

The Death Penalty in the OSCE Area

Background Paper 2018

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2017*. 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 2017 to 31 March 2018.

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Designed by Nona Reuter

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I.

Introduction

OSCE participating States have made a number of commitments regarding the death penalty, including to consider the potential abolition of capital punishment, to exchange information toward that end and to make information on the use of the death penalty available to the public.¹ Where the death penalty is still in use, participating States have agreed that it can be imposed only for the most serious crimes, and only in line with international commitments.²

In light of these commitments and its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) monitors trends and new developments regarding human rights standards and practices among OSCE participating States related to the death penalty. The findings are presented each year in the *Background Paper on the Status of the Death Penalty in the OSCE Area*. The background paper is based on the information provided by participating States, in the form of responses to ODIHR questionnaires. The information from their responses has been included in the present report, to the extent possible, and is supplemented with information from international and regional human rights bodies, non-governmental organizations and media reports. The annexes contain excerpts from international and regional documents relevant to the question of the death penalty in the OSCE region.

The ODIHR 2018 death penalty questionnaire was sent out in May 2018 to all OSCE participating States. The reporting period for this background paper covers developments from 1 April 2017 to 31 March 2018. Twenty-one OSCE participating States have provided information on the status of the death penalty in their respective countries in response to the 2018 ODIHR questionnaire.³

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. Fifty-two

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

2 “Vienna Document 1989”, para. 24, *op. cit.*, note 1.

3 The participating States of Albania, Andorra, Austria, Azerbaijan, Belarus, Finland, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, Poland, Romania, Russian Federation, Serbia, Sweden, Switzerland, and the Republic of Uzbekistan replied to the 2018 ODIHR questionnaire on the death penalty.

of the 57 OSCE participating States are abolitionist states. A *de-facto abolitionist* state is one in which the death penalty is allowed, although the punishment is not imposed in practice. The Russian Federation and Tajikistan are the two *de-facto abolitionist* states in the OSCE region. Due to a recent death sentence in 2016, Kazakhstan is now classified as *abolitionist for ordinary crimes only*, although this remains the only death sentence handed down in Kazakhstan as of today. A *retentionist* state is one that continues to maintain the death penalty in law and practice. Belarus and the United States are the only two retentionist states in the OSCE region.

During the reporting period, capital punishment remained an important topic during Plenary Meetings of the OSCE Permanent Council. A total of 12 statements calling for abolition of the death penalty and raising concerns regarding executions or new death sentences in the OSCE region have been made. The statements have been issued or supported through the EU Delegation, representing 28 OSCE participating States, or individually by Albania, Andorra, Austria, Bosnia and Herzegovina, Canada, Germany, the Holy See, Iceland, Liechtenstein, Luxemburg, the former Yugoslav Republic of Macedonia, Moldova, Mongolia, Montenegro, Norway, San Marino, Serbia, Slovenia, Switzerland and Ukraine. This adds 16 additional OSCE participating States to the 28 OSCE participating States that are also EU member states that regularly expressed their support for the complete abolition of the death penalty in the OSCE region.

ODIHR has also continued to engage in discussions about capital punishment. On 19 April 2017, then-ODIHR Director Michael Georg Link raised concern about the compressed execution schedule in Arkansas, and once more called on the United States to consider the complete abolition of capital punishment, in the context of the international debate linking the practice with torture and other cruel, inhuman or degrading treatment or punishment.⁴ On 8 May 2017, following emerging information about an execution in Belarus, Link called on the country's government, once more, to introduce an immediate moratorium on executions, as a step towards complete abolition of the death penalty. He stated that "the use of the death penalty is completely out of place in a region where most countries recognize the inherently cruel, inhuman and degrading nature of a punishment that fails to act as a deterrent and makes any miscarriage of justice irreversible" and added that "the complete secrecy surrounding executions in Belarus have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress."⁵

4 "ODIHR Director Link concerned by accelerated executions using questionable drug in Arkansas", OSCE/ODIHR, 19 April 2017, <<http://www.osce.org/odihr/312321>>, (hereafter, "ODIHR Director Link concerned by accelerated executions using questionable drug in Arkansas", OSCE/ODIHR).

5 "Condemning recent execution in Belarus, OSCE/ODIHR Director repeats call for immediate moratorium on death penalty", OSCE/ODIHR, 8 May 2017 <<https://www.osce.org/odihr/315931>>.

At the annual OSCE Human Dimension Implementation Meeting (HDIM) in Warsaw in September 2017, ODIHR published *The Death Penalty in the OSCE Area: Background Paper 2017*, providing updates on the situation of capital punishment in the OSCE region with a thematic focus on children of parents sentenced to death or executed.⁶ During the same meeting, OSCE participating States and civil society organizations addressed issues concerning the death penalty, including its inhuman and degrading character, and stressed the importance of the ratification of the related international human rights instruments. Participants also expressed concerns regarding calls for the re-introduction of the death penalty in some countries, and expressed support for the UN General Assembly Resolution calling for a global moratorium on the death penalty.⁷

On 10 October 2017, current ODIHR Director Ingibjörg Sólrún Gísladóttir, together with the UN Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, stressed in a public statement that the protection of children of those sentenced to death or executed should be strengthened.⁸ They also said that:

“The death penalty has a particularly cruel impact on children, who are often forgotten in the public debate surrounding capital punishment, as well as by states in the wider framework of their obligation to prevent torture or other ill-treatment,” and that “participating States should reinforce their efforts to strengthen the protection of children under their jurisdiction affected by the sentencing or execution of a parent, including in cases where the sentence is imposed and carried out in a country that is not their home.”⁹

There were a number of positive developments during the reporting period, such as the launch of a Global Alliance for Torture-Free Trade, which aims at ending the trade in goods used to carry out the death penalty and torture, initiated by Mongolia and the EU in September 2017, and supported by 43 OSCE participating States; and the adoption of UN Human Rights Council resolution 36/17, which underlines the discriminatory aspect of the death penalty. Fourteen OSCE participating States voted in favour of this resolution, and only one against.

However, there were also some negative developments. Statements by the current United States administration in support of tougher prosecution of drug related

6 “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR, 19 September 2017, <<https://www.osce.org/odihr/343116>>, (hereafter, “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR).

7 “2017 Human Dimension Implementation Meeting. Consolidated Summary”, OSCE/ODIHR, 11-22 September, <<https://www.osce.org/odihr/365486?download=true>>.

8 “Greater protection needed for children of parents sentenced to death or executed, ODIHR Director and UN Special Representative say on World Day against the Death Penalty”, OSCE/ODIHR, 10 October 2017, <<https://www.osce.org/odihr/348816>>.

9 *Ibid.*

crimes, including the introduction of capital punishment for drug dealers, and the instruction to the United States Department of Justice to “seek the death penalty in drug trafficking cases, where appropriate under current law”¹⁰ move away from the overall stance on the death penalty within the OSCE region. During the reporting period, Turkish President, Recep Tayyip Erdoğan, told supporters that he would immediately discuss the reinstatement of capital punishment and eventually hold a referendum on the topic.¹¹

Achieving full abolition in the OSCE region remains a strong objective for the vast majority of OSCE participating States. In a comparative study on how states abolish the death penalty, the International Commission against the Death Penalty identified that various domestic measures are crucial on the road to abolition, such as:

- Publishing information regarding the use of death penalty so that members of the public are fully informed;
- Enabling national institutions and civil society to engage in free and informed debate about the death penalty and seeking the advice of relevant organizations, including national human rights institutions, professional organizations, religious bodies and national and international non-governmental organizations;
- Encouraging empirical studies on the use of the death penalty, including compliance with international human rights standards and the principle of non-discrimination; and
- Requesting abolitionist states and intergovernmental organizations for advice, including assistance with accession to international and regional instruments on the abolition of the death penalty.¹²

It is also clear that leadership by heads of state, governments and others in position of power is important for achieving abolition.¹³

¹⁰ “President Donald J. Trump’s Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand”, the White House, 19 March 2018, <<https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-administration-working-every-day-help-bring-end-opioid-crisis/>> (hereafter, “President Donald J. Trump’s Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand”).

¹¹ “Turkey’s next referendum could reintroduce the death penalty, Erdogan says”, *Newsweek*, 17 April 2017, <https://www.newsweek.com/turkey-referendum-death-penalty-erdogan-eu-membership-585065>; see also “Erdogan says Turkey could hold referendum on EU membership bid”, Euroactive with AFP, 18 April 2017, <https://www.euractiv.com/section/global-europe/news/Erdogan-says-turkey-could-hold-referendum-on-eu-membership-bid/>.

¹² “How States abolish the death penalty”, International Commission against the Death Penalty, 2013, <<http://www.icomdp.org/cms/wp-content/uploads/2013/04/Report-How-States-abolition-the-death-penalty.pdf>>. In 2010, the Spanish Government launched an initiative to establish the International Commission against the Death Penalty (ICDP) in order to reinforce the fight against the death penalty in all regions of the world and in order to establish a moratorium on the use of the death penalty, with a view to its complete abolition. The initiative is supported by 18 countries, representing different regions of the world.

¹³ *Ibid.*

II.

The Status of the Death Penalty in the OSCE Area

1. Retentionist participating States

Belarus and the United States continue to be the only two retentionist participating States in the OSCE region, maintaining the application of the death penalty both in law and in practice.

1.1. Belarus

In its reply to the ODIHR questionnaire on the situation of the death penalty in the OSCE region 2018 (hereafter referred to as the “2018 ODIHR questionnaire”), Belarus provided information on death sentences handed down by domestic courts and executions carried out in the reporting period.

In the same reply, Belarus also requested the following corrections to the ODIHR background paper for 2017, regarding national legislation: In accordance with the Act of the Republic of Belarus No. 356 – 3 from 5 January 2016, the offence “treason against the State” is excluded from the list of crimes carrying the death sentence. Article 24 of the Constitution of the Republic of Belarus provides that the death penalty represents an exceptional measure of punishment for some especially serious crimes.¹⁴ Belarus also reported that the Criminal Code of Belarus forbids imposing the death penalty on women, and persons who committed a crime when they were under 18 years of age, or are older than 65 at the time of the sentencing.¹⁵

14 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”, <<http://pravo.by/document/?guid=3871&po=hk9900275>>.

15 Criminal Code of the Republic of Belarus, Art. 59.2(2), <<http://pravo.by/document/?guid=3871&po=hk9900275>>.

Death sentences between 1 April 2017 and 31 March 2018

According to the information received, national courts in Belarus imposed five death sentences during the reporting period. This is the highest number of death sentences handed down since 2006. In its response to the 2018 ODIHR questionnaire, Belarus confirmed that during the reporting period no presidential pardons were granted.

The following persons were sentenced to death:

Mr. Ihar Hershankou, 35 years of age,¹⁶ and Mr. Syamyon Berazhny, 30 years of age, were sentenced to death on 21 July 2017 by the Mahilyou Regional Court.¹⁷ The Supreme Court upheld their sentences and the judgments came into force on 20 December 2017. The applications for the presidential pardons of both convicts are pending before the President of the Republic of Belarus.

The court proceedings of Hershankou and Berazhny have attracted widespread public attention, as well as from national and international organizations. Local media reported that Berazhny claimed to have been beaten, threatened by prison staff and forced to confess.¹⁸ According to another Belarusian media source, Hershankou's mother appealed to the Investigative Committee with a complaint concerning her son's alleged mistreatment in prison. She also claimed that his right to correspondence was violated and that he had not been able to receive or send letters from the place of detention.¹⁹

On 21 July 2017, the EU condemned the sentencing to death of Hershankou and Berazhny, calling on Belarus to commute all remaining death sentences and to introduce a moratorium on the death penalty as a first step towards its abolition. The EU stated that the death penalty "goes counter to Belarus' stated willingness to engage with the international community" and that the death penalty "violates the right to life and is the ultimate cruel, inhuman and degrading punishment."²⁰

¹⁶ Age at the date of the sentencing.

¹⁷ In its reply to the 2018 ODIHR questionnaire, the Republic of Belarus stated that Mr. Hershankou and Mr. Berazhny were found guilty of "intentional murder in order to conceal another crime involving a robbery which was committed by a group of persons including a person who had previously committed murder; the preparation for a premeditated murder; the use of violence dangerous to the life and health of the victim, with the aim of seizing property in a particularly large amount, committed repeatedly, by an organized group, causing serious injury; seizing property by deceit and abuse of confidence, committed repeatedly, by an organized group, on an especially large scale and on other crimes." See also: "Amnesty International Global Report: Death Sentences and Executions 2017", Amnesty International, 2018, <<https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>>, (hereafter, "Amnesty International Global Report: Death Sentences and Executions 2017").

¹⁸ "Приговоренные к смерти «черные риелторы»: Показания из нас выбивали силой", Tut.by новости, 18 декабря 2017, <<https://news.tut.by/society/573431.html?crnd=2460>>.

¹⁹ "Приговоренный к смерти Игорь Гершанков намерен начать голодовку", Naviny.by Белорусские новости, 26 июня 2018, <<https://naviny.by/article/20180626/153001180-prigovorennyy-k-smerti-igor-gershankov-nameren-nachat-golodovku>>.

²⁰ "Statement by the Spokesperson on two new death sentences in Belarus", European External Action Service, 21 July 2017, <https://eeas.europa.eu/headquarters/headquarters-homepage_hu/30248/Statement%20by%20the%20Spokesperson%20on%20two%20new%20death%20sentences%20in%20Belarus>.

In a statement on 24 July 2017, the General Rapporteur on the abolition of the death penalty and the Rapporteur on the situation in Belarus of the Parliamentary Assembly of the Council of Europe (PACE) denounced the two death sentences handed down in Belarus. They stated that “the Parliamentary Assembly has been ceaselessly affirming its absolute opposition to capital punishment, which it regards as an act of torture and inhuman and degrading punishment, and undeniably the most serious of all human rights violations.” They also called on the Belarusian authorities to urgently introduce a moratorium on executions and noted that “nothing in the Belarusian Constitution or legislation would prevent President Lukashenko or the Parliament from taking this step. A moratorium is simply a question of political will.”²¹

Viktar Liotau, 30 years old, was found guilty of deliberate murder committed with particular cruelty. Liotau murdered three of his cellmates in different prisons. After the third murder, Liotau was sentenced to death on 22 September 2017 by the Vitebsk Regional Court.²² According to information provided in response to the 2018 ODIHR questionnaire, the verdict came into legal force on 6 October 2017, due to the fact that Liotau did not appeal the decision or apply for clemency.²³ On 9 February 2018, the Delegation of the EU to Belarus issued a statement in agreement with the EU Heads of Mission in Belarus reiterating that capital punishment violates the right to life and is the ultimate cruel, inhuman and degrading punishment, and called for its abolition.²⁴

21 “Abolition of death penalty in Belarus, simply a question of political will”, Parliamentary Assembly of the Council of Europe, 24 July 2017, <<http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6743&lang=2&cat=>>>. Belarus is not a member State to the Council of Europe (CoE). However, all 47 CoE member States are also OSCE participating States. In addition, the OSCE participating States of Canada, Holy See and United States are CoE Observer States. It is therefore assumed that statements of the CoE, including its Parliamentary Assembly, reflect the views of a vast majority of OSCE participating States.

22 “Local EU Statement on a Death Sentence in Belarus”, European External Action Service, 9 February 2018, <https://eeas.europa.eu/delegations/belarus_en/39626/Local%20EU%20Statement%20on%20a%20Death%20Sentence%20in%20Belarus>, (hereafter, “Local EU Statement on a Death Sentence in Belarus”, European External Action Service, 9 February 2018).

23 During a court hearing in a different case, a fellow death row prisoner alleged that Viktar Lyotav and Aliaksei Mikhalenia (convicted on 17 March 2017; see, “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR, *op. cit.*, note 6), were moved out of the prison cell that he shared with them on the night of the 16 May 2018, and probably executed; see: “Неофициально. В Беларуси расстреляли двух «смертников» – Алексея Михаленю и Виктора Лётова”, Naviny.by Белорусские новости, 29 мая 2018, <<https://naviny.by/new/20180529/1527585573-неофициально-в-беларуси-расстреляли-двух-смертников-алексея-михаленю-и>>. See also: “Зарезал в колонии педофила, а на суде попросил расстрел – что известно о новом смертнике”, Наша Нива nn.by, 31 января 2018, <<https://nn.by/?c=ar&i=204077&lang=ru>>.

24 “Local EU Statement on a Death Sentence in Belarus”, European External Action Service, 9 February 2018, *op. cit.*, note 23.

On 20 January 2018, Vyachaslau Sukharka, 25, and Alyaksandr Zhylnikau, 45, were convicted of the murder of two persons, robbery and other crimes.²⁵ In December 2015, they were initially sentenced to life imprisonment. However, after an appeal by a prosecutor was upheld by the Supreme Court on 14 July 2017, on 20 January 2018 the Minsk City Court changed the punishment to death penalty in the re-trial. On 23 January 2018, the EU condemned the two death sentences, adding that “the death penalty does not serve as a deterrent to crime, and errors, inevitable in any legal system, become irreversible”.²⁶

In July 2017, the Belarusian Supreme Court upheld the death sentence against Aliaksei Mikhalenia,²⁷ who was initially found guilty on 17 March 2017 by Gomel Regional Court of committing two murders in 2016.²⁸

Executions between 1 April 2017 and 31 March 2018:

Siarhei Vostrykau, 33 years old, was sentenced to death by Homel Regional Court on 19 May 2016 for the rape and murder of two women in two separate incidents in 2014 and 2015.²⁹ The verdict came into force on 4 October 2016.³⁰ In May 2017, local media and human rights NGOs stated that Vostrykau was possibly executed in April 2017.³¹ ODIHR condemned the execution of Vostrykau on 8 May 2017, and stressed that “the use of the death penalty is completely out of place in a region where most countries recognize the inherently cruel, inhuman and degrading nature of a punishment

25 In the reply to the 2018 ODIHR questionnaire, Belarus stated that Sukharka was found guilty of “deliberately unlawfully depriving two persons of their life, committed with particular cruelty, associated with robbery, by a group of persons and a person who had previously committed murder; the use of violence dangerous to the life and health of the victim, with the aim of seizing property in a particularly large amount and home invasion, committed repeatedly, by a group of people, causing serious physical harm” and Zhylnikau was found guilty of “deliberately unlawfully depriving two persons of life, committed with particular cruelty, associated with robbery, by a group of persons, and a person who had previously committed murder; in complicity in a premeditated murder committed with special cruelty, coupled with robbery; in the use of violence dangerous to the life and health of the victim, with the aim of directly capturing property in a particularly large amount, with penetration into the home, repeatedly, by a group of people, causing serious physical harm; in complicity in the use of violence dangerous to the life and health of the victim, with the aim of seizing property in a particularly large amount, home invasion, committed repeatedly, by a group of people, causing serious physical harm”.

26 “Statement by the Spokesperson on two death sentences in Belarus”, European External Action Service, 23 January 2018 <https://eeas.europa.eu/headquarters/headquarters-homepage/38599/statement-spokesperson-two-death-sentences-belarus_en>.

27 “EU Local Statement on the decision of the Belarus Supreme Court to uphold the death sentence against Aliaksei Mikhalenia, delivered in the 1291st Meeting of the Committee of Ministers (5 July 2017)”, European External Action Service, 5 July 2017, <https://eeas.europa.eu/delegations/council-europe/29432/eu-local-statement-decision-belarus-supreme-court-uphold-death-sentence-against-aliaksei_en>.

28 “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR, *op. cit.*, note 6, p.25; “Amnesty International Global Report: Death Sentences and Executions 2017”, *op. cit.*, note 17.

29 *Ibid.*

30 In the reply to the 2018 ODIHR questionnaire on the situation of the death penalty in the OSCE region Belarus stated that Vostrykau was “found guilty of a deliberate murder committed with special cruelty, in order to conceal other crimes; and rape”.

31 Приведен в исполнение смертный приговор в отношении убийцы двух девушек, Tut.by новости, 5 May 2017, <<https://news.tut.by/society/542223.html?crnd=90425>>.

that fails to act as a deterrent and makes any miscarriage of justice irreversible”.³² Similarly, the Rapporteur on the situation in Belarus of PACE³³ and the EU³⁴ denounced the execution and urged the country’s authorities to abolish the death penalty on 5 and 6 May 2017, respectively.

Kiryl Kazachok, 39, indicted for the deliberate murder of his two children, was sentenced to death on 28 December 2016 by the Homel Regional Court.³⁵ According to the information provided by Belarus to ODIHR, the verdict came into force on 10 January 2017.³⁶ Kazachok was executed in October 2017, according to PACE and Amnesty International.³⁷ On 8 March 2018, the EU Spokesperson reaffirmed the EU’s strong opposition to capital punishment in all circumstances and added that it “violates the inalienable right to life enshrined in the Universal Declaration of Human Rights and is the ultimate cruel, inhuman and degrading punishment”.³⁸ The same day, also the PACE Rapporteur on the abolition of the death penalty and on the former Rapporteur on the situation in Belarus condemned the execution of Kazachok and added that “the execution of Kiryl Kazachok is all the more shocking since it took place secretly in October 2017, while the relatives of the convicted were only informed recently.”³⁹

Belarus did not provide the exact dates of the executions in its reply to the 2018 ODIHR questionnaire. Both executions were carried out in secret and the families of the executed only learned that the executions had taken place after they had occurred.⁴⁰ Generally, the Belarusian authorities do not provide information about the date of executions or the place of burial to the families or to the public. Article 175

32 “Condemning recent execution in Belarus, OSCE/ODIHR Director repeats call for immediate moratorium on death penalty”, OSCE/ODIHR, 8 May 2017 <<https://www.osce.org/odihr/315931>>.

33 “Rapporteurs condemn execution of Siarhei Vostrykau in Belarus”, Parliamentary Assembly of the Council of Europe, 5 May 2017, <<http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6637&lang=2%20>>. The statement also states that “the Assembly’s Committee on Political Affairs and Democracy adopted a draft report on 26 April 2017 urging the Belarusian authorities to show genuine political will on the issue of capital punishment and the administration of justice by not carrying out the death sentences recently pronounced against Kiryl Kazachok and Siarhei Vostrykau”.

34 “Statement by the Spokesperson on the execution in Belarus of Siarhei Vostrykau”, European External Action Service, 6 May 2017, <https://eeas.europa.eu/delegations/vienna-international-organisations/25677/execution-belarus-siarhei-vostrykau_sq>.

35 “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR, p.25, *op. cit.*, note 6.

36 In the reply to the 2018 ODIHR questionnaire on the situation of the death penalty in the OSCE region, Belarus stated that Kazachok was “found guilty of the deliberate murder of two persons, including a child in a helpless state”.

37 “Amnesty International Global Report: Death Sentences and Executions 2017”, *op. cit.*, note 17.

38 “Statement by the Spokesperson on the execution of Kiryl Kazachok in Belarus”, European External Action Service, 8 March 2018, <https://eeas.europa.eu/headquarters/headquarters-homepage/41034/statement-spokesperson-execution-kiryl-kazachok-belarus_en>.

39 “Belarus: rapporteurs strongly condemn the execution of Kiryl Kazachok in October 2017”, Parliamentary Assembly of the Council of Europe, 8 March 2018, <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6979&lang=2&cat=5>

40 “Amnesty International Global Report: Death Sentences and Executions 2017”, *op. cit.*, note 17.

of the Criminal Executive Code of the Republic of Belarus allows for the government not to communicate the place of burial of those executed.⁴¹

As stated in the ODIHR death penalty background papers for 2016 and 2017, the lack of transparency and secrecy surrounding executions in Belarus may constitute cruel, inhuman or degrading treatment, or even torture.⁴² In his report to the Human Rights Council in April 2017, the UN Special Rapporteur on the situation of human rights in Belarus highlighted that “the fact that no details on executions or places of burial are given to the families also amount to torture.”⁴³

Name	Age at the time of execution	Entry into force of the death sentence	Reported date of execution
Siarhei Vostrykau	34	4 October 2016	April 2017
Kiryl Kazachok	40	10 January 2017	October 2017

Other information received:

The parliamentary working group on the death penalty (Working Group of the National Assembly of the Republic of Belarus on the Study of Death Penalty as a Measure of Punishment Applied in the Republic of Belarus) , re-established in December 2012, regularly holds meetings, and its representatives participate in events dedicated to the issue of the death penalty in Belarus.

1.2. United States

The United States did not reply to the 2018 ODIHR questionnaire. Therefore, the section on the situation of the death penalty in the United States is based on information from available resources made available by national authorities and international and regional human rights bodies, as well as information reported by non-governmental organizations and the media.

Death sentences between 1 April 2017 and 31 March 2018

41 Criminal Executive Code of the Republic of Belarus, Art. 175, <<http://pravo.by/document/?guid=3871&po=hk9900275>>.

42 See: “The Death Penalty in the OSCE Area: Background Paper 2017”, OSCE/ODIHR, *op. cit.*, note 6; and “The Death Penalty in the OSCE Area: Background Paper 2016”, OSCE/ODIHR, 21 September 2016, p. 26, <<https://www.osce.org/odihr/266186>>, (hereafter, “The Death Penalty in the OSCE Area: Background Paper 2016”, OSCE/ODIHR).

43 “Report of the Special Rapporteur on the situation of human rights in Belarus”, UN Human Rights Council, 21 April 2017, para. 103, UN Doc. A/HRC/35/40 with reference to Human Rights Committee, Communication No. 886/1999 *Schedko v. Belarus*, 3 April 2003..

According to online resources, 39 people were sentenced to death in the United States in 2017.⁴⁴ Information on all dates of sentencing is not publicly available.

Within the reporting period, courts in the United States examined several cases of convicts on death row claiming their innocence due to newly disclosed evidence, or cases where the judgment was considered unconstitutional by a supreme court.⁴⁵ For instance, the case of Marcellus Williams attracted widespread public attention. In August 2017, Williams' execution was halted several hours before it was to take place, because DNA evidence not available at the time of the crime showed an unknown third person's DNA on the murder weapon. Despite the fact that DNA evidence that cast doubt on his guilt was found in 2016, the state of Missouri is still planning to proceed with his execution.⁴⁶ More than 276,000 people signed the online petition⁴⁷ calling for the stay of execution.⁴⁸

Executions between 1 April 2017 and 31 March 2018

During the reporting period, 24 executions were carried out in the United States. Texas executed seven people, Alabama, Arkansas and Florida executed four people each, Georgia and Ohio executed two people each, and Virginia carried out one execution. Those executed were all men. They were all executed by lethal injection.

Date of execution	Name	State	Age	Race
20 April 2017	Ledell Lee	Arkansas	51	Black
24 April 2017	Jack Jones	Arkansas	52	White
24 April 2017	Marcel Williams	Arkansas	46	Black
27 April 2017	Kenneth Williams	Arkansas	38	Black
17 May 2017	JW Ledford	Georgia	46	White
26 May 2017	Thomas Arthur	Alabama	75	White
8 June 2017	Robert Melson	Alabama	46	Black
6 July 2017	William Morva	Virginia	35	White
26 July 2017	Ronald Phillips	Ohio	43	White

44 "Death Sentences in 2017", Death Penalty Information Center, <<https://deathpenaltyinfo.org/2017-sentencing>>.

45 See, for example: "Florida Denies Relief to Prisoner Unconstitutionally Sentenced to Death, in Decision that Could Affect More Than 75 Cases", Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6839>>.

46 "Marcellus Williams execution delayed after DNA test raises question about his guilt", the *Independent*, 22 August 2017, <<https://www.independent.co.uk/news/world/americas/marcellus-williams-execution-delay-stay-leave-dna-test-death-row-murder-inmate-a7907356.html>>.

47 "Stop the execution of Marcellus Williams", Change.org, <<https://www.change.org/p/eric-greitemens-do-not-execute-marcellus-williams>>.

48 In August 2018 it was announced that the panel of five judges will review the case of Marcellus Williams. "Ex-judges to review evidence in Mo. death penalty case", CorrectionsOne.com, 7 August 2018, <<https://www.correctionsone.com/capital-punishment/articles/478834187-Ex-judges-to-review-evidence-in-Mo-death-penalty-case/>>.

27 July 2017	TaiChin Preyor	Texas	46	Black
24 Aug. 2017	Mark Asay	Florida	53	White
13 Sept. 2017	Gary Otte	Ohio	45	White
5 Oct. 2017	Michael Lambrix	Florida	57	White
12 Oct. 2017	Robert Pruett	Texas	38	White
19 Oct. 2017	Torrey McNabb	Alabama	40	Black
8 Nov. 2017	Patrick Hannon	Florida	53	White
8 Nov. 2017	Ruben Cardenas	Texas	47	Latino
18 Jan. 2018	Anthony Shore	Texas	55	White
30 Jan. 2018	William Rayford	Texas	64	Black
1 Feb. 2018	John Battaglia	Texas	62	White
22 Feb. 2018	Eric Branch	Florida	47	White
15 March 2018	Michael Eggers	Alabama	50	White
15 March 2018	Carlton Gary	Georgia	67	Black
27 March 2018	Rosendo Rodriguez	Texas	38	Latino

Recent developments concerning lethal injections as a method of execution:

Seven states carried out executions during the reporting period. Although this represents a small fraction of the total number of 50 states, numerous others have attempted to obtain lethal injection drugs and may resume executions in the near future. Some developed new lethal injection drug combinations. For instance, officials in Nebraska, who had struggled to find lethal injection drugs, announced a never-before-used four-drug combination. The concoction includes the sedative diazepam (a benzodiazepine, better known as Valium), cisatracurium (a muscle relaxant that causes paralysis and can stop the heart), potassium chloride and fentanyl (an opioid).⁴⁹ The drug mixture is controversial, because if the substances do not work as planned, the convict could suffer extreme pain.⁵⁰ The state's first death by lethal injection was scheduled for 14 August 2018. In Nevada, officials also struggled to obtain lethal injection drugs, but in August 2017 they announced plans to also use a combination of fentanyl, diazepam and cisatracurium.⁵¹ The first use of this combination in Nevada was planned for July 2018 but postponed due to the

49 Fentanyl is an opioid painkiller that is 30 times more potent than heroin and at least 80 times stronger than morphine, according to the Drug Enforcement Administration (DEA). Nearly 30,000 overdose deaths were linked to fentanyl in 2017, according to Centers for Disease Control and Prevention data cited by the National Institute on Drug Abuse.

50 "Carey Dean Moore says 'I love you' before dying in Nebraska's first execution by lethal injection using fentanyl", *USA Today*, 14 August 2018, <<https://eu.usatoday.com/story/news/nation-now/2018/08/14/nebraska-execute-carey-moore-using-opioid-fentanyl/984608002/>>.

51 "The history of the death penalty in Nevada", the Marshall Project, <<https://www.themarshallproject.org/next-to-die/nv>>.

nationwide objection by pharmaceutical companies to their medicines being used in executions.⁵² Some other states attempted to pass new laws to protect the identities of drug suppliers.⁵³

Background information:

Until 2009, most states used a three-drug combination for lethal injections: an anesthetic (usually sodium thiopental, until pentobarbital was introduced at the end of 2010), pancuronium bromide (a paralytic agent, also known by the brand name Pavulon), and potassium chloride (which stops the heart and causes death).

An EU regulation on trade in goods that may be used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment came into force in 2005, was updated in 2011, and amended on 23 November 2016.⁵⁴ It bans certain medicinal products from being exported for the purpose of capital punishment and prohibits any transit of the goods listed in Annex II of the regulation. It also imposes restrictions on supplying brokering services related to any listed goods located in a third country, on supplying certain other services to third countries and on promoting certain goods in trade fairs in the EU.⁵⁵

Due to the EU regulation and a growing refusal of pharmaceutical companies to sell their products to the United States for the purpose of executions, many states have experienced a shortage of drugs used in lethal injections. At the same time, several drug-makers, including major pharmaceutical companies such as Pfizer, actively oppose the use of their products in lethal injections for capital punishment.⁵⁶ Janssen Pharmaceuticals, a division of Johnson & Johnson condemned the use of an anesthetic drug called etomidate, discovered by their scientists, in the three-drug cocktail that was used for Mark Asay's execution in Florida.⁵⁷ In April 2017, drug distributor McKesson Medical-Surgical sued Arkansas after learning that the state was using one of its distributed medicines as an execution drug, and alleged that

52 "Death-row inmate tired of postponements: 'Just get it done'", *New York Post*, 9 August 2018, <<https://nypost.com/2018/08/09/death-row-inmate-tired-of-postponements-just-get-it-done/>>.

53 "What to Know About the Death Penalty in 2018", the Marshall Project, 1 March 2018, <<https://www.themarshallproject.org/2018/01/03/what-to-know-about-the-death-penalty-in-2018>>.

54 "Council Regulation (EC) No. 1236/2005", *Official Journal of the European Union*, , 27 June 2005, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>>; "Commission Implementing Regulation (EU) No. 775/2014", *Official Journal of the European Union*, 16 July 2014, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0775>>; "Regulation (EU) 2016/2134 of the European Parliament and of the Council", *Official Journal of the European Union*, , 23 November 2016, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2134>>.

55 "Anti-torture measures", Service for Foreign policy Instruments of the European Commission, <http://ec.europa.eu/dgs/fpi/what-we-do/anti-torture_measures_en.htm>.

56 "Pfizer's Position on Use of Our Products in Lethal Injections for Capital Punishment", Pfizer, April 2016, <<https://www.pfizer.com/files/b2b/GlobalPolicyPaperLethalInjection.pdf>>.

57 "Johnson & Johnson says its drug shouldn't be used in executions", the *Washington Post*, 22 August 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/08/22/johnson-johnson-says-its-drug-shouldnt-be-used-to-kill-prisoners/?noredirect=on&utm_term=.9edcd6fdd4a8>.

the state had deliberately misled McKesson to believe that the purchase was for legitimate medical purposes.⁵⁸ In June 2017, Hospira – the sole United States company approved to manufacture sodium thiopental – reportedly announced that it will no longer produce the drug.⁵⁹ In Nevada, Scott Dozier’s execution scheduled for November 2017 was postponed by a District Court in response to a challenge by the United States-based pharmaceutical company Alvogen, which urged the court to block the use of its drug midazolam in lethal injections.⁶⁰ Subsequently, the states of Nebraska and Nevada announced that they will change their drug protocols and use fentanyl, a controversial opioid anesthetic, and the paralytic cisatracurium, which have never been used before in lethal injections (see also above).⁶¹

The shortage of sodium thiopental has forced the 35 states using lethal injection to search for any remaining stock and to explore alternatives. Several states have reportedly turned to unreliable distributors.⁶² In 2015, for instance, the United States Food and Drug Administration (FDA) seized a shipment of sodium thiopental that Texas and Arizona had ordered from an unreliable supplier in India.⁶³ In January 2017, the Texas Department of Criminal Justice sued the FDA for the seizure of the drugs. In April 2017, the FDA announced its refusal to release the illegally imported drugs.⁶⁴ Oklahoma, another state forced to change its lethal injection protocols due to the drug shortage, started to use pentobarbital, a drug commonly used to euthanize animals.⁶⁵

Pharmacy compounding, a practice in which a licensed pharmacist combines, mixes, or alters ingredients in response to a prescription, is said to be one of the untrustworthy sources of lethal drugs.⁶⁶ Such practices must be licensed by a state

58 “State and Federal Courts Grant Stays, Preliminary Injunctions Blocking 8 Arkansas Executions”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6735>>.

59 “Lethal Injection Drug Shortage”, the Council of State Governments, July-August 2017, <http://www.csg.org/pubs/capitolideas/enews/issue65_4.aspx>, (hereafter, “Lethal Injection Drug Shortage”, the Council of State Governments).

60 “Scott Dozier case: Hours before execution, judge in pharma company suit halts use of drug”, CBS News, 11 July 2018, <<https://www.cbsnews.com/news/scott-dozier-case-nevada-judge-halts-use-of-drug-hours-before-execution-after-companys-suit/>>. In July 2018, despite the amended lethal injection protocol, the rescheduled execution was halted again, just before it was due to take place.

61 “Nevada Says Fentanyl Was Easy to Obtain, But Execution Protocol Draws Criticism from Doctors, Legal Experts”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6955>>.

62 For more information on alternative drug protocols and methods of execution discussed in different states, see: “State by State Lethal Injection”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/state-lethal-injection>>, (hereafter, “State by State Lethal Injection”, Death Penalty Information Center).

63 “Arizona, Texas Attempted to Import Illegal Lethal Injection Drugs Linked to Indian Supplier with Troubling History”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6280>>.

64 “FDA’s Admissibility Determination for Sodium Thiopental Entry”, U.S. Food & Drug Administration, 20 April 2017, <<https://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofGlobalRegulatoryOperationsandPolicy/ORA/ORAElectronicReadingRoom/UCM555237.pdf>>.

65 “Lethal Injection Drug Shortage”, the Council of State Governments, *op. cit.*, note 62.

66 “The Special Risks of Pharmacy Compounding”, U.S. Food & Drug Administration, <<http://wayback.archive-it.org/7993/20170111235218/http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm107836.htm>>.

pharmacy board, although they are not required to be accredited or registered with the FDA. Ten federal states are believed to use, or intend to use, drugs that have undergone pharmacy compounding.⁶⁷

Human rights activists have also raised concern over the potential for federal states to resort to alternative execution practices.⁶⁸ In March 2018, the Oklahoma Attorney General announced that due to the shortage of lethal drugs, the state may use nitrogen gas asphyxiation.⁶⁹ Similarly, Alabama (effective July 2018) and Mississippi (effective April 2017) have laws that allow for use of nitrogen hypoxiation. Tennessee's law allows for the use of the electric chair, Utah's law allows a firing squad to be used if the state cannot obtain lethal-injection drugs 30 days before an execution, and New Hampshire allows for hanging if it is determined "to be impractical to carry out the punishment of death by administration of the required lethal substance or substances."⁷⁰

Cases:

In February 2017, the Governor of Arkansas set the execution dates for eight death row prisoners, stating that executions needed to be carried out in quick succession in order to utilize the federal state's final batch of the sedative midazolam before its expiration date at the end of April 2017. Arkansas had not carried out executions for 12 years, and the last time it carried out a dual execution was on 8 September 1999.⁷¹ On 19 April 2017, then-ODIHR Director Michael Georg Link raised concern about the compressed execution schedule in Arkansas and called on the United States to once more consider the complete abolition of capital punishment, in the context of the international debate linking the practice with torture and other cruel, inhuman or degrading treatment or punishment.⁷² Arkansas executed four death row prisoners – Ledell Lee, Jack Jones, Marcel Williams and Kenneth Williams – on 20 and 24 April 2017. In a statement to the OSCE Permanent Council on 27 April 2017, Norway, together with Iceland, Liechtenstein, San Marino and Switzerland strongly condemned the executions of the four inmates in Arkansas and reiterated that "in the international community there is an increasing support for the view

67 "State by State Lethal Injection", Death Penalty Information Center, *op. cit.*, note 65.

68 "ACLU of Oklahoma responds to announced intent to modify Oklahoma's death penalty method", ACLU of Oklahoma, 14 March 2018, <<https://www.acluok.org/en/news/aclu-oklahoma-responds-announced-intent-modify-oklahomas-death-penalty-method>>.

69 "Oklahoma Turns to Gas for Executions Amid Turmoil Over Lethal Injection", the *New York Times*, 14 March 2018, <<https://www.nytimes.com/2018/03/14/us/oklahoma-nitrogen-executions.html>>.

70 "State by State Lethal Injection", Death Penalty Information Center, *op. cit.*, note 65.

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

72 "ODIHR Director Link concerned by accelerated executions using questionable drug in Arkansas", OSCE/ODIHR, *op. cit.*, note 4.

that the death penalty constitutes a violation of the prohibition of torture and cruel, inhuman and degrading treatment or punishment.”⁷³

On 24 August 2017, Mark James Asay was executed in Florida.⁷⁴ This was the first execution in Florida in 18 months. Asay’s execution raised concern among international and national human rights organizations due to the use of an experimental drug cocktail that has never been tested in lethal injections. Instead of midazolam, a new sedative – etomidate – was first used, then the paralytic drug rocuronium bromide, and then potassium acetate to stop the heart.⁷⁵ The anesthetic drug etomidate has not been tested properly, experts say, and may cause pain and leave the person being executed awake during the process.⁷⁶

In Ohio, the execution of the 69-year-old, terminally ill Alva Earl Campbell was scheduled for 15 November 2017. Campbell, who allegedly had cancer, was unable to walk without assistance, had to receive breathing treatments daily, and reportedly had an allergy to midazolam, one of the drugs in the lethal injection “cocktail”, asked to be executed by firing squad.⁷⁷ During the unsuccessful petition for the stay of execution, Campbell’s lawyer and public defender claimed that injecting the drugs may cause problems because of the state of his client’s veins.⁷⁸ On the execution day the prison staff failed four times to find a suitable vein for an injection. The execution was then called off and rescheduled for 5 June 2019. Mr. Campbell died from his illnesses on death row on 3 March 2018.⁷⁹

Changes in legislation:

Several court cases have dealt with the issue of disclosing the sources of drugs used or intended to be used for capital punishment. These issues have been raised by

73 “Joint statement on death penalty in the United States”, OSCE Permanent Council, Vienna, 27 April 2017, <<https://www.osce.org/permanent-council/324251?download=true>>.

74 “USA. Death in Florida”, Amnesty International, 21 August 2017, <<https://www.amnestyusa.org/wp-content/uploads/2017/08/Florida-Death-Penalty-Briefing-ENG.pdf>>.

75 *Ibid.* See also: “Statement of the PACE General Rapporteur on the abolition of the death penalty”, Parliamentary Assembly of the Council of Europe, 29 August 2017, <[https://deathpenaltyinfo.org/node/6847](http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6751&lang=2&cat=>”; and “Florida Death-Penalty Practices, Mark Asay Execution Draw Criticism From Human Rights Groups, Johnson & Johnson”, Death Penalty Information Center, <.

76 “Florida plans first execution in 19 months amid lethal injection concerns”, the *Guardian*, 24 August 2017, <<https://www.theguardian.com/us-news/2017/aug/24/mark-james-asay-execution-florida-lethal-injection>>.

77 “Ohio set to execute gravely ill prisoner, Alva Campbell”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6926>>.

78 *Alva Campbell v. Charlotte Jenkins, Warden, Chillicothe correctional institution*, Supreme Court of the United States: “notwithstanding the medical assessments of its own professionals, which indicate that Campbell has an allergy to the very drugs Ohio proposes to use, and that Campbell’s veins are unsuitable for IV access. This latter concern is especially troubling in light of Ohio’s “long, problematic history with IV catheters in lethal injection procedures”, <https://www.supremecourt.gov/DocketPDF/17/17-6688/19530/20171113100811380_2017.11.13%20Reply%20signed.pdf>.

79 “Alva Campbell, terminally ill prisoner who survived botched execution attempt dies on Ohio death row”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/7031>>.

human rights advocates and pharmaceutical companies. On 19 September 2017 a state court in Arkansas ruled that the Department of Corrections must disclose the packaging information of drugs,⁸⁰ and in Arizona a federal district court judge denied a First Amendment challenge, meaning that the source information of drugs does not have to be revealed.⁸¹ In January 2018, Nebraska introduced a bill that exempts the state from making public the identity of lethal drugs manufacturers.⁸² On 9 January 2018, an act proposing that information about the execution team and lethal injection drugs suppliers should be kept confidential was submitted to the Senate of South Carolina.⁸³

A number of initiatives to abolish the death penalty were introduced in several states during the reporting period. Legislators in Alabama,⁸⁴ Kentucky,⁸⁵ Missouri,⁸⁶ North Carolina,⁸⁷ Ohio⁸⁸ and Pennsylvania⁸⁹ filed bills with the aim of repealing the death penalty. In February 2018, Louisiana introduced a bill abolishing the death penalty for offences committed after 1 August 2018. The proposed bill is currently still subject to call and has not passed through the Senate of the state legislature.⁹⁰

Some bills to abolish the death penalty in federal states have failed. A bipartisan bill aiming to repeal the death penalty and replace it with life imprisonment without parole introduced in Kansas in January 2017, failed to pass into law in May 2018.⁹¹ A bill in Florida eliminating provisions concerning the death penalty for capital

80 *Arkansas Department of Correction and Wendy Kelley, in her official capacity as Director of the Arkansas Department of Correction v. Steven Shults* (Appeal from the Pulaski County Circuit court), Supreme Court of Arkansas, 2 November 2017, <https://deathpenaltyinfo.org/files/pdf/2017.11.02_ArkDOCv.Shults.pdf>.

81 “Mixed Rulings in Arkansas and Arizona Highlight Issue of Lethal-Injection Secrecy”, Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6877>>.

82 LB661, Nebraska Legislature, <https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=25062>

83 “SC - SB871, Execution team member identity disclosure”, South Carolina Senate, <<https://trackbill.com/bill/south-carolina-senate-general-bill-871-execution-team-member-identity-disclosure/1511581/>>.

84 “Bill Status for SB104 (Regular Session 2018): Death penalty repealed”, the Alabama Legislature, <http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.ASPX?BILL=SB104&WIN_TYPE=BillResult>.

85 “SB54: An act relating to the abolition of the death penalty”, Kentucky Legislature <<http://www.lrc.ky.gov/record/18rs/SB54.htm>>.

86 “SB595: Repeals the Death Penalty”, Missouri State Senate, <http://www.senate.mo.gov/18info/BTS_Web/Bill.aspx?SessionType=R&BillID=69471943>.

87 “House Bill 604: Repeal Death Penalty”, North Carolina General Assembly. <<https://www2.ncleg.net/Bill-Lookup/2017/H604>>.

88 “Senate Bill 94: Abolish the Death Penalty”, the Ohio Legislature, <<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-94>>.

89 “An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, prohibiting use of the death penalty”, Pennsylvania General Assembly, 8 May 2017, <http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2017&sind=0&body=S&type=B&bn=703>.

90 “SB51: Eliminates the Death Penalty”, Louisiana State Legislature, <<http://www.legis.la.gov/Legis/BillInfo.aspx?i=233264&sbi=y>>.

91 “HB2167: Abolishing the death penalty and creating the crime of aggravated murder”, Kansas Legislature, <http://www.kslegislature.org/li/b2017_18/measures/hb2167/>.

felonies was withdrawn from consideration in March 2018.⁹² In February 2018, the Washington State Senate passed a bill to abolish the death penalty and forwarded it to the House of Representatives for examination.⁹³ The bill aimed to reduce state expenses by replacing the death penalty with life imprisonment without parole for aggravated first degree murder.⁹⁴ However, it failed in the House of Representatives in March 2018. The New Hampshire Governor vetoed a bill on the penalty for capital murder, introduced in February 2018.⁹⁵ Utah's initiative to repeal the death penalty, introduced in February 2018, was also withdrawn from consideration.⁹⁶

In March 2018, Alabama passed a bill allowing for the use of nitrogen hypoxia as an execution method if lethal injection is unavailable or found to be unconstitutional (effective July 2018).⁹⁷

In August 2017, California signed into law a bill that requires the permanent retention of court records in capital felony cases where the defendant was sentenced to death, including records of the cases of any co-defendants and any related cases, regardless of the disposition. The previously existing law specified the time period after which the documents could be destroyed.⁹⁸

In California, the Supreme Court upheld an initiative to speed up death-penalty appeals and executions, although as a directive, not a mandatory rule.⁹⁹

In Delaware, a bill revising the state's death penalty statute was introduced in April 2017. The bill would reinstate capital punishment for murder or accomplice to murder with aggravating circumstances. The House of Representatives passed the bill in May 2017, and it has since been pending in the Judicial and Community Affairs Committee in the Senate.¹⁰⁰

92 "SB1416: Death Penalty; Deleting provisions for the death penalty for capital felonies, etc.", the Florida Senate, <<https://www.flsenate.gov/Session/Bill/2018/01416/?Tab=BillHistory>>.

93 "Washington Senate passes bill to abolish death penalty", the *Seattle Times*, 14 February 2018, <<https://www.seattletimes.com/seattle-news/politics/washington-senate-passes-bill-to-abolish-death-penalty/>>.

94 "SB6052: Reducing criminal justice expenses by eliminating the death penalty and instead requiring life imprisonment without possibility of release or parole as the sentence for aggravated first degree murder", Washington State Legislature, <<http://apps2.leg.wa.gov/bills/summary?BillNumber=6052&Year=2017&BillNumber=6052&Year=2017>>.

95 "Governor Chris Sununu Vetoes SB 593", *governor.nh.gov*, <<https://www.governor.nh.gov/news-media/press-2018/20180621-sb593.htm>>.

96 "HB379: Death Penalty Amendments", Utah State Legislature, <<https://le.utah.gov/~2018/bills/static/HB0379.html>>.

97 Bill Status for SB272: Capital defendant, execution methods further provided for, use of by nitrogen hypoxia if lethal injection is unavailable or on election of defendant", the Alabama Legislature, <http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.ASPX?BILL=SB272&WIN_TYPE=BillResult>.

98 "Assembly Bill 1443, Chapter 172", California Legislative Information, <https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1443>.

99 "California Supreme Court Upholds, But Limits, Initiative to Speed Up Death-Penalty Appeals", Death Penalty Information Center, <<https://deathpenaltyinfo.org/node/6852>>.

100 House Bill 125: An act to amend Title 11 of the Delaware Code relating to the extreme crimes protection act", Delaware General Assembly, <<https://legis.delaware.gov/BillDetail?LegislationId=25590>>.

United States President Donald J. Trump repeatedly claimed that introduction of capital punishment for drug dealers is an effective solution for the opioid crisis.¹⁰¹ In March 2018, the White House announced Trump's initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand, whereby the Department of Justice is instructed to "seek the death penalty in drug trafficking cases, where appropriate under current law."¹⁰²

2. Abolitionist participating States

In the OSCE region, 52 of the 57 participating States are classified as abolitionists, meaning that the death penalty has been abolished for all crimes, in law and in practice.

Bosnia and Herzegovina is one of the 52 abolitionist states, although the Constitution of the Republika Srpska still provides for capital punishment. In a resolution issued at the Parliamentary Assembly on 24 January 2018, the Council of Europe called upon Bosnia and Herzegovina to adopt amendments to the Constitution of Republika Srpska, as it still provides for the death penalty, even though capital punishment is not applied in practice.¹⁰³

On 17 April 2017, after Turkish voters backed a constitutional referendum, Turkish President, Recep Tayyip Erdoğan, told supporters that he would "immediately discuss the reinstatement of capital punishment with his Prime Minister, Binali Yıldırım, and the leader of the opposition Nationalist Movement Party, Devlet Bahçeli", according to public sources.¹⁰⁴ It is also reported that he suggested holding a referendum on reinstating the death penalty.¹⁰⁵ On 15 July 2017, Erdoğan made a statement in Istanbul that he would not hesitate to introduce capital punishment should the parliament back it.¹⁰⁶ On 17 July 2017, the European Commission President, Jean-Claude Juncker, warned against Turkey re-imposing the death penalty, stating that "the move would slam the door to EU membership".¹⁰⁷ He delivered

101 "Remarks by President Trump on Combatting the Opioid Crisis", the White House, 19 March 2018, <<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-combatting-opioid-crisis/>>.

102 "President Donald J. Trump's Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand", *op. cit.*, note 11.

103 "Resolution 2201 (2018): The honouring of obligations and commitments by Bosnia and Herzegovina", Parliamentary Assembly of the Council of Europe, 24 January 2018, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML-2HTML-en.asp?fileid=24465&lang=en>>.

104 "Turkey's next referendum could reintroduce the death penalty, Erdogan says", *Newsweek*, 17 April 2017, <<https://www.newsweek.com/turkey-referendum-death-penalty-erdogan-eu-membership-585065>>.

105 *Newsweek and Euroactive with AFP*, *op. cit.*, note 11.

106 *Ibid.*

107 "Juncker: Death penalty will end Turkey's EU bid", *EUobserver*, 17 July 2017, <<https://euobserver.com/enlargement/138545>>.

a similar message on 31 May 2017.¹⁰⁸ On 9 May 2017, German Chancellor Angela Merkel said that Turkish citizens living in Germany would not be allowed to vote in any referendum on reinstating the death penalty.¹⁰⁹

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

On the international level:

All 57 OSCE participating States are members of the United Nations.

On 18 September 2017, during the United Nations General Assembly Ministerial Week in New York, a Global Alliance for Torture-Free Trade was launched, bringing together countries from around the world.¹¹⁰ Mongolia and the EU, as well as other OSCE participating States involved in the Alliance, confirmed their commitment to end the trade in goods used to carry out the death penalty. The following 43 OSCE participating States participate in the Alliance: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Moldova, Mongolia, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.¹¹¹

On 29 September 2017, after putting the death penalty at the heart of its discussion, the 36th session of the UN Human Rights Council ended with the adoption of Resolution 36/17 on the death penalty.¹¹² The resolution was adopted by recorded vote of 27 to 13, with seven abstentions. The following 14 OSCE participating States voted in favor of the resolution: Albania, Belgium, Croatia, Georgia, Germany, Hungary, Kyrgyzstan, Latvia, Mongolia, Netherlands, Portugal, Slovenia, Switzerland, and the United Kingdom. The United States voted against. Recognizing that the death penalty is “a form of torture or other cruel, inhuman or degrading treatment or

108 “Juncker: Death penalty in Turkey would mean end to EU accession talks”, *Euractiv*, 1 June 2017, <<https://www.euractiv.com/section/justice-home-affairs/news/juncker-death-penalty-in-turkey-would-mean-end-to-eu-accession-talks/>>.

109 “Merkel rules out allowing German Turks say on death penalty”, *Euractiv*, 9 May, 2017, <<https://www.euractiv.com/section/global-europe/news/merkel-rules-out-allowing-german-turks-say-on-death-penalty/>>.

110 “The Alliance for Torture-Free Trade to stop the trade in goods used for capital punishment and torture”, 6 September 2017, European External Action Service, <https://eeas.europa.eu/delegations/mongolia/31699/alliance-torture-free-trade-stop-trade-goods-used-capital-punishment-and-torture_en>

111 Political Declaration, Global Alliance to end trade in goods used for capital punishment and torture, 19 September 2017, New York, <http://torturefreetrade.org/documents/170918_Political-Declaration-Torture-Free.pdf>; for more information on the Alliance see <http://torturefreetrade.org/>

112 A/HRC/RES/36/17, Resolution adopted by the Human Rights Council on 29 September 2017, The question of the death penalty, 5 October 2017, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/291/39/PDF/G1729139.pdf?OpenElement>>

punishment” and addressing “disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals”, the resolution underlines the discriminatory aspect of the death penalty and aims to organize a high-level panel on this issue during the 40th session of the UN Human Rights Council. The resolution includes an emphasis on “deploring” and “condemning” the execution of those exercising their rights to freedom of expression and assembly, those under 18 at the time of the crime, people with mental or intellectual disabilities, pregnant women, people who engage in same-sex sexual relations, and those who engage in adultery. Moreover, the resolution asks the UN Secretary General to dedicate his 2019 yearly supplement of his quinquennial report to capital punishment and its consequences for the respect for human rights.

During the same 36th session of the UN Human Rights Council, the UN Secretary General presented the yearly supplement to his quinquennial report on capital punishment.¹¹³ It paid specific attention to discrimination in the context of the death penalty. An entire section of the report focuses on socio-economic discrimination. In particular, the report examines the disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals, foreign nationals, individuals exercising their right to freedom of religion or belief and freedom of expression, and the discriminatory use of the death penalty against people belonging to racial and ethnic minorities, its discriminatory use based on gender or sexual orientation and its discriminatory use against individuals with mental or intellectual disabilities.

During the 36th session of the UN Human Rights Council, the UN High Commissioner for Human Rights submitted his report on the high-level panel discussion on the question of the death penalty that was held at the 34th session of the Council on 1 March 2017.¹¹⁴ The objective of the panel discussion was to continue exchanging views on the question of the death penalty and to address violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. According to the report, a significant number of States hold that the death penalty is a form of torture or other cruel, inhuman or degrading treatment or punishment.

On 10 October 2017, the United Nations Office of the High Commissioner for Human Rights organized a panel on “Transparency and the death penalty” in New York. UN Secretary General António Guterres, in his first public statement as Secretary General on the death penalty, stated that “the death penalty has no place in the

113 A/HRC/36/z6, 36th session of the Human Rights Council: Reports, United Nations Human Rights Council, 22 August 2017, <<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session36/pages/listreports.aspx>>

114 “High-level panel discussion on the question of the death Penalty: Report of the United Nations High Commissioner for Human Rights”, United Nations General Assembly, 4 July 2017, A/HRC/36/z7.

21st century”.¹¹⁵ He stated that the lack of transparency and secrecy surrounding executions in some retentionist states “shows a lack of respect for the human rights of those sentenced to death and to their families” and added that “full and accurate data is vital to policy-makers, civil society and the general public. It is fundamental to the debate around the death penalty and its impact.”¹¹⁶ Discussions focused on three aspects of transparency. Panelists pointed out that some governments refuse to disclose data, seek to hide who is on death row and classify information on the death penalty as a state secret, making its release an act of treason. Participants also highlighted the lack of transparency for the families of those on death row, who sometimes do not know the whereabouts and the conditions of incarceration of their loved ones.¹¹⁷

On 19 December 2017, the UN General Assembly, during its 72nd session in New York, adopted resolution 72/163 on torture and other cruel, inhuman or degrading treatment or punishment.¹¹⁸ The UN General Assembly condemned all forms of torture and other ill-treatment, recognizing that states must protect the rights of those facing criminal sentences, including the death penalty and life imprisonment without the possibility of parole, and of other affected people in accordance with their international obligations.

On the regional level:

All 47 Council of Europe member states are also OSCE participating States.¹¹⁹ In addition, the OSCE participating States of Canada, the Holy See and the United States are Council of Europe observer states. Seven OSCE participating States have no formal involvement with the Council of Europe.

Since 2001, the Ministers’ Deputies have held regular exchanges of views on the abolition of the death penalty in all member States.

On 5 April 2017 at the 1283rd meeting of the Ministers’ Deputies, views were exchanged on the abolition of the death penalty, on the basis of the Secretary General’s document “*Policy of the Council of Europe in relation to the Death Penalty and Challenges*”

115 António Guterres, “Remarks at Panel on ‘Transparency and the death penalty’”, United Nations, 10 October 2017, <<https://www.un.org/sg/en/content/sg/speeches/2017-10-10/sgs-transparency-and-death-penalty-remarks>>.

116 *Ibid.*

117 For more information on the panel discussion see: “Death penalty and transparency – what’s to hide?”, United Nations Office of the High Commissioner for Human Rights, <<https://www.ohchr.org/en/newsevents/pages/death-penaltyandtransparency.aspx>>.

118 “Resolution adopted by the General Assembly on 19 December 2017: Torture and other cruel, inhuman or degrading treatment or punishment”, United Nations General Assembly, 19 January 2018, <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/163>.

119 “Our member States”, the Council of Europe in brief, <<https://www.coe.int/en/web/about-us/our-member-states>>.

and Policy Options”.¹²⁰ The objective of the paper is to identify and analyze different challenges to Council of Europe policy on the abolition of the death penalty in Europe and beyond.

At the same meeting, the deputies considered a decision reaffirming their univocal opposition to the death penalty in all places and in all circumstances, and reiterating their strong and urgent call on the Russian Federation, as the only Council of Europe member State that has not yet abolished the death penalty, to take, without delay, all the necessary steps to transform the existing moratorium on the death penalty into a *de jure* abolition and to ratify Protocol. No. 6 to the European Convention on Human Rights. The decision also reiterated the deputies’ strong call to the authorities of Belarus to establish, without delay, a formal moratorium on executions as a first step towards abolition of the death penalty and to commute the death sentences that have been pronounced. The deputies also regretted that executions also continued in the United States, a Council of Europe observer State. The deputies adopted the decision at their 1284th meeting on 19 April 2017.¹²¹

On 13 October 2017, the Council of Europe Directorate General of Human Rights and Rule of law provided an update on the death penalty in Belarus.¹²²

On 25 October 2017, at their 1298th meeting, the deputies adopted another decision reiterating that, in accordance with case law from the European Court of Human Rights, the death penalty is a particularly cruel and inhuman form of punishment, is prohibited by Article 3 of the European Convention on Human Rights, and recalling that Article 2 of this Convention, as amended by Protocols Nos. 6 and 13, bans the death penalty in all circumstances.¹²³

On 28 March 2018, in preparation for the exchange of views on the abolition of the death penalty in Europe at the Ministers’ Deputies 1314th meeting (18 April 2018), the Secretariat provided an update on the situation of the death penalty in Belarus.¹²⁴

120 “Policy of the Council of Europe in relation to the death penalty: challenges and policy options”, the Council of Europe, 27 March 2017, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807026b7>.

121 “Abolition of the death penalty: 1284th meeting”, Committee of Ministers of the Council of Europe, 19 April 2017, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680707509>.

122 “Abolition of the death penalty: Information document by the Directorate General of Human Rights and Rule of Law on the death penalty in Belarus”, Committee of Ministers of the Council of Europe, 13 October 2017, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168075df5f>.

123 “Abolition of the death penalty: 1298th meeting”, Committee of Ministers of the Council of Europe, 25 October 2017, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168075ff35>.

124 “Abolition of the death penalty: Information document by the Directorate General of Human Rights and Rule of Law on the death penalty in Belarus”, Committee of Ministers of the Council of Europe, 28 March 2018, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168079c838>.

OSCE level:

Statements made during OSCE Permanent Council meetings between 1 April 2017 and 31 March 2018:

At the 1143rd Plenary Meeting of the OSCE Permanent Council on 27 April 2017, the EU expressed its deep concern about the developments in the United States regarding the planned execution of eight people in Arkansas and the breaking of a *de facto* moratorium on the death penalty that had been in place since 2005. The EU reiterated its firm opposition to the use of the death penalty at all times and in all circumstances, even when backed by due process in a democratic society. Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Moldova, Montenegro and Serbia aligned themselves with the statement.¹²⁵ A joint statement on behalf of Iceland, Liechtenstein, Norway, San Marino and Switzerland was also issued. It condemned the executions in the United States and noted that “capital punishment is not a deterrent against crime and makes miscarriages of justice irreversible” and that “in the international community there is an increasing support for the view that the death penalty constitutes a violation of the prohibition of torture and cruel, inhuman and degrading treatment or punishment”.¹²⁶ It was also noted that there is a global trend towards the abolition of the death penalty. In its reply to the execution of Ledell Lee, Jack Harold Jones and Marcel Wayne Williams in the State of Arkansas, the United States Mission to the OSCE stated that “The U.S. judicial system provides exhaustive protections to ensure that the death penalty is not applied in an extrajudicial, summary, or arbitrary manner and that it may only be carried out subject to extensive due process and equal protection requirements after exhaustive appeals. These and other protections, including with respect to the manner in which a death penalty is carried out, are guaranteed by the U.S. Constitution and criminal statutes at both the federal and state levels”.¹²⁷

At the 1145th Plenary Meeting of the OSCE Permanent Council, on 11 May 2017, the EU issued a statement condemning the execution in Belarus of Siarhei Vostrykau, noting that “the death penalty constitutes inhuman and degrading treatment, does not have any proven significant deterrent effect, and allows judicial errors to become irreversible and fatal”. The statement added that the EU “also echoed ODIHR Director Michael Link’s concerns about the secrecy surrounding executions in Belarus”. Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Moldova, Montenegro and Serbia aligned themselves with

¹²⁵ “EU Statement on the Death Penalty in the United States: OSCE Permanent Council No 1143, Vienna”, OSCE, 27 April 2017, <<https://www.osce.org/permanent-council/324241?download=true>>.

¹²⁶ “Joint Statement on the death penalty in the United States. OSCE Permanent Council No 1143, Vienna”, 27 April 2017, <<https://www.osce.org/permanent-council/324251?download=true>>.

¹²⁷ See: “On the Executions of Ledell Lee, Jack Harol Jones, and Marcel Wayne in the State of Arkansas”, U.S. Mission to the OSCE, 27 April 2017, <<https://osce.usmission.gov/executions-ledell-lee-jack-harold-jones-marcel-wayne-williams-state-arkansas/>>.

the statement.¹²⁸ The Permanent Delegation of Norway to the OSCE, together with Iceland, Liechtenstein, San Marino, and Switzerland also denounced the execution of Vostrykau in Belarus.¹²⁹ The joint statement reiterated that in the international community there is increasing support for the view that the death penalty constitutes a violation of the prohibition of torture and cruel, inhuman and degrading treatment or punishment. At the 1152nd Plenary Meeting of the OSCE Permanent Council on 6 July 2017, the EU denounced the death penalty case of William Charles Morva, a Hungarian-American dual citizen, in the state of Virginia, in the United States. The EU noted that “there is evidence to show that Mr. Morva is suffering from severe mental illness. The EU remains particularly concerned by the imposition of the death penalty in cases of persons suffering from intellectual disability or mental illness, which is contrary to widely accepted human rights norms and to the minimum standards set forth in several international human rights instruments.”¹³⁰ Albania, Bosnia and Herzegovina, Liechtenstein, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Norway, San Marino and Serbia aligned themselves with the statement.

At the 1160th Plenary Meeting of the OSCE Permanent Council on 12 October 2017, the EU together with Albania, Andorra, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine, issued a statement on the occasion of the European and World Day against the Death Penalty. It stated that “as highlighted by EU High Representative/Vice President Mogherini and CoE Secretary General Jagland, the death penalty is incompatible with human dignity. It constitutes inhuman and degrading treatment, does not have any proven deterrent effect, and allows judicial errors to become irreversible and fatal.”¹³¹ The EU also called on states “not to reintroduce death penalty once it has been abolished or suspended. The scourge of terrorism affects all parts of the world, and the OSCE region is not an exception. However, the threat of terrorism cannot serve as a legal justification for the death penalty.”¹³² At the same meeting, the Delegation of Norway, on behalf of Canada, Iceland, Liechtenstein, Mongolia, San Marino and Switzerland, issued a statement confirming their opposition to capital punishment on the occasion of the World Day against the death penalty, referring to the issue of whether people living in poverty or members of socially marginalized and discriminated groups are at greater risk of being sentenced to death

128 “EU statement on the Execution in Belarus of Siarhei Vostrykau: OSCE Permanent Council No 1145, Vienna”, OSCE, 11 May 2017, <<https://www.osce.org/permanent-council/320761?download=true>>.

129 “Joint Statement on capital punishment in Belarus: OSCE Permanent Council No 1145, Vienna”, OSCE, 11 May 2017, <<https://www.osce.org/permanent-council/320766?download=true>>.

130 “EU statement on the Death Penalty in the United States: OSCE Permanent Council No 1152, Vienna”, OSCE, 6 July 2017, <<https://www.osce.org/permanent-council/330321?download=true>>.

131 “EU statement on European and World Day against the Death Penalty: OSCE Permanent Council No 1160 Vienna”, OSCE, 12 October 2017, <<https://www.osce.org/permanent-council/350596?download=true>>, (hereafter, “EU statement on European and World Day against the Death Penalty”).

132 *Ibid.*

and executed, and stated that “social and economic inequality must play no role in access to justice, especially when the defendant risks the sentence of death”.¹³³ The statement strongly urged the three OSCE participating states maintaining the death penalty in law, but with moratoria on executions, and the two retentionist states, to suspend all executions, take immediate steps towards abolition, and join efforts to free the OSCE region of the death penalty.

At the 1173rd Plenary Meeting of the OSCE Permanent Council on 25 January 2018, the EU made a statement on the sentencing to death of Vyachaslaw Sukharka and Alyaksandr Zhylnikaw in their retrial before the Minsk City Court on 20 January 2018. The EU strongly and unequivocally opposed the use of the death penalty at all times and in all circumstances. It also stated that “the death penalty is cruel, inhuman and degrading in nature, even when backed by due process in a democratic society”.¹³⁴ Albania, Andorra, Bosnia and Herzegovina, Iceland, Lichtenstein, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Norway, San Marino and Serbia aligned themselves with the statement.¹³⁵

At the 1179th Plenary Meeting of the OSCE Permanent Council on 15 March 2018, the EU issued a statement reaffirming its opposition on the use of the death penalty. In this statement, the EU voiced increased concern “about the lack of transparency surrounding the use of the death penalty in Belarus, which leaves families of the convicted and the public in the dark”.¹³⁶ Albania, Andorra, Bosnia and Herzegovina, Iceland, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine aligned themselves with the statement. At the same meeting, the Permanent Delegation of Norway, on behalf of Andorra, Iceland, Liechtenstein and Switzerland, spoke against the death penalty in the United States and Belarus, and condemned the latest executions in the two countries. Norway stated that the five countries “consider the death penalty to be a cruel, inhuman and degrading punishment, incompatible with human rights and human dignity. It is also irreversible. The inherent risk of mistake in all criminal justice systems shows the willingness of retentionist States to risk perpetuating the miscarriage of justice through the application of the death penalty. Innocent people are at times wrongfully convicted and executed.”¹³⁷ Norway also stated that it was well-documented that capital punishment does not itself deter crime. In its reply to the Permanent Council, the U.S.

133 “EU statement on European and World Day against the Death Penalty”, *op. cit.*, note 141.

134 “EU statement on two death sentences in Belarus: OSCE Permanent Council No 1173, Vienna”, OSCE, 25 January 2017, <<https://www.osce.org/permanent-council/369956?download=true>>.

135 In its reply to the Permanent Council, the U.S. Mission to the OSCE stated that “international law does not prohibit capital punishment. Rather, each country is entitled to choose the path to take on this policy matter. Any decision to eliminate capital punishment must be addressed through the domestic democratic processes of individual countries”, <<https://www.osce.org/permanent-council/369961?download=true>>.

136 “EU Statement on the death penalty: OSCE Permanent Council No 1179, Vienna”, OSCE, 15 March 2018, <<https://www.osce.org/permanent-council/380857?download=true>>.

137 “Statement on the death penalty in the United States of America and Belarus”, OSCE, 15 March 2018, <<https://www.osce.org/permanent-council/380854?download=true>>.

Mission to the OSCE stated that “the International Covenant on Civil and Political Rights specifically recognizes the authority of countries to impose the death penalty for “the most serious crimes,” in accordance with the law in force at the time of the commission of the crime, when carried out pursuant to a final judgment rendered by a competent court and in accordance with the applicable provisions of the Covenant, including requisite safeguards and fair trial guarantees” and that “United States law and the U.S. judicial system provide an exhaustive system of protections at both the federal and state levels to ensure that the death penalty is not applied in a summary or arbitrary manner, or in any manner inconsistent with the United States Constitution”.¹³⁸

Other activities as reported by OSCE abolitionist states:

Luxembourg noted that it provides financial support for the activities of the organization Ensemble Contre la Peine de Mort, including co-organization of the 2019 World Congress against the death penalty; the NGO Actions des Chrétiens pour l’abolition de la torture for the fight against capital punishment in Africa; as well as providing a voluntary financial contribution to the Office of the UN High Commissioner for Human Rights.

Italy financially supported the organization of the 10th Congress of Ministers of Justice on the death penalty that took place in November 2017 in Rome, promoted by the NGO Sant’Egidio Community, which actively campaigns against the death penalty. Switzerland also supported the event.

On 10 October 2017, the Swiss Federal Department of Foreign Affairs presented its new action plan, which sets out Switzerland’s foreign policy activities towards universal abolition of the death penalty for the period until 2019.¹³⁹ Switzerland is also one of the main sponsors of the upcoming 7th World Congress Against the Death Penalty, which will be held from 27 February to 1 March 2019 in Brussels, Belgium.

Nationals facing the death penalty abroad

According to information from the participating States who replied to the 2018 ODIHR questionnaire, seven abolitionist OSCE participating States reported that their nationals had faced the death penalty abroad during the reporting period. Some of the states were not able to share further information concerning their

¹³⁸ See: “Right of Reply on the Death Penalty”, U.S. Mission to the OSCE, 15 March 2018, <<https://www.osce.org/permanent-council/380917?download=true>>.

¹³⁹ “FDFA Action Plan for the Universal Abolition of the Death Penalty 2017-2019”, Federal Department of Foreign Affairs FDFA, Swiss Confederation, <https://www.eda.admin.ch/dam/eda/en/documents/publications/MenschenrechtshumanitaerePolitikundMigration/aktionsplan-todesstrafe-2017-19_EN.pdf>.

citizens on death row abroad for reasons of confidentiality.¹⁴⁰ Other participating States did share additional information about citizens on death row abroad.

- Italy reported that two male Italian citizens face the death penalty abroad: in Thailand and in the United States, respectively. The Italian embassies, as well as the Ministry of Foreign Affairs, ensure that they are provided with proper consular protection and maintain regular contact with the detainees, their lawyers and families.
- Lithuania reported that one Lithuanian national, Jurijus Kadamovas, born in 1966, faces the death penalty in the United States.
- The Netherlands provided information that two male Dutch citizens (58 and 62 years of age) have been sentenced to death in Indonesia.
- Poland granted Abd al-Rahim Al-Nashiri victim status in 2010. Poland has reported that it continues correspondence and co-operation with the United States authorities concerning the al-Nashiri's case¹⁴¹ in order to ensure that he would not be subjected to the death penalty. The two states exchanged a number of letters and held bilateral meetings concerning al-Nashiri's situation. The 2014 ruling of the European Court for Human Rights (ECtHR) found Poland in violation of Articles 2, 3 and Article 1 of Protocol No. 6 to the Convention on account of the transfer of Al-Nashiri from Polish territory to the United States, despite the existence of a real risk that he could be subjected to the death penalty. Poland reported that after the judgement, in diplomatic communication with the United States dated October 2014, 6 March 2015, 13 May 2015 and 14 October 2015, it requested assurances by the United States Government that Mr Al-Nashiri would not be subjected to the death penalty. In response to the diplomatic communication, the United States authorities confirmed that the Polish authorities' request for diplomatic assurances cannot be supported. Subsequently, Poland declared its readiness to repeat its requests to the Government of the United States.
- Romania indicated that four Romanian citizens are facing capital charges abroad and one has already been sentenced to death. He reportedly submitted a request for pardon to the relevant federal state authorities. The Romanian authorities are in permanent contact with the convicted individual, with his lawyer, as well as with his family in Romania.

¹⁴⁰ According to the Netherlands' Personal Data Protection Act [Wet bescherming persoonsgegevens, or WBP] the Ministry of Foreign Affairs is bound, in this area, by the provisions of that Act, which is the Dutch transposition of EU Privacy Directive (95/46/EC).

¹⁴¹ *Al Nashiri v. Poland*, ECtHR, Application no. 28761/11, Judgement of 24 July 2014, European Court of Human Rights, <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-146044&filename=001-146044.pdf>>; for more information see also ODIHR background paper on the death penalty 2014, page 16; ODIHR background paper on the death penalty 2015, page 13; ODIHR background paper on the death penalty 2016, page 35.

- Sweden stated that two Swedish citizens are currently sentenced to death and facing capital punishment abroad. Due to reasons of consular secrecy Sweden is not able to provide specific details about these cases or information about the countries of detention.
- Turkey noted that two male Turkish citizens are facing the death penalty in Iran.
- Uzbekistan indicated that there are currently six Uzbek citizens – sentenced to death abroad.

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

The majority of OSCE participating States stressed their efforts to protect vulnerable groups facing the death penalty abroad, such as pregnant women, new mothers, people below 18 years of age and people with mental disabilities. In particular, EU member states reported that, according to the “EU Guidelines on the Death Penalty”, in those countries that still practice executions, capital punishment may not be imposed upon the aforementioned categories of people.¹⁴² A number of states stressed that whenever such a case occurs, they would regularly formally protest against the sentencing state. Other states also mentioned obligations stemming from international conventions and resolutions, such as the International Covenant on Civil and Political Rights,¹⁴³ the Convention on the Rights of the Child,¹⁴⁴ and the Economic and Social Council Resolution 1984/50 of 25 May 1984.¹⁴⁵ Several countries stressed in their replies that aliens on their territory who might be subjected to capital punishment, torture or other inhuman or degrading treatment or punishment in their home countries, should never be expelled.

¹⁴² “EU Guidelines on the Death Penalty (2013)”, European Commission, 8 June 2017, <https://ec.europa.eu/europeaid/eu-guidelines-death-penalty-2013-en_en>.

¹⁴³ Art. 6, ICCPR.

¹⁴⁴ Art. 37, CRC.

¹⁴⁵ “Economic and Social Council Resolution 1984/50”, United Nations, 25 May 1984, <https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1984/ECOSOC_Resolution_1984-50.pdf>.

3. De-facto abolitionist participating States

The Russian Federation and Tajikistan remain the only de-facto abolitionist countries in the OSCE region. Both states retain capital punishment for crimes committed in peacetime, but executions are not carried out on the basis of moratoria, established in 1996 and 2004, respectively. Within the reporting period, neither Russia nor Tajikistan have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, regarding abolition of the death penalty, nor has Russia, 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.

In the Russian Federation, although the application of the death penalty has been prohibited since 1996, with the prohibition reiterated by the Constitutional Court in 1999 and 2009,¹⁴⁶ capital punishment is still mentioned in Federal Legislation and formally listed as one of the types of criminal punishment. The Criminal Code of the Russian Federation provides for the death penalty as an exceptional measure for five types of offences: aggravated murder, assassination attempts against a state or public figure, attempts on the life of a person administering justice or preliminary investigations, attempts on the life of a law-enforcement official and genocide. The Criminal Code further specifies that the death penalty is not imposed against women, as well as offenders under the age of 18 or over 65 at the time of sentencing.¹⁴⁷ The Criminal Procedure Code of the Russian Federation also contains provisions on the death penalty.¹⁴⁸

During the working session at the OSCE Human Dimension Implementation Meeting in September 2017, the Council of Europe stressed that Russia is one of the two Council of Europe member States that have not yet signed the Protocol No.6 providing for the unconditional abolition of the death penalty.¹⁴⁹

3.1. Kazakhstan: Abolitionist for Ordinary Crimes Only

Since 2010, Kazakhstan has been defined as *de facto* abolitionist in ODIHR background papers on the death penalty. However, it was previously classified as “partly abolitionist”, meaning that the death penalty was abolished for crimes committed in peacetime, but retained for crimes committed in wartime. In light of a

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

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

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

149 Human Dimension Implementation Meeting, Working Session 12: Rule of Law. Contribution of the Council of Europe. Exchange of views on the question of abolition of capital punishment, OSCE/ODIHR, 11-22 September 2017, <<https://www.osce.org/odihr/342976?download=true>>.

death sentence handed down in 2016, it would be more appropriate to reclassify Kazakhstan 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.¹⁵⁰

An indefinite moratorium on executions has remained in place in Kazakhstan since the issuance of a presidential decree in 2003, when Kazakhstan halted executions and introduced life imprisonment as an alternative to the death sentence.¹⁵¹ Nevertheless, in November 2016, a specialized district criminal court of Almaty city handed down a death sentence on Ruslan Kulekbayev, who was found guilty of a shooting spree that resulted in the death of eight police officers and two civilians. He was the only person known to be under sentence of death by the end of the reporting period.

¹⁵⁰ “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty”, Report of the Secretary-General, United Nations Economic and Social Council, 13 April 2015, para. 10, E/2015/49, <<http://www.ohchr.org/Documents/Issues/DeathPenalty/E-2015-49.pdf>>.

¹⁵¹ “The Death Penalty in the OSCE Area: Background Paper 2015”, OSCE/ODIHR, 24 September 2015, p. 14, <<http://www.osce.org/odihr/184581?download=true>>; and “The Death Penalty in the OSCE Area: Background Paper 2016”, OSCE/ODIHR, p. 38, *op. cit.*, note 44.

Annexes

Annex 1

OSCE COMMITMENTS

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

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

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

Capital Punishment

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

Helsinki Document: The Challenges of Change (Helsinki 1992)

The participating States

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

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

(36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and re-affirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.

(36.1) They note

- i. that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on 11 July 1991;
- ii. that a number of participating States have recently taken steps towards the abolition of capital punishment;
- iii. the activities of several non-governmental organizations concerning the question of the death penalty.

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

17. The participating States

17.1 recall the commitments undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate within relevant international organizations;

17.2 recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

17.3 note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular Article 6 of the International Covenant on Civil and Political Rights;

17.4 note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;

17.5 note recent measures taken by a number of participating States towards the abolition of capital punishment;

17.6 note the activities of several non-governmental organizations on the question of the death penalty;

17.7 will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

17.8 will make available to the public information regarding the use of the death penalty.

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

Questions relating to security in Europe

(24) With regard to the question of capital punishment, the participating States note that capital punishment has been abolished in a number of them. In participating States where capital punishment has not been abolished, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to their international commitments. This question will be kept under consideration. In this context, the participating States will co-operate within relevant international organizations.

Annex 2

OSCE PARLIAMENTARY ASSEMBLY

OSCE Parliamentary Assembly 19th Annual Session (Oslo, 6 - 10 July 2010)

Resolution on the Death Penalty

[...]

The OSCE Parliamentary Assembly:

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

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

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

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

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

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

[...]

52. *Calls upon* the retentionist participating States to encourage the Office for Democratic Institutions and Human Rights and OSCE Missions, in co-operation

with the Council of Europe, to conduct awareness-raising activities against recourse to the death penalty, particularly with the media, law enforcement officials, policy-makers and the general public;

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

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

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

Declaration, Recalling the Spirit of Helsinki

Chapter III, Democracy, Human Rights and Humanitarian Questions

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

[...]

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

[...]

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

Annex 3

UNITED NATIONS STANDARDS AND REPORTS

International Covenant on Civil and Political Rights (1966)

[...]

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

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

**Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
(1989)**

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

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

Article 1

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

Article 2

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

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

Article 3

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

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

[...]

Article 16

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

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

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

[...]

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

**Economic and Social Council Resolution 1984/50:
Safeguards guaranteeing protection of the rights of those facing
the death penalty
(1984)**

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

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

The Economic and Social Council,

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

- a. Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;
- b. Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;
- c. Establishing a maximum age beyond which a person may not be sentenced to death or executed;
- d. Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

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

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

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

5. Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal

and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.

**Economic and Social Council Resolution 1996/15:
Implementation of the safeguards guaranteeing protection of the rights of
those facing the death penalty
(1996)**

[...]

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

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

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly

[...]

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes”. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the “most serious crimes”. The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States’ reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

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

The General Assembly,

[...]

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

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

1. *Expresses* its deep concern about the continued application of the death penalty;

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

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;

(b) To provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;

(c) To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;

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

3. *Calls upon* States which have abolished the death penalty not to reintroduce it;

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

[...]

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

The General Assembly,

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

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

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

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

[...]

¹ A/63/293 and Corr.1.

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

The General Assembly,

[...]

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

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

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

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

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

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 63/168² and the recommendations contained therein;

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

3. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum

² A/65/280 and Corr.1.

standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

(b) To make available relevant information with regard to their use of the death penalty, which can contribute to possible informed and transparent national debates;

(c) To progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed;

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

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

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

[...]

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

The General Assembly,

[...]

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

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

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

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

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

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

1. *Expresses* its deep concern about the continued application of the death penalty;

2. *Welcomes* the report of the Secretary-General on the implementation of resolution 65/206³ and the recommendations contained therein;

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

4. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

(b) To make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;

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

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

3 A/67/226

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

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

6. *Calls upon* States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;⁴

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

[...]

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

The General Assembly,

[...]

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

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available to the public information on the use of the death penalty, and also, in this regard, the decision by the Human Rights Council in its resolution 26/2 of 26 June 2014⁵ to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty,

[...]

1. *Expresses its deep* concern about the continued application of the death penalty;

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

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

2. *Welcomes* the report of the Secretary-General on the implementation of resolution 67/176⁶ and the recommendations contained therein;

3. *Also welcomes* the steps taken by some States to reduce the number of offences for which the death penalty may be imposed, as well as steps taken to limit its application;

4. *Further welcomes* the decisions made by an increasing number of States, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

5. *Calls upon* all States:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

(b) To make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;

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

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

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

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

⁶ A/69/288.

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

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

[...]

**United Nations General Assembly Resolution 71/187:
Moratorium on the use of the death penalty
(2016)**

[...]

1. Reaffirms the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations;

2. Expresses its deep concern about the continued application of the death penalty;

3. Welcomes the report of the Secretary-General on the implementation of resolution 69/1866 and the recommendations contained therein;

4. Also welcomes the steps taken by some States to reduce the number of offences for which the death penalty may be imposed, as well as steps taken to limit its application;

5. Further welcomes initiatives and political leadership encouraging national discussions and debates on the possibility of moving away from capital punishment through domestic decision-making;

6. Welcomes the decisions made by an increasing number of States from all regions, at all levels of government, to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;

7. Calls upon all States:

- (a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;

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

- (b) To comply with their obligations under article 36 of the 1963 Vienna Convention on Consular Relations,⁷ particularly the right to receive information on consular assistance;
 - (c) To make available relevant information, disaggregated by sex, age and race, as applicable, and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of death sentences reversed or commuted on appeal and information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;
 - (d) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age, on pregnant women or on persons with mental or intellectual disabilities;
 - (e) To reduce the number of offences for which the death penalty may be imposed;
 - (f) To ensure that those facing the death penalty can exercise their right to apply for pardon or commutation of their death sentence by ensuring that clemency procedures are fair and transparent and that prompt information is provided at all stages of the process;
 - (g) To establish a moratorium on executions with a view to abolishing the death penalty;
8. Calls upon States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
9. Encourages States which have a moratorium to maintain it and to share their experience in this regard;
10. Calls upon States that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
11. Requests the Secretary-General to report to the General Assembly at its seventy-third session on the implementation of the present resolution;
12. Decides to continue consideration of the matter at its seventy-third session under the item entitled “Promotion and protection of human rights”.

United Nations General Assembly Resolution 70/146:

**Torture and other cruel, inhuman or degrading treatment or punishment
(17 December 2015)**

[...]

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

[...]

United Nations General Assembly Resolution 72/163:

**Torture and other cruel, inhuman or degrading treatment or punishment
(19 December 2017)**

[...]

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

[...]

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

[...]

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

[...]

VIII. Conclusions

78. Developments on the question of the death penalty during the reporting period suggest that the trend towards abolition is continuing. However, numerous

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

79. States should amend national laws on extradition and deportation to specifically prohibit the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognized standards, unless adequate assurances are obtained that the death penalty will not be carried out.

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

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

**Report of the United Nations Secretary-General,
Question of the death penalty, A/HRC/27/23⁸
(2014)**

[...]

VIII. Conclusions

72. The trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for relevant international human rights norms and standards in States where the death penalty is still imposed. Until the death penalty is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve

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

intentional killing. The death penalty should not be imposed for “drug offences”, “consensual adult sex”, “blasphemy” or any other acts that do not meet the threshold of “most serious crimes”. States should abolish the mandatory death penalty, where it still exists. States must also ensure that the highest level of compliance with fair trial and other international human rights norms and standards are met in all death penalty cases.

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

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

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

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

[...]

V. Conclusions and Recommendations

55. As the Secretary-General has noted on several occasions, the death penalty has no place in the twenty-first century. In the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty is incompatible with fundamental tenets of human rights, in particular

human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. The application of the death penalty often also violates the right to equality and the principle of non-discrimination. The decision about whether to sentence a convict to death or to lesser punishment is often arbitrary and does not necessarily follow predictable, rational criteria. In that judicial lottery, the odds are often stacked against the poor, minorities and other common targets of discrimination, including women, foreign nationals and lesbian, gay, bisexual, transgender and intersex persons.

56. All measures aimed at ending the application of the death penalty are steps towards the enjoyment of the right to life. In its article 6, the International Covenant on Civil and Political Rights, adopted in 1966, referred to the abolition of the death penalty in terms that strongly suggest that it is desirable. In 1989, by adopting the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, States enshrined their stronger abolitionist stance in international law. The Secretary-General reiterates his call for universal ratification of the Second Optional Protocol, and urges those States that have not yet ratified it to do so without delay.

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

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

59. States that continue to apply the death penalty should comply with international human rights requirements, as stipulated in article 6 of the International Covenant on Civil and Political Rights. In particular, capital punishment may be

imposed only for most serious crimes, that is, intentional killing, and may not be mandatory in such cases. States should also adhere to fair trial guarantees in capital cases. Clemency, pardons and commutations are critical steps towards the abolition of the death penalty. Heads of State and Government and other responsible State authorities should exercise their constitutional and/or legal authority to grant amnesty, pardon or commutation of the sentence of death in all cases.

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

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

The Commission on Human Rights,

[...]

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

[...]

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

1. Recalls the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3), and welcomes the yearly supplement of the Secretary-General on changes in law and practice concerning the death penalty worldwide contained in his report (E/CN.4/2003/106), as requested in Commission resolution 2002/77;

2. Reaffirms resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence;

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

4. Urges all States that still maintain the death penalty:

(a) Not to impose it for crimes committed by persons below 18 years of age, and to exclude pregnant women from capital punishment;

(b) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

(c) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;

(d) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

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

(f) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;

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

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

(i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;

(j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

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

(a) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

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

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;

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

7. Requests States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;

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

The Commission on Human Rights,

[...]

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

[...]

4. Urges all States that still maintain the death penalty:
 - (a) Not to impose it for crimes committed by persons below 18 years of age;
 - (b) To exclude pregnant women and mothers with dependent infants from capital punishment;
 - (c) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;
 - (d) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;
 - (e) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;
 - (f) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults;
 - (g) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;
 - (h) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance

within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgments;

(i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, is stopped immediately;

(j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

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

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

(b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;

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

7. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out, and calls upon States to provide such effective assurances if requested to do so;

[...]

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

The Commission on Human Rights,

1. *Expresses its concern* at the continuing use of the death penalty around the world, alarmed in particular at its application after trials that do not conform to international standards of fairness and that several countries impose the death penalty in disregard of the limitations set out in the International Covenant on Civil and

Political Rights and the Convention on the Rights of the Child and of the safeguards guaranteeing protection of the rights of those facing the death penalty;

2. *Condemns* the continuing application of the death penalty on the basis of any discriminatory legislation, policies or practices;

3. *Condemns also* cases in which women are subjected to the death penalty on the basis of gender-discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities;

[...]

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

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

(b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;

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

7. *Urges* all States that still maintain the death penalty:

(a) Not to impose it for crimes committed by persons below 18 years of age;

(b) To exclude pregnant women and mothers with dependent infants from capital punishment;

(c) Not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person;

(d) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent

court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;

(e) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;

(f) To ensure also that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence;

(g) To withdraw and/or not to enter any new reservations under article 6 of the Covenant that may be contrary to the object and purpose of the Covenant, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;

(h) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure, as affirmed by the jurisprudence of the International Court of Justice and confirmed in recent relevant judgements;

(i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;

(j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

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

9. *Calls upon* States that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend such executions;

10. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that the death penalty will not be carried out, and calls upon States to provide such effective assurances if requested to do so, and to respect them;

[...]

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

The Human Rights Council,

[...]

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

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

[...]

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

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

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

stages of the imposition and application of the death penalty on the enjoyment of the human rights of those facing the death penalty and other affected persons, and to present it to the Human Rights Council at its thirtieth session;

[...]

**United Nations Human Rights Council Resolution 30/5⁹:
The question of the death penalty
(2015)**

[...]

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

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

[...]

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

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

Emphasizing the need to ensure that persons facing the death penalty are treated with humanity and with respect for their inherent dignity, and to improve

⁹ See also Human Rights Council decision 18/117 of 28 September 2011 on reporting by the Secretary-General on the question of the death penalty, Council resolution 22/11 of 21 March 2013 on a panel on the human rights of children of parents sentenced to the death penalty or executed, Council decision 22/117 of 21 March 2013 on a high-level panel discussion on the question of the death penalty and Council resolution 26/2 of 26 June 2014 on the question of the death penalty.

conditions in prisons in accordance with international standards, such as the Standard Minimum Rules for the Treatment of Prisoners,

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

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

[...]

1. Urges all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
2. Calls upon States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;
3. Calls upon States that have not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;
4. Calls upon States to ensure that children whose parents or parental caregivers are on death row, the inmates themselves, their families and their legal representatives are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform on where the body is located, unless this is not in the best interests of the child;

5. Requests the Secretary-General to dedicate the 2017 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of the persons facing the death penalty and other affected persons, paying specific attention to the right to equality and non-discrimination, including on foreign nationals, and to present it to the Human Rights Council at its thirty-sixth session;

6. Decides that the upcoming biennial high-level panel to be held at the thirty fourth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

7. Requests the Office of the United Nations High Commissioner for Human Rights to organize the panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including non-governmental organizations, and national human rights institutions, with a view to ensuring their participation in the panel discussion;

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

United Nations Human Rights Council Resolution 36/17:

The question of the death penalty

(29 September 2017)

[...]

Recalling general recommendation No. 35 on gender-based violence against women recently adopted by the Committee on the Elimination of Discrimination against Women, in which the Committee recommended that States parties to the Convention repeal all criminal provisions that affect women disproportionately, including those resulting in the discriminatory application of the death penalty to women,

Recalling also general recommendation No. 31 of the Committee on the Elimination of Racial Discrimination on the prevention of racial discrimination in the administration and functioning of the criminal justice system,

[...]

Deploring the fact that, frequently, poor and economically vulnerable persons and foreign nationals are disproportionately subjected to the death penalty, that laws carrying the death penalty are used against persons exercising their rights to freedom of expression, thought, conscience, religion or peaceful assembly and association, and that persons belonging to religious or ethnic minorities are disproportionately represented among those sentenced to the death penalty,

[...]

Condemning the imposition of the death penalty as a sanction for specific forms of conduct, such as apostasy, blasphemy, adultery and consensual same-sex relations, and expressing serious concern that the application of the death penalty for adultery is disproportionately imposed on women,

[...]

1. *Urges* all States to protect the rights of persons facing the death penalty and other affected persons by complying with their international obligations, including the rights to equality and non-discrimination;
2. *Calls upon* States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty to consider doing so;
3. *Calls upon* States that have not yet abolished the death penalty to ensure that it is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law;
4. *Calls upon* States to ensure that all accused persons, in particular poor and economically vulnerable persons, can exercise their rights related to equal access to justice, to ensure adequate, qualified and effective legal representation at every stage of civil and criminal proceedings in capital punishment cases through effective legal aid, and to ensure that those facing the death penalty can exercise their right to seek pardon or commutation of their death sentence;
5. *Urges* States that have not yet abolished the death penalty to ensure that the death penalty is not applied against persons with mental or intellectual disabilities and persons below 18 years of age at the time of the commission of the crime, as well as pregnant women;

6. *Also urges* States that have not yet abolished the death penalty to ensure that it is not imposed as a sanction for specific forms of conduct such as apostasy, blasphemy, adultery and consensual same-sex relations;

7. *Calls upon* States to comply with their obligations under article 36 of the Vienna Convention on Consular Relations, and to inform foreign nationals of their right to contact the relevant consular post;

8. *Also calls upon* States to undertake further studies to identify the underlying factors that contribute to the substantial racial and ethnic bias in the application of the death penalty, where they exist, with a view to developing effective strategies aimed at eliminating such discriminatory practices;

9. *Calls upon* States that have not yet abolished the death penalty to make available relevant information, disaggregated by gender, age, nationality and other applicable criteria, with regard to their use of the death penalty, inter alia, the charges, number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon has been granted, as well as information on any scheduled execution, which can contribute to possible informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty;

10. *Requests* the Secretary-General to dedicate the 2019 supplement to his quinquennial report on capital punishment to the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of persons facing the death penalty and other affected persons, paying specific attention to the impact of the resumption of the use of the death penalty on human rights, and to present it to the Human Rights Council at its forty-second session;

11. *Decides* that the upcoming biennial high-level panel discussion to be held at the fortieth session of the Human Rights Council will address the human rights violations related to the use of the death penalty, in particular with respect to the rights to non-discrimination and equality;

12. *Requests* the Office of the United Nations High Commissioner for Human Rights to organize the high-level panel discussion and to liaise with States, relevant United Nations bodies, agencies, treaty bodies, special procedures and regional human rights mechanisms, as well as with parliamentarians, civil society, including

non-governmental organizations, and national human rights institutions with a view to ensuring their participation in the panel discussion;

13. *Also requests* the Office of the High Commissioner to prepare a summary report on the panel discussion and to submit it to the Human Rights Council at its forty-second session;

14. *Decides* to continue its consideration of this issue in accordance with its programme of work.

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

[...]

VI. Conclusions and recommendations

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

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

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

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

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

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

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

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

- (a) To abolish the use of the death penalty for juveniles, persons with mental disabilities and pregnant women and give further consideration to abolishing the death penalty for persons over the age of 70 years and for recent mothers;
- (b) To ensure that the method of execution employed causes the least possible physical and mental suffering and that it does not violate the prohibition of

- torture and cruel, inhuman or degrading treatment; establish that there are no more humane alternatives available; and justify the use of a particular method of execution. The Special Rapporteur reiterates that the burden of proof is on the State;
- (c) To refrain from carrying out executions in public or in any other degrading manner; end the practice of secret executions; and end the practice of executions with little or no prior warning given to condemned prisoners and their families;
 - (d) To improve conditions on death row in accordance with international standards, such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights;
 - (e) To use solitary confinement on death row only in accordance with the recommendations made in his previous report to the General Assembly (A/66/268);
 - (f) To respect the rights of the families and relatives of persons sentenced to death.

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

Annex 4

COUNCIL OF EUROPE STANDARDS

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

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

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

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

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

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

Article 6 – Relationship to the Convention

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

**Protocol No. 13 to the European Convention
for the Protection of Human Rights and Fundamental Freedoms,
Concerning the Abolition of the Death Penalty in All Circumstances
(2002)**

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4 – Territorial application

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

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

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

Article 5 – Relationship to the Convention

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

Parliamentary Assembly of the Council of Europe (PACE)

Resolution 1187¹⁰

(1999)

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

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

Parliamentary Assembly of the Council of Europe (PACE)
Resolution 1807,
The death penalty in Council of Europe member and observer states: a
violation of human rights
(2011)

1. The Parliamentary Assembly reiterates its principled opposition to the death penalty in all circumstances. It takes pride in its successful contribution to eradicating this inhuman and degrading punishment from almost all of Europe, by having made abolition of the death penalty a condition for accession to the Council of Europe.

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

[...]

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

[...]

6. As regards the death penalty, the Assembly:

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

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

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

[...]

Annex 5

EUROPEAN UNION STANDARDS

Charter of Fundamental Rights of the European Union (2010)

[...]

Article 1

Human dignity

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

Article 2

Right to Life

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

Article 3

Right to the integrity of the person

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

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 19

Protection in the event of removal, expulsion or extradition

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

**European Union Guidelines on the Death Penalty
(2008)**

[...]

III. Minimum standards paper

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

iii) Capital punishment may not be imposed on:
persons below 18 years of age at the time of the commission of their crime;
pregnant women or new mothers;
persons who have become insane.

iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.

v) Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.

vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.

vii) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.

ix) Capital punishment may not be carried out in contravention of a state's international commitments.

x) The length of time spent after having been sentenced to death may also be a factor.

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

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

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

[...]

II. OPERATIONAL PAPER

The EU considers that the death penalty constitutes serious violation of human rights and human dignity. Encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty. ¹¹ The abolition of capital punishment contributes to the progressive development of human rights. Capital punishment is inhumane and unnecessary. No compelling evidence exists to show that the death penalty

serves as a deterrent to crime. Furthermore, any miscarriage of justice could lead to the intentional killing of an innocent person by state authorities.

[...]

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

The European Parliament,

...

1. *Reiterates* its long-standing position against the death penalty in all cases and under all circumstances and *expresses* once more its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights;

2. *Calls for* a worldwide moratorium on executions to be established immediately and unconditionally with a view to the worldwide abolition of the death penalty, through a relevant resolution of the current UN General Assembly, whose actual implementation the UN Secretary-General should be able to monitor.

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

The European Parliament,

...

1. Reiterates its call to the EU Member States to gather third-country support for the statement;

2. Encourages the EU to seize the existing opportunities and press its case and calls on the EU Member States and the EU to immediately submit - seeking the co-sponsorship of countries in other continents - a resolution for a universal moratorium on the death penalty to the current UN General Assembly;

3. Calls on the EU Presidency to encourage those remaining countries which have not signed and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights to do so, and those Member States that have not signed Protocol No 13 to the European Convention on Human Rights on the death penalty to do so;

4. Fully endorses the final declaration of the third World Congress and intends to follow up the Congress, notably by developing the parliamentary dimension of the global campaign against the death penalty and raising the matter through its interparliamentary delegations and participation in the ACP-EU Joint Parliamentary Assembly and the Euro-Mediterranean Parliamentary Assembly;

5. Calls on the Council and the Commission to take every possible opportunity to support the establishment of regional abolitionist coalitions;

6. Calls on all institutions of the European Union, together with the Council of Europe, to support the World Day against the Death Penalty by declaring 10 October a European Day against the Death Penalty, from 2007 onwards, and endorses the initiative of organising a high-profile European conference against the death penalty in connection with that day; mandates its President to represent the European Parliament, together with the relevant delegation, on that occasion;

[...]

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

The European Parliament,

[...]

1. *Reiterates* its long-standing opposition to the death penalty in all cases and under all circumstances and emphasises once again that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights;

2. *Condemns* all executions wherever they take place; strongly calls on the EU and its Member States to enforce the implementation of the UN resolution on a universal moratorium on executions with a view to total abolition in all states which still practise the death penalty; calls on the Council and the Commission to take action in order to progressively restrict its use while insisting that it be carried out according to international minimum standards; expresses its deep concern regarding the imposition of the death penalty on minors and on persons with mental or intellectual disability and calls for their immediate and definitive ending;

3. *Urges* the EU to use all tools of diplomacy and cooperation assistance available to it to work towards the abolition of the death penalty;

4. *Calls upon* states applying the death penalty to declare an immediate moratorium on executions;

(...)

6. *Encourages* the states that have not abolished the death penalty to respect safeguards protecting the rights of those facing the death penalty, as laid down in the United Nations Economic and Social Council Safeguards; calls on the Council and the Commission to encourage those remaining countries which have not signed and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights to do so, and those Member States that have not signed Protocol No 13 to the European Convention on Human Rights on the death penalty to do so;

7. *Calls on* OSCE member states, in particular the United States and Belarus, to adopt an immediate moratorium on executions;

8. *Calls on* Kazakhstan and Latvia to amend provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances;

9. *Strongly encourages* EU Member States and all co-sponsors of the 2007 and 2008 UNGA resolutions to introduce, in the framework of a reinforced cross-regional alliance, a third resolution on the death penalty at UNGA65 which should in priority address:

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

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

11. *Calls on* retentionist OSCE states to treat information concerning the death penalty in a transparent manner, providing public information on the identity of

individuals sentenced to death or executed and statistics on the use of the death penalty, in accordance with OSCE commitments;

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

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

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

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

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

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

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

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

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

[...]

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

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

[...]

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

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

[...]

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

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

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

[...]

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

[...]

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

Annex 6

ORGANIZATION OF AMERICAN STATES STANDARDS

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

Chapter II – Civil and Political Rights

Article 4: Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5: Right to Human Treatment

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

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

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

Preamble

The States Parties to this Protocol,

Considering

That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty;

That everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason;

That the tendency among the American States is to be in favor of abolition of the death penalty;

That application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted;

That the abolition of the death penalty helps to ensure more effective protection of the right to life;

That an international agreement must be arrived at that will entail a progressive development of the American Convention on Human Rights, and

That States Parties to the American Convention on Human Rights have expressed their intention to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas,

Have agreed to sign the following protocol to the American Convention on Human Rights to Abolish the Death Penalty

Article 1

The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.

Article 2

1. No reservations may be made to this Protocol. However, at the time of ratification or accession, the States Parties to this instrument may declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.
2. The State Party making this reservation shall, upon ratification or accession, inform the Secretary General of the Organization of American States of the pertinent provisions of its national legislation applicable in wartime, as referred to in the preceding paragraph.
3. Said State Party shall notify the Secretary General of the Organization of American States of the beginning or end of any state of war in effect in its territory.

Annex 7

Relevant Recommendations made at the 2012 OSCE Human Dimension Implementation Meeting

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

Participants made the following recommendations:

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

Relevant Recommendations made at the 2013 OSCE Human Dimension Implementation Meeting

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

Participants made the following recommendations:

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

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

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

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

Participants made the following recommendations:

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

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

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

Participants made the following recommendations:

To OSCE participating States,

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

To OSCE institutions, executive structures and field operations,

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

**Relevant Recommendations made at the
2017 OSCE Human Dimension Implementation Meeting**

To OSCE participating States:

- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) concerning the abolition of the death penalty, and all other related international human rights instruments in this field;
- To introduce a moratorium on executions and death sentences with a view to the complete abolition of the death penalty;
- To support the UN General Assembly Resolution calling for a global moratorium on the death penalty;

Annex 8

ODIHR QUESTIONNAIRE ON THE DEATH PENALTY DEATH PENALTY QUESTIONNAIRE 2018

To abolitionist states:

Questions below relate to the developments with regard to the issue of the death penalty in your country in the period from 1 April 2017 to 31 March 2018.

- 1) Is your country engaged in any activities relevant to the issue of the death penalty on the national or international level? If yes, please highlight the most important activities in the period from 1 April 2017 to 31 March 2018. Also, please state how these activities took into account the gender aspects of the death penalty.
- 2) Are any of your citizens facing the death penalty abroad? If yes, please provide information about their gender and race or ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. In cases where the person concerned provided informed consent, please provide their full name, age and location. Also, are there any indications that gender bias may have had an impact on the imposition of the death penalty or otherwise on the situation of any individual facing the death penalty abroad?
- 3) What measures are taken by your country to protect pregnant women, children/juveniles and persons with mental disabilities facing the death penalty abroad?
- 4) Does your country consider the death penalty as a form of cruel, inhuman or degrading punishment or even torture? Are there any public statements or official documents describing such attribution of the death penalty? If yes, please provide the related documentation.
- 5) Does your country actively advocate for the global abolition of the death penalty on the diplomatic/political level? If yes, please highlight the most important initiatives taken during the reporting period (1 April 2017 - 31 March 2018).

End of Questionnaire

To de-facto abolitionist states:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2017 to 31 March 2018.

- 1) Have any steps been taken to retain or remove a moratorium on the death penalty in the reporting period (1 April 2017 - 31 March 2018)? If yes, please attach copies of relevant documents.
 - a) Have any steps to fully remove the death penalty from national legislation been taken in the reporting period (1 April 2017 - 31 March 2018)?
 - b) Have any steps been taken towards the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights?
- 2) Please indicate ways in which you have co-operated with local and international organizations on the issue of the death penalty in the period from 1 April 2017 to 31 March 2018.
- 3) Are any of your citizens facing the death penalty abroad? If yes, please provide information about the number, their age, gender and race / ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. In cases where the person concerned provided informed consent, please provide their full name, age and location.
- 4) What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
 - a) Is there any specialist support provided to children of parents sentenced to death or executed?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?

End of Questionnaire

To Kazakhstan:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2017 to 31 March 2018.

- 1) Have any steps been taken to retain or remove a moratorium on the death penalty in the reporting period (1 April 2017 - 31 March 2018)? If yes, please attach copies of relevant documents.
 - a) What measures will be taken to achieve complete abolition of capital punishment in Kazakhstan?
 - b) Have any steps been taken towards the ratification the Second Optional Protocol to the International Covenant on Civil and Political Rights?
- 2) Please indicate ways in which you have co-operated with local and international organizations on the issue of the death penalty in the period from 1 April 2017 to 31 March 2018.
- 3) Are any of your citizens facing the death penalty abroad? If yes, please provide information about the number, their age, gender and race / ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. In cases where the person concerned provided informed consent, please provide their full name, age and location.
 - 4) What measures are taken by your country to protect children who have a parent facing the death penalty abroad?
 - d) Is there any specialist support provided to children of parents sentenced to death or executed?
 - e) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - f) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?

End of Questionnaire

To the United States of America:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2017 to 31 March 2018.

LEGAL FRAMEWORK

- 1) The 2017 Background Paper on the death penalty lists crimes that carry the death penalty and the methods of execution in your country, among other issues. Please inform us if any corrections or changes are needed.
- 2) Have any steps been taken to introduce, retain or remove a moratorium on the death penalty during the reporting period (1 April 2017- 31 March 2018) on the state level? If yes, please attach copies of relevant documents.
- 3) Please provide details on any changes in legislation, rules and regulations regarding the treatment of persons on death row and attach copies of relevant documents. Please provide information whether there are any particular provisions applicable regarding the special needs of women on death row.

STATISTICS

- 4) Please provide statistics on the number, age, gender and race/ ethnicity of persons who have been sentenced to death in the period from 1 April 2017 to 31 March 2018, as well as the specific crime for which each of these persons was sentenced.
- 5) Please provide information about the gender of the victim of the crime leading to the death sentence.
- 6) Please list other death sentences that have become final (i.e. all appeal stages have been exhausted) during the reporting period (1 April 2017 - 31 March 2018) and which courts passed each of these sentences.
- 7) Please indicate if any of the persons sentenced to death in the period from 1 April 2017 to 31 March 2018 were:
 - Under the age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disorder;
 - Non-nationals; please indicate whether or not any of these persons received consular assistance.

- 8) Please provide us with the number, age, gender, and race / ethnicity of any person sentenced to death who has been asking for clemency and the number, age, gender, and race / ethnicity of any person who has been granted clemency or had his or her sentence commuted in the reporting period (1 April 2017 - 31 March 2018). In cases where the person concerned provided informed consent, please provide their full name, age and location.
- 9) If there have been any changes during the reporting period, please describe the procedure for considering a request for clemency, including the factors that are taken into account when considering such a request.
- 10) Please provide statistics on the number, age, gender and race / ethnicity of persons who have been executed in the period from 1 April 2017 to 31 March 2018.
- 11) Please indicate if any persons executed in the period from 1 April 2017 to 31 March 2018 were:
 - Under the age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disorder;
 - Non-national; please indicate whether or not any of these persons received consular assistance.
- 12) Please provide details on the number of women and men on death row as well as on the treatment of men and women awaiting execution. Are official medical reports on the psychological status of death row prisoners available? How does your country respond to the death row phenomenon, which consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death? Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held.
- 13) Please provide information on the methods of execution used in your country and the assessments made with regard to the pain and suffering caused by each of these methods.
- 14) Are any of your citizens facing the death penalty abroad? If yes, please provide information about the number, their age, gender and race / ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. In cases where the person concerned provided informed consent, please provide their full name, age and location.

- 15) What measures are taken by your country to protect children who have a parent facing the death penalty in your respective country and abroad?
 - a) Is there any specialist support provided to children of parents sentenced to death or executed?
 - b) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - c) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 16) Please list all cases regarding the use of the death penalty that have been decided in the reporting period (1 April 2017 - 31 March 2018), or are currently ongoing, before international bodies (eg. UN Human Rights Committee, International Court of Justice).
- 17) Please describe procedures for complying with interim stays by the UN Human Rights Committee.

SAFEGUARDS

- 18) What safeguards are in place in your country to protect pregnant women, children and persons with mental disabilities facing the death penalty?
- 19) What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions to impose death sentences?
- 20) What safeguards are in place to minimize the risk that gender bias, or any other form of bias, may affect the decisions on clemency?
- 21) Please describe if there have been any changes in the procedure for informing all non-nationals who have been accused of committing a crime, for which the death penalty is a potential sentence, of their right to receive consular assistance. Is this procedure mandatory?

MISCELLANEOUS

- 22) Which state body is responsible for keeping statistics on sentences, executions and commutations?

- 23) Please indicate ways in which you have co-operated with local and international organizations on the issue of the death penalty in the period from 1 April 2017 to 31 March 2018.

End of Questionnaire

To Belarus:

Questions below relate to the developments with regard to the death penalty in your country in the period from 1 April 2017 to 31 March 2018.

LEGAL FRAMEWORK

- 1) The attached paper is the entry related to your country in the 2017 Background Paper on the Situation of the Death Penalty. It lists crimes that carry the death penalty and the methods of execution in your country, among other issues. Please inform us if any corrections or changes are needed.
- 2) Have any steps been taken to introduce a moratorium on the death penalty during the reporting period (1 April 2017 - 31 March 2018)? If yes, please attach copies of relevant documents.
- 3) Please provide details on any changes in legislation, rules and regulations regarding the treatment of persons on death row and attach copies of relevant documents. Please provide information whether there are any particular provisions applicable regarding the special needs of women on death row.

STATISTICS

- 4) Please provide statistics on the number, age, gender and race / ethnicity of persons who have been sentenced to death in the period from 1 April 2017 to 31 March 2018, as well as the specific crime for which each of these persons was sentenced.
- 5) Please provide information about the gender of the victim of the crime leading to the death sentence.
- 6) Please list other death sentences that have become final (i.e. all appeal stages have been exhausted) during the reporting period (1 April 2017 - 31 March 2018) and which courts passed each of the sentences.
- 7) Please indicate if any of the persons sentenced to death in the period from 1 April 2017 to 31 March 2018 were:
 - Under the age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disorder;

- Non-nationals; please indicate whether or not any of these persons received consular assistance.
- 8) Please provide us with the number, age, gender, and race / ethnicity of any person sentenced to death who has been asking for clemency and the number, age, gender, and race / ethnicity of any person who has been granted clemency or had his or her sentence commuted in the reporting period. In cases where the person concerned provided informed consent, please provide their full name, age and location.
 - 9) If there have been any changes during the reporting period, please describe the procedure for considering a request for clemency, including the factors that are taken into account when considering such a request.
 - 10) Please provide statistics on the number, age, gender and race / ethnicity of persons who have been executed in the period from 1 April 2017 to 31 March 2018.
 - 11) Please indicate if any persons executed in the period from 1 April 2017 to 31 March 2018 were:
 - Under the age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent children;
 - Men with dependent children;
 - Diagnosed as having any form of mental disorder;
 - Non-national: please indicate whether or not any of these persons received consular assistance.
 - 12) Please provide details on the number of women and men on death row as well as on the treatment of men and women awaiting execution. Are official medical reports on the psychological status of death row prisoners available? How does your country respond to the death row phenomenon, which consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death? Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held.
 - 13) Please provide information on the methods of execution used in your country and the assessments made with regard to the pain and suffering caused by these methods.

- 14) Please provide information on the procedure for informing relatives of the date of execution and the date that the execution has been carried out, as well as of the place of burial of executed persons.
- 15) Are any of your citizens facing the death penalty abroad? If yes, please provide information about the number, their age, gender and race / ethnicity, as well as information about children of such persons, indicating relevant countries where your citizens may be facing the death penalty. In cases where the person concerned provided informed consent, please provide their full name, age and location.
- 16) What measures are taken by your country to protect children who have a parent facing the death penalty in your respective country and abroad?
 - g) Is there any specialist support provided to children of parents sentenced to death or executed?
 - h) What kind of technical and legal assistance or consular representation are provided to persons sentenced to death abroad taking into consideration the best interest of the child?
 - i) Does your country provide any assistance (financial, practical and/or psychological) to families and in particular children of parents sentenced to death also with regard to the right to family visits and communication with death row prisoners in order to reduce trauma and anxiety and to help maintain a positive relationship with convicted parents?
- 17) Please list all cases regarding the use of the death penalty that have been decided in the reporting period (1 April 2017 - 31 March 2018), or are currently ongoing, before international bodies (eg. UN Human Rights Committee, International Court of Justice).
- 18) Please describe procedures for complying with interim stays by the UN Human Rights Committee.

SAFEGUARDS

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

- 22) Please describe if there have been any changes in the procedure for informing all non-nationals who have been accused of committing a crime, for which the death penalty is a potential sentence, of their right to receive consular assistance. Is this procedure mandatory?

MISCELLANEOUS

- 23) Which state body is responsible for keeping statistics on sentences, executions and commutations?
- 24) Please indicate ways in which you have co-operated with local and international organizations on the issue of the death penalty in the period from 1 April 2017 to 31 March 2018.

End of Questionnaire

Annex 9

STATUS OF RATIFICATION OF RELEVANT TREATIES

Status of Ratifications as of 31 March 2016

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

The Death Penalty in the OSCE Area-Background Paper 2018

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

Notes:

r = ratification or accession

signed = signature only

No action = neither signed nor ratified

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

A = abolitionist

DA = de facto abolitionist

R = retentionist