

# THE DEATH PENALTY IN THE OSCE AREA

BACKGROUND PAPER 2005  
HUMAN DIMENSION IMPLEMENTATION MEETING  
SEPTEMBER 2005

HUMAN RIGHTS



# THE DEATH PENALTY IN THE OSCE AREA

BACKGROUND PAPER 2005

HUMAN DIMENSION IMPLEMENTATION MEETING

SEPTEMBER 2005



This paper was prepared by the Human Rights Section of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in co-operation with OSCE field offices. Every effort has been made to ensure that the information contained in this paper is accurate and impartial.

This paper updates Background Paper 2004/1 of October 2004. It is intended to provide a comparative overview of the death penalty throughout the OSCE region and to promote constructive discussion. The content of this paper does not necessarily reflect the policy or position of the OSCE or the ODIHR.

Any comments or suggestions should be addressed to the Human Rights Section of the ODIHR.

Published by the OSCE Office for Democratic Institutions and Human Rights  
(OSCE/ODIHR)  
Aleje Ujazdowskie 19  
00-557 Warsaw  
Poland  
<http://www.osce.org/odih>

© OSCE/ODIHR 2005

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE/ODIHR as the source.

This publication was funded by the European Commission in the framework of the EC-ODIHR Joint Programme for Advancing Human Rights and Democratization in Central Asia (and Developing Guidelines for Media Monitoring in Elections).



# CONTENTS

<b>INTRODUCTION</b> .....	4
<b>1. THE STATUS OF THE DEATH PENALTY IN THE OSCE AREA</b> .....	5
<b>2. INTERNATIONAL STANDARDS ON THE DEATH PENALTY</b> .....	7
2.1. International Standards Restricting the Use of the Death Penalty .....	7
2.2. International Standards Abolishing the Death Penalty .....	11
<b>3. THE DEATH PENALTY IN THE OSCE AREA</b> .....	13
3.1 Albania .....	14
3.2 Belarus .....	15
3.3 Kazakhstan .....	20
3.4 Kyrgyzstan .....	23
3.5 Latvia .....	26
3.6 The Russian Federation .....	27
3.7 Tajikistan .....	30
3.8 The United States of America .....	34
3.9 Uzbekistan .....	41
<b>ANNEXES</b>	
<b>1. OSCE Commitments on the Death Penalty</b> .....	47
<b>2. Other International Standards on the Death Penalty</b> .....	50
<b>3. Questionnaire on the Death Penalty</b> .....	65
<b>4. Status of Ratifications</b> .....	68

# INTRODUCTION<sup>1</sup>

The Organization for Security and Co-operation in Europe has 55 participating States, the majority of which have abolished the death penalty for all crimes. **Chapter 1** of this background paper lists the participating States and classifies them as abolitionist, partly abolitionist, *de facto* abolitionist, or retentionist.

While OSCE participating States are not required to abolish the death penalty, they have made a number of commitments regarding its use. In particular, participating States have committed themselves to impose the death penalty only in a manner that is not contrary to their international commitments. Accordingly, **Chapter 2** provides an overview of the international standards on the death penalty that have been developed by the OSCE, the United Nations, the Council of Europe, and the European Union.

The participating States that retain the death penalty have also committed themselves to make information on its use available to the public. **Chapter 3** facilitates the compliance of participating States with this commitment by providing a forum for the publication and dissemination of such information. It is the ODHR's intention that this chapter should be based primarily on information received from the participating States themselves. It includes information on the legal framework, statistics on sentences and executions, and information on compliance with the international standards outlined in Chapter 2.

Finally, a copy of the questionnaire that was sent to the participating States requesting information on the use of the death penalty is attached as an annex along with full-text reproductions of the relevant OSCE commitments and other international standards and a ratifications table.

---

<sup>1</sup> This paper updates Background Paper 2004/1. The reporting period covered by this paper is from 30 June 2004 to 30 June 2005. Information on developments that have occurred since 30 June 2005 will be indicated as such.

## 1.

## THE STATUS OF THE DEATH PENALTY IN THE OSCE AREA

For the purpose of this paper, each participating State has been classified as **abolitionist**, **partly abolitionist**, **de facto abolitionist**, or **retentionist** according to the status of the death penalty in the relevant state's law and practice.

**Abolitionist: The death penalty has been abolished for all crimes.**

**Forty-six** OSCE participating States are abolitionist:

- Andorra
- Armenia
- Austria
- Azerbaijan
- Belgium
- Bosnia and Herzegovina
- Bulgaria
- Canada
- Croatia
- Cyprus
- The Czech Republic
- Denmark
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- The Holy See
- Hungary
- Iceland
- Ireland
- Italy
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Moldova
- Monaco
- The Netherlands
- Norway
- Poland
- Portugal
- Romania
- San Marino
- Serbia and Montenegro
- The Slovak Republic
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- Turkmenistan
- Ukraine
- The United Kingdom
- The former Yugoslav Republic of Macedonia

**Partly abolitionist:** The death penalty has been abolished for crimes committed in peacetime but is retained for crimes committed in wartime.

Two participating States are partly abolitionist:

- Albania
- Latvia

**De facto abolitionist:** The death penalty is retained for crimes committed in peacetime, but executions are not carried out.

Four participating States are *de facto* abolitionist:

- Kazakhstan
- Kyrgyzstan
- The Russian Federation
- Tajikistan

**Retentionist:** The death penalty is retained for crimes committed in peacetime, and executions are carried out.

Three participating States are retentionist:

- Belarus
- The United States of America
- Uzbekistan

## 2.

# INTERNATIONAL STANDARDS ON THE DEATH PENALTY

This chapter provides an overview of the international standards on the death penalty that have been developed by the OSCE, the Council of Europe, the United Nations, and the European Union. For the purposes of this overview, the international standards have been divided into two categories:

- International standards **restricting** the use of the death penalty; and
- International standards **abolishing** the death penalty.

### 2.1

## INTERNATIONAL STANDARDS RESTRICTING THE USE OF THE DEATH PENALTY

### OSCE

OSCE commitments, which are of a politically binding nature, do not require the abolition of the death penalty. However, OSCE participating States have committed themselves to carry out the death penalty only for the **most serious crimes** and **in a manner not contrary to their international commitments**.<sup>2</sup>

### COUNCIL OF EUROPE

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is of a legally binding nature, does not require the abolition of the death penalty.<sup>3</sup> Article 2 of the ECHR, which enshrines the right to life, provides that:

“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.”

<sup>2</sup> Concluding Document of the 1989 Vienna Follow-up Meeting, “Questions relating to Security in Europe”, Paragraph 24. OSCE commitments also place a number of positive obligations on participating States that choose to retain the death penalty. A full-text reproduction of the OSCE commitments on the death penalty can be found in Annex 1.

<sup>3</sup> ETS No. 005. Entered into force on 3 September 1953.



The text of the ECHR itself places no explicit restrictions on the use of the death penalty, save that it can only be carried out following conviction by a court of a crime for which the death penalty is provided for by law. However, the European Court of Human Rights has interpreted both Article 2 and Article 3 of the ECHR as placing certain limitations on the use of the death penalty.<sup>4</sup>

## UNITED NATIONS (UN)

The International Covenant on Civil and Political Rights (ICCPR), which is of a legally binding nature, does not require the abolition of the death penalty.<sup>5</sup> Article 6 of the ICCPR provides for the right to life but recognizes the death penalty as a permissible exception to the right to life. The text of the ICCPR provides that no one shall be deprived of the right to life arbitrarily and lists a number of specific restrictions and limitations on the use of the death penalty. Article 6(2) provides that:

- A death sentence 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;
- A death sentence may be imposed only in a manner not contrary to the provisions of the ICCPR, and the death penalty may be carried out only pursuant to a final judgement rendered by a competent court;
- Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence;
- The death penalty shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

The limitations set out in Article 6(2) have been interpreted by the Human Rights Committee in its concluding observations on state party reports, in its General Comment No. 6, and in its jurisprudence on individual complaints.<sup>6</sup> In addition, the limitations set out in Article 6(2) have also been interpreted and expanded upon in documents produced by other UN bodies, in particular, in the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>7</sup> and in the annual resolutions of the Commission on Human Rights on the question of the death penalty.<sup>8</sup> The following is a brief overview of the nature of the restrictions set out in Article 6(2) on the basis of the documentation produced by the above-mentioned bodies.<sup>9</sup>

<sup>4</sup> Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment.

<sup>5</sup> UN General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entered into force on 23 March 1976.

<sup>6</sup> General Comment No. 6, adopted at the 16th session of the Human Rights Committee, 1982.

<sup>7</sup> Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, UN Economic and Social Council Resolution 1984/50, adopted on 25 May 1984.

<sup>8</sup> The most recent resolution of the Commission on Human Rights on the question of the death penalty is Resolution 2005/59, 20 April 2005.

<sup>9</sup> Unless otherwise indicated, the documents referred to in the following overview are not of a legally binding nature.

## Most serious crimes

General Comment No. 6 states that the term *most serious crimes* must be read restrictively to mean that the death penalty should be an exceptional measure. The ECOSOC Safeguards specify that the scope of the crimes punishable by the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Human Rights Committee has gone further than this, stating that the imposition of the death penalty for crimes that do not result in loss of life would be contrary to the ICCPR.<sup>10</sup> Resolution 2005/59 of the Commission on Human Rights states that the death penalty should neither be imposed for non-violent acts – such as financial crimes, religious practice or expression of conscience, or sexual relations between consenting adults – nor as a mandatory sentence.<sup>11</sup>

## In a manner not contrary to the provisions of the ICCPR and pursuant to a final judgement rendered by a competent court

States parties are obliged to observe rigorously all the fair-trial guarantees set out in Article 14 of the ICCPR. The Human Rights Committee is of the opinion that a violation of the right to life would result from an execution following a trial that fails to ensure 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.<sup>12</sup> The ECOSOC Safeguards and Resolution 2005/59 of the Commission on Human Rights also state that all legal proceedings should comply with Article 14 of the ICCPR.<sup>13</sup>

## Right to seek pardon or commutation

The term *pardon* means the removal of a death sentence and release, while the term *commutation* means the substitution of a death sentence with a less severe sentence. The right to seek pardon or commutation has been reaffirmed by General Comment No. 6, the ECOSOC Safeguards, and Resolution 2005/59 of the Commission on Human Rights.

## Persons below the age of 18 and pregnant women

The prohibition on the death penalty for crimes committed by persons below the age of 18 is reiterated in the Convention on the Rights of the Child (CRC), which is of

<sup>10</sup> CCPR/C/79/Add. 25, 3 August 1993.

<sup>11</sup> Resolution of the UN Commission on Human Rights 2005/59, 20 April 2005, paragraph f.

<sup>12</sup> General Comment No. 6.

<sup>13</sup> The special rapporteur on extrajudicial, summary and arbitrary executions has stated that the process leading to the imposition of the death penalty must also comply with Articles 9 and 15 of the ICCPR.

a legally binding nature.<sup>14</sup> This principle has been reaffirmed by the ECOSOC Safeguards and Resolution 2005/59 of the UN Commission on Human Rights. In addition, the Sub-Commission on the Promotion and Protection of Human Rights has stated that the imposition of the death penalty for crimes committed by persons below the age of 18 is contrary to customary international law.<sup>15</sup> The prohibition on the execution of pregnant women has been reaffirmed by a number of resolutions of the UN Commission on Human Rights and the ECOSOC Safeguards. **The Human Rights Committee has expressed the opinion that the prohibition on the execution of children and pregnant women represents a norm of customary international law.**<sup>16</sup>

Although Article 6(2) prohibits the execution of only two specific categories of people, this list should not be considered exhaustive. Indeed, the ECOSOC Safeguards extend this restriction to the elderly, mothers with dependent infants, the insane, and the mentally disabled.

Finally, it should be noted that the use of the death penalty also raises issues under Article 7 of the ICCPR on the prohibition of torture and inhuman or degrading treatment. The Human Rights Committee has found violations of Article 7 in certain cases concerning detention on death row, the method of execution, and the issuance of execution warrants for mentally incapable persons.

## EUROPEAN UNION (EU)

The European Union takes an active stance against the death penalty in its relations with accession countries and third countries. First, the abolition of the death penalty is a prerequisite to accession to the EU.<sup>17</sup> Second, the EU has developed *Guidelines on European Union policy towards third countries on the death penalty*.<sup>18</sup> These *Guidelines*, which are reproduced in Annex 2, contain a list of minimum standards on the use of the death penalty.

<sup>14</sup> Article 37 of the Convention on the Rights of the Child, UN General Assembly Resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990.

<sup>15</sup> Resolution 2000/17, 17 August 2000.

<sup>16</sup> On this basis, the Human Rights Committee has stated that states parties may not reserve the right to execute children or pregnant women. See General Comment No. 24, adopted at the 52nd session of the Human Rights Committee, 1994.

<sup>17</sup> The abolition of the death penalty for peacetime crimes is an element of the Copenhagen Criteria for accession countries to the European Union.

<sup>18</sup> General Affairs Council, Luxembourg, 29 June 1998.

## 2.2 INTERNATIONAL STANDARDS ABOLISHING THE DEATH PENALTY

### COUNCIL OF EUROPE

Since the adoption of the ECHR, steps have been taken to develop legally binding instruments that do abolish the death penalty.

The Council of Europe has adopted Protocol No. 6 to the ECHR,<sup>19</sup> which abolishes the death penalty during peacetime. All new member states of the Council of Europe are required to ratify Protocol No. 6 within a certain time limit.<sup>20</sup> In addition, the Council of Europe has also adopted Protocol No. 13 to the ECHR,<sup>21</sup> which is the first legally binding instrument that abolishes the death penalty in all circumstances, including in time of war.

- Forty-four OSCE participating States have ratified Protocol No. 6.<sup>22</sup> In the period from 30 June 2004 to 30 June 2005, one participating State, Monaco, signed Protocol No. 6.
- Thirty-two OSCE participating States have ratified Protocol No. 13. In the period from 30 June 2004 to 30 June 2005, six participating States ratified Protocol No. 13: the Czech Republic, Finland, Germany, Greece, Iceland and the former Yugoslav Republic of Macedonia.<sup>23</sup> One participating State, Monaco, signed Protocol No. 13.

### UNITED NATIONS

Since the adoption of the ICCPR, steps have been taken to develop a legally binding instrument that requires the abolition of the death penalty. Accordingly, the UN

<sup>19</sup> ETS No.114. Entered into force on 1 March 1985. Article 2 of Protocol No. 6 provides that a state may make provision in its law for the death penalty in respect of acts committed in times of war or of imminent threat of war.

<sup>20</sup> Resolution 1044 (1994) of the Parliamentary Assembly of the Council of Europe on the Abolition of Capital Punishment, 4 October 1994.

<sup>21</sup> ETS No. 187. Entered into force on 1 July 2003.

<sup>22</sup> Of the 55 OSCE participating States, 46 are member states of the Council of Europe.

<sup>23</sup> In addition, Protocol No. 13 was ratified by Norway on 16 August 2005 and by the Slovak Republic on 18 August 2005.

has adopted the Second Optional Protocol to the ICCPR,<sup>24</sup> which abolishes the death penalty during peacetime.

Thirty-seven OSCE participating States have ratified the Second Optional Protocol.

Resolution 2005/59 of the Commission on Human Rights called upon all states that still retain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions.<sup>25</sup> It also stated that abolition of the death penalty is essential for the protection of the right to life.

### **EUROPEAN UNION (EU)**

Article 2 of the Charter of Fundamental Rights of the European Union,<sup>26</sup> which is politically binding on EU member states, provides that no one shall be condemned to death or executed.

---

<sup>24</sup> UN General Assembly Resolution 44/128 of 15 December 1989. Entered into force on 11 July 1991. Article 2 of the Second Optional Protocol provides that no reservation is admissible except for reservations made at the time of ratification or accession that provide 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.

<sup>25</sup> Resolution of the UN Commission on Human Rights 2005/59, 20 April 2005, paragraph a.

<sup>26</sup> The presidents of the European Parliament, European Council, and European Commission signed and proclaimed the Charter on behalf of their institutions on 7 December 2000 in Nice, France.

### 3.

## THE DEATH PENALTY IN THE OSCE AREA

The participating States that retain the death penalty in some form have committed themselves to ensuring transparency by making information about its use available to the public.<sup>27</sup> This publication facilitates compliance with this commitment by providing a forum for participating States to make such information available on an annual basis. This chapter is comprised of country entries on the nine participating States that retain the death penalty in some form. Unlike in 2004, this part of the paper does not include Greece, which took steps to fully abolish the death penalty during the reporting period.

Each country entry contains information on relevant international instruments, the country's legal framework, statistics, and compliance with international safeguards. First, the section on "relevant international instruments" lists the legally binding instruments the state has ratified. Second, the section on the "legal framework" outlines those crimes for which a death sentence can be imposed. It is in this section that trends towards reduction in scope or abolition are presented. Third, the section on "statistics" indicates the number of death sentences that have been imposed and executed during the reporting period. Fourth, the section on "international safeguards" provides information on compliance with the international standards that were outlined in Chapter 2.

### *Methodology*

It is the ODIHR's intention that the content of each country entry should be based primarily on information provided by the participating States themselves. Accordingly, a questionnaire on the use of the death penalty was sent to each of the relevant states. The questionnaire, which is reproduced in Annex 3, requested detailed information on each state's legal framework, statistics on sentences and executions, and information on compliance with the international standards outlined in Chapter 2. Of the nine participating States that retain the death penalty, seven responded to the questionnaire: Belarus, Kazakhstan, Kyrgyzstan, Latvia, the Russian Federation, the United States of America, and Uzbekistan. Albania and Tajikistan did not respond.

In some instances, the information received from the participating States was not complete. Therefore, it has been complemented by information received from other sources, including OSCE field presences, intergovernmental organizations, non-governmental organizations, and media reports.

---

<sup>27</sup> Copenhagen Document 1990, Paragraph 17.8.

## 3.1 ALBANIA

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>28</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The death penalty has been abolished for all peacetime crimes but is retained for serious crimes committed in wartime or during a state of emergency.<sup>29</sup> The Military Criminal Code envisages the death penalty for a number of crimes if committed during a state of emergency or during wartime.<sup>30</sup>

<sup>28</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>29</sup> Article 8(a) of the Military Criminal Code, Law No. 8003, 1955. Amended by Law No. 8991, 4 July 2002.

<sup>30</sup> Articles 25, 26, 28, 34, 47, 50, and 77 of the Military Criminal Code.

## 3.2 BELARUS

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status
ICCPR	R
Second Optional Protocol to the ICCPR	-
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The Constitution of the Republic of Belarus provides that, until the abolition of the death penalty, it may be applied in accordance with the law<sup>32</sup> as an exceptional penalty for particularly serious crimes and only in accordance with the verdict of a court of law. The Criminal Code provides that the death penalty may be imposed for severe crimes connected with the deliberate deprivation of life with aggravating circumstances.<sup>33</sup>

The death penalty is envisaged for 14 crimes: acts of aggression, murder of a representative of a foreign state or international organization with the intention of provoking international tension or war, international terrorism, genocide, crimes against the security of humanity, use of weapons of mass destruction, violations of the laws and customs of war, murder with aggravating circumstances, terrorism, terrorist acts, treason that results in loss of life, conspiracy to seize power, sabotage, and murder of a police officer.<sup>34</sup>

<sup>31</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>32</sup> Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

<sup>33</sup> Article 59(1) of the Criminal Code, 9 July 1999.

<sup>34</sup> Articles 122(2), 124(2), 126, 127, 128, 134, 135(3), 139(2), 289(3), 359, 356(2), 367(3), 360(2), and 362 of the Criminal Code.



## Moratorium

There is no moratorium on executions. In 2000, the Parliamentary Assembly of the Council of Europe urged the Belarusian authorities to declare an immediate moratorium on executions and set in motion the legislative procedure for the abolition of capital punishment.<sup>35</sup>

On 11 March 2004, the Constitutional Court concluded its assessment of the compliance of the death-penalty provisions in the Criminal Code with the Constitution, following a request from the House of Representatives of the National Assembly. The Court found a number of provisions of the Criminal Code to be inconsistent with the Constitution,<sup>36</sup> thus providing for the possibility of either the abolition of the death penalty or the imposition of a moratorium on executions as the first step towards full abolition. The Court recalled that such measures may be enacted by the head of state and the National Assembly.

On 24 June 2005, the president of Belarus submitted a draft law to the parliament that, *inter alia*, supplements the Criminal Code with a reference to the temporary character of the death penalty, which, until its abolition, may be applied as an exceptional measure for cases of premeditated murder with aggravating circumstances.

On 29 June 2005, the chairperson of the House of Representatives of the National Assembly, Vladimir Konoplev, spoke at a press conference about the possibility of introducing a moratorium for a certain period. On 11 July 2005, the deputy head of the Presidential Administration and the chairperson of the Clemency Commission, Natalya Petkevich, announced that the death penalty could be abolished when certain social preconditions were in place. She also stated that the Belarusian authorities could not abolish the death penalty at the moment because 85 per cent of the population voted to retain the death penalty in a referendum in 1996; thus, she said, the results of that referendum could be overturned only by another referendum.

## Method of execution

Shooting<sup>37</sup>

<sup>35</sup> Recommendation 1441, Parliamentary Assembly of the Council of Europe, 26 January 2000.

<sup>36</sup> Articles 48 (Part 1, Paragraph 11) and 59 have been found to be inconsistent with the Constitution due to the lack of reference, in those articles, to the temporary character of the death penalty.

<sup>37</sup> Article 59(1), Criminal Code.

---

## STATISTICS

---

### Death sentences

According to official statistics provided by the Ministry of Justice, during the period from 30 June 2003 to 30 June 2004, five individuals were sentenced to death for the murder, with aggravating circumstances, of two or more people. Two of the sentenced individuals were citizens of another country, Ukraine. No information on their identities was provided.

Official statistics indicate that one death sentence for murder was handed down in the period from 30 June 2004 to 30 June 2005. This sentence has entered into force (i.e., all appeals stages have been exhausted). An appeal for clemency was rejected.

### Executions

Official statistics indicate that two individuals were executed during the period from 30 June 2003 to 30 June 2004, and four individuals were executed during the period from 30 June 2004 to 30 June 2005 (irrespective of the date of sentencing). No information was provided with respect to the identities of the executed individuals.

In a resolution (2005/13) on the situation of human rights in Belarus, the UN Commission on Human Rights urged the Government of Belarus “to provide public information regarding the execution of those sentenced to death”.<sup>38</sup>

---

## INTERNATIONAL SAFEGUARDS

---

### Pregnant women and children

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>39</sup>

### Fair-trial guarantees

In 2001, the UN special rapporteur on the independence of judges and lawyers reported that: “the administration of justice, together with all its institutions, namely the judiciary, the prosecutorial service and the legal profession, are

---

<sup>38</sup> E/CN.4/2005/L.32, 12 April 2005, item 2 (j).

<sup>39</sup> Article 59(2)(1), Criminal Code. In addition, Article 59(2)(3) also stipulates that men who are over the age of 65 at the time when the sentence is pronounced are exempt from the death penalty.

undermined and not perceived as separate and independent. The rule of law is therefore thwarted."<sup>40</sup>

In November 2004, after a visit to Belarus, the UN Working Group on Arbitrary Detention noted with concern the excessive power given to prosecutors and investigators during the period of pre-trial detention, and that investigations are carried out without effective oversight by a judge. The Working Group also expressed concern regarding the procedure used for appointing and dismissing judges, which does not guarantee their independence from the executive branch, and also regarding the lack of independence of lawyers and of the National Bar Association. The Working Group recommended that the Belarusian Government reconsider the role and place of the actors involved in the process of criminal prosecution in order to ensure their independence, to establish a balance between the parties at trial, and to ensure effective protection of the rights of people deprived of their liberty.<sup>41</sup> In March 2005, the UN special rapporteur on the situation of human rights in Belarus expressed his concern that certain convictions resulting in the death penalty might be unsound as a result of judicial errors or violations of due process.<sup>42</sup>

### **Pardon or commutation**

The Constitution gives the president authority to grant clemency, and the death penalty may be commuted to life imprisonment.<sup>43</sup> Appeals are initially considered by the Clemency Commission. The cases of all individuals sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency.<sup>44</sup>

### **Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed.<sup>45</sup> The UN Human Rights Committee has found the treatment of the relatives of individuals sentenced to death in Belarus to amount to inhuman treatment in violation of Article 7 of the ICCPR.<sup>46</sup>

<sup>40</sup> Report on the mission to Belarus, E/CN.4/2001/65/Add.1, 8 February 2001.

<sup>41</sup> Report of the Working Group on Arbitrary Detention, mission to Belarus, E/CN.4/2005/6/Add.3, 25 November 2004.

<sup>42</sup> Report of the special rapporteur on the situation of human rights in Belarus, Adrian Severin, E/CN.4/2005/35, 18 March 2005.

<sup>43</sup> Article 84(19) of the Constitution.

<sup>44</sup> Presidential Decree No. 250 "On the introduction of the regulation of provisions for pardoning procedure in the Republic of Belarus", 3 December 1994.

<sup>45</sup> Article 175, Criminal Executive Code.

<sup>46</sup> CCPR/C/77/D/887/1999, 24 April 2003, and CCPR/C/77/D/886/1999, 28 April 2003.

The Human Rights Committee stated that the complete secrecy surrounding the date of execution, the place of burial, and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.

In addition, the UN Committee against Torture has also expressed concern about the reported refusal to return the bodies of those executed to their relatives.<sup>47</sup>

---

<sup>47</sup> Concluding observations of the Committee against Torture, 20 November 2000.

## 3.3 KAZAKHSTAN

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>48</sup>
ICCPR	S
Second Optional Protocol to the ICCPR	–
CRC	R

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution of the Republic of Kazakhstan envisages the death penalty, as an exception to the right to life, for 10 especially grave crimes:<sup>49</sup> murder with aggravating circumstances; terrorism; attempt on the life of a person administering justice or preliminary investigations; attempt on the life of the president; state treason; sabotage; planning, preparation, or conduct of aggressive war; use of prohibited means and methods of conducting war; genocide; and mercenary participation in armed conflict. The death penalty is also envisaged for eight military crimes if committed in time of war.<sup>50</sup>

#### Moratorium

A presidential decree placing a moratorium on executions was introduced in December 2003.<sup>51</sup> The moratorium is not limited to a particular time frame but is in place until the question of the full abolition of the death penalty is resolved. In addition, the presidential decree also provided for the introduction of life imprisonment as an alternative to the death penalty from 1 January 2004.

<sup>48</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>49</sup> Article 15 of the Constitution of the Republic of Kazakhstan, 30 August 1995. Also see Article 49(1) of the Criminal Code, 1 January 1998.

<sup>50</sup> Articles 96(2), 156(2), 159(2), 160, 162(4), 165, 167, 171, 233, 340, 367(2), 368(3), 369(3), 373(3), 374(3), 375(3), 380(3), 383 of the Criminal Code of the Republic of Kazakhstan.

<sup>51</sup> Presidential Decree No. 1251 "On the introduction of a moratorium on the death penalty in the Republic of Kazakhstan", 17 December 2003.

Subsequent amendments to the Criminal Code provide for the suspension of all executions while the moratorium is in place and set out the status of those individuals who are subject to the moratorium.<sup>52</sup> In the event of the cancellation of the moratorium, the Criminal Code provides that all death sentences should be executed within one year. Everyone who had been subject to the moratorium would have the right to appeal to the Clemency Commission for commutation of their sentences.<sup>53</sup>

### Method of execution

Shooting<sup>54</sup>

## STATISTICS

### Death sentences

Official statistics indicate that two death sentences were passed in the period from 30 June 2004 to 30 June 2005. Both individuals were sentenced for murder. These sentences have not entered into force (i.e., not all appeals stages have been exhausted).

### Executions

None

## INTERNATIONAL SAFEGUARDS

### Pregnant women and children

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.

<sup>52</sup> Law of the Republic of Kazakhstan No. 514-II "On the introduction of amendments and additions to legislative acts of the Republic of Kazakhstan on the introduction of life imprisonment", 31 December 2003; Law of the Republic of Kazakhstan No. 529-II "On the introduction of amendments and additions to the Criminal Code and Criminal Procedure Code of the Republic of Kazakhstan in connection with the introduction of a moratorium on the execution of the death penalty", 10 March 2004.

<sup>53</sup> Article 49 of the Criminal Code of the Republic of Kazakhstan; Article 166(1) of the Criminal Procedure Code of the Republic of Kazakhstan.

<sup>54</sup> Article 49 of the Criminal Code; Article 167 of the Criminal Executive Code, 13 December 1997. The death penalty cannot be executed until one year after all appeals have been exhausted.

<sup>55</sup> Article 49(2), Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time the sentence is pronounced.

## Pardon or commutation

All individuals sentenced to death have the right to appeal for commutation of the sentence to life imprisonment or 25 years' imprisonment.<sup>56</sup> Appeals are initially considered by the Clemency Commission. The cases of all individuals sentenced to death are considered regardless of whether the convicted individual submits an appeal for clemency.<sup>57</sup>

## Relatives

Relatives are not informed in advance of the date of execution, the body is not returned, and the location of the place of burial is not disclosed to the relatives until at least two years after the burial has taken place.<sup>58</sup>

---

<sup>56</sup> Article 49(3) of the Criminal Code, Article 31(2) of the Criminal Procedure Code, and Article 166(1) of the Criminal Executive Code.

<sup>57</sup> Presidential Decree No. 2975 "On provisions for pardoning procedure by the president of the Republic of Kazakhstan", 7 May 1996.

<sup>58</sup> Article 167, Criminal Executive Code.

## 3.4 KYRGYZSTAN

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>59</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution provides that the death penalty may be used only in exceptional cases.<sup>60</sup> The death penalty is currently retained for three crimes: murder, rape of a female minor, and genocide.<sup>61</sup>

The National Human Rights Programme calls for the drafting of a law on the abolition of the death penalty by 2006. In accordance with a presidential decree on this matter, the relevant state bodies were instructed to draft legislation before 30 June 2005.<sup>62</sup>

Draft amendments to the Constitution of Kyrgyzstan proposing the abolition of the death penalty were approved by the Constitutional Council of Kyrgyzstan on 9 June 2005.<sup>63</sup>

<sup>59</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>60</sup> Article 18 of the Constitution of the Kyrgyz Republic, 5 May 1993.

<sup>61</sup> Articles 97(2), 129(4), and 373 of the Criminal Code, 1 October 1997.

<sup>62</sup> Presidential Decree No. 4 "On prolongation of the term of the moratorium on execution of the death penalty in the Kyrgyz Republic", 10 January 2005.

<sup>63</sup> Should the proposed amendments to the Constitution of Kyrgyzstan be adopted, Article 18, Paragraph 4, of the new Constitution would read as follows: "The death penalty is prohibited in the Kyrgyz Republic."



## Moratorium

An official moratorium on executions is in place. A moratorium was initially introduced by a presidential decree that entered into force on 8 December 1998. The moratorium has subsequently been extended on an annual basis. The current moratorium will be in place until the end of 2005.<sup>64</sup> The UN Human Rights Committee has commended the moratorium on executions and has urged Kyrgyzstan to extend it indefinitely and to commute the sentences of individuals on death row.<sup>65</sup>

The government treats information on the number and identity of individuals subject to the moratorium as confidential. According to unofficial sources, there are at least 160 people on death row in Kyrgyzstan.<sup>66</sup>

Prison conditions on death row in Kyrgyzstan have been widely criticized by local and international human rights groups. Kyrgyz Ombudsman Tursunbai Bakir-uulu has noted that inmates on death row are often kept in unacceptable conditions.<sup>67</sup> The presidential decree extending the moratorium recommends that additional resources be allocated to improve conditions for those sentenced to death.

## Method of execution

Shooting<sup>68</sup>

## STATISTICS

### Death sentences

According to official statistics provided by the Ministry of Justice, 17 individuals were sentenced to death during the period from 30 June 2004 to 30 June 2005. One sentenced person is a citizen of another country, Kazakhstan. No information on their identities was provided. Three of these sentences have entered into force (i.e., all appeals stages have been exhausted). Of these three individuals, two were sentenced for murder, and one for rape of a female minor.

<sup>64</sup> Presidential Decree No. 4 "On prolongation of the term of the moratorium on execution of the death penalty in the Kyrgyz Republic", 10 January 2005.

<sup>65</sup> Concluding observations of the Human Rights Committee, CCPR/CO/69/KGZ, 24 July 2000, Paragraph 8.

<sup>66</sup> "Kyrgyz Rights Ombudsman asks law enforcement agencies not to extradite suspects to death-penalty countries", Associated Press, 14 June 2004.

<sup>67</sup> "Central Asia: trend is away from capital punishment", RFE/RL, 10 December 2004.

<sup>68</sup> Article 155(2) of the Criminal Executive Code, 13 December 1999. This article also provides that executions should not be carried out in public.

## Executions

None

---

## INTERNATIONAL SAFEGUARDS

---

### Pregnant women and children

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>69</sup>

### Pardon or commutation

The Constitution gives the president the authority to grant clemency and provides that all individuals sentenced to death have the right to seek clemency.<sup>70</sup> The cases of all individuals sentenced to death are automatically considered by the Presidential Clemency Commission regardless of whether the sentenced person has submitted an appeal for clemency.<sup>71</sup> Official statistics indicate that, during the period from 30 June 2004 to 30 June 2005, the death sentences of two individuals were commuted to prison terms.

### Relatives

Relatives are not informed of the execution in advance. The administration of the institution where the execution is carried out is obliged to notify a close relative, although the date of the execution is not disclosed. The body is not returned, and the place of burial is not disclosed.<sup>72</sup>

---

<sup>69</sup> Article 50(2) of the Criminal Code.

<sup>70</sup> Article 18(4) and Article 46 of the Constitution.

<sup>71</sup> The clemency procedure is governed by the Law "On general principles of amnesty and clemency" and Presidential Decree No. 100 on "Regulations on the procedure for providing pardon in the Kyrgyz Republic", 13 April 1995.

<sup>72</sup> Article 155(5) of the Criminal Executive Code.

## 3.5 LATVIA

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>73</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	R
Protocol No. 13 to the ECHR	S

**Status:** partly abolitionist

### LEGAL FRAMEWORK

The death penalty has been abolished for crimes committed in peacetime. However, the Criminal Code envisages the death penalty for murder with aggravating circumstances if committed during wartime.<sup>74</sup> Draft laws on ratification of the Second Optional Protocol to the ICCPR and Protocol No. 13 to the ECHR have been submitted to parliament.

<sup>73</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>74</sup> Article 37 of the Criminal Code, 15 October 1998, with amendments of 18 May 2000. This article also provides that the death penalty may not be applied to individuals below the age of 18 at the time of the crime, or to women.

## 3.6

# THE RUSSIAN FEDERATION

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>75</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R
ECHR	R
Protocol No. 6 to the ECHR	S
Protocol No. 13 to the ECHR	–

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution of the Russian Federation provides for the death penalty, until its abolition, as an exceptional punishment for especially grave crimes against life.<sup>76</sup> The Criminal Code of the Russian Federation envisages the death penalty for five crimes: murder with aggravating circumstances, assassination attempt against a state or public figure, attempt on the life of a person administering justice or preliminary investigations, attempt on the life of a law-enforcement officer, and genocide.<sup>77</sup>

Upon accession to the Council of Europe on 28 February 1996, the Russian Federation committed itself to introducing a moratorium on executions and to ratifying Protocol No. 6 to the ECHR within three years. A presidential decree was issued on 16 May 1996 that requested the government to draft legislation on

<sup>75</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>76</sup> Article 20(2) of the Constitution of the Russian Federation, 25 December 1993.

<sup>77</sup> Articles 105(2), 277, 295, 317, and 357 of the Criminal Code, 13 June 1996.

ratification of Protocol No. 6.<sup>78</sup> A draft law was submitted to the parliament (the State Duma) on 6 August 1999. As of 30 June 2005, the Russian Federation had still not ratified Protocol No. 6.

The Parliamentary Assembly of the Council of Europe has urged the Russian Federation to abolish the death penalty and to conclude its ratification of Protocol No. 6 to the ECHR.<sup>79</sup> The Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles, has called on the Russian Federation to ratify Protocol No. 6 to the ECHR as soon as possible.<sup>80</sup>

## Moratorium

A presidential decree instituted a moratorium on executions in 1996.<sup>81</sup> Furthermore, a ruling of the Constitutional Court placed a temporary prohibition on the passage of death sentences on 2 February 1999.<sup>82</sup>

The Russian Constitution guarantees the right to trial by jury in cases where the death penalty is a potential sentence. Accordingly, the Constitutional Court adopted a resolution prohibiting the passage of death sentences until such time as jury trials are introduced throughout the Russian Federation. At the time of the decision, jury trials were available in only nine of the 89 constituent entities of the Federation. It is envisaged that jury trials will have been introduced throughout the Russian Federation by 1 January 2007. The introduction of jury trials will remove the bar that the Constitutional Court has placed upon the passage of death sentences.

On 3 June 1999, a presidential decree commuted the sentences of all individuals on death row to either life or 25 years' imprisonment.

## Method of execution

Shooting<sup>83</sup>

<sup>78</sup> Presidential Decree No. 724 "On the gradual decrease of the application of the death penalty in connection with accession to the Council of Europe".

<sup>79</sup> Resolution 1277, 23 April 2002.

<sup>80</sup> Report by Alvaro Gil-Robles on his visits to the Russian Federation on 15-30 July 2004 and 19-29 September 2004, 20 April 2005.

<sup>81</sup> Presidential Decree No. 724 "On the gradual decrease of the application of the death penalty in connection with accession to the Council of Europe", 16 May 1996.

<sup>82</sup> Article 20(2) of the Constitution.

<sup>83</sup> Article 186, Criminal Executive Code, 8 January 1997.

---

 STATISTICS
 

---

**Death sentences**

None

**Executions**

None

---

 INTERNATIONAL SAFEGUARDS
 

---

**Pregnant women and children**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>84</sup>

**Pardon or commutation**

The Constitution gives the president authority to grant clemency.<sup>85</sup> The death penalty can be commuted to life imprisonment or deprivation of liberty for 25 years.<sup>86</sup> Clemency commissions in each of the constituent entities consider appeals for clemency and make recommendations to the president.<sup>87</sup> All cases concerning individuals sentenced to death are automatically considered regardless of whether the sentenced person has submitted an appeal for clemency. Sentences are not executed until a decision on clemency has been issued.<sup>88</sup>

**Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed.<sup>89</sup>

---

<sup>84</sup> Article 59(2), Criminal Code. This article also stipulates that the death penalty cannot be applied to men who are over the age of 65 at the time when the sentence is pronounced.

<sup>85</sup> Article 89(c) of the Constitution.

<sup>86</sup> Articles 59(3) of the Criminal Code.

<sup>87</sup> A single Presidential Pardon Commission was replaced by regional commissions in each of the constituent entities by Presidential Decree No. 1500 "On the procedure for consideration of clemency appeals in the Russian Federation", 28 December 2001.

<sup>88</sup> Article 184 of the Criminal Executive Code.

<sup>89</sup> Article 186(4) of the Criminal Executive Code.

## 3.7 TAJIKISTAN

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>90</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R

**Status:** *de facto* abolitionist

### LEGAL FRAMEWORK

The Constitution provides that: “Everyone has the right to life. No one shall be deprived of life except by order of the court for exceptionally grave crimes.”<sup>91</sup> In August 2003, the president signed legislation abolishing the death penalty for 10 crimes.<sup>92</sup> The death penalty was retained for five crimes: murder with aggravating circumstances, rape with aggravating circumstances, terrorism, biocide, and genocide.<sup>93</sup> On 30 November 2004, the lower chamber of parliament adopted amendments to the Criminal Code that provide for life imprisonment for these five crimes.<sup>94</sup> These amendments were endorsed by the upper chamber of parliament on 11 February 2005 and signed by the president on 1 March 2005. The Criminal Executive Code has also been amended.<sup>95</sup> The amendments introduce life imprisonment as an alternative to the death penalty for men between 18 and 63 years of age.

<sup>90</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>91</sup> Article 18 of the Constitution of the Republic of Tajikistan, 6 November 1994.

<sup>92</sup> Law No. 45 “On amendments to the Criminal Code”, 1 August 2003.

<sup>93</sup> Articles 104(2), 138(3), 179(4), 399, and 398 of the Criminal Code, 21 May 1998, with amendments of 1 August 2003.

<sup>94</sup> Law “On the introduction of amendments to the Criminal Code”, 30 November 2004.

<sup>95</sup> Law No. 86 “On amendments to the Criminal Code” and Law No. 87 “On amendments to the Criminal Executive Code”, 1 March 2005.

## Moratorium

On 30 April 2004, the president of Tajikistan announced the introduction of a moratorium on executions and signed a subsequent law to that effect on 15 July 2004. The moratorium, which was applicable from the day of its announcement, is not limited to a specific time frame but has been put in place indefinitely.

The moratorium applies to those who were sentenced to death prior to 30 April 2004 and to those convicted of crimes for which the death penalty is envisaged after 30 April 2004. In the former case, death sentences were to be commuted to 25 years' imprisonment; in the latter case, a sentence of 25 years' imprisonment was to be passed as opposed to the death penalty. As indicated above, however, life imprisonment was also introduced on 1 March 2005 as an alternative to the death penalty.

Official statistics were not provided. The death sentences of at least two individuals (Bakhrom Khomidov and Zarif Sattorov) were commuted to 25 years' imprisonment.

## Method of execution

Shooting<sup>96</sup>

## STATISTICS

### Access to statistics on the death penalty

Official statistics on sentences and executions are not made public.<sup>97</sup>

### Death sentences

None<sup>98</sup>

### Executions

None<sup>99</sup>

<sup>96</sup> Article 219(2), Criminal Executive Code, 6 August 2001. This article also provides that executions shall not be carried out in public.

<sup>97</sup> Article 9 (22), Law "On the enumeration of information constituting a state secret", 10 May 2002.

<sup>98</sup> No official statistics were provided.

<sup>99</sup> No official statistics were provided.



## INTERNATIONAL SAFEGUARDS

**Pregnant women and children**

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>100</sup>

**Fair-trial guarantees**

By the end of the current reporting period, the UN Human Rights Committee had adopted decisions on four communications from individuals in Tajikistan on issues relating to the death penalty. The Committee found a number of violations of the ICCPR, including Article 9 (prohibition against arbitrary detention), Article 7 (prohibition against torture or other ill-treatment), Article 10(1) (right of persons in detention to be treated with humanity), and Article 14 (right to a fair trial).<sup>101</sup>

In all of these cases, the Committee recalled that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of Article 6 of the ICCPR (right to life) and held that the sentences of death were passed in violation of the right to a fair trial as set out in Article 14 of the Covenant, and therefore also in violation of Article 6 of the ICCPR.<sup>102</sup>

**Individual complaints to the UN Human Rights Committee**

Tajikistan has ratified the First Optional Protocol to the ICCPR and thereby recognizes the competence of the UN Human Rights Committee to consider complaints from individuals claiming that their rights under the ICCPR have been violated.<sup>103</sup> In cases concerning the death penalty, the UN Human Rights Committee can issue urgent requests to suspend the execution of a death sentence while the case is pending before the Committee.

By the end of the current reporting period, the UN Human Rights Committee had received 25 communications from Tajikistan concerning violations of the right to life, the prohibition against arbitrary detention, the right to a fair trial, the prohibi-

<sup>100</sup> Article 59(2), Criminal Code, and Law No. 45 "On amendments to the Criminal Code", 1 August 2003.  
<sup>101</sup> CCPR/C/79/D/1096/2002, 6 November 2003, Paragraph 7; CCPR/C/81/D/964/2001, 20 August 2004, Paragraph 7; CCPR/C/81/D/1117/2002, 25 August 2004, Paragraph 7; CCPR/C/83/D/973/2001, 13 April 2005, Paragraph 8.

<sup>102</sup> CCPR/C/79/D/1096/2002, 6 November 2003, Paragraph 7; CCPR/C/81/D/964/2001, 20 August 2004, Paragraph 6.9; CCPR/C/81/D/1117/2002, 25 August 2004, Paragraph 6.6; CCPR/C/83/D/973/2001, 13 April 2005, Paragraph 7.6.

<sup>103</sup> Tajikistan acceded to the First Optional Protocol to the ICCPR on 4 January 1999.

tion against torture and other ill-treatment, and the right of persons in detention to be treated with humanity and dignity.

In April 2005, the UN Human Rights Committee stated that “a number of persons sentenced to death were executed in spite of the fact that they had petitioned the Committee under the Optional Protocol, and that the Committee had issued a request ... not to carry out their executions, pending consideration of their cases by the Committee”.<sup>104</sup>

### **Pardon or commutation**

The Constitution gives the president authority to grant clemency.<sup>105</sup> Death sentences may be commuted to 25 years' imprisonment.<sup>106</sup> The cases of all individuals sentenced to death are automatically considered by the Clemency Commission regardless of whether the person sentenced to death has submitted an appeal for clemency.<sup>107</sup> Sentences are not executed until a decision on clemency has been issued.

According to official statistics, the president pardoned 23 people who had been sentenced to death in the period from 1999 through 2004.<sup>108</sup>

### **Relatives**

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of execution and the place of burial are not disclosed.<sup>109</sup> The Criminal Executive Code provides that the court that passed the death sentence should inform the relatives of the fact that the execution has taken place; however, it does not indicate the time frame after execution within which this information should be made available to the relatives.

<sup>104</sup> List of issues to be taken up in connection with the consideration of the initial report of Tajikistan, CCPR/C/84/L/TJK, 29 April 2005.

<sup>105</sup> Article 69 (27) of the Constitution. Article 216 of the Criminal Executive Code provides that individuals sentenced to death can apply to the president for clemency.

<sup>106</sup> Article 59 of the Criminal Code.

<sup>107</sup> The Commission was established by Presidential Decree No. 721, 8 May 1997.

<sup>108</sup> Initial report of Tajikistan submitted under Article 40 of the ICCPR, CCPR/C/TJK/2004/1, 11 April 2005.

<sup>109</sup> Article 221, Criminal Executive Code. Information of this nature is treated as a state secret. Article 9 (22), Law “On the enumeration of information constituting a state secret”, 10 May 2002.

## 3.8

# THE UNITED STATES OF AMERICA

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>110</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	S
American Convention on Human Rights	S

**Status:** retentionist

### LEGAL FRAMEWORK

The death penalty is retained at the federal level and in 38 of the 50 states.<sup>111</sup> The states that have abolished the death penalty are Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin, as well as the District of Columbia.

The United States Code identifies 42 crimes (38 homicide and four non-homicide) for which the death penalty may be used. The crimes that carry the death penalty differ from state to state, although all states envisage the death penalty for murder.<sup>112</sup> The Uniform Code of Military Justice allows for the death penalty as a possible punishment for 15 offences, many of which must occur during a time of war.

On 24 June 2004, New York's highest court, the Court of Appeals, held that the central provision of the state's law on capital punishment violated the state

<sup>110</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>111</sup> The death penalty is also retained in military law for 15 crimes.

<sup>112</sup> A complete list of capital crimes can be found at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).

Constitution.<sup>113</sup> In December 2004, the Supreme Court of Kansas found that the state's death-penalty law was invalid under the federal Constitution because it gave the prosecution an unfair advantage over defendants during the sentencing process.

## Moratorium

There is no moratorium on executions in place at the federal level. At the state level, Illinois is the only state that has instituted a moratorium on the use of the death penalty.

On 31 May 2005, the North Carolina House of Representatives Judiciary Committee approved a moratorium measure, and it is now up to the state House of Representatives to vote on the measure.<sup>114</sup> In May 2005, the Texas state Senate passed a measure that provides for life imprisonment without parole as an alternative to the death penalty for individuals sentenced for murder. In March 2005, the Connecticut Judiciary Committee voted for legislation to abolish the state's death penalty; it is now up to the state House of Representatives to debate this measure. The New Mexico House of Representatives passed a bill in March 2005 to abolish the death penalty; the bill is now pending in the state Senate.

## Method of execution

The possible methods of execution are lethal injection, electrocution, the gas chamber, hanging, and shooting. The most common method of execution is lethal injection, which is either the sole method or a possible method of execution in all states except Nebraska, where the sole method of execution is electrocution.

# STATISTICS

## Death sentences

According to official statistics, 3,503 prisoners were on civilian death row at the end of 2004, while 3,455 prisoners were there at the end of the reporting period on 30 June 2005. There are seven prisoners on the US military's death row.

<sup>113</sup> The court found that the sentencing provisions were coercive because they required judges to tell juries in capital cases that, if they deadlocked and failed to reach a verdict during the sentencing phase of a trial, the judge would impose a more lenient sentence.

<sup>114</sup> The North Carolina state Senate passed a moratorium bill in 2003.

## Executions

### 2004

According to official statistics, 59 individuals were executed in 2004. Of these, 23 executions were carried out in Texas, seven in Ohio, six in Oklahoma, five in Virginia, four in North Carolina, four in South Carolina, two in Alabama, two in Florida, two in Nevada, one in Arkansas, and one in Maryland.

### 2005

According to unofficial statistics, 28 individuals were executed during the first half of 2005. Of these, nine executions were carried out in Texas, three in Indiana, three in Missouri, two in Alabama, two in Georgia, two in North Carolina, two in Oklahoma, one in California, one in Connecticut, one in Florida, one in Ohio, and one in South Carolina.

---

## INTERNATIONAL SAFEGUARDS

---

### Pregnant women and children

Pregnant women cannot be executed under federal or state law. Women can be executed, and, according to unofficial statistics, there were 54 women on death row as of 1 July 2005.<sup>115</sup>

At the federal level, individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>116</sup>

The United States has entered a reservation to Article 6 of the ICCPR that provides that “the United States reserves the right, subject to its constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.”<sup>117</sup> The UN Human Rights Committee has expressed concern that this reservation may be incompatible with the object and purposes of the ICCPR, and the Inter-American Commission has found the United States to be

---

<sup>115</sup> *Death Row U.S.A. Summer 2005*, Criminal Justice Project of the NAACP Legal Defence and Educational Fund, Inc., [www.naacpldf.org](http://www.naacpldf.org).

<sup>116</sup> 18 U.S.C. § 3591(a)(2)(D), 18 U.S.C. § 3591 (b)(2).

<sup>117</sup> See concluding observations of the Human Rights Committee, CCPR/C/79/Add.50, A/50/40, Paragraph 279, 3 October 1995.

in violation of a principle of *jus cogens* in its pursuit of the death penalty against individuals who were under the age of 18 at the time of the crime.<sup>118</sup>

On 1 March 2005, the US Supreme Court took a decision to abolish the death penalty for defendants who were under the age of 18 when they committed their crimes.<sup>119</sup> In *Roper v. Simmons*, the Supreme Court held that the execution of minors constitutes cruel and unusual punishment within the meaning of the Eighth Amendment to the Constitution. The court found that a national consensus had emerged that such executions are a disproportionate punishment for juveniles, whom society views as categorically less culpable than adult criminals.

As of 1 July 2005, there were 33 death-row inmates (all male) who had been sentenced as juveniles (under 18 at the time of the crime).<sup>120</sup>

### Individuals suffering from any form of mental disorder

The US Supreme Court has ruled that the execution of an insane person – somebody who is not aware of the impending execution or the reasons therefor – violates the US Constitution.<sup>121</sup> Furthermore, the US Supreme Court has also ruled that the execution of a mentally retarded person violates the US Constitution.<sup>122</sup> The American Association of Mental Retardation defines mental retardation as *substantial intellectual impairment appearing at birth or during childhood that impacts on the everyday life of the individual*, although definitions of mental retardation differ from state to state. However, there is no constitutional bar against the execution of individuals who are mentally ill but are not classified as “insane”.

On 2 July 2004, Indiana Governor Joseph Kernan commuted Darnell Williams’ death sentence for murder to life imprisonment without the possibility of parole. Williams had been due to be executed on 9 July 2004 for a double murder committed in 1986. Borderline mental retardation was named as one of the reasons behind this commutation decision.<sup>123</sup>

On 16 March 2005, Stanley Hall was executed in Missouri. His lawyers had appealed for clemency on a number of grounds, including on the claim that Hall

<sup>118</sup> Inter-American Commission Report No. 101/03, Case 12.412, Napoleon Beazley United States, 29 December 2003, and Inter-American Commission Report No. 62/02, Case 12.285, Michael Domingues United States, 22 October 2002.

<sup>119</sup> *Roper v. Simmons*, 543 U.S. (2005).

<sup>120</sup> *Op. cit.*, Note 115.

<sup>121</sup> *Ford v. Wainwright*, 477 U.S. 399 (1986).

<sup>122</sup> *Atkins v. Virginia*, 536 U.S. (2002).

<sup>123</sup> *Death Penalty News*, Amnesty International, December 2004.

was mentally retarded, and that his execution would violate Missouri and US law prohibiting such executions.<sup>124</sup>

On 21 April 2005, Bill Benefiel was executed in Indiana. He had been diagnosed with schizotypal personality disorder and had undergone a number of evaluations prior to his arrest for murder.<sup>125</sup>

## Foreign nationals

The Vienna Convention on Consular Relations provides that state authorities must inform foreign nationals without delay of their right to have their consulate notified of their detention.<sup>126</sup>

On 31 March 2004, the International Court of Justice ruled that the United States had violated its obligation to inform foreign nationals without delay of their right to have their consulate notified of their detention in 51 of the 52 cases of Mexican nationals brought before it by Mexico.<sup>127</sup> The International Court of Justice (ICJ) held that the United States should review the convictions and sentences in each case and determine whether the failure to provide consular notification caused actual prejudice to the defendant in the process of administration of criminal justice.

On 13 May 2004, Governor Brad Henry of Oklahoma commuted the death sentence of Mexican national Osvaldo Torres, whose case was one of those before the ICJ, to life imprisonment without the possibility of parole. The governor noted that Torres had been denied his consular rights under the Vienna Convention.

In February 2005, President George W. Bush issued a memorandum to the US attorney general affirming that the United States would comply with the ICJ judgement.<sup>128</sup> Under the president's determination, the 51 Mexican nationals whose cases are affected by the ICJ ruling may file petitions in state courts seeking review and reconsideration.<sup>129</sup>

<sup>124</sup> *Death Penalty News*, Amnesty International, June 2005.

<sup>125</sup> [www.internationaljusticeproject.com](http://www.internationaljusticeproject.com).

<sup>126</sup> Article 36 of the Vienna Convention on Consular Relations, 1963.

<sup>127</sup> Case concerning *Avena* and other Mexican nationals (*Mexico v. United States of America*), 31 March 2004. The International Court of Justice made a similar ruling in the *LaGrande* case (*Germany v. United States*), 27 June 2001.

<sup>128</sup> *Mexico v. United States of America*, 31 March 2004

<sup>129</sup> State courts will be expected to give effect to the ICJ judgement in accordance with general principles of comity. Consistent with the *Avena* judgement, the president's decision to provide review and reconsideration in these cases does not mean that there must be a different outcome.

According to unofficial statistics, 118 foreign nationals were on death row as of 28 May 2005.<sup>130</sup>

## Fair-trial guarantees

### *Racial prejudices*

In its concluding observations on the periodic report of the United States in 2001, the Committee for the Elimination of Racial Discrimination noted with concern that, according to the special rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary, or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. The Committee urged the state party to ensure, possibly by imposing a moratorium, that no death penalty be imposed as a result of racial bias.<sup>131</sup>

### *Military commissions*

The death penalty may be applied in accordance with the military order establishing military commissions to prosecute individuals currently detained at Guantanamo Bay.<sup>132</sup> The military order has been widely criticized due to the perceived failure of the trial procedures contained therein to comply with international fair-trial standards. To date, President Bush has designated 15 Guantanamo detainees as eligible for trial by military commission. Of those 15, four were formally charged in 2004 and referred for prosecution.<sup>133</sup>

On 15 July 2005, the US Court of Appeal for the District of Columbia overturned the 8 November 2004 ruling of a lower court that had resulted in the suspension of the US military commissions at Guantanamo Bay.

### *Innocence*

As of the end of the reporting period, 119 prisoners had been released from death row since 1973 after being found innocent of the crimes for which they had previously been convicted.<sup>135</sup> According to official statistics, seven death-row inmates have been exonerated since 1 January 2004.

<sup>130</sup> [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).

<sup>131</sup> Concluding observations of the CERD on the United States, A/56/18, 14 August 2001, Paragraph 396.

<sup>132</sup> Military Commission Order No. 1 "Procedures for trials by military commissions of certain non-United States citizens in the war against terrorism", 21 March 2002, Part 6(g).

<sup>133</sup> "Briefing Paper on the U.S. Military Commissions", Human Rights Watch, revised July 2005, [www.hrw.org](http://www.hrw.org).

<sup>134</sup> *Hamdan v. Rumsfeld*, Civil Action No. 04-1519 (JR), United States District Court for the District of Columbia. In accordance with the ruling, a Yemeni national Salim Ahmed Hamdan can be tried by a military commission. Amnesty International Public Statement, AMR/51/113/2005, 21 July 2005.

<sup>135</sup> *Death Penalty News*, Amnesty International, June 2005.



Three prisoners have been released since August 2004 on the grounds that they were innocent of the crimes for which they had been convicted. Ryan Matthews, convicted in Louisiana in 1999, had the charges against him dismissed in August. He had been sentenced to death for a crime committed when he was 17 years old, but he was granted a new trial in 2004 after it was found that the state had suppressed evidence and after DNA testing implicated another person in the murder. Ernest Ray Willis was sentenced to death in Texas in 1987 for the arson murder of two women who died in a house fire in 1986. A federal judge overturned the conviction in 2004 after an arson specialist reviewed the original evidence and concluded that there was no evidence of arson. A third man, Dan Bright, sentenced to death in Louisiana in 1996, was released in August 2004.<sup>136</sup>

On 28 February 2005, an Ohio judge dismissed all charges against Derrick Jamison in a murder for which he had been sentenced to death in 1985. His conviction had been overturned on appeal in 2002, and the prosecuting authorities eventually decided not to retry him.<sup>137</sup>

### **Pardon or commutation**

At the federal level, the president has the authority to grant clemency, and, at the state level, the respective governor has the authority to grant clemency, although the process differs from state to state.

According to official statistics, clemency on humanitarian grounds was granted in four cases during 2004 and in one case during the first half of 2005.

In June 2005, Texas Governor Rick Perry commuted the death sentences of 28 juvenile offenders to life imprisonment, thus bringing the state into compliance with the US Supreme Court ruling of March 2005.

---

<sup>136</sup> *Death Penalty News*, Amnesty International, December 2004.

<sup>137</sup> *Death Penalty News*, Amnesty International, June 2005.

## 3.9 UZBEKISTAN

### RELEVANT INTERNATIONAL INSTRUMENTS

International Instruments	Ratification Status <sup>138</sup>
ICCPR	R
Second Optional Protocol to the ICCPR	–
CRC	R

**Status:** retentionist

### LEGAL FRAMEWORK

The death penalty is envisaged for two crimes:<sup>139</sup> murder with aggravating circumstances and terrorism.<sup>140</sup> Until August 1998, the death penalty had been envisaged for 13 crimes. The death penalty was abolished for five crimes in 1998, for four crimes in 2001, and for two more crimes in 2003.

On 28 January 2005, President Islam Karimov raised the issue of the abolition of the death penalty at a joint session of both chambers of parliament: “We are not talking about a moratorium on the death penalty as it is done in some countries, where a convict has to wait for years for the execution of the sentence, but [we are talking about] its complete abolition.”<sup>141</sup>

On 1 August 2005, President Karimov signed a decree on the abolition of the death penalty as of 1 January 2008.<sup>142</sup> The decree envisages that, from 1 January 2008, the death penalty shall be abolished in Uzbekistan as a type of criminal

<sup>138</sup> R = ratified, S = signed, a dash (-) indicates that the participating State has neither signed nor ratified the relevant instrument.

<sup>139</sup> Article 51 of the Criminal Code, 22 September 1994, with further amendments as of 29 September 2004.

<sup>140</sup> Articles 97 (2) and 155 (3) of the Criminal Code.

<sup>141</sup> Note Verbale from the Permanent Mission of Uzbekistan to the Office of the UN High Commissioner for Human Rights, E/CN.4/2005/G/21, 21 March 2005, Paragraph 19.3.

<sup>142</sup> Decree of the President of the Republic of Uzbekistan “On abolition of the death penalty in the Republic of Uzbekistan”, 1 August 2005.

punishment; instead, punishment in the form of life, or long-term, imprisonment shall be introduced.<sup>143</sup>

### Moratorium

There is no moratorium on executions. The UN special rapporteur on torture has called for the introduction of a moratorium on executions in Uzbekistan. The OSCE Chairman-in-Office has expressed hope to see further steps taken towards abolition of the death penalty in Uzbekistan.<sup>144</sup>

### Method of execution

Shooting<sup>145</sup>

## STATISTICS

### Access to statistics

Statistics on death sentences and executions are not made public. In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee expressed its concern about the lack of information on the number of prisoners sentenced to death, grounds for conviction, and the number of executions. The Committee has urged Uzbekistan to “publish such information periodically and make it accessible to the public”.<sup>146</sup>

### Death sentences

Official statistics were not provided. In December 2004, President Karimov stated at a press conference that between 50 and 60 people had been sentenced to death in Uzbekistan in 2004. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least six individuals were sentenced to death during the period from 30 June 2004 to 30 June 2005. Nazirzhan Azizov, Khurshidbek Salaidinov, and Bakhtiyorzhan Tuichiev were sentenced to death in October 2004.<sup>147</sup> Yuldash Kasymov, Alisher Khatamov, and Ismatillo Abasov were sentenced to death on different dates in 2004 and 2005. The latter three were sentenced for murder with aggravating

<sup>143</sup> Uzbek and international human rights organizations welcomed the decree but expressed concerns about the fate of those who have been already sentenced and those who will be sentenced until 2008. They have called for an immediate moratorium on executions and for the sentences to be commuted to life imprisonment.

<sup>144</sup> OSCE press release, 17 March 2005, Ljubljana.

<sup>145</sup> Article 51 of the Criminal Code. Article 140 of the Criminal Executive Code of 1 April 1995 provides that executions shall not be carried out in public.

<sup>146</sup> Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, Paragraph 7.

<sup>147</sup> EUR 62/006/2005, Amnesty International, 11 May 2005.

circumstances.<sup>148</sup> In these six cases, the UN Human Rights Committee lodged requests with Uzbekistan to stay their executions while their cases are pending before the Committee.

## Executions

Official statistics were not provided. Human rights groups in Uzbekistan allege that around 200 people are executed in Uzbekistan every year. According to unofficial statistics compiled from media reports and information received from non-governmental organizations, at least four individuals were executed during the period from 30 June 2004 to 30 June 2005. Mardonbek Jumaniyozov was reportedly executed on 20 July 2004. Azizbek Karimov and Yusuf Zhumayev were reportedly executed on 10 August 2004.<sup>149</sup> Akhrorkhuzha Tolipkhuzhaev was reportedly executed on 1 March 2005.<sup>150</sup> In the last three cases, the UN Human Rights Committee had lodged requests with the Uzbek authorities to stay the executions of these three men while their cases were being considered by the Committee.

In a press statement in September 2004, the UN special rapporteur on the question of torture, Theo van Boven, highlighted “the lack of cooperation by the Government of Uzbekistan with United Nations human rights mechanisms in relation to reports on executions of persons whose sentences were allegedly based on confessions extracted under torture”.<sup>151</sup>

---

## INTERNATIONAL SAFEGUARDS

---

### Women and children

Women and individuals who were below the age of 18 at the time of the crime cannot be sentenced to death.<sup>152</sup>

### Fair-trial guarantees

The UN special rapporteur on torture described the use of torture in Uzbekistan as systematic. He also reported a lack of respect for the principle of

---

<sup>148</sup> EUR 62/014/2005, Amnesty International, 20 June 2005.

<sup>149</sup> UN press release, “UN Expert deplors Uzbekistan’s lack of cooperation with UN Human Rights Mechanisms”, 13 September 2004.

<sup>150</sup> UN press release, “Human Rights Committee requests explanation from Uzbekistan on execution of an Uzbek national”, 14 April 2005.

<sup>151</sup> “Report of the Special Rapporteur on the question of torture”, Theo van Boven, E/CN.4/2005/62, 15 December 2004, Paragraph 7.

<sup>152</sup> Article 51 of the Criminal Code. This article also stipulates that men over the age of 60 at the time of sentencing cannot be sentenced to death.

presumption of innocence, a lack of independence of the judiciary, and discretionary powers of the prosecutor with respect to access to detainees by legal counsel and relatives.<sup>153</sup> Both the UN Human Rights Committee and the UN Committee against Torture have expressed their concern about the lack of independence of the judiciary in Uzbekistan.<sup>154</sup> In addition, the UN Human Rights Committee has also expressed its concern about “the continuing high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the Covenant [prohibition against torture or other ill-treatment]”.<sup>155</sup>

In March 2004, the UN Human Rights Committee considered the case of an applicant who had initially been sentenced to death for murder with aggravating circumstances. The sentence was commuted by the Supreme Court. In the case, the Committee found violations of Article 10(1) (right of persons deprived of their liberty to be treated with humanity) and Article 14 (right to a fair trial) of the ICCPR.<sup>156</sup> The Committee found that the death sentence had been pronounced without meeting the requirements of a fair trial and recalled that the initial imposition of the death penalty upon conclusion of a trial in which the provisions of the ICCPR have not been respected constitutes a violation of the right to life in Article 6 of the ICCPR.

### Individual complaints to the UN Human Rights Committee

Uzbekistan has ratified the Optional Protocol to the ICCPR and thereby recognizes the competence of the UN Human Rights Committee to consider complaints from individuals claiming that their rights under the ICCPR have been violated.<sup>157</sup> In cases concerning the death penalty, the UN Human Rights Committee can issue urgent requests to suspend the execution of a death sentence while the case is pending before the Committee.

The UN Human Rights Committee has received communications on the death penalty from Uzbekistan concerning violations of the right to life, the prohibition against arbitrary detention, the right to a fair trial, the prohibition against torture and

<sup>153</sup> “Report of the UN Special Rapporteur on Torture”, mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003.

<sup>154</sup> Concluding observations of the Human Rights Committee, Uzbekistan, CCPR/CO/71/UZB, 26 April 2001; Concluding observations/comments of the Committee against Torture, CAT/C/CR/28/7, 6 June 2002; Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/83/UZB, 26 April 2005.

<sup>155</sup> Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, Paragraph 10.

<sup>156</sup> CCPR/C/80/D/917/2000, 29 March 2004, Paragraph 6.

<sup>157</sup> Uzbekistan acceded to the Optional Protocol to the ICCPR on 28 September 1995.

other ill-treatment, and the right of persons in detention to be treated with humanity and dignity.

According to official sources, Uzbekistan received urgent requests concerning 31 individuals from the UN Human Rights Committee in 2003-2004. Fifteen individuals (Sh. Andasbaev, U. Eshov, I. Babajanov, M. Ismailov, M. Mirzaev, A. Uteev, O. Ruzmetov, U. Ruzmetov, O. Makhmudov, N. Bazarov, O. Kupalov, B. Yusupov, J. Madrakhimov, I. Sultanov, A. Karimov) had been executed before the requests were received. Death sentences were commuted to different terms of imprisonment for seven individuals (A. Kornetov, A. Isaev, N. Karimov, E. Gungin, F. Karaev, I. Karimov, S. Alisov). In the cases of nine individuals (F. Nasibulin, I. Khudaiberganov, Sh. Juraev, F. Alimov, A. Buryachek, A. Tolipkhujaev, I. Ibragimov, Sh. Baibulatov, S. Kadirov), execution of death sentences was suspended while the cases were pending before the Clemency Commission under the Office of the President.<sup>158</sup>

In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee recalled that, in several cases, Uzbekistan had executed prisoners under sentence of death while their cases were pending before the Committee. The Committee reminded Uzbekistan that “disregard of the Committee’s requests for interim measures constitutes a grave breach of the state party’s obligations under the Covenant and the Optional Protocol”<sup>159</sup>.

### **Pardon or commutation**

Death sentences can be commuted to 25 years’ imprisonment.<sup>160</sup> The cases of all individuals sentenced to death are automatically considered by the Clemency Commission under the Office of the President regardless of whether the sentenced person has submitted an appeal for clemency. Sentences are not executed until a decision on clemency has been issued.

Official statistics for the reporting period were not provided. For the period of 2002-2004, death sentences of 32 individuals were commuted to imprisonment.<sup>161</sup>

<sup>158</sup> Note Verbale from the Permanent Mission of Uzbekistan to the Office of the UN High Commissioner for Human Rights, E/CN.4/2005/G/21, 21 March 2005, Paragraph 21.1.

<sup>159</sup> Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, Paragraph 6.

<sup>160</sup> Article 93 of the Constitution and Article 51(3) of the Criminal Code. Regulation on the Procedure of Granting Clemency in the Republic of Uzbekistan. Approved by Decree of the President of the Republic of Uzbekistan NYII-1839, 11 September 1997.

<sup>161</sup> Note Verbale from the Permanent Mission of Uzbekistan to the Office of the UN High Commissioner for Human Rights, E/CN.4/2005/G/21, 21 March 2005, Paragraph 19.3.

## Relatives

Relatives are not informed in advance of the date of execution. The body is not returned, and the place of burial is not disclosed.<sup>162</sup> Following his mission to Uzbekistan, the special rapporteur on torture expressed serious concern regarding the situation of the relatives of people sentenced to death: “The complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved ones. The practice of maintaining families in a state of uncertainty with a view to punishing or intimidating them or others must be considered malicious and amounting to cruel and inhuman treatment.”<sup>163</sup>

In its concluding observations on the second periodic report submitted by Uzbekistan, the UN Human Rights Committee remained concerned that, “when prisoners under sentence of death are executed, the authorities systematically fail to inform the relatives of the execution, defer the issuance of a death certificate and do not reveal the place of burial of the executed persons”. The Committee stated that, “these practices amount to a violation of article 7 of the Covenant [prohibition against torture or other ill-treatment] with respect to the relatives of the executed persons”. The Committee urged Uzbekistan to change its practice in this regard in order to comply fully with the Covenant’s provisions.<sup>164</sup>

---

<sup>162</sup> This information is regarded as a state secret in accordance with Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 239-33 “On measures of protection of state secrets of the Republic of Uzbekistan”, 5 May 1994, and article 140 of the Criminal Executive Code.

<sup>163</sup> *Op. cit.*, Note 153.

<sup>164</sup> Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, Paragraph 8.

# ANNEX 1

## OSCE COMMITMENTS ON THE DEATH PENALTY

### Concluding Document of the 1989 Vienna Follow-up Meeting

#### 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.

#### Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

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;

### **Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE**

- (36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and reaffirm 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.

### **Concluding Document of the 1992 Helsinki Summit**

The participating States

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

## **Concluding Document of the 1994 Budapest Summit**

### **Capital Punishment**

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

## ANNEX 2

### OTHER INTERNATIONAL STANDARDS ON THE DEATH PENALTY

#### United Nations

##### Extract from the International Covenant on Civil and Political Rights

###### 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.

##### Second Optional Protocol to the International Covenant on Civil and Political Rights

###### 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.

### **Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### **Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

### **Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### **Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

### **Article 11**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

### **Extract from the Convention on the Rights of the Child**

#### **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: Safeguards guaranteeing protection of the rights of those facing the death penalty**

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.

### **General Comment 6 of the Human Rights Committee (extracts)**

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)... 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.

## UN Commission on Human Rights Resolution 2005/59

### Question of the death penalty

*The Commission on Human Rights,*

*Recalling* article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, convinced that the abolition of the death penalty is essential for the protection of this right and recalling article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

*Taking note* that the Second Optional Protocol to the International Covenant on Civil and Political Rights provides that no one within the jurisdiction of a State party shall be executed and that each State party shall take all necessary measures to abolish the death penalty within its jurisdiction,

*Recalling* the entry into force, on 1 July 2003, of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), concerning the abolition of the death penalty in all circumstances,

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

*Welcoming* the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court are authorized to impose,

*Welcoming also* the abolition of the death penalty in some States since the last session of the Commission and decisions taken in other States that restrict the use of the death penalty, inter alia through excluding certain categories of persons or offences from its application,

*Commending* States that have recently acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights,

*Welcoming* the fact that many countries that still retain the death penalty in their penal legislation are applying a moratorium on executions, and also welcoming the



regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

*Reaffirming* the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, and the provisions regarding the implementation of the guidelines contained in Council resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996,

*Reaffirming also* 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,

*Deeply concerned* about the recent lifting of moratoriums on executions in several countries,

*Noting* the consideration of issues relating to the question of the death penalty by the Human Rights Committee,

*Welcoming* the efforts of various sectors of civil society at the national and international levels to achieve the abolition of the death penalty,

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;
4. *Welcomes* the seventh 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 (E/2005/3), submitted in accordance with Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1995/57 of

28 July 1995 and Council decision 2004/242 of 21 July 2004, which concludes that there is an encouraging trend towards the abolition and restriction of the use of the death penalty in most countries, but that much remains to be done in the implementation of the aforementioned safeguards in those countries that retain it;

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;
11. *Requests* the Secretary-General to submit to the Commission at its sixty-second session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons suffering from any mental or intellectual disabilities;

12. *Decides* to continue consideration of the matter at its sixty-second session under the same agenda item.

## **COUNCIL OF EUROPE**

### **Extract from the European Convention for the Protection of Human Rights and Fundamental Freedoms**

#### **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 Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty**

#### **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.

#### **Article 7 – Signature and ratification**

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 8 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 9 – Depositary functions**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d. any other act, notification or communication relating to this Protocol.

## **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**

### **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.

### **Article 6 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 7 – Entry into force**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
2. In respect of any member State which subsequently expresses its consent to be bound by it, 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 the deposit of the instrument of ratification, acceptance or approval.

### **Article 8 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d. any other act, notification or communication relating to this Protocol.

## EUROPEAN UNION

### Extract from the Charter of Fundamental Rights of the European Union

#### Article 2

##### Right to Life

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

### Guidelines on EU Policy Towards Third Countries on the Death Penalty (extracts)

#### 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 financial crimes or for non-violent religious practice or expression of conscience.
- (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 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 any-



- one 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.
  - (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.

## ANNEX 3

### QUESTIONNAIRE ON THE DEATH PENALTY

#### LEGAL FRAMEWORK

- 1) Has the number of crimes that carry the death penalty been increased or decreased since the last publication? Please also attach a copy of the complete text of all criminal offences that carry the death penalty.
- 2) Do any crimes under your country's Code of Military Law carry the death penalty? Please attach a copy of the complete text of all military criminal offences that carry the death penalty.
- 3) Have any steps been taken to introduce, retain or remove a moratorium on executions since last year's publication?
- 4) If a moratorium is in place, please indicate the legal basis of the moratorium, and explain in detail how it works in practice. Please attach copies of relevant legislation or presidential decrees.
- 5) If a moratorium is in place, please detail the specific procedure regulating the treatment and rights of persons subjected to the moratorium. Please attach copies of relevant legislation or presidential decrees.
- 6) If a moratorium is in place, please list the name and place of detention of all persons currently subjected to the moratorium.

#### STATISTICS

- 7) Please provide us with statistics on the number of persons who have been sentenced to death in the period 30 June 2004 to 30 June 2005.
- 8) Please provide us with the full name and age of persons who have been sentenced to death in the period 30 June 2004 to 30 June 2005.
- 9) Please indicate the specific crime for which each of these persons was sentenced.

- 10) Please list which of these sentences has entered into force (i.e. all appeal stages have been exhausted).
- 11) Please list which court passed each of the sentences.
- 12) Please indicate if any of the persons sentenced to death in the period from 30 June 2004 to 30 June 2005 were:
  - Under the age of 18 at the time the crime was committed.
  - Pregnant women or women with dependent infants.
  - Diagnosed as having any form of mental disorder.
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 13) Please detail the regulations in place regarding the treatment of persons on death row and attach copies of the relevant legislation and regulations.
- 14) Please provide us with the full name and age of persons who were executed in the period 30 June 2004 to 30 June 2005. Please also indicate the specific crime for which each of these persons was executed.
- 15) Please indicate if any of the persons executed in the period from 30 June 2004 to 30 June 2005 were:
  - Under the age of 18 at the time the crime was committed.
  - Pregnant women or women with dependent infants.
  - Diagnosed as having any form of mental disorder.
  - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
- 16) Which state body is responsible for keeping statistics on sentences, executions and commutations? Please attach any the legal or administrative regulations on the compilation and retention of such statistics?
- 17) Please provide us with the full name and age of any persons sentenced to death who have been granted clemency and had their sentence commuted since 30 June 2004.

## SAFEGUARDS

(In your answers to these questions, please provide us with separate answers with regard to civilian and military crimes.)

- 18) Please describe 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?
- 19) Please list all cases regarding the use of the death penalty that have been decided since the last publication, or are currently ongoing, before international bodies (e.g. UN Human Rights Committee, International Court of Justice, European Court of Human Rights).
- 20) What system do you have in place to ensure that interim stays by the UN Human Rights Committee are complied with and transmitted to all the relevant actors at the national level?
- 21) Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.
- 22) Please describe the procedural process of considering a request for clemency, including the factors that are taken into account when considering such a request. Please attach copies of relevant legislation or regulations.
- 23) Please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out. Please attach copies of the relevant legislation or decrees.
- 24) Please indicate the procedure for informing relatives of the place of burial of executed persons. Please attach copies of the relevant legislation or decrees.

## MISCELLANEOUS

- 25) Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue.

## ANNEX 4

## STATUS OF RATIFICATIONS AS OF:

ICCPR, 2nd Optional Protocol, CRC – 29 June 2005  
 ECHR, Protocol No. 6, Protocol No. 13 – 18 August 2005

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Albania	PA	r		r	r	r	s
Andorra	A	s	s	r	r	r	r
Armenia	A	r		r	r	r	
Austria	A	r	r	r	r	r	r
Azerbaijan	A	r	r	r	r	r	
Belarus	R	r		r	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	n/a	n/a	n/a
Croatia	A	r	r	r	r	r	r
Cyprus	A	r	r	r	r	r	r
The 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	s
Georgia	A	r	r	r	r	r	r
Germany	A	r	r	r	r	r	r
Greece	A	r	r	r	r	r	r
The Holy See	A			r	n/a	n/a	n/a
Hungary	A	r	r	r	r	r	r

STATUS OF RATIFICATIONS

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Iceland	A	r	r	r	r	r	r
Ireland	A	r	r	r	r	r	r
Italy	A	r	r	r	r	r	s
Kazakhstan	DA	s		r	n/a	n/a	n/a
Kyrgyzstan	DA	r		r	n/a	n/a	n/a
Latvia	PA	r		r	r	r	s
Liechtenstein	A	r	r	r	r	r	r
Lithuania	A	r	r	r	r	r	r
Luxembourg	A	r	r	r	r	r	s
Malta	A	r	r	r	r	r	r
Moldova	A	r		r	r	r	s
Monaco	A	r	r	r	s	s	s
The Netherlands	A	r	r	r	r	r	s
Norway	A	r	r	r	r	r	r
Poland	A	r	s	r	r	r	s
Portugal	A	r	r	r	r	r	r
Romania	A	r	r	r	r	r	r
The Russian Federation	DA	r		r	r	s	
San Marino	A	r	r	r	r	r	r
Serbia and Montenegro	A	r	r	r	r	r	r
The Slovak Republic	A	r	r	r	r	r	r
Slovenia	A	r	r	r	r	r	r
Spain	A	r	r	r	r	r	s
Sweden	A	r	r	r	r	r	r
Switzerland	A	r	r	r	r	r	r
Tajikistan	DA	r		r	n/a	n/a	n/a
Turkey	A	r	s	r	r	r	s
Turkmenistan	A	r	r	r	n/a	n/a	n/a

Participating State	Status	ICCPR	2nd Optional Protocol	CRC	ECHR	Protocol No. 6	Protocol No. 13
Ukraine	A	r		r	r	r	r
The United Kingdom	A	r	r	r	r	r	r
The United States of America	R	r		s	n/a	n/a	n/a
Uzbekistan	R	r		r	n/a	n/a	n/a
The Former Yugoslav Republic of Macedonia	A	r	r	r	r	r	r

Notes:

r = ratification

s = signature only

n/a = non-applicable

A = abolitionist

DA = de facto abolitionist

PA = partly abolitionist

R = retentionist