefinitely on ‘death row’, or substitute alternative sanctions that amount to torture or cruel, inhuman or degrading punishment, such as life imprisonment without the possibility of parole, solitary confinement for long and indeterminate periods of time, and inadequate basic physical or medical provisions. Such practices fall outside international human rights standards and norms, including those established under the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs)⁹

⁵ Statistics found at <http://www.deathpenaltyinfo.org/executions-united-states>, accessed on 7 September 2012.

⁶ International Commission against the Death Penalty, *Statement by the International Commission against the Death Penalty on Belarus: Execution of Dmitry Konovalov and Vladislav Kovalyov*, 19 March 2012.

⁷ UN Human Rights Council, *Question of the death penalty: Report of the Secretary-General*, 2 July 2012, A/HRC/21/29, para. 4.

⁸ For further information on the World Day against the Death Penalty, please see the World Coalition against the Death Penalty’s World Day campaign, <http://www.worldcoalition.org/worldday.html>.

⁹ Adopted in 1955 and approved by the UN Economic and Social Council in 1957.

PRI recalls that Article 10(3) of the ICCPR mandates that the ‘essential aim of the penitentiary system’ should be ‘reformation and social rehabilitation’. Life imprisonment without parole (LWOP), while preserving physical life, removes any hope of release and therefore denies the offender a meaningful opportunity for rehabilitation and undermines the inherent right to human dignity.

Prolonged solitary confinement and semi-isolation of prisoners raises serious concerns regarding the mental health of such prisoners. A number of studies which have looked at the effects of solitary confinement on prisoners have found that such prisoners suffer from paranoia, self-mutilation, suicidal thoughts, depression, and loss of a sense of reality.¹⁰ In certain conditions and circumstances prolonged solitary confinement amounts to torture and ill-treatment, and even where this threshold is not met, it infringes the right to mental health and the right to human dignity. Solitary confinement also results in an elevated risk of torture or ill-treatment going unnoticed and undetected. It raises questions about double jeopardy; the deprivation of liberty constitutes the punishment, prison conditions and treatment should not form a secondary type of punishment.

Penal Reform International calls on all OSCE participating States, while continuing to move toward full abolition of the death penalty, to review their policies and practices in relation to those convicted of the worst crimes and to bring them into compliance with international standards and norms. In particular, PRI calls on the OSCE to engage in debate and dialogue as to how best to protect the rights of those sentenced to life imprisonment as a vulnerable category of prisoner, including upholding their rights. Reference should be made to the prohibition of life imprisonment without parole, prolonged solitary confinement, and the obligation to equal treatment of prisoners including those serving a life sentence.¹¹

Recommendations:

The Republic of Belarus and the United States of America:

- 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 the Vilnius Resolution on a Moratorium on the Death Penalty and Towards its Abolition, and UN General Assembly Resolution 65/206 which calls for a moratorium on the use of the death penalty.

The Russian Federation and the Republic of Tajikistan:

- To abolish the death penalty in law for all crimes.

The Republic of Kazakhstan:

- To abolish provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances.

¹⁰ See for example, Stuart Grassain, *Psychiatric Effects of Solitary Confinement*, Journal of Law & Policy Vol. 22:325, 2006, or Craig Haney, *Mental Health Issues in Long-term Solitary and “Supermax” Confinement*, Crime & Delinquency, University of California, Santa Cruz.

¹¹ For further information on life and long-term imprisonment, please see PRI briefing paper *Life after death: what replaces the death penalty?*, April 2012, or PRI information pack on *Alternative Sanctions to the Death Penalty*, April 2011, both available for download in Arabic, English, French and Russian at <http://www.penalreform.org/death-penalty-publications>.

All OSCE States:

- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty, if they have not yet done so.
- To review their policies and practices in relation to those convicted of the worst crimes and to bring them into compliance with international standards and norms.

The OSCE:

- To engage in debate and dialogue as to how best to protect the rights of those sentenced to life imprisonment as a vulnerable category of prisoner, including upholding their rights. Reference should be made to the prohibition of life imprisonment without parole, prolonged solitary confinement, and the obligation to equal treatment of prisoners including those serving a life sentence.

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