

The Death Penalty in the OSCE Area

Background Paper 2017

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2016*. 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 the issue. It covers the period from 1 April 2016 to 31 March 2017.

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Designed by Nona Reuter

The Death Penalty in the OSCE Area

Background Paper 2017

*Special Focus:
Children of Parents Sentenced
to Death or Executed*



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I. Introduction

1. Overview

OSCE participating States have made a number of commitments regarding the death penalty, including considering the potential abolition of capital punishment, to exchange information toward that end and to make information on the use of the death penalty available to the public.¹ Where the death penalty is still in use, participating States have agreed that it could be imposed only for the most serious crimes and only in line with international commitments.² In light of these commitments and its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) monitors trends and new developments regarding human rights standards and practices among OSCE participating States related to 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 ODIHR 2017 death penalty questionnaire was sent out on 17 May 2017 to all OSCE participating States. The reporting period for this background paper covers developments from 1 April 2016 to 31 March 2017. ODIHR commends the 30 OSCE participating States that have provided information on the status of the death penalty in their respective countries in response to the ODIHR questionnaire.³

This year's edition includes a thematic focus on children of parents sentenced to death or executed in relation to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in addition to other relevant aspects of the situation of the death penalty in the OSCE region. Part I of the 2017

1 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>>.

2 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>>.

3 The participating States of Albania, Azerbaijan, Belarus, Belgium, Canada, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Monaco, Montenegro, the Netherlands, Norway, Romania, Russian Federation, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the Republic of Uzbekistan have replied to the ODIHR's Questionnaire on the Death Penalty 2017.

background paper contains an introductory essay written by the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais.⁴ Part II of the background paper covers the current status of the death penalty in the OSCE region, based on the information provided by the OSCE participating States and other relevant sources.

Throughout the background paper, an *abolitionist* state is defined as an OSCE 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 and carries out executions.

2. Introductory Essay of the United Nations Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais

The rights of children of parents sentenced to the death penalty or executed

The rights of children of parents sentenced to the death penalty or subject to execution have been largely invisible and neglected. It is crucial to bring the child's perspective into these reflections.

In recent years, we have seen some promising developments at the global level: in September 2013, the Human Rights Council of the United Nations held an important panel discussion on the rights of children of parents sentenced to the death penalty or executed, and the topic has been given distinct attention by the reports of the Secretary-General on the question of death penalty. In addition, the topic has been raised in the Universal Periodic Review process and the Committee on the Rights of the Child has addressed it in the review of States' reports on national implementation. The decision of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to devote the introductory essay in this year's background paper to this topic will hopefully be an important contribution to this debate.

Several international and regional human rights instruments prohibit the use of capital punishment, encourage its abolition and strictly limit its application to the "most serious crimes." Some 160 states have abolished or introduced a moratorium on the death penalty either in law or practice, and some have suspended its enforcement.

Despite a general trend away from capital punishment in some countries there is lack of transparency surrounding executions and at times data regarding the use of death penalty is classified as state secrets. Needless to say, it is even more difficult to obtain information about affected children and families. Better data collection and sound research are urgently needed in this area.

⁴ The opinion expressed by the Special Representative are those of the author and do not necessarily reflect the opinion of the OSCE or ODIHR.

According to available studies, death penalty disproportionately affects the poor and people belonging to ethnic, racial and religious minorities. Children whose parents have been sentenced to death may thus face multiple discriminations.

Indeed, the protection of the rights of the child enshrined in the Convention on the Rights of the Child (CRC) is a very distant dream for these children: their best interest is not duly taken into account and protected (art. 3); their right to freedom from violence is not safeguarded (art. 19); their right to special protection and assistance when state action causes a child to be deprived of his or her family environment fails to be given due attention (art. 20); and the right to an adequate standard of living for the child's physical, mental, spiritual, moral and social development is not fulfilled either (art. 27(1)). In brief, these children have truly been left behind.

The loss of a parent is traumatic and irreversible in any circumstance. But, unlike a natural death, when it is officially performed by the authorities of a country it becomes particularly confusing and frightening for a child. Children find it hard to understand and explain their situation, and are increasingly tempted to deny it and hide their feelings. These children need adequate support and accurate information about the situation of their parent on an on-going basis and in an age-sensitive way. Experience shows that family and peer support, as well as assistance by community-based and civil society organizations can be effective and appropriate in many of these situations.

Children whose parents are facing the death penalty may feel anger and a deep sense of uncertainty. The process from trial to imprisonment, with multiple stages and appeals is exhausting, both for those convicted and their children. These children experience high levels of stress and anxiety as executions are announced, delayed and appealed. Traumatized and with low self-esteem, they can suffer from constant nightmares or loss of sleep, and eating disorders; they can lose concentration and interest in school, as well as willingness to play. Some of them feel pressed to become economically active because the family breadwinner is in prison or has been executed. Post-traumatic stress disorder, aggressive behavior and self-harm often go hand in hand. Overall, children often endure this experience in deep loneliness and hopelessness.

In these desperate situations, adults of the family may need to use their energy and resources to prevent the execution and the child may not receive the support that he or she will need. Unresolved grief and trauma can make it hard for these children to become good parents later in life. Thus, death penalty ends up having an intergenerational impact.

While data are limited, United Nations Office on Drugs and Crime (UNODC) homicide statistics show that 40 to 70 per cent of homicides of women are perpetrated by an intimate partner or family member. This points toward a significant number of children being affected as a result of these crimes and convictions. Where the

death penalty applies, these children could be eventually orphaned by the state. In some cases of domestic violence children may also be required to stand as witnesses in court against their parent; as a result, they gain a deep sense of guilt as their testimony may contribute to the death sentence of their own parent.

In addition, the serious stigma associated with people sentenced to death often makes it difficult to find alternative caregivers for the child. This further exacerbates the pain and in turn, increases the risk of becoming homeless and ending up living on the street, at risk of violence and exploitation, and manipulated into crime. Girls are at particular risk of sexual violence. At the same time, relatives may not have financial resources to take care of the child, and in cases where both the offender and the victim are the child's parents, families may be divided and the child left on his or her own.

The execution of a parent, a provider and protective figure in a child's life, may cause a considerable internal conflict and lead to a complex relationship with the state and the community. This is even more likely in situations where the death penalty is applied to non-lethal offences. Children may understand that a parent has done wrong and needs to be held accountable, but they may be unable to understand and accept that the state deliberately plans to kill the parent. This may trigger a lack of trust in legislators, law enforcement and the judiciary, and be reflected in their behavior and social integration in society later in life.

It is also important to consider that the death penalty can touch families within more than one country. Children whose parents are sentenced to death in a country that is not their home, may face less stigma and enjoy more public and community support in their own communities. However, they may have no experience or expectation of the death penalty and for this reason the shock they endure may be stronger.

Daunting as the reality of children whose parents have been sentenced to death in their own countries or abroad may be, it is not inevitable. And there are cases where the impact of a death sentence on the children's wellbeing has been used to successfully argue a non-death punishment. Change is possible, and three steps are particularly important to make it happen.

First, the sentencing of a parent to death compromises the enjoyment of a wide spectrum of a child's rights; but it can be prevented, as we are reminded by the Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted nearly 30 years ago. Efforts for wide ratification and effective implementation of this treaty, which is now in force in 84 countries, 56 OSCE participating States, would improve the situation for these children.

Second, more research on the situation of children of parents facing the death penalty is urgently needed. However, available evidence is sufficiently sound and convincing to recognize the urgency of ensuring a protective environment for these

children; of preventing discrimination against them, and providing them with the services and the recovery and reintegration measures they urgently require.

Third, it is important to recognize that there are children subjected to the death penalty still today. This is contrary to the Convention on the Rights of the Child (CRC) and other international human rights standards that ban the imposition of capital punishment for offences committed by people below 18 years of age, regardless of their age at the time of trial, sentencing or of the execution of the sanction. It is imperative to ensure that such a fundamental provision is respected and duly implemented in all countries of the world.

Working together at the international, regional and national levels, a paradigm shift can be achieved. Safeguarding the rights of children everywhere and at all times is within reach, and this will help to secure safe, just and peaceful societies for all.

II.

The Status of the Death Penalty in the OSCE Area

1. Children of parents sentenced to death or executed⁵

The death penalty has a noteworthy impact not only on accused and convicted people, but also on the children of such people. Although there is still an urgent need for more research into the situation of children of those sentenced to death or executed, there is a growing body of evidence that documents the specific and serious mental health implications of capital punishment for these children.⁶ Such children are affected by issues comparable to those experienced by children of imprisoned parents, as well as by repercussions unique to children of parents sentenced to death.⁷ However, their experiences are often overlooked in criminal justice processes by the public, as well as states in the wider framework of their obligation to prevent torture or other ill-treatment. Children might therefore be considered the hidden and indirect victims of capital punishment.⁸ Remembering that many of those facing the death penalty in retentionist states are parents, can contribute to rehumanizing death row prisoners in public perception, as well as reminding authorities and the public to consider the damage the death penalty does to those connected to the sentenced person. Considering that the majority of OSCE participating States have abolished, in law and in practice, the death penalty, or are considered de-facto abolitionists, one of the issues to explore in the OSCE is

5 The following sub-section is partly based on a legal memorandum prepared by the Sussex Law School at the University of Sussex, "Human Rights Law Clinic Papers 2017 - the impact of the death penalty on children of parents sentenced to death" (2017), commissioned by the Office for Democratic Institutions and Human Rights (Sussex Legal Memo), <<https://www.sussex.ac.uk/webteam/gateway/file.php?name=clinic2017-yeboahappiah-death-penaltyparents-final.pdf&site=408>>.

6 United Nations Human Rights Council, Report of the Secretary-General, "Question of the death penalty", A/HRC/24/18 (1 July 2013), para. 77, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/157/38/PDF/G1315738.pdf?OpenElement>>..

7 Olivier Robertson and Rachel Brett, "Lightening the Load of the Parental Death Penalty on Children", Quakers United Nations Office, June 2013, at 46, <http://www.quono.org/sites/default/files/resources/Lightening%20the%20Load.Web_.EN_.pdf>.

8 "'Hidden' victims: the children of parents on death row", OHCHR, 10 October 2013, <<http://www.ohchr.org/EN/NewsEvents/Pages/HiddenVictims.aspx>>.

the effect of capital punishment on children of parents sentenced to death or executed abroad. Many states outside the OSCE region continue to apply the death penalty including for non-lethal, drug related offences.⁹ As a consequence, there are hundreds of foreign nationals who are facing the death penalty in those states, including citizens of OSCE participating States. Hence, participating States should consider the possibility of their citizens being sentenced or executed abroad and the impact on their children.¹⁰

Human Rights, including the right to be free from torture or other cruel, inhuman or degrading treatment or punishment of children of parents sentenced to death or executed

It is increasingly recognized that aside from people sentenced or executed, their children are similarly considered relevant victims and rights holders.¹¹ The impact of the death penalty on a child can constitute a violation of the child's rights under international human rights law, as recognized by international human rights bodies.¹²

OSCE commitments and legal framework

With the Copenhagen Document in 1990, OSCE participating States decided to accord particular attention to the recognition of the rights of the child, including children's civil rights and individual freedoms, economic, social and cultural rights, and the right to special protection against all forms of violence and exploitation.¹³ Moreover, with the Declaration on Youth adopted on 5 December 2014, the OSCE Ministerial Council recalled the OSCE commitments relating to youth and children, which are enshrined in the Helsinki Final Act and other relevant OSCE

9 "The Death Penalty for Drug Offences", Harm Reduction International, <<https://www.hri.global/the-death-penalty-doesnt-stop-drug-crimes>>; see also "Which countries have the death penalty for drug smuggling?", *The Economist*, 29 April 2015, <<https://www.economist.com/blogs/economist-explains/2015/04/economist-explains-28>>.

10 Helen Kearney, "The death penalty: a child rights issue and a public health issue", *Freedom From Fear Magazine*, Issue 9, 2014, pp. 66-71, <http://f3magazine.unicri.it/wp-content/uploads/F3_09.pdf>.

11 "Can the children of parents sentenced to death or executed be considered victims of torture or cruel, inhuman or degrading treatment?", Quaker United Nations Office, February 2017, at 2, <http://www.quino.org/sites/default/files/resources/QUNO_2017%20HRC%20statement%20flyer_updatedv3%20%28002%29.pdf>.

12 Francis Ssuubi, "The impact of the Death Penalty on the children with a parent on death row or executed", in OHCHR, *Death Penalty and the Victims* (2016), p. 190, <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/menschenrechte-menschliche-sicherheit/death-penalty-and-the-victims-2016_EN.pdf>; see also UN Human Rights Council resolution A/HRC/22/11/L.18, Panel on the human rights of children of parents sentenced to the death penalty or executed; UN Human Rights Council resolution A/HRC/19/L.31, Rights of the Child; UN Human Rights Council resolution A/HRC/30/L.11/Rev.1; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279 (9 August 2012), para. 52; UN Human Rights Committee, Concluding Observations Japan (2008), CCPR/C/JPN/CO/5, para. 16.

13 Copenhagen Document, *op. cit.*, note 1, para. 17.7 and 17.8.

decisions, and acknowledged that youth and children require particular attention and that their needs, concerns and interests should be addressed in a comprehensive manner.¹⁴

All OSCE participating States, with the exception of the United States of America, have ratified the UN Convention on the Rights of the Child (CRC).¹⁵ The Convention recognizes four key guiding principles that permeate the understanding and construction of all pertinent rights of children. These principles include: the best interest of the child (Article 3), a foundational principle underlying all decisions, judgments or actions concerning the child; the right to life, survival and development (Article 6); **respect for the views of the child (Article 12)**; and the right to non-discrimination (Article 2). These principles, together with others, are used to evaluate the impact of the death penalty on children of people sentenced to the death penalty. The key principles of the CRC establish that the best interests of the child must be a primary consideration in all decisions affecting them, including decisions relating to their parents. State parties have to ensure the protection and care that is necessary for a child's well-being (Article 3). In addition, Article 9 of the CRC, while taking in consideration the best interest of the child, underlines the importance of respecting the right of children who are separated from one or both parents to maintain personal relationships and direct contact with both parents on a regular basis. The CRC prescribes that if such separation is a consequence of any action initiated by a state, states shall, upon request, provide the child with the essential information concerning the whereabouts of the absent member(s) of the family, unless the provision of the information would be detrimental to the well-being of the child. Article 20 of the CRC further imposes an obligation on the state to guarantee special protection and assistance to children temporarily or permanently deprived of their family environment and, in accordance with their national laws, to ensure alternative care for such a child.

Furthermore, all OSCE participating States are party to the United Nations Convention against Torture and Other, Cruel, Inhuman or Degrading treatment or Punishment (CAT) and have committed to combat and eradicate torture and other ill-treatment in a number of OSCE commitments.¹⁶ Article 1 of the CAT defines torture as the, "infliction of such pain or suffering for certain purposes" and cruel and inhuman or degrading treatment as an act that can pose "harsh or severe suffering on the physical, emotional and psychological well-being of an individual, severe pain or suffering whether physical or mental, inflicted on a person". In the case of the child, particular emphasis is to be placed on the severe mental and

¹⁴ OSCE Ministerial Council, "Declaration on youth", Basel, 5 December 2014, OSCE MC.DOC/3/14, <<http://www.osce.org/mc/130536?download=true>>.

¹⁵ The United States of America has signed but not ratified the UNCRC.

¹⁶ Vienna 1989; Copenhagen 1990; Paris 1990; Moscow 1991; Budapest 1994; Istanbul 1999; Ljubljana 2005; Helsinki 2008; Athens 2009;

psychological suffering inflicted as result of the imposition of the death penalty on her or his parent.

In the context of children with parents sentenced to death or executed abroad, meaning in a different country from the one the child is residing, other international standards come into play. In particular, Article 36 of the Vienna Convention on Consular Relations that includes the obligation to provide regular consular access to any foreigner arrested on criminal charges during detention and criminal proceedings, including to prisoners on death row.¹⁷ Access to consular officials by death row inmates is essential to the best interest of the child as it helps to relay information between the child and the accused people facing the death penalty or people sentenced to the death penalty. The state of nationality must therefore provide consular assistance to nationals facing the death penalty charges overseas to ensure aid in legal proceedings through the provision of competent defence counsels that will defend convicted parents based on the need for the court to take into account the best interest of the child.

New developments at the international level

In 2012, the United Nations Human Rights Council, in its resolution 19/37, called on 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 or to inform on where the body is located, unless this is not in the best interests of the child”.¹⁸ One year later, in 2013, the Human Rights Council furthermore adopted resolution 22/11 on the “Panel on the human rights of children of parents sentenced to the death penalty or executed”.¹⁹ This resolution deals specifically with the human rights of children of parents sentenced to death or executed and the state’s obligations in such circumstances. It acknowledges the negative impact of a parent’s death sentence and his or her execution on his or her children, and urges states to provide those children with the protection and assistance they may require and called upon states to provide those children or, where appropriate, giving due consideration to the best interests of the child, another member of the family, with access to their parents and to all relevant information about the situation of their parents.²⁰ Based on this resolution, a

17 Vienna Convention on Consular Relations 1963, 596 UNTS 261.

18 Resolution adopted by the Human Rights Council on 23 March 2012 on the Rights of the Child, A/HRC/RES/19/37, (19 April 2012), para. 69 (f).

19 UN Human Rights Council, Panel on the Human Rights of Children of Parents Sentenced to the Death Penalty or Executed, A/HRC/RES/22/11 (2013).

20 Human Rights 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, A/HRC/RES/22/11 (2013), paras. 1 and 2.

panel discussion on the human rights of children of parents sentenced to the death penalty was held on 11 September 2013 in Geneva at the twenty-fourth session of the UN Human Rights Council.

During the panel discussion several states highlighted the challenges faced by families, and especially children, with regard to access to and information on individuals sentenced to the death penalty. The Panel recommended that states that retain the death penalty have, “to ensure that the rights of the child to information and last visits or communications [...] are effectively protected; to return the body of a person executed or any personal effects to the family for burial, or inform them where the body is buried and allow them reasonable access to that location; to immediately end any form of secrecy surrounding the use of the death penalty and to ensure domestic legislation complies with international standards on transparency.”²¹

In the same year, 2013, the UN General Assembly, in its resolution 68/147 on the rights of the child, acknowledged, “that a parent’s [...] sentencing to death [...] has a serious impact on children’s development”.²² The General Assembly subsequently urged states, in the framework of their national child protection efforts, to provide the assistance and support these children may require.

In 2015 the UN Human Rights Council, in its resolution 30/5, reiterated its call upon states to ensure that children, whose parents or parental caregivers are on death row, are provided, in advance, with adequate information about a pending execution, its date, time and location. The importance to allow a last visit or communication with the convicted person and the return of the body to the family for burial were likewise stressed.²³ The Human Rights Council also decided to dedicate a high-level panel discussion to 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.

The high-level panel discussion was held on 1 March 2017, in Geneva at the thirty-fourth session of the UN Human Rights Council. The objective of the panel discussion was to continue the exchange of views among states on the question of the death penalty and to address 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. The impact of the death penalty on family members and other individuals around them was discussed, particularly trauma and long-term consequences that the children of parents sentenced to death suffer. It was stressed that the human rights of children of parents sentenced to death or

²¹ United Nations Human Rights Council, Summary of the Panel discussion on the human rights of children of parents sentenced to the death penalty or executed, Report of the UN High Commissioner for Human Rights, A/HRC/25/33 (2013), para. 31 (e).

²² United Nations General Assembly Resolution on Rights of the child A/RES/68/147 (2013), para. 57.

²³ 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), para. 4, <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=25720>..

executed, in particular, need to be addressed, as was the anguish of relatives who did not know when their relative would be executed or who could not visit them or say their farewells.²⁴

The UN Committee on the Rights of the Child has recommended that authorities take into consideration the children of those sentenced and their best interests when considering individual death penalty cases and provide psychological and other support necessary to children whose parents have been sentenced to death. The duty to take into account the best interest of the child at the time of sentencing could, if implemented, contribute to a reduction in the use of the death penalty. Supplemental to the right of the child to visit his or her incarcerated parent, the Committee made specific recommendations to facilitate, as far as technically possible, further regular contact between the child and the incarcerated parent(s) through telephone, video-conference and other means of communication, and to ensure that any associated costs are non-prohibitive.²⁵

The impacts of the death penalty on children

Parent-child relationship

Unlike any other criminal punishment, the execution of a parent cuts the parent-child relationship irreversibly.²⁶ This can reduce children's standards of living due to loss of family income, and affect access to healthcare and education. Considering that parents usually play a major role in defining and shaping the personality of their children, sentencing a parent to death might jeopardize a child's future. Childhood is a period of continuous growth. As the Committee on the Rights of the Child has emphasized, each phase in a child's growth is significant, given that important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. Moreover, the stages of the child's development are cumulative and each stage has an impact on subsequent phases, influencing the child's health, potential risks and opportunities.²⁷

24 United Nations Human Rights Council, High-level panel discussion on the question of the death penalty, Report of the United Nations High Commissioner for Human Rights, A/HRC/36/27 (2017), paras. 37 and 45, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/180/42/PDF/G1718042.pdf?OpenElement>>.

25 Committee on the rights of the Child, Report and recommendations of the Day of General Discussion on "Children of incarcerated Parents" 30 September 2011, para. 46, <<http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCGDReport.pdf>>.

26 "Children of parents sentenced to death or executed – How are they affected? How can they be supported?", Child Rights Connect, September 2013, p. 2, <http://www.quono.org/sites/default/files/resources/English_Children%20of%20parents%20sentenced%20to%20death%20or%20executed.pdf>.

27 Committee on the Rights of the Child, General Comment 15, 'On the rights of the child to the enjoyment of the highest attainable standard of health', U.N. Doc. CRC/C/GC/15 (2013), para. 20, <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLKzM58RF%2F5FovH-CIs1B9k1r3xoaA7FYrehlNUfw4dHmlOxmFtmhaiMokH8oywS3uq6Q3bqZ3A3yQo%2B4u6214CSatnrBlZT8nZ-mj>>.

Therefore, the absence of a parent figure as a result of the death penalty can be a hindrance to the developmental process of a child. The parent-child relationship is also affected in a way that may cause “intense fear, helplessness or horror”²⁸ in the child, potentially leading to post-traumatic stress disorder or other trauma symptoms in the child that persist into adulthood and throughout life.²⁹

Psychological impact and trauma suffered by children of parents sentenced to death or executed

Children of parents sentenced to death or executed endure multidimensional harm.³⁰ Children have different ways of experiencing pain and suffering associated with the death penalty. This depends on the personality and circumstance of the child, reactions of people around them, the criminal justice system and even public or media responses.³¹ A pending execution of a parent can induce psychological and emotional distress in children, as well as a sense of powerlessness and fear concerning the fate of their parent in detention, and a mixture of anxiety and shock.³² Social stigma against those sentenced to death can limit the child’s ability to grieve their parent’s absence, resulting in what psychologists call “disenfranchised grief”. Also, uncertainty about whether and when the execution will take place compounds the emotional and psychological harm. The high-security nature of death row means the often physical contact may be forbidden during visits, denying children physical comfort from their parent at a particularly traumatic time.

It is therefore necessary to adopt a more holistic understanding of capital punishment systems, including the social, economic and psychological impacts on lives that were never intended to be the targets of death penalty laws.³³ For instance, it has been found by grief counsellors and therapists that when children’s grief is hidden and unsupported, they often express intense anger, guilt and shame. Studies carried out in China revealed that children of executed parents often suffer from tremendous and irrational guilt, as well as internalized shame.³⁴ These children shown low self-esteem and they may even blame themselves for what is happening to their parents.³⁵ They may have behavioral issues, such as aggression and

28 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Press Inc., 4th ed., 1994), para.309.81; see also Elizabeth Beck, Sarah Britto and Arlene Andrews, *In the Shadow of Death: Restorative Justice and Death Row Families* (OUP, 2007), p.125.

29 Oliver Robertson and Rachel Brett, “Lightening the Load of the Parental Death Penalty on children” Quakers United Nations Office (QUNO), June 2013, p.35, <http://www.quno.org/sites/default/files/resources/Lightening%20the%20Load.Web_.EN_.pdf>.

30 Kearney *op. cit.* note 10.

31 Robertson and Brett, *op. cit.*, note 29, page 4

32 Ssuubi, *op. cit.*, note 12, p. 192; see also Sussex Legal Memo. *op. cit.*, note 5, p. 5.

33 *Ibid.*

34 Kearney, *op. cit.* note 10, p. 69.

35 Ssuubi, *op. cit.*, note 12, p. 192.

violence, alcoholism, substance abuse, running away from home, disobedience and stubbornness, and they may turn to committing crimes and end up being arrested and imprisoned like their parents.³⁶ In addition, they may also have sleeping problems, such as nightmares, insomnia and night terrors. Moreover, psychologists working with children and families of those sentenced to death or executed in the United States have found that many experience this uniquely difficult type of “disenfranchised grief”, leading to depression, severe anxiety, self-induced isolation, somatic illnesses, withdrawal, emotional problems and even post-traumatic stress disorder.³⁷ Children may experience trauma from the day of arrest to the day of execution. For many children, the arrest of a parent will be the first time they have had contact with the criminal justice system.³⁸ The fear and uncertainty about what will happen to the parent may not be resolved until the judicial process is complete.³⁹ Particularly in judicial systems involving multiple appeals and stays of execution, children can experience emotional “rollercoasters” of repeated hope and disappointment.⁴⁰ In addition, in some circumstances, executions may be carried out in secrecy, with little information provided, compounding a child’s distress. Families may not be informed of the execution until after it has taken place, and in some cases may not have the body for the deceased returned to them for burial.

Violation of children’s right to be free from torture and other cruel, inhuman or degrading treatment or punishment

Given the above mentioned serious impacts on a child and the severe pain and suffering caused, the sentencing to death and subsequent execution of a parent may amount to cruel, inhuman or degrading treatment or punishment of the child, as prohibited under the absolute prohibition against torture and other ill-treatment. This has already been well established in cases where secrecy surrounding detention on death row and executions and the failure to return the bodies to the family are practiced. For instance, the Human Rights Committee has stated that the failure to notify the children of the prisoners on death row of their execution is incompatible with the Covenant.⁴¹ The Committee views these practices as having the effect of “intimidating or punishing the children by leaving them in a state of

³⁶ *Ibid.*, p. 193.

³⁷ Kearney, *op. cit.*, note 10, p. 69.

³⁸ Robertson and Brett, *op. cit.*, note 29, p. 10.

³⁹ *Ibid.*, p. 7.

⁴⁰ Statement of Penal Reform International, at 2013 ODIHR Human Dimension Implementation Meeting (HDIM), Working Session 14: Abolition of the Death Penalty, 2 October 2013, <<https://www.penalreform.org/wp-content/uploads/2013/10/Oct-2013-OSCE-DP-for-website.pdf>> .

⁴¹ Concluding Observations of the Human Rights Committee: Japan, U.N. Doc. CCPR/C/79/Add.102 (1998), para. 21, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F-C%2F79%2FAdd.102&Lang=en> .

uncertainty and distress amounting to a violation of article 7 (the prohibition of torture and other ill-treatment) of the ICCPR”.⁴² The UN Special Rapporteur on extrajudicial, summary and arbitrary executions has also stated that “refusing to provide convicted persons and children with advance notice of date and time of execution is a clear violation of human rights. These practices are inhuman and degrading and undermine procedural safeguards surrounding the right to life”.⁴³ The UN Special Rapporteur on torture found that secrecy and refusal to hand over remains to families are especially cruel features of capital punishment and that there is the need for total transparency and avoidance of harm to innocent people in the whole process.⁴⁴

Children experience grief, emotional and psychological trauma differently to adults, owing to their physical and emotional development and specific needs. In children, ill-treatment may cause even greater or irreversible damage than for adults. While the death of a parent is often a painful loss, the knowledge that the death was caused by the deliberate actions of another (the state) is distinctly traumatic for children.⁴⁵

The neglect of children’s suffering, stigma and discrimination

This situation can be further worsened when authorities involved either fail to recognize or deliberately refuse to consider the emotional and material needs of these children and that the children can experience public indifference or hostility.⁴⁶ Despite these dangerous consequences, the effects of capital punishment on this vulnerable group of indirect victims are rarely considered in criminal justice systems.⁴⁷

Besides internalized feelings and trauma, children of parents on death row or executed often face extreme stigma and hostility from the community. Stigma is a painful punishment that society can inflict on the family of a condemned person. Sometimes discrimination and hostility from the community may be so great that the family may move to a different area, where they are unknown. Potential alternative carers, including family members, may decide not take in children to avoid

42 United Nations Economic and Social Council, Report of the Secretary-General on Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, U.N. Doc. E/2005/3, 9 March 2005, para.125, <<http://undocs.org/E/2005/3>>.

43 United Nations Economic and Social Council Special Rapporteur on extrajudicial, summary and arbitrary executions, Report, U.N. Doc. E/CN.4/2006/53/Add.3 (2006), para.32, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go6/120/57/PDF/Go612057.pdf?OpenElement>>.

44 United Nations General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/67/279 (2012), p.14, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>>.

45 Helen Kearney, “Children of parents sentenced to death”, QUNO, February 2012, p.14, <http://www.quno.org/sites/default/files/resources/ENGLISH_Children%20of%20parents%20sentenced%20to%20death.pdf>.

46 Child Rights Connect, *op. cit.*, note 26, p. 2.

47 *Ibid.*

the stigma. It may be that they are unwilling due to the stigma and discrimination they fear facing or worries that the children will “infect” other children.⁴⁸

The death penalty disproportionately affects the poor and people belonging to ethnic, racial and religious minorities. As a consequence, a child may experience additional discrimination on grounds of race, ethnicity, religion or economic condition.⁴⁹ In that regard, the CRC stresses that children must be protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of their parents (article 2). Moreover, children may suffer discrimination especially where the parent’s offence is known publicly. Media stories can generate public hostility and feelings of revenge towards the parent on death row but also towards their children.⁵⁰

Lack of support

Children permanently or temporarily deprived of their family environment due to the imposition of the death penalty are entitled to special protection by the state.⁵¹ The family unit is very important, since the family is entrusted under law with the function of acting as the primary carer of the child.⁵² According to the European Court of Human Rights (ECHR), the best interest of the child comprises two limbs: maintaining family ties and ensuring the child’s development within a sound environment such as would not harm her or his health and development.⁵³ When a child is deprived of the family setting, the state should provide alternative care and support. In retentionist states, however, children may reject the state’s authority, lose a sense of personal allegiance to the state and become unwilling to seek or accept assistance. This is especially so in this context because they associate the state with the execution of their parent.

States often fail to make available adequate funds for the support needed for medical expenses, counselling or funeral expenses to children and family of an executed person.⁵⁴ Often, support to offenders’ children is not guaranteed in the same way as it is for children of the victims of the offense, even though these children might also be considered victims within the meaning of the UN Universal Declaration of Principles of Justice for Victims of Crime and Abuse of Power.

48 Robertson and Brett, *op. cit.*, note 29, p. 29.

49 Ssuubi, *op. cit.*, note 12, p. 193.

50 *Ibid*, pp. 194-195.

51 Convention on the Rights of the Child (CRC), Article 20.

52 CRC, Article 5.

53 *Neulinger and Shuruk v. Switzerland*, ECHR Application no. 41615/07, (2010), para. 136, <http://hudoc.echr.coe.int/eng?i=001-99817>.

54 Rachel King, *Capital Consequences: Family of the Condemned Tell Their Stories* (Rutgers, 2005), p.10.

Children of parents sentenced to death or executed abroad

States must also offer support for children of parents sentenced to death abroad. At times, affected children may be found in the same country with the convicted parent or may be in the country of origin or even in a third country. However, whatever the location, the state of nationality has a role to play in supporting these children. Children in the same country as their convicted parent need to be returned home to other family members or another carer who is competent enough to take care of the child or stay near the parent, depending on various factors, such as the child's age and the availability of suitable caregivers. As such, the state has to make sure that children are able to participate and be heard in decisions about alternative carers. In other words, states should make sure that alternative care is necessary and must guarantee that the alternative care option provided is deemed appropriate.

Children in the country of origin must be given assistance financially or provided with means to communicate or even visit parents convicted abroad. In addition to this, sometimes children may seek answers to certain questions regarding the parent's death sentence or may even need reassurances of state commitment to assist in their predicament. As such, the state has to make available well-equipped institutions that operate over a wide area and are well-placed to provide adequate information on services available to these children. These support systems can help reduce the severity of post-traumatic stress disorder in children and also serve the particular therapeutic needs of children of death row inmates. States should also provide support through social aid schemes that will cover the living expenses, school fees and medical expenses of such children. In all this, it is imperative that the state informs children of available support. The criminal justice system and other state authorities must provide this information orally or in documented forms especially in languages children of different ages and stages of development can comprehend.⁵⁵

Measures taken by OSCE participating States to protect children who have a parent facing the death penalty abroad

In the OSCE region, in relation to safeguards provided for children whose parents have been sentenced to death, participating States generally do not have in place specific legislation for these situations. In most cases protection is given to those in such situations through general rules and legislation governing the protection of children's rights. Belarus informed that there are special measures in place to provide assistance to children whose parents have been sentenced to death. Women are exempted from the death penalty but in cases when a father with dependents

⁵⁵ Sussex Legal Memo, *op. cit.*, note 5, pp. 8-9.

is sentenced to death, the court has to notify the Education Department of the city of residence in order to insure State protection for the child.⁵⁶

In their replies to the ODIHR 2017 questionnaire, a number of abolitionists participating States highlighted measures they have in place to assist children of their nationals who might face the death penalty abroad. However, considering that some states declared that they have never encountered such a situation, they do not envisage any mechanism specifically for children whose parents are sentenced to death, but that children in such a situation would, where necessary, be eligible for child welfare schemes under national law.

Azerbaijan, for instance, stated that relevant guarantees of social protection to this vulnerable group are regulated by the Law of the Republic of Azerbaijan “On social protection of children who lost their parents or deprived of parental care”, where the latter means individuals under the age of eighteen with both parents serving a sentence in prison. Finland informed ODIHR that its Child Welfare Act (417/2007) provides protection for a child who is about to be left without a parent or custodian. The objective of the Act is to protect children’s rights to a safe growth environment, to balanced and well-rounded development and to special protection. “The Act on Child Custody and Right of Access” (361/1983) safeguards the establishment of custody, which can be ordered by a court if necessary.

Hungary recalled UN Human Rights Council Resolution 22/11, where it was agreed to provide the required protection and assistance to the children of parents sentenced to death or executed. On the basis of Section 167, Paragraph 4 of Government Decree No. 149/1997 (IX.10.) on “Guardianship Authorities, Child Protection Procedure and Guardianship Procedure”, the Department for Child Protection and Guardianship Affairs of the Ministry of Human Capacities fulfills the task of protection, repatriation and guardianship of such children at the national level. It does so in co-operation with the Hungarian consular service. Furthermore, considering that the execution of a person is the direct result of a state action, primarily, the enforcing state shall be responsible for ensuring that children receive appropriate care and assistance. If the given state is not a state party to the CRC, Hungary declared its readiness to provide assistance through its consular service. Sweden informed ODIHR that any support to children of parents sentenced to death or executed abroad falls under ordinary structures, such as the “Social Services Act” (2001:453), which regulates special provisions on the social welfare committee’s responsibilities for children and young people.

Turkey mentioned its International Social Services (ISS) Unit affiliated to Ministry of Family and Social Policies, Department of European Union and Foreign Relations, which carries out case studies in order to resolve social and family problems of Turkish citizens who are living abroad for any reason. Within this

⁵⁶ See “The Death Penalty in the OSCE Area: Background Paper 2016” (OSCE’s Office for Democratic Institutions and Human Rights (2016)), p. 40, at <<http://www.osce.org/odihr/266186?download=true>>.

framework, children living abroad are provided with the same services as the children in Turkey. In addition, children who need protection are taken under care in accordance with “Article 5 of Juvenile Protection Law No: 5395”. Care measures are taken in the event that the people responsible for the juvenile are unable to fulfil his/her care duties for any reason. Other OSCE participating States responded that such situations are considered on a case-by-case basis.

A number of participating States also recalled initiatives intended to inform discussions between UN Member States, such as a high-level panel event on the death penalty held on 21 September 2016 at the margins of the Ministerial week of the 71st session of the UN General Assembly, co-organized by several countries together with the United National Office of the High Commissioner on Human Rights (OHCHR).⁵⁷ The panel was intended to inform discussions among states, with a particular focus on the impact that capital punishment has on a broad array of victims, including murder victims’ families, the wrongfully convicted and the “hidden” third parties, including the children of the condemned, legal actors and prison personnel who oversee executions.

Additional measures to reinforce the protection of children of parents sentenced to death or executed

States that still use the death penalty may put further restrictions on its use considering the impacts on children of parents sentenced to death. Where a moratorium is in place (de jure or de facto) death sentences continue to be handed down and individuals remain incarcerated on death row. The possibility of a return to the use of the death penalty means that for affected children, the risk of their parent’s execution remains. Highlighting this problem can be used in campaigning for the shift to full abolition.

Where the death penalty has been abolished, children may still be affected if a parent faces the death penalty abroad. In such cases, states have the obligation to support these children. Depending on the circumstances, it may be necessary for authorities to provide children with support in the form of repatriation or facilitation of visits and contact. Participating States that have abolished the death penalty may not have any influence on the sentencing or execution of a parent abroad. However, their obligation to prevent torture or other ill-treatment within their jurisdiction may require action to alleviate the detrimental effects of the death penalty on children under their jurisdiction. This may include efforts to transfer the death row prisoner back to the home country, but also to provide rehabilitation services to children suffering from their parent’s sentence or execution, as well as additional practical, emotional and financial support to the child to communicate

⁵⁷ “The death penalty and victims”, Side event at the 71st Session of the United Nations General Assembly, 21 September 2016, <<http://www.un.org/webcast/pdfs/160921am-death-penalty.pdf>>.

with and visit their imprisoned parents abroad. The UN Committee against Torture in its General Comment No. 3 clarified that victims of torture or other ill-treatment have the right to obtain redress and adequate compensation, including the means for as full a rehabilitation as possible, without discrimination.⁵⁸

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

OSCE participating States have made a number of commitments related to the question of capital punishment, including keeping its abolition under consideration and for participating States that have not abolished the death penalty to only impose it for the most serious crimes, in accordance with international commitment.⁵⁹

At the 2016 OSCE Human Dimension Implementation Meeting in Warsaw, in September, participating States reiterated those commitments. Several participating States called for a moratorium as a first step towards universal abolition, citing that any miscarriage of justice could result in the killing of an innocent person by state authorities and that cruel, inhuman and degrading aspects of the use of the death penalty are not mitigated by a democratic process. Furthermore, it was reported that arguments were raised in favor of the re-introduction of the death penalty in states that previously abolished it or de-facto abolished it,⁶⁰ and that 2015 saw the greatest use of the death penalty, with Asian countries remaining responsible for 50 per cent of executions, globally.

At the international level, on 19 December 2016 the United Nations General Assembly adopted its sixth resolution aimed to establish a global moratorium on the death penalty.⁶¹ The resolution was endorsed by an overwhelming majority, with 117 states voting in favor of the text, 40 voting against it, 31 abstaining and five absent.⁶²

In particular, it has to be noted that Belarus, one of the two remaining retentionist countries in the OSCE region, together with the United States, was among those 31 states who abstained, while the United States voted against the resolution.

Besides its main goal of establishing a moratorium on executions with a view to abolishing the death penalty, the resolution intended to make other strong calls

58 Committee against Torture, General Comment No.3 on the implementation of article 14 of the UNCAT, U.N. Doc. CAT/C/GC/3 (2012), paras. 1, 3 and 15.

59 Vienna 1989; Copenhagen 1990; Helsinki 2008.

60 Organization for Security and Co-operation in Europe, "OSCE/ODIHR Director Link expresses grave concern over Turkish President's statement on reintroducing the death penalty", 2 November 2016, <<http://www.osce.org/odihr/278597>>.

61 United Nations General Assembly Resolution on the Moratorium on the use of the death penalty, U.N. Doc. A/RES/71/187 (2016), <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/187&referer=http://www.un.org/en/ga/71/resolutions.shtml&Lang=E>.

62 "Overwhelming Majority of States support a Universal Moratorium on the Death Penalty", Fédération internationale des ligues des droits de l'homme (FIDH), 20 December 2016, <<https://www.fidh.org/en/issues/death-penalty/overwhelming-majority-of-states-support-a-universal-moratorium-on-the>>.

on retentionist countries, such as reducing the number of offences for which this punishment can be imposed and to increase the transparency in its use, including by making publicly available information on any scheduled executions and by following fair and transparent clemency procedures.⁶³ The instrument was proposed by 89 UN Member States under the leadership of Argentina and Mongolia.

2.1 Retentionist participating States

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

2.1.1 Belarus

Article 24 of the Constitution of the Republic of Belarus provides that the death penalty represents an exceptional measure of punishment for the most serious crimes.⁶⁴ Although the Constitution allows the imposition of capital punishment, Belarus stopped executions for one and a half years (between November 2014 and April 2016) but has resumed in 2016. In its response to the ODIHR 2017 questionnaire, Belarus provided information on death sentences handed down by national courts and executions carried out in the reporting period. However, human rights defenders report that comprehensive and official statistics regarding the number of death sentences imposed and executions carried out are lacking and the numbers of death sentences and executions have to be considered approximate.⁶⁵

Death sentences between 1 April 2016 and 31 March 2017

According to the information received, national courts in Belarus imposed three death sentences during the reporting period. Given that the Criminal Code of Belarus forbids imposing the death penalty on women, only men above the age

63 "Global Report - Death sentences and executions 2016", Amnesty International, 11 April 2017, page 10, <<https://www.amnesty.org/en/what-we-do/death-penalty/>>.

64 The Criminal Code of the Republic of Belarus, as amended up to July 2013, envisages the death penalty for fourteen crimes: Art 122 (2): "Unleashing or conducting a war of aggression", Art 124 (2): "Act of Terrorism directed against the representative of a foreign state or international organization", Art 126 (3): "Act of International Terrorism", Art. 127: "Genocide", Art. 128: "Crimes against humanity", Art. 134: "Use of weapons of mass destruction", Art 135 (3): "Violation of laws and customs of war", Art 139 (2): "Murder with attenuating circumstances, Art 289 (2) "Act of Terrorism", Art. 356 (2): "Treason to the State connected with murder", Art 357 (3): "Plot, or other actions, taken with a purpose to take over governmental power", Art 359 (2): "Act of Terrorism directed against state or public official", Art. 360 (2): "Sabotage", Art. 362: "Murder of an employee of internal affairs bodies". <<http://www.wipo.int/edocs/lexdocs/laws/ru/by/byo86ru.pdf>>.

65 "Belarus: Fourth death sentence issued before New Year: Kiryl Kazachok", Amnesty International, 13 January 2017, <<https://www.amnesty.org.uk/files/ua01617.pdf>>.

of 18 and below the age of 65 at the time of the sentencing can be sentenced to death.⁶⁶

Siarhei Vostrykau, 33 years old, was convicted by the Gomel Regional Court on 19 May 2016 for two separate cases of rape and murder committed in July 2014 and in July 2015, respectively. Vostrykau was the third person to be sentenced to death in 2016 and the first within the reporting period in Belarus. The verdict entered into force on 4 October 2016.⁶⁷

The second death sentence was handed down by the Regional Court in Mazyr (south-eastern Belarus), to Kiryl Kazachok, convicted for murdering his two children. The verdict was announced on 28 December 2016, during a trial which was reportedly held behind closed doors.⁶⁸ The verdict entered into force on 10 January 2017. According to public information, Kazachok's appeal hearing at the Supreme Court of Belarus was scheduled for 21 March 2017. However, he has refused to use his right to appeal the sentence or request clemency. He was allegedly transferred to the pre-trial detention centre (SIZO) #1 in Minsk where death sentences are carried out. At the time of the drafting of this report he was at risk of imminent execution.⁶⁹

On 17 March 2017, the third death sentence within the reporting period was handed down. Aliaksei Mikhalienia, a 32-year-old resident of Narouïlia, has been found guilty of murdering two people and of committing the crime with special cruelty (para. 1, 6, 16, Part 2, Art. 139 of the Criminal Code of Belarus).⁷⁰ In its response to the ODIHR 2017 questionnaire, Belarus confirmed that the verdict has entered into force on 30 June 2017 after the Supreme Court rejected his appeal and upheld the sentence. It is reported that Mikhalienia has been transferred to the pre-trial detention centre (SIZO) #1 in Minsk where death sentences are carried out.⁷¹

66 Criminal Code of the Republic of Belarus, arts. 59.2(2).

67 "Belarus issues third death sentence in 2016: Siarhei Vostrykau", Amnesty International, 3 June 2016, <<https://www.amnesty.org/en/documents/eur49/4198/2016/en/>>. According to public sources, Vostrykau has been executed on 5 May 2017; see e.g. Organization for Security and Cooperation in Europe, "Condemning recent execution in Belarus, OSCE/ODIHR Director repeats call for immediate moratorium on death penalty", 8 May 2017, <<http://www.osce.org/odihr/315931>>; "Execution in Belarus of Siarhei Vostrykau", European Union External Action (EEAS), 6 May 2017, <https://eeas.europa.eu/headquarters/headquarters-homepage_en/25677/Execution%20in%20Belarus%20of%20Siarhei%20Vostrykau>; see also "EU Local Statement on the Execution of Siarhei Vostrykau in Belarus", EEAS, 10 May 2017, <https://eeas.europa.eu/headquarters/headquarters-homepage/25888/eu-local-statement-execution-siarhei-vostrykau-belarus_en; <<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6637&lang=2&cat=9>>.

68 "Man in Mazyr sentenced to death", VIASNA, 28 December 2016, <<http://spring96.org/en/news/85703>>.

69 "Belarus: Kiryl Kazachok at risk of imminent execution", Amnesty International, 3 March 2017, <<https://www.amnesty.org/.../EUR4958212017ENGLISH.pdf>>. Death Penalty News (4 March 2017) at <<https://deathpenaltynews.blogspot.com/2017/03/belarus-kiryl-kazachok-at-risk-of.html>>

70 "Man sentenced to death in Narouïlia", VIASNA, 20 March 2017, <<http://spring96.org/en/news/86286>>.

71 "Aliaksei Mikhalienia risque d'être exécuté sous peu", Amnesty International, 18 July 2017, <<https://www.amnesty.be/je-veux-agir/agir-en-ligne/ecrire-des-lettres/article/aliaksei-mikhalienia-risque-d-etre-execute-sous-peu?lang=fr>>.

These death sentences are in contrast with the work of Belarus' Parliamentary working group established in February 2010 with the aim to study the issue of the abolition of the death penalty in the country (hereafter "the working group"). The Council of Europe, the European Union and OSCE institutions have issued statements throughout the reporting period urging Belarus to respect the right to life and to join a global moratorium on the death penalty as a first step towards its full abolition.⁷² By way of example, on 30 November 2016, at the 1272nd meeting the Council of Europe's Committee of Ministers adopted a decision regarding the abolition of the death penalty in Europe, expressed deep disapproval of four further death sentences pronounced in Belarus, in contravention of the global trend towards abolition, since their last exchange of views on 7 and 8 October 2015, respectively against Ivan Kulesh on 20 November 2015, Henadz Yakavitski on 5 January 2016, Sergey Khmelevsky on 16 February 2016 and Siarhei Vostrykau on 19 May 2016.⁷³ In the same decision, the Committee of Ministers condemned the executions of Ivan Kulesh and Sergey Khmelevsky which immediately preceded the Committee of Ministers debate on the abolition of the death penalty.

Executions between 1 April 2016 and 31 March 2017

Name	Entry onto force of the death sentence	Crime	Reported date of execution
Siarhei Ivanov	14 July 2015	Rape and murder	18 April 2016
Siarhei Khmialeuski	6 May 2016	Theft and murder	5 November 2016
Ivan Kulesh	29 March 2016	Three counts of aggravated murder, attempted murder, theft and robbery	5 November 2016
Guennady Yakovitsky	8 April 2016	Aggravated murder	5 November 2016

According to the information provided to ODIHR by the Belarusian Government, four executions were carried out in Belarus within the reporting period, which

72 Organization for Security and Co-operation in Europe, "OSCE/ODIHR Director calls on Belarus to stop executions, introduce immediate moratorium on death penalty", 9 May 2016, <<http://www.osce.org/odihr/239336>>; see also The Delegation of the European Union to Belarus, "Local EU Statement on a death sentence in Belarus", 28 March 2017, <https://eeas.europa.eu/delegations/belarus/23593/node/23593_en>; see also Andrea Wiktorin, Head of the Delegation of the European Union to Belarus, "Belarus has the ultimate role to play in making the European continent free from executions", 10 October 2016, <http://eeas.europa.eu/archives/delegations/belarus/press_corner/all_news/news/2016/2016_10_10_1_en.htm>.

73 Council of Europe Committee of Ministers, 1272nd meeting – 30 November 2016, "Abolition of the death penalty in Europe", <CM/Del/Dec(2001)769/4.4, CM/Del/Dec(2015)1237/4.5, CM/Inf(2016)32. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806be4ed>.

represents the highest number of executions since 2008.⁷⁴ However, human rights organizations believe that this number of executions might be higher.⁷⁵ In its response to the ODIHR questionnaire, Belarus confirmed that during the reporting period no presidential pardons were granted.

Syarhei Ivanov is the first person known to have been executed in Belarus since November 2014. He was sentenced to death by the Supreme Court of Belarus in March 2015 for murder, theft and robbery committed in 2013, and was reportedly executed on 18 April 2016. His execution was discovered by human rights defenders who learned it from a statement made in court by another death-row inmate, who had shared a cell with Ivanov. The night when he was taken out of his cell the inmate realized that he was not returned to his cell. In the morning, the inmate had to hand over all of Ivanov's belongings to penitentiary staff who allegedly made comments insinuating that he would no longer need those things.⁷⁶ Ivanov's brother had petitioned the United Nations Human Rights Committee, arguing that his trial was unfair, and stating that, during the trial, Ivanov remained handcuffed and was obliged to wear special clothes with the label "capital punishment" on them. It was also alleged that he was not brought promptly before a judge upon arrest and had limited access to a lawyer.⁷⁷ In accordance with the First Optional Protocol to the International Covenant on Civil and Political Rights, which Belarus acceded to in 1992, the Human Rights Committee had requested the Belarusian authorities not to carry out the execution while the case was under consideration.⁷⁸ Despite the request, the execution was carried out, even though the case was still pending with the UN body. On 5 November 2016, three other executions were carried out without any prior notice, those of Siarhei Khmialeuski, Ivan Kulesh and Guennady Yakovitsky.

In January 2016, the Minsk Regional Court found Guennady Yakovitsky guilty of a murder committed in 2015. Yakovitsky denied the charges against him and lodged an appeal against his conviction and death sentence with the Supreme Court and

74 United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, U.N. Doc. A/HRC/35/40, 21 April 2017, para. 98, < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/097/69/PDF/G1709769.pdf?OpenElement>>. >

75 "Executing Countries in 2016", Amnesty International, *op. cit.*, note 63.; see also "Belarus: First death sentence in 2017", Fédération internationale des ligues des droits de l'Homme, 21 March 2017, < <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-first-death-sentence-in-2017>>; see also "Belarus: Three executions feared in as many weeks amid 'sudden and shameful purge' of death row", Amnesty International, 30 November 2016, <<https://www.amnesty.nl/actueel/belarus-three-executions-feared-many-weeks-amid-sudden-shameful-purge-death-row>>.

76 "Death Penalty in Belarus: Murder on (Un)lawful Grounds", FIDH-HRC "Viasna", 5 October 2016, page 8, <<https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf>>.

77 "Belarus: execution shows 'callous disdain' for international human rights law – UN experts", UN News Centre, 13 May 2016. <<http://www.un.org/apps/news/story.asp?NewsID=53935#.WYsscFUjGJA>>.

78 Amnesty International, *op. cit.*, note 63, p. 28.

an appeal for clemency to the President. According to his defense lawyers, vital evidence was omitted at his trial.⁷⁹

Siarhei Khmialeuski was sentenced to death in February 2016 for theft and murder. While he was sentenced to life imprisonment by a first instance court, the Supreme Court overturned the sentence and ordered a retrial of the case by the same first instance court. As a result, Khmialeuski was sentenced to death.⁸⁰ Both Yakovitsky and Khmialeuski's cases were pending before the United Nations Human Rights Committee at the time of the executions. As the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, pointed out on 5 December 2016, "the cases of Khmialeuski and Yakovitsky were pending before the UN Human Rights Committee, which has oversight power on Belarus' compliance with the International Covenant on Civil and Political Rights. As a signatory to the Covenant, Belarus is obliged to wait out and respond to the Committee's judgements".⁸¹ Similarly, the ODIHR Director condemned the execution of Siarhei Khmialeuski in a press statement.⁸²

The third man who was executed, Ivan Kulesh, was sentenced to death in 2015 after being found guilty of three murders, theft, robbery and attempted murder of another person. Ivan Kulesh was reported to be under the influence of alcohol at the time of committing the crime. Furthermore, on 29 March 2016, the Supreme Court rejected Kulesh's appeal, and the convict chose not to request a presidential pardon.⁸³

According to Belarusian legislation, relatives of Guennady Yakovitsky, Ivan Kulesh and Siarhei Khmialeuski were not notified in advance of the executions or immediately thereafter. In Belarus, the public is not informed of executions. According to the current legislation, the bodies of executed people are not released to their families, and the time and place of execution, as well as the place of burial are kept secret. As a result, relatives of people executed remain in a state of uncertainty, and they are not even able to bury the body in accordance with family traditions and beliefs. This practice was previously qualified by the UN as cruel,

79 *Ibid*, p. 28-29.

80 FIDH-HRC "Viasna", *op. cit.*, note 76, p. 8.

81 "The bloody reality of Belarus' judicial system stains Europe", OHCHR, 5 December 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20984&LangID=E>.

82 Organization for Security and Co-operation in Europe, "Condemning recent execution in Belarus, ODIHR Director repeats call for immediate moratorium on death penalty" 2 December 2016, <<http://www.osce.org/odihr/285801>>.

83 "Death convict Ivan Kulesh executed", VIASNA, 28 November 2016, <<http://spring96.org/en/news/85494>>.

inhuman or degrading treatment or punishment towards the relatives of prisoners sentenced to death.⁸⁴

Proposed changes in legislation

On 16 December 2016, Alena Anisim, a member of the House of Representatives, proposed considering the question of declaring a moratorium on the death penalty at the second session of the parliament's lower chamber of the sixth convocation. The proposal originated from a petition from human rights activists who called for a parliamentary hearing to discuss the possibility of a moratorium.⁸⁵

In a statement made on 3 February 2017, President Alexander Lukashenko declared that he would be willing to impose a moratorium on the death penalty if supported by the majority of citizens. He, however, noted that this has been dismissed by the Belarusian people in a previous referendum. Lukashenko suggested launching a public campaign aimed at discuss all aspects of capital punishment.⁸⁶

Other reported activities

On 24 June 2016 Nikolai Samoseiko, Deputy of the House of representatives of the National Assembly and Chairman of Belarus' parliamentary working group on studying the death penalty as an instrument of punishment, participated in a Council of Europe seminar on the death penalty.

On 13 December 2016, the Council of Europe, in co-operation with the Belarusian Foreign Ministry, organized an international conference on the abolition of the death penalty and public opinion in Minsk.⁸⁷

On 23 March 2017, during his visit to Belarus, the Parliamentary Assembly of the Council of Europe (PACE) Rapporteur on Belarus Andrea Rigoni met with members of the Parliamentary working group on the death penalty. In addition to Rigoni, diplomats and representatives of governmental bodies and civil society

84 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>>; see also "Introductory Essay of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez", in "The Death Penalty in the OSCE Area: Background Paper 2016", p. 7, (OSCE's Office for Democratic Institutions and Human Rights (2016)) at <<http://www.osce.org/odihr/266186?download=true>>.

85 "MP proposes to consider moratorium on the death penalty", VIASNA, 16 December 2016, <<http://dp.spring96.org/en/news/85651>>.

86 "Lukashenko says ready to impose moratorium on death penalty if there is majority public support", Belarus News, 3 February 2017, <<http://eng.belta.by/society/view/lukashenko-says-ready-to-impose-moratorium-on-death-penalty-if-there-is-majority-public-support-98472-2017/>>; see also <<https://deathpenaltynews.blogspot.com/2017/02/belarus-lukashenko-ready-to-impose.html>>.

87 "Key to Europe becoming a death penalty free area lies in Belarus, say participants at Minsk conference", Council of Europe, 13 December 2016, <http://www.coe.int/en/web/portal/full-news/-/asset_publisher/VN6cYY-bQB4QE/content/the-key-to-europe-becoming-a-death-penalty-free-area-lies-in-belarus-say-participants-at-a-conference-in-minsk?desktop=false>.

were invited to attend the meeting.⁸⁸ During the event the working group activity plan for 2017 was discussed.

2.1.2 United States of America

The United States of America did not reply to the 2017 questionnaire covering the period between 1 April 2016 and 31 March 2017. Therefore, the section on the situation of the death penalty in the United States is based on information from international and regional human rights bodies, non-governmental organizations and media reports.

Death sentences between 1 April 2016 and 31 March 2017

During the reporting period, 40 new death sentences were imposed in the United States. Thirty-eight death sentences were handed down by courts in 15 different states and two sentences were handed down by the United States Federal Government. Both, the states of Oregon and Pennsylvania have had a gubernatorial moratorium on executions in place since 2011 and 2015, respectively.⁸⁹ Pennsylvania is waiting for the findings of the *ad hoc* Pennsylvania Task Force and Advisory Committee on Capital Punishment (hereinafter “Committee”), whose report was originally due in December 2013. The Committee, established under Senate Resolution 6 of 2011, is examining 17 aspects of capital punishment, including its cost, its impact on public safety, its potential for racial or economic bias, and whether there are sufficient safeguards against innocent people being executed.⁹⁰ In the state of Oregon, on 10 November 2016, a jury composed of nine women and three men found David Ray Bartol guilty of aggravated murder after killing a fellow inmate. Bartol is the first person to be sentenced to death in Oregon since 2014. Despite this death sentence, Oregon’s Governor plans to uphold Oregon’s moratorium on capital punishment.⁹¹ In addition to Oregon and Pennsylvania, the states of Alabama, Arizona, Arkansas, California, Florida, Kansas, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Tennessee and Texas have handed down death

88 “Председатель Совета Республики Мясникович М.В. встретился с докладчиком по Беларуси Комиссии ПАСЕ А.Ригони”, 23 March 2017, <<http://www.sovrep.gov.by/ru/news-ru/view/mjasnikovich-vs-trecha-rigoni-11498-2017/>>.

89 “Pennsylvania Supreme Court Unanimously Upholds Governor’s Moratorium on Executions”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6334>> and “Brown to maintain death penalty moratorium”, *Oregon Live*, <http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/10/brown_to_maintain_death_penalt.html>.

90 Riley Yates, “Three years late, seminal death penalty report still unfinished”, *The Morning Call*, 2 January 2017, <<http://www.mcall.com/news/nationworld/pennsylvania/mc-pennsylvania-death-penalty-committee-still-delayed-20170102-story.html>>; see also Sarah Mearhoff, “Pennsylvania carries out mock executions during death penalty moratorium”, *Pittsburgh Post-Gazette*, 30 May 2017, <<http://www.post-gazette.com/news/state/2017/05/30/pennsylvania-death-penalty-mock-execution-eric-frein-corrections/stories/201705280115>>.

91 Kristian Foden-Vencil, “Despite Execution Moratorium, Oregon Gives Another Inmate The Death Penalty”, *Oregon Public Broadcasting*, 29 November 2016, <<http://www.opb.org/news/article/david-ray-bartol-oregon-death-row/>>.

sentences during the reporting period. All the people sentenced to death were men. The Federal Government handed down two sentences, to Gary Lee Sampson and Dylann Storm Roof. The former was sentenced by a federal jury in Massachusetts in January 2017, the second time a jury voted to give him the death penalty.⁹² A federal jury found Dylann Roof guilty of 33 counts, including hate crimes resulting in death, for the killing of nine African-Americans in a church in Charleston, South Carolina.⁹³

Executions between 1 April 2016 and 31 March 2017

Country	State	Name	Age at Execution	Race, Gender	Method of execution
United States of America	Alabama	Ronald Bert Smith Jr.	53	White, Male	Lethal Injection
	Georgia	Kenneth Fults	47	Black, Male	Lethal Injection
		Daniel Lucas	37	White, Male	Lethal Injection
		John Conner	60	White, Male	Lethal Injection
		Gregory Paul Lawler	63	White, Male	Lethal Injection
		Steven Frederick Spears	50	White, Male	Lethal Injection
		William Sallie	50	White, Male	Lethal Injection
	Missouri	Earl Forrest	66	White, Male	Lethal Injection
		Mark Christenson	37	White, Male	Lethal Injection
	Texas	Pablo Vasquez	38	Latino, Male	Lethal Injection
		Barney Ronald Fuller Jr.	53	White, Male	Lethal Injection
		Christopher Wilkins	48	White, Male	Lethal Injection
		Terry Darnell Edwards	43	Black, Male	Lethal Injection
		Rolando Ruiz	44	Latino, Male	Lethal Injection
		James Bigby	61	White, Male	Lethal Injection
	Virginia	Rick Javon Gray	39	Black, Male	Lethal Injection

During the reporting period, 16 executions were carried out in the United States of America. Georgia and Texas executed six death row inmates each, Missouri two, while Alabama and Virginia each carried out one execution. The executed were all men.

In Alabama, Ronald Bert Smith Jr.'s execution on 8 December 2016 raised several criticisms. During a 13-minute span toward the start of the process, Smith

92 Milton J. Valencia, "Gary Lee Sampson gets the death penalty", *Boston Globe*, 9 January 2017, <<https://www.bostonglobe.com/metro/2017/01/09/sampson-jurors-continue-death-penalty-deliberations/fGpcceiNQXIRX-GkdprignL/story.html>>.

93 Alan Blinder and Kevin Sackjan, "Dylann Roof Is Sentenced to Death in Charleston Church Massacre", *The New York Times*, 10 January 2017, <<https://www.nytimes.com/2017/01/10/us/dylann-roof-trial-charleston.html>>.

“appeared to be struggling for breath and heaved and coughed and clenched his left fist”, and his left eye appeared to be slightly open at times.⁹⁴

In February 2017, the Governor of Arkansas set the execution dates for eight death row prisoners, stating that executions needed to be carried out in such quick succession in order to utilize the state’s final batch of the sedative midazolam before its expiration date at the end of April 2017. No state has carried out such a condensed sequence of executions since the death penalty was reinstated in the United States in 1976. Furthermore, Arkansas had not held an execution for 12 years and the last time it carried out a dual execution was on 8 September 1999.⁹⁵ The prisoners’ lawyers argued that by rushing the executions there was a considerable risk of mistakes and speeding up the procedure would inflict suffering on the prisoners tantamount to “cruel and unusual punishment”, which is prohibited under the United States Constitution.⁹⁶ On 19 April 2017, the ODIHR Director raised concern about the compressed execution schedule in Arkansas and called on the United States to once more consider the complete abolition of capital punishment, in the context of the international debate linking the practice with torture and other cruel, inhuman or degrading treatment or punishment.⁹⁷

Changes in legislation

During the reporting period, several states made a number of changes in their legislation on the death penalty or attempted to do so. In February 2017, Alabama was in the process of approving a bill to end the practice of permitting trial judges to impose death sentences, when the recommendation of a capital sentencing jury is to impose a life sentence instead. Before its entry into force,⁹⁸ Alabama’s law allowed judicial override in sentencing capital murder cases. Alabama was the only state left permitting this.⁹⁹ However, the legislation does not have retroactive effect, and it only affects future death sentences.¹⁰⁰

94 “Witness: Condemned Alabama man coughed, heaved during execution”, CNN, 9 December 2016, <<http://edition.cnn.com/2016/12/09/health/alabama-execution/>>.

95 “Arkansas carries out first execution in 12 years”, *Al Jazeera*, 21 April 2017, <<http://www.aljazeera.com/news/2017/04/arkansas-carries-execution-12-years-170421052004430.html>>; see also “Arkansas carries out first double execution in US since 2000”, *The Telegraph*, 25 April 2017, <<http://www.telegraph.co.uk/news/2017/04/25/us-judge-temporarily-halts-second-arkansas-execution/>>

96 “Lawyers race to save seven Arkansas inmates from ‘execution by assembly line’”, *The Guardian*, 10 April 2017, <<https://www.theguardian.com/world/2017/apr/10/arkansas-death-row-executions-april>>.

97 Organization for Security and Co-operation in Europe, “ODIHR Director Link concerned by accelerated executions using questionable drug in Arkansas”, 19 April 2017, <<http://www.osce.org/odihr/312321>>.

98 The bill passed after the 2016 reporting period. “Alabama Gov. Kay Ivey signs bill: Judges can no longer override juries in death penalty cases”, *AL.com*, 11 April 2017, <http://www.al.com/news/birmingham/index.ssf/2017/04/post_317.html>.

99 *Ibid.*

100 “Alabama Ends Death Penalty by Judicial Override”, *US News*, 11 April 2017, <<https://www.usnews.com/news/best-states/alabama/articles/2017-04-11/alabama-ends-death-penalty-by-judicial-override>>; see also “Alabama Legislature Votes to End Judicial Override”, *Death Penalty Information Centre*, <<https://deathpenaltyinfo.org/node/6726>>.

In November 2016, three referenda were held, in California, Nebraska and Oklahoma, respectively. Voters were asked to choose between retaining or repealing the laws on the death penalty.¹⁰¹ In all three states, voters decided to reject measures that would have abolished the death penalty. In the case of Oklahoma, the outcome gave lawmakers more latitude to find new execution methods.¹⁰²

The majority of voters in California opted to reject a proposal that would have abolished the death penalty, and, in the same referendum, they decided by a very narrow margin to pass a measure that would effectively speed up the pace of executions.¹⁰³

In Nebraska, a bill passed in May 2015 that abolished the death penalty was repealed. This bill was a source of conflict between the Nebraska lawmakers who passed the legislation and Nebraska's Governor, who defined it as "cruel" to the victims of people sentenced to death and vowed to veto it.¹⁰⁴

Furthermore, Oklahoma voted to provide explicit constitutional protections for its death penalty, which will prevent state courts from deeming the practice unconstitutional. Sixty-seven per cent of voters were in favor of State Question No. 776, the so called "Death Penalty Amendment", which will add a new section to the Oklahoma Constitution stating that "any method of execution shall be allowed, unless prohibited by the United States Constitution" and that the method "shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments."¹⁰⁵

In Colorado, a bill to repeal the death penalty failed in February 2017.¹⁰⁶

In October 2016, Ohio announced the reinstatement of capital punishment after a nearly three-year moratorium on executions following concerns regarding the mixture of drugs used for lethal injections by the state.¹⁰⁷

In May 2016, the Connecticut Supreme Court reaffirmed a decision from 2015 that the remaining death row prisoners must be resentenced to life imprisonment without parole. Other positive developments were reported from Delaware, where in August 2016 the state Supreme Court declared the state's capital sentencing procedures unconstitutional, leaving Delaware without a valid death penalty

101 "Pro-Death Penalty Referenda Prevail in 3 States; Kansas Retains 4 Justices Attacked for Death Penalty Decisions", *Death Penalty Information Center*, <<https://deathpenaltyinfo.org/node/6599>> .

102 Mark Berman, "Nebraska and California voters decide to keep the death penalty", *The Washington Post*, 9 November 2016, at https://www.washingtonpost.com/news/post-nation/wp/2016/11/09/nebraska-and-california-voters-decide-to-keep-the-death-penalty/?utm_term=.3219ec9848e7

103 *Ibid.*

104 *Ibid.*

105 State Question Number 776, Legislative Referendum Number 367, <<https://www.sos.ok.gov/documents/questions/776.pdf?3,9>> .

106 "The unlikely movement that could finally kill the death penalty in the US", *Quartz*, 23 March 2017, <<https://qz.com/938618/aramis-ayala-orange-osceola-state-attorney-in-florida-is-just-one-of-the-prosecutors-pushing-to-phase-out-the-death-penalty-in-the-united-states/>> .

107 See "The Death Penalty in the OSCE Area: Background Paper 2014" (OSCE's Office for Democratic Institutions and Human Rights (2014)), page 31, at <<http://www.osce.org/odihr/124105?download=true>> .

statute.¹⁰⁸ In December 2016, the Delaware Supreme Court further ruled that its August decision declaring the state's death penalty law unconstitutional has to be considered retroactive.¹⁰⁹ However, a group of Delaware lawmakers is backing legislation designed to reinstate the death penalty.¹¹⁰

Nevada made some steps towards the abolition of capital punishment by introducing "Assembly Bill 237" in February 2017.¹¹¹ However, although the bill was heard once at an Assembly Judiciary meeting on 29 March 2017, it was scuttled shortly after on 14 April 2017, the deadline for bills to make it out of their original committee.¹¹² The bill, sponsored by two democrats representing Las Vegas, would have made life without parole the strongest punishment in place for heinous crimes, changing the sentence for the 82 inmates on death row to life in prison without parole and ending future death sentences.¹¹³

On 13 March 2017, Florida's Governor signed "Senate Bill 280" into law.¹¹⁴ The bill requires that a jury to unanimously recommend the death penalty before a judge can impose it. The move brings Florida law in line with death penalty procedures across the rest of the United States.¹¹⁵ The bill represents a response to two Florida Supreme Court's rulings, namely *Hurst v. State* and *Perry v. State*, that put Florida's death penalty process on hold in 2016.¹¹⁶

In addition, bills to exempt individuals with severe mental illnesses from facing the death penalty are expected in at least seven states in 2017. Legislators in Idaho,

108 In the case of *Benjamin Rauf v. State of Delaware*, the court held that Delaware's death sentencing procedures violate the constitutional principles recently set forth by the U.S. Supreme Court's January 2016 decision in *Hurst v. Florida*. <<http://cases.justia.com/delaware/superior-court/2016-1509009858.pdf?ts=1453834857>>.

109 "Delaware Supreme Court Declares State's Death Penalty Unconstitutional", *Death Penalty Information Center*, <<https://deathpenaltyinfo.org/node/6519>>.

110 "Delaware death penalty fight returns", *News Works*, 27 March 2017, <<http://www.newsworks.org/index.php/local/delaware/102565-delaware-death-penalty-fight-returns>>; see also "Death penalty back on the table: New legislation will aim to restore capital punishment", *Delaware State News*, 27 March 2017, <http://delawarestatenews.net/news/new-legislation-aims-restore-capital-punishment/>.

111 Assembly Bill No. 237, <<https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5091/Text>>.

112 Meaghan Mackey, "Legislature scraps death penalty bill", *The Nevada Sagebrush*, 18 April 2017, <<http://nevadasagebrush.com/blog/2017/04/18/legislature-scraps-death-penalty-bill/>>.

113 Sandra Chereb, "Death penalty, bill deadline and teamwork fill eighth week of Nevada Legislature", *Las Vegas Review Journal*, 1 April 2017, <<https://www.reviewjournal.com/news/2017-legislature/death-penalty-bill-deadline-and-teamwork-fill-eighth-week-of-nevada-legislature/>>.

114 Senate Bill 280, "Sentencing for Capital Felonies", <http://www.flsenate.gov/Session/Bill/2017/0280/?Tab=-BillText>.

115 "Florida governor signs bill tightening death penalty", *CS Monitor*, 15 March 2017, <http://www.csmonitor.com/USA/2017/0315/Florida-governor-signs-bill-tightening-death-penalty>.

116 "*Hurst* struck down Florida's prior capital sentencing statute, which had allowed judges to impose the death penalty if a majority of jurors recommended death or to override a jury's recommendation of life. *Perry* struck down an amended version of the statute, which had permitted judges to impose a death sentence if 10 or more jurors recommended death". "Florida Legislature Passes Bill Eliminating Non-Unanimous Jury Recommendations for Death Penalty", *Death Penalty Information Center*, <<https://deathpenaltyinfo.org/node/6702>>.

Indiana, North Carolina, Ohio, South Dakota, Tennessee and Virginia have either introduced such legislation or announced plans to do so.¹¹⁷

2.2 Abolitionist participating States

In the OSCE region, 52 out of 57 participating States are classified as abolitionists, meaning that the death penalty has been abolished for all crimes, in law and in practice. Although during the reporting period no relevant changes were made or proposed as to the reinstatement of the capital punishment, concerns were raised with regard to two particular situations.

In Turkey, after the attempted coup in July 2016 and in the wake of the April 2017 referendum, the Turkish President spoke in favour of its reintroduction, leading to international criticism.¹¹⁸ In its reply to the 2017 ODIHR questionnaire, Turkey made no mention of the reinstatement of capital punishment.

In December 2015, following a parliamentary vote in favor of a new Criminal Code, Mongolia became the 105th country worldwide and the 52nd OSCE participating State to abolish the death penalty in law for all crimes. The new Criminal Code should have entered into force in September 2016, but on 30 August 2016 the Mongolian Parliament adopted a law that postponed the implementation of the new Criminal Code by a further ten months.¹¹⁹

Twenty-seven out of 52 abolitionist States submitted their replies to the ODIHR's questionnaire 2017 on the death penalty.

Participating States engagement in national or international activities relevant to the issue of the death penalty

Several OSCE participating States highlighted their participation in the “Biennial High-Level Panel on the Death Penalty”,¹²⁰ which was held on 1 March 2017 during the 34th session of the United Nations Human Rights Council. The Panel was organized in accordance with two Human Rights Council resolutions on the question of

117 “At Least Seven States Introduce Legislation Banning Death Penalty for People with Severe Mental Illness”, *Death Penalty Information Center*, <<https://deathpenaltyinfo.org/node/6673>>.

118 OSCE PA, “OSCE PA human rights Chair Sanchez Amor calls for rule of law in Turkey”, 4 November 2016, <<https://www.oscepa.org/parliamentary-diplomacy/helsinki40/project-news/press-releases/2016/2632-osce-pa-human-rights-chair-sanchez-amor-calls-for-rule-of-law-in-turkey>>; see also ODIHR press statement, note 60,

119 “Mongolia: Logistical Challenges Should not Delay Abolition of Death Penalty and Measures to Combat Torture”, Amnesty International, 13 September 2016, <<https://www.amnesty.org/en/documents/asa30/4806/2016/en/>>.

120 34th session of the Human Rights Council, Biennial high-level panel discussion on the question of the death penalty, Theme: The death penalty and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, 1 March 2017, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/CN_DEATH_PENALTY.doc>.

the death penalty.¹²¹ Several states, including, Finland, Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Sweden, reaffirmed their strong opposition to the death penalty at all times and in all circumstances. These states further specified that they consider the death penalty a violation of the right to life and as cruel, inhuman and degrading punishment.¹²² During the same panel, several states issued statements to highlight that the death penalty must be considered torture or cruel, inhuman or degrading punishment.¹²³ In addition, in its response to the 2017 ODIHR questionnaire, Montenegro also recalled its statement during the panel, which was aimed to express concern that a number of countries announced their intention to reintroduce the death penalty and opposed reports that making execution methods more “humane” could justify the use of the death penalty.

In December 2016, a number of participating States supported the adoption of the United Nations General Assembly resolution on a moratorium on the use of the death penalty A/RES/71/187. Mongolia was one of the co-sponsors of the resolution.¹²⁴ The governments of France, Germany, Hungary, Italy, Latvia, Montenegro, Norway, Romania, Spain, Slovenia and Switzerland emphasized their active engagement in the negotiations of the resolution. Italy explained that, prior to the adoption of the resolution, its task force, which was established in 2014 by the Ministry of Foreign Affairs and International Cooperation, held three meetings in order to strengthen existing synergies and to foster the exchange of information between institutions and civil society on the question of the death penalty.

Another noteworthy event held during the reporting period is the Sixth World Congress against the Death Penalty, which took place in Oslo in June 2016, sponsored by the governments of Australia, France and Norway. Belgium, Canada, France, Italy, Luxembourg, Monaco, Norway, Spain and Switzerland recalled also their active involvement and financial contributions to the Congress.

Furthermore, OSCE participating States that are also members of the European Union highlighted the initiatives undertaken under the “2013 EU Guidelines on the Death Penalty”, which present the objectives and elements of EU policy on the universal abolition of the death penalty. The Guidelines further specify that, where abolition is rejected, the EU promotes the use of minimum standards in relation to the death penalty.¹²⁵ Many EU member States supported initiatives undertaken in

121 Resolution adopted by the Human Rights Council on 26 June 2014, on the question of the death penalty, A/HRC/RES/26/2 (16 July 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/084/95/PDF/G1408495.pdf?OpenElement>; see also Resolution adopted by the Human Rights Council, *op. cit.* note 23.

122 Item 3: Biennial high-level panel discussion on the question of the death penalty, Joint Statement by Finland on behalf of Denmark, Estonia, Iceland, Latvia, Lithuania, Sweden, and Norway, 1 March 2017, <<https://www.norway.no/en/missions/wto-un/norway-/statements-test/human-rights/human-rights-council/hrc-34th-session-27-feb---25-march-2017/item-3/biennial-high-level-panel-discussion-on-death-penalty/>>.

123 U.N. Doc. A/HRC/36/27, *op. cit.* note 24, para 34.

124 U.N. Doc. A/RES/71/187 *op. cit.* note 61.

125 EU Guidelines on Death Penalty, <https://eeas.europa.eu/sites/eeas/files/guidelines_death_penalty_sto8416_en.pdf>.

accordance with the EU Guidelines on the Death Penalty, including statements, declarations or demarches on the death penalty aimed at, *inter alia*, addressing individual cases of concern in partner countries and advocating for the minimum standards defined by international law.

Nationals facing the death penalty abroad

According to the information received, 11 abolitionist participating States reported having nationals facing the death penalty abroad. A number of these states, namely France, Germany, the Netherlands and Sweden, were not able to share further information concerning their citizens on death row abroad for reasons of confidentiality.¹²⁶ Other participating States shared information about their citizens on death row abroad.

Greece reported a case of a Greek national, Konstantinos Fotopoulos, who has been sentenced to death in the United States of America. Greek authorities submitted a request for prisoner transfer that has been rejected by the United States authorities.

Hungary reported that there has been only one Hungarian citizen (with double citizenship, Hungarian and United States), on death row abroad. William Charles Morva was sentenced to death in 2008 in the United States, in Virginia. The Hungarian Government stressed that, since then, it has reached out to the Governor of Virginia requesting to commute Morva's death sentence, stating that Hungary strongly opposes the use of capital punishment under any circumstances.¹²⁷ The case has been particularly controversial because there was evidence showing that Morva was suffering from severe mental illness. Virginia recently introduced draft legislation proposing the first formal definition of "severe mental illness" for the Code of Virginia.¹²⁸

A few states, including Latvia and Norway, reported that they have provided their nationals on death row abroad with requested consular assistance, and

126 According to the Netherlands' Personal Data Protection Act [Wet bescherming persoonsgegevens, or WBP] the Ministry of Foreign Affairs is bound, in this area, by the provisions of that Act, which is the Dutch transposition of EU Privacy Directive (95/46/EC).

127 In March 2017, after receiving a request for precautionary measures from the "Virginia Capital Representation Resource Center" (hereinafter "the applicants"), the Inter-American Commission on Human Rights examined the case of the dual national William Morva. The Court stated that "After analyzing the legal arguments and facts presented by the applicants, the Commission considers that in the event Morva is executed before it has had an opportunity to examine the merits of this matter, any eventual decision would be rendered moot in respect of the effectiveness of potential remedies resulting in irreparable harm. Consequently, pursuant to Article 25.1 of its Rules of Procedure, the Commission hereby requests that the United States take the necessary measures to preserve the life and physical integrity of William Charles Morva until the IACHR has ruled on his petition, so as not to render ineffective the processing of his case before the Inter-American system". However, regardless of the ruling and Hungarian efforts, the death sentence of the concerned person was enforced on 6 July 2017. <<https://www.oas.org/es/cidh/decisiones/pdf/2017/9-17MC156-17-US.pdf>>.

128 "Bill proposes formal definition of 'severe mental illness' for the Code of Virginia", *Daily Press*, 30 December 2016, <<http://www.dailypress.com/news/politics/dp-nws-shad-plank-1231-20161230-story.html>>; see also <<https://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+HB1522>>.

Norway, specifically, with free legal aid. Furthermore, Norway communicated that, during the reporting period, two Norwegian citizens were facing the death penalty abroad. While one of the two cases is currently under appeal, the other one has been resolved. The dual British and Norwegian national Joshua French, after spending eight years on death row in the Democratic Republic of the Congo (DRC), was released from prison on humanitarian grounds in May 2017.¹²⁹

Romania indicated that there are three cases of Romanian citizens facing the death penalty abroad, one of whom has already been sentenced to death and submitted a request for pardon to the state authorities in an undisclosed country. Spain also has two citizens on death row abroad, Pablo Ibar in the United States of America, whose death sentence was overturned in February 2016 by the Florida Supreme Court, which ordered a retrial, and Artur Segarra, who was sentenced to death for murder in April 2016 by a court in Bangkok, Thailand.

Measures taken by participating States to protect pregnant women, children and people with mental disabilities facing the death penalty abroad

The majority of participating States stressed their efforts in order to protect vulnerable groups facing the death penalty abroad, such as pregnant women, new mothers, people below 18 years of age and people with mental disabilities. In particular, EU member States reported that, according to the “EU Guidelines on the Death Penalty”, in those countries that still practice executions, capital punishment may not be imposed upon the aforementioned categories of people.¹³⁰ A number of states stressed that whenever such a case occurs, they would regularly formally protest the sentencing state. Other states also mentioned obligations stemming from international conventions and resolutions, such as the International Covenant on Civil and Political Rights,¹³¹ the Convention on the Rights of the Child,¹³² and the Economic and Social Council resolution 1984/50 of 25 May 1984.¹³³ Moreover, with reference to aliens on their territory who might be subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment if expelled, several countries mentioned that such expulsion must never be enforced.¹³⁴

129 “Norwegian-British prisoner released from death row in DRC amid growing health concerns”, *The Death Penalty Project*, 18 May 2017, <<http://www.deathpenaltyproject.org/news/2733/norwegian-british-prisoner-released-from-death-row-in-drc-amid-growing-health-concerns/>>.

130 EU Guidelines, *op. cit.*, note 125, p. 11.

131 Article 6 ICCPR.

132 Article 37 CRC.

133 Economic and Social Council Resolution 1984/50, 25 May 1984, <https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1984/ECOSOC_Resolution_1984-50.pdf>.

134 Swedish Aliens Act (2005:716).

2.3 De-facto abolitionist participating States

The Russian Federation and Tajikistan remain the only de-facto abolitionist countries in the OSCE region. Both states, retain capital punishment for crimes committed in peacetime, but executions are not carried out given that moratoria have been established in 1996 and 2004, respectively. Within the reporting period, neither Russia nor Tajikistan have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, nor has Russia ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

In the Russian Federation, although the application of the death penalty has been prohibited since 1996, with the prohibition reiterated by the Constitutional Court in 1999 and 2009,¹³⁵ 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 provides for the death penalty as an exceptional measure for five types of offences namely aggravated murder, assassination attempts against a state or public figure, attempts on the life of a person administering justice or preliminary investigations, attempts on the life of a law-enforcement official and genocide. The Criminal Code further specifies that the death penalty is not imposed against women, as well as offenders under the age of 18 or over 65 at the time of sentencing.¹³⁶ The Criminal Procedure Code of the Russian Federation also contains provisions on the death penalty.¹³⁷ On 30 November 2016, the Council of Europe's Committee of Ministers adopted a decision on the abolition of the death penalty in Europe, a strong and urgent call on the Russian Federation, as the only member state that has not yet abolished the death penalty, to take, without delay, all the necessary steps to transform the existing moratorium on the death penalty into a *de jure* abolition of the death penalty and to ratify Protocol No. 6 to the European Convention on Human Rights.¹³⁸

According to the draft report of the Working Group on the Universal Periodic Review of Tajikistan, the Suspension of the Death Penalty Act is in force and a moratorium on the death penalty is in place. Amendments to the Criminal Code were introduced to include maximum imprisonment up to 20 years. Transition to

135 "Russian court extends moratorium on death penalty", *Reuters*, 19 November 2009, <<http://www.reuters.com/article/idUSLJ330478>>; see also, "Russia to decide on death penalty moratorium", *BBC News*, 10 November 2009, <<http://news.bbc.co.uk/2/hi/8352090.stm>>.

136 Art. 59, para. 2 of the Criminal Code of the Russian Federation.

137 Art. 31, 51, 301, 310 of the Criminal Procedure Code of the Russian Federation.

138 *Op. cit.*, note 73.

the abolition of the death penalty would take place gradually by addressing issues of administrative, financial and legal nature.¹³⁹

2.4 Abolitionist for Ordinary Crimes Only participating States

2.4.1. Kazakhstan

Since 2010, Kazakhstan has been defined as a “de-facto abolitionist” in the ODIHR background paper on the death penalty. However, it was previously classified as “partly abolitionist”, meaning that the death penalty was abolished for crimes committed in peacetime, but retained for crimes committed in wartime. In light of a death sentence handed down in 2016, it would be, therefore, more appropriate to reclassify Kazakhstan as “abolitionist for ordinary crimes only.” This is a United Nations designation that refers¹⁴⁰ to countries whose laws retain the death penalty only for exceptional crimes, such as crimes in times of war or those committed against the state, such as treason, terrorism or armed insurrection.¹⁴¹

An indefinite moratorium on executions has remained in place in Kazakhstan since the issuance of a presidential decree in 2003, when Kazakhstan halted executions and introduced life imprisonment as an alternative to the death sentence.¹⁴² Nevertheless, in November 2016, a specialized district criminal court of Almaty city handed down a death sentence on Ruslan Kulekbayev, a Salafi jihadist man found guilty of a shooting spree that ended with the death of eight policemen and two civilians. During a OSCE Permanent Council meeting in November 2016, several OSCE participating States expressed their concern about the imposition of the death sentence on Kulekbayev.¹⁴³

As a result of this shooting incident, discussions concerning the death penalty for terrorism related offences have revived in Kazakhstan. In particular, after a meeting held at the Parliament between the Committee on Constitutional Legislation,

139 Human Rights Council Working Group on the Universal Periodic Review, Twenty-fifth session, 2-13 May 2016, “Draft report of the Working Group on the Universal Periodic Review – Tajikistan”, U.N. Doc. A/HRC/WG.6/25/L.8, para. 10, <https://www.upr-info.org/sites/default/files/document/tajikistan/session_25_-_may_2016/a-hrc-wg.6-25-l.8.pdf>.

140 United Nations Economic and Social Council E/2015/49, “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Report of the Secretary-General”, 13 April 2015, p. 8, <<http://www.ohchr.org/Documents/Issues/DeathPenalty/E-2015-49.pdf>>; see also “Statement of Penal Reform International Exchange of views on the Question of abolition of capital punishment”, 26 September 2012, page 2, <<http://www.osce.org/odihr/94289?download=true>>.

141 Amnesty International, *op. cit.*, note 63, p. 42

142 “The Death Penalty in the OSCE Area: Background Paper 2015” (OSCE’s Office for Democratic Institutions and Human Rights (2015)), p. 14. <<http://www.osce.org/odihr/184581?download=true>> and “The Death Penalty in the OSCE Area: Background Paper 2016” (OSCE’s Office for Democratic Institutions and Human Rights (2016)), p. 38 at <<http://www.osce.org/odihr/266186?download=true>>.

143 Permanent Delegation of Norway to the OSCE, “Statement on the death penalty in Kazakhstan” as delivered by Counsellor Hilde Austad to the Permanent Council, 10 November 2016, <<http://www.osce.org/pc/281606?download=true>>.

the judiciary and law enforcement agencies, Senator Serik Akylbai proposed to abolish the death penalty moratorium and to introduce in the Criminal Code of Kazakhstan capital punishment for the organization of and incitement to terrorist acts.¹⁴⁴

¹⁴⁴ “Senate member proposes to introduce death penalty for terrorists”, *Kazakh TV*, 13 June 2016, <http://kazakh-tv.kz/en/view/news_kazakhstan/page_162367>. ; see also *Forbes.kz*, 7 November 2016, <https://forbes.kz/news/2016/11/07/newsid_126247>.

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 62/149,¹ and the conclusions and recommendations contained therein;

¹ A/63/293 and Corr.1.

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,

[...]

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 63/168² and the recommendations contained therein;

² A/65/280 and Corr.1.

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;

(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 65/206³ 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

³ A/67/226

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;⁴

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

⁴ United Nations, Treaty Series, vol. 1642, No. 14668.

2014⁵ 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 67/176⁶ 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;

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

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

6 A/69/288.

(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;⁷

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

[...]

⁷ 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/27/23⁸
(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.

⁸ 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 30/5⁹:
The question of the death penalty
(2015)**

⁹ 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.

[...]

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 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.

Seventy-first session

Agenda item 68 (b)

Resolution adopted by the General Assembly on 19 December 2016

[on the report of the Third Committee (A/71/484/Add.2)]

71/187. Moratorium on the use of the death penalty

The General Assembly,

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

Reaffirming the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights² and the Convention on the Rights of the Child,³

Recalling the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,⁴ and in this regard welcoming the increasing number of accessions to and ratifications of the Second Optional Protocol,

Reaffirming its resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012 and 69/186 of 18 December 2014 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 all relevant decisions and resolutions of the Human Rights Council,

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,

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴ *Ibid.*, vol. 1642, No. 14668.

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 2014⁵ to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty,

Recognizing the role of national human rights institutions in contributing to ongoing local and national debates and regional initiatives on the death penalty,

Welcoming the considerable movement towards the abolition of the death penalty globally and the fact that many States are applying a moratorium, including long-standing moratoriums, either in law or in practice, on the use of the death penalty,

Emphasizing the need to ensure that persons facing the death penalty are treated with humanity and with respect for their inherent dignity and in compliance with their rights under international human rights law,

Noting the technical cooperation among Member States, as well as the role of relevant United Nations entities and human rights mechanisms, in supporting State efforts to establish moratoriums on the death penalty,

Bearing in mind the work of special procedures mandate holders who have addressed human rights issues related to the death penalty within the framework of their respective mandates,

1. *Reaffirms* the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations;
2. *Expresses its deep concern* about the continued application of the death penalty;
3. *Welcomes* the report of the Secretary-General on the implementation of resolution 69/186⁶ and the recommendations contained therein;
4. *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;

⁵ See *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 53 (A/69/53)*, chap. V, sect. A.6 A/71/332.

5. *Further welcomes* initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making;
6. *Welcomes* the decisions made by an increasing number of States from all regions, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
7. *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 comply with their obligations under article 36 of the 1963 Vienna Convention on Consular Relations,⁷ particularly the right to receive information on consular assistance;
 - (c) To make available relevant information, disaggregated by sex, age and race, as applicable, 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 and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, 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;
 - (d) 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, on pregnant women or on persons with mental or intellectual disabilities;
 - (e) To reduce the number of offences for which the death penalty may be imposed;
 - (f) To ensure that those facing the death penalty can exercise their right to apply for pardon or commutation of their death sentence by ensuring that clemency procedures are fair and transparent and that prompt information is provided at all stages of the process;
 - (g) To establish a moratorium on executions with a view to abolishing the death penalty;
8. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
9. *Encourages* States which have a moratorium to maintain it and to share their experience in this regard;

⁷ United Nations, *Treaty Series*, vol. 596, No. 8638.

10. *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;
11. *Requests* the Secretary-General to report to the General Assembly at its seventy-third session on the implementation of the present resolution;
12. *Decides* to continue consideration of the matter at its seventy-third session under the item entitled “Promotion and protection of human rights”.

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 1187¹⁰

(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.

¹⁰ See also PACE Resolution 1044 and Recommendation 1246 from 1994; PACE Resolution 1097 and Recommendation 1302 from 1996

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 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 Konovalov 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 2017

To abolitionist states:

Questions below relate to the developments with regard to the issue of the death penalty in your country in the period from 1 April 2016 to 31 March 2017.

- 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 April 2016 to 31 March 2017. Also, please state how these activities took into account the gender aspects of the death penalty.
- 2) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. 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?
- 3) What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
 - a) Is there any specialist support provided to children of parents sentenced to death or executed abroad?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners abroad in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 4) What measures are taken by your country to protect pregnant women, children/juveniles and persons with mental disabilities facing the death penalty abroad?
- 5) Does your country consider the death penalty as a form of 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.

- 6) 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 April 2016 - 31 March 2017).

End of Questionnaire

To de-facto abolitionist states:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2016 to 31 March 2017.

- 1) Have any steps been taken to retain or remove a moratorium on the death penalty in the reporting period (1 April 2016 - 31 March 2017)?
- 2) Have any steps to fully remove the death penalty from national legislation been taken in the reporting period (1 April 2016 - 31 March 2017)?
- 3) Have any steps been taken towards the ratification of the Second Optional protocol to the International Covenant on Civil and Political Rights?
- 4) 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 April 2016 to 31 March 2017. Also, please state how these activities took into account the gender aspects of the death penalty.
- 5) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, indicating relevant countries where your citizens may be facing the death penalty. 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?
- 6) What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
 - a) Is there any specialist support provided to children of parents sentenced to death or executed?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with

death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?

- 7) What measures are taken by your country to protect pregnant women, children/juveniles and persons with mental disabilities facing the death penalty abroad?

End of Questionnaire

To Kazakhstan:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2016 to 31 March 2017.

- 8) Have any steps been taken to retain or remove a moratorium on the death penalty in the reporting period (1 April 2016 - 31 March 2017)?
- a) What is the government's position with regard to the death sentence handed down by a national court on 2 November 2016?
 - b) Reportedly, with this sentence, Kazakhstan has ended a moratorium on the death penalty that has been observed for the past 10 years. What measures will be taken on the legal and policy level to reinstate the moratorium on the death penalty?
 - c) What measures will be taken to achieve complete abolition of capital punishment in Kazakhstan?
 - d) Have any steps been taken towards the ratification the Second Optional protocol to the International Covenant on Civil and Political Rights?
- 9) 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 April 2016 to 31 March 2017. Also, please state how these activities took into account the gender aspects of the death penalty.
- 10) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, indicating relevant countries where your citizens may be facing the death penalty. 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?
- a) Is there any specialist support provided to children of parents sentenced to death or executed?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?

- c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 11) What measures are taken by your country to protect pregnant women, children/juveniles and persons with mental disabilities facing the death penalty potentially in Kazakhstan or abroad?

End of Questionnaire

To the United States of America:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2016 to 31 March 2017.

LEGAL FRAMEWORK

- 1) The 2016 background paper on the death penalty 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 April 2016 – 31 March 2017)? If yes, please attach copies of relevant documents.
- 4) 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

- 5) Please provide statistics on the number, age, gender and race/ ethnicity of persons who have been sentenced to death in the period from 1 April 2016 to 31 March 2017, as well as the specific crime for which each of these persons was sentenced.
- 6) Please provide information about the gender of the victim of the crime leading to the death sentence.

- 7) Please list other death sentences that have become final (i.e. all appeal stages have been exhausted) during the reporting period (1 April 2016 - 31 March 2017) and which courts passed each of these sentences.
- 8) Please indicate if any of the persons sentenced to death in the period from 1 April 2016 to 31 March 2017 were:
 - Under age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent infants;
 - Men with dependent infant;
 - Diagnosed as having any form of mental disorder;
 - Non-nationals; please indicate whether or not each of these persons received consular assistance.
- 9) Between 1 April 2016 and 31 March 2017 was the death sentence rate higher in cases where the victim of the crime leading to the death sentence was a woman or in cases where the victim was a man?
- 10) 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 April 2016 - 31 March 2017). In cases where the person concerned provided informed consent, please provide their full name, age and location.
- 11) If there have been any changes during the reporting period (1 April 2016 - 31 March 2017), please describe the procedure for considering a request for clemency, including the factors that are taken into account when considering such a request.
- 12) Please provide statistics on the number, age, gender and race / ethnicity of persons, who have been executed in the period from 1 April 2016 to 31 March 2017. Please also indicate the specific crime for which each of these persons was executed.
- 13) Please indicate if any persons executed in the period from 1 April 2016 to 31 March 2017 were:
 - Under age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent infants;
 - Men with dependent infant;
 - Diagnosed as having any form of mental disorder;
 - Non-national; please indicate whether or not each of these persons received consular assistance.
- 14) Please provide details on the number of women and men on death row as well as on the treatment of men and women awaiting execution. Are official medical reports on psychological status of death row prisoners available? 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?

- 15) 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.
- 16) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. 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) What measures are taken by your country to protect children who have a parent facing the death penalty in your respective country and abroad?
 - a) Is there any specialist support provided to children of parents sentenced to death or executed?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 18) Please list all cases regarding the use of the death penalty that have been decided in the reporting period (1 April 2016 - 31 March 2017), or are currently ongoing, before international bodies (eg. UN Human Rights Committee, International Court of Justice).
- 19) Please describe procedures for complying with interim stays by the UN Human Rights Committee.
- 20) 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

- 21) 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)?
- 22) What safeguards are in place in your country to protect pregnant women, children and persons with mental disabilities facing the death penalty?
- 23) 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?
- 24) What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions on clemency?
- 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?

MISCELLANEOUS

- 26) Which state body is responsible for keeping statistics on sentences, executions and commutations?
- 27) 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 April 2016 to 31 March 2017.

End of Questionnaire

To Belarus:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2016 to 31 March 2017.

LEGAL FRAMEWORK

- 1) The attached paper is the entry related to your country in the 2016 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 April 2016 - 31 March 2017)? If yes, please attach copies of relevant documents.

- 4) 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

- 5) Please provide statistics on the number, age, gender and race / ethnicity of persons who have been sentenced to death in the period from 1 April 2016 to 31 March 2017, as well as the specific crime for which each of these persons was sentenced.
- 6) Please provide information about the gender of the victim of the crime leading to the death sentence.
- 7) Please list other death sentences that have become final (i.e. all appeal stages have been exhausted) during the reporting period (1 April 2016 - 31 March 2017) and which courts passed each of the sentences.
- 8) Please indicate if any of the persons sentenced to death in the period from 1 April 2016 to 31 March 2017 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-nationals; please indicate whether or not each of these persons received consular assistance.
- 9) Between 1 April 2016 and 31 March 2017 was the death sentence rate higher in cases where the victim of the crime leading to the death sentence was a woman or in cases where the victim was a man?
- 10) 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 April 2016 - 31 March 2017). In cases where the person concerned provided informed consent, please provide their full name, age and location.
- 11) If there have been any changes during the reporting period (1 April 2016 - 31 March 2017), please describe the procedure for considering a request for clemency, including the factors that are taken into account when considering such a request.
- 12) Please provide statistics on the number, age, gender and race / ethnicity of persons, who have been executed in the period from 1 April 2016 to 31 March 2017. Please also indicate the specific crime for which each of these persons was executed.

- 13) Please indicate if any persons executed in the period from 1 April 2016 to 31 March 2017 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.
- 14) Please provide details on the number of women and men on death row as well as on the treatment of men and women awaiting execution. Are official medical reports on psychological status of death row prisoners available? 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?
- 15) 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.
- 16) If there have been changes during the reporting period (1 April 2016 - 31 March 2017), 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.
- 17) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. 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?
- 18) What measures are taken by your country to protect children who have a parent facing the death penalty in your respective country and abroad?
- d) Is there any specialist support provided to children of parents sentenced to death or executed?
 - e) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?

- f) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 19) Please list all cases regarding the use of the death penalty that have been decided in the reporting period (1 April 2016 - 31 March 2017), or are currently ongoing, before international bodies (eg. UN Human Rights Committee, International Court of Justice).
- 20) 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

- 28) 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)?
- 21) What safeguards are in place in your country to protect pregnant women, children and persons with mental disabilities facing the death penalty?
- 22) 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?
- 23) What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions on clemency?
- 24) 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?

MISCELLANEOUS

- 25) Which state body is responsible for keeping statistics on sentences, executions and commutations?
- 29) 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 April 2016 to 31 March 2017

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 or Europe

A = abolitionist

DA = de facto abolitionist

R = retentionist