The Death Penalty in the OSCE Area

Background Paper 2011

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This paper updates *The Death Penalty in the OSCE Area: Background Paper 2010*. It is intended to provide a concise update to highlight changes in the status of the death penalty in OSCE participating States since the previous publication and to promote constructive discussion of this issue. It covers the period from 1 July 2010 to 30 June 2011.

All comments or suggestions should be addressed to ODIHR's Human Rights Department.

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Overview

Since 1999, in accordance with its mandate, ODIHR has been monitoring developments regarding the death penalty in the OSCE area and reporting on the issue annually at the OSCE Human Dimension Implementation Meeting. OSCE commitments do not require that participating States abolish the death penalty. The states have, however, committed themselves to using the death penalty as punishment only for the most serious crimes and in a manner not contrary to their international commitments, as well as to keeping the question of eliminating capital punishment under consideration.[1]

This publication covers the period 1 July 2010 to 30 June 2011 and offers a concise update that highlights only those changes in the status of the death penalty made since the last Background Paper.[2] Seeking to rely primarily on information provided directly by OSCE participating States, ODIHR sent out a questionnaire on the use of the death penalty in June 2011 to each of the six countries for which there were entries in the 2010 Background Paper.[3] Responses were received only from Belarus and the United States. Additional information had, therefore, to be gathered from other sources, such as OSCE field operations and reports by non-governmental actors and the media.

While only minimal progress has been seen in participating States that have publicly committed to or are legally obliged to abolish capital punishment, there were, nevertheless, some noteworthy developments. Illinois abolished the death penalty in March 2011, becoming the 16th jurisdiction in the United States to take this step. Kyrgyzstan, for its part, acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty. And, in October 2010, Spain established the International Commission Against the Death Penalty, whose objectives include the universal abolition of capital punish-

1 OSCE Copenhagen Document, 1990, para. 17.8, see Annex 1.

2 For earlier developments, see "The Death Penalty in the OSCE Area, Background Paper 2001", OSCE/ODIHR, September 2010, <http://www.osce.org/odihr/71484>.

3 The six participating States that retained the death penalty in 2010 in some way were Belarus, Kazakhstan, Latvia, the Russian Federation, Tajikistan and the United States of America.

ment, and promoting the establishment of a global moratorium on the use of the death penalty in the meantime.

The international community, including the United Nations, the OSCE Parliamentary Assembly and the European Parliament, continued to work in support of abolition of the death penalty globally. In its Annual Session, held in Oslo from 6 to 10 July 2010, the OSCE Parliamentary Assembly adopted a resolution condemning all executions and calling upon states that still have not abolished the death penalty to declare an immediate moratorium.

A resolution against the use of the death penalty was adopted by the European Parliament on 7 October 2010, ahead of the World and European Day Against the Death Penalty, on 10 October. On 21 December, the Sixty-fifth plenary session of the UN General Assembly adopted a resolution on a moratorium on the use of the death penalty. The resolution, the third on this theme adopted since 2007, received the support of more states than ever before, with 107 voting in favour, 38 against, and 36 abstaining.[4] The resolution calls upon all states to make available relevant information with regard to their use of the death penalty, to move towards the restriction of the use of the death penalty and the reduction of the number of offences for which it may be imposed, and to establish a moratorium on executions, with a view to abolishing the death penalty.

4 UN General Assembly website, GA/SHC/3996, 11 November 2010, <http://www.un.org/News/Press/docs/2010/gashc3996.doc.htm>.

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.

Fifty OSCE participating States are abolitionist:

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

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

One participating State is partly abolitionist:

- Latvia

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

Three participating States are *de facto* abolitionist:

- Kazakhstan
- Russian Federation
- Tajikistan

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

Two participating States are retentionist:

- Belarus
- United States of America

1. Abolitionist States

After acceding to Protocol No. 13 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, in April 2010, the government of Spain established, on 7 October, the International Commission Against the Death Penalty. The objective of the commission is to pursue the universal abolition of capital punishment while, in the meantime, promoting the establishment of a global moratorium on its use.[5]

On 6 December 2010, Kyrgyzstan acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which is aimed at the abolition of the death penalty, thus becoming the Protocol's 73rd State Party.[6] The treaty had been ratified on 3 June, after the adoption of an enabling law on 17 March.

2. Partly Abolitionist States

LATVIA

A moratorium on the death penalty has been in place in Latvia since 1996 and, in 1999, capital punishment was abolished for crimes committed in peacetime. The Criminal Code of Latvia allows for the imposition of death sentences for convictions for murder with aggravating circumstances, and only when committed in wartime.[7] The country is in the process of ratifying Protocol No. 13 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. Since the government of Latvia endorsed a draft law on the ratification of Protocol No. 13, on 19 May 2008, progress on passing the law has been slow. The only notable devel-

5 International Commission Against the Death Penalty, About ICDP, 5 September 2011, <http://www.icomdp.org/about-icdp/>.

6 "Kyrgyzstan becomes 73rd country to pass irreversible abolition", World Coalition Against the Death Penalty, 17 December 2010, <http://www.worldcoalition.org/Kyrgyzstan-becomes-73rd-country-to-pass-irreversible-abolition.html>.

7 Article 37 of the Criminal Code of Latvia, 15 October 1998, as amended on 18 May 2000.

opment since last's year's report was a gathering of several parliament committees[8] in March 2011 for further discussions on the draft law.[9]

3. *De Facto* Abolitionist States

KAZAKHSTAN

In Kazakhstan, the death penalty is retained for acts of terrorism entailing loss of life and grave crimes committed in wartime, with people sentenced having the right to appeal for pardon.[10] A presidential decree establishing an indefinite moratorium on the death penalty was issued in December 2003.

On 28 March 2011, at a meeting on the implementation of the National Human Rights Plan of Action, the Head of the Presidential Commission for Human Rights in Astana, Tastemir Abishev, called on the government to abolish capital punishment, thus taking a further step towards the removal of the death penalty. The Commission also recommended the ratification by Kazakhstan of the Second Optional Protocol to the International Covenant on Civil and Political Rights.[11]

A regional conference entitled "Partial Abolition in Central Asia: How to Move the Process of Death Penalty Abolition Forward" was held at the Ministry of Foreign Affairs of Kazakhstan in Astana on 26 April 2011. The conference brought together representatives from governmental bodies and agencies, the non-governmental sector and academia from Kazakhstan, Tajikistan and Kyrgyzstan, as well as representatives from international organizations.[12]

8 These were the Public Affairs and Human Rights; Defence; Foreign Affairs; Legal Affairs; and Anti-corruption and Internal Affairs committees.

9 Lolita Lūse , "Latvia encouraged to abolish death penalty", newspaper of the Parliament of Latvia, 30 March 2011, <http://lv.lv/?menu=doc&id=227920>.

10 Constitution of the Republic of Kazakhstan, clause 2 article 15, as amended on 21 May 2007.

11 Kazakhstan Daily, "Kazakhstan might fully abolish the Death Penalty", 28 March 2011, <http://www.kazakhstan-daily.com/sobytia/sobytia-izbrannoe/v-kazaxstane-mogut-polnostyu-otkazatsya-ot-smertnoj-kazni/> (in Russian).

12 With Moratorium since 2003, Kazakhstan Mulls Abolishing Death Penalty", Astana Calling: a bi-weekly online publication of the Ministry of Foreign Affairs of the Republic of Kazakhstan, 26 April 2011, <http://portal.mfa.kz/portal/page/portal/mfa/resources/Pictures/Astana%20Calling%20PDF%202011/Astana%20Calling%20042611.pdf> (in Russian).

RUSSIAN FEDERATION

A moratorium on the application of the death penalty has been in place in the Russian Federation since 1996, as a result of its obligations as a member of the Council of Europe to abolish capital punishment.[13]

On 21 December 2010, the Russian Federation, for the first time, co-sponsored the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly.[14] The Resolution had been put before the Assembly on two previous occasions. During a session of the Parliamentary Assembly of the Council of Europe, in April 2011, the Vice-Chairman of the Committee on Legal and Judicial Affairs of the Federation Council, Nikolai Shaklein, stated that today "the death penalty is unnatural" and specified that, since 1 January 2010, "under no circumstances is the death sentence to be delivered" in the Russian Federation. He explained that the parliament of the Russian Federation has been working on the ratification of Protocol No. 6 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and expressed the hope that the document would be ratified in the near future.[15]

Debates on ending the moratorium on the use of the death penalty occasionally still resurface. The question of whether the death penalty should be applied for those convicted of committing terrorist acts received significant public coverage following the Moscow Metro bombings of 29 March 2010 and the Moscow Domodedovo Airport terrorist bombing of 24 January 2011. In reaction to the latter, on 27 January 2011, the Vice-Chairman of the Security and Defense Committee of the Federation Council and ex-Deputy Interior Minister, Aleksander Chekalin, expressed his personal conviction that international negotiations on the reinstatement of death penalty for terrorists should be initiated. Chekalin said that not only the perpetrators of terrorist attacks should be sentenced to death, but also "organizers, persons providing funding and instigators" .[16]

13 "Honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions of the death penalty", Report, Council of Europe Parliamentary Assembly, 28 January 1997, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc97/EDOC7746.htm>.

14 Country information on the Russian Federation, Hands off Cain, <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=9&nome=russia>.

15 "Russian Senators: Nowadays Death Penalty is unnatural", Federation Council Press Release, 14 April 2011, <http://www.council.gov.ru/inf_ps/chronicle/2011/04/item16103.html>.

16 *Ibid.*

TAJIKISTAN

A moratorium on executions and the handing down of death sentences has been in place in Tajikistan since 15 July 2004. During the reporting period, Tajikistan continued slowly moving towards the full abolition of capital punishment.

On the occasion of the Warsaw portion of the OSCE Review Conference, on 5 October 2010, Jumakhon Davlatov, the Head of the Working Group on the Death Penalty, which was established by an April 2010 decision by the President of Tajikistan, stated that the country would abolish the death penalty in the very near future. Earlier in the year, on 18 May, Davlatov told an international conference in Dushanbe, entitled "Central Asia Without the Death Penalty", that the measures taken by the Tajikistani government showed that the country would not revert to imposing the death penalty.[17] The government maintains that the legal abolition of the death penalty in Tajikistan would require changes to the Constitution, an outcome the majority of government representatives view as unrealistic, pointing out that the introduction of such changes would have to be approved in a referendum.

According to the International Commission Against the Death Penalty (ICDP), the government would prefer to eliminate the death penalty from the Criminal Code and/or ratify the second Optional Protocol to the International Covenant on Civil and Political Rights.[18] ICDP explains that, according to the government, the abolition of the death penalty has to be understood as a part of a broader reform, aiming at the creation of more humane conditions in the Tajikistani justice system as a whole.[19]

In order to assess public opinion ahead of a possible future referendum, ODIHR commissioned the Nota Bene Public Association to carry out a survey on attitudes towards the death penalty in late 2010. Of the 2,000 people surveyed, 61.2 percent spoke out against the use of capital punishment in the country.

17 "Tajikistan will not revert to practice of death penalty, says Tajik official", Asia-Plus, 18 May 2011, <http://news.tj/en/news/tajikistan-will-not-revert-practice-death-penalty-says-tajik-official>.

18 Conclusion by the ICDP Mission to Tajikistan, communicated in a letter from the Secretary-General of the International Commission Against the Death Penalty to the ODIHR Director, Ambassador Janez Lenarcic, on 18 June 2011.

19 *Ibid.*

4. Retentionist States

BELARUS

In September 2010, the government of Belarus acknowledged to the UN Human Rights Council the need to abolish the death penalty and stated its intention to mould public opinion in favour of abolition, as well as to continue its co-operation with the international community on this issue.[20]

Shortly after, on 6 December, at the Fourth All Belarus People's Assembly, President Alexander Lukashenko stated that "the issue of capital punishment should be revisited", as there are "strong [arguments] for the non-use of capital punishment." At the same time, he stated that public opinion in favour of capital punishment should be taken into account.[21] The Parliamentary Assembly of the Council of Europe Rapporteur on Belarus, Sinikka Hurskainen, said that there has been a general lack of progress on human rights issues between the Parliamentary Assembly and the authorities in Belarus, and that discussions suspended in April 2010 remain on hold.[22]

As on previous occasions, on 21 December 2010, at the 65th UN General Assembly, Belarus abstained from voting on the resolution on a Moratorium on the Use of the Death Penalty.

Legal Framework

The Constitution of Belarus provides that, until it is formally abolished, the death penalty may be applied in accordance with the law as an exceptional penalty for particularly serious crimes.[23] The Criminal Code states that the death penalty may be imposed in cases of severe crimes connected with the deliberate deprivation of life with aggravating circumstances.[24] The death penalty is applicable to 12 crimes in peacetime

20 Country entry on Belarus, *Annual Report 2011-The state of world's human rights*, (London: Amnesty International, 2011) <http://www.amnesty.org/en/region/belarus/report-2011>.

21 "Lukashenko urges a revisiting of the death penalty issue", BelTA, 6 December 2010, <http://www.law.by/work/EnglPortal.nsf/NewsBelForInt/8A320DB5BB27BC22C22577F100570826?OpenDocument>.

22 "PACE Relations with Belarus Authorities to Stay Frozen", Office for a Democratic Belarus, 12 April 2011, <http://democraticbelarus.eu/node/12187>.

23 Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

24 Article 59(1) of the Criminal Code, 9 July 1999, amended on 17 July 2006.

and two additional crimes in times of war.[25] The Constitution of Belarus gives the President the authority to grant clemency and commute a death sentence to one of life imprisonment.[26] Appeals are initially considered by the Clemency Commission.[27]

Moratorium

There is no moratorium in place on either the imposition or carrying out of death sentences.

Method of execution

The death penalty is carried out by firing squad.[28] Relatives are reportedly not informed about the date and/or place of execution.[29] The bodies of those executed are reportedly not returned to families, nor is their place of burial disclosed.[30]

Statistics

Death sentences

According to official statistics provided by the Supreme Court of Belarus, one individual was sentenced to death during the reporting period.[31]

On 14 September 2010, Igor Myalik, age 41, was sentenced to death by the Mogilev Oblast Court for robbery and multiple counts of murder with aggravating circumstances.[32] Myalik was convicted of robbing and murdering four foreigners in 2009.[33] After confirmation of the death sentence by the Supreme Court of Belarus, on 11

25 The death penalty is allowed for the following crimes: "unleashing or conducting a war of aggression" (Article 122, part 2 of the Criminal Code of Belarus), "murder of a representative of a foreign state or international organization, with the intention to provoke international tension or war" (Art. 124, part 2), "international terrorism" (Art. 126), "genocide" (Art. 127), "crimes against humanity" (Art. 128), "premeditated, aggravated murder" (Art. 139, part 2), "terrorism" (Art. 289, part 3), "terrorist acts" (Art. 359), "treason accompanied by murder" (Art. 356, part 2), "conspiracy to seize power" (Art. 357, part 3), "sabotage" (Art. 360, part 2), "murder of a police officer" (Art. 362), "use of weapons of mass destruction" (Art 134), and "murder of a person in violation of the laws and customs of war" (Art. 135, part 3).

26 Constitution of the Republic of Belarus, Art.84 (19).

27 Presidential Decree No. 250 "On the introduction of the regulation of provisions for pardoning procedures in the Republic of Belarus", 3 December 1994.

28 Article 59(1) of the Criminal Code of the Republic of Belarus.

29 Country entry on Belarus, *Annual* Amnesty International, *op. cit.*, note 20.

30 *Ibid.*

31 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Belarus to the OSCE, 15 July 2011.

32 *Ibid.*

33 "Belarusian Gang Members Sentenced for Highway Robberies, Killings", Radio Free Europe, 15 September 2010, <http://www.rferl.org/content/Belarusian_Gang_Members_Sentenced_For_Highway_Robberies_Killings_/2158296.html>.

February 2011,[34] Council of Europe Secretary General Thorbjørn Jagland expressed his disappointment and concern regarding the Court's decision. Jagland said that "talk is not enough to pave the way to a moratorium" and that there is "a need for a genuine political will to turn words into action".[35]

The death sentences of Oleg Gryshkovtsov and Andrei Burdyko, handed down on 14 May 2010 by the Grodno Regional Court, were confirmed by the Supreme Court of Belarus on 17 September 2010, after cassation was denied.[36] Gryshkovtsov and Burdyko, who were 29 and 28 years of age, respectively, when sentenced, were found guilty of the murder of three people and the kidnapping of a minor during a robbery and arson attack, carried out in 2009.[37] In their cassation appeals against the death sentences, the two men argued that investigators had violated procedural regulations and the International Covenant on Civic and Political Rights, using illegal methods to obtain confessions. On 25 February 2011, President Alexander Lukashenko rejected requests for clemency from the two men.[38]

Executions

No executions were carried out during the reporting period.[39] The executions of Oleg Gryshkovtsov and Andrei Burdyko, which led to expressions of concern from the international community, including from the United Nations Human Rights Committee, were carried out after the reporting period for this Background Paper, reportedly between 13 and 19 July 2011.[40]

34 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Belarus to the OSCE, *op. cit.,* note 31.

35 "Jagland Calls Belarus to Adopt an Immediate Moratorium on Executions", Office for a Democratic Belarus, 16 February 2011, <http://democraticbelarus.eu/node/11542>.

36 *Ibid.*

37 "Belarus upholds death Penalty for two men", Office for a Democratic Belarus, 20 September 2010, <http://democraticbelarus.eu/node/9799>.

38 "Belarus: President Lukashenko denies clemency to two death row inmates", BBC, 25 February 2011, <http://www.handsoffcain.info/archivio_news/201102.php?iddocumento=15302565&mover=0>.

39 Response to the ODIHR questionnaire on the death penalty from the Permanent Delegation of the Republic of Belarus to the OSCE, *op. cit.,* note 31.

40 "Britain called on Belarus to establish a moratorium on death penalty", World News – Russian opinion, 1 August 2011, <http://mysouth.su/2011/08/britain-called-on-belarus-to-establish-a-moratorium-on-death-penalty/>.

International Safeguards

Pardon or commutation

The Constitution gives the President the authority to grant clemency, and death penalties may be commuted to those of life imprisonment.[41] No clemencies or commutations were granted during the reporting period, despite submitted requests, nor were any death sentences changed on appeal.[42]

UNITED STATES OF AMERICA

Legal Framework

In the United States, death sentences can be handed down by state, federal or military courts. There are currently 16 jurisdictions that do not maintain the death penalty as a sentencing option, including Alaska, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin and the District of Columbia.[43]

At the state level, the number of jurisdictions in which capital punishment is still practiced continues to decline. During the reporting period, Illinois abolished the death penalty.[44] On 9 March 2011, Governor Pat Quinn signed the bill abolishing the death penalty, which had been passed by the Illinois legislature in January. The sentences of the 15 men on death row in the state at the time the law was signed were commuted to terms of life imprisonment.[45] The abolition followed the imposition of a formal moratorium on executions in 2000, introduced due to concerns that innocent people could be put to death. These concerns arose after the Center on Wrongful Convictions at the Northwestern University School of Law identified cases in which 13 men had been wrongly condemned.

41 Article 84 (19) of the Constitution of the Republic of Belarus.

42 Response to from the Permanent Delegation of the Republic of Belarus to the OSCE, *op.cit.,* note 31.

43 Response to the ODIHR questionnaire on the death penalty from the Unites States Department of State, received on 11 September 2011.

44 Abolitionist states are Alaska, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, New Jersey, New York, North Dakota, Rhode Island, Vermont, West Virginia and Wisconsin. The District of Columbia and the unincorporated United States territory of Puerto Rico are also abolitionist.

45 "Illinois Abolishes The Death Penalty", NPR, 9 March 2011, <http://www.npr.org/2011/03/09/134394946/illinois-abolishes-death-penalty>.

Moratorium

There is no moratorium on executions in place at the federal level in the United States, and responsibilities not vested in the Federal Government are reserved for state governments. Kansas and New Hampshire, in which legislation permits the imposition of the death penalty, have not imposed it in the past 30 years. Neither Colorado, Idaho, Nebraska, Oregon, Pennsylvania or Wyoming, which also have capital punishment laws in effect, has sentenced anyone to death in the past 10 years.[46]

While New York has a capital statute, the New York State Court of Appeals has held that a portion of the state's death penalty sentencing statute (CPL 400.27) is unconstitutional (People v. Taylor, 9 N.Y.3d 129 [2007]). As a result, no defendants may be sentenced to death until the legislature corrects the errors in this statute. New Mexico has repealed its capital statute, but only for murders committed after 1 July 2009.[47]

A *de facto* moratorium on executions exists in four states – California, Maryland, Kentucky and Nebraska – as a result of lethal injection issues. In Nebraska, executions were originally halted when, on 8 February 2008, electrocution was ruled unconstitutional by the state's Supreme Court. Despite the fact that the Nebraska Legislature approved the use of lethal injection in 2009, executions remain halted because the new lethal injection law is currently being challenged in the courts. New Mexico repealed the death penalty for offenses committed after 1 July 2009. Two previously sentenced inmates remain under sentence of death, and the state is pursing the death penalty in the case of one person who is currently on trial.[48]

On 22 June 2011, U.S. District Judge Jose E. Martinez ruled that the method by which Florida courts hand down death sentences was unconstitutional, marking the first time a judge in Florida had overturned a death sentence under the 2002 U.S. Supreme Court ruling in Ring v. Arizona, in which the Court ruled that the defendant had the right to have a jury, rather than a judge, decide on the existence of an aggravating factor that might be considered in handing down a death sentence.[49]

46 "Almost Half of U.S. Jurisdictions Have Had No Executions in 10 Years", Death Penalty Information Center, 5 September 2011, <http://www.deathpenaltyinfo.org/almost-half-us-jurisdictions-have-had-no-executions-10-years>.

47 Response to the ODIHR questionnaire on the death penalty from the Unites States Department of State, received on 11 September 2011., *op. cit.*, note 43.

48 *Ibid.*

49 "Miami federal judge rules Florida's death penalty unconstitutional", Miami Herald, 22 June 2011, <http://www.miamiherald.com/2011/06/22/2279518/miami-federal-judge-floridas-death.html>.

Method of Execution

The methods of execution practiced vary from state to state, although most use lethal injection. There has been no change in methods used since last year's update. The following alternatives to lethal injection exist: electrocution (in Alabama, Arkansas, Florida, Kentucky, Oklahoma, South Carolina, Tennessee and Virginia), the gas chamber (in Arizona, California, Maryland, Missouri and Wyoming), hanging (in Delaware, New Hampshire and Washington) and firing squad (in Oklahoma and Utah).

On 23 June 2011, the Supreme Court of Arkansas halted the executions of three inmates, who had challenged the constitutionality of lethal injections. The three men held that a 2009 state law authorizing the director of the state Department of Correction to choose the drugs used for lethal injection amounts to an unconstitutional delegation of authority.[50]

Statistics

Death Sentences

As of 31 December 2009, the number of inmates on death row was 3,173, which represented a slight decline from the figure of 3,297 provided for the previous year. The most current statistics are provided by the Bureau of Justice Statistics (BJS), a unit of the United States Department of Justice. Data collection by BJS excludes those death row convicts who are awaiting retrial or re-sentencing. Higher figures provided by other sources may include inmates who are awaiting retrial or re-sentencing following a court reversal, or inmates whose court-ordered reversal has not yet been finalized.

Executions

During the reporting period, according to the Death Penalty Information Centre, 42 individuals were executed in the United States, all by means of lethal injection.[51] This number is slightly lower than that for the previous period, with the number of executions in Texas, for example, falling by almost 50 per cent. Of the 42 executions reported, 10 were carried out in Texas, seven each in Ohio and Alabama, four each in Oklahoma and Arizona, three each in Mississippi and Georgia, and one each in Missouri, South Carolina, Virginia and Washington.[52]

50 "High court halts three executions", Arkansas News, 23 June 2011, <http://arkansasnews.com/2011/06/23/high-court-halts-three-executions/>.

51 "Facts about the Death Penalty", Death Penalty Information Centre, Updated 22 July 2011, <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>

52 *Ibid.*

On 9 September 2010, Holly Wood was executed in Alabama after spending 16 years on death row. In a 2002 decision, the United States Supreme Court banned capital punishment for the mentally impaired. Despite an expert report indicating that Wood operated "at most, in the borderline range of intellectual functioning", an appeal for clemency was turned down by Alabama Governor Bob Riley.[53]

On 23 September 2010, Teresa Lewis was executed in Virginia, despite the fact that she had been assessed as having "borderline mental retardation". The execution was the first of a woman in Virginia since 1912 and the first in the United States since 2005. Virginia Governor Bob McDonnell denied an appeal for clemency, stating that "No medical professional has concluded that Teresa Lewis meets the medical or statutory definition of mentally retarded."[54]

International safeguards

Federal laws providing for the death penalty involve serious crimes that result in death, such as murder committed during a drug-related shooting, civil rights offenses resulting in murder, murder related to the sexual exploitation of children, murder related to a carjacking or kidnapping, and murder related to rape. There are also a few very serious non-homicide crimes that may result in a death sentence, *e.g.*, espionage, treason and possessing very large quantities of drugs or drug receipts as part of a continuing criminal enterprise. The United States Congress has also enacted several carefully circumscribed capital offenses intended to combat the threat of terrorist attacks resulting in widespread loss of life. These exceptionally grave criminal acts all have catastrophic effects on society.[55]

The United States Constitution, which applies to both state and federal convictions, prohibits the imposition of the death sentence if the offender was under the age of 18 when the capital offense was committed,[56] is mentally disabled,[57] or is legally insane at the time of the scheduled execution.[58] Federal law specifically prohibits the consideration of a defendant's race or national origin in deciding to seek or impose the

53 "Execution carried out in Alabama", Amnesty International, 10 September 2010, <http://www.amnesty.org/en/library/info/AMR51/084/2010/en>.

54 "Woman, 41, executed in Virginia", New York Times, 23 September 2011, <http://www.nytimes.com/2010/09/24/us/24execute.html>.

55 Response to the ODIHR questionnaire on the death penalty from the Unites States Department of State, received on 11 September 2011., *op. cit.*, note 43.

56 See *Roper v. Simmons*, 543 US 551 (2005).

57 See *Atkins v. Virginia*, 536 US 304 (2002).

58 See *Ford v. Wainwright*, 477 US 399 (1986).

death penalty, and the federal death penalty statute additionally requires a sentencing jury to certify that the defendant's race was not considered in passing sentence.

Fair trial guarantees

No developments were monitored during the reporting period related to changes in fair-trial guarantees.

Foreign Nationals

The case of Humberto Garcia Leal attracted attention at the national and international level, as it was the subject of a hearing before the International Court of Justice. The Court found that, as Texas authorities had failed to notify Leal of his right to contact a Mexican consulate at the time of his arrest, as required by the Vienna Convention on Consular Relations, the United States government had breached its obligations under article 36 of the Convention. The Court ordered the United States not to execute Leal, a Mexican national, pending review and reconsideration of the case. In June 2011, in response to a United States Supreme Court decision, a bill was introduced in the United States Congress aimed at implementing the decision of the International Court of Justice.

In July 2010, having learned that the Texas District Attorney planned to ask a Texas trial court to set an October 2010 execution date for Leal, the Legal Advisor to the United States Department of State wrote to the Texas court asking it to refrain from setting an execution date, so as to allow a reasonable opportunity for the legislative process to work. With interventions by the executive branch, Leal's execution date was delayed until 7 July 2011. Thereafter, the United States government filed a brief as *amicus curiae* with the United States Supreme Court, supporting Leal's request for a stay of execution to allow time for Congress to enact the Consular Notification Compliance Act, which would provide Leal's case the review and reconsideration called for under the International Court of Justice's *Avena* decision. That request for a stay was denied by the Supreme Court on 7 July, and Leal was executed later that day, despite requests from the United Nations High Commissioner for Human Rights, among other bodies and individuals.[59]

In another case, the European Parliament called, on 9 June 2011, for United States authorities not to seek the death penalty for Saudi national and Guantanamo detainee Abd al-Rahim al-Nashiri in a trial before a military court, and to provide for a fair trial

59 Response to the ODIHR questionnaire on the death penalty from the Unites States Department of State, received on 11 September 2011., *op. cit.*, note 43.

in accordance with international rule of law standards.[60] Prior to this, in April 2011, the United States Defense Department had announced that it was seeking the death penalty against Mr. al-Nashiri in his trial in connection with the bombing of the warship USS Cole in Yemen in 2000.[61]

Pardon or commutation

For federal death row inmates, only the President of the United States has the power to grant clemency. Furthermore, no member of the military services can be executed unless the President confirms the death penalty. The clemency process varies from state to state, usually involving the governor, a board of advisors, or both. In all cases, a formal petition for clemency must be filed.

During the reporting period, six death sentences were comuted on humanitarian grounds.[62] On 9 March 2011, Governor Pat Quinn of Illinois also commuted the sentences of 15 persons on death row to sentences of life imprisonment without parole, after signing into law a bill abolishing the death penalty in the state.

On 27 October 2010, 16 years after he was sentenced to death in Texas, Anthony Graves was released from prison, following a decision by the Burleson County District Attorney to drop all charges in a re-trial. Graves' initial murder conviction had been overturned by the 5th United States Circuit Court of Appeals. Graves thus became the 138th person to be released from death row in the United States since 1973 after being declared not guilty.

60 "Guantánamo: EP opposes death sentence to be imposed by US military court", Press Release from the European Parliament, <http://www.europarl.europa.eu/en/pressroom/content/20110609IPR21066/html/Guant%C3%A1namo-EP-opposes-death-sentence-to-be-imposed-by-US-military-court>.

61 "Pentagon Seeks Death Penalty Against USS Cole Bombing Suspect", Foxnews, 20 April 2011, <http://www.foxnews.com/politics/2011/04/20/pentagon-seek-capital-charges-uss-cole-bombing-suspect/>.

62 Entry on clemency, Death Penalty Information Website, 4 September 2011, <http://www.deathpenaltyinfo.org/clemency>.

Annexes

Annex 1

OSCE Commitments and Resolutions on the Death Penalty

OSCE Parliamentary Assembly Annual Session, Oslo, 6 – 10 July 2010,

Resolution on the Death Penalty

(…)

The OSCE Parliamentary Assembly:

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

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

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

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

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

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

51. *Calls upon* Latvia to amend its Criminal Code in order to abolish the death penalty for murder with aggravating circumstances, if committed during wartime;

52. *Calls upon* the retentionist participating States to encourage the Office for Democratic Institutions and Human Rights and OSCE Missions, in co-operation with the Council of Europe, to conduct awareness-raising activities against recourse to the

death penalty, particularly with the media, law enforcement officials, policy-makers and the general public;

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

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

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.

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.

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.

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.

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.

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, subse-

quent 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.

Moratorium on the use of the death penalty, UN General Assembly Resolution 65/206, 21 December 2010

The General Assembly,

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

Recalling the Universal Declaration of Human Rights[63], the International

63 Resolution 217 A (III).

Covenant on Civil and Political Rights[64] and the Convention on the Rights of the Child,[65]

Reaffirming its resolutions 62/149 of 18 December 2007 and 63/168 of

18 December 2008 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

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

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

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

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

1. Welcomes the report of the Secretary-General on the implementation of resolution 63/168[66] and the recommendations contained therein;

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

3. *Calls upon* all States:

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

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

64 See resolution 2200 A (XXI), annex.

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

66 A/65/280 and Corr.1.

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

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

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

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

6. *Decides* to continue its consideration of the matter at its sixty-seventh session under the item entitled "Promotion and protection of human rights".

Moratorium on the use of the death penalty, UN General Assembly Resolution 62/149, 18 December 2007[67]

The General Assembly,

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

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being its resolution 2005/59, in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive

67 Another resolution was adopted by the UN General Assembly one year later, on 18 December 2008, on the implementation of the 2007 General Assembly resolution 62/149, UN Doc. A/63/430/Add.2, draft res. I., 18 December 2008.

evidence of the death penalty's deterrent value and that any miscarriage or failure of justice in the death penalty's implementation is irreversible and irreparable,

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

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

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

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

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

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

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

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

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

5. *Decides* to continue consideration of the matter at its sixty-third 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 the 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.

Extract from EU Guidelines on the Death Penalty: revised and updated version, 2008

III. Minimum standards paper

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

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

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

iii) Capital punishment may not be imposed on:

- persons below 18 years of age at the time of the commission of their crime;
- pregnant women or new mothers;
- persons who have become insane.

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

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

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

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

viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment. ix) Capital punishment may not be carried out in contravention of a state's international commitments.

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

Extract from European Parliament Resolution of 7 October 2010 on the World Day Against the Death Penalty

The European Parliament,

…

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

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

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

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

(…)

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

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

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

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

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

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

11. *Calls on* retentionist OSCE states to treat information concerning the death penalty in a transparent manner, providing public information on the identity of individuals sentenced to death or executed and statistics on the use of the death penalty, in accordance with OSCE commitments;

12. *Urges* the Council and the Commission, notably in view of the setting-up of the EEAS, to provide guidance for a comprehensive and effective European death penalty

policy with regard to dozens of confirmed European nationals facing execution in third countries, which should include strong and reinforced mechanisms in terms of the identification system, the delivery of legal assistance, EU legal interventions and diplomatic representations;

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

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

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

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

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

(…)

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

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

(…)

Extract from European Parliament resolution of 1 February 2007 on the initiative in favour of a universal moratorium on the death penalty

The European Parliament,

…

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

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

ORGANIZATION OF AMERICAN STATES

Extract from the American Convention on Human Rights

Chapter II – Civil and Political Rights

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Annex 3

Relevant Recommendations made at the 2010 OSCE Review Conference

During the 2010 OSCE Review Conference, held in Warsaw from 30 September to 08 October 2010, views were also exchanged on the question of the abolition of the death penalty. *Working Session 5: Rule of law II* addressed the issues of capital punishment, prevention of torture and the protection of human rights in fighting terrorism. The majority of interventions focused on the death penalty and the prevention of torture.

It was noted that there had been a gradual phasing out of the death penalty in the OSCE area over the past decade. Only six States still retained the death penalty. Of these, two still carried out executions. The two States in question – Belarus and the United States pointed out that they used the death penalty sparingly and only in exceptional circumstances and that its use did not contravene OSCE commitments. Four States had retained the death penalty for cases of terrorism leading to loss of life and other most serious crimes, but had not in fact imposed the death penalty for some years.

It was also noted that this positive trend had continued despite an increase in terrorist activity in the OSCE area over this period. States had resisted the temptation to reintroduce the death penalty, possibly taking the view that the death penalty might fuel extremism and radicalisation. Many States expressed their opposition to capital punishment in all cases and under all circumstances, and called for a global moratorium as a first step towards its abolition. Some States pointed out that popular support for the retention or reintroduction of capital punishment remained strong. The ODIHR's Annual Report on the Death Penalty in the OSCE was commended.

The following recommendations were made:

- The two OSCE participating states where executions still take place should abolish capital punishment and adopt a moratorium on capital punishment in the meantime;
- All participating states which still maintain the possibility to apply capital punishment should abolish it for all crimes;

- There should be a moratorium on the death penalty and an affirmation of the right to life;
- Several participating States and NGOs urged the OSCE to examine alternatives to the death penalty and, in particular, the imposition of life sentences;
- The OSCE was called upon to facilitate an exchange of information on sentencing arrangements and the handling of those condemned to life in prison;
- Several NGO participants called for increased public awareness of the broader human rights implications of the death penalty.

Annex 4

Questionnaire on the Death Penalty sent out by ODIHR in June 2011

1. Please inform us of any developments with regard to the death penalty in your country since 1 July 2010.

LEGAL FRAMEWORK

2. The attached paper is a copy of the entry related to your country in the publication of 2010. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
3. Has the number of crimes that carry the death penalty increased or decreased since the last publication?
4. Do any crimes under your country's Code of Military Law carry the death penalty? Have there been any changes since the last publication?
5. Have any steps been taken to introduce, retain, or remove a moratorium on executions? If yes, please provide details and the legal basis for those changes and please attach copies of relevant legislation or presidential decrees.
6. If a moratorium is in place, have there been any changes since last year's publication in the specific procedure regulating the treatment and rights of persons subjected to the moratorium? If yes, please attach copies of relevant legislation or presidential decrees.
7. If a moratorium is in place, please list the name and place of detention of all persons currently subjected to the moratorium.

STATISTICS

8. Please provide us with statistics on the number of persons who have been sentenced to death in the period from 1 July 2010 to 30 June 2011.
9. Please provide us with the full name and age of persons who have been sentenced to death in the period from 1 July 2010 to 30 June 2011.

10. Please indicate the specific crime for which each of these persons was sentenced.

11. Please list which of these sentences has entered into force (i.e., all appeal stages have been exhausted).

12. Please list which court passed each of the sentences.

13. Please indicate if any of the persons sentenced to death in the period from 1 July 2010 to 30 June 2011 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.

14. If there have been changes since the last year's publication, please detail the regulations in place regarding the treatment of persons on death row and attach copies of the relevant legislation and regulations.

15. Please provide us with the full name and age of persons who have been executed in the period from 1 July 2010 to 30 June 2011.

16. Please indicate if any of the persons executed in the period from 1 July 2010 to 30 June 2011 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.

17. Which state body is responsible for keeping statistics on sentences, executions and commutations?

18. Please provide us with the full name and age of any persons sentenced to death who have been granted clemency or had their sentence commuted since 1 July 2010.

SAFEGUARDS

19. Please describe if there have been any changes in the procedure for informing all non-nationals who have been accused of committing a crime, for which the death

penalty is a potential sentence, of their right to receive consular assistance. Is this procedure mandatory?

20. 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).

21. What system is 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? Have there been any changes in this system since last year's publication?

22. Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.

23. If there have been changes since last year's publication, please describe the procedural process of considering a request for clemency, including the factors that are taken into account when considering such a request.

24. If there have been changes since last year's publication, please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out, as well as of the place of burial of executed persons.

MISCELLANEOUS

25. Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue in the period from 1 July 2010 to 30 June 2011.

Annex 5

Status of Ratifications of Relevant Treaties

Status of Ratifications as of: 5 August 2011

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Albania	A	r	r	r	r	r
Andorra	A	r	r	r	r	r
Armenia	A	r	not ratified	r	r	signed
Austria	A	r	r	r	r	r
Azerbaijan	A	r	r	r	r	not ratified
Belarus	R	r	not ratified	n/a	n/a	n/a
Belgium	A	r	r	r	r	r
Bosnia and Herzegovina	A	r	r	r	r	r
Bulgaria	A	r	r	r	r	r
Canada	A	r	r	n/a	n/a	n/a
Croatia	A	r	r	r	r	r
Cyprus	A	r	r	r	r	r
Czech Republic	A	r	r	r	r	r
Denmark	A	r	r	r	r	r
Estonia	A	r	r	r	r	r
Finland	A	r	r	r	r	r
France	A	r	r	r	r	r
Georgia	A	r	r	r	r	r
Germany	A	r	r	r	r	r
Greece	A	r	r	r	r	r
Holy See	A	not ratified	not ratified	n/a	n/a	n/a
Hungary	A	r	r	r	r	r
Iceland	A	r	r	r	r	r
Ireland	A	r	r	r	r	r
Italy	A	r	r	r	r	r
Kazakhstan	DA	r	not ratified	n/a	n/a	n/a
Kyrgyzstan	A	r	**ratified**	n/a	n/a	n/a
Latvia	PA	r	not ratified	r	r	signed
Liechtenstein	A	r	r	r	r	r

Participating State	Status	ICCPR	2nd Optional Protocol	ECHR	Protocol No. 6	Protocol No. 13
Lithuania	A	r	r	r	r	r
Luxembourg	A	r	r	r	r	r
Malta	A	r	r	r	r	r
Moldova	A	r	r	r	r	r
Monaco	A	r	r	r	r	r
Montenegro	A	r	r	r	r	r
Netherlands	A	r	r	r	r	r
Norway	A	r	r	r	r	r
Poland	A	r	signed	r	r	signed
Portugal	A	r	r	r	r	r
Romania	A	r	r	r	r	r
Russian Federation	DA	r	not ratified	r	signed	not ratified
San Marino	A	r	r	r	r	r
Serbia	A	r	r	r	r	r
Slovak Republic	A	r	r	r	r	r
Slovenia	A	r	r	r	r	r
Spain	A	r	r	r	r	r
Sweden	A	r	r	r	r	r
Switzerland	A	r	r	r	r	r
Tajikistan	DA	r	not ratified	n/a	n/a	n/a
Turkey	A	r	r	r	r	r
Turkmenistan	A	r	r	n/a	n/a	n/a
Ukraine	A	r	r	r	r	r
United Kingdom	A	r	r	r	r	r
United States of America	R	r	not ratified	n/a	n/a	n/a
Uzbekistan	A	r	r	n/a	n/a	n/a
Former Yugoslav Republic of Macedonia	A	r	r	r	r	r

Notes:

r = ratification or accession
signed = signature only
not ratified = neither signed not ratified
n/a = non-applicable as not member of the Council or Europe
A = abolitionist
DA = *de facto* abolitionist
PA = partly abolitionist
R = retentionist

in bold = developments since last reporting