

The Death Penalty in the OSCE Area

Background Paper 2016

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2015*. 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 2015 to 31 March 2016.

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Designed by Nona Reuter

The Death Penalty in the OSCE Area

Background Paper 2015



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I. Introduction

1. Overview

OSCE participating States have made a number of commitments regarding the death penalty, although there are no specific OSCE commitments requiring the abolition of this type of punishment. In the Vienna Document,¹ participating States agreed that the death penalty could be imposed only for the most serious crimes and only in line with international commitments. Moreover, states agreed to consider the potential abolition of the death penalty, to exchange information toward that end, and to make information on the use of the death penalty available to the public.² In the light of these commitments and its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) monitors the trends and developments regarding human rights standards and practices among OSCE participating States and their application of the death penalty. The findings are presented each year in the *Background Paper on the Status of the Death Penalty in the OSCE Area*. The background paper is based on the information provided by participating States, in the form of responses to ODIHR questionnaires. The information from their responses has been included in the present report, to the extent possible, and is supplemented with information from international and regional human rights bodies, non-governmental organizations and media reports.

The questionnaire was sent out on 20 April 2016 to all 57 OSCE participating States. The deadline for replies was 20 June 2016. In order to streamline the production of this report and related follow-up activities, the reporting period for the 2016 background paper was moved earlier than previous years and, for this document, covers developments from 1 July 2015 to 31 March 2016, a period of nine months. Future editions of this document will cover a 12-month period, from April to March. ODIHR commends

1 Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference, 15 January 1989, Vienna), paragraph 24, <<http://www.osce.org/mc/16262>> .

2 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, 29 June 1990, Copenhagen, paragraph 17.7 and 17.8, <<http://www.osce.org/odihr/elections/14304>> .

the 45 participating States³ that have provided information on the status of the death penalty in their respective countries.

The background paper provides information on changes and developments with regard to the death penalty in the OSCE area and new developments on the international level. In this year's edition, there is a specific focus on the relationship between capital punishment and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. ODIHR has noted the evolving international debate on the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, that was brought into focus by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez in 2012. ODIHR will report on other thematic aspects of the death penalty in the background paper for 2017 and 2018.

Throughout the background paper, an *abolitionist* state is defined as a participating State in which there is no death penalty, in law, for all crimes. A *de-facto abolitionist* state is one in which the death penalty is allowed, although in practice the punishment is not imposed. A *retentionist* state is one that continues to implement this penalty.⁴

Part I of the present background paper contains an introductory essay written by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez.⁵

Part II of the background paper covers the current status of the death penalty in the OSCE region, with a thematic focus on the discussion around capital punishment and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, followed by other aspects of the death penalty in the OSCE region.

3 The participating States of the Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, the former Yugoslav Republic of Macedonia, France, Greece, Georgia, Germany, the Holy See, Hungary, Iceland, Ireland, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, the Netherlands, Norway, Poland, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey and Ukraine. Republic of Uzbekistan have replied to ODIHR's Questionnaire on the Death Penalty 2016.

4 See "The Death Penalty in the OSCE Area: Background Paper 2015" (OSCE's Office for Democratic Institutions and Human Rights (2015)) at <http://www.osce.org/odihr/184581?download=true>

5 The opinion expressed by the Special Rapporteur are those of the author and do not necessarily reflect the opinion of the OSCE or ODIHR.

2. Introductory Essay of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez

The Death Penalty and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Four years ago, in October 2012, I presented my thematic report to the United Nations General Assembly, exploring the death penalty as it relates to the international prohibition of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment).⁶

In that report I found that, as also reflected in the OSCE commitments, the death penalty has generally been considered a lawful sanction under the international standards and regulations governing the right to life. And that – also similarly to the OSCE commitments – international law decidedly encourages abolition of the death penalty, but does not require it.

However, I demonstrated in my 2012 report that certain circumstances surrounding the actual imposition or execution of the death penalty are already established to constitute cruel, inhuman or degrading treatment or punishment, or even torture. The harshness of the death penalty goes beyond the execution itself. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment may be inflicted on a convict and his relatives awaiting execution at different stages of her or his time in detention. A convict who has been sentenced to death can be caught in a terrifying limbo and constant uncertainty between imminent death and the hope that her or his appeals for clemency could result in a pardon. The mental trauma to a person on death row is compounded when left waiting for a long time for the execution, which can take decades and sometimes comes unannounced until moments before it happens. For instance, since January 2014, the Supreme Court of India has issued a series of decisions commuting death sentences on the grounds of delay in the disposition of mercy petitions. The court held that such delays caused psychological torture, which could lead to mental illness, thus justifying commutation.⁷ During that agonizing wait, additional punishment, such as solitary confinement and deprivation of social interaction or poor prison conditions, and lack of educational and recreational activities add to an already extremely harsh punishment. Circumstances that

6 United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report, A/67/279 (9 August 2012), <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>>.

7 United Nations Secretary-General, Report on the Moratorium on the use of the death penalty, A/69/288 (8 August 2014), para. 32, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/500/31/PDF/N1450031.pdf?OpenElement>>; *Shatrughan Chauhan and Anr. v. Union of India and Ors*, Writ Petition (Criminal) No. 55 of 2013 (judgement issued on 21 January 2014), <<http://supremecourtindia.nic.in/outtoday/wpc552013.pdf>>; *Shriharan and Suthendraraja and Perarivalan v. Union of India and Others*, Supreme Court of India, 18 February 2014, <<http://www.sci.nic.in/outtoday/tc12012.pdf>>; *Devender Pal Singh Bhullar v. State (NCT) of Delhi* (2013) 6 SCC 195, <<http://www.sci.nic.in/outtoday/40266.pdf>>.

produce severe mental trauma and physical suffering for prisoners sentenced to death are referred to as the “death row phenomenon” and may qualify as cruel, inhuman or degrading treatment, or even torture.⁸

Some methods of execution have already been declared violations of the absolute prohibition of torture, such as death by stoning or gas asphyxiation.⁹ The cruelty of other methods is widely discussed, such as lethal injection or hanging.¹⁰ I reiterate my findings that it has become increasingly difficult for states to prove that the application of the death penalty does not violate the absolute prohibition of torture or other ill-treatment.

Regarding lethal injection as a method of execution used in the United States of America, one of the two retentionist states in the OSCE region, I have repeatedly found that the United States Government violated the right to be free from torture or cruel, inhuman or degrading treatment or punishment by the administration of compound chemicals that cause pain and suffering.¹¹ Reports show that executions by lethal injection can last over 20 minutes, or even more, and lead to severe suffering, burns and convulsions.¹² According to new statistics, lethal injection has the highest rate of botched executions, prompting litigation at the domestic and regional levels, as well as the expression of concern by my Rapporteurship and other UN bodies.¹³ States have a reinforced special duty to ensure that the method of execution does not constitute cruel or unusual punishment. In this regard, the drugs and doses to be used in case of executions by lethal injection, as well as the composition of the execution team and the training of its members, should be subjected to the highest quality control standards. I strongly condemn the fact that some states in the United States are experimenting with drugs never tried before and with controversial lethal

8 See EU Guidelines on death penalty, 8416/13, 12 April 2013(xiii), <https://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_sto8416_en.pdf >; See also “Moving Away from the Death Penalty: Lessons in South-East Asia”, OHCHR, 2013, para. 2.4.3, <<http://bangkok.ohchr.org/files/Moving%20away%20from%20the%20Death%20Penalty-English%20for%20Website.pdf> >.

9 Special Rapporteur 2012, Op. Cit., note 6, para. 31 and 32; see also European Parliament Resolution 2015/2879 (RSP), 8 October 2015, D, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-1007+0+DOC+XML+V0//EN>>.

10 See African Commission on Human and Peoples’s Rights, Interights & Ditswanelo v. Republic of Botswana, communication 319/06 (2016): the Commission held that execution by hanging constitutes cruel and unusual punishment in violation of Article 5 of the African Charter on Human and Peoples’ Rights, <<http://www.achpr.org/communications/decision/319.06/>>.

11 United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report, A/HRC/28/68/Add.1, (6 March 2015), JAL 04/08/2014, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>>.

12 See, Ninth Session of the Working Group on the Universal Periodic Review, United Nations Human Rights Council, 22 November – 3 December 2010, United States of America (1st cycle), submission by The Advocates for Human Rights, <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS9.aspx>>; see also Amnesty International, “Execution by lethal injection: a quarter century of state poisoning” (2007), <<http://www.amnestyusa.org/document.php?lang=e&id=ENACT500072007>>.

13 See the Inter-American Commission on Human Rights, case *Ramiro Hernandez Llanas v. US* (March 31, 2014), Resolution 7/2014 re precautionary measure, <<https://www.oas.org/es/cidh/decisiones/pdf/2014/MC110-14-EN.pdf>>; and Death Penalty Information Center, website, <<http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions>>.

injection protocols, as well as passing legislation allowing them to keep information about where they get their supply a secret. Even if execution itself has not yet been found a cruel and unusual punishment under the Eight Amendment of the United States Constitution, a cruel and torturous death using untested drugs certainly is.

Regarding the lack of transparency or secrecy surrounding executions, I have repeatedly called on retentionist states to end the practice of executions with little or no prior warning given to condemned prisoners and their families, a practice often observed in Belarus, the other retentionist State in the OSCE region.¹⁴ In 1999, the United Nations Human Rights Committee noted that complete secrecy surrounding the date of execution and the place of burial, and refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. In the case of *Natalia Schedko v. Belarus*, the Committee found the authorities' initial failure to notify a mother of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounted to inhuman treatment of the mother, in violation of article 7 of the Covenant.¹⁵ Most recently, the African Commission on Human and Peoples' Rights held that the prisoner must be informed in advance of the time and place of her or his execution and have a prior opportunity to meet with family or seek spiritual comfort. The failure of the prison authorities to inform the family and the lawyers of the date, the hour and the place of the execution, as well as the exact place of the burial, constitutes a violation of Article 5 of the African Charter, prohibiting torture and cruel, inhuman or degrading treatment or punishment, and fails to respect the human dignity of both the family and the prisoner, which further violates Article 5.¹⁶

While some methods of execution and other circumstances related to the implementation of the death penalty, including the "death row phenomenon", often constitute violations of the prohibition of torture or other ill-treatment themselves, I have sought to demonstrate that, in certain cases, international law already expressly considers the death penalty to be a violation *per se* of the prohibition of torture or other ill-treatment. These standards hold that executions of persons belonging to certain

¹⁴ See Special Rapporteur 2015, *Op. Cit.*, note 11, JUA 08/01/2014 Case No. BLR 1/2014 and JUA 01/10/2013 Case No. BLR 3/2013, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>>.

¹⁵ See United Nations Human Rights Committee, *Natalia Schedko v. Belarus*, Communication No. 886/1999, U.N. Doc. CCPR/C/77/D/886/1999 (1999), <<http://juris.ohchr.org/Search/Details/1037>>.

¹⁶ See African Commission on Human and Peoples' Rights, *Interights & Ditshwanelo v. Republic of Botswana*, communication 319/06 (2016), <<http://www.achpr.org/communications/decision/319.06/>>.

groups, such as juveniles,¹⁷ persons with mental disabilities,¹⁸ pregnant women, elderly persons and persons sentenced after an unfair trial,¹⁹ are considered particularly cruel and inhuman, regardless of the specific methods of implementation or other attendant circumstances. Although international law does not attribute a different value to the right to life of these particular groups, it holds that the imposition of the death penalty in such cases *per se* is a violation of the prohibition of torture. These standards are based on the established belief that the execution of such persons is inherently cruel. The prohibition on the execution of juveniles is also considered a *jus cogens* norm, an imperative rule that binds all states. Similarly, an increasing number of regional and domestic courts, including the Inter-American Court of Human Rights and the United States Supreme Court, have held that the mandatory death penalty, where judges have no discretion to consider aggravating or mitigating circumstances with respect to the crime or the offender, violates due process and amounts to cruel, inhuman or degrading treatment or punishment.²⁰

These standards and practices also illustrate a developing global trend to reconsider capital punishment in all cases as an intrinsic violation of the prohibition of torture or other ill-treatment. I am convinced that the rigorous conditions applied to the imposition of the death penalty under international law and that the burden is on states to prove that the surrounding circumstances, including the method of execution, do not violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, make retention of this punishment not only costly and impractical, but almost impossible. These requirements include strict due-process guarantees, restrictions on the specific methods of execution, prevention of the “death row phenomenon” and other related circumstances, and the prohibition on execution of individuals with certain characteristics. Even with such conditions in place, however, states cannot guarantee that standards and conditions imposed by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 1 and 16 of the Convention against Torture (CAT) in regards to particular methods of implementation of execution and other related circumstances will not be violated in each case.

17 For the case of juveniles see *Domingues v. United States*, Rep. Inter-Am. Ct. H.R., No. 62/02, paras. 84-87 (2002) <<http://cidh.org/annualrep/2002eng/USA.12285.htm>>; *Roper v. Simmons*, 543 U.S. 551 (2005), <<https://www.supremecourt.gov/opinions/04pdf/03-633.pdf>>.

18 See United Nations Office of the High Commissioner for Human Rights on the question of the death penalty, E/CN.4/RES/2003/67, <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5021>; United States Supreme Court, *Atkins v. Virginia*, 20 June 2002, No. 00-8452, 536 U.S. 304, <<http://caselaw.findlaw.com/us-supreme-court/536/304.html>>.

19 See United Nations Human Rights Committee, *Baboheram-Adhin v. Suriname*, Comms. Nos. 148-154/1983 (1985), <<http://juris.ohchr.org/Search/Details/348>>; United Nations Human Rights Committee, *Pratt v. Jamaica*, Comms Nos. 210 & 225 (1986) (1987), <<http://juris.ohchr.org/Search/Details/308>>; *Bader v. Sweden*, ECtHR Application no. 13284/04 (2005), <[http://hudoc.echr.coe.int/eng?i=001-70841#\["itemid":\["001-70841"\]\]](http://hudoc.echr.coe.int/eng?i=001-70841#[)>; *Öcalan v. Turkey*, ECtHR, application no. 46221/99, 12 May 2005 (Grand Chamber), <[http://hudoc.echr.coe.int/eng?i=001-142086#\["itemid":\["001-142086"\]\]](http://hudoc.echr.coe.int/eng?i=001-142086#[)>.

20 See *Woodson v. North Carolina* 428 U.S. 280 (1976), <<http://caselaw.findlaw.com/us-supreme-court/428/280.html>>; *Hilaire v. Trinidad and Tobago*, Inter-Am. Ct. H.R., Series C, No. 94, paras. 167,168 (2002), <http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf>.

In fact, I found no categorical evidence that any method of execution currently in use complies with the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Even if the required safeguards were respected, all methods of execution currently used could inflict inordinate pain and suffering.²¹

There is evidence of an evolving standard within regional and local jurisprudence and state practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other ill-treatment. In 2012, I therefore urged states to further investigate this evolving standard in order to re-examine the legality of the death penalty under international law, and to determine its implications for the global trend towards abolition. I believe it is necessary for the international community, including OSCE participating States, to discuss this issue further and to reconsider whether the death penalty *per se* fails to respect the inherent dignity of the human person, because it constitutes a cruel, inhuman and degrading punishment and violates the absolute prohibition of torture.

Globally, there have been considerable additional developments since 2012, and I believe that the ability of states to impose the death penalty without violating the prohibition of torture and other ill-treatment is becoming increasingly restricted. In his recent report on the question of the death penalty from July 2015, the United Nations Secretary-General further elaborated on my findings from 2012, and concluded that the imposition of the death penalty was incompatible with human dignity, the right to life and the prohibition of torture and other ill-treatment.²² The report states that approximately 160 of the 193 UN Member States have abolished the death penalty or introduced *moratoria*, either in law or in practice. One-hundred-and-two countries and territories in the world have abolished the death penalty for all crimes, and about half of them have enshrined its prohibition in their constitutions, often making explicit the link with the rights to life and physical integrity.²³ Once we add to this the countries that have abolished this punishment in practice, two-thirds of the world's governments do not execute convicts any longer.²⁴ Amnesty International's 2015 Global Report documented a steady decline in the use of the death penalty in the United States and around the world. In 2015, only six states in the United States carried out executions, and 86 per cent of executions were concentrated in just three states: Texas, Missouri and Georgia.²⁵

21 Special Rapporteur 2013, *Op. Cit.*, note 6, paras. 31–40.

22 See, “Yearly supplement of the Secretary General to his quinquennial report on capital punishment – Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty”, A/HRC/30/18 (16 July 2015), para. 55, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>>.

23 *Ibid.* para. 14.

24 Amnesty International, “Global Report – Death Sentences and Executions 2015, 2016”, <<https://www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/>>.

25 *Ibid.*, page 13.

In his report, the United Nations Secretary General noted that governments that still use the death penalty do not have unfettered discretion in deciding the manner in which it is carried out. They should comply with requirements emanating from the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.²⁶ The United Nations Human Rights Council, in its resolution 30/5, from October 2015, recalled my call to consider whether the use of the death penalty violated the prohibition of torture and other ill-treatment. Likewise, the upcoming biennial high-level panel discussion to be held at the 34th session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other ill-treatment.²⁷ In its 17 December 2015 resolution on torture and other cruel, inhuman or degrading treatment or punishment, the United Nations General Assembly recognized that states must protect the rights of those facing the death penalty.²⁸

The growing trend toward the abolition of the death penalty and the regulation of the particular methods of implementation reflect the irreconcilable conflict between the lawful imposition of the sanction and the prohibition of torture or other ill-treatment under international law. Other documents that provide evidence of this trend and, at the same time, constitute a reflection of the international movement toward abolition are, among others, the United Nations General Assembly Resolutions calling for a moratorium on the use of the death penalty with a view to achieving its abolition,²⁹ and the report of the Office of the High Commissioner for Human Rights (OHCHR) showing a positive picture of progress in South-East Asia towards abolition of the death penalty in that region, consistent with the worldwide trend.³⁰ Regional instruments, such as the EU Guidelines or the resolution of the Council of Ministers of the Community of Portuguese-speaking countries, are further indicators of the global trend, at times explicitly linking the application of the death penalty with the prohibition of torture and other ill-treatment.³¹

²⁶ Secretary General, *Op. Cit.*, note 22, para. 30.

²⁷ Resolution adopted by the Human Rights Council on 1 October 2015, on the question of the death penalty, A/HRC/RES/30/5 (12 October 2015), page 2 and para. 6, <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=25720>.

²⁸ United Nations General Assembly Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, A/RES/70/146 (12 February 2016), <<http://www.un.org/en/ga/70/resolutions.shtml>>.

²⁹ United Nations General Assembly Resolutions on the Moratorium on the Use of the Death Penalty, A/RES/62/149 (2007), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/149; A/RES/63/168> (2008), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/168>; A/RES/65/206 (2010), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/206>; A/RES/67/176 (2012), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/176>; and A/RES/69/186 (2014), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/186>.

³⁰ EU Guidelines, *Op. Cit.*, note 8.

³¹ *Ibid.*; see also “EU Policy on Death Penalty”, <http://eeas.europa.eu/human_rights/adp/index_en.htm>; see also Council of Ministers of the Community of Portuguese-speaking countries, “Resolution on Human Rights and the Abolition of the death Penalty”, (18 July 2003), <<http://www.cplp.org/id-4447.aspx?Action=1&NewsId=3002&M=NewsV2&PID=10872>>, and “Resolution on the Protection and Promotion of Human Rights in the CPLP” (18 July 2013), <<http://www.cplp.org/id-4447.aspx?Action=1&NewsId=3012&M=NewsV2&PID=10872>>.

The conflict between the application of the death penalty and the prohibition of torture is most evident in the growing number of regional and domestic opinions and decisions that have held the death penalty in all cases to constitute cruel, inhuman or degrading treatment or punishment, or even torture, regardless of the methods or circumstances of implementation, or the particular individuals upon whom it is imposed.³² The European Court of Human Rights (ECtHR), for example, citing various resolutions of the European human rights system, has held that the death penalty involves the deliberate and premeditated destruction of a human being by state authorities and that “whatever the method of execution, the extinction of life involves some physical pain; in addition, the foreknowledge of death at the hands of the State must inevitably give rise to intense psychological suffering.”³³ In the case *Al-Saadoon v. United Kingdom*, the European Court came to the conclusion that the prohibition of torture includes the death penalty.³⁴ Similarly, the African Commission on Human and Peoples’ Rights has consistently encouraged the abolition of the death penalty in Africa, expressing concerns that executions will constitute a violation of the provisions of the African Charter on Human and Peoples’ Rights (African Charter), specifically Article 4, which states that human beings are inviolable, with every human being entitled to respect for his life and the integrity of his person, and Article 5, which guarantees the right to respect of the dignity inherent in a human being and the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Similarly, a significant number of domestic courts have held that the death penalty *per se* violates the prohibition of torture and other ill-treatment, including the South African Constitutional Court,³⁵ the Canadian Supreme Court,³⁶ and the Constitutional Courts of Albania, Hungary, Lithuania, and Ukraine.³⁷ These decisions are consistent with the abolition of the death penalty in a number of states in the United States based on the argument that the death penalty itself constitutes an extreme form of physical and psychological suffering, thereby violating the prohibition of torture and other ill-treatment.

This evolving standard, along with the resulting illegality of the death penalty under the concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is developing into a norm of customary law,

32 Special Rapporteur 2012, *Op. Cit.*, note 6, para. 66; see also Manfred Nowak, *Is the Death Penalty an Inhuman Punishment?*, *Jurisprudence of Human Rights Law – A comparative and interpretive approach*, eds. Turku, Finland: Institute for Human Rights, Abo Akademi Univ. (2000).

33 See *Al-Saadoon v. United Kingdom*, application No. 61498/08, para. 115 (2010), <[http://hudoc.echr.coe.int/eng?i=001-97575#{"itemid":\["001-97575"\]}](http://hudoc.echr.coe.int/eng?i=001-97575#{)>.

34 *Ibid.*, para. 120.

35 Constitutional Court of the republic of South Africa, *The State v. Makwanyane*, 1995 SA no. CCT/3/94 (1995), <<http://www.constitutionalcourt.org.za/Archimages/2353.PDF>>.

36 Supreme Court of Canada, *United States v. Burns*, [2001] S.C.R. 283, 289 (Can.), <<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do>>.

37 *Öcalan v. Turkey*, *op. cit.*, note 19, para. 159.

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if it has not already done so.³⁸ I commend the OSCE participating States that have abolished the death penalty and that are engaged in the global efforts to eliminate this cruel, inhuman and degrading punishment once and for all. The trend within the OSCE region to consider capital punishment in the light of the absolute prohibition of torture represents a strong development at the international level, and I am confident that, ultimately, the death penalty will eventually be accepted for what it is: a cruel, inhuman and degrading punishment, which is prohibited under international human rights law.

³⁸ Special Rapporteur, *op. cit.*, note 6, para. 74.

II.

The Status of the Death Penalty in the OSCE Area

1. The Death Penalty and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment

“The application of the death penalty almost invariably entails cruel, inhuman and degrading treatment in violation of international law” – Former United Nations High Commissioner for Human Rights, Navi Pillay³⁹

Since the elaboration of the Universal Declaration of Human Rights and the beginning of the international debate on the abolition of the death penalty, humanity has evolved significantly. The interpretation of the content of each area of human rights in the Declaration has progressed through conventions and international protocols. The death penalty as it relates to the prohibition of torture and other cruel, inhumane or degrading treatment or punishment remains under debate.⁴⁰

1.1 OSCE commitments and the international legal framework

Since 1997, the United Nations General Assembly has adopted five resolutions that called on states to establish a moratorium on executions with a view to abolishing the death penalty.⁴¹ Currently, approximately 160 of the 193 Member States of the United Nations have abolished the death penalty or introduced moratoriums, either in law or in practice. Reportedly, on the global level, 2015 saw a rise in the number of people executed – at least 1,634 – in 25 countries excluding executions in the People’s Republic

39 EU Guidelines, *op. Cit.*, note 8, see also Navi Pillay, former UN High Commissioner for Human Rights, Foreword, <http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf>.

40 “Death Penalty: A Cruel and Inhuman Punishment” Arroyo Zapatero, L., Schabas, W. Takayama, K. (Edit.) Muñoz de Morales, M. (Coord.). – Cuenca : Ediciones de la Universidad de Castilla-La Mancha, 2013, p. 47, <<https://ruidera.uclm.es/xmlui/bitstream/handle/10578/7353/DEATH%20PENALTY%20web.pdf?sequence=1>>.

41 See U.N. G.A. Res. A/RES/65/206 (2010) para.3.d, <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/206>; A/RES/67/176 (2012), para. 3 and A/RES/69/186 (2014), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/186>.

of China.⁴² Despite this, the global trend towards abolition continued in 2015 with four countries abolishing the death penalty for all crimes, including the OSCE participating State Mongolia.

OSCE participating States have committed to ensure that where capital punishment has not been abolished, death sentences may be imposed only for the most serious crimes and in a manner not contrary to international commitments.⁴³ Furthermore, they have committed to keep the question of the death penalty under consideration and to co-operate with relevant international organisations.⁴⁴ In Copenhagen in 1991, the participating States recalled the adoption by the General Assembly of the United Nations, of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty, and noted the provisions of the 6th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), concerning the abolition of the death penalty. OSCE participating States have also committed to ensure that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, and to prohibit such acts, and to take effective legislative, judicial and other measures to prevent and punish such practices.⁴⁵ In Budapest in 1994, OSCE participating States recognized the importance of international norms as laid down in international treaties on human rights, in particular the United Nations Convention against Torture (CAT) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, in the context of the elimination of all forms of torture.

All OSCE participating States, excluding the Holy See, are parties to the International Covenant on Civil and Political Rights (ICCPR), and all participating States are parties to the Convention against Torture (CAT). These include the two retentionist states, Belarus and the United States of America. Forty-seven OSCE participating States are state parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and 28 OSCE participating States are members of the European Union (EU), with its Charter of Fundamental Rights (EU Charter).

Article 6 of the ICCPR protects the right to life but allows the use of the death penalty under specific conditions. Among these conditions, the death penalty “may be imposed only for the most serious crimes,” and must be in accordance with both the law in force at the time of the commission of the crime and the provisions of the

⁴² Amnesty International, *op. cit.*, note 24.

⁴³ Vienna Document, *op. cit.*, note 1, para. 24.

⁴⁴ *Ibid.*; Copenhagen Document, *op. cit.*, note 2, para. 17.1 and 17.7; Document of the Moscow Meeting of the Conference on the Human dimension of the CSCE (Moscow 1991), para. 36, <<http://www.osce.org/odihr/elections/14310>>.

⁴⁵ See Vienna Document, *op. cit.*, note 1, ; Copenhagen Document, *op. cit.*, note 2; Paris (1990), <<http://www.osce.org/mc/39516>>; Budapest (1994), <<http://www.osce.org/mc/39554>>; Istanbul (1999) para. 21, <<http://www.osce.org/mc/39569>>; Ljubljana (2005), <<http://www.osce.org/mc/18778>>; Helsinki (2008), <<http://www.osce.org/node/36545>>; Athens (2009), <<http://www.osce.org/mc/63629>>.

Covenant.⁴⁶ Furthermore, the death penalty may only be imposed, “pursuant to a final judgment rendered by a competent court” and may not be carried out against pregnant women or invoked for crimes committed by persons below the age of eighteen.⁴⁷ The Covenant also provides that Article 6 may not be invoked to prevent or delay the abolition of the death penalty by states parties.⁴⁸ This is supplemented by the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. With the exception of Armenia, Belarus, the Holy See, Kazakhstan, the Russian Federation, Tajikistan and the United States, all OSCE participating States are parties to the Second Optional Protocol to the ICCPR, including Canada, Kyrgyzstan, Mongolia, Turkmenistan and Uzbekistan, which are not state parties to the ECHR.

Article 7 of the ICCPR expressly prohibits the use of torture or cruel, inhuman, or degrading treatment or punishment. Under Article 1.1 of the Convention against Torture (CAT), torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person,” by, or with the instigation or consent of a public official or person acting in an official capacity, so as to intimidate, punish, or obtain information from the person, among other motives.⁴⁹ Article 16.1 of the CAT prohibits other acts of cruel, inhuman, or degrading treatment or punishment (other ill-treatment) committed by, or with the instigation or consent of public officials, that cause pain and suffering but do not reach the level of severity of torture nor carry the same motive requirements.

The absolute prohibition of torture is a non-derogable, customary and *jus cogens* norm that no state is allowed to ignore.⁵⁰ Under Article 1.1 of the CAT, the definition of torture, “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.⁵¹ It has long been the view that this means that the death penalty cannot be considered, *per se*, a violation of the prohibition of torture and other ill-treatment. However, current international debate is pointing to the conclusion that “lawful sanction” should be understood as sanctions that are lawful under both national and international law.

As emphasized by various international judicial bodies and reports of the United Nations Special Rapporteur on Torture, the interpretation of what sanctions are to

46 International Covenant on Civil and Political Rights, art. 6, para. 2, <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

47 *Ibid.* art. 6, para 5.

48 *Ibid.*

49 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/19/51 (1984), entered into force June 26, 1987, <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/39/46>.

50 *Jus cogens* is a peremptory principle or norm recognized by the international community as a whole as being fundamental to the maintenance of an international legal order and from which no derogation is permitted. According to Article 38(1)(b) or the Statute of the International Court of Justice a customary norm is defined as “evidence of a general practice accepted as law.” This is usually determined through state practice applied under a sense of legal obligation or *opinio juris*. Evidence of state practice and *opinio juris* can be found in the signing and ratification of treaties, policy statements, and the votes and resolutions of political decision-making bodies.

51 CAT, *op. cit.*, note 49, art. 1, para. 1.

be considered lawful under international law may change over time.⁵² This can be illustrated with the example of judicial corporal punishment, which is nowadays considered an unlawful sanction amounting to ill-treatment or even torture.⁵³ Therefore, maintaining the distinction between a dynamic interpretation that finds that corporal punishment is prohibited, while upholding that capital punishment is compatible with international law, becomes increasingly difficult.

In the OSCE region, 47 out of the 57 participating States are members of the Council of Europe. Therefore, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is of particular relevance for the OSCE region. The right to life is enshrined in Article 2 and the prohibition of torture in Article 3 of the ECHR. The Council of Europe has adopted two instruments prohibiting the use of capital punishment. All Member States except the Russian Federation have ratified Protocol No. 6 to the ECHR, concerning the abolition of the death penalty in peacetime.⁵⁴ Furthermore, 45 of the OSCE participating States have signed – 44 have ratified – Protocol No. 13 concerning the abolition of the death penalty in all circumstances.⁵⁵

All the 28 member states of the European Union (EU) are also OSCE participating States. The Charter of Fundamental Rights of the EU (EU Charter) brings together in a single document the fundamental rights protected in the EU.⁵⁶ Article 2 (2) of the EU Charter of Fundamental Rights provides that no one shall be condemned to the death penalty, or executed. This provision is based on the provision of Article 1 of Protocol No. 6 to the ECHR. Article 3 of the EU Charter states that everyone has the right to respect for his or her physical and mental integrity. Its Article 4 prohibits torture, inhuman or degrading treatment or punishment and Article 19 (2) states that no one may be removed, expelled or extradited to a state where there is a serious risk that he or she would be subject to the death penalty, torture or other ill-treatment.⁵⁷

⁵² See United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/10/44 (Jan. 14, 2009), <<https://daccess-ods.un.org/TMP/2482055.87267876.html>>; A/67/279, paras. 53-72, <<https://daccess-ods.un.org/TMP/3937184.5126152.html>>; see also Schabas (1996), p. 54: “international human rights treaties are to be interpreted in a dynamic fashion, keeping pace with the progressive development and protection of human rights”

⁵³ Special Rapporteur 2012, *op. cit.*, note 6, para. 27; see also Nigel S. Rodley, *Integrity of the Person*, in *International Human Rights Law* (Oxford University Press ed., 2000).

⁵⁴ Council of Europe, Treaty Office, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/114/signatures?p_auth=1XRrxrxt>.

⁵⁵ Excluding Armenia, Azerbaijan and the Russian Federation.

⁵⁶ Charter of Fundamental Rights of the European Union, 2012/C 326/02 (26 October 2012), <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012P%2FTXT>>.

⁵⁷ Article 19(2) is implemented in practice by the inclusion of clauses allowing for the refusal of cooperation in agreements between the EU and third countries on cooperation in criminal matters. Examples include the agreement between the EU and the USA on extradition, 25 June 2003 (article 13 refuses extradition in case of risk of death penalty). According to the EU’s guidance on the Charter or the so-called “Explanations Relating to the Charter of Fundamental Rights,” Article 19 (2) of the EU Charter incorporates the relevant case-law from the European Court of Human Rights regarding prohibition of torture (Article 3) of the ECHR, see “Official Journal of the European Union, Explanations Relating to the Charter of Fundamental Rights (2007/C 303/02), 14 December 2007, <[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007X1214\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007X1214(01))>.

1.2 Surrounding circumstances of the death penalty that may constitute torture or other cruel, inhuman or degrading treatment or punishment

Prohibition on executing persons belonging to certain groups

The execution of persons belonging to certain groups, such as juveniles, persons with mental disabilities, pregnant women, elderly persons and persons sentenced after an unfair trial, are prohibited under international law and constitute cruel, inhuman and degrading punishment. In those cases, the death penalty is considered *per se* particularly cruel and inhuman. In addition, there is a growing trend to discuss methods of execution, the “death row phenomenon” and other circumstance of the death penalty in relation to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁵⁸

By way of example, in the United States of America, legislation on protection of children or mentally disabled persons is dependent on the legislative framework of each state. The Supreme Court has, however, issued a series of rulings regarding the protection of both sets of people, establishing minimum standards. In *Atkins v. Virginia*⁵⁹ and *Roper v. Simmons*⁶⁰ the United States Supreme Court struck down the death penalty for mentally disabled and juvenile defendants, respectively, under the Court’s Eighth Amendment jurisprudence (prohibition of cruel and unusual punishment), and established a jurisprudential precedent stating that emerging standards of decency that mark the progress of a maturing society will no longer tolerate the use of this cruel and unusual punishment if such mitigating factors cannot be reliably assessed. Expanding on *Atkins v. Virginia*, in *Hall v. Florida*⁶¹ the justices stated that in death penalty cases, individual state laws drawing a hard line with IQ ceilings should be considered unconstitutional and not be allowed to override federal law. In *Roper v. Simmons*⁶² the Court held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 when their crimes were committed. Justice Kennedy, writing for the majority, stated: “When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.”⁶³

58 See, Special Rapporteur 2012, *op. cit.*, note 6; Secretary General, *op. cit.*, note 22, para. 25-32; and Resolution adopted by the Human Rights Council on 1 October 2015, p. 2, <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=25720>.

59 *Atkins v. Virginia*, *op. cit.* note 18.

60 U.S. Supreme Court, *Roper v Simmons* Opinion of the Court, 1 March 2015, No. 03-633, <<https://www.supremecourt.gov/opinions/04pdf/03-633.pdf>>.

61 U.S. Supreme Court, *Hall v Florida*, 27 May 2014, No. 12-10882, <<https://supreme.justia.com/cases/federal/us/572/12-10882/>>

62 Special Rapporteur 2012, *op. cit.*, note 6.

63 *Ibid.*

The “death row phenomenon”

Another aspect of capital punishment is the “death row phenomenon,” a relatively new concept that has emerged within the context of the implementation of the death penalty and the prohibition of torture and other ill-treatment. The phenomenon refers to a combination of circumstances that produce severe mental trauma and physical suffering in prisoners awaiting their execution in death row, including prolonged periods waiting for uncertain outcomes, solitary confinement, poor prison conditions, and a lack of educational and recreational activities. The European Court of Human Rights (ECtHR) has held that prolonged periods of time spent on death row awaiting execution violate the prohibition of ill-treatment.⁶⁴ This decision, however, was based not only on the length of time spent on death row, but also on the personal circumstances of the inmate, including age and mental state.⁶⁵ The Inter-American Court of Human Rights and Inter-American Commission on Human Rights have similarly held that prison conditions, together with the anxiety and psychological suffering caused by prolonged periods on death row, constitute a violation of the prohibition of torture and other ill-treatment.⁶⁶ Most recently, in the final declaration of the 6th World Congress against the Death Penalty, held under the sponsorship of the OSCE participating States Norway and France on 21 to 23 June 2016 in Oslo, the participants, including France, Monaco, Spain, Switzerland and Turkey as members of the Core Group for this event, observed that, “more often than not, as a direct consequence of their status, death row prisoners suffer deplorable incarceration conditions which violate human dignity and often represent an inhuman and degrading treatment.”⁶⁷

Fair trial safeguards in death penalty cases and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

With regard to the death penalty after an unfair trial, The ECtHR stated in *Öcalan v. Turkey* from 12 May 2005, that Article 2 of the ECHR precluded the execution of the death penalty in cases when a trial is found unfair. In the Court’s view, “to impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed. The fear and uncertainty about the future generated by a death sentence, where there existed a real possibility that the sentence would be enforced, inevitably caused strong human anguish to people. Such anguish could not be dissociated from the unfairness of the proceedings underlying the sentence

64 ECtHR, *Soering v. UK*, judgment of 7 July 1989, paras. 100 – 111, <[65 *Ibid.*](http://hudoc.echr.coe.int/eng?i=001-57619&v=1392752313000#[“itemid”:[“001-57619”]]>”> .</p></div><div data-bbox=)

66 See, Rep. Inter-Am. Ct. H.R. no. 55/02, Merits, Case 11.765, *Paul Lallion v. Grenada*, October 21, 2002 paras. 86-90, <<http://cidh.org/annualrep/2002eng/Grenada.11765.htm>>; Rep. No. 58/02, Case 12.275, Merits, *Denton Aitken v. Jamaica*, October 21, 2002, paras. 133-134, <<http://cidh.org/annualrep/2002eng/Jamaica.12275.htm>>; *Hilaire v. Trinidad and Tobago*, Inter-Am. Ct. H.R., Series C, No. 94, paras.167-168 (Jun. 21 2002), <http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf> .

67 See Final Declaration, <<http://congres.abolition.fr/wp-content/uploads/2016/06/Final-Declaration-of-the-6th-World-Congress-Against-the-Death-Penalty.pdf>> .

which, given that human life was at stake, became unlawful under the Convention.”⁶⁸ More precisely, the Court found that the imposition of the death sentence following an unfair trial by a court whose independence and impartiality were open to doubt amounted to inhuman treatment in violation of the prohibition of torture and other ill-treatment.⁶⁹

In the United States, it is worth noting that, on 23 May 2016, the United States Supreme Court dismissed the conviction and death sentence of an African-American man due to an unfair trial, on the basis that prosecutors had excluded African-Americans from the jury.⁷⁰ The decision was partly based on an earlier, 1986 Supreme Court decision that laid out rules to prevent racial discrimination in jury selection.

A related concern is the imposition of the death penalty by military commissions, especially on civilians. In the United States, the Guantanamo military commissions are military tribunals currently authorized by the Military Commissions Act of 2009 to prosecute detainees held in the United States Guantanamo Bay detention camps. In light of concerns about the failure of the military commissions to meet international fair trial standards, as documented in the OSCE/ODIHR report on the human rights situation of detainees at Guantanamo,⁷¹ the carrying out of a death sentence following a conviction by such military commissions would be a violation of international humanitarian law, the right to life and the right to fair trial. Following the ECtHR’s jurisprudence, it would also constitute a violation of the prohibition of torture and other ill-treatment. Fair trial issues arise *inter alia* due to the fact that the accused, who has already been classified as an enemy combatant, is presented as an alien “unprivileged enemy belligerent” before facing trial. This designation indicates to the judge and to the members of the military commission that the accused engaged in hostilities against the United States or coalition partners, purposefully and materially supported hostilities and/or was part of al Qaeda before the trial even begins. Additionally, the length of detention may affect the presumption of innocence as pre-trial procedures have been known to last up to 12 years.⁷² The United Nations Working Group on Arbitrary Detention has concluded that military justice systems should be prohibited from imposing the death penalty under all circumstances (see E/CN.4/1999/63, para. 80). Similarly, the European Union in its resolution on the death penalty stated that “military tribunals may not impose death sentences on civilians under any circumstances.”

68 *Öcalan v. Turkey*, *op. cit.*, note 19.

69 *Ibid.*, para. 175.

70 Supreme Court of the United States, *Forster v. Chatman*, 578 U.S. No. 14-8349, decided 23 May 2016, <https://www.supremecourt.gov/opinions/15pdf/14-8349_6k47.pdf>.

71 OSCE Office for Democratic Institutions and Human Rights, “Report on the Human Rights Situation of Detainees at Guantanamo”, 2015, <<http://www.osce.org/odihr/198721>>.

72 *Ibid.* para. 367.

Lethal injection as a method of execution

Some methods of execution have already been declared violations of the absolute prohibition of torture, such as death by stoning or gas asphyxiation.⁷³ As explained by the United Nations Special Rapporteur on torture, the cruelty of other methods is widely discussed, such as lethal injection or hanging. The United Nations Human Rights Committee refrained from deciding what other specific methods of execution might constitute torture or other ill-treatment, holding instead that the death penalty, in all cases, “must be carried out in such a way as to cause the least possible physical and mental suffering.”⁷⁴ There has not been a clear consensus in international opinion and practice on other methods of execution. This is true of execution by hanging, which some international and domestic judicial bodies have indicated does or may constitute other ill-treatment or torture.⁷⁵ However, in the case *Ng v. Canada* (1993) of the United Nations Human Rights Committee, dissenting opinions show resounding disapproval of the majority’s attempt to make a distinction among various methods of execution, because the death penalty, as such, constitutes cruel, inhuman and degrading treatment, regardless of how it is carried out.⁷⁶

Regarding the use of lethal injection as a method of execution, serious concerns have been raised about its use in the United States. Thirty-four states and the federal government use lethal injection as their primary method of execution.⁷⁷ In 2008, the United States Supreme Court heard a challenge to Kentucky’s lethal injection process, and allowed its continued use as a method of execution. However, alarming reports about lethal injection procedures continue to emerge. On 15 September 2009, during an attempted execution, Ohio officials spent over two hours attempting to locate a suitable vein to use for the lethal injection before finally postponing the execution.⁷⁸ In July 2013, an execution was stopped in Georgia only hours before it was to be carried

73 Special Rapporteur 2012, *op. cit.*, note 6 para. 31 and 32; see also European Parliament Resolution, *op. cit.*, note 9; Commission on Human Rights Res. 2003/67, Question of the Death Penalty, E/CN.4/RES/2003/67 at 4(i) (Apr. 24, 2003), <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5021>; Human Rights Council Res. 2004/67, Question of the Death Penalty, E/ CN.4/RES/2004/67 at 4(i) (Apr. 21 2004), <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=9878>; Human Rights Council Res. 2005/59, Question of the Death Penalty, E/CN.4/RES/2005/59 at 7(i), 4(h) (Apr. 20 2005), <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=11140>; Human Rights Committee, H.R. Comm., *Ng v. Canada*, Comm. No. 469/1991, 49th Sess., U.N. Doc. CCPR/C/49/D/469/1991 at 16.4 (Nov. 5 1993), <<http://juris.ohchr.org/Search/Details/415>>.

74 Human Rights Committee, *Ng v. Canada*, Comm. No. 469/1991, 49th Sess., U.N. Doc. CCPR/C/49/D/469/1991 at 16.4 (Nov. 5 1993) at 16.2, <<http://juris.ohchr.org/Search/Details/415>>.

75 See *In re Ramadan*, Application for Leave to Intervene as Amicus Curiae of United Nations High Commissioner for Human Rights (2007); Republic v. Mbushuu, High Court of Tanzania (Jun. 22 1994). In *Interights&Ditshwanelo v. The Republic of Botswana* (communication 319/06) 2016 the African Commission on Human and Peoples’ Rights held that execution by hanging constitutes cruel and unusual punishment in violation of the prohibition of torture, para. 84-87, <<http://www.achpr.org/communications/decision/319.06/>>.

76 Special Rapporteur 2012, *op. cit.*, note 6 para. 66 citing Human Rights Committee, communication No. 469/1991.

77 See Death Penalty Information Center, <<http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>>.

78 NGO submission to the United States of America UPR (1st cycle), The Advocates for Human Rights, <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS9.aspx>>.

out, in connection with ongoing litigation over the state's lethal injections secrecy act.⁷⁹ As stated in the United Nations Secretary's report from 8 August 2014, the act makes the identities of companies and individuals who manufacture and supply lethal injection drugs, and the identities of the doctors hired by the state to oversee executions, "state secrets" shielded from disclosure to the public, the media and even the judiciary.⁸⁰ In 2014, an execution in the State of Arizona took nearly two hours because it required 15 doses of a new drug combination, where the initial dose was supposed to be a lethal one. It was reported that the botched execution was carried out using the same combination of drugs as those used in the execution of an Ohio prisoner earlier in 2014. Reports indicate pain and suffering during the execution.⁸¹

As of today, due to a current shortage or unavailability of the combination of drugs previously used in lethal injection protocols, and amid the various restrictions imposed by foreign governments, the European Union and private pharmaceutical companies seeking to avoid association with executions, a number of retentionist states in the United States (e.g., Arkansas, California, Florida, Louisiana, Montana, North Carolina and Ohio) amended their execution procedures to include a one-drug protocol and/or to allow new chemicals to be used which are not certified by the U.S. Food and Drug Administration for this purpose.⁸² Reportedly, two approaches have emerged in the search for new executions methods by lethal injection in the United States: (a) some states have adopted new, experimental executions protocols using untested manufactured drugs; (b) some other states have turned to compounded drugs. Under both approaches, the use of those untested means of execution has demonstrably increased the risks of such executions amounting to cruel and unusual punishment.⁸³ This situation has so far led to a series of delayed executions in some states, including Arizona, Oklahoma and Ohio,⁸⁴ but also instances in which "the states covertly bought supplies from loosely regulated compounding pharmacies, experimented with new drugs and a series of botched executions."⁸⁵

After another execution of a death row prisoner in Oklahoma, in May 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed

79 Georgia law, House Bill 122, passed in March 2013, <<http://www.legis.ga.gov/Legislation/20132014/136252.pdf>>.

80 Report on the Moratorium *op. cit.*, 7, para. 42.

81 NGO submission to the United States of America UPR (2nd cycle), REDRESS 12 June 2015, <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS22.aspx>>.

82 See Erik Eckholm, "Pfizer Blocks the Use of its Drugs in Executions", *New York Times*, 13 May 2016, <http://www.nytimes.com/2016/05/14/us/pfizer-execution-drugs-lethal-injection.html?_r=0>; See also a state by state lethal injection overview, Death Penalty Information Centre, website, <<http://www.deathpenaltyinfo.org/state-lethal-injection>>.

83 Report on the Moratorium, *op. cit.*, note 7, para. 41.

84 Manny Fernandez, "Delays as Death-Penalty States Scramble for Execution Drugs", *The New York Times*, 8 October 2015, <http://www.nytimes.com/2015/10/09/us/death-penalty-lethal-injection.html?_r=0>.

85 Associated Press "Oklahoma officials backed use of wrong drug in botched execution – grand jury", *The Guardian*, 20 May 2016, <<https://www.theguardian.com/us-news/2016/may/19/oklahoma-botched-execution-drug-mary-fallin>>.

concerns about the suffering endured by persons during their executions, as it may amount to cruel, inhuman and degrading treatment, in violation of international human rights law.⁸⁶ The High Commissioner also said that the execution appeared to run counter to the United States Constitution, which bars cruel and unusual punishment, and that “the apparent cruelty involved in these recent executions simply reinforces the argument that authorities across the United States should impose an immediate moratorium on the use of the death penalty and work for abolition of this cruel and inhuman practice.”⁸⁷ Also in 2014, the United Nations Committee Against Torture expressed concern regarding executions in the United States by the States of Arizona, Oklahoma and Ohio, and called on the United States to “review its execution methods in order to prevent pain and prolonged suffering.” On 23 April 2014, in its concluding observations on the periodic report of the United States, the United Nations Human Rights Committee noted with concern reports about the administration of untested lethal drugs to execute prisoners and the withholding of information on such drugs in some states.⁸⁸ Similarly, on 6 March 2016, the United Nations Special Rapporteur published his observations on an execution that took place on 29 April 2014, concluding that the Government of the United States, by administering compound chemicals, caused an attenuated and painful execution, and violated the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁸⁹ It is reported that the victim died of an apparent heart attack around 40 minutes after his lethal injection combination was administered, reportedly, “writhing, twitching and clenching his teeth on the gurney, leading prison officials to halt the proceedings,” and lowering blinds to prevent people in the viewing gallery from watching what was happening in the death chamber.⁹⁰ As stated in the report of the United Nations Secretary-General, the Governor of Oklahoma subsequently suspended executions, and the Office of the Attorney General of the United States, following a Presidential order, initiated an investigation into state level execution protocols and related policy issues.⁹¹

In three petitions regarding detainees on death row in Virginia and in Texas, the Inter-American Commission on Human Rights recently considered a number of issues regarding the use of lethal injection as a method of execution. In the Rocha Diaz case, from 23 March 2015, the Commission stressed that states have a reinforced special

86 See, UN News Centre: “UN rights office calls on US to impose death penalty moratorium after botched execution”, 2 May 2014, <www.un.org/apps/news/story.asp?NewsID=47706>.

87 Katie Fretland and Paul Lewis, “UN human rights chief condemns Oklahoma execution of Clayton Lockett”, *The Guardian*, 2 May 2014, <<https://www.theguardian.com/world/2014/may/02/un-human-rights-condemns-oklahoma-execution-clayton-lockett>>.

88 United Nations, Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4 (23 April 2014), <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4>.

89 Special Rapporteur 2015, *op. cit.*, note 11.

90 See Bailey Elise McBride and Sean, “Oklahoma inmate dies after execution is botched”, *Associated Press*, 30 April 2014, <<http://bigstory.ap.org/article/oklahoma-prepares-execution-2-inmates>>.

91 Report on the Moratorium, *op. cit.*, note 7, para. 44.

duty to ensure that the method of execution does not constitute cruel, infamous or unusual punishment, as provided in Article XXVI of the American Declaration.⁹² In this regard, the drugs and doses to be used in case of executions by lethal injection, as well as the composition of the execution team and the training of its members should be subjected to the highest quality control standards. In particular, the drugs used should be subject to government approval and regulation, the execution team should have appropriate medical training, and lethal injection protocols should be available to the public to guarantee public scrutiny. The Commission further criticised the failure to provide relevant information regarding the method of execution noting that “the State has the duty to inform the person sentenced to death, in a timely manner, about the drug and method of execution that will be used, so he or she is not precluded from litigating the right to be executed in a manner devoid of cruel and unusual suffering.”⁹³ In these cases the Commission found violations of the prohibition of cruel, infamous or unusual punishment, by exposing the petitioners to unjustified anguish and fear.⁹⁴

On 29 June 2015, in *Glossip v Gross*, the U.S. Supreme Court, when faced with the question of whether the lethal injection protocol constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution,⁹⁵ decided five to four to uphold the death penalty, since, in its view, the applicants had failed to establish a likelihood of success on the merits of their claim. The Court held that the use of Midazolam, the sedative used in Oklahoma’s lethal injection protocol, does not violate the prohibition on cruel and unusual punishment under the United States Constitution. The Supreme Court’s decision has triggered reactions from various stakeholders, including from organizations within the OSCE region.⁹⁶ The decision led Justice Sonia Sotomayor to file a dissenting opinion, in which Ruth Bader Ginsburg, Stephen Breyer, and Elena Kagan joined. Sotomayor stated that “Oklahoma’s current protocol is a barbarous method of punishment—the chemical equivalent of being burned alive. But under the Court’s new rule, it would not matter whether the State intended to use midazolam, or instead to have petitioners drawn and quartered, slowly tortured to death, or actually burned at the stake: because petitioners failed to prove the availability of sodium thiopental or pentobarbital, the State could execute them using whatever means it designated.”⁹⁷

92 IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Felix Rocha Diaz, United States, March 23, 2015, paras. 84, <<https://www.oas.org/en/iachr/decisions/2015/USPU12833EN.pdf>>.

93 *Ibid.*, para. 85

94 *Ibid.*, para. 87; NGO submission to the United States of America UPR (2nd cycle), REDRESS 12 June 2015 at <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS22.aspx>>.

95 U.S. Supreme Court, case of *Glossip v. Gross*, 29 June 2015, No. 14–7955, 576 U. S. (2015), <https://www.supremecourt.gov/opinions/14pdf/14-7955_aplc.pdf>.

96 Statement of the General Rapporteur on the abolition of the death penalty for the Parliamentary Assembly of the Council of Europe (PACE), 1 July 2015, <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5707&lang=2>>.

97 U.S. Supreme Court, *Glossip v. Gross*, dissenting opinion, 29 June 2015, 576 U. S. (2015), <https://www.supremecourt.gov/opinions/14pdf/14-7955_aplc.pdf>.

On 30 September 2015, the Governor of Oklahoma issued a 37-day stay of execution only minutes before a prisoner was due to be killed, after the prison department revealed it did not have one of the drugs required for the lethal injection. On 10 December 2015, Norway, on behalf of the OSCE participating States Iceland, Liechtenstein, Mongolia, San Marino, Switzerland and Norway, strongly condemned an execution in Georgia that took place on 8 December 2015 and on which American media reported.⁹⁸

Secret executions and lack of transparency

As noted by the UN Secretary-General, the continued lack of transparency on the part of some governments concerning the numbers of persons who have been executed is incompatible with human rights. States should refrain from carrying out executions in secret and strive to take all measures necessary to guarantee access to information on the death penalty, including advance notice to family members regarding the date of execution.⁹⁹ The lack of transparency has direct consequences for the human rights not only of the persons sentenced to death, but also for other affected persons.¹⁰⁰

Similarly, as mentioned by the United Special Rapporteur on torture in the introduction to this paper, the United Nations Human Rights Committee stated in a case concerning Belarus, where this practice is often observed, that for a convict and her or his family, a lack of transparency can result in inhuman or degrading treatment or punishment within the meaning of article 7 of the ICCPR. The Committee against Torture has also expressed deep concern over the unnecessary secrecy and uncertainty surrounding executions. It noted that refusing to provide advance notice of the date and time of execution to convicted persons and their family members was a clear human rights violation.¹⁰¹ Similarly, the EU has stated that where capital punishment occurs, it may not be carried out in secrecy and that the family and lawyers of prisoners on death row must be notified of details of their execution.¹⁰² In a statement on 10 October 2012, the Rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) stated that, "Belarus continues to carry out executions in a particularly cruel way: the condemned are shot in the head, and their families are not told in advance. Belarus knows that ending this barbaric practice is an essential condition for joining

98 Permanent Delegation of Norway to the OSCE, statement on capital punishment in the USA, Vienna, 10 December 2015, <<http://www.norway-osce.org/PageFiles/750590/12-10%20Death%20Penalty%20USA.pdf;m>>, response of the United States Mission to the OSCE, Vienna, 10 December 2015 at <<http://www.osce.org/pc/212931?download=true>>. Also see, Rhonda Cook, "Georgia Executes Brian Keith Terrell after Struggling to Find Vein", Atlanta Journal and Constitution, Dec. 9, 2015, <<http://www.ajc.com/news/news/local/brian-keith-terrells-execution-still-on-as-lawyers/npfLW/>>.

99 Secretary General, *op. cit.*, note 22, para.58.

100 See, Economic and Social Council, resolution 1989/64, 24 May 1989, <https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-64.pdf>.

101 See, Concluding observations on the second periodic report of Japan, 28 June 2013, CAT/C/JPN/CO/2, para. 15, <<http://www.refworld.org/publisher,CAT,JPN,51dfe6614,o.html>>; and Secretary General, *op. cit.*, note 22, para 51-52.

102 EU Guidelines, *op. cit.*, note 8.

the Council of Europe.”¹⁰³ The UN Special Rapporteur on the situation of human rights in Belarus expressed his ongoing concern that individuals facing the death penalty in Belarus are being denied a fair trial, the date and time of executions are not reported, the bodies of individuals who are executed are not returned to their relatives, and the location of the burial site is not disclosed.¹⁰⁴

1.3 Evolving standard: the death penalty as a violation per se of the the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment

As stated by the United Nations Special Rapporteur on torture, the issues outlined above show the dilemma of international jurisprudence and national courts in regard to the actual application of the death penalty and the contradiction with the prohibition of torture and other ill-treatment. Since his report in 2012, there is evidence of a trend within international human rights bodies, as well as at the regional and national levels to consider the death penalty in itself contradictory to the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

Developments at the international level

On 17 December 2015, the UN General Assembly adopted resolution 70/146, on torture and other cruel, inhuman or degrading treatment or punishment, recognizing that states must protect the rights of those facing the death penalty, which includes the right to be free from torture and other ill-treatment.¹⁰⁵ In a statement following adoption, Liechtenstein regretted that the links between the prohibition of torture and the question of the death penalty had not been further explored in the resolution. Liechtenstein, supported by several countries, including the OSCE participating States Norway and Switzerland and the OSCE partner for co-operation Australia, stated that the imposition of the death penalty was incompatible with the prohibition of torture and other cruel and inhuman treatment.¹⁰⁶

On 25 June 2014, the UN Human Rights Council adopted resolution 26/2, on the question of the death penalty, in which it strongly deplored that the use of capital punishment leads to violations of the human rights of those facing the death penalty

103 Parliamentary Assembly of the Council of Europe, “Death penalty abolition worldwide: PACE rapporteur spells out the next steps”, 10 October 2012, <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=4162&lang=2>>.

104 United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, UN Doc. A/HRC/29/43, 29 April 2015, para.74, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>>.

105 See, A/Res/70/146 (17 December 2015), <<http://www.un.org/en/ga/70/resolutions.shtml>>.

106 See, “Third Committee Approves Texts relating to Torture, Minorities, Elections, Social inclusion, Rights Centres in Africa, South-West Asia, Arab Region”, 17 November 2015, <<http://www.un.org/press/en/2015/gashc4155.doc.htm>>.

and of other affected persons.¹⁰⁷ The Council also requested that the United Nations Secretary-General dedicate the 2015 supplement to his quinquennial report on capital punishment to the theme of the consequences of imposition and application of the death penalty on the enjoyment of human rights by those facing the death penalty and other affected persons. Subsequently, on 16 July 2015, the UN Secretary-General published his report on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty to the Human Rights Council.¹⁰⁸ In this report he stated that, “in the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty is incompatible with [...] the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.”¹⁰⁹ This finding was in line with the earlier conclusion of the Special Rapporteur on Torture that, “there is no categorical evidence of any method of execution currently in use complying with this absolute prohibition in every case.”¹¹⁰

On 16 July 2015, a report was published by the United Nations High Commissioner for Human Rights providing a summary of the high-level discussion on the question of the death penalty that was held on 4 March 2015.¹¹¹ The objective of the panel discussion was to continue the exchange of views on the question of the death penalty and to discuss regional efforts aimed at the abolition of the death penalty and related challenges. During the high-level event, the Assistant United Nations Secretary-General for Human Rights, Ivan Šimonović, concluded that the death penalty constitutes an inhuman and outdated punishment (para. 5). During the discussion, several States asserted that the final and cruel nature of capital punishment was *per se* incompatible with the right to life and emphasized that the abolition of the death penalty contributed to the progressive development and consolidation of human rights. Several delegates also labelled the death penalty one of the worst forms of cruel, inhuman, and degrading punishment. In that regard, they pointed out that, while the death penalty might be a sentence permissible under some domestic laws, the practice must be scrutinized in the light of national human rights commitments, as well as obligations under international and regional human rights treaties.

On 1 October 2015, the United Nations Human Rights Council adopted resolution 30/5, which recalls the calls to consider whether the use of the death penalty violates the prohibition of torture and other ill-treatment and urges states to protect the rights of those persons facing the death penalty and other affected persons by complying with their international obligations and the right to be free from torture and other

107 United Nations Human Rights Council, resolution 26/2, 16 July 2014, A/HRC/RES/26/2, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/084/95/PDF/G1408495.pdf?OpenElement>>.

108 Secretary General, *op. cit.*, note 22.

109 *Ibid.* para. 55.

110 Special Rapporteur 2012, *op. cit.*, note 6, para. 41.

111 United Nations High Commissioner for Human Rights, A/HRC/30/21, 16 July 2016, <http://www.ohchr.org/Documents/Issues/DeathPenalty/A-HRC-30-21_en.pdf>.

ill-treatment.¹¹² In the same resolution, the United Nations Human Rights Council decided that the upcoming biennial high-level panel discussion to be held at the 34th session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other ill-treatment. This resolution has explicitly been supported by a number of OSCE participating States, including Albania, Croatia, Estonia, France, Germany, Ireland, Latvia, Montenegro, the Netherlands and Switzerland.

Developments at the regional level

By virtue of being members of the Council of Europe, 47 of the OSCE participating States are state parties to the European Convention for the Protection of Human Rights (ECHR) and under the jurisdiction of the European Court of Human Rights (ECtHR). As mentioned above, as early as 1989, the ECtHR held that the exposure to the “death row phenomenon” was in violation of the prohibition of torture and other ill-treatment.¹¹³ In addition, since 1989, the Court has asked member states to require firm diplomatic assurances from retentionist countries that persons to be extradited or expelled will not be sentenced to death. In the 2005 case of *Ocalan v. Turkey*, the ECtHR held that capital punishment in peacetime had come to be regarded as an unacceptable form of punishment that was no longer permissible under Article 2 of the ECHR, and that the imposition of a death sentence after an unfair trial constitutes a violation of Article 3 of the ECHR, notably the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.¹¹⁴ In a partly dissenting opinion to the decision in this case, Judge Lech Garlicki stated that article 3 of the ECHR had been violated because *any* imposition of the death penalty represented *per se* inhuman and degrading treatment, including, but not limited to, after an unfair trial.¹¹⁵ Finally, in the 2010 case *Al-Saadoon and Mufdhi v. United Kingdom*, the ECtHR came to the conclusion Article 2 of the ECHR has been amended so as to remove the exception permitting the death penalty, and stated that “the Court does not consider that the wording of the second sentence of Article 2 (1) continues to act as a bar to its interpreting the words inhuman or degrading treatment of punishment in Article 3 as including the death penalty.”¹¹⁶ In this case, due to a real risk of being sentenced to death if extradited to Iraq, the ECtHR concluded that the fact that the applicants knew about this risk caused, “intense psychological suffering,” and held that causing the applicants psychological suffering of this nature and degree constituted inhuman treatment in

112 Human Rights Council, *op. cit.*, note 28.

113 ECtHR, case of *Soering v. UK*, judgment of 7 July 1989, paras. 100 – 111, <[http://hudoc.echr.coe.int/eng?i=001-57619&v=1392752313000#{"itemid":\["001-57619"\]}](http://hudoc.echr.coe.int/eng?i=001-57619&v=1392752313000#{)>.

114 *Ocalan v. Turkey*, *op. cit.*, note 19, para. 166 and 175.

115 *Ibid.*, partly concurring, partly dissenting opinion of Judge Garlicki, page 65.

116 *Al-Saadoon and Mufdhi v. United Kingdom*, *op. cit.*, note 33.

violation of Article 3 of the ECHR.¹¹⁷ Most recently, on 29 January 2016, in the case of *A.L. (X.W.) v. Russia*, the Court reiterated that the death penalty has become an unacceptable form of punishment that is no longer permissible under Article 2 of the ECHR, and that it amounts to inhuman or degrading treatment or punishment under Article 3 of the ECHR.¹¹⁸

The Parliamentary Assembly of the Council of Europe (PACE) has repeatedly expressed its dismay at death sentences handed down, stated that capital punishment runs counter to the values of the Council of Europe,¹¹⁹ and reaffirmed its beliefs in resolutions and public statements that the application of the death penalty constituted inhuman and degrading punishment.¹²⁰ For instance, on 20 March 2016, the general rapporteur of PACE on abolition of the death penalty stated that, “the death penalty is inhumane and never justified, irrespective of the circumstances.”¹²¹ The PACE has been a driving force in the movement to abolish the death penalty since the 1980s. It gradually has persuaded governments to permanently outlaw the death penalty or to commit to a moratorium on executions. It also examines candidatures of states seeking membership in the Council of Europe; nowadays candidates are required to abolish the death penalty and to ratify Protocol No. 6. The Council of Europe is particularly attentive to individual non-European states, namely those with observer status with the organization, since they are expected to share common values. By way of example, its Resolution 1807 from 2011, reiterates the inhuman and degrading character of the death penalty.¹²²

European Union representatives have stated on various occasions, including at UN and OSCE forums, that the EU finds the death penalty to be cruel and inhuman, representing an unacceptable denial of human dignity and integrity,¹²³ that its abolition contributes to the progressive development of human rights, and that capital punish-

117 *Ibid.*, para. 136 and 144.

118 European Court of Human Rights, Case of *A.L. (X.W.) v. Russia*, Application no. 44095/14, judgement 29 January 2016, para. 120, <[119 See PACE Resolution 1044, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16455&lang=en>>; and Recommendation 1246 from 1994, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15280&lang=en>>; PACE Resolution 1097, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16508&lang=en>>; and Recommendation 1302 from 1996, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15336&lang=en>>; PACE Resolution 1187 from 1999, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16702&lang=en>>; See also statement of 24 November 2015, <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5893&lang=2>>; statement of 14 January 2016, <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5975&lang=2>>.](http://hudoc.echr.coe.int/eng?i=001-158148#[“itemid”:[“001-158148”]]]:>”; “the Court does not consider that the wording of the second sentence of Article 2 § 1 continues to act as a bar to its interpreting the words “inhuman or degrading treatment or punishment” in Article 3 as including the death penalty.</p></div><div data-bbox=)

120 See Parliamentary Assembly, Resolution 1187 (1999), <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16702&lang=en>>.

121 Parliamentary Assembly of the Council of Europe, “Death penalty: concern at the latest events in Belarus and Russia”, 20 March 2015, <<http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5491&lang=2>>.

122 PACE Resolution 1807 (2011), <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17986&lang=en>>.

123 Secretary General, *op. cit.*, note 22, para. 28.

ment is inhuman and unnecessary.¹²⁴ On 8 October 2015, the European Parliament adopted a resolution on the death penalty¹²⁵ reiterating its condemnation of the use of the death penalty and its strong support for the introduction of a moratorium as a step towards abolition. Condemning all executions as a violation to human dignity, the European Parliament expressed particular concern about the imposition of the death penalty on minors and persons with mental and intellectual disability. The resolution on the death penalty makes specific reference to CAT.

On 9 July 2015, the Parliamentary Assembly of the OSCE approved by majority vote their 2015 Helsinki Declaration, at its 24th annual session in Helsinki. OSCE participating States affirmed the right of and responsibility for OSCE/ODIHR and themselves to speak out when abuses take place in other States, including the imposition of the death penalty. Calling for an immediate moratorium on executions, representatives of the OSCE Parliamentary Assembly consider the death penalty to be an inhuman and degrading punishment, an act of torture unacceptable to states respecting human rights¹²⁶

In taking note of the ongoing discussions, in recent statements ODIHR has welcomed the increased number of abolitionist OSCE participating States, acknowledging that most of the OSCE region recognizes the inherently cruel, inhuman and degrading nature of capital punishment.¹²⁷

OSCE participating States

The increased focus on examining whether the death penalty in itself violates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, is also reflected in statements by individual participating States' before various international forums. Representatives of various OSCE countries have indicated that the death penalty is a violation of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment,¹²⁸ and is incompatible with respect for human dignity.¹²⁹ For instance, before the OSCE Permanent Council, European Union Member States,¹³⁰

124 EU Guidelines on Death Penalty, 8416/13, 12 April 2013, <https://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_sto8416_en.pdf>.

125 European Parliament Resolution 2015/2879 (RSP), *Op. Cit.*, note 9.

126 OSCE PA Helsinki Declaration and Resolutions adopted by the OSCE Parliamentary Assembly at the Twenty-fourth Annual Session, (AS [15] DE) Helsinki 5-9 July 2015, para. 98 and 138, <<http://www.oscepa.org/documents/all-documents/annual-sessions/2015-helsinki/declaration-3/2977-2015-helsinki-declaration-eng/file>>.

127 ODIHR statement of 18 February 2016, <<http://www.osce.org/odihr/223246>>; ODIHR statement of 11 December 2015, <<http://www.osce.org/odihr/209026>>.

128 See Secretary General, *op. cit.*, note 22, para. 28: Bulgaria, Denmark, Finland, Mongolia, Slovenia, Spain, European Union.

129 *Ibid.* para. 7.

130 See PC DEL/201/16, 18 February 2016, <<http://www.osce.org/pc/224671?download=true>>; PC DEL/52/16, 21 January 2016, <<http://www.osce.org/pc/219831?download=true>>; PC DEL/1689/15/REV.1, 14 December 2015, <<http://www.osce.org/pc/212926?download=true>>; PC DEL/1653/15, 27 November 2015, <<http://www.osce.org/pc/205761?download=true>>; PC DEL/1342/15, 16 October 2015, <<http://www.osce.org/pc/197626?download=true>>; PC DEL/1299/15, 9 October 2015, <<http://www.osce.org/pc/197901?download=true>>.

together with Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Moldova, San Marino, Ukraine, Norway,¹³¹ Iceland, Liechtenstein, Mongolia, San Marino, Switzerland¹³² and the Holy See¹³³, have all, either individually or jointly condemned executions by retentionist states and reiterated calls for the death penalty's abolition. Opposing capital punishment in all cases and without exceptions, they have also claimed that the penalty undermines human dignity, is not a deterrent against crime and makes miscarriage of justice irreversible. These statements demonstrate increasing support for the view that the death penalty constitutes a violation of the prohibition of torture and cruel, inhuman and degrading treatment and growing momentum towards its abolition.

In response to the *ODIHR questionnaire on the death penalty 2016*, 19 participating States have explicitly stated that their respective governments consider the death penalty cruel, unusual and inhuman treatment.

National Courts

As early as 1996, leading experts stated that there was, "an increasing willingness by judges to limit or totally abolish the death penalty by relying on what is a universal rule of human rights law prohibiting cruel punishment or torture."¹³⁴

National courts in the OSCE region have continued to express similar views. Under United States law, executions are unconstitutional if they inflict purposeless and needless pain and suffering.¹³⁵ What constitutes needless or unnecessary pain is informed by standards of decency as they evolve in light of contemporary human knowledge.¹³⁶ With regard to the question of whether methods of executions may constitute cruel and unusual punishment, the U.S. Supreme Court found that punishments that involve torture or lingering death, something more than the mere extinction of life, violate the Eighth Amendment's prohibition against cruel and unusual punishment.¹³⁷

In the case of *People v. Anderson* of 1972, the California Supreme Court in the United States found that, "the cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy

131 See PC DEL/176/16, 16 February 2016, <<http://www.osce.org/pc/223106?download=true>>; PC DEL/81/16, 25 January 2016, <<http://www.osce.org/pc/219861?download=true>>; PC DEL/1685/15, 10 December 2015, <<http://www.osce.org/pc/212921?download=true>>; PC DEL/1670/15, 1 December 2015, <<http://www.osce.org/pc/205776?download=true>>; PC DEL/1626/15, 24 November 2015, <<http://www.osce.org/pc/205836?download=true>>.

132 See PC DEL/81/16, 25 January 2016, <<http://www.osce.org/pc/219861?download=true>>.

133 See PC DEL/246/16, 3 March 2016, <<http://www.osce.org/pc/226546?download=true>>.

134 Schabas, W. A. *The Death Penalty as Cruel Treatment and Torture*, Northeastern University Press, (Boston, 1996), pp. 3-206, see, p. 4.

135 *Atkins vs. Virginia*, *op. cit.* note 18.

136 United States Supreme Court, *Robinson v. California*, 370 US 660, 666 (1962), <<https://supreme.justia.com/cases/federal/us/370/660/case.html>>.

137 U.S. Supreme Court, *In re Kemmler*, 136 U.S. 436 (1890), <<https://supreme.justia.com/cases/federal/us/136/436/case.html>>; HRW, "So Long as They Die, Lethal injections in the United States", 2006, <<https://www.hrw.org/report/2006/04/23/so-long-they-die/lethal-injections-united-states>>.

imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out. (...) the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture.”¹³⁸ With this landmark case, California outlawed the use of capital punishment. In 1991, three members of the Supreme Court of Canada, in their dissenting view, considered capital punishment *per se* cruel and unusual punishment.¹³⁹ In 2001, in the case *United States v. Burns*, the Canadian Supreme Court stated that capital punishment engaged the underlying values of the prohibition against cruel and unusual punishment.¹⁴⁰ The Albanian Constitutional Court abrogated the death penalty as incompatible with its 1998 Constitution, stating that “the death penalty is a denial of the right to life and constitutes inhuman and cruel punishment”.¹⁴¹ The Hungarian Constitutional Court has held that capital punishment imposes a limitation on the essential content of the fundamental rights to life and human dignity, eliminating them irretrievably. The Court stressed the relationship between the rights to life and dignity, and the absolute nature of these two rights, which together were the source of all other rights.¹⁴² Furthermore, the Constitutional Courts of Lithuania and Ukraine have also found that the death penalty *per se* violates the prohibition of cruel, inhuman or degrading treatment.¹⁴³

2. Other aspects of the situation of the death penalty in the OSCE region

During the 2015 OSCE Human Dimension Implementation Meeting, the issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism were discussed at Working Session 8: Rule of Law. It was recommended to OSCE participating States to give strong consideration to ratifying all international conventions and protocols on the death penalty and torture, to abolish the death penalty in all circumstances, not to reintroduce the death penalty once it has been abolished, to support the 2016 UN General Assembly resolution which will call for a global moratorium on the use of the death penalty, and to work to update OSCE commitments concerning the use of capital punishment.

138 California Supreme Court, *The People of the State of California v. Robert Page Anderson*, 493 P.2d 880, 6 Cal. 3d 628 (Cal. 1972), <<http://online.ceb.com/calcases/C3/6C3d628.htm>>.

139 Supreme Court of Canada, *Kindler v. Minister of Justice of Canada* (1991) 2 SCR 779, at 818: “If corporal punishment, lobotomy and castration are no longer acceptable and contravene section 12 then the death penalty cannot be considered to be anything other than cruel and unusual punishment. It is the supreme indignity to the individual, the ultimate corporal punishment, the final and complete lobotomy and the absolute and irrevocable castration”, <<http://www.refworld.org/docid/3ae6b6edo.html>>.

140 *United States v. Burns*, *op. cit.*, note 36, p. 287.

141 Secretary General, *op. cit.*, note 22, para. 29.; See also, <www.deathpenaltyproject.org/legal-resources/authorities-database/search/?id=1111>.

142 Secretary General, *op. cit.*, note 22, para. 9; See also <www.mkab.hu/letoltesek/en_0023_1990.pdf>.

143 *Ibid.*, para. 29.

On 4 December 2016, following a parliamentary vote in favor of a new criminal code that abolishes capital punishment for all crimes, Mongolia became the 105th country worldwide and the 52nd OSCE participating State to abolish the death penalty in law.¹⁴⁴ The decision has been welcomed by the international community. The United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein hailed the end of the death penalty in the country as a welcome step in the fight for the human rights of all, thanking Mongolia for its strong and sustained leadership on this issue.¹⁴⁵ Michael Georg Link, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), also welcomed the complete abolition of the death penalty in Mongolia. Recalling that most of the OSCE region now recognizes the inherently cruel, inhuman and degrading nature of the death penalty, he called Mongolia's decision a very positive development and an encouraging example of progress made towards the respect for human dignity and integrity in the OSCE region.¹⁴⁶

2.1 Abolitionist participating States

Engagement in activities relevant to the issue of the death penalty on the national and international level (Question 1 and 7)

Forty-one out of 52 abolitionist participating States submitted replies to OSCE/ODIHR's questionnaire on the death penalty. The majority of those replies confirmed that the participating States from this group remained dedicated to international efforts towards the abolition of the death penalty through various initiatives, including different events and activities within and of the OSCE, the UN, the Council of Europe and the EU.

A number of OSCE participating States, including Albania, Croatia, Estonia, France, Germany, Ireland, Latvia, Montenegro and the Netherlands, reported that they had supported and welcomed the adoption of the UN Human Rights Council Resolution of 1 October 2015 on the question of the death penalty drafted by Switzerland (A/HRC/RES/30/5). The governments of Andorra, Bosnia and Herzegovina, Lithuania, Malta, Spain and Turkey emphasized their work on advancing the international campaign for a moratorium on the death penalty. Several respondents also stressed their active participation in discussions at the UN General Assembly and the endorsement of statements by the UN Human Rights Council calling for abolition.

Some of the participating States, for example Austria, the Czech Republic, Hungary, Italy, Poland, Romania, Slovakia and Sweden, expressed their support for

¹⁴⁴ Amnesty International, "Mongolia: Historic vote abolishes death penalty", 4 December 2015, <<https://www.amnesty.org/en/latest/news/2015/12/mongolia-historic-vote-abolishes-death-penalty/>>.

¹⁴⁵ United Nations, Office of the High Commissioner for Human Rights "Zeid hails end of death Penalty in Mongolia", 9 December 2015, <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16857&LangID=E>>.

¹⁴⁶ Organization for Security and Cooperation in Europe, "OSCE/ODIHR Director welcomes the abolition of the death penalty in Mongolia", 11 December 2015, <<http://www.osce.org/odihr/209026>>.

EU initiatives undertaken either under the EU Guidelines on the Death Penalty, actively contributing to their implementation, or under the EU Task Force on Abolishing the Death Penalty, joining the European Union in systematically raising the issue and their opposition to the death penalty. Mention should also be made of Finland's involvement in amending Council Regulation No 1236/2005, concerning trade in certain goods that could be used for capital punishment, and providing for the prohibition of any export of goods that have no practical use other than for the purpose of capital punishment or for the purpose of torture and other ill-treatment.¹⁴⁷

Others, namely Iceland, Liechtenstein and Uzbekistan, noted their work towards the global abolition of capital punishment, through individual and group statements. For instance, the Holy See, San Marino and Slovenia made public statements, participated in several congresses on the question of the death penalty and sponsored several decisions and resolutions in different international forums. Greece stated in its reply that it had ratified the Statute of the International Criminal Court, imposing life imprisonment as the most severe measure applicable for genocide, crimes against humanity and war crimes.

Following-up on the OSCE/ODIHR background paper on the situation of the death penalty in the OSCE region of 2015, Poland provided information on the developments of ECtHR's case of *Al Nashiri v. Poland*. The 2014 ruling found Poland in violation of Articles 2, 3 and Article 1 of Protocol No. 6 to the Convention on account of the transfer of the applicant from Polish territory to the United States, despite the existence of a real risk that he could be subjected to the death penalty. Poland reported that after the judgement, in diplomatic communication with the United States dated October 2014, 6 March 2015, 13 May 2015 and 14 October 2015, it requested assurances by the United States Government that Mr Al Nashiri would not be subjected to the death penalty. In response to the diplomatic communication, the United States authorities confirmed that the Polish authorities' request for diplomatic assurances cannot be supported. Subsequently, Poland declared its readiness to repeat its requests to the Government of the United States.

Citizens facing the death penalty abroad (Question 3)

According to the information received, 13 participating States reported having their national citizens sentenced to death in a foreign country. At least 16 individuals from Estonia, Greece, Ireland, Latvia, Lithuania, Norway, Poland, Romania, Spain and Turkey are facing death sentences or trials in which the death sentence is a possible punishment. The individuals are held in Iran, Pakistan and the United States of America. Sweden, the Netherlands and Germany were unable to provide detailed information on the matter due to confidentiality legislation. A high number of participating States stated that they provide their nationals facing the death penalty with

¹⁴⁷ Council of the European Union, Regulation (EC) No 1236/2005 (27 June 2005), Chapter II, Article 3, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>>.

consular aid and protection. Canada informed ODIHR that, since February 2016, its Government had decided to undertake clemency intervention in all cases of Canadians facing execution.

Children of parents sentenced to death (Question 4)

In relation to safeguards for children whose parents have been sentenced to death, a large number of participating States claimed not to have in place specific legislation for these situations, as they are extremely rare. However, they stated that protection of those who might be found in such a situation is offered through general rules and legislation governing the protection of children's rights. Malta made specific mention of the 2013 UN Human Rights Council's panel discussion, conclusions and recommendations on the human rights of children of parents sentenced to the death penalty or executed in stating that it would provide protection in line with these recommendation if such a case were to occur.

Safeguards protecting those facing the death penalty (Question 5)

The majority of responding participating States stated that they monitor the implementation of safeguards protecting those facing the death penalty on a case-by-case basis, using all available methods at their disposal (démarche; public statement, EU common action), in particular when capital punishment would be imposed for persons below 18 years of age at the time of the commission of their crime, for pregnant women, new mothers and persons with mental disabilities.

Additional information

Bosnia and Herzegovina provided information from the General Secretariat of the National Assembly of Republika Srpska on the death penalty stating, that Article 11 of the Constitution of Republika Srpska still maintains the possibility of application of the death penalty "exclusively for capital crimes", but the article is not operational in practice as, Republika Srpska's Criminal Code does not provide for capital punishment.¹⁴⁸ In its 2015 Progress Report for Bosnia and Herzegovina, the European Commission noted that the relevant provision in the Constitution of Republika Srpska needs to be repealed in order to comply with the EU political criteria, which are necessary for the EU to consider an EU membership application from Bosnia and Herzegovina.¹⁴⁹

¹⁴⁸ Constitution of Republika Srpska "Official Gazette" of Republika Srpska, No. 21/92 revised text, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05, Article 11.

¹⁴⁹ European Commission, Commission Staff Working Document, Bosnia and Herzegovina, 2015 Report, SWD (2015) 214 final (10 November 2015), para. 2.4, <http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_bosnia_and_herzegovina.pdf>.

2.1 De-Facto abolitionist participating States

Three OSCE participating States are de-facto abolitionist. Kazakhstan, Tajikistan and the Russian Federation, still retain, in law, the death penalty for crimes committed in peacetime but have moratoriums on executions. Throughout the reporting period, all three countries continued to observe their official moratoriums on the use of the death penalty.

In the Russian Federation, the application of the death penalty has been suspended since 1996, but capital punishment is still mentioned in federal legislation and formally listed as one of the types of criminal punishment. The Criminal Code of the Russian Federation (CCRF) stipulates the application of the death penalty as an exceptional measure for five types of offences. However, it may not be imposed against women, offenders under the age of 18 or over 65 at the time of sentencing, or against offenders extradited to the Russian Federation by a foreign state. In the report of the UN High-Commissioner for Human Rights (A/HRC/30/21, para. 42), it was noted that the Russian Federation was considering acceding to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty. The ECtHR concluded on 29 October 2015, that, in view of what it called the Russian Federation's unequivocal undertaking to abolish the death penalty, partly fulfilled through an initially *de facto* moratorium, subsequently confirmed *de jure* by the Constitutional Court Judgment – 1344-O-P of 19 December 2009¹⁵⁰ the death penalty, “has become a form of punishment that is no longer permissible under article 2 (...) and that it amounts to inhuman and degrading treatment or punishment under article 3 of the European Convention on Human Rights, even if the Russian Federation is yet to ratify Protocols Nos. 6 and 13 to the European Convention for the Protection of Human Rights (ECHR).”¹⁵¹

During the reporting period, individual members of the Russian parliament, from both the lower and upper houses, called for the reintroduction of the death penalty. In October 2015, a member of the Communist caucus in the State Duma urged fellow lawmakers to allow the death penalty for terrorists as an extraordinary measure and, “a supreme measure of social protection.” In November 2015 a member of the Liberal Democratic Party introduced a bill in parliament proposing the expansion of the scope of the death penalty for terrorism.¹⁵²

150 Constitutional Court of the Russian Federation, Judgment – 1344-O-P of 19 December 2009, according to the Opinion of the Constitutional Court, there is a complex moratorium of the death penalty in the Russian Federation which further develops the right to life guaranteed by the Constitution. Within this regime and based on the international legal tendencies and commitments of the Russian Federation, there is an irreversible process of the complete abolition of the death penalty as an exceptional punishment of a temporary nature and acceptable only during the transition period, namely until the goal set in part 2 of the article 20 of the Constitution of the Russian Federation is achieved.

151 European Court of Human Rights, Case of A.L. (X.W.) v. Russia, (Application no. 44095/14), Judgment of 29 October 2015, final 29 January 2016, para. 64 and para. 120, <[http://hudoc.echr.coe.int/eng?i=001-158148#{"item-id":\["001-158148"\]}](http://hudoc.echr.coe.int/eng?i=001-158148#{)>.

152 Amnesty International, *op. cit.* note 24.

Sergey Ivanov, then Chief of the Kremlin Administration, said in November 2015 that it would be premature to introduce capital punishment for terrorists. Also, the presidential Human Rights Council has unanimously rejected calls to re-introduce the death penalty for terrorist crimes, saying the measure would be both inhumane and ineffective. Presidential spokesperson Dmitry Peskov was asked in December 2015 whether the stance of the Russian Federation President's opposition to the death penalty has changed; he stated that the President had "not come up with any alternative points of view".¹⁵³

There have been various reactions from stakeholders in the OSCE region. By way of example, on 20 March 2016, the general rapporteur of the PACE on abolition of the death penalty publicly stated that she was disturbed by reports alleging that a working group at the Russian Federation's State Duma is preparing legislation to introduce capital punishment for certain crimes relating to terrorism. The general rapporteur condemned all attempts to re-introduce the death penalty and stated that the Russian Federation, which is the only member of the Council of Europe that has not ratified Protocol No.6 to the ECHR on the abolition of the death penalty in time of peace, must urgently take steps to abolish the death penalty once and for all, in order to not find itself increasingly isolated in Europe, where there is a relatively broad consensus that the death penalty has no place on the continent.¹⁵⁴

The situation in Tajikistan and Kazakhstan has not changed in the reporting period. Both participating States maintain an indefinite moratorium on executions, with Tajikistan likewise applying a moratorium on death sentences. No new laws have been adopted by either country on the matter.

Kazakhstan continued to observe an official moratorium on the death penalty. Through its reply to the ODIHR questionnaire dated 24 March 2016, it listed the gradual reduction of the grounds for the imposition of the death penalty as a key objective of the country's legal policy framework, and that, although Kazakhstan did not accept the recommendation on ratification of the Second Optional Protocol to the ICCPR, on the grounds that there is a need to complete the process of humanization of legislation and law enforcement practice while taking into account public opinion, in fact the Protocol is being implemented.

Similarly, the Tajikistan used its National Report submission for the "2nd Cycle of the United Nations Universal Periodic Review" to list a number of measures taken in the country towards complete abolition of the death penalty. These include an interdepartmental Working Group focused on conducting public-information and public-education campaigns, organizing conferences and awareness-raising meetings, conducting analysis on the crime situation before and after the moratorium, and ultimately considering various options and procedures with respect to abolition. Two possible ways forward have been identified to date: complete abolition could be achieved

¹⁵³ *Ibid.*

¹⁵⁴ Parliamentary Assembly, *op. cit.*, note 121.

through a Constitutional amendment or, without such an amendment, the country would retain the possibility of applying the death penalty in times of war. The United Nations High Commissioner for Human Rights, in his reply to the country's submission stated that, while welcoming the moratorium, the United Nations Human Rights Committee regretted the slow progression towards abolition.

Tajikistan was the only de-facto abolitionist state to report to ODIHR that its citizens have been sentenced to death abroad. Three women and three men have been sentenced to death in the People's Republic of China. The execution of the sentence against the women has been indefinitely postponed, while the sentence has already been carried out against one of the men, and the other two are awaiting execution.

2.2 Retentionist participating States

Among the 57 OSCE participating States, only Belarus and the United States of America maintain, both in law and in practice, the application of the death penalty. During the reporting period the situation has largely remained unchanged, with neither country taking effective measures towards the abolition of the death penalty or the imposition of a moratorium against executions.

Belarus

In Belarus, the Constitution prohibits the imposition of the death penalty on criminal offenders who are less than 18 years of age, women, or men older than 65 at the time of sentencing. Capital punishment is intended to be an exceptional measure of punishment for certain especially serious crimes involving premeditated deprivation of life with aggravating circumstances. Belarus reported to ODIHR that currently the death penalty can be applied for 13 different crimes. It can only be imposed on the basis of an unanimous decision by the judges taking part in the trial (Article 354 (4) Criminal Procedure Code of the Republic of Belarus) and it cannot be applied for preparatory or attempted offences (Article 67 (2) Criminal Code of the Republic of Belarus).

Belarus also reported that, in accordance with the Act of the Republic of Belarus No. 356 – 3 from 5 January 2016, the offence “treason against the State” is excluded from the list of crimes carrying the death sentence.¹⁵⁵ According to Belarus' reply, Act

¹⁵⁵ The Criminal Code of the Republic of Belarus provides for the application of the death penalty for the following crimes: unleashing or conducting a war of aggression (Article 122 (2)); murder of a representative of a foreign state or international organization, with the intention to provoke international tension or war (Article 124(2)); international terrorism (Article 126 (3)); genocide (Article 127); crimes against humanity (Article 128); premeditated, aggravated murder (Article 139 (2)); terrorism (Article 289 (3)); terrorist acts against a state or public figure (Article 359 (2)); conspiracy to seize power (Article 357(3)), sabotage (Article 360 (2)), murder of a police officer (Article 362); use of weapons of mass destruction (Article 134); murder of a person in violation of the laws and customs of war (Article 135 (3)). During the reporting period, Belarus informed ODIHR that the official title of the provisions mentioned above should read as follows: Part 2 of Art 124: “Act of Terrorism directed against the representative of a foreign state or international organization”, Part 3 of Art 126: “Act of International Terrorism”, Part 3 of Art 135: “Violation of laws and customs of war”, Part 2 of Art 139: “Murder with attenuating circumstances, Part 3 of Art 289 “Act of Terrorism”, Part 3 of Art 357: “Plot, or other actions, taken with a purpose to take over governmental power”, Part 2 of Art 359: “Act of Terrorism directed against state or public official”.

No. 356 – 3 introduced changes to the appeals procedures prescribed in the Criminal Procedural Code (CPC). According to Chapter 39 of the CPC, all restrictions to appealing a judgment are removed, and anyone sentenced to capital punishment can appeal against the court's decision.

According to information received from Belarus, there is a set of measures in place designed to ensure that no one suffering from psychological disorders that might prevent her or him from understanding her or his actions can be sentenced to death. In case a mental disorder deprives a convicted person of awareness of their actions, a medical examination report shall be sent to the court so that it may suspend the death sentence. Were the person to recover, the court in question will rule on the execution of the sentence or the possibility of its replacement. Women cannot be sentenced to death, but in cases when a father with dependents is sentenced to capital punishment the Court must notify the Education Department of the city of residence in order to insure state protection for the child. Where the dependents are elderly parents of the accused, the Court shall issue a ruling on the transfer of said persons to care or custody of relatives or other persons or institutions.

The United Nations Periodic Review on Belarus took place on 4 May 2015, and the UN Human Rights Council's Working Group on the Universal Periodic Review issued its report on Belarus on 13 July 2015.¹⁵⁶ According to the National Report prepared by Belarus for the second Universal Periodic Review, positive developments included the adoption of the possibility of plea-bargain agreements for suspected and accused persons, which was introduced into criminal procedure in 2015. Those who have reached a pre-trial settlement, including people that have committed especially serious crimes that incur in the death penalty, can now see their sentence commuted to life imprisonment.¹⁵⁷ According to the participating State's submission, this may have the effect of further reducing the number of death sentences handed down.

Furthermore, Belarus has accepted a set of recommendations regarding the death penalty, including to carry out public campaigns on the arguments for abolition of the death penalty, with the aim of ratifying the Second Protocol to the ICCPR and abolition.¹⁵⁸ Furthermore, Belarus supported recommendations to revitalize the discussions within the parliamentary working group on the death penalty and to ensure that the minimum standards are applied pending an eventual moratorium, as well as to consider abolishing the death penalty.¹⁵⁹ However, Belarus did not support recommendations to take concrete steps towards abolishing the death penalty, including

¹⁵⁶ United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, UN Doc. A/HRC/29/43, 29 April 2015, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>>.

¹⁵⁷ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review, Belarus, UN doc. A/HRC/30/3, 13 July 2015, para.11, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>>.

¹⁵⁸ *Ibid.*, para. 127.1 in connection with A/HRC/30/3/Add.1, 30 July 2015.

¹⁵⁹ *Ibid.* para. 129.29 and 129.30.

by imposing a moratorium on executions as an interim measure.¹⁶⁰ Belarus did not support recommendations calling for the ratification of the Second Optional Protocol to the ICCPR and the implementation of the CAT recommendations on arbitrary and secret executions, recommendations calling to ensure respect for the fundamental rights of those persons convicted and their families, and recommendations calling to guarantee that the families of condemned persons have the opportunity to say good-bye and bury the corpses in accordance with international standards.¹⁶¹

On 6 November 2015, in the case of Pavel Selyun's execution on 17 April 2014, the United Nations Human Rights Committee reiterated its jurisprudence that the imposition of a sentence of death upon the conclusion of a trial that did not meet the required fair trial standards constitutes a violation of the right to life. In the light of the Committee's findings of a violation of the prohibition of torture, especially in the light of the complainant's allegations of torture and ill-treatment to force him to confess guilt, which served as a basis for his conviction, the Committee concluded that the final death sentence and the subsequent execution of Mr. Selyun did not meet the requirements of article 14 and that, as a result, his right to life under article 6 of the ICCPR, in particular that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the ICCPR, which implies that the procedural guarantees therein prescribed must be observed, has also been violated.¹⁶²

On 21 January 2016, Belarus stated at the OSCE Permanent Council that the death penalty is being applied temporarily until its abolition is decided, and that work on legislation, as well as public discussion on the application of the death penalty in Belarus, continues.¹⁶³ The statement was made in response to the EU Statement on the death penalty in Belarus on 21 January 2016.¹⁶⁴

On 10 March 2016, the Chairman of the Belarusian Parliament's working group on the death penalty responded to the PACE Rapporteur on the Situation in Belarus' statement that a moratorium would allow Belarus to return to PACE as a special guest. The response stated that this issue could not be subject to political bargaining, and that Belarusian society is not ready for the abolition of the capital punishment.¹⁶⁵

On 10 March 2016 in Minsk, UNDP in Belarus and the Belarusian Foreign Ministry and the British Embassy hosted the conference, *Death Penalty: Transcending the*

¹⁶⁰ *Ibid.* para. 129.30 and 31.

¹⁶¹ *Ibid.* para. 129.34 -50.

¹⁶² United Nations Human Rights Committee, Communication No. 2289/2013, (9 December 2015), <<http://juris.ohchr.org/Search/Details/2034>>; See also United Nations Human Rights Committee, general comment No. 6 (1982) on the right to life, <http://tbineternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6630&Lang=en>.

¹⁶³ "Statement of the Permanent Delegation of the Republic of Belarus to the OSCE, OSCE Permanent Council 1086th Meeting, 21 January 2016," PC.DEL/56/16.

¹⁶⁴ European Union, OSCE permanent Council No. 1086, Vienna, 21 January 2016, PC.DEL/52/16, <https://eeas.europa.eu/delegations/vienna/documents/eu_osce/permanent_council/2016/pc_1086_eu_on_death_penalty_belarus.pdf>.

¹⁶⁵ Viasna Human Rights Center, "PACE insists on moratorium on the death penalty in Belarus", 10 March 2016 <<http://spring96.org/en/news/82525>>.

Divide. The event gathered experts and speakers from Belarus and other countries, international organizations (EU Special Representative for Human Rights, Council of Europe and UN Office for the High Commissioner for Human Rights) the diplomatic community (United Kingdom and Switzerland), civil society and churches.

Since February 2010, the Belarusian Parliament has maintained a working group to study the issue of the death penalty in Belarus. According to the country's submission to the second cycle Universal Periodic Review, the members of the working group hold meetings and take part in socio-political events related to the death penalty on a regular basis. During this report's reporting period, the Working Group held two meetings to discuss the situation of the use of death penalty in Belarus. During the meetings, crimes for which persons were sentenced to capital punishment or life imprisonment were analyzed. The head of the working group also took part in hearings on the situation in Belarus at the Political Affairs and Democracy session of the PACE meeting on 28 January, 2016 in Strasbourg, where the application of the death penalty was discussed.

United States of America

As of 31 March 2016, 18 states in the United States have abolished capital punishment and 12 additional states had not carried out executions in the 10 years prior. That more than half of the states do not carry out executions underlines the ongoing trend towards abolition of the death penalty in the United States.¹⁶⁶

The states of California, Delaware, Kansas, Kentucky, Missouri, South Dakota and Utah all developed initiatives or proposed bills to abolish the death penalty during the reporting period. At this point, four of these legislative proposals have yet to be reviewed by legislative bodies. In Kentucky, South Dakota and Utah, the bills aimed at abolishing the death penalty did not gather enough votes and were eventually defeated in either the states' houses of representatives or state senates.

Other legislative developments include New Hampshire Bill SB 463, introduced on 6 January 2016, which intends to suspend the death penalty until such time that methods exist to ensure that it cannot be imposed on innocent people.¹⁶⁷ This bill was eventually defeated by the New Hampshire State Senate's vote on 3 March 2016. In Ohio, a new bill, which intends to exempt defendants with severe mental illness from the death penalty, was referred to the Ohio State Senate Criminal Justice Committee, and hearings were conducted on 27 January and 10 February 2016.

In Mississippi, a bill to expand the death penalty to include those who murder certain public servants, such as first responders, was initially passed by the State House of Representatives on March 2016, but did not become a law after being assigned to its judiciary committee. Mississippi's Senate Bill 2237, providing for execution in secrecy, was amended by the House of Representatives in March 2016 to include the option

¹⁶⁶ Amnesty International, *op. cit.*, note 24, p. 14.

¹⁶⁷ New Hampshire Senate Bill, SB 463-FN, 16-2820, (2016), <<https://legiscan.com/NH/text/SB463/id/1287234>>.

of execution by firing squad if lethal injection is deemed too costly or unavailable.¹⁶⁸ In line with this development, lawmakers in South Carolina also introduced a bill allowing the use of nitrogen gas in executions, if drugs for lethal injection are unavailable. This bill is currently on hold.

Nebraska, which had previously passed legislation repealing the death penalty, saw a ballot initiative called to reverse the decision to abolish capital punishment in the state. The abolition of the death penalty remains on hold until after a referendum in November 2016.

On 12 January 2016, the United States Supreme Court struck down Florida's death penalty sentencing system.¹⁶⁹ The Supreme Court found the state's sentencing unconstitutional because judges were given full discretion in death penalty sentences (juries' had purely an advisory role). The Court held that the Sixth Amendment requires a jury, not a judge to find each fact necessary to impose a sentence of death. In response to this ruling, the Florida State Senate passed Bill 7068, conditioning the imposition of capital punishment upon a jury vote of at least 10-2 in favor of death.¹⁷⁰ The decision in Florida triggered Delaware to look into its own capital punishment sentencing scheme.

As noted in the report to the United Nations Working Group on the Universal Periodic Review from 14 September 2015, the United States does not accept recommendations to establish a national moratorium on executions with a view to abolishing the death penalty.¹⁷¹ However, the United States did partially support recommendations not to impose the death penalty on people with mental or intellectual disabilities, committing to this restriction under international law only to the extent that it meets standards established by the United States Supreme Court.¹⁷²

Statistics

During the reporting period, 18 people were sentenced to death in the United States. Belarus sentenced three people during this time. While, in Belarus, all court statistics and data on death penalty cases fall within the jurisdiction of the Supreme Court of the Republic of Belarus, there are no comprehensive public official statistics on death

168 American Civil Liberties Union of Mississippi, "ACLU of MS Statement on Passage of SB 2237 – Execution Secrecy Bill", 25 March 2016, <<https://www.aclu-ms.org/news/2016/03/25/aclu-ms-statement-passage-sb-2237-execution-secrecy-bill>>.

169 U.S. Supreme Court in *Hurst v. Florida*, No. 14-7505, 12 January 2016, <https://www.supremecourt.gov/opinions/15pdf/14-7505_5ie6.pdf>.

170 See Senate Bill 7068 at <<https://www.flsenate.gov/Session/Bill/2016/7068/BillText/c1/HTML>> and House Bill 7101, <<https://www.flsenate.gov/Session/Bill/2016/7101>>.

171 Addendum, "Views and conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", (14 September 2015), A/HRC/30/12/Add.1, para. 8, <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>>.

172 See, Office of the High Commissioner for Human Rights, Appendix to the Addendum to the Report on the Second Universal Periodic Review of the United States of America, <http://lib.ohchr.org/HRBodies/UPR/Documents/Session22/US/AdditionalInfo_US_22session.pdf>.

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sentences and executions.¹⁷³ This is in contravention with their OSCE commitments to, “make available to the public information regarding the use of the death penalty.”¹⁷⁴

Death Penalty Sentences between 1 July 2015 and 31 March 2016

Country	State/ Oblast	Name	Age at Offense	Race Gender	Crime	Victim(s)
United States of America	Florida ¹⁷⁵	Dennis Glover	49	Black Male	1st degree murder	Female
		Barry Davis	26	Black Male	Two counts of 1st degree murder	Female (1) Male (1)
		Randall Devine	18	White Male	1st degree murder	Female
	California ¹⁷⁶	Michael Brown	26	Black Male	1st degree murder and sexual offenses	Female
		Eddie Nealy	29	Black Male	1st degree murder and rape	Female
		Joseph Mercado	26	Latino Male	Three counts of 1st degree murder	Female (1) Male (2)
		Luis Rodriguez	24	Latino Male	Two counts of 1st degree murder	Male (2)
		Francisco Zavala	20	Latino Male	Murder during the course of a robbery	Male (1)
	Alabama ¹⁷⁷	Heather Keaton	22	White Female	Murder and Manslaughter	Female (1) Male (1)
		Jovon Gaston	23	Black Male	Murder	Male
		Lisa Graham	40	White Female	Murder	Female
	Texas ¹⁷⁸	Mark Gonzalez	41	Latino Male	Capital murder ¹⁷⁹	Male
		James Calvert	41	White Male	Capital murder	Female
		Paul Hall	18	Asian Male	Capital murder	Male

173 Andrei Paluda, Palina Stsepanenka and Adarya Hushtyn, “The Death Penalty in Belarus” Fédération internationale des ligues des droits de l’Homme, Vilnius, 2016, <https://www.fidh.org/IMG/pdf/knyga_en_web_1_.pdf>.

174 OSCE Commitments, *op. cit.*, note 45 (17.8).

175 Florida Department of Corrections, Death Row Roster, last updated 21 July 2016, <<http://www.dc.state.fl.us/activeinmates/deathrowroster.aspx>>.

176 California Department of Corrections and Rehabilitation, Division of Adult Operations, Death Row Tracking System printed 5 July 2016, <http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateListSecure.pdf?pdf=Condemned-Inmates>.

177 Alabama Department of Corrections, Alabama inmates on Death Row, last updated 21 July 2016, <<http://www.doc.state.al.us/DeathRow.aspx>>.

178 Texas Department of Criminal justice, Offenders on Death Row, last updated 15 July 2016, <https://www.tdcj.state.tx.us/death_row/dr_offenders_on_dr.html>.

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United States of America	Arizona ¹⁸⁰	Thomas Riley	37	White Male	Murder	Male
	Delaware ¹⁸¹	Otis Phillips	36	Black Male	1st degree murder	Male
	Kansas ¹⁸²	Frazier Cross Jr.	73	White Male	Capital murder and three counts of attempt 1st degree murder	Male (2) Female (1)
	Oklahoma ¹⁸³	Darrell Frederik	55	Black Male	Murder	Female
Belarus¹⁸⁴	Minsk	Gennady Yakovitsky	49	White Male	Aggravated murder, non-fulfillment of alimony duties	Female
		Sergey Chmielewski	32	White Male	Two counts of aggravated murder, theft, breaking-and-entering, non-fulfillment of parole duties	Female (1) Male (1)
	Grodno	Ivan Kulesh	28	White Male	Three counts of aggravated murder, attempted murder, theft and robbery	Female (3)

Death Penalty executions between 1 July 2015 and 31 March 2016:

In the reporting period between 1 July 2015 and 31 March 2016 Belarus has not carried out an execution.

In the United States, 21 people, including one woman, were executed. The State of Texas was responsible for almost half of the executions in the United States during the period covered, with nine sentences executed, followed by Georgia with six, including the only woman executed in the United States during the reporting period. Florida and Missouri both carried out two executions, and Virginia and Louisiana executed one person each.

As of 1 January 2016, there were 2,943 people on death row in the United States.¹⁸⁵

179 Texas does not officially use the term “First degree murder”. Its equivalent in the state’s legislation is “capital murder.”

180 Arizona department of Corrections, Death Row, <<https://corrections.az.gov/node/431>>.

181 State of Delaware, Department of Correction, Inmates Currently Sentenced to Death in Delaware, <<http://www.doc.delaware.gov/deathrow/inmates.shtml>>.

182 Kansas Department of Corrections, Capital Punishment information, last updated May 2016, <<http://www.doc.ks.gov/newsroom/capital/data>>.

183 Oklahoma department of Corrections, Death row Monthly Roster, last updated 29 February 2016, <<https://www.ok.gov/doc/documents/DRMR%203-1-2016.pdf>>.

184 Reply to ODIHR questionnaire on the status of the death penalty 2015/2016, submitted by the Government of the Republic of Belarus.

185 Death Row U.S.A., Winter 2016, “A quarterly report by the Criminal Justice Project of the NAACP Legal Defense and educational Fund, Inc.” as of 1 January 2016, <<http://www.naacpldf.org/death-row-usa>>.

Texas has drawn some criticism due to the executions of Adam Ward and Coy Westbrook. Both men showed evidence of mental disability but were considered above the legal threshold of mental disability in Texas law – an IQ of 70. However, according to a petition to the Supreme Court, Adam Ward suffered from delusions and paranoia fed by his bipolar disorder. The Supreme Court denied the appeal about two hours before the execution.¹⁸⁶ In the case of Coy Westbrook, the Texas Court of Criminal Appeals rejected a last-minute appeal that had been filed because of concerns over Westbrook’s possible mental impairment.¹⁸⁷

Public information procedures and execution methods

In the Republic of Belarus, prisoners might be only informed hours, or even minutes, before they are executed, and relatives receive no prior notification. Executions are carried out by firing squad. In practice, all executions are carried out in undisclosed locations by a shot fired into the back of the head of the condemned person. The bodies are not returned to relatives, nor are the families told where they are buried.

The United States publically announce the dates of executions months in advance. Families of the condemned and a set of witnesses, including the media and the family of the victims, are allowed to be present at executions.

The primary method of execution is lethal injection, but there are other methods available, including electrocution (in eight states), gas chamber (five), hanging (three) and firing squad (three). Tennessee allows for electrocution to be used if the drugs for lethal injections are not available. Utah might allow for firing squads to be used for executions in the event that the drugs required for lethal injection are unavailable. The unavailability of such drugs has grown in the last five years, as manufacturers, seeking to avoid association with executions, have barred the sale of their products to corrections agencies. More than 20 American and European drug companies have already adopted such restrictions, citing moral or business reasons. The latest company to do so is Pfizer, which, on 28 March 2016, decided to impose sweeping controls on the distribution of its products to ensure that none are used in lethal injections. States’ reactions to such bans have included enacting laws that prohibit the disclosure of information regarding the drugs used in lethal injection protocols, “including the identity of the drug manufacturers, and the types, dosages, and expiration dates of the drugs”.¹⁸⁸ The majority of the 31 states with the death penalty have such secrecy provisions, making it increasingly more difficult for prisoners to obtain the

186 See, Jon Herskovitz, REUTERS, “Texas executes man who killed city inspector in 2005”, 22 March 2016, <<http://www.reuters.com/article/us-texas-execution-idUSKCN0WO1AO>>.

187 See, Death Penalty News, “Texas executes Coy Westbrook”, 10 March 2016, <<http://deathpenaltynews.blogspot.com/2016/03/texas-executes-coy-wesbrook.html>>.

188 Submission to the UN Committee against Torture, 27 June 2015, <<http://textlab.io/doc/9586557/june-27--2016-the-undersigned-groups-welcome-the-opportun...>>.

The Death Penalty in the OSCE Area

information necessary to determine if the drugs would violate prohibitions under human rights conventions.

III. 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 re-affirm 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 19th Annual Session (Oslo, 6 – 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.

**OSCE Parliamentary Assembly 24th Annual Session
(Helsinki, 5-9 July 2015)**

Declaration, Recalling the Spirit of Helsinki

Chapter III, Democracy, Human Rights and Humanitarian Questions

98. Affirming the right of and responsibility for OSCE participating States to speak out when abuses take place in other OSCE participating States, including in cases of politically motivated imprisonment, imposition of the death penalty, discriminatory treatment, including that of migrants, Internally Displaced Persons (IDPs) and refugees, and actions against journalists and human rights defenders,

[...]

117. Calls upon the Office for Democratic Institutions and Human Rights and the Representative on Freedom of the Media to continue to speak out publicly when rights are abused, including in cases of politically motivated imprisonment, imposition of the death penalty, discriminatory treatment including that of migrants and refugees and actions against journalists and human rights defenders;

[...]

138. Considers the death penalty to be an inhuman and degrading punishment, an act of torture unacceptable to states respecting human rights, and calls on retentionist states to impose an immediate moratorium on executions;

Annex 3

UNITED NATIONS STANDARDS AND REPORTS

International Covenant on Civil and Political Rights (1966)

[...]

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
(1989)**

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.

**Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment
(1984)**

Article 1

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

[...]

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

**Convention on the Rights of the Child
(1989)**

[...]

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 1984/50:
Safeguards guaranteeing protection of the rights of those facing
the death penalty
(1984)**

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.

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

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 1996/15:
Implementation of the safeguards guaranteeing protection of the rights of
those facing the death penalty
(1996)**

[...]

7. ... to keep to a minimum the suffering of prisoners under sentence of death and to avoid an exacerbation of such suffering;

**Human Rights Committee,
General Comment No. 6: The right to life (Article 6)
(1982)**

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.

**United Nations General Assembly Resolution 62/149:
Moratorium on the use of the death penalty
(2007)**

The General Assembly,

[...]

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

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:

(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;

(b) To provide the Secretary-General with 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;

(c) To progressively restrict the use of the death penalty and 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;

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;

[...]

**United Nations General Assembly Resolution 63/168:
Moratorium on the use of the death penalty
(2008)**

The General Assembly,

Reaffirming its resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions and the global trend towards the abolition of the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 62/149,¹⁸⁹ and the conclusions and recommendations contained therein;

2. *Requests* the Secretary-General to provide a report on progress made in the implementation of resolution 62/149 and the present resolution, for consideration during its sixty-fifth session, and calls upon Member States to provide the Secretary-General with information in this regard;

[...]

**United Nations General Assembly Resolution 65/206:
Moratorium on the use of the death penalty
(2010)**

The General Assembly,

[...]

¹⁸⁹ A/63/293 and Corr.1.

Reaffirming its resolutions 62/149 of 18 December 2007 and 63/168 of 18 December 2008 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available information on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 63/168¹⁹⁰ and the recommendations contained therein;

2. *Also welcomes* the steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

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;

¹⁹⁰ A/65/280 and Corr.1.

(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;

[...]

**United Nations General Assembly Resolution 67/176:
Moratorium on the use of the death penalty
(2012)**

The General Assembly,

[...]

Reaffirming the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, Reaffirming its resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

Welcoming Human Rights Council decision 18/117 of 28 September 2011,

Mindful that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available to the public information on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

1. *Expresses* its deep concern about the continued application of the death penalty;
2. *Welcomes* the report of the Secretary-General on the implementation of resolution 65/206¹⁹¹ and the recommendations contained therein;
3. *Also welcomes* the steps taken by some Member States to reduce the number of offences for which the death penalty may be imposed and the decisions made by an increasing number of States, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
4. *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, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;
 - (c) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age and on pregnant women;
 - (d) To reduce the number of offences for which the death penalty may be imposed;
 - (e) To establish a moratorium on executions with a view to abolishing the death penalty;
5. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
6. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;¹⁹²

¹⁹¹ A/67/226

¹⁹² United Nations, Treaty Series, vol. 1642, No. 14668.

7. *Requests* the Secretary-General to report to the General Assembly at its sixty-ninth session on the implementation of the present resolution;

[...]

**United Nations General Assembly Resolution 69/186:
Moratorium on the use of the death penalty
(2014)**

The General Assembly,

[...]

Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available to the public information on the use of the death penalty, and also, in this regard, the decision by the Human Rights Council in its resolution 26/2 of 26 June 2014¹⁹³ to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty,

[...]

1. *Expresses its deep* concern about the continued application of the death penalty;
2. *Welcomes* the report of the Secretary-General on the implementation of resolution 67/176¹⁹⁴ and the recommendations contained therein;
3. *Also welcomes* the steps taken by some States to reduce the number of offences for which the death penalty may be imposed, as well as steps taken to limit its application;
4. *Further welcomes* the decisions made by an increasing number of States, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

¹⁹³ See Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 53 (A/69/53), chap. V, sect. A.

¹⁹⁴ A/69/288.

5. *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, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;

(c) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age and on pregnant women;

(d) To reduce the number of offences for which the death penalty may be imposed

(e) To establish a moratorium on executions with a view to abolishing the death penalty;

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

7. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;¹⁹⁵

8. *Requests* the Secretary-General to report to the General Assembly at its sixty-ninth session on the implementation of the present resolution;

[...]

¹⁹⁵ United Nations, Treaty Series, vol. 596, No. 8638

**United Nations General Assembly Resolution 70/146:
Torture and other cruel, inhuman or degrading treatment or punishment
(17 December 2015)**

[...]

Recognizing that States must protect the rights of those facing criminal sentences, including the death penalty and life imprisonment without the possibility of parole, and of other affected persons in accordance with their international obligations,

[...]

**Report of the United Nations Secretary-General,
Question of the death penalty, A/HRC/24/18
(2013)**

[...]

59. In his report to the General Assembly, the Special Rapporteur on Torture noted that there is no categorical evidence that any method of execution in use today complies with the prohibition of torture and cruel, inhuman or degrading treatment. Even if the required safeguards are in place, all methods of execution currently used can inflict inordinate pain and suffering. States cannot guarantee that there is a pain-free method of execution (A/67/279, paragraph 41).

[...]

VIII. Conclusions

78. Developments on the question of the death penalty during the reporting period suggest that the trend towards abolition is continuing. However, numerous concerns remain with regard to respect for relevant international human rights norms and standards in States where the death penalty is still imposed. Until it is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve intentional killing. It should not be imposed for drug-related offences and any other ordinary crime that does not meet the threshold of “most serious crimes”. The mandatory death penalty is not compatible with the limitation of the use of the death penalty only to “most serious crimes”. States should abolish the mandatory death penalty, where it still exists. States must also ensure that the highest level of compliance with fair trial and other international human rights norms and standards are met in all death penalty cases.

79. States should amend national laws on extradition and deportation to specifically prohibit the enforced transfer of persons to States where there is a genuine risk that

the death penalty may be imposed in violation of internationally recognized standards, unless adequate assurances are obtained that the death penalty will not be carried out.

80. The lack of data on the number of executions or individuals on death row is a serious impediment to international and national debates that may lead to the abolition of capital punishment. It will also be important for the effectiveness and transparency of such a debate to ensure that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it, without resorting to capital punishment.

81. There is an also urgent need to examine the effects of the capital punishment system in its entirety, including the social, economic and psychological impact on the children of those executed or under death sentence.

**Report of the United Nations Secretary-General,
Question of the death penalty, A/HRC/27/23¹⁹⁶
(2014)**

[...]

VIII. Conclusions

72. The trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for relevant international human rights norms and standards in States where the death penalty is still imposed. Until the death penalty is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve intentional killing. The death penalty should not be imposed for “drug offences”, “consensual adult sex”, “blasphemy” or any other acts that do not meet the threshold of “most serious crimes”. States should abolish the mandatory death penalty, where it still exists. States must also ensure that the highest level of compliance with fair trial and other international human rights norms and standards are met in all death penalty cases.

73. The lack of data on the number of executions or individuals on death row is a serious impediment to debate on the abolition of capital punishment. It will also be important, for the effectiveness and transparency of such a debate, to ensure that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it, without resorting to capital punishment.

¹⁹⁶ See also previous reports: A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18

74. States that still use the death penalty on persons who committed crimes before the age of 18 must stop that practice. When the death penalty is abolished, they must avoid sentencing children to life imprisonment as an alternative punishment. States must take account of article 37 of the Convention on the Rights of the Child, which explicitly requires that deprivation of liberty be used only as a last resort and for the shortest appropriate period of time.

75. The effects of the death penalty system in its entirety, including the social, economic and psychological impact on the children and family members of those executed or under a death sentence, must be further examined. States that still use the death penalty should recognize the urgency of ensuring a protective environment for the children of parents sentenced to death or executed, preventing discrimination and stigma, and providing them with assistance for their recovery and reintegration.

**Yearly supplement of the Secretary-General to his quinquennial report on capital punishment, A/HRC/30/18,
Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty
(16 July 2015)**

[...]

V. Conclusions and Recommendations

55. As the Secretary-General has noted on several occasions, the death penalty has no place in the twenty-first century. In the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty is incompatible with fundamental tenets of human rights, in particular human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. The application of the death penalty often also violates the right to equality and the principle of non-discrimination. The decision about whether to sentence a convict to death or to lesser punishment is often arbitrary and does not necessarily follow predictable, rational criteria. In that judicial lottery, the odds are often stacked against the poor, minorities and other common targets of discrimination, including women, foreign nationals and lesbian, gay, bisexual, transgender and intersex persons.

56. All measures aimed at ending the application of the death penalty are steps towards the enjoyment of the right to life. In its article 6, the International Covenant on Civil and Political Rights, adopted in 1966, referred to the abolition of the death penalty in terms that strongly suggest that it is desirable. In 1989, by adopting the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, States enshrined their stronger abolitionist stance

in international law. The Secretary-General reiterates his call for universal ratification of the Second Optional Protocol, and urges those States that have not yet ratified it to do so without delay.

57. The 70 years since the United Nations came into being have seen a remarkable shift from a large majority of Member States that maintained the death penalty to, nowadays, a minority. Since 1997, the General Assembly has adopted five resolutions that called on States to establish a moratorium on executions with a view to abolishing the death penalty. Currently, approximately 160 of the 193 Member States of the United Nations have abolished the death penalty or introduced moratoriums, either in law or in practice. States should go beyond simply ceasing executions and aim for a suspension of capital punishment for all who might be, or have been, sentenced to death. National prosecutors may consider refraining from seeking the death penalty. Judges may consider not imposing it. In this regard, the highest judicial bodies could issue judicial directives or sentencing guidelines, as appropriate.

58. The continued lack of transparency on the part of some Governments concerning the numbers of persons who have been executed is incompatible with human rights. States should refrain from carrying out executions in secret and strive to take all measures necessary to guarantee access to information on the death penalty, including advance notice to family members regarding the date of execution.

59. States that continue to apply the death penalty should comply with international human rights requirements, as stipulated in article 6 of the International Covenant on Civil and Political Rights. In particular, capital punishment may be imposed only for most serious crimes, that is, intentional killing, and may not be mandatory in such cases. States should also adhere to fair trial guarantees in capital cases. Clemency, pardons and commutations are critical steps towards the abolition of the death penalty. Heads of State and Government and other responsible State authorities should exercise their constitutional and/or legal authority to grant amnesty, pardon or commutation of the sentence of death in all cases.

60. States should consider developing measures to minimize the harm suffered by other persons affected by the death penalty, including family members of convicts, defence lawyers, prison staff and medical staff. In particular, under the Convention on the Rights of the Child, States must take measures to ensure that children's rights, including the principle of the best interests of the child, are duly considered during sentencing.

**United Nations Commission on Human Rights Resolution 2003/67 on the
question of the death penalty
(2003)**

The Commission on Human Rights,

[...]

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

[...]

Concerned that several countries, in imposing the death penalty, do not take into account the safeguards guaranteeing protection of the rights of those facing the death penalty,

1. Recalls the sixth 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, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3), and welcomes the yearly supplement of the Secretary-General on changes in law and practice concerning the death penalty worldwide contained in his report (E/CN.4/2003/106), as requested in Commission resolution 2002/77;
2. Reaffirms resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence;
3. 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;
4. Urges all States that still maintain the death penalty:
 - (a) Not to impose it for crimes committed by persons below 18 years of age, and to exclude pregnant women from capital punishment;
 - (b) 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;

(c) 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;

(d) To ensure 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, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

(e) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;

(f) 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 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;

(g) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;

(h) To exclude mothers with dependent infants from capital punishment;

(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;

5. Calls upon all States that still maintain the death penalty:

(a) 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;

(b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(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 as contained in Economic and Social Council resolution 1984/50;

6. Calls upon States which no longer apply the death penalty but maintain it in their legislation to abolish it;

7. 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 capital punishment will not be carried out;

**United Nations Commission on Human Rights Resolution 2004/67 on the
question of the death penalty
(2004)**

The Commission on Human Rights,

[...]

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

[...]

4. 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 form of mental disorder 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 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;

(g) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, 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 1963 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 judgments;

(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, is 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;

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 as contained in Economic and Social Council resolution 1984/50;

6. *Calls upon* States that no longer apply the death penalty but maintain it in their legislation to abolish it;

7. *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 capital punishment will not be carried out, and calls upon States to provide such effective assurances if requested to do so;
[...]

United Nations Commission on Human Rights Resolution 2005/59 on the question of the death penalty (2005)

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;

[...]

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;

[...]

**United Nations Human Rights Council Resolution 26/2:
The question of the death penalty
(25 June 2014)**

The Human Rights Council,

[...]

Taking note of the reports of the Secretary-General on the question of the death penalty, the latest of which¹ highlighted the significant developments towards the universal abolition of the death penalty and some noticeable steps towards restricting its use in countries that have retained it, and reminded those States that still intend to implement the death penalty of the need to protect the rights of those facing the death penalty and to ensure that it is not imposed for offences committed by persons below 18 years of age, in particular in accordance with the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Mindful of the work of special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture

and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions,

[...]

Strongly deploring the fact that the use of the death penalty leads to violations of the human rights of those facing the death penalty and of other affected persons,

Acknowledging the interest in studying the question of the death penalty, as well as in holding national and international debates related thereto,

1. *Urges* States that have not yet abolished the death penalty to protect the rights of those facing the death penalty and to ensure that the death penalty is not imposed for offences committed by persons below 18 years of age, in particular in accordance with the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child;
2. *Calls* upon States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;
3. *Requests* the Secretary-General to dedicate the 2015 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of those facing the death penalty and other affected persons, and to present it to the Human Rights Council at its thirtieth session;

[...]

**United Nations Human Rights Council Resolution 30/5¹⁹⁷:
The question of the death penalty
(2015)**

[...]

Taking note of the reports of the Secretary-General on the question of the death penalty, in the latest of which¹ the Secretary-General concluded that the imposition of the death penalty was incompatible with human dignity, the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and highlighted the consequences of the lack of transparency in the imposition and

¹⁹⁷ See also Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level panel discussion on the question of the death penalty and Council resolution 26/2 of 26 June 2014 on the question of the death penalty.

application of the death penalty and the consequences arising at various stages of the imposition and application of the death penalty for the enjoyment of the human rights of other affected persons,

Mindful of the work of special procedure mandate holders who have addressed human rights issues related to the death penalty, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers,

[...]

Strongly deploring the fact that the use of the death penalty leads to violations of the human rights of the persons facing the death penalty and of other affected persons,

Recalling the calls to consider whether the use of the death penalty violates the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including because of the death row phenomenon or the methods of execution,

Emphasizing the need to ensure that persons facing the death penalty are treated with humanity and with respect for their inherent dignity, and to improve conditions in prisons in accordance with international standards, such as the Standard Minimum Rules for the Treatment of Prisoners,

Recalling that all methods of execution can inflict inordinate pain and suffering, and that the circumstances in which executions are carried out, in particular public executions, which imply an undignified exposure of the persons sentenced to death, and secret executions or those with short or no prior warning, add to the suffering of the persons sentenced to death as well as of other affected persons,

Emphasizing that lack of transparency in the use of the death penalty has direct consequences for the human rights of the persons sentenced to death as well as for other affected persons,

[...]

1. Urges all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. Calls upon States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;
3. Calls upon States that have not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;
4. Calls upon States to ensure that children whose parents or parental caregivers are on death row, the inmates themselves, their families and their legal representatives are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform on where the body is located, unless this is not in the best interests of the child;
5. Requests the Secretary-General to dedicate the 2017 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of the persons facing the death penalty and other affected persons, paying specific attention to the right to equality and non-discrimination, including on foreign nationals, and to present it to the Human Rights Council at its thirty-sixth session;
6. Decides that the upcoming biennial high-level panel to be held at the thirty fourth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
7. Requests the Office of the United Nations High Commissioner for Human Rights to organize the panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions, with a view to ensuring their participation in the panel discussion;

8. Also requests the Office of the High Commissioner to prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its thirty sixth session;

**United Nations Special Procedures,
Interim Report by the Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment
A/67/279 (2012)**

[...]

VI. Conclusions and recommendations

73. The evolving practice of States shows a clear trend towards abolition of the death penalty. Even in retentionist countries, practices and opinions have changed. Significantly, the trend to abolish and the trend to restrict are both informed by a stated conviction that capital punishment is cruel, inhumane and degrading, either per se or as applied.

74. To date, the death penalty has been treated under the provisions concerning the right to life, and therein as an exception provided for by international law. A new approach is needed as there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so.

75. The Special Rapporteur finds that even if the emergence of a customary norm that considers the death penalty as per se running afoul of the prohibition of torture and cruel, inhuman or degrading treatment is still under way, most conditions under which capital punishment is actually applied renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment.

76. The prohibition of torture and cruel, inhuman or degrading treatment and the strict adherence to safeguards constitute absolute limits on the use and enforcement of the death penalty. It may still be theoretically possible to impose and execute the death penalty without running afoul of the absolute prohibition of torture and cruel, inhuman or degrading treatment, but the rigorous conditions that States must apply for that purpose make the retention of capital punishment not worth the effort. Even

with such conditions, States cannot guarantee that in all cases the prohibition of torture will be scrupulously adhered to.

77. Death by stoning or gas asphyxiation is already clearly prohibited under international law. Furthermore, there is no categorical evidence that any method in use today can be said to comply with the prohibition of torture and cruel, inhuman or degrading treatment.

78. The death row phenomenon is a violation of article 7 of the International Covenant on Civil and Political Rights, and of article 1 or article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, depending on the length of isolation and severity of conditions. The anxiety created by the threat of death and the other circumstances surrounding an execution, inflicts great psychological pressure and trauma on persons sentenced to death. A prolonged stay on death row, along with the accompanying conditions, constitutes a violation of the prohibition of torture itself.

79. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture or cruel, inhuman or degrading treatment. He recommends a more comprehensive legal study on the emergence of a customary norm prohibiting the use of the death penalty under all circumstances.

80. Whether or not a customary norm prohibiting the death penalty has crystallized, the Special Rapporteur calls upon all retentionist States to observe rigorously the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights and article 1 or article 16 of the Convention against Torture. The Special Rapporteur calls upon retentionist States:

- (a) To abolish the use of the death penalty for juveniles, persons with mental disabilities and pregnant women and give further consideration to abolishing the death penalty for persons over the age of 70 years and for recent mothers;
- (b) To ensure that the method of execution employed causes the least possible physical and mental suffering and that it does not violate the prohibition of torture and cruel, inhuman or degrading treatment; establish that there are no more humane alternatives available; and justify the use of a particular method of execution. The Special Rapporteur reiterates that the burden of proof is on the State;
- (c) To refrain from carrying out executions in public or in any other degrading manner; end the practice of secret executions; and end the practice of executions with little or no prior warning given to condemned prisoners and their families;

- (d) To improve conditions on death row in accordance with international standards, such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights;
- (e) To use solitary confinement on death row only in accordance with the recommendations made in his previous report to the General Assembly (A/66/268);
- (f) To respect the rights of the families and relatives of persons sentenced to death.

81. In accordance with article 3 of the Convention against Torture and further customary law, the Special Rapporteur calls upon all States not to expel, return or extradite a person to another State where there are substantial grounds for believing that there is a danger of the person being sentenced to death and subsequently subjected to detention on death row, severe mental or physical suffering or executed in a manner inconsistent with the prohibition of torture and cruel, inhuman or degrading treatment.

Annex 4

COUNCIL OF EUROPE STANDARDS

European Convention for the Protection of Human Rights and Fundamental Freedoms (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 European Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty (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 5 – Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

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

Article 6 – Relationship to the Convention

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

**Protocol No. 13 to the European Convention
for the Protection of Human Rights and Fundamental Freedoms,
Concerning the Abolition of the Death Penalty in All Circumstances
(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 4 – Territorial application

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

Article 5 – Relationship to the Convention

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

Parliamentary Assembly of the Council of Europe (PACE)

Resolution 1187¹⁹⁸

(1999)

1. The Assembly, referring to its Resolutions 1044 (1994) and 1097 (1996), reaffirms its belief that the application of the death penalty constitutes inhuman and degrading punishment and a violation of the most fundamental human right, that to life itself. It reiterates its firm conviction that capital punishment therefore has no place in civilised, democratic societies governed by the rule of law.

Parliamentary Assembly of the Council of Europe (PACE)

Resolution 1807,

The death penalty in Council of Europe member and observer states: a violation of human rights

(2011)

1. The Parliamentary Assembly reiterates its principled opposition to the death penalty in all circumstances. It takes pride in its successful contribution to eradicating

¹⁹⁸ See also PACE Resolution 1044 and Recommendation 1246 from 1994; PACE Resolution 1097 and Recommendation 1302 from 1996

this inhuman and degrading punishment from almost all of Europe, by having made abolition of the death penalty a condition for accession to the Council of Europe.

3. The Assembly urges the United States of America and Japan, as observer states, and Belarus, which aspires to become a member state of the Council of Europe, to join the growing consensus of democratic countries that protect human rights and human dignity by abolishing the death penalty.

[...]

**Parliamentary Assembly of the Council of Europe (PACE)
Resolution 1857 on the situation in Belarus
(2012)**

[...]

6. As regards the death penalty, the Assembly:

6.1. expresses dismay at the execution of the death sentences against Aleh Gryshkautsou and Andrei Burdyka, in July 2011, when their cases were pending before the United Nations Human Rights Committee, and the continuing failure of Belarus to take any tangible steps towards the abolition of the death penalty or the introduction of a moratorium on it;

6.2. deplores the death sentences handed down on 30 November 2011 against Dmitry Kononov and Vladislav Kovalev and is seriously worried that the investigation and the trial were marred by serious human rights abuses (including the use of torture in order to extract confessions), contradictions and gaps in the evidence presented at the trial; it calls on the competent authorities to carry out a full investigation of the allegations made in this context and to ensure true justice for the victims of the heinous acts of terrorism in question, and reiterates that such an irreversible, cruel and inhumane penalty is unacceptable, however heinous the alleged crimes;

6.3. notes with regret that the work of the parliamentary working group on the study of the death penalty issue, initiated two years ago, has not produced any tangible results.

[...]

Annex 5

EUROPEAN UNION STANDARDS

Charter of Fundamental Rights of the European Union (2010)

[...]

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to Life

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

Article 3

Right to the integrity of the person

Everyone has the right to respect for his or her physical and mental integrity.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 19

Protection in the event of removal, expulsion or extradition

(2) No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

**European Union Guidelines on the Death Penalty
(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.

xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.

xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.

**European Union Guidelines on the Death Penalty, 8416/13
(12 April 2013)**

[...]

II. OPERATIONAL PAPER

The EU considers that the death penalty constitutes serious violation of human rights and human dignity. Encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty. ¹¹ The abolition of capital punishment contributes to the progressive development of human rights. Capital punishment is inhumane and unnecessary. No compelling evidence exists to show that the death penalty serves as a deterrent to crime. Furthermore, any miscarriage of justice could lead to the intentional killing of an innocent person by state authorities.

[...]

**European Parliament resolution of 1 February 2007
on the initiative in favour of a universal moratorium on the death penalty
(2007)**

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.

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

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 interparliamentary 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;

[...]

**European Parliament Resolution
on the World Day against the Death Penalty
(7 October 2010)**

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 practise 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 alliance, 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;

**European Parliament resolution of 8 October 2015 on the death penalty,
2015/2879 (RSP)
(2015)**

[...]

1. Reiterates its condemnation of the use of the death penalty and strongly supports the introduction of a moratorium on the death penalty, as a step towards abolition; emphasises once again that the abolition of the death penalty contributes to the enhancement of human dignity and that the EU's ultimate aim is universal abolition;

2. Condemns all executions wherever they take place; continues to be deeply concerned regarding the imposition of the death penalty on minors and on persons with mental or intellectual disability, and calls for an immediate and definitive end to such practices, which violate international human rights standards; expresses its grave concern about the recent mass trials leading to a vast number of death sentences;

[...]

4. Urges the European External Action Service (EEAS) and the Member States to continue fighting against the use of the death penalty and to strongly support the moratorium as a step towards abolition, to continue to push for abolition worldwide, to strongly urge countries still carrying out capital punishment to comply with international minimum standards, to reduce the scope and use of the death penalty, and to publish clear and accurate figures on the number of sentences and executions; urges the EEAS to remain vigilant with regard to developments in all countries, in particular Belarus as the only European country which still has the death penalty, and to use all means of influence at its disposal;

5. Welcomes the abolition of the death penalty in certain US states and encourages the EU to continue its dialogue with the USA with a view to total abolition, in order to stand together in addressing capital punishment worldwide;

[...]

7. Recalls that the death penalty is incompatible with values such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, on which the Union is founded, and that any Member State reintroducing the death penalty would therefore be in violation of the Treaties and of the EU Charter of Fundamental Rights;

8. Is particularly concerned by the increasing use of the death penalty in the context of the fight against terrorism in a number of countries, and by the possibility of its reintroduction in others;

9. Condemns in particular the use of the death sentence to suppress opposition, or on grounds of religious belief, homosexuality or adultery, or on other grounds which would either be considered trivial or not regarded as crimes at all; calls, therefore, on those states which criminalise homosexuality not to apply the death penalty for this;

[...]

13. Urges the Commission to strengthen the controls on export of products which can be used for the death penalty;

[...]

21. Calls on the member states of the Council of Europe which have yet to ratify Protocols 6 and 13 to the European Convention on Human Rights to do so, in order to ensure the effective abolition of the death penalty within the entire Council of Europe region;

Annex 6

ORGANIZATION OF AMERICAN STATES STANDARDS

**American Convention on Human Rights
“Pact of San Jose, Costa Rica”, B-32
(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 re-established 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.

Article 5: Right to Human Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.

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

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 2012 OSCE Human Dimension Implementation Meeting

During the 2012 OSCE Human Dimension Implementation Meeting, held in Warsaw from 24 September to 5 October 2012 issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism were discussed at the *Working Session 5: Rule of Law II*.

Participants made the following recommendations:

- For OSCE participating States that still retain the death penalty, to take steps towards its abolition by promptly establishing a moratorium on death sentences and executions;
- For OSCE participating States that still retain the death penalty, to commute all death sentences to imprisonment terms;
- For OSCE participating States that have in place a moratorium on the death penalty, to amend their legislation to fully abolish the death penalty;
- For all OSCE participating States, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, if they have not yet done so; and
- For all OSCE participating States, to encourage debate on the abolition of the death penalty both at the national and international levels.

Relevant Recommendations made at the 2013 OSCE Human Dimension Implementation Meeting

During the 2013 OSCE Human Dimension Implementation Meeting, held in Warsaw from 23 September to 4 October 2013, issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism were discussed at the Working Session 15: Rule of Law II.

Participants made the following recommendations:

- For OSCE participating States that still retain the death penalty, to take steps towards its abolition by promptly establishing a moratorium on death sentences and executions;
- For OSCE participating States that have in place a moratorium on the death penalty, to amend their legislation to fully abolish the death penalty;
- For all OSCE participating States, to ratify relevant international legal instruments to abolish the death penalty, including the Second Optional Protocol to the International

- Covenant on Civil and Political Rights and Protocol 13 to the European Convention on Human Rights, if they have not yet done so; and
- For all OSCE participating States, to encourage debate on the abolition of the death penalty both at the national and international level.

**Relevant Recommendations made at the
2014 OSCE Human Dimension Implementation Meeting**

During the 2014 OSCE Human Dimension Implementation Meeting, held in Warsaw from 22 September to 3 October 2014, issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism were discussed at the Working Session 4: Rule of Law I.

Participants made the following recommendations:

- For OSCE participating States that still retain the death penalty, to introduce moratoriums on the death penalty;
- For OSCE participating States that have in place a moratorium on the death penalty, to abolish it from the law; and
- For all OSCE participating States to respond to the ODIHR questionnaires on the state of the death penalty.

**Relevant Recommendations made at the
2015 OSCE Human Dimension Implementation Meeting**

During the 2015 OSCE Human Dimension Implementation Meeting, held in Warsaw from xx September to xx October 2015, issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism were discussed at the Working Session 8: Rule of Law.

Participants made the following recommendations:

To OSCE participating States,

- To abolish the death penalty in all circumstances;
- Do not reintroduce the death penalty once it has been abolished;
- Do not reintroduce the death penalty once it has been abolished;
- Work to update OSCE commitments concerning the use of capital punishment;

To OSCE institutions, executive structures and field operations,

- The OSCE should update its commitments on the use of capital punishment.

Annex 8

ODIHR QUESTIONNAIRE ON THE DEATH PENALTY

2016 DEATH PENALTY QUESTIONNAIRE

Abolitionist

Questions below relate to the developments with regard to the issue of the death penalty in your country in the period from 1 July 2015 to 31 March 2016.

1. Is your country engaged in any activities relevant to the issue of the death penalty on the national or international level? If yes, please highlight the most important activities in the period from 1 July 2015 to 31 March 2016. Also, please state how these activities took into account the gender aspects of the death penalty.
2. Are there any pending cases or communications related to the issue of the death penalty with regard to your country, such as cases before domestic or international courts or quasi-judicial bodies or communications with penitentiary institutions? If yes, please provide a description of each case or communication highlighting any gender-related issues, including as to whether gender bias may have had an impact on the imposition of the death penalty or otherwise on the situation of any individual facing the death penalty.
3. Are any of your citizens facing the death penalty abroad? If yes, please provide information about gender and race or ethnicity, indicating relevant countries. In cases where the person concerned provided informed consent, please provide their full name, age and location. Also, are there any indications that gender bias may have had an impact on the imposition of the death penalty or otherwise on the situation of any individual facing the death penalty abroad?
4. What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
5. What measures are taken by your country to protect pregnant women, children/ juveniles and persons with mental disabilities facing the death penalty abroad?
6. Does your country consider the death penalty as a cruel, inhuman or degrading punishment or even torture? Are there any public statements or official documents describing such attribution of the death penalty? If yes, please provide the related documentation.
7. Does your country actively advocate for the global abolition of the death penalty on the diplomatic/political level? If yes, please highlight the most important initiatives taken during the reporting period (1 July 2015 – 31 March 2016).

End of Questionnaire

De-facto Abolitionist

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 July 2015 to 31 March 2016.

1. The attached paper is the entry related to your country in the 2015 Background Paper on the Situation of the Death Penalty. It lists crimes that carry the death penalty in your country. Please check this list and inform us if any corrections or changes are needed.
2. Have any steps been taken to retain or remove a moratorium on the death penalty in the reporting period (1 July 2015 – 31 March 2016)?
3. Have any steps to fully remove the death penalty from national legislation been taken in the reporting period (1 July 2015-31 March 2016)?
4. Have any steps been taken towards the ratification of any of the following international instruments (if applicable):
 - Second Optional protocol to the International Covenant on Civil and Political Rights;
 - Protocol Six to the European Convention on Human Rights;
 - Protocol Thirteen to the European Convention on Human Rights.
5. Please indicate ways in which you have co-operated with local and international organizations on the issue of the death penalty in the period from 1 July 2015 to 31 March 2016. Also, please state how these activities took into account the gender aspects of the death penalty.
6. Are any of your citizens facing the death penalty abroad? If yes, please provide information about gender and race or ethnicity, indicating relevant countries. In cases where the person concerned provided informed consent, please provide their full name, age and location. Also, are there any indications that gender bias may have had an impact on the imposition of the death penalty or otherwise on the situation of any individual facing the death penalty abroad?
7. What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
 - What measures are taken by your country to protect pregnant women, children/juveniles and persons with mental disabilities facing the death penalty abroad?
8. Does your country consider the death penalty as a cruel, inhuman or degrading punishment or even torture? Are there any public statements or official documents describing such attribution of the death penalty? If yes, please provide the related documentation.

End of Questionnaire

Retentionists

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 July 2015 to 31 March 2016.

LEGAL FRAMEWORK

1. The attached paper is the entry related to your country in the 2015 Background Paper on the Situation of the Death Penalty. It lists crimes that carry the death penalty and the methods of execution in your country, among other issues. Please inform us if any corrections or changes are needed.
2. Should your country's Code of Military Law carry the death penalty, have there been any changes to it?
3. Have any steps been taken to introduce, retain or remove a moratorium on the death penalty during the reporting period (1 July 2015 – 31 March 2016)? If yes, please attach copies of relevant documents.
4. If a moratorium is in place, have there been any changes during the reporting period (1 July 2015 – 31 March 2016) in the specific procedure regulating the treatment and rights of persons subjected to the moratorium? If yes, please attach copies of relevant documents.
5. Please provide details on any changes in legislation, rules and regulations regarding the treatment of persons on death row and attach copies of relevant documents. Please provide information whether there are any particular provisions applicable regarding the special needs of women on death row.

STATISTICS

6. If a moratorium is in place, please list the name and place of detention of all persons subjected to the moratorium.
7. Please provide statistics on the number, age, gender and race/ ethnicity of persons who have been sentenced to death in the period from 1 July 2015 to 31 March 2016, as well as the specific crime for which each of these persons was sentenced.
8. Please provide information about the gender of the victim of the crime leading to the death sentence.
9. Please list other death sentences that have entered into force (i.e. all appeal stages have been exhausted) during the reporting period (1 July 2015 – 31 March 2016).
10. Please indicate if any of the persons sentenced to death in the period from 1 July 2015 to 31 March 2016 were:
 - Under age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disability;

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- Non-nationals; please indicate whether or not each of these persons received consular assistance.
11. Please provide statistics on the number, age, gender and race/ethnicity of persons, who have been executed in the period from 1 July 2015 to 31 March 2016. Please also indicate the specific crime for which each of these persons was executed.
 12. Please indicate if any persons executed in the period from 1 July 2015 to 31 March 2016 were:
 - Under age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disability;
 - Non-national: please indicate whether or not each of these persons received consular assistance.
 13. If there have been changes during the reporting period (1 July 2015 – 31 March 2016), 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.
 14. Please provide us with the number, gender, and race/ ethnicity of any person sentenced to death penalty who has been asking for clemency and the number, gender, and race/ethnicity of any person who has been granted clemency or had his or her sentence commuted in the reporting period (1 July 2015 – 31 March 2016). In cases where the person concerned provided informed consent, please provide their full name, age and location.
 15. If there have been any changes during the reporting period (1 July 2015 -31 March 2016), please describe the procedure for considering a request for clemency, including the factors that are taken into account when considering such a request.
 16. Are any of your citizens facing the death penalty abroad? If yes, please provide information about gender and race or ethnicity, indicating relevant countries. In cases where the person concerned provided informed consent, please provide their full name, age and location. Also, are there any indications that gender bias may have had an impact on the imposition of the death penalty or otherwise on the situation of any individual facing the death penalty abroad?
 17. Please list all cases regarding the use of the death penalty that have been decided in the reporting period (1 July 2015 – 31 March 2016), or are currently ongoing, before international bodies (eg. UN Human Rights Committee, International Court of Justice).
 18. Please describe procedures for complying with interim stays by the UN Human Rights Committee.

19. Please list the number, age, gender and race/ethnicity of any persons who have been executed whilst a procedure regarding their case was ongoing before an international body.

SAFEGUARDS

20. What safeguards are in place in your country to protect pregnant women, children and persons with mental disabilities facing the death penalty?
21. What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions to impose death sentences?
22. What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions on clemency?
23. What measures are undertaken to ensure that the different needs of women and men facing the death penalty (e.g. in the course of legal proceedings, in detention etc.) are addressed?
24. What safeguards are in place to protect children who have a parent facing the death penalty in your country and abroad (relevant to nationals of your country)?
25. 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?
26. Please provide details on the number and the treatment of women and men on death row as well as on gender related aspects of those awaiting execution. Are official medical reports on psychological status of death row prisoners available?
27. How does your country respond to the death row phenomenon, which consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death? Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held.
28. Please provide information on the methods of execution used in your country and the assessments made with regard to the pain and suffering caused by each of these methods.

MISCELLANEOUS

29. Which state body is responsible for keeping statistics on sentences, executions and commutations?
30. Please indicate ways in which you have co-operated with local and international organizations on this issue of the death penalty in the period from 1 July 2015 to 31 March 2016.

End of Questionnaire

Annex 9

STATUS OF RATIFICATION OF RELEVANT TREATIES

Status of Ratifications as of 31 March 2016

Participating State	Status	ICCPR	CAT	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Albania	A	r	r	r	r	r	r
Andorra	A	r	r	r	r	r	r
Armenia	A	r	r	No action	r	r	Signed
Austria	A	r	r	r	r	r	r
Azerbaijan	A	r	r	r	r	r	No action
Belarus	R	r	r	No action	n/a	n/a	n/a
Belgium	A	r	r	r	r	r	r
Bosnia and Herzegovina	A	r	r	r	r	r	r
Bulgaria	A	r	r	r	r	r	r
Canada	A	r	r	r	n/a	n/a	n/a
Croatia	A	r	r	r	r	r	r
Cyprus	A	r	r	r	r	r	r
Czech Republic	A	r	r	r	r	r	r
Denmark	A	r	r	r	r	r	r
Estonia	A	r	r	r	r	r	r
Finland	A	r	r	r	r	r	r
France	A	r	r	r	r	r	r
Georgia	A	r	r	r	r	r	r
Germany	A	r	r	r	r	r	r
Greece	A	r	r	r	r	r	r
Holy See	A	No action	r	No action	n/a	n/a	n/a
Hungary	A	r	r	r	r	r	r
Iceland	A	r	r	r	r	r	r
Ireland	A	r	r	r	r	r	r
Italy	A	r	r	r	r	r	r
Kazakhstan	DA	r	r	No action	n/a	n/a	n/a
Kyrgyzstan	A	r	r	r	n/a	n/a	n/a
Latvia	A	r	r	r	r	r	r

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Liechtenstein	A	r	r	r	r	r	r
Lithuania	A	r	r	r	r	r	r
Luxembourg	A	r	r	r	r	r	r
Malta	A	r	r	r	r	r	r
Republic of Moldova	A	r	r	r	r	r	r
Monaco	A	r	r	r	r	r	r
Mongolia	A	r	r	r	n/a	n/a	n/a
Montenegro	A	r	r	r	r	r	r
Netherlands	A	r	r	r	r	r	r
Norway	A	r	r	r	r	r	r
Poland	A	r	r	r	r	r	r
Portugal	A	r	r	r	r	r	r
Romania	A	r	r	r	r	r	r
Russian Federation	DA	r	r	No action	r	Signed	No action
San Marino	A	r	r	r	r	r	r
Serbia	A	r	r	r	r	r	r
Slovak Republic	A	r	r	r	r	r	r
Slovenia	A	r	r	r	r	r	r
Spain	A	r	r	r	r	r	r
Sweden	A	r	r	r	r	r	r
Switzerland	A	r	r	r	r	r	r
Tajikistan	DA	r	r	No action	n/a	n/a	n/a
Turkey	A	r	r	r	r	r	r
Turkmenistan	A	r	r	r	n/a	n/a	n/a
Ukraine	A	r	r	r	r	r	r
United Kingdom	A	r	r	r	r	r	r
United States of America	R	r	r	No action	n/a	n/a	n/a
Uzbekistan	A	r	r	r	n/a	n/a	n/a
Former Yugoslav Republic of Macedonia	A	r	r	r	r	r	r

Notes:

r = ratification or accession

signed = signature only

No action = neither signed nor ratified

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

A = abolitionist

DA = de facto abolitionist

R = retentionist