



The Death Penalty in the OSCE Area

Background Paper 2021

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*Special Focus: The road to abolition
in selected OSCE participating States*



This paper was prepared by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Every effort has been made to ensure that the information contained in this paper is accurate and impartial.

This paper updates *The Death Penalty in the OSCE Area: Background Paper 2020*. 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 2020 to 31 March 2021.

All comments or suggestions should be addressed to ODIHR's Human Rights Department at office@odihhr.pl.

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Introduction

Noting the restrictions and safeguards regarding the use of the death penalty adopted by the international community, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of capital punishment, OSCE participating States have made a number of commitments relating to the death penalty.¹ They committed to exchange information on the question of the abolition of the death penalty and to provide information on the use of the death penalty to the public.² Where the death penalty is still in use, participating States have agreed that it can be imposed only for the most serious crimes and only in line with international commitments.³

OSCE participating States have also made a number of other commitments relevant in the context of the application of the death penalty, such as ensuring the right to life, the right to a fair trial and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁴

In accordance with 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 Death Penalty in the OSCE Area.⁵ The paper is based on information gathered by ODIHR on the situation of the death penalty in all 57 OSCE participating States during the reporting period, incorporating information from

1 “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE”, OSCE, 29 June 1990, Copenhagen, paras. 17.2, 17.3 and 17.4.

2 *Ibid.*, paras. 17.7 and 17.8. See also: “Concluding Document of the Third Follow-up Meeting, Vienna, 4 November 1986 to 19 January 1989”, OSCE, (hereafter, “Vienna Document 1989”); “Document of the Sixteenth Meeting of the Ministerial Council Helsinki 2008”, OSCE, (hereafter, “Helsinki Document 2008”).

3 “Vienna Document 1989”, para. 24, *op. cit.*, note 2.

4 OSCE, Ministerial Council Tirana 2020, MC.DEC/7/20, 4 December 2020; “Vienna Document 1989”, “Copenhagen Document 1990”, “Helsinki Document 2008”.

5 The ODIHR annual background papers on the death penalty are available since 2000, here: “The Death Penalty in the OSCE Area: Background Papers”, OSCE/ODIHR.

international and regional human rights bodies, non-governmental organizations and media reports.

This year's background paper, which covers developments from 1 April 2020 to 31 March 2021, contains an introductory essay by Jeanne Bishop, and has a thematic focus on how a selection of OSCE participating States have gone about abolishing the death penalty in law and in practice in Part II, looking at the road to abolition in Kazakhstan, Mongolia, Latvia and the American state of Virginia. Part III covers the status of the death penalty in the OSCE region during the reporting period.

Throughout the background paper, an *abolitionist* state is defined as an OSCE participating State in which there is no death penalty, in law, for any crimes. A *de-facto abolitionist* state is one in which the death penalty is foreseen in law, but in practice the punishment is not imposed. A *retentionist* state is one that continues to implement this penalty by sentencing and carrying out executions.

Part I: Introductory essay

To further assist OSCE participating States in their exchange of information on the death penalty and to support consideration of its abolition, since 2016, ODIHR has included both thematic discussions and introductory essays by external contributors on various aspects of the death penalty in this annual background paper.

This year's background paper on the death penalty pays tribute to the enormous contribution to the protection of human rights, internationally, of the late Professor Christof Heyns. The introductory essay he so kindly contributed to the 2019 OSCE Background Paper demonstrated why capital punishment is irreconcilable with the right to life and helped communicate this message to States and other key audiences in the OSCE-region. His tireless efforts and dedication to human rights will always be remembered and serve as an inspiration to future generations of human rights advocates.

The Unlikely Voices against the Death Penalty: Murder Victims' Survivors, Jeanne Bishop⁶

Death consumes us. Literally, of course, in time, but thoughts of it also encompass much of what is most momentous in our lives: the deaths of our loved ones, the fear of our own death, the mystery of it. Within criminal law it is at the center of the most important cases, where a life was taken. In my office, where I work as a public defender, the most haunted among us are those who defend people accused of murder.

And so, of course, the death penalty — our willingness to kill our own citizens in the name of the people — is inextricably linked not only to those executed but to the survivors of victims of their crimes. Much of the discussion of capital punishment in my country is about or on behalf of those left behind by a murder, who are often offered up as the moral justification for killing by the state. That simple calculus is wrong;

⁶ Jeanne Bishop is an American attorney, activist and author. Since the killing of her sister, Bishop has advocated nationally and internationally for the abolition of the death penalty, and was a part of its successful abolition in her home state of Illinois in 2011.

those who have suffered the loss of a loved one through murder are multitudes, with wildly diverging ideas of what the death penalty does or can mean.

I am among that kinship of tragedy.

My story, and that of many I know, disrupts the too-easy image of a victim's family member who finds "closure" in state-sanctioned death. Our souls steer us away from brutal vengeance.

On 7 April 1990, in a quiet town in the North Shore area of Chicago, Illinois, an intruder broke into the home of my sister Nancy Bishop Langert and her husband Richard and shot them to death. Nancy was 25 years old; Richard was 29. To compound the tragedy, Nancy was pregnant with what would have been their first child, my first little niece or nephew and my parents' first grandchild.

The killer was David Biro, a 17-year-old who lived only a few blocks away from Nancy and Richard. He shot Richard once, execution style, in the back of his head. He shot Nancy in her side and abdomen, even though they had told him she was pregnant. The autopsy report detailing the path the bullets had taken in her body, destroying the child within her, was so excruciating that I wailed in agony when I read it.

Nancy was the beloved youngest of three daughters in my family. She was a sunny, sweet, spirited person who wanted more than anything to be a mother. She and Richard were a young couple with no enemies and everything to live for, on the brink of achieving their dream of having a child and owning a home of their own.

A jury found Biro guilty after only two hours of deliberation. The court sentenced him to the mandatory sentence imposed at the time on juveniles in the State of Illinois who had committed multiple homicides: life in prison without the possibility of parole.

Although other places had a death penalty for juveniles at that time, Illinois did not.⁷ When my family and I walked out of the courthouse after the sentencing, the press was waiting to ask how we felt. The first question a reporter asked me was this: "Aren't you disappointed your sister's killer couldn't get the death penalty?" My answer was this, then and now: "No." I will never find joy or hope in the death of another.

I am glad his life was spared, not because of who he is but because of who Nancy was. She was a good and generous person who loved life, who loved people, who

⁷ The United States Supreme Court has since struck down the death penalty for people who were children at the time of their crimes.

was carrying life in her body when she died. The last thing she would have wanted is more killing.

Also, the notion that the lives of my family members could be paid for by snuffing out the life of their killer seemed preposterous to me. How could his one life even begin to recompense the lives he took? Shedding more blood and digging another grave and creating another grieving family like mine could never heal me. It would not bring Nancy and Richard and their baby back. It would not honour their lives or what they stood for. It would not give me that thing people often say that murder victims' families want and need above all: closure.

Closure is this mythical state in which all your pain and heartbreak over losing your loved ones will be neatly wrapped up and put to rest when a dire punishment is imposed on the one who took them from you. It is a lie. I will love my sister and brother-in-law and their unborn baby forever. I will mourn them every holiday, every birthday, every time I see a blue car like the one they drove or a young woman wearing her hair in a French braid, as Nancy did. My love and grief over her death will live on in me as long as I live, and motivate me to love as she did, to live passionately and joyfully and to have courage at the end. I do not want to close that.

After I made that public declaration against the death penalty, a group reached out to me: an organization of people who had lost family members to homicide, but who opposed the death penalty for all offenders, including the ones who killed their loved ones. Those people have become my heroes: Bud Welch, the father of an only daughter, Julie, who died when domestic terrorist Timothy McVeigh blew up the federal building in Oklahoma City. Marietta Jaeger, whose young daughter Susie was abducted, raped and murdered by a man who took her from her tent on a family camping trip. Bill Babbitt, whose brother Manny, a Marine who had served in wartime, was executed for murder despite his post-traumatic stress disorder. Robert Curley, whose 10-year-old son Jeffrey was asphyxiated, raped and dismembered by two pedophiles. Kate Lowenstein, the daughter of a congressman shot by an activist. Renny Cushing, whose father Robert and brother-in-law Stephen both were murdered decades apart in eerily similar circumstances: on the front steps of their homes in front of their spouses. All have spoken with unimaginable courage, across the country and around the world, about the necessity of abolishing the death penalty everywhere.

I began to follow their lead, to speak out against executions from my perspective as a murder victim's family member. The first time was at an event at my former law school, Northwestern University School of Law in Chicago. One of its professors was trying to overturn the conviction and death sentence of an innocent man wrongfully

convicted of a heinous rape and murder of a 10-year-old girl. The man, Rolando Cruz, had an execution date that was drawing closer.

My message was this: I must try to save an innocent man's life because I could not save the lives of my family members. If I had known the date, time and place that the killer was going to break into their home, I would have done anything to prevent it. But we did know the date, time, location and even the manner in which the state intended to kill Rolando Cruz, and I had to do my utmost to stop it. The collective efforts of so many worked; Cruz was later exonerated and released from custody.

That speech was the first of many in the days to come, before state legislatures in the United States and in countries around the world: Mongolia, Japan, France. Often, in response, voices on the other side would say this: "Victims' families need the death penalty to have justice, to end their nightmare. They need to know the person who killed their loved ones will never walk the streets again."

That contention stopped the conversation in its tracks. No one wants to hurt survivors of murder victims. Bill after bill seeking to abolish the death penalty in the United States would die in state houses, in Congress. The voices purporting to speak for *all* murder victims' survivors would drown out the rest.

Some of those voices argued that the murdered themselves would want those that killed them to be executed, would be pleased to see them suffer. One such person was a relative of one of the victims of Karla Faye Tucker, who killed two people with an ice pick. Tucker took full responsibility for her crime, gave her life to God while in prison and behaved there in a manner so exemplary that prison personnel spoke out against executing her. The relative told reporters that if Tucker went to heaven after her death by lethal injection, he hoped that her victims would assault her when she got there. Richard Thornton, husband of victim Deborah Thornton, witnessed Tucker's execution and as it proceeded, said to his dead wife, "Here she comes, baby doll. She's all yours." It was a conception of heaven as a place of vengeance that intersected in no way with my faith or the beliefs of anyone I know; it was heaven as dystopia. But it is that dystopia of vengeance that too often drives our politics.

I believe to the depths of my soul that murder victims would wish on no human being the fate that befell them. Most of those Americans who support the death penalty are Christians, but Jesus himself rejected "an eye for an eye" retributive justice and instead urged his followers, like me, to turn the other cheek.

The angriest voices do not speak for all survivors. On the contrary, many victims' families argue eloquently that a ritual killing of the perpetrator would desecrate the

memory of their loved ones. That it would contradict everything they believed in. That it would make survivors less like the innocent victims and more like their killer, a deliberate taker of human life.

One such survivor was Mamie Till Mobley, whose only child, Emmett Till, was kidnapped, tortured and murdered in the American South in 1955. Emmett's mother insisted on an open casket at his funeral to display for the world the evil done to her son. She told me that when an all-white jury acquitted the men, she did not thirst for their death. "I erased them," she said, making a sweeping motion with her hand like an eraser over a blackboard. She focused instead, until the end of her shining life, on teaching children about the struggle for civil rights.

Ross Byrd's father, James Byrd, Jr., a Black man, was chained to the back of a truck in Texas and dragged to death by three white men. The force of the ground skinned his flesh to the bone in some places and decapitated him when his head struck a culvert. The night before the execution of one of the men who had killed his father, Byrd's son Ross spoke out against it, telling Reuters, "You can't fight murder with murder."

Even victims' family members who believe in the concept of capital punishment oppose it in practice, as being bad for victims' survivors. When the State of New Jersey abolished its death penalty in 2007, the effort to halt executions was led in part by the families of murder victims. Larry Post, father of a daughter who was murdered, started New Jerseyans for Alternatives to the Death Penalty in a church basement. The organization grew into a powerful and effective coalition of murder victims' family members, clergy, legislators and law enforcement.

The group was striking in that many of its members favoured the death penalty in principle but not in practice. Their argument was not that it was wrong, but that it was bad for victims' survivors. One of the organizers, Celeste Fitzgerald, argued that the death penalty, "condemns the family members of murder victims to a life in limbo" and tied them for years to the killers of their loved ones. In the run-up to abolition, family members of 52 murder victims wrote in a letter to legislators that while capital punishment drags victims' loved ones through an agonizing and lengthy process, a life without parole sentence would keep society safe, hold killers responsible for their brutal acts, and begin as soon as survivors left the courtroom.⁸

8 ["N.J. on verge of repealing death penalty," Los Angeles Times](#), December 14, 2007, reporter byline Henry Weinstein.

The parents of the youngest victim of the Boston Marathon bombing, 8-year-old Martin Richard, made this appeal when prosecutors sought the death penalty for one of the bombers, Dzhokhar Tsarnaev. The Richards wrote in the *Boston Globe*:

“We understand all too well the brutality of the crimes committed. We were there. We lived it. The defendant murdered our 8-year-old son, maimed our 7-year-old daughter, and stole a part of our soul. We know that the government has its reasons for seeking the death penalty, but the continued pursuit of that punishment could bring years of appeals and prolong reliving the most painful day of our lives... As long as the defendant is in the spotlight, we have no choice but to live a story told on his terms, not ours. The minute the defendant fades from our newspapers and TV screens is the minute we begin the process of rebuilding our lives and our family.”⁹

Victims’ survivors made a similar argument in the most recent state to abolish its death penalty, the Commonwealth of Virginia, a former slave state and the first Southern state to end its death penalty. Victims’ families wrote in a joint letter that the death penalty fails victims’ families by diverting resources and attention to the killer rather than using funds for funeral costs, counselling and other services for survivors.¹⁰

Finally, even murder victims’ survivors who supported executing their loved ones’ murderer and saw those executions carried out have reported feeling re-victimized and agonized rather than helped and healed. Bud Welch said that before the execution of Timothy McVeigh for the Oklahoma City bombing, some fellow survivors were, “tortured, in pain all the time because they were carrying revenge, and that’s never going to heal you.” After the execution, some of those survivors felt guilt for the harm inflicted on McVeigh’s surviving family members — his grieving father and sisters — and for the death of Timothy McVeigh himself. The pro-death penalty survivors reported feeling that they had been put in the same position as McVeigh: killer.

We who have suffered the loss of a loved one to murder know common pain: the moments that did not come and never will, the empty chair, the fading photograph we cannot bear to look at. We ask only this: to be considered as fully human, rather than only as vessels for anger and vengeance. Our experiences with death diverge as much as each mother’s experience with birth, a complexity beyond imagination. In this report are truths that reflect that very human lack of simplicity. I commend the telling of these truths.

9 [Open letter of the Richard Family to the United States Department of Justice](#), published on the front page of the *Boston Globe* on April 17, 2017.

10 See section: [the role of victims’ families](#).

Part II: The road to abolition of the death penalty

All OSCE participating States have ratified the International Covenant on Civil and Political Rights (ICCPR). As elaborated in ODIHR's 2019 background paper on the death penalty, the Human Rights Committee has stated that:

“Article 6 (6) of the ICCPR reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights.”¹¹

The majority of OSCE participating States are in agreement that the death penalty is a cruel, inhuman and degrading punishment. Yet, capital punishment is still imposed within the region in two retentionist states – Belarus and the United States.

As debates surrounding the reintroduction of capital punishment surface repeatedly, it is crucial to better understand how countries are able to abolish it in law and in practice. This section highlights some of the most influential dynamics on a state's road to abolition of the death penalty, referencing the abolition process in Kazakhstan, Mongolia, Latvia and the American state of Virginia. The paper illustrates that the road to abolition is often not linear but can be achieved in various ways in very different contexts when broad coalitions of national and international actors work together.¹²

It is important to note that this thematic section does not claim to provide a comprehensive overview or assessment of all factors that played a role in abolishing the

11 Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, [CCPR/C/GC/36](#), para. 50.

12 These participating States were selected as they have abolished the death penalty in recent years and represent different regions within the OSCE.

death penalty in law and in practice in the countries examined. Recognizing the highly complex and multi-layered nature of death penalty abolition, it seeks to provide an overview of key elements and stakeholders in selected countries in which capital punishment was abolished in the more recent past.

The information was gathered through in-depth desk research as well as interviews with selected experts on abolition processes from the OSCE region. For the purposes of this short thematic section, focus will be put on six factors that became evident as influential in abolition processes across numerous states: political leadership, the role of civil society organizations, the role of religious groups and of victims' families, the development of public opinion and the impact of international interventions.

1. Political leadership

The importance of political leadership for the abolition of capital punishment in any state cannot be over-emphasised. The country examples studied all demonstrate that abolition of the death penalty requires significant political will on the part of the government.

Domestic political leadership that is supportive of abolition is particularly effective where these individuals publicly speak out against the death penalty and highlight concerns associated with its use. In fact, the provision of information and transparency on the use of the death penalty to the public, arguably, is part of public duty and democratic governance.¹³

The importance of having a governor who actively pursued abolition of the death penalty was reportedly a crucial factor for eventual abolition in **Virginia**.¹⁴ Governor Northam had called for an end to capital punishment in a state-wide address in January 2021 and would not sign any death warrants.¹⁵ On various occasions, he emphasised some of the most worrying aspects relating to the reality of the death penalty,

13 In the two retentionist countries in the OSCE region, a lack of transparency with regard to the application of the death penalty only exacerbates many assumptions about the death penalty that are often not true. United Nations Digital Library, Report of the Secretary-General, "[Question of the death penalty](#)", UN Doc. A/HRC/45/20, 13 August 2020, para 22: "It remains difficult to obtain up-to-date and accurate global figures on the application of the death penalty. Belarus, China and Viet Nam continue to classify data on the use of the death penalty as a State secret, and little to no information is available on some countries. [...] In the United States, research was undertaken on laws and policies that make information about executions inaccessible to the public, pharmaceutical companies and prisoners."

14 Madeleine Carlisle, [Why It's So Significant Virginia Just Abolished the Death Penalty](#), TIME, 24 March 2021.

15 Interview with Joseph T. Flood, former Capital Defender for Northern Virginia, 28 May 2021; [Governor Northam Delivers State of the Commonwealth Address](#), 13 January 2021.

noted the racist history of the death penalty and referred to a case where a man had almost been executed for a crime he did not commit before being exonerated.¹⁶

The well documented realities of racial disparities and wrongful convictions were also highlighted by politicians in Virginia.¹⁷ Moreover, prosecutors (who are elected) were influential in progressing criminal justice reform, emphasising in a letter that the death penalty is not evenly applied across Virginia jurisdictions and juries' increasing reluctance to hand down death sentences.¹⁸

At the same time, the broader political context at the national level can also heavily influence abolition processes. In Virginia, a newly elected majority, in control of the General Assembly for a second year, and its support for the implementation of progressive criminal justice policies was consistently described as an important factor in the abolition effort.¹⁹ The murder of George Floyd, the subsequent Black Lives Matter protests and the support of a progressive and popular governor, allowed the goal of abolition to be achieved quicker than expected, since criminal justice reforms became a priority.²⁰ The death penalty was abolished on 5 February 2021.

As in many American states, Virginia had already seen a sharp decline in new death sentences and executions in the lead up to abolition. There had not been a new death sentence since 2011.²¹ According to numerous sources, this was largely due to the establishment of state-funded "capital defence offices" that ensured that there were highly qualified attorneys to represent capital defendants.²² These were set up following a State Supreme Court ruling in 2000 that noted changes were necessary to improve capital defence.²³ Research has shown that professional legal representation

16 Liliana Segura, [The long shadow of Virginia's Death Penalty](#), The Intercept, 11 April 2021.

17 Death Penalty Information Centre, [Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty](#), 15 September 2020.

18 Death Penalty Information Center, [Twenty-One Virginia Prosecutors Sign Letter Urging Repeal of Death Penalty](#), 4 February 2021. The letter was signed by former Attorney General Mark L. Earley, Sr., who had presided over 36 executions during 13 years in office, William G. Broaddus, nine current or former Commonwealth's Attorneys elected across the state, and 12 other former homicide prosecutors. The letter was also signed by Amy Ashworth, the newly elected Commonwealth's Attorney in Prince William County, historically one of the most active death penalty jurisdictions in Virginia.

19 AP News, [Virginia lawmakers vote to abolish the death penalty](#), 23 February 2021; Interview with Joseph T. Flood, *op. cit.*, note 15.

20 Interview with Michael E. Stone, Executive Director of Virginians for Alternatives to the Death Penalty, 28 May 2021.

21 Liliana Segura, [The long shadow of Virginia's Death Penalty](#), The Intercept, 11 April 2011.

22 Interview with Michael E. Stone, *op. cit.*, note 20; Interview with Joseph T. Flood, *op. cit.*, note 15.

23 The General Assembly created regional Capital Representational Centers in 2002.

in death penalty cases is more closely correlated with a reduction in death sentences than other factors.²⁴ Quality capital defenders can demonstrate the complex backgrounds of those being charged and any underlying mental health issues, for example.²⁵ Overall, a long-term reduction in death sentences and executions and the gradual, positive influence this has on abolition appears to be a common theme across different countries.

Strong political leadership was also highly influential in the abolition process in **Mongolia**. On 14 January 2010, the President announced in Parliament, which at the time held a majority of the opposition party,²⁶ that he would automatically pardon all those sentenced to death and commute their death sentences to 30 years imprisonment. This constituted the first step towards abolition in many years.²⁷ The President expressed his support for abolition of the death penalty repeatedly, arguing for the full respect for the right to life. He noted that the threat of executions did not have a deterrent effect on crime and that the risk of any miscarriage of justice is inherent in any justice system.²⁸ On 3 December 2015, a new Criminal Code was adopted that abolished the death penalty for all crimes in Mongolia.²⁹ The parliamentary majority of a party whose platform sought to abolish the death penalty has been cited as one of the reasons that Mongolia abolished the death penalty in law.³⁰

The research conducted for this paper indicates that abolition comes about, not only due to the conviction of a certain political leader but in the context of broader criminal justice reforms by the government – which help to restrict the use and scope of the death penalty. Such reforms can be prompted by various factors: an understanding of the flaws in criminal justice systems that apply the death penalty; international pressure; and advocacy efforts of different national actors, highlighting the multitudinous problems associated with the application of the death penalty.

24 Death Penalty Information Center, [How Capital Defenders Helped End Virginia's Death Penalty](#), 30 March 2021.

25 *Ibid.*

26 Aljazeera, [Mongolia moratorium on executions](#), 14 January 2010.

27 Amarzaya Galsanlkhagva, [The long road to death penalty abolition in Mongolia](#), Amnesty International UK, 4 December 2015.

28 Embassy of Mongolia, [Mongolia to Abolish Death Penalty](#), 9 December 2015.

29 World Coalition Against the Death Penalty, [ADPAN welcomes Mongolia's decision abolish death penalty in law](#), 18 December 2015.

30 Written comments from Amarzaya Galsanlkhagva and Altantuya Batdorj, Amnesty International Mongolia, 14 June 2021.

In **Latvia**, it seems that various different, influential personalities across numerous government institutions contributed to the abolition process. In 1996, the Prosecutor General noted in an important speech that Latvia had not acceded to Protocol No. 6 of the European Convention on Human Rights (ECHR).³¹ At the same time, the European experience showed that the murder rate in a country does not depend on whether it uses capital punishment and that capital punishment should be applied only in exceptional cases.³² On 24 September 1996, speaking in Strasbourg, the Latvian President announced that until the adoption of a new criminal code in Latvia, he would pardon anyone sentenced to death.³³

Highlighting concerns about ensuring the right to life, in 2011, the Ministry of Justice emphasised that it was essential to accede to Protocol No. 13 of the ECHR.³⁴ The President of the Parliament's Human Rights and Public Affairs Commission acknowledged that even during wartime, it is impossible to avoid mistakes, so even in such situations, the highest penalty should be life imprisonment without the right to pardon, and not the death penalty.³⁵

In the case of **Kazakhstan**, progress towards abolition started on 17 December 2003, when the Head of State signed a moratorium as part of an initiative to humanise criminal law and bring it in line with international standards. After the implementation of the moratorium and the establishment of life imprisonment as the alternative, death penalty trials became virtually non-existent.³⁶ Imposition of death sentences was discretionary, with Article 52 of the Criminal Code requiring that a severe form of punishment should only be imposed if a lesser form of punishment would not satisfy the purpose. In this assessment, courts were required to take into account the gravity of

31 “Despite having committed itself during its Council of Europe accession procedure on 31 January 1995 “to ratify ... Protocol No. 6 within a period which, by the terms of Assembly Resolution 1031 (1994), should not normally exceed one year from the time of accession” (Opinion No. 183 (1995), paragraph 10.b), Latvia had not signed or ratified the Protocol during this time. Latvia had in fact carried out two executions by shooting since its accession to the Council of Europe, on 26 January 1996. Eight death sentences were handed down in the years 1994–96, all of them for murder under aggravating circumstances, and, as of 25 June 1996, two prisoners were awaiting execution on death row.” Committee on Legal Affairs and Human Rights, [Abolition of the death penalty in Europe](#), Doc. 7589, 25 June 1996.

32 Latvian Centre for Human Rights, [Press Review](#), 19 December 1996.

33 Andris Runcis, [Latvia Towards Europe: International Security Issues](#), North Atlantic Treaty Organization, Riga 1999.

34 LV, [Rosina Latvijā pilnībā atcelt nāves sodu](#), 30 March 2011.

35 LV, [Rosina Latvijā pilnībā atcelt nāves sodu](#), 30 March 2011.

36 Penal Reform International, [The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan](#), May 2013.

the offence, the characteristics of the defendant, including their mental state, and other circumstances.³⁷

However, the road to abolition was not linear. In the wake of a 2016 mass shooting in Almaty, talk of lifting the moratorium on death sentences for terrorism resumed.³⁸ In November 2016, a specialized district criminal court of Almaty city handed down a death sentence for Ruslan Kulekbayev, who was found guilty of a shooting spree that resulted in the death of eight police officers and two civilians.³⁹ Later, on 1 January 2018, amendments to the Criminal Code that came into force raised the number of offences subject to the death penalty from 18 to 19.⁴⁰

Ultimately, abolition in Kazakhstan seems to have come about less as a specific goal driven by individuals, but rather as part of wider reforms within the country and efforts to strengthen the state's standing in the international community. These efforts ultimately resulted in the initiation of the procedure for joining the Second Optional Protocol to the ICCPR during the implementation of political reforms in December 2019.⁴¹ Kazakhstan's parliament passed a bill on 29 December 2020 to ratify this treaty and, on 2 January 2021, the President added his signature to this bill.⁴²

As also shown by the Virginian experience, creating a system whereby death sentences are not frequently handed down, and alternatives are instead commonly used, can lay the groundwork for abolition.

2. The role of civil society organizations (CSOs)

It is important to recognize the vital role that national bodies and organizations, and in particular CSOs, play on a state's road to abolition. They make a difference through advocacy, engaging with politicians and State representatives, and are influential in mobilizing public support for abolition. Drawing attention to problems associated with the application of the death penalty, they can contribute to a change in public opinion.

37 Penal Reform International, [The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan](#), May 2013.

38 [15 интересных фактов о смертной казни в РК \[15 Interesting Facts about the Death Penalty in Kazakhstan\]](#), 2 November 2016.

39 Following the ratification of the Second Optional Protocol to the ICCPR, Ruslan Kulekbayev will now face life imprisonment, see section: [abolitionist for ordinary crimes only](#).

40 "The Death Penalty in the OSCE Area: Background Paper 2019", OSCE/ODIHR, *op. cit.*, note 5, p. 55.

41 DW, [Казахстан отменил смертную казнь. До конца? \[Has Kazakhstan abolished the death penalty completely?\]](#), 25 September 2020.

42 Death Penalty Information Center, [NEWS BRIEF-Kazakhstan Abolishes the Death Penalty](#).

The **Virginian** example is considered to be particularly illustrative of the influential role exercised by CSOs, lobbying for the abolition of the death penalty both with politicians as well as the general public. This included representatives of such organizations travelling through the state's key legislative districts, in particular trying to build support among conservative constituents of legislators serving on the House and Senate Courts of Justice Committee.⁴³ Certain organizations focused on congressional lobbying and produced educational materials.⁴⁴

The so-called “Journeys of Hope”⁴⁵ are commonly also considered a cornerstone of the abolition movement in the United States and in Virginia. Victims' family members, exonerees, and abolitionists would tour a state and talk at rallies and demonstrations about concerns relating to capital punishment, such as the possibility for miscarriages of justice, and conveying the reasons why many victims' family members are opposed to the death penalty.⁴⁶ Such events seem to have been particularly instrumental, first, for validating and energizing members of the abolitionist movement, and second, for enabling engagement with the community at large, in particular finding allies within communities of colour and religious organizations.⁴⁷ A number of national organizations in fact focused on building support for abolition within the African-American community, particularly with religious leaders and their congregations.⁴⁸

The anti-death penalty coalition in Virginia also benefited from the support of a former executioner — who added his voice and personal direct experience, publicly recalling the toll that such a job took on him.⁴⁹ Other grassroots organizations helped to publicize individual cases of the death penalty⁵⁰ in order to elucidate some common misconceptions, for example regarding the fairness and reliability of the criminal

43 Interview with Michael E. Stone, *op. cit.*, note 20.

44 The National Coalition to Abolish the Death Penalty (NCADP).

45 [Murder Victims Families for Human Rights](#).

46 Interview with Mark Warren, former United States coordinator with the Canadian section of Amnesty International, 3 June 2021.

47 *Ibid.*

48 [Virginians for Alternatives to the Death Penalty](#). Other organizations who worked on abolition include: the Virginia Interfaith Center for Public Policy, the Virginia Catholic Conference, ACLU of Virginia, Rutherford Institute, Virginia State Conference NAACP, Virginia Association of Criminal Defense Lawyers, Office of Justice and Peace of the Catholic Diocese of Richmond, Virginia Coalition for Juvenile Justice, Amnesty International USA, Virginia C.U.R.E., Legal Aid Justice Center.

49 Liliana Segura, [The long shadow of Virginia's Death Penalty](#), *The Intercept*, 11 April 2011; and Liliana Segura, [The life and death of Jerry Givens, Virginia's executioner-turned- abolitionist](#), *The Intercept*, 26 April 2020.

50 VASK – Virginians Against State Killings which subsequently changed its name to Virginians for Alternatives to the Death Penalty (VADP); and Interview with Mark Warren, *op. cit.*, note 46.

justice process, and that innocent people would not be executed.⁵¹ Experience from Virginia seems to underpin that thorough communication of factual information can help to dispel some of the myths that surround the death penalty and help change public opinion.⁵²

CSOs can also be influential in making sure that key human rights concerns related to death penalty cases are brought to light, for example in the form of “friend of the court letters” opposing the death penalty for persons with intellectual disabilities.⁵³ In Virginia, working in co-operation with defence attorneys, the submission by civil society of intervenor briefs supporting post-conviction appeals helped keep challenges to death sentences on various grounds percolating through the appellate courts.⁵⁴ This increased the likelihood that the United States Supreme Court would take on the issue and was very important in terms of leading to the *Atkins v. Virginia* 2002 judgment that found unconstitutional the sentencing to death or execution of individuals with intellectual disabilities.

CSOs also played a key role in pushing for reforms in **Kazakhstan**, where a substantial number of human rights defenders and CSOs advocated for abolishment of the death penalty for many years.⁵⁵ Advocacy by such organizations often focused on interacting with government officials to push for final steps towards full abolition in law.⁵⁶ CSOs were also influential in raising public awareness about the death penalty, emphasizing the fact that miscarriages of justice are possible and that Kazakhstan should move towards compliance with its international obligations and ratification of the Second Optional Protocol to the ICCPR, for example.

Some observers pointed out the impact of civil society in their work with parliamentarians, mobilizing and convincing MPs of reasons against the death penalty. Contributions of CSOs included participation in one of the meetings for the Working Group on the Criminal Code at the Parliament on 19 November 2013, which brought together representatives of the General Prosecutor’s office, MPs, state officials, lawyers and civil society representatives. The discussion focused on the death penalty

51 Interview with Mark Warren, *op. cit.*, note 46.

52 *Ibid.*

53 ACLU, [High Court Rules That Executing the Mentally Retarded Is “Cruel and Unusual” Punishment](#), 20 June 2002.

54 Interview with Mark Warren, *op. cit.*, note 46.

55 Penal Reform International, [The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan](#), May 2013.

56 *Ibid.*

as a type of punishment and the challenge of total abolition of the death penalty in Kazakhstan.⁵⁷

In **Mongolia**, too, a non-governmental organization was consistently described as influential in their campaign for abolition. The organization hosted art exhibitions, film discussions, gave talks to law students, went on speaking tours with American victim family members who opposed capital punishment and met legislators, among many other activities to try and shift public opinion.⁵⁸ In this context, collaboration with other (national) CSOs and state institutions, including the Human Rights Commission of Mongolia, was important. In 2005–6, in co-operation with the Law University, it conducted research on the death penalty in Mongolia and their human rights education library proved to be the only source for students to learn about the death penalty.⁵⁹ They also raised awareness through media coverage, including newspaper articles, interviews, talk shows, and TV debates.⁶⁰ This same organization was involved in sending letters to MPs and the President urging for the adoption of the Second Optional Protocol to the ICCPR.

2.1. *The role of victims' families*

A key narrative often used to oppose abolition is the claim that the death of the perpetrator of a crime is (an integral) part of providing justice to victims' families. Contrary to this entrenched perception, groups and platforms of family members of victims have formed who are very vocal and active in advocacy against the death penalty.

This has proven particularly influential in abolitionist movements in three ways. The active participation in matters directly affecting them empowers the victims' family members themselves. It raises awareness about the detrimental human impact of the death penalty, often invoked on their behalf. It also helps change legislator and public opinion about various commonly held myths regarding criminal justice systems applying the death penalty.

Advocacy by victims' families has been consistently described by observers as a significant aspect in the context of death penalty abolition in **Virginia**. As early as 1976, an organization was founded led by family members of murder victims and the executed

57 Dinara Dildabekova, [Next stage: will the death penalty remain in Kazakhstan's new criminal code?](#), Penal Reform International, 20 November 2013.

58 This is referring to Amnesty International Mongolia, noted in: Amarzaya Galsanlkhagva, *op. cit.*, note 27.

59 Written comments from Amarzaya Galsanlkhagva and Altantuya Batdorj, *op. cit.*, note 30.

60 *Ibid.*

to “dismantle and disrupt” the death penalty.⁶¹ The founders stated that they no longer wanted to be told the death penalty was the appropriate answer to their pain. The aim of this organization was to convey the idea that not all victims’ families are in favour of the death penalty and that executions, rather than bringing their families closure, in many ways ripped open the wounds all over again.⁶² CSOs like this are vital in voicing the desires of family members of murder victims with the media, the public, legislators, district attorneys, and other elected officials and policymakers. One of the leading CSOs working for abolition noted that testimony from victim family members is very powerful since they are able to “speak from the heart.”⁶³

The role that victim’s family members played in advocacy for abolition more recently in Virginia was exemplified by 13 family members of murder victims who sent a letter to the General Assembly asking lawmakers to abolish the death penalty in 2019.⁶⁴ They shared their personal stories to show that criminal justice encompassing the death penalty led to traumatic experiences in a system, “more interested in retribution than meeting their practical needs.”⁶⁵

A few Virginia politicians who were family members of victims also spoke out publicly against the death penalty.⁶⁶ In fact, all seven murder victim family members in the General Assembly voted in favour of abolition.⁶⁷ When faced with victim family members who are opposed to the death penalty, it is much harder to find reasons to justify retaining it.⁶⁸

One of the most influential organizations for victim’s family members from the United States was also involved in international death penalty abolition advocacy. For example, in 2011, Amnesty International Mongolia organized a speaker tour bringing

61 [Murder Victims’ Families for Reconciliation \(MVFR\)](#) is a national organization founded in 1976 in response to the reinstatement of capital punishment in the United States that year. Their goal was to ensure that victims’ families’ opposition to the death penalty was voiced and that the many reasons for their opposition to the death penalty were heard.

62 Interview with Mark Warren, *op. cit.*, note 46.

63 *Ibid.*

64 AP News, [Virginia lawmakers vote to abolish the death penalty](#), 23 February 2021.

65 Virginians for Alternatives to the Death Penalty, [Statement at Death Penalty Abolition Bill Signing Ceremony](#), 24 March 2021.

66 Sarah Rankin, [Virginia Senate passes death penalty abolition bill](#), Associated Press, 4 February 2021.

67 Virginians for Alternatives to the Death Penalty, [Virginia abolishes the death penalty after 413 years and 1390 executions](#).

68 Interview with Michael E. Stone, *op. cit.*, note 20.

victims' family members to speak to prosecutors, judges and lawyers, as well as to the public.⁶⁹

2.2. The role of religious groups

Considering the importance of different actors working together on the national level, it is worth noting also the influence of religious groups in some abolition processes. A number of observers interviewed for the background paper have highlighted the importance of work with religious communities in the context of death penalty abolition, and discourse framing the death penalty as a social justice issue rather than solely a matter of punishment.⁷⁰

In **Mongolia**, for example, a series of videos about the death penalty was made by an international NGO which included interviews with a lama (spiritual leader) of the Buddhist temple and a meditation teacher. The video was displayed for the public, students and lawyers.⁷¹

Virginia's religious community seems to have played a crucial role in the early abolition movement and the involvement of the Pope asking for clemency for Joseph O'Dell in 1996 reportedly encouraged domestic Catholic organizations to get involved in abolition work.⁷² In subsequent years, religious leaders publicly opposed capital punishment and local religious leaders led execution vigils at sites across Virginia, and their faith communities funded abolition work.⁷³ People from many faith denominations joined efforts, led by Black Baptist faith leaders, and spoke passionately about the connection between the death penalty and Virginia's history of lynching and racism.⁷⁴ A number of church organizations in Virginia communicated moral and ethical concerns around the death penalty.

69 Written comments from Amarzaya Galsanlkhagva and Altantuya Batdorj, *op. cit.*, note 30.

70 Interview with Mark Warren, *op. cit.*, note 46.

71 Written comments from Amarzaya Galsanlkhagva and Altantuya Batdorj, *op. cit.*, note 30.

72 Interview with Mark Warren, *op. cit.*, note 46; also see: The New York Times, [Vatican Pressing Its Plea For Death Row Inmate](#), 15 December 1996.

73 Virginians for Alternatives to the Death Penalty, [Statement at Death Penalty Abolition Bill Signing Ceremony](#), 24 March 2021. The Virginia Interfaith Center for Public Policy (VICPP) advocacy campaign included five prayer vigils at historic lynching sites across Virginia, clergy and community petition drives, two Zoom press conferences with faith leaders and prosecutors who opposed the death penalty, and state-wide and national media outreach.

74 Virginia Interfaith Center, [Black Pastors Help Win the Fight to Abolish the Death Penalty in Virginia](#).

3. Development and impact of public opinion

In pursuit of abolition it is important to analyse the influence of public opinion, regardless of the inconsistencies of public polling results on the death penalty. Real or perceived public support is often used to justify the retention or even the resumption of capital punishment.⁷⁵

National organizations have proven to be effective in promoting death penalty abolition when they involved victims' family members and also religious groups, because this helped to change public opinion on matters relating to the death penalty.

The relationship between public opinion and death penalty abolition, however, is highly complex. As emphasised in previous background papers, political leaders should not base their decision to engage in abolition processes depending on any real or perceived public opinion on the matter. Instead, States have a responsibility to protect human rights, in line with international human rights law, regardless of any majority opinion, and political leadership must promote public awareness and discussion about abolition.⁷⁶

Moreover, public opinion is notoriously hard to measure and statistics and opinion polls should therefore be treated cautiously.⁷⁷ The way in which poll questions are phrased, who they are distributed to, how many people are asked and at what point in time demonstrably has a huge impact on responses, and jeopardizes the reliability of polls. Particularly when asked in the aftermath of a heinous crime widely reported in the media, public support for the death penalty is likely to increase. On the other hand, when a wrongful conviction is exposed or a citizen is sentenced to death abroad, support for abolition usually increases. It has also been shown that the more people are aware of the facts, the less likely they are to support the death penalty.⁷⁸ As noted by the UN Secretary General during the reporting period, public support for the death penalty is, however, often based on a misconception that it acts as a deterrent to serious crime.⁷⁹

75 ODIHR, *The Death Penalty in the OSCE Area—Background Paper 2019*, *op. cit.*, note 5, pp. 16–18.

76 *Ibid.*

77 Yearly supplement of the Secretary-General to the United Nations to his quinquennial report on capital punishment, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, *A/HRC/42/28*, 28 August 2019, para. 30.

78 Penal Reform International, *The Death Penalty: Myths & Realities*.

79 UN Secretary-General, *op. cit.*, note 77, para. 31.

Public opinion had been provided as an argument against abolition in **Kazakhstan**, resulting in the introduction of a moratorium in 2003 instead of full abolition. Also, a poll conducted in the first half of 2008 suggested that the public felt the death penalty should be imposed in “extreme cases” (66 per cent of responses). Forty-four per cent of those who answered the survey considered the death penalty to be a deterrent to crime. On the other hand, 38 per cent felt it was ineffective and incapable of influencing the spread of crime.⁸⁰

In 2014, another survey on public attitudes toward the death penalty for terrorist offences resulting in death and for especially grave crimes committed in wartime found that the public had variable opinions on the moratorium. Forty-one per cent supported the moratorium, but also supported retaining the death penalty in the Criminal Code as an exceptional measure, so that if the moratorium were to be cancelled, the death penalty could still be imposed.⁸¹ Respondents who indicated support for the death penalty thought that the list of crimes for which the death penalty can be applied should rather be expanded, in particular for terrorist offences resulting in death.⁸²

Following the announcement that Kazakhstan would sign the Second Optional Protocol, some observers noted that public opinion on the death penalty was still divided in Kazakhstan.⁸³ For example, it has been reported that the issue of abolishing the death penalty or keeping it as a possibility in law should be resolved by a national referendum.⁸⁴ Conversely, human rights defenders and other observers note that due to a general lack of trust in the criminal justice system, there is more public doubt about the death penalty. Once again, reports on opinion polls and public discourse indicate what a divisive and fluctuating issue this is.

In **Mongolia**, too, developments over the last years illustrate the important role of public opinion. Public support for the death penalty contributed to its reinstatement following a massacre in the 1950s.⁸⁵ The former President’s efforts to abolish the

80 Kazakhstan, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1*, UN Doc. [A/HRC/WG.6/7/KAZ/1](#), 3 November 2009, para 36.

81 Penal Reform International, [Social survey: public attitudes in Kazakhstan to the death penalty for terrorist offences](#), September 2014.

82 *Ibid.*

83 DW, *op. cit.*, note 41.

84 Azattyk, [Отмена смертной казни: Токаев считает, что можно не менять Конституцию, эксперты не согласны](#) (Abolition of the death penalty: Tokaev does not think the Constitution should be changed, experts do not agree), 28 September, 2020.

85 Amarzaya Galsanlkhagva, *op. cit.*, note 27.

death penalty were initially unpopular with the public according to reports.⁸⁶ The campaign for Erdene-Ochir, a Mongolian who was wrongfully convicted of murder and sentenced to death in 1995, was, however, significant. His death sentence was upheld three times by three different courts before he was eventually found innocent and released in 2002. Public opinion allegedly shifted significantly over the seven years it took for the courts to overturn Erdene-Ochir's conviction – from support for his death sentence to the opposite by the end. Support for the death penalty has waned further since.⁸⁷

A survey conducted in 2011 by a research branch of the Mongolian government in collaboration with a CSO, showed a majority of Mongolians thought the death penalty should be abolished as it is “irrevocable to execute innocent people.”⁸⁸ At the same time, some have argued that public opinion in Mongolia prior to abolition overwhelmingly supported the death penalty, and continued to even after abolition.⁸⁹ This demonstrates once again the challenges in understanding how the public feels about the application of the death penalty.

In **Latvia**, too, public opinions on abolition of the death penalty have been hard to ascertain and still were after ratification of Protocol no. 13 in 2012. A January 2016 survey found that 47 per cent of respondents were against reinstating capital punishment, as opposed to 37 per cent in favour. The results were not divided by age group, but it is likely that support for abolition was higher among the generation that grew up without executions, as in other abolitionist countries.⁹⁰

On 3 October 1996, after the President had announced an executive moratorium on executions, he also noted that if the public did not support abolition this would have to be taken into consideration and suggested that the issue should be discussed publicly.⁹¹ Others stated that the moratorium on the death penalty should be accompanied by thorough sociological research to explore the pros and cons for all sections of society.⁹²

86 Tjalling H.F. Halbertsma, [Abolition of the Death Penalty in Mongolia: Is “Normative Power Europe” at Work?](#), *Mongolian Journal of International Affairs*, 21, 50–63.

87 Amarzaya Galsanlkhagva, *op. cit.*, note 27.

88 *Ibid.*

89 Tjalling H.F. Halbertsma, *op.cit.*, note 86.

90 [Cornell Center on the Death Penalty Worldwide](#), Latvia.

91 Latvijas Vestnesis, [Par nāvessoda moratoriju Latvijā](#), 8 October 1996; and Latvian Centre for Human Rights, [Integration monitor](#).

92 *Ibid.*

A survey carried out a year later, in 1997, as part of research on public opinion on the death penalty in the Baltics more broadly showed that at the time, 85 per cent of respondents in Latvia opposed abolition.⁹³ Those who supported capital punishment argued that abolition would inevitably lead to a rapid increase in serious crime.⁹⁴

Before Latvia's ratification of Protocol No. 13 to the ECHR in 2012,⁹⁵ public opinion remained divided, and calls for cancelling the moratorium on the death penalty emerged, for instance in 2008 following the murder of a young girl. At the time, a government official announced on national TV that he would support a Latvian referendum on reinstating the death penalty.⁹⁶ However, such movements were reportedly short-lived.⁹⁷

While polls indicated public support for the death penalty, it did not seem to be perceived as a "key issue" in the general public, and discussions in favour of abolition tended to circulate within legal and political circles.⁹⁸ It has also been noted that there were, at the time, no human rights groups who were working on raising public awareness about abolition.⁹⁹ Observers note that there was little public debate at the time of abolition in 2012, and the strong support for the death penalty among the population eventually had little impact on the process.

In **Virginia**, much effort was put into raising public awareness of the issues surrounding the death penalty by national organizations, victims' family members and religious groups to demonstrate to the public that there were available and viable alternatives to the death penalty.¹⁰⁰ Observers noted that thanks to these efforts the public became more aware that capital punishment did not guarantee public safety and was also expensive.¹⁰¹

93 Latvian Centre for Human Rights, [Press Report](#), 22 July 1997.

94 Andris Runcis, [Latvia Towards Europe: International Security Issues](#), North Atlantic Treaty Organization, Riga 1999.

95 Latvia introduced a moratorium on executions in 1996, abolished the death penalty in peacetime by ratification of ECHR Protocol no. 6 in 1998 and signed ECHR Protocol no. 13 on 3 May 2002 but did not ratify it until January 2012.

96 Philippa Runner, [Latvian death penalty debate rumbles on](#), EU Observer, 25 September 2008.

97 Cornell Center, *op. cit.*, note 90.

98 *Ibid.*

99 *Ibid.*

100 Interview with Mark Warren, *op. cit.*, note 46.

101 Interview with Joseph T. Flood, *op. cit.*, note 15.

Moreover, public confidence in the criminal justice system in Virginia was reportedly eroded as cases started to emerge in which individuals sentenced to death raised compelling claims of actual innocence, largely because of DNA evidence. This demonstrated vividly one of the flaws of capital punishment.¹⁰² A survey by Christopher Newport University in February 2021 showed that a majority of Virginia’s registered voters had come to support repealing the death penalty and eliminating mandatory minimum sentences.¹⁰³ According to this survey, Black registered voters were more likely to support the repeal than white voters.¹⁰⁴

As illustrated in the country examples, public opinion is often highly divided on death penalty matters. It is difficult to measure and prone to change according to current events. Public opinion can spur on abolition processes but also hinder them, and perceived public opposition can be used to stall progress towards eliminating the death penalty. However, the examples also show that, regardless of the public support (or lack thereof) for the death penalty, political leaders are able to pursue abolition. In fact, States must take seriously their responsibility, according to international human rights standards, to make relevant information available to the public and contribute to changing the public perception of the death penalty.

4. Interventions at international level

Research into the most influential factors on a state’s road to abolition of the death penalty underpin the important role that the international community, inter-governmental organizations, international human rights bodies and courts can play in a variety of ways.

Firstly, intergovernmental institutions are vital in the promulgation of binding and non-binding international human rights standards that promote the gradual abolition of the death penalty. The Council of Europe and the EU, for example, demand the abolition of the death penalty as a prerequisite for joining. Secondly, international human rights bodies, human rights commissions, regional and national courts can issue interim measures requiring stays of execution that directly affect the application of the death penalty.¹⁰⁵

102 Interview with Mark Warren, *op. cit.*, note 46.

103 Blue Virginia, [New Wason Center Poll: Virginians “support pot legalization, paid sick leave; most would repeal death penalty, minimum sentencing; health care, schools favored most for budget increases”](#), 2 February 2021.

104 CNU, [State of the Commonwealth](#), 2 February 2021.

105 United Nations Digital Library, Report of the Secretary-General, “[Question of the death penalty](#)”, UN Doc. A/HRC/45/20, 13 August 2020, para. 14.

Thirdly, intergovernmental organizations play a key part in monitoring and reporting on international treaty obligations and commitments through processes such as the Universal Periodic Review, which has at times resulted in recommendations to States regarding the abolition of the death penalty.¹⁰⁶

There are also many different international non-governmental organizations that support national projects to advocate for abolition of the death penalty. International efforts are influential in supporting national actors with their abolition work and providing more momentum to these movements.

It appears that international bodies, and especially the EU, had a considerable impact on **Mongolia's** road to abolition. During a speech to parliament on 14 January 2010 the then President highlighted Mongolia's engagement with the "global family" and the global trend towards abolition. He described the death penalty as a degradation of "the supreme human right to life", arguing that the practice had harmed Mongolia's international standing.¹⁰⁷ Despite State secrecy laws which forbade sharing information on executions, the President revealed the method of execution as "shooting a person dead."¹⁰⁸

The strong support of the EU for the President's moratorium was made visible by the EU diplomatic presence during the speech, for example.¹⁰⁹ The President acknowledged and mobilised the support offered by the EU and its Member States in achieving abolition.

Support for the President's efforts to abolish the death penalty was rendered by representatives of the EU both before and after the moratorium took effect.¹¹⁰ Arguments used by the President against the death penalty echoed those commonly expressed by

106 Or for example at ODIHR, as part of our regular monitoring of the situation of the death penalty in the OSCE region.

107 Tjalling H.F. Halbertsma, *op. cit.*, note 86.

108 *Ibid.*

109 *Ibid.* To highlight international support for the moratorium, the Office of the President posted the EU declaration on the President's official website, alongside several other declarations of support from countries including the France, Germany and the United Kingdom. The United Kingdom's statement also urged the lifting of state secrecy around executions. The Swiss Confederation, the UN representative office in Mongolia and Amnesty International also expressed support for the moratorium. Representatives from the embassies of France, Germany, the United Kingdom, Bulgaria, and the Netherlands who were posted to Ulaanbaatar, as well as diplomats from Canada, Japan, the United States and the UN, attended the parliamentary session.

110 Tjalling H.F. Halbertsma, *op.cit.*, note 86.

EU institutions. Moreover, the EU provided Official Development Assistance (ODA) to human rights organizations in Mongolia to support their abolition advocacy efforts.

The international non-governmental community welcomed the decision to abolish and, after Mongolia's ratification of the Second Optional Protocol to the ICCPR in 2012, continued its efforts, following up on its ratification campaign.¹¹¹ Numerous international experts and representatives worked on lobbying legislators and key officials, and raising awareness among the public and targeted groups.¹¹²

In **Kazakhstan**, international monitoring bodies and their reporting processes also influenced the abolition process. After its Universal Periodic Review in 2010, Kazakhstan agreed to recommendations concerning its move towards abolition in law, and confirmed that it would continue the policy of gradual abolition.¹¹³

Some international NGOs also played a powerful convening role by organizing conferences on the abolition of the death penalty in Central Asia. For example, on 26 April 2011, participants from Kazakhstan, Kyrgyzstan and Tajikistan were convened to discuss how to move the process of death penalty abolition forward across the Central Asia region and agreed on 26 recommendations to this end. It has been noted that continued advocacy efforts at the national and regional level—EU and OSCE—also contributed to the promotion of reforms in the criminal justice system in Kazakhstan.¹¹⁴ On 9 February 2013, a roundtable was held in the Mazhilis (the lower house of the Kazakh Parliament), during which participants discussed capital punishment and life imprisonment in the amended Criminal Code.¹¹⁵ Forum participants welcomed a variety of diplomats, as well as international and national CSOs.¹¹⁶

111 World Coalition Against the Death Penalty, [ADPAN welcomes Mongolia's decision abolish death penalty in law](#), 18 December 2015.

112 International experts and organizations were key, including delegations of Murder Victims' Families for Human Rights, Community of Sant'Egidio, financial support of the Human Rights and Governance Grants Program of the Open Society Institute, French Ambassador to Mongolia, United Kingdom Ambassador to Mongolia, European Union, and the UNDP Resident representative in Mongolia.

113 Penal Reform International, [The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan](#), May 2013.

114 *Ibid.*

115 Parlam, [СМЕРТНАЯ КАЗНЬ – АЛЬТЕРНАТИВА: круглый стол в Мажилисе \(Death Penalty – Alternatives: round table in the Mazhilis\)](#), 19 February 2013.

116 The round table was held by the Chamber's Committee on Legislation and Judicial and Legal Reform in conjunction with the Representative Office of Penal Reform International (PRI) in Central Asia and the Charter for Human Rights public foundation with the support of the EU and the British Embassy in Astana.

Observers have remarked that in **Virginia** international efforts were important for national organizations mostly to boost the morale and reassure them that they had allies. For example, the invitation of activists from Virginia to speak at conferences in Canada reportedly energized and encouraged the movement.¹¹⁷ It was also noted that international involvement in cases such as that of Joseph O’Dell was important in states where governors were Catholic. It demonstrated how international outcry could bolster domestic concern.¹¹⁸

In a different but also important way, governments whose nationals were facing death sentences in the United States also influenced abolition in Virginia by way of their interventions on behalf of their citizens. They initiated consular action, requesting clemency, and bringing *amici curiae* briefs before the courts, sometimes including the provision of lawyers to represent their nationals. In the case of Breard, for example, the government of Paraguay brought a claim against the United States for violations of consular rights of their citizen before the International Court of Justice who ruled that the United States was required to, “take all measures at its disposal” to stop the execution.¹¹⁹ It was noted that diplomatic interventions of this kind placed death penalty abolition as an issue of international relations rather than a matter of crime and punishment.¹²⁰

The growing abolitionist international community is also influential in abolition processes through exerting pressure on states more generally. The Parliamentary Assembly of the Council of Europe (PACE) declared that it was becoming increasingly challenging for the Council to accept “observer states which carried out executions” in relation to the United States.¹²¹ PACE noted that the application of the death

117 Interview with Mark Warren, *op. cit.*, note 46.

118 “When Joseph O’Dell faced execution in Virginia despite an unresolved claim of innocence, the European response was influential. The Pope and Mother Teresa appealed for clemency as a member from the European Parliament and an official of the Italian consulate flew to Virginia to meet with the state governor. In the days leading up to the execution, nearly ten thousand protesting calls and faxes were logged by the governor’s office, mostly from Italy. The mayor of Palermo made O’Dell an honorary citizen and publicly joined in the crusade to save his life. In contrast, only about a dozen protestors gathered outside of the prison for a candlelight vigil as O’Dell’s last hours approached. After the execution, the city of Palermo chartered a plane to return the body for a public funeral and burial in a cemetery normally reserved for aristocrats and Mafia dons. His tombstone describes O’Dell as “killed by Virginia, U.S.A., in a merciless and brutal justice system,” Mark Warren, “[Death, Dissent, and Diplomacy: The U.S. Death Penalty as an Obstacle to Foreign](#),” William and Mary Bill of Rights Journal, 13(2) (2004), 309–337.

119 Amnesty International, [The Execution of Ángel Breard: Apologies Are Not Enough](#), 1 May 1998, AMR/51/27/98.

120 Interview with Mark Warren, *op. cit.*, note 46.

121 Interview with Mark Warren, *op. cit.*, note 46.

penalty was a violation of the right to life, and the right to be protected against torture and inhuman and degrading treatment.¹²²

Inter-governmental organizations were also significant for **Latvia's** road to abolition. Following independence, Latvia's plan to enter the Council of Europe and the EU proved vital. It has been noted that political support for abolition was largely (though not entirely) based on these pragmatic considerations.¹²³

In February 1995, Latvia became a member of the Council of Europe and signed the ECHR.¹²⁴ In January 1996 however, Igor Strukov and Rolans Laceklis-Bertmanis were executed, marking the first executions to have been carried out since Latvia became a member of the Council of Europe and signed the ECHR.¹²⁵ In June 1996, PACE adopted Resolution 1097 (1996) in which it expressed its regret that Latvia had not kept its commitment to ratify Protocol No. 6 within one year of accession. The Resolution warned that further executions would have consequences.¹²⁶

In May 1998, the Government presented the Saeima (the parliament of Latvia) with a Criminal Code amendment that abolished the death penalty under all circumstances with no exceptions, thus going beyond the requirements of Protocol No. 6. In parliamentary debates, the importance of Latvia's accession to the Council of Europe membership was highlighted. The Government signed Protocol No. 6, which entered into force on 7 May 1999. Soon afterwards, a Criminal Code amendment replaced the death penalty with life imprisonment, but permitted capital punishment during times of war.¹²⁷ Correspondents reported that while most Latvians supported the death penalty, the country's political leaders saw compliance with EU legislation as vital for Latvia's chances of joining the EU.¹²⁸

In September 2008, discussions about reintroduction of capital punishment surfaced, following the murder of a young girl.¹²⁹ The President of PACE denounced these

122 Committee on Legal Affairs and Human Rights Report, [Abolition of the death penalty in Council of Europe observer states](#), Doc. 9115, 7 June 2001, para 40.

123 Cornell Center, *op. cit.*, note 90.

124 Amnesty International, [Report](#), 1996.

125 Amnesty International, [Report](#), 1997.

126 Committee on Legal Affairs and Human Rights, [Abolition of the death penalty in Europe](#), Doc. 7589, 25 June 1996.

127 Cornell Center, *op. cit.*, note 90.

128 BBC News, [World: Europe Latvia abolishes death penalty](#), 15 April 1999.

129 Amnesty International, [Amnesty International report 2009: The state of the world's human rights](#), 2009.

moves, stating that “[u]nder no circumstances can the reintroduction of the death penalty ever be on the Council of Europe or European Union (EU) agenda again.”¹³⁰

In 2009, the World Coalition Against the Death Penalty presented its campaign for the ratification of the Second Optional Protocol during the 67th Session of the Human Rights Committee. Advocacy efforts began with a focus on Latvia and El Salvador: “We have chosen them because they are already abolitionist in law, they are parties to the International Covenant on Civil and Political Rights and they have shown strong support for the abolition of capital punishment” in the UN General Assembly.¹³¹

At the OSCE 2010 Review Conference, following presentation of ODIHR’s 2010 background paper on the death penalty, participating States and NGOs encouraged the six countries that still retained the death penalty in their legislation, including Latvia, to proceed with full abolition.¹³²

Latvia abolished the death penalty for all crimes on 1 January 2012 and ratified Protocol No. 13 to the ECHR on 5 January 2012 — as reported by the World Coalition Against the Death Penalty, “[a]fter two years of campaigning, hundreds of letters and about ten missions on the ground.”¹³³

5. Concluding remarks

The examples explored in the context of this background paper illustrate that a broad variety of actors are necessary to achieve abolition of the death penalty in law and in practice.

The country examples demonstrate that first and foremost, political leadership is crucial on the road to abolition. Eventually, the removal of capital punishment from statute books is in the hands of political decision-makers. All other factors are influential in that they promote an atmosphere conducive for abolition.

Individual political leaders can play a powerful role on the road to abolition. Indeed, in all countries examined, the announcement of a head of state to introduce a

130 ODIHR, *The Death Penalty in the OSCE Area—Background Paper 2019*, *op. cit.*, note 5.

131 World Coalition Against the Death Penalty, *UN Protocol campaign harnesses diplomatic power*, 4 November 2009.

132 World Coalition Against the Death Penalty, *Statement: “Irreversible trend towards abolition”*, OSCE, 12 October 2010; *Statement on behalf of the World Coalition Against the Death Penalty*, 5 October 2010; *EU Statement – Session 5: Rule of Law II*, 5 October 2010.

133 Aurelie Placais, *Ratification of abolition treaties gathers pace in 2012*, World Coalition Against the Death Penalty, 20 March 2012.

moratorium on executions or commute death sentences proved to be a stepping stone towards abolition. It constituted a signal towards policy-makers and contributed to an immediate reduction in executions. In turn, the reduction in death sentences made apparent that capital punishment is redundant in modern criminal justice systems, and its absence does not lead to an increase in crime. This again seems to help change public opinion, as the public becomes accustomed to criminal justice systems that do not make use of capital punishment. As the death penalty becomes obsolete, decision-makers are at more liberty to take active steps towards abolition, less constrained by public opinion.

To the same end, initiation of broader criminal justice reforms, including but not limited to the issue of capital punishment, seem to form a successful approach to move abolition processes forward. It appears to reduce the emotional dimensions of the discourse and helps move the focus to the objectives of a criminal justice system, where accountability and rehabilitation outrank the concept of retribution.

At the same time, criminal justice reforms can be used in order to gradually reduce the application of the death penalty. Measures can include the reduction of death-penalty applicable offences and removal of mandatory death sentences, to ensure the circumstances of the individual case are taken into account. As research has shown, improvement of professional legal representation for defendants who face capital punishment also leads to a reduction in death sentences. In turn, the examined country examples suggest fewer death sentences have a positive effect on public opinion.

CSOs play a crucial role in the abolitionist movement, including in the context of broader criminal justice reforms. The countries examined illustrate how much they can help move both politicians and the wider public towards an acceptance of abolition. Their ability to raise awareness and to provide information, including on the flaws in its application and through the power of highlighting individual case examples, has had a significant impact.

In some jurisdictions, the effort of families of murder victims has played a significant role in raising awareness about the realities of the death penalty. In particular, it has helped counter the argument that capital punishment is required to deliver justice to victims and their families. Since the death penalty is seemingly an emotive issue for many people, being able to hear direct testimony from individuals affected by the death penalty has shown to be powerful in shifting public opinion and addressing common misperceptions. It can convincingly demonstrate that too often innocent people are killed, that executing someone does not bring a victim's family member justice or any form of closure, and it can help build support from criminal justice stakeholders and legislators.

Indeed, another factor that can help swing opinion are the voices of stakeholders from within the criminal justice system, in particular prosecutors and former executioners. Not perceived as the ‘usual suspects’ in supporting death penalty abolition, their voices may be particularly powerful in political as well as public discourse.

While public opinion on capital punishment is notoriously difficult to measure and does not exempt states from their human rights obligations, it is undoubtedly a factor that can facilitate or impede abolition. Improved public education is therefore an important contributing factor towards abolition and for the sustainability of abolition by helping to resist attempts at reinstating the death penalty.

The research conducted for this background paper showed that communication of factual information related to the application of the death penalty is a highly influential factor on the road to abolition. This underlines the importance of the commitment of all OSCE participating States to provide information on the use of the death penalty to the public and to exchange information on the question of the abolition of the death penalty.

This is an area where civil society has proven to be particularly adept at organizing information campaigns and outreach events among the public, legislators and state officials. In this context, it is important to note that states have committed to creating a safe and enabling environment that empowers human rights defenders to pursue their activities.¹³⁴

Interventions by the international community help to anchor the work of civil society and other national abolitionists. The ability of national actors to draw on international principles and safeguards has provided justification and weight to arguments of abolition advocates. Providing impetus for political leaders to act at the national level, inter-governmental organizations and external actors more generally are a significant factor for progress towards the global abolitionist trend. Support by international organizations, including participation in events and statements, have also been described as a considerable motivational factor for national abolitionist movements. In all these regards, international standards and monitoring help to move the abolition process forward, even where public or political opinion still support the death penalty.

Finally, research for this background paper has shown that reputational risks and considerations of international standing can feature among considerations by political decision-makers that lead them to support abolition. In light of the growing abolitionist movement in the international community, retaining the death penalty

¹³⁴ OSCE ODIHR, [Guidelines on the Protection of Human Rights Defenders](#), p. 30.

constitutes an increasing reputational risk, and abolition can become an important matter not only of domestic but also foreign policy. International relations come under particular strain when citizens are at risk of the death penalty abroad.

As detailed in previous background papers, the death penalty inevitably leads to violations of both the right to life and the prohibition of torture and other ill-treatment.¹³⁵ Criminal justice systems that use capital punishment cause severe mental and physical suffering not only to the person concerned, but also to their family, victims' family members, as well as the many other individuals involved in carrying out executions.

A multi-pronged strategy involving coalitions of national and international organizations is needed, with strong political leadership prepared to push abolition forward, through increased transparency and public discussion, to change public attitudes and depoliticise the death penalty.

In this respect, it is hoped that the good practices from different OSCE participating States mentioned in this background paper provide translatable models to other jurisdictions.

¹³⁵ OSCE ODIHR, *The Death Penalty in the OSCE Area: Background Papers*, *op. cit.*, note 5: the ODIHR background paper on the situation of the death penalty 2016, focused on the relation between capital punishment and the prohibition of torture in the OSCE area. In 2017, the background paper included a thematic focus on children of parents sentenced to death or executed and the prohibition of torture or ill-treatment. The 2018 paper focused on developments related to methods of execution, including lethal injections and new drug combinations used in the United States and the lack of transparency and secrecy surrounding executions in Belarus in relation to the absolute prohibition of torture and other ill-treatment. In its 2019 report, ODIHR put an emphasis on challenging the arguments used to retain or eventually reintroduce the death penalty and explored the ways in which the death penalty violates the right to life. The 2020 background paper focused on the inherent arbitrariness of the death penalty and how it either procedurally or substantively can violate the right to life or prohibition of torture and other ill-treatment.

Part III: The situation of the death penalty in the OSCE region

1. Retentionist participating states

1.1. *Belarus*

Belarus remains the only country in Europe that still applies the death penalty. Article 24 of the Constitution of the Republic of Belarus still enshrines the death penalty as an exceptional measure of punishment for some especially serious crimes.¹³⁶ The Criminal Code of Belarus exempts certain groups from the imposition of the death penalty, including women, and people who committed the crime when they were under 18 years of age, or are older than 65 at the time of the sentencing.¹³⁷ In accordance with Article 175 of the Criminal Law Enforcement Code, the death penalty is “carried out by firing squad with no members of the public present. The execution of the death penalty shall be carried out separately for each convict and without other death convicts present.”¹³⁸ Although the President of Belarus can grant clemency, he has done so only once since 1994.¹³⁹

136 The [Criminal Code of the Republic of Belarus](#), as amended up to January 2016, envisages the death penalty for thirteen 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 under aggravating circumstances, Art 289 (3) “Act of Terrorism”, Art 357 (3): “Conspiracy, or other actions, taken with a purpose to seize state 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”.

137 [Criminal Code of the Republic of Belarus](#), Art. 59.2(2).

138 FIDH – HRC “Viasna”, “[Death Penalty in Belarus: Murder on \(Un\)lawful Grounds](#)”, October 2016, p. 64.

139 Viasna, «[Дайте шанс исправиться](#)». Родные осужденных на смерть братьев Костевых обратились к Лукашенко («Give a chance to improve.» Relatives of the Kostev brothers, condemned to death, turned to Lukashenko), 3 June 2020.

Belarus continues to argue that the use of the death penalty is not forbidden by any international human rights instrument to which Belarus is a party, that it is popular among the population, and that its use is on a temporary basis, until its abolition.¹⁴⁰ The UN Human Rights Committee has determined in its Concluding Observations on the implementation of the ICCPR in Belarus in 2018 that the country's practice of secrecy surrounding executions, both towards the inmates and their families, constitutes a violation of Article 7 of the ICCPR.¹⁴¹

During the reporting period, a constitutional challenge was brought in August 2020 by human rights activist Ales Dergachev, who argued that article 175 of the Criminal Procedure Code does not take into account Article 61 of the Constitution – whereby everyone has the right to apply to international organizations in order to protect their rights if all domestic remedies have been exhausted. However, the Constitutional Court held that such constitutional provision can only be applied if the legislature amends article 175 of the Criminal Procedure Code.¹⁴²

Various organizations reiterated their concerns about the application of the death penalty in Belarus during the reporting period. On World Day against the Death Penalty 2020, the EU and the Council of Europe urged Belarus to abolish the death penalty and “join the majority of countries which have abandoned this cruel and in-human practice.”¹⁴³

Following the same line, the UN Special Rapporteur on the situation of human rights in Belarus reiterated that, “Belarus must promptly implement a moratorium on executions as a first step towards full abolition of the death penalty.”¹⁴⁴ She welcomed the participation of the government in a dialogue on the abolition of the death penalty with international counterparts, and the preliminary efforts to launch a debate on the issue at the national level.¹⁴⁵ Following the Universal Periodic Review of Belarus in November 2020, Belarus supported the recommendations made to consider ratifying the Second Optional Protocol to ICCPR and those recommendations requesting

140 Viasna, [Death penalty in Belarus in the context of global justice. Is abolition possible?](#), 31 July 2021; ODIHR, [The Death Penalty in the OSCE Area—Background Paper 2020](#), *op. cit.*, note 5, p. 43; see also footnote no. 144.

141 Human Rights Committee, “[Concluding observations on the fifth periodic report of Belarus](#)”, UN Doc CCPR/C/BLR/CO/5, 22 November 2018, para. 27 (b).

142 Viasna, [The human rights activist drew the attention of the Constitutional Court to the legal conflict regarding the death penalty](#), 7 September 2020.

143 EEAS, [Defying Death Penalty is defending Human Rights](#), 10 October 2020.

144 Situation of human rights in Belarus, Report of the Special Rapporteur on the situation of human rights in Belarus, [A/HRC/44/55](#), 8 April 2020, para. 6.

145 *Ibid.*, pp. 5 and 18.

it to consider and take steps towards abolition of the death penalty, and partially accepted a recommendation to consider a moratorium on executions.¹⁴⁶

On 29 October 2020, the OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus included recommendations to, "establish a moratorium on the death penalty and work on its full abolition."¹⁴⁷

The European Parliament, also expressed concerns about the retention of the death penalty in Belarus, stating in November 2020, that it "strongly condemns the ongoing application of the death penalty and calls for its immediate and permanent abolition and, pending this, a moratorium on capital punishment and an effective right to appeal against death penalty sentences."¹⁴⁸

However, when faced with calls to abolish the death penalty, representatives of the Belarussian authorities refer to the "will of the people", referring to a national referendum conducted in 1996. The President has stated that abolishing capital punishment can only be decided through a national referendum.¹⁴⁹ Both the UN Special Rapporteur and human rights activists and academics have raised concerns regarding the use of a referendum for this issue.¹⁵⁰ Reportedly, the number of people who support this punishment is, in any case, decreasing.¹⁵¹

146 See Matrix of recommendations [here](#) and: Report of the Working Group on the Universal Periodic Review, [Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review](#), A/HRC/46/5/Add.1, 5 March 2021.

147 On 17 September 2020 the Moscow Mechanism of the human dimension of OSCE was invoked by 17 participating States with regard to credible reports of human rights violations before, during and after the Presidential election of 9 August 2020 in the Republic of Belarus. Due to the decision of Belarus not to appoint a second expert the author of this report has been appointed as a single rapporteur. The Office for Democratic Institutions and Human Rights (ODIHR) facilitated the mission by providing administrative and logistical support to the rapporteur. In particular, it opened a channel for communications to the rapporteur under the Moscow Mechanism through which the rapporteur received more than 700 submissions. Wolfgang Benedek, [OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#), 29 October 2020, section B, pp. 4-7.

148 European Parliament, "[The continuous violations of human rights in Belarus, in particular the murder of Raman Bandarenka](#)", RC-B9-0389/2020, 26 November 2020.

149 Situation of human rights in Belarus, *op. cit.*, note 144, para. 23.

150 *Ibid.*

151 BBC, "[Воля одного человека". Как в Беларуси казнят осужденных и что происходит с их семьями](#)", [The Will of One Man: How convicts are executed in Belarus and what happens to their families], 15 May 2020.

Death sentences between 1 April 2020 and 31 March 2021

At the end of the reporting period, in Belarus, five individuals were known to be under sentence of death, and three death sentences were reportedly handed down.¹⁵²

In May 2020, the Supreme Court of Belarus upheld the death sentences of Stanislau and Illia Kostseu, who became known as the “Kostseu brothers.” The brothers, 19 and 21 years old at the time when they killed their neighbour, reportedly had a difficult childhood, being raised in foster families and orphanages.¹⁵³ Their conviction resulted in an Urgent Action initiative of Amnesty International calling for a commutation of their death penalties.¹⁵⁴ Both defendants petitioned to the President of Belarus for clemency.¹⁵⁵ Prisoners are reportedly not told of decisions on clemency petitions, until they are taken to be executed.¹⁵⁶ It was also noted by human rights defenders that, for the first time in Belarus, two death sentences were passed for the murder of one person, and stressed how the death penalty is not the solution to end violence in society.¹⁵⁷

Another death sentence was handed down during the reporting period against Viktor Skrundzik in January 2021 after he was found guilty of murdering two elderly people. He had appealed his original death sentence and the Supreme Court ordered a retrial of his case in June 2020. At the beginning of 2021 the Minsk Regional Court handed down a death sentence for a second time.¹⁵⁸ Viktor Skrundzik appealed for clemency from the President, and was at risk of execution at the end of the reporting period.¹⁵⁹ The General Rapporteur of PACE on the abolition of the death penal-

152 “Amnesty International Global Report: Death sentences and executions 2020”, Amnesty International, 21 April 2021, p. 34

153 Viasna, [Supreme Court confirms death sentence for Kostseu brothers](#), 22 May 2020.

154 Viasna, [Amnesty International urges Belarus to stop execution of Kostseu brothers](#), 24 June 2020.

155 In May 2021, after the reporting period for this paper, the two defendants were pardoned by the President and sentenced to life imprisonment. For more information, see Community Sant’ Egidio, [Brothers Kostseu Transferred to a Prison for Ordinary Prisoners](#), 5 May 2021.

156 [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 32.

157 Viasna, “Наше государство не даёт шанса исправиться”: сестра приговоренных к смертной казни из Черикова, [“Our state does not give a chance to improve”: the sister of those sentenced to death from Cherikov], 17 January 2020.

158 Radio Free Europe / Radio Liberty, [In Rare Move, Belarusian Court Cancels Death Sentence In High-Profile Case](#), 1 July 2020.

159 [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 35; and Viasna, [Верховный суд не удовлетворил апелляционную жалобу осужденного к смертной казни Виктора Скрундика](#), [Supreme Court did not confirm the appeal of the condemned to death Viktor Skrundik], 4 May 2021.

ty condemned this death sentence, urged authorities to introduce a moratorium on the death penalty, and to adopt legislative amendments to remove this sentence.¹⁶⁰

Two individuals remained on death row in the reporting period. Viktor Pavlov and Viktor Sergel were sentenced to death in July 2019 and October 2019 respectively,¹⁶¹ and face execution at any time.

Executions between 1 April 2020 and 31 March 2021

During the reporting period no executions became known. In fact, since December 2019 there have been no executions carried out according to publicly available information.¹⁶²

Legislative developments

A number of amendments to criminal legislation were proposed in October 2020, including a proposal to remove the death penalty from the Criminal Code, currently enshrined in Article 59.¹⁶³ A “first package” of changes was adopted and approved by parliament at the end of 2020. The “second package” of amendments, including the removal of the death penalty from the Criminal Code, was reported to be considered at the spring or autumn session of parliament in 2021.¹⁶⁴ This amendment was initiated by law enforcement agencies, suggesting to replace the death penalty with life imprisonment.¹⁶⁵

160 Council of Europe, [Belarus: General Rapporteur condemns handing down of a new death sentence](#), 20 January 2021.

161 ODIHR, *The Death Penalty in the OSCE Area—Background Paper 2020*, *op. cit.*, note 5, p. 43.

162 Coupled with the recent pardon of the Kostev brothers, human rights activists have noted that this could be a de-facto moratorium on the execution of sentences. During the finalisation of this report it was however announced that Viktor Pavlov is likely to have been executed. See: Viasna, [Андрей Полуда: «Пока нет системных изменений, новые приговоры и расстрелы могут произойти в любой момент»](#), [Andrei Paluda: As long as there are not systemic changes, new death sentences and executions can occur at any moment], 4 May 2021; Viasna, [EU deplores likely execution of Viktor Paulau](#), 17 June 2021.

163 UN News, [Доклад ООН: Беларусь, единственная страна в Европе, где применяются смертная казнь, рассматривает возможность ее отмены](#), [UN report: Belarus, the only country in Europe that still has the death penalty, is examining the possibility of abolition], 9 October 2020.

164 General Rapporteur PACE on the abolition of the death penalty, noted in January 2021 that, “according to reports a package of legislative amendments removing (the death penalty) from the Criminal Code will soon be considered by the National Assembly,” Council of Europe, [Belarus: General Rapporteur condemns handing down of a new death sentence](#), 20 January 2021.

165 TUT.Бү, [Смертную казнь исключить, день в СИЗО засчитывать за два в колонии. Какие изменения готовят в уголовный закон](#), [Exclude the death penalty, count a day in a pre-trial detention center as two in a colony, What changes are being prepared in the criminal law], 5 January 2021.

It has been suggested that the legislative proposals were initiated to anticipate a risk of death sentences imposed on individuals involved in the mass detention of peaceful protesters following the elections in August 2020.¹⁶⁶

Areas of concern

Lack of transparency

Death sentences and executions in Belarus have been repeatedly criticized for the lack of transparency and atmosphere of secrecy in which they take place. Relatives are not informed in advance of the scheduled day of execution nor the burial place of those executed. Belarussian law classifies information on the death penalty as a “State secret”, which means that the convicted person, their lawyer and their family are not informed about the time and place of the execution.

As the UN Special Rapporteur on the situation of human rights in Belarus has noted, this lack of transparency traumatizes families of those affected by the death penalty and can amount to inhuman treatment in violation of Article 7 of the ICCPR. She also noted that pending abolition, the right to an effective appeal against death sentences must be ensured in line with the ICCPR and family members of persons convicted and sentenced to death must be informed about the date and place of the execution, and also informed about the place of burial.¹⁶⁷ The suffering and trauma experienced by death row prisoners’ family members needs to be taken into account. There are reports about the stigma faced by relatives of those sentenced to death in Belarus and limited services offered by the state specialized in psychological assistance agency to the families of those executed.¹⁶⁸

The anxiety often experienced on death row as a result of the uncertainty caused by the threat of death at any time, can also cause severe psychological suffering for convicted individuals and may amount to torture or other ill-treatment.¹⁶⁹ Moreover, the lack of transparency complicates the monitoring and reporting of death penalty cases.¹⁷⁰

166 Viasna, [Андрей Полуда: Власти хотят продать этот политический вопрос — отмену смертной казни в Беларуси](#), [Andrei Paluda: authorities make this a political question – abolition of the death penalty in Belarus], 6 January 2021.

167 Situation of human rights in Belarus, *op. cit.*, note 144, p. 2 and 18.

168 BBC, *op. cit.*, note 151.

169 Juan E. Méndez, “Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, UN Doc. [A/67/279](#), 9 August 2011, para. 50–51.

170 Situation of human rights in Belarus, *op. cit.*, note 144, pp., 4–5.

Right to life and fair trial rights

In March 2020, the UN Human Rights Committee recognized that in the case of Gennady Yakovitsky, who was executed in 2016, the Belarusian authorities committed several violations of his rights guaranteed by the ICCPR. Specifically, the Committee found that there was an arbitrary deprivation of his life, and that the right to fair trial and the presumption of innocence had been violated. The Committee also noted the refusal of Belarus to co-operate with the UN mechanism, as it disrespected the Committee's interim measure to not execute Gennady Yakovitsky for as long as the Committee was examining the case.¹⁷¹

As noted in previous ODIHR Background Papers on the Death Penalty, Belarus justifies non-compliance with interim measures even in death penalty cases, by arguing that these measures are not binding, and are of an advisory nature.¹⁷² The Human Rights Committee has however noted that death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place.¹⁷³ Indeed, failure to comply with such measures violates a state's obligations under the first Optional Protocol to the ICCPR.

In a report on the administration of justice published in July 2020, the UN Special Rapporteur on the situation of human rights in Belarus elaborated on the lack of independence of the judiciary, which raises serious concerns overall, but specifically with regard to criminal proceedings that could result in a death sentence. The UN Special Rapporteur also noted the lack of autonomy and integrity of prosecutors and

171 Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2789/2016, [CCPR/C/128/D/2789/2016](#); Viasna, [Комитет по правам человека ООН признал нарушения в деле расстрелянного Геннадия Яковичского](#) [Human Rights Committee announced that there had been violations in the case Gennady Yakovitsky], 21 May 2020. For information on another case in which the same situation was observed, meaning, Belarus executed a person with a pending case before the UN HRC, see ODIHR, [The Death Penalty in the OSCE Area—Background Paper 2020](#), *op. cit.*, note 5, p. 44.

172 Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, U.N. Doc. [CCPR/C/BLR/CO/5](#), 22 November 2018, para 7; ODIHR, [The Death Penalty in the OSCE Area—Background Paper 2019](#), *op. cit.*, note 5, p. 42–43.

173 “Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions, and international monitoring bodies, such as the UN Treaty Bodies. Failure to implement such interim measures is incompatible with the obligation to respect in good faith the procedures established under the specific treaties governing the work of the relevant international bodies.” Human Rights Committee, General comment No. 36 (2018) on Article 6 of the ICCPR, on the right to life, [CCPR/C/GC/36](#), para. 46.

recommended, among other measures, that Belarus must ensure the independence of the judiciary; and respect for the presumption of innocence.¹⁷⁴

1.2. United States

At the end of the reporting period (31 March 2021), 27 American states still retained the death penalty, as well as the federal government and the military. Military authorities have not carried out an execution since 1961.¹⁷⁵

More than two-thirds of the United States (35 states) have either abolished capital punishment (23 states) or not carried out an execution in at least ten years (another 12 states). This includes the three states in which governors have formally imposed moratoria on executions. Indiana, Kansas, Kentucky, Montana, Nevada, North Carolina, Wyoming, Louisiana and Utah, while retentionist, have not carried out an execution for ten years or more.¹⁷⁶

During 2020, and for the first time in United States history, the majority of executions were carried out at the federal level. Only five states performed executions, which constitutes the lowest number of state executions in 37 years. This reporting period saw the lowest number of new death sentences passed and only two states that carried out executions.¹⁷⁷ The COVID-19 pandemic was an important factor in this reduction, resulting in many executions and court proceedings being halted.¹⁷⁸

A poll initiated by Gallup in October 2020 across all 50 states found that almost half of Americans do not support the death penalty, which would represent the highest level of opposition since the 1960s.¹⁷⁹

The United States continued to defend its stance on the death penalty during the reporting period, emphasizing at the OSCE Permanent Council the legality of the death penalty when imposed. The United States also argued that capital punishment

174 Report of the Special Rapporteur on the situation of human rights in Belarus, [A/75/173](#), 17 July 2020, pp. 3 and 20.

175 [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 19.

176 Death Penalty Information Center, [State by State](#).

177 Death Penalty Information Center, [The Death Penalty in 2020: Year End Report](#), p. 2. See also table below.

178 *Ibid.*; and, [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p., 18.

179 [Gallup](#) has measured Americans' beliefs about the moral acceptability of the death penalty and numerous other social issues each May since 2001. Results for this Gallup poll are based on telephone interviews conducted 1–13 May 2020, with a random sample of 1,028 adults, aged 18 and older, living in all 50 U.S. states and the District of Columbia; Death Penalty Information Center, [Gallup Poll: Public Support for the Death Penalty Lowest in a Half-Century](#), 24 November 2020.

is carried out in a manner consistent with the state’s international obligations, and maintained that it is a matter for individual countries to decide.¹⁸⁰

A change, however, has been signalled with the election of Joseph R. Biden as the new President of the United States, who supported death penalty abolition during his election campaign. His campaign platform advocated that, “Because we cannot ensure we get death penalty cases right every time, Biden will work to pass legislation to eliminate the death penalty at the federal level, and incentivize states to follow the federal government’s example.”¹⁸¹

Following his inauguration, in March 2021 UN human rights experts called on the newly elected President to do everything in his power to halt and end executions at the federal and state level, highlighting how this practice is irreconcilable with the right to life. They also remarked how the death penalty disproportionately affects African-Americans and people living in poverty, and is often imposed following violations of due process guarantees.¹⁸²

A coalition of international NGOs also urged the new President to act on his promise of commuting all death sentences, and reinstating the federal moratorium on its use.¹⁸³ They noted how capital punishment perpetuates patterns of racial and economic oppression, endemic to the American criminal justice system. Moreover, the NGO coalition called for: dismantling the federal death chamber at the Terre Haute penitentiary center; rescinding the lethal injection protocol; establishing clear executive guidelines to prohibit federal prosecutors from seeking the death penalty; withdrawing authorization for all pending death penalty trial cases; and instituting a federal moratorium.¹⁸⁴

180 “[Right of Reply: Regarding the Death Penalty](#)” OSCE Permanent Council, 8 October 2020, “[Right of Reply: Regarding the Death Penalty](#)” OSCE Permanent Council, 14 May 2020, “[Right of Reply: Regarding the Death Penalty](#)” OSCE Permanent Council, 2 July 2020, “[Right of Reply: Regarding the Death Penalty](#)” OSCE Permanent Council, 23 July 2020 and “[Right of Reply: Regarding the Death Penalty](#)” OSCE Permanent Council, 17 December 2020.

181 Death Penalty Information Center, [Democratic Legislators Introduce Death Penalty Repeal Bills, Urge President Biden to Commute Federal Death Sentences](#), 20 January 2021.

182 OHCHR, [USA: UN experts call for President Biden to end death penalty](#), 11 March 2021.

183 The Leadership Conference, ACLU, Amnesty International, LDF, [Letter to Joe Biden](#), 26 January 2021. Outside of the reporting period, on 30 June 2021, U.S. Attorney General Merrick Garland [issued a directive](#) formally pausing federal executions while the Department of Justice (DOJ) undertakes a review of executive branch policies adopted in the last two years of the Trump administration.

184 *Ibid.*

Death sentences between 1 April 2020 and 31 March 2021

At the end of 2020, 2,485 individuals remained on death row in 29 states, as well as in federal and military prisons.¹⁸⁵ The state with the largest death row population is California, with 711 inmates, followed by Florida with 347. California currently has a moratorium on executions.

Eighteen death sentences were reportedly handed down in the United States in 2020, which is the lowest number of new sentences in one year since *Furman v. Georgia* in 1972, the year in which the Supreme Court struck down all existing capital punishments statutes in the United States. It was reported that the temporary closing of courts due to the COVID-19 pandemic resulted in the longest period of time without a new death sentence imposed since capital punishment was reinstated after *Gregg v. Georgia* in 1977.¹⁸⁶ The year 2020 was the sixth consecutive year with fewer than 30 executions and fewer than 50 new death sentences imposed. Furthermore, compared to 2019, five fewer states imposed death sentences.¹⁸⁷ Between January 2021 and the end of the reporting period, at least four more death sentences were handed down.

Executions between 1 April 2020 and 31 March 2021

During the reporting period, 15 executions were carried out, which represents a decrease from the 24 executions that took place during the previous reporting period.

Executions were carried out in two states during the reporting period, as well as by the federal government: one in Missouri, one in Texas and 13 at the federal level. All executions were carried out by lethal injection. Florida did not execute anyone for the first time since 2007.¹⁸⁸

185 *Amnesty International Global Report*, 2020, *op. cit.*, note 152, p. 13.

186 Death Penalty Information Center, *op. cit.*, note 177, p. 10.

187 *Amnesty International Global Report*, 2020, *op. cit.*, note 152, p. 18.

188 *Ibid.*, p. 17.

Date of execution	Name	No. of years in death row ¹⁸⁹	Ethnic group	Age	Sex	State	Method
19/05/2020	Walter Barton	29	White	64	Male	Missouri	Lethal injection
08/07/2020	Billy Joe Wardlow	25	White	45	Male	Texas	Lethal injection
14/07/2020	Daniel Lewis Lee	21	White	47	Male	Federal	Lethal injection
16/07/2020	Wesley Ira Purkey	16	White	68	Male	Federal	Lethal injection
17/07/2020	Dustin Lee Honken	15	White	52	Male	Federal	Lethal injection
26/08/2020	Lezmond Mitchell	19	Native American	38	Male	Federal	Lethal injection
28/08/2020	Keith Dwayne Nelson	19	White	45	Male	Federal	Lethal injection
22/09/2020	William Emmett LeCroy	16	White	50	Male	Federal	Lethal injection
24/09/2020	Christopher Andre Vialva	20	Black	40	Male	Federal	Lethal injection
19/11/2020	Orlando Hall	25	Black	49	Male	Federal	Lethal injection
10/12/2020	Brandon Bernard	20	Black	40	Male	Federal	Lethal injection
11/12/2020	Alfred Bourgeois	17	Black	56	Male	Federal	Lethal injection
13/01/2021	Lisa Montgomery	12	White	52	Female	Federal	Lethal injection
14/01/2021	Corey Johnson	30	Black	52	Male	Federal	Lethal injection
16/01/2021	Dustin Higgs	20	Black	48	Male	Federal	Lethal injection

Promising developments (in chronological order)

During the reporting period, there were significant rulings and some new legislation that seek to mitigate racial biases in death penalty cases. In June 2020, the North Carolina Supreme Court in *North Carolina v. Ramseur*, restored the full protections of the Racial Justice Act. This ruling enables individuals on death row to challenge their death sentences based on racial discrimination under the Racial Justice Act, passed in 2009.¹⁹⁰

In California, the state with the country's largest death row, three racial justice reform bills were passed in September 2020, which are hoped to reduce the influence of racial, ethnic, and socioeconomic bias in the administration of the death penalty.¹⁹¹ The first bill bans the imposition of the death penalty on defendants who have intellectual disabilities, and incorporated the prevailing medical definitions of intellectual and developmental disability rather than a fixed age by when these disabilities

¹⁸⁹ The figures have been ascertained from news reports and other open source information.

¹⁹⁰ ACLU, [North Carolina Supreme Court Finds the Repeal of Racial Justice Act Unconstitutional](#), 5 June 2020 and Equal Justice Initiative, [North Carolina Supreme Court Requires Review of Racial Bias in Death Penalty Cases](#), 8 June 2020.

¹⁹¹ Death Penalty Information Center, [California Legislature Passes Racial Justice Package Affecting Death-Penalty Practices](#), 4 September 2020

must be present (18). Secondly, the newly passed California Racial Justice Act prohibits prosecutors and judges from seeking a conviction or imposing a sentence, “on the basis of race, ethnicity, or national origin.”¹⁹² This bill also includes the requirement for appeals courts to overturn convictions and sentences based on discriminatory conduct, for instance, when the judge, lawyer or law enforcement officer, expert witness or a juror used discriminatory language about the defendant’s “race,” ethnicity or national origin. Lastly, acknowledging the historical exclusion of people of colour from juries, the legislature approved a major reform on jury selection practice.

In Ohio, new legislation was introduced in January 2021 to ban the death penalty for defendants whose severe mental illness at the time of the offense significantly impaired their judgment, capacity, or ability to appreciate the nature of their conduct.¹⁹³

In the same vein, in March 2021 the Kentucky House of Representatives approved a bill that prohibits the death penalty for defendants who, at the time of the offense suffered from schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder or delusional disorder.¹⁹⁴

On 22 February 2021, Virginia became the first state in the American South to repeal the death penalty, and the 11th American state to do so. In the last forty years,¹⁹⁵ it executed a greater proportion of those it condemned than had any other American state.¹⁹⁶ Abolition in Virginia was welcomed as a positive step towards a fairer, less discriminatory criminal justice system.¹⁹⁷

During the reporting period, at least four prisoners were exonerated from death row after having spent between 14 and 37 years there. Some of them faced multiple trials, and in most of these cases, official misconduct contributed to the wrongful conviction,

192 *Ibid.*, and ACLU, North Carolina, *op. cit.*, note 190.

193 Death Penalty Information Center, [Ohio Bars Death Penalty for People with Severe Mental Illness](#), 11 January 2021.

194 Death Penalty Information Center, [With Overwhelming Bipartisan Support, Kentucky House Passes Bill to Ban Death Penalty for Defendants with Serious Mental Illness](#), 3 March 2021.

195 The Death Penalty Information Center refers to the modern era as any time after 1977, when the death penalty was reinstated.

196 Death Penalty Information Center, [Statement by Robert Dunham, Executive Director Of The Death Penalty Information Center, on Virginia’s Abolition of Capital Punishment](#), 24 March 2021 and Equal Justice Initiative, [Virginia Abolishes the Death Penalty](#), 24 March 2021.

197 ACLU, [Statement on Repeal of Death Penalty in Virginia](#), 22 February 2021. See thematic section for in-depth discussion as to how Virginia successfully abolished capital punishment.

often combined with false accusation, false/misleading forensic evidence, ineffective representation and eyewitness misidentification.¹⁹⁸

In Philadelphia, two men were exonerated, one largely due to a forced confession and the other involving misleading forensic evidence, both ultimately as a result of prosecutorial misconduct. After almost 23 years on death row in Mississippi, a man was exonerated also due to prosecutorial misconduct, unconstitutional removal of Black jurors and false evidence. Another man in Florida was exonerated after new forensic evidence proved his innocence. False testimony and misleading evidence had led to his wrongful conviction.¹⁹⁹

Areas of concern

Resumption of federal executions

In July 2020, the United States administration resumed federal executions after a 17-year hiatus. This resumption is unprecedented in terms of the number of executions, and represented more than half of the executions nationwide. During the reporting period, more people were executed at the federal level than in the last 57 years combined. As Supreme Court Justice Sonia Sotomayor noted in her dissent in *United States v. Dustin John Higgs*, “to put that in historical context, the Federal Government will have executed more than three times as many people in the last six months than it had in the previous six decades.”²⁰⁰ This practice ran contrary to the nationwide trend of gradually moving away from the death penalty.²⁰¹

The Death Penalty Information Center noted that Black people are disproportionately represented on federal death row. Thirty-four of the 57 people on federal death row in 2020 were people of colour, including 26 Black men.²⁰²

198 Death Penalty Information Center, *op. cit.*, note 177, p., 12; The most recent data from the [National Registry of Exonerations](#) states that the most prevalent causes of wrongful convictions in death penalty cases are official misconduct and perjury or false accusation. The Registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. See here: [The National Registry of Exonerations, % Exonerations By Contributing Factor](#).

199 *Ibid.*, pp . 12–15.

200 *United States v. Dustin John Higgs*, [592 United States Supreme Court \(2021\)](#).

201 Death Penalty Information Center, [DPIC Analysis: Federal Execution Spree Out of Step with U.S. Death Penalty Trends and Attitudes](#), 3 September 2020.

202 Death Penalty Information Centre, [Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty](#), 15 September 2020 and Death Penalty Information Centre, [The Federal Government Restarts Federal Executions Amid Procedural Concerns and a Pandemic](#), 20 July 2020.

A member of the Navajo Nation became the first Native American in modern history to be executed by the United States government for a crime committed against another Native American on tribal land, and despite the tribe's objections.²⁰³ His tribe opposes capital punishment on cultural and religious grounds and has never "opted in" to the federal death penalty.²⁰⁴

The federal death penalty raised concerns also related to the interpretation of the Federal Death Penalty Act given the lack of sufficient procedural guarantees, the methods of execution and the compressed execution schedule. Justice Sotomayor, Justice Ginsburg and Justice Kagan, in a dissenting opinion relating to *Barr et. al. v. Daniel Lewis Lee*, challenged the, "government's artificial claim of urgency to truncate ordinary procedures of judicial review."²⁰⁵ They highlighted that denying the prisoners' challenge concerning the methods of execution, "sets a dangerous precedent."²⁰⁶ The majority of the 13 executions undertaken at the federal level happened in the middle of the night, after the Supreme court dismissed orders of lower courts that had stayed the executions.²⁰⁷

The resumption of capital punishment at the federal level attracted considerable criticism. At the OSCE Permanent Council, concerns were raised in a number of statements, including from the EU,²⁰⁸ the Russian Federation,²⁰⁹ and a group of nations represented by Norway.²¹⁰ The PACE General Rapporteur on Abolition of the Death Penalty also expressed his disappointment and emphasized that the federal executions

203 Death Penalty Information Center, [As Courts Deny Execution Challenges, Native Americans Nationwide Call for Clemency for Federal Death-Row Prisoner Lezmond Mitchell](#), 20 August 2020.

204 Equal Justice Initiative, [U.S. Plans to Execute Lezmond Mitchell Over Navajo Nation's Objections](#), 26 August 2020.

205 William P. Barr, Attorney General, ET AL. v. Daniel Lewis Lee, ET AL. on Application for Stay or Vacatur, 14 July 2020, [591 U. S. ____ \(2020\)](#).

206 Death Penalty Information Centre, [The Federal Government Restarts Federal Executions Amid Procedural Concerns and a Pandemic](#), 20 July 2020.

207 ACLU, [Atrocities of the Federal Death Penalty](#), 2 February 2021.

208 "EU on Death Penalty in the United States of America", OSCE Permanent Council, 14 May 2020, "EU Statement on the Federal Death Penalty in the United States of America", 2 July 2020, "EU Statement on the resumption of federal executions in the United States" 23 July 2020 and "EU Statement on Federal Executions in the United States" 17 December 2020.

209 "Statement by Alexander Lukashевич, Permanent Representative of the Russian Federation, at the 1267th Meeting of the OSCE Permanent Council", 14 May 2020, "Statement by Alexander Lukashевич, Permanent Representative of the Russian Federation, at the 1273rd Meeting of the OSCE Permanent Council" 2 July 2020, "Statement by Alexander Lukashевич, Permanent Representative of the Russian Federation, at the 1276th Meeting of the OSCE Permanent Council", 23 July 2020: The Russian Federation expressed serious concern about the situation of the death penalty in the United States, the possibility that the methods of execution could cause suffering amounting to torture, and miscarriages of justice in the United States.

210 On matters of the death penalty, Norway often speaks in the OSCE Permanent Council on behalf of a group of states made up of Iceland, Liechtenstein, Switzerland, and Norway. See "[Statement on the death penalty in the United States of America](#)", OSCE Permanent Council, 14 May 2020.

went against the trend towards abolition.²¹¹ ODIHR noted with deep concern the sharp increase in federal executions in the United States, highlighting that the death penalty is cruel, inhuman and degrading.²¹²

Moreover, before the first execution was conducted, 1,000 faith leaders, diplomats, legal experts and the EU voiced their opposition to the resumption of federal executions, highlighting its biases and arbitrariness.²¹³ In December 2020, almost 100 criminal justice officials called on the federal government to halt the scheduled executions, and to put an end to the use of capital punishment.²¹⁴ This joint statement also highlighted how it was a cruel, ineffective and unjust punishment, affected by racial bias, used against the most vulnerable and how, amidst the COVID-19 pandemic, it undermined public safety.

The Director of ACLU's Capital Punishment Project pointed out on the 13th and final federal execution that the majority of executions ordered by the federal government dealt with people who were mentally ill and two Black men for crimes they committed 20 years ago as teenagers, as well as two Black men who always defended their innocence. The statement highlighted the fact that the Supreme Court disregarded lower court findings in many of these cases and stated that the executions were unconstitutional and that the public executions became "super-spreader events, and Terre Haute became the federal prison with the most cases of COVID-19."²¹⁵

The discriminatory and arbitrary application of the death penalty

As the Death Penalty Information Center noted in its yearly report, in 2020 every prisoner executed, "had one or more significant mental or emotional impairment (mental illness, intellectual disability, brain damage, or chronic trauma)."²¹⁶ The organization pointed out the failure to respect the entitlement to, "specific measures

211 Aravot, *General rapporteur deeply regrets the decision of the US Federal Government to resume executions*, 21 July 2021.

212 ODIHR twitter, available at: https://twitter.com/osce_odihr/status/1335864909051015859.

213 Death Penalty Information Center, *Op-Eds Highlight Disparities in Federal Death Penalty, as 1,000 Faith Leaders and the European Union Urge Justice Department to Halt Executions*, 10 July 2020.

214 Death Penalty Information Center, *Prosecutors Call for Ending Federal Executions*, 7 December 2020.

215 ACLU, *Statement on the 13th and Final Federal Execution*, 16 January 2021.

216 Death Penalty Information Center, *op. cit.*, note 177, p. 3.

of protection so as to ensure their effective enjoyment of the right to life on equal basis with others.”²¹⁷

The execution of Lisa Montgomery constituted the most controversial case in relation to individuals executed despite mental or emotional impairment due to the circumstances of the case. She was reportedly profoundly mentally ill, and developed PTSD and brain damage after a lifetime of sexual violence and torture inflicted on her. Conditions on death row allegedly retraumatized her, being constantly watched and surrounded by male guards. She was the only woman on federal death row and the first female inmate to be executed by the federal government in 67 years.²¹⁸

Several UN experts called for clemency for Lisa Montgomery after the federal government rescheduled her execution, highlighting that she had received inadequate legal assistance during her trial, and because her previous trauma and mental health were not taken into consideration.²¹⁹ The sickness of her lawyers with COVID-19 after travelling to visit her meant that she was deprived of legal representation in filing a clemency petition within the required time limit. The UN experts remarked that the death penalty is always arbitrary and unlawful, “when the court ignores or discounts essential facts that may have significantly influenced a capital defendant’s motivations, situation and conduct. Such facts include exposure to domestic violence and other abuse.” They concluded that, “a death sentence carried out in contravention of a Government’s international obligations amounts to an arbitrary execution.”²²⁰

A global campaign, including letters signed by UN experts, advocates, groups and prosecutors, more than 800 people and organizations working on combating violence against women, over 100 people and organizations combating human trafficking, and 40 advocates working on the protection of abused children had tried to

217 See 2020 Background Paper, p. 28, quoting: Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, [CCPR/C/GC/36](#), para. 24. Moreover, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed the execution of persons with mental disabilities as particularly cruel, inhuman and degrading, and therefore in violation of Article 7 of the ICCPR and Articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

218 Equal Justice Initiative, [Federal Government Plans Three More Executions, Including Only Woman on Federal Death Row](#), 10 November 2020.

219 Lisa Montgomery’s case represents an example of the inherent arbitrariness of the death penalty. For more information on the death penalty and its arbitrariness, see ODIHR, [The Death Penalty in the OSCE Area: Background Paper 2020](#), *op. cit.*, note 5, pp. 7–30.

220 OHCHR, [UN experts call for clemency for Lisa Montgomery after US Government reschedules execution](#), 3 December 2020.

stop Lisa Montgomery's execution, to no avail.²²¹ Lisa Montgomery was executed on 13 January 2021 by lethal injection.

During the reporting period, the Florida Supreme Court reduced the constitutional protections for death row prisoners.²²² In the case of *Phillips v. State*, the Florida Supreme Court ruled that the *Hall v. Florida* judgement does not apply to cases that were finalised before Hall was decided in 2014. In *Hall v. Florida*, United States Supreme Court declared that Florida's standard to prove IQ was below 70 was unconstitutionally narrow and hence did not protect those with intellectual disabilities from receiving death sentences. Moreover, the Florida Supreme Court stopped independently reviewing death penalty cases on appeal – a practice that was designed to ensure that death sentences are not disproportionate to other sentences imposed in similar cases.²²³

Moreover, many defendants sentenced during the reporting period waived procedural rights, raising concern about arbitrary deprivation of life. According to one report, more than 20 per cent of the death sentences passed in 2020 were the result of proceedings in which defendants were not afforded key procedural protections, for example where defendants waived their right to a jury trial or to legal counsel,²²⁴ including several of the persons executed during the reporting period. Walter Barton, the first person executed during the COVID-19 pandemic by Missouri maintained his innocence and the case against him relied on misleading forensic evidence.²²⁵ New evidence was collected by his defence team, and three jurors who convicted him signed affidavits saying that the new evidence would have impacted their deliberations.²²⁶ In the case of Corey Johnson, the United States Supreme Court denied an emergency stay of execution, thus preventing him from presenting evidence proving that he

221 [Letter](#) to President Donald Trump of 11 November 2020 – this formed part of a series of letters delivered to administration officials and released to the public by Montgomery's lawyers on November 11, 2020. Death Penalty Information Center, [Coalition of More Than 1,000 Advocates Urge Federal Government to Halt December 8 Execution of Lisa Montgomery](#), 12 November 2020.

222 Death Penalty Information Center, [Florida Supreme Court Limits Enforcement of Supreme Court Decision Barring Execution of Intellectually Disabled Prisoners](#), 27 May 2020.

223 Death Penalty Information Center, [Florida Supreme Court Abandons 50-Year-Old Proportionality Safeguard for Capital Defendants](#), 2 November 2020. "The practice, known as comparative proportionality review, was initiated by the court a half-century ago after the U.S. Supreme Court struck down all existing U.S. death penalty statutes in *Furman v. Georgia* because of the unconstitutionally arbitrary manner in which capital punishment was administered."

224 Death Penalty Information Center, *op. cit.*, note 177, p. 26.

225 *Ibid.*, p. 16.

226 ACLU, [First Person Executed During Covid-19 Pandemic Put to Death by Lethal Injection in Missouri](#), 19 May 2020 and Death Penalty Information Center, [First Execution, New Death Sentence During Coronavirus Pandemic Highlight Grave Flaws in U.S. Capital Punishment System](#), 21 May 2020.

suffered from an intellectual disability. The Court also denied a stay of execution to permit Corey Johnson to recover from COVID-19.²²⁷

In February 2021, 11 people were added to the Death Penalty Information Center innocence list, bringing the number of wrongfully convicted American death-row prisoners who have been exonerated since 1973 to 185.²²⁸ Through data compiled by this NGO, it becomes clear how people of colour are disproportionately affected by police and prosecutorial misconduct, and are more likely to experience false accusation or perjury.²²⁹

A report released by the Death Penalty Information Center in September 2020 highlighted how racial discrimination permeates the criminal justice system.²³⁰ The report explains how, throughout United States history, the death penalty has been used to enforce racial hierarchies, starting during colonization as a tool for controlling Black populations and curbing rebellions. It demonstrates that discrimination is present in the United States criminal justice system at every stage of capital cases, for instance by systemic exclusion of jurors of colour, resulting in disproportionate imposition of death sentences against defendants of colour.²³¹ Observers have noted that abolishing capital punishment forms part of necessary criminal legal reforms, as well as racial healing.²³²

227 Equal Justice Initiative, [Federal Executions Continue Despite Serious Questions of Fairness](#), 16 January 2021 and Death Penalty Information Center, [Federal Government Executes Corey Johnson, Who was Likely Intellectually Disabled, Without Any Judicial Review of His Eligibility for the Death Penalty](#), 14 January 2021.

228 [According to DPIC](#): “Because of the inherent subjectivity of declaring a person innocent when some facts may remain in dispute, DPIC has adopted the objective criterion of “legal exoneration” for an individual to be included. What that means is that individuals who had been wrongfully convicted and sentenced to death were: Subsequently acquitted of all charges related to the crime that placed them on death row, either at retrial or by an appellate court determination that the evidence presented at trial was insufficient to convict; Had all charges related to the crime that placed them on death row dismissed by the prosecution or had re prosecution barred by the court in circumstances implicating the reliability of the evidence of guilt; or Been granted a complete pardon based on evidence of innocence.”

229 Death Penalty Information Center, [DPIC Special Report: The Innocence Epidemic](#), 18 February 2021.

230 This was also noted by Patrisse Cullors, the co-founder of Black Lives Matter, in Death Penalty Information Center, [Capital Punishment and the Arts: Clemency Lead Actress and Black Lives Matter Co-Founder Discuss Justice and the Death Penalty](#), 7 August 2020; Death Penalty Information Center, [DPIC Releases Major New Report on Race and the U.S. Death Penalty](#), 15 September 2020.

231 See section on “Race” in [“The Death Penalty in the OSCE Area: Background Paper 2020”](#), OSCE/ODIHR, *op. cit.*, note 5.

232 Death Penalty Information Center, [Capital Punishment and the Arts: Clemency Lead Actress and Black Lives Matter Co-Founder Discuss Justice and the Death Penalty](#), 7 August 2020.

Methods of execution: the effects of the lethal injection

Since 2016, ODIHR has been highlighting the ways in which methods of execution, and especially lethal injection protocols, can constitute cruel, inhuman and degrading treatment or punishment.²³³ In September 2020, a report by the American media organization NPR (National Public Radio) analysed more than 300 autopsies from individuals who were executed between 1990 and 2019 in nine American states.²³⁴ The inquiry found that when lethal injections were administered (using pentobarbital, as well as other drugs, such as midazolam), the inmates were still alive and trying to breathe while their lungs filled with fluid. In fact, in 84 per cent of the cases examined, individuals showed signs of pulmonary edema. This raises concerns about inmates not being properly anesthetized, and the resulting feelings of suffocation and drowning they experience.

These findings were presented to several federal courts and the Supreme Court to determine whether lethal injection protocols constitute cruel and unusual punishment according to the Eighth Amendment.²³⁵ To date, no court has yet ruled on the relevance of pain associated with pulmonary edema in the context of the Eighth Amendment. Expert medical evidence presented in *Roane v. Barr*, demonstrated that it is a, “virtual medical certainty that most, if not all, prisoners will experience excruciating suffering, including sensations of drowning and suffocation (flash pulmonary edema),” as a result of an injection of 5 grams of pentobarbital.²³⁶

The ongoing debate on lethal injection protocols prompted Ohio Governor Mike DeWine to put all the state’s executions on hold on 8 December 2020. Overall, lethal injection protocols, as well as difficulties procuring drugs for lethal injections, led to de-facto moratoria on executions in several other states.²³⁷ In March 2021, South Carolina advanced a bill to allow the state to carry out executions by electric chair if lethal-injection drugs were not available. At the time of writing, the law in South Carolina allows prisoners to choose between lethal injection and electric chair as the method of execution. However, lethal injection constitutes the default method,

233 See ODIHR Background Papers, 2015–2020, *op. cit.*, note 5.

234 NPR, [Gasping For Air: Autopsies Reveal Troubling Effects Of Lethal Injection](#), 21 September 2020.

235 Equal Justice Initiative, [Lethal Injections Cause Suffocation and Severe Pain, Autopsies Show](#), 22 September 2020 and NPR, [Gasping For Air: Autopsies Reveal Troubling Effects Of Lethal Injection](#), 21 September 2020.

236 *Roane v. Barr* (In re Fed. Bureau of Prisons’ Execution Protocol Cases), 980 F.3d 123 (D.C. Cir. 2020), 18 November 2020.

237 [Amnesty International Global Report: Death sentences and executions 2020](#), *op. cit.*, note 152, p. 18.

resulting in the delay of two executions due to the unavailability of execution drugs.²³⁸

In the case of Montana, in March 2021, a bill was tabled to permit execution by, “an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death.”²³⁹ In the same month, corrections officials in Arizona announced that the state could soon resume executions after it procured pentobarbital through a compounding pharmacy,²⁴⁰ from an unknown source, in line with the state’s secrecy policy.²⁴¹

The federal execution protocol allows for execution by lethal injection, “or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court,” in accordance with the Federal Death Penalty Act, which includes death by electrocution or death by firing squad.²⁴² Executions carried out at the federal level, criticised for lack of transparency and procedural irregularities, also raised controversy related to the procurement of pentobarbital required for applying the lethal injection. The government kept the supplier of its execution drugs, and of the laboratories that tested them, secret out of fear that the companies would not co-operate if subjected to public scrutiny.²⁴³

238 Death Penalty Information Center, [Legislators in South Carolina, Montana Seek to Change Execution Methods to Allow Executions to Resume](#), 1 March 2021.

239 *Ibid.*

240 [According to DPIC](#), As lethal injection drugs have become less accessible due to a combination of shortages and measures implemented by pharmaceutical companies intended to stop the drugs’ use in executions, some Departments of Corrections have begun to use compounding pharmacies as a source of those drugs. Compounding pharmacies combine, mix, or alter drugs. The Food and Drug Administration does not approve the products of compounding pharmacies. Compounding pharmacies must be licensed by their state’s pharmacy board, but do not have to register with the FDA or inform the FDA what drugs they are making.

241 Death Penalty Information Center, [Arizona Department of Corrections Says It Is Ready to Resume Executions](#), 8 March 2021. “Major pharmaceutical companies that produce pentobarbital and other execution drugs have expressed their opposition to the use of their products in executions and have implemented distribution restrictions to prevent prisons from purchasing the drugs. Arizona joined Texas and other states in purchasing pentobarbital from compounding pharmacies. The federal government also used compounded pentobarbital in the 13 executions it carried out in 2020 and 2021, but it is unclear who supplied the drug.” Death Penalty Information Center, [Execution Lawsuits Settle in Arizona and California, as Prisoners Renew Lethal-Injection Protocol Challenge in Oklahoma](#), 6 August 2020. “Following a lawsuit after the botched execution of Joseph Wood in 2014 in Arizona, a settlement was reached on 26 June 2020, allowing witnesses to see and hear an execution in its entirety, while keeping the identity of its drug suppliers secret.”

242 [Manner of Federal Executions](#), Proposed Rule by the Justice Department on 8 May 2020.

243 ProPublica, [Inside Trump and Barr’s Last-Minute Killing Spree](#), 23 December 2020 and Death Penalty Information Center, [ProPublica Investigation Reveals Irregularities in Federal Executions](#), 8 January 2021.

Concerns about the pain and suffering caused by lethal injection have led to many cases alleging cruel and unusual punishment contrary to the protection by the Eighth Amendment. For example, during the reporting period, Daniel Lee, Wesley Purkey and Keith Nelson alleged that the Government's planned use of pentobarbital could result in needless pain and suffering in violation of the Eighth Amendment.²⁴⁴ However, the Supreme Court denied the application for stays of execution based on evidence presented by the Federal Government, according to which pentobarbital does not cause a sense of drowning until after the prisoner has died.

The impact of the COVID-19 pandemic

The COVID-19 pandemic resulted in fewer executions being carried out and death sentences handed down due to court closures and public health concerns. However, concerns were raised during the reporting period with regard to precautions against COVID-19 infections during executions. For instance, in one case a staff member involved in execution preparations had tested positive for COVID-19, but continued to work without wearing a mask.²⁴⁵ A COVID-19 outbreak was recorded at the federal prison complex in Terre Haute in summer 2020, resulting in a number of deaths and infection of others, including of the Bureau of Prisons execution team.²⁴⁶ Similar outbreaks were registered in Missouri and Texas, which experienced COVID-19 outbreaks in the weeks following executions.²⁴⁷ Amnesty International recorded that COVID-19 outbreaks are suspected of having claimed 15 out of 33 lives of the death row prisoners known to have died in detention in 2020 across 10 states.²⁴⁸

Infections occurred not only among prison staff, but also lawyers and defence teams of people sentenced to death. Lisa Montgomery's team of lawyers, for example, contracted the virus after visiting her in the penitentiary, which led to the rescheduling

244 *William P. Barr, Attorney General, et al. v. Daniel Lewis Lee, et al* on Application for Stay or Vacatur, 14 July 2020, [591 United States Supreme Court \(2020\)](#).

245 ACLU, [ACLU: Documents Show Federal Executions Likely Caused Prison COVID-19 Outbreak](#), 22 September 2020, Nathalie Baptiste, Mother Jones Daily, [How Trump's Rush to Execute Inmates Is Spreading COVID](#), 8 December 2020, and ACLU, [New Data Connect the Federal Executions and a COVID-19 Outbreak in Indiana](#), 22 September 2020.

246 ACLU, [Federal Execution Team Members Test Positive for COVID-19 After Orlando Hall Execution](#), 10 December 2020.

247 *Ibid.*

248 [Amnesty International Global Report: Death sentences and executions 2020](#), *op. cit.*, note 152, p. 20. "Thirty-three people were recorded to have died on death row in 10 states, with 15 dying as a result of or with suspected complications from Covid-19: Alabama (2), Arizona (2, including one due to Covid-19), California 19 (including 12 suspected Covid-19 deaths), Florida (4), Georgia (1), Louisiana (1), Missouri (1, due to Covid-19), Ohio (1, due to Covid-19), Oregon (1), Pennsylvania (1)."

of her execution date.²⁴⁹ The COVID-related suspension of visits in prisons also impaired access of people on death row to legal representation, thus endangering their right to a fair trial.²⁵⁰ Suspending visits to prison also led to situations where, for example, Wesley Ira Purkey's spiritual adviser, due to his health complications, was unable to support him ahead of his execution, after his request to postpone the execution was denied.²⁵¹

Moreover, it has been established that lethal injections have a different impact on individuals who contracted COVID-19 due to the lung damage caused by the virus. Medical reports found that lung damage would exacerbate the feelings of a flash pulmonary edema and thus could amount to torture or other ill-treatment.²⁵² Corey Johnson and Dustin Higgs, for example, were executed while suffering from COVID-19.²⁵³ The United States Supreme Court denied Johnson's request to delay his execution until after he had recovered.²⁵⁴ In the case of Dustin Higgs, the United States Supreme Court overturned a stay of execution enacted by the United States Court of Appeals for the Fourth Circuit.²⁵⁵ Justice Breyer and Justice Sotomayor filed dissenting opinions. Justice Breyer called into question the constitutionality of the death penalty. Justice Sotomayor supported the approach taken by the District Court, which noted that executing Dustin Higgs and Corey Johnson while they suffered from COVID-19 entailed the risk of "needless and significant pain" and an increased likelihood of "torturous effects."²⁵⁶

249 DPIC, [Lawyers for Lisa Montgomery Contract COVID-19 During Prison Visits, Seek Stay of Execution](#), 13 November 2020.

250 [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 20.

251 *Ibid.*, p. 20, ACLU, [The Federal Government's Decision to Proceed with Executions During the Pandemic Puts Me in an Impossible Position](#), 2 July 2020 and ACLU [Buddhist Priest Should not Have to Choose Between his Health and Performing Sacred Religious Duties For Prisoner Set to be Executed in July](#), 2 July 2020.

252 "Op-Ed: COVID, Capital Punishment, and Pentobarbital—Unquestionably cruel without lung infection, and even more egregious now", Joel Zivot, 11 January 2021.

253 Michael Tarm and Denise Lavoie, CTV News, [U.S. executes Virginia gang killer despite COVID-19 infection](#), 15 January 2021.

254 Equal Justice Initiative, [Federal Executions Continue Despite Serious Questions of Fairness](#), 16 January 2021. Breyer joining Sotomayor and Kagan in noting a dissent: SCOTUS blog, [Court allows execution of Corey Johnson to proceed after COVID-19 diagnosis](#), 14 January 2021.

255 "Justice Sotomayor's 10-page dissent not only called attention to the unusual procedural tool the Court employed to overturn the stay of execution in Mr. Higgs' case—a writ of certiorari before judgment—but also summarized many of the major claims and open legal questions the Court failed to address in the prior federal execution cases." American Bar Association "The Project Blog", [Justice Sotomayor's Dissent in United States v. Higgs Rebukes Supreme Court Practices During Federal Execution Spree](#), 8 February 2021.

256 Besides addressing the methods of execution used, J. Sotomayor also noted procedural issues and the lack of consideration the presence of intellectual disabilities, which were not taken into consideration. To read the full dissenting opinion, see: *United States v. Dustin John Higgs*, [592 United States Supreme Court \(2021\)](#).

2. Abolitionist participating States

2.1. New developments at the international and regional levels on the abolition of the death penalty

During the reporting period, abolitionist OSCE participating States remained active on issues related to the death penalty. This included statements and events at United Nations forums (all OSCE participating States are members of the UN) and regional bodies such as the Council of Europe (all 47 Council of Europe member states are also OSCE participating States)²⁵⁷ and the EU (all 27 EU members are also OSCE participating states).²⁵⁸ Many events and reports highlighted the discriminatory nature or unequal application of the death penalty and the clear trend towards universal abolition of capital punishment, which constitutes a cruel, inhuman and degrading punishment.

In August 2020, the UN Secretary General issued his annual report on the moratorium on the use of death penalty as well as the yearly supplement to his quinquennial report on capital punishment.²⁵⁹ The report noted the discriminatory impact of the death penalty and welcomed progress towards the universal abolition of the death penalty as progress towards the protection of the right to life. Pending abolition, the Secretary General recommended the universal ratification of the Second Optional Protocol to the ICCPR, the use of moratoria, and the guarantee of fair trial rights, as well as the imposition of death penalty only for the “most serious crimes”.²⁶⁰

He also highlighted that the death penalty cannot be reconciled with the full respect for the right to life, and therefore welcomed initiatives limiting its use and implementing the safeguards guaranteeing protection of the rights of those facing the death penalty. The Secretary General stressed that imposing a death sentence at the end of a trial in which due process and fair trial safeguards have not been respected constitutes a violation of the right to life. Moreover, he recalled that international law prohibits the imposition of the death penalty on juvenile offenders, and that people with psychosocial disabilities and persons with intellectual disabilities should not be sentenced to death.²⁶¹

257 OSCE, “[The Council of Europe](#)”.

258 OSCE, “[The European Union](#)”.

259 United Nations Digital Library, Report of the Secretary-General, “[Question of the death penalty](#)”, UN Doc. A/HRC/45/20, 13 August 2020. United Nations Digital Library, Report of the Secretary-General, “[Moratorium on the use of the death penalty](#)”, UN Doc. A/75/309, 13 August 2020.

260 United Nations Digital Library, Report of the Secretary-General, “[Moratorium on the use of the death penalty](#)”, UN Doc. A/75/309, 13 August 2020.

261 United Nations Digital Library, Report of the Secretary-General, “[Question of the death penalty](#)”, UN Doc. A/HRC/45/20, 13 August 2020, para. 51.

During the 75th Session of the UN General Assembly and the commemoration of the 25th anniversary of the Beijing Declaration and Platform for Action²⁶², a high-level virtual event, organized by the UN Permanent Mission of Italy, the EU, and Amnesty International, in co-operation with the UN Office of the High Commissioner on Human Rights (OHCHR) and UN Women, was conducted to shed light on the gender dimension of the death penalty, which will be the topic for the 2021 World Day Against the Death Penalty.²⁶³

The 18th World Day against the Death Penalty in 2020 was dedicated to the theme “Access to Counsel: A Matter of Life or Death”. It highlighted how access to qualified and effective representation in all stages of a trial is crucial to ensure due process, and is a key factor for whether the procedure ends with a death sentence or not.²⁶⁴

Numerous organizations used the annual World Day against the Death Penalty, on 10 October 2020, to reiterate their commitment to the abolition of capital punishment. For example, the Council of Europe Secretary General and EU High Representative issued a Joint Declaration,²⁶⁵ reaffirming the opposition to the use of capital punishment in all circumstances and calling for the universal abolition of the death penalty by these institutions. The statement noted the trend towards universal abolition, and the cycle of violence perpetuated by the death penalty despite the lack of a proven deterrent effect. The joint statement also urged Belarus to abolish the death penalty.

That day ODIHR also highlighted that some cases that end in the death penalty lack certain basic elements for a fair trial, like the presumption of innocence or effective defence counsel, which is particularly concerning when considering the irreversibility of any miscarriage of justice in capital cases.²⁶⁶

262 “[Beijing Declaration and Platform for Action](#) is a visionary agenda for the empowerment of women. It is also one of the reference frameworks to analyse the situation of women around the world and to assess the efforts of States in support of women’s empowerment.”

263 [Keynote by Michelle Bachelet](#), UN High Commissioner for Human Rights, 75th session of the UN General Assembly Virtual High-Level Side Event “Death penalty and gender dimension – Exploring disadvantage and systemic barriers affecting death sentences,” 24 September 2020.

264 Gia Tongson, “[The 18th World Day Against the Death Penalty Highlights the Life-Saving Importance of Effective Legal Representation in Capital Cases](#)”, World Coalition Against the Death Penalty, 18 November 2020.

265 Council of Europe, [Joint declaration by Secretary General and European Union High Representative](#), 10 October 2020.

266 ODIHR, [Arbitrary capital punishment at odds with the right to life, ODIHR reminds OSCE states](#), 9 October 2020.

In November 2020, the General Assembly of the European Youth Forum, a platform for over 100 European youth organizations, adopted a Resolution on the abolition of the death penalty in Belarus, initiated by the Belarusian National Youth Council “RADA”.²⁶⁷

In December 2020, the UN General Assembly passed resolution 75/183 with a record number of 123 supporting states. It calls for the establishment of a moratorium on executions with a view to fully abolishing the death penalty and introduced new elements in comparison to previous years.²⁶⁸ It recognizes that the death penalty is often applied in a discriminatory manner against women. It also calls for enhanced protection of children, calling on states to not impose the death penalty on people who are younger than 18 years old at the time of the offence. This resolution also notes the importance of civil society, “in pursuing local and national debates and regional initiatives on the death penalty.”²⁶⁹

In February 2021, the UN Biennial High Level Panel on the Death Penalty took place in the framework of the UN Human Rights Council session, challenging the idea that capital punishment has a deterrent effect on crime. UN High Commissioner for Human Rights Michelle Bachelet noted that the deterrent effect has been debunked, and that, rather, numerous states have seen a decline in murder rates after abolition. She also noted how criminal justice systems are not “mistake-proof”, how the death penalty often disproportionately affects those marginalised in society, and that it causes severe mental and physical suffering.²⁷⁰ Many subsequent statements delivered strong messages against the death penalty, condemning its use as a breach of the right to life.²⁷¹

In March 2021, ahead of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice,²⁷² the Death Penalty Project issued a statement advocating for the inclusion of the abolition of the death penalty as an integral component of programmes to prevent crime and improve criminal justice systems globally.²⁷³

267 Viasna, [На Европейском молодежном форуме приняли Резолюцию об отмене смертной казни в Беларуси](#) (At the European Youth Forum a death penalty abolition resolution was adopted), 25 November 2020.

268 United Nations Digital Library, United Nations General Assembly, “[Moratorium on the use of the death penalty](#)”, UN Doc. A/RES/75/183, 28 December 2020.

269 *Ibid.*; ECPM, Together Against the Death Penalty, [UN Resolution for a Universal Moratorium on the Use of the Death Penalty. Analysis of the 2020 Vote](#).

270 [Statement by United Nations High Commissioner for Human Rights, Michelle Bachelet](#), 23 February 2021.

271 Grace O'Connor, [UN High Level Panel on the Death Penalty and Deterrence](#), World Coalition Against the Death Penalty, 25 February 2021.

272 United Nations Office on Drugs and Crime, [14th United Nations Congress on Crime Prevention and Criminal Justice](#), March 2021.

273 The Death Penalty Project, [UN Crime Congress: abolition of the death penalty must be an integral part of crime prevention programmes and criminal justice reforms](#), 5 March 2021.

Business leaders also started an initiative against the death penalty by launching a declaration in March 2021. The campaign is co-ordinated by the Responsible Business Initiative for Justice, and received support by a number of global business leaders.²⁷⁴

In March 2021, the Council of Europe Committee of Ministers adopted Recommendation CM/Rec(2021)2 on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment,²⁷⁵ following the Steering Committee for Human Rights (CDDH)'s recommendation of December 2020.²⁷⁶ The recommendation calls on Council of Europe member states to, “prohibit the import, export and transit of equipment and goods, and the supply of technical assistance and training relating to such equipment and goods, which have no practical use other than the infliction of the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.” It provides a detailed list of items for which the import, export and transit should be prohibited, such as gas chambers, guillotines, or electric chairs. The recommendation calls on member states to establish legal frameworks which control the flow of goods used to inflict the death penalty, torture or other cruel, inhuman or degrading treatment or punishment.

Relating to the trade in goods used to execute death sentences, the UN Secretary General issued a report entitled, “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards” in July 2020.²⁷⁷ The report mapped the views of Member States on the feasibility and scope of a range of options to establish international standards for the import, export and transfer of goods used for capital punishment – as well as for torture or other cruel, inhuman or degrading treatment or punishment. The information received indicated considerable differences in the regulation of the trade in those goods, and the report concluded that the establishment of a common international standard could ensure more effective regulation.²⁷⁸

274 [Business Leaders Against the Death Penalty](#) and Dominic Rushe, ‘Inhumane and flawed’: global business leaders urge governments to end death penalty, *The Guardian*, 18 March 2021. Among the business leaders who participated in the campaign there are Arianna Huffington, co-founder of the Huffington Post, and Ben Cohen and Jerry Greenfield, the founders of Ben & Jerry, among others.

275 Ministers’ Deputies, [Recommendation CM/Rec\(2021\)2 of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment](#), CM/Rec(2021)2, adopted by the Committee of Ministers on 31 March 2021 at the 1400th meeting of the Ministers’ Deputies, 31 March 2021.

276 Steering Committee for Human Rights, [Report](#), CDDH(2020)R93, 27 January 2021.

277 United Nations Digital Library, Report of the Secretary-General, “[Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards](#)”, UN Doc. A/74/969, 28 July 2020.

278 *Ibid.*, para. 40.

In December 2020, the UN High Commissioner for Human Rights Michelle Bachelet issued a statement welcoming the Global Alliance for Torture-Free Trade initiative.²⁷⁹ This Alliance is an initiative of Argentina, the EU and Mongolia which includes countries from around the world, and aims at ending the trade in goods used for capital punishment and torture.²⁸⁰

In order to inform the deliberations at the UN, in December 2020 Amnesty International and Omega Research Foundation released a report titled, “Ending the Torture Trade: The Path to Global Controls on the ‘Tools of Torture.’”²⁸¹ It includes a call for the prohibition of devices that are specifically designed to carry out executions, like electric chairs or automatic lethal injection devices, as well as trade controls on dual use pharmaceutical goods used in lethal injection protocols.

Efforts to tackle the trade in goods related to the death penalty also advanced at the level of the EU. On 30 July 2020, the European Commission presented its report to the European Parliament and to the European Council on the implementation of Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (often referred to as the ‘Anti-Torture’ Regulation). The report provides a comprehensive assessment of the regulation, which introduced binding trade restrictions on a range of goods used for capital punishment, torture or other ill-treatment. The report includes suggestions of non-legislative measures to help Member States implement the regulation more effectively, including responding to technological developments when considering the scope of goods, and the creation of a group of experts to strengthen implementation and compliance.²⁸²

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

Several OSCE participating States made statements in the OSCE Permanent Council on the occasion of the World Day Against the Death Penalty.

279 Statement by Michelle Bachelet, [Towards Torture-Free Trade: Opportunities and Challenges](#), 10 December 2020.

280 [Alliance for Torture-Free Trade](#).

281 Amnesty International and Omega, [Ending the Torture Trade: The Path to Global Controls on the ‘Tools of Torture’](#), 11 December 2020.

282 [Report from the Commission to the European Parliament and the Council on the review of Regulation \(EU\) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment](#), COM(2020) 343, 30 July 2020, p. 18–19.

At the OSCE Permanent Council on 8 October 2020, the EU delegation affirmed its strong and unequivocal opposition to the use of the death penalty at all times and under all circumstances, calling for the universal abolition of the death penalty and advocated for a global moratorium on its use. The EU acknowledged how the death penalty disproportionately affects members of vulnerable groups, and welcomed the decision of Kazakhstan to sign the Second Optional Protocol to the ICCPR. It also recognized how the death penalty is the ultimate cruel, inhuman and degrading punishment, and does not serve as a deterrent to crime. It encouraged States to join the Global Alliance for Torture-Free trade.²⁸³

On the same day at the OSCE Permanent Council, Norway delivered a statement on behalf of Andorra, Canada, Iceland, Liechtenstein and Switzerland, in which it stated opposition to the death penalty in all cases without exception, because of its incompatibility with human rights and human dignity. The statement also recalled how poor and economically vulnerable persons, foreign nationals, persons exercising their human rights and persons belonging to religious or ethnic minorities are disproportionately represented among those sentenced to the death penalty in the world today, and finished by calling on the OSCE countries that maintain the death penalty to suspend all executions and take immediate steps towards abolition.²⁸⁴

The United States, exercising its right to reply on 8 October 2020, reiterated its understanding of the death penalty as compliant with international standards, and mentioned the example of Keith Dwayne Nelson, who was executed on 28 August 2020, to highlight that “for horrific cases such as this one, society must send a strong signal that such heinous acts are not allowed.”²⁸⁵

In December 2020, the OSCE participating States reaffirmed their commitment to uphold the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. In MC Decision 7/20 they affirmed that, “states must safeguard the rights, and protect the human rights, of all persons deprived of their liberty, including those facing the death penalty, in accordance with their international obligations.”²⁸⁶

283 [EU Statement on the occasion of the European and World Day against the Death Penalty](#), OSCE Permanent Council, 8 October 2020.

284 [Statement on the World Day Against the Death Penalty](#), OSCE Permanent Council, 8 October 2020.

285 [Right of Reply on Death Penalty](#), OSCE Permanent Council, 8 October 2020. Nelson, 45, had been sentenced to death for the 1999 kidnapping, sexual abuse and subsequent killing of a 10-year-old girl.

286 [Decision No. 7/20, Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), OSCE Ministerial Council, 4 December 2020.

3. De-facto abolitionist participating States

The Russian Federation and Tajikistan remain the only two de-facto abolitionist states in the OSCE region. Both, the Russian Federation and Tajikistan continued to observe the official moratoria they established in 1996 and 2004, respectively, although they both retain the death sentence for crimes committed in peacetime.

Within the reporting period, neither the Russian Federation nor Tajikistan ratified the Second Optional Protocol to the ICCPR, regarding abolition of the death penalty, nor has the Russian Federation, as a member State of the Council of Europe, 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.

The Russian Federation introduced a moratorium on the death penalty in 1996, although executions were still carried out until 1999 in the Chechen Republic.²⁸⁷ The moratorium was upheld by the Constitutional Court twice, in 1999 and 2009.²⁸⁸ The Criminal Code provides for the death penalty as an exceptional measure for five types of offences: 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 on women, or on offenders under the age of 18 or over 65 at the time of sentencing.²⁸⁹ The Criminal Procedure Code also contains provisions on the death penalty.²⁹⁰

The Russian Federation made several statements to the OSCE Permanent Council on the subject of the death penalty during the reporting period. On the occasion of the World Day Against the Death Penalty, 10 October 2020, a statement noted the moratorium applied since 1996 and highlighted that a, “constitutional and legal framework” had emerged, under which there was an irreversible process aimed at abolishing the death penalty, taking into account Russia’s international commitments. Moreover, it stated that the Federal Assembly of the Russian Federation is considering the legislative abolition of the death penalty and accession to the Second Optional Protocol to the ICCPR.²⁹¹

287 [Amnesty International Global Report, 2020, op. cit., note 152, p. 58.](#)

288 “[Russian court extends moratorium on death penalty](#)”, Reuters, 19 November 2009. See also, “[Russia to decide on death penalty moratorium](#)”, BBC News, 10 November 2009.

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

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

291 [Statement by Mr. Alexander Lukashevich, Permanent Representative of The Russian Federation, at the 1284th Meeting of the OSCE Permanent Council, OSCE Permanent Council, 8 October 2020.](#)

Tajikistan has not carried out an execution since 2004. Article 18 of the Constitution states that, “No person may be deprived of life except by the verdict of a court for a very serious crime.”²⁹² The Criminal Code considers such crimes to be: aggravated murder, terrorism-related offenses resulting in death and not resulting in death, rape not resulting in death, war crimes, crimes against humanity and genocide.²⁹³ The following categories of individuals are considered non-eligible for the death penalty: women, persons with intellectual disabilities, the mentally ill and the elderly (understood as being over 63 at the time of the sentencing).²⁹⁴

In December 2020, both the Russian Federation and Tajikistan voted in favour of Resolution 75/183 of the UN General Assembly, expressing encouragement for States to establish a moratorium on executions with a view to abolishing the death penalty.²⁹⁵ The resolution also encourages States with a moratorium to maintain it and to share their experience in this regard, and it calls upon States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the ICCPR.

3.1. *Abolitionist for ordinary crimes only*

Kazakhstan was previously defined as *abolitionist for ordinary crimes only*. This is a United Nations designation that refers 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.

After a 17-year moratorium on executions, Kazakhstan formally abolished the death penalty on 2 January 2021, when President Kassym-Jomart Tokayev added his signature to a bill passed by the parliament and the senate in December 2020, in which it ratified the Second Optional Protocol to the ICCPR, after signing it on 23 September 2020.²⁹⁶ The one remaining death sentence was commuted to life imprisonment.²⁹⁷

However, the bill contains a reservation that provides for the application of the death penalty in time of war.²⁹⁸ The current Criminal Code of Kazakhstan also still provides for the death penalty for more than a dozen crimes, including for “high treason” and

292 [Constitution of Tajikistan](#), UNESCO.

293 “[Tajikistan](#)”, Death Penalty Database.

294 *Ibid.*

295 [Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 61.

296 Amnesty International, [Kazakhstan takes important step towards abolishing death penalty](#), 24 September 2020 and Death Penalty Information Center, [Kazakhstan Abolishes the Death Penalty](#), 2 January 2021.

297 DW, [Kazakhstan Abolishes the Death Penalty](#), 2 January 2021.

298 “[Amnesty International Global Report](#), 2020, *op. cit.*, note 152, p. 34.

“terrorism”.²⁹⁹ UN experts, as well as CSOs in Kazakhstan, have highlighted the necessity for Kazakhstan to amend its Constitution and Criminal Code to be in full compliance with the Protocol.³⁰⁰

²⁹⁹ Azattyk, [Отмена смертной казни: Токаев считает, что можно не менять Конституцию, эксперты не согласны](#) [Abolition of the death penalty: Tokaev does not think the Constitution should be changed, experts do not agree], 28 September, 2020

³⁰⁰ For example: Kazakhstan International Bureau for Human Rights and Rule of Law Charter for Human Rights public foundation, *ibid.*; and [Statement by United Nations High Commissioner for Human Rights, Michelle Bachelet](#), 23 February 2021.