

The abolition of the death penalty and its alternative sanction in Eastern Europe: Belarus, Russia and Ukraine



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Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
FSIN	Federal Service of Execution of Punishments of Russia
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
ODIHR	Office for Democratic Institutions and Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly for the Council of Europe
PED	Department of Execution of Punishments of the Belarusian Ministry of Internal Affairs
PRI	Penal Reform International
POC	Public Oversight Commission (Russia)
SPS	State Penitentiary Service (Ukraine)
TB	Tuberculosis
UK	United Kingdom
UN	United Nations
UPR	Universal Periodic Review
USA	United States of America

Introduction

The death penalty is the ultimate cruel, inhuman and degrading punishment. It represents an unacceptable denial of human dignity and integrity. It is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent. In many countries that retain the death penalty there is a wide scope of application which does not meet the minimum safeguards, and prisoners on death row are often detained in conditions which cause physical and/or mental suffering.

The challenges within the criminal justice system do not end with the institution of a moratorium or with abolition. Many countries that institute moratoria do not create humane conditions for prisoners held indefinitely on 'death row', or substitute alternative sanctions that amount to torture or cruel, inhuman or degrading punishment, such as life imprisonment without the possibility of parole, solitary confinement for long and indeterminate periods of time, and inadequate basic physical or medical provisions. Punitive conditions of detention and less favourable treatment are prevalent for reprieved death row prisoners. Such practices fall outside international minimum standards, including those established under the EU Guidelines on the Death Penalty.

This research paper focuses on the application of the death penalty and its alternative sanction in three countries of Eastern Europe: the Republic of Belarus, the Russian Federation and Ukraine. Its aim is to provide up-to-date information about the laws and practices relating to the application of the death penalty in this region, including an analysis of the alternative sanctions to the death penalty and whether they reflect international human rights standards and norms.

This paper takes a country-by-country approach and focuses on:

- The legal framework of the death penalty and its alternative sanction (life imprisonment).
- Implementation of both sentences, including information on fair trial standards.
- Application of the sentence, including an analysis of the method of execution, the prison regime and conditions of imprisonment.
- Statistical information on the application of the death penalty/life imprisonment.
- Criminal justice reform processes in general.

This paper provides detailed and practical recommendations tailored to each country to bring it in line with international human rights standards and norms.

We hope this research paper will assist advocacy efforts towards abolition of the death penalty and the implementation of humane alternative sanctions in the region. We hope this paper will be of use to researchers, academics, members of the international and donor community, and all other stakeholders involved in penal reform processes including government officials, parliamentarians, prison officials and members of the judiciary.

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Research methodology

Access to information on the application of the death penalty and its alternative sanction is often unavailable or inaccurate in many countries. Statistical information is not always made available by state bodies, and information provided is not always timely, or lacks clarity. Across the Eastern European region in particular, such information is often classified as a state secret. As such, although PRI aimed to undertake an in-depth analysis of legal, policy and practice areas within the remit of this research paper, access to some information was beyond the abilities of the researchers, and therefore gaps in the research remain.

A research questionnaire was designed in late 2010 to assist researchers in identifying relevant information. The research questionnaire was designed by PRI in partnership with Sandra Babcock (Northwestern University, USA) and Dirk van Zyl Smit (Nottingham University, UK).

The researchers looked at primary sources, such as legislation and case law, as well as interviewed relevant government officials within the various departments of the Ministries of the Interior, the Ministries of Justice, Constitutional Councils, and the Penitentiary Services, as well as with national human rights commissions/Ombudsmen, lawyers and judges, journalists, and members of civil society/human rights defenders in all three countries, and with a cross-section of death row and life sentenced prisoners where access was made available. The researchers also turned to reports by individuals or organisations with first-hand experience, such as by inter-governmental organisations including reports by UN treaty bodies, the OSCE and Council of Europe, as well as reports by international NGOs such as Human Rights Watch, Amnesty International, Death Penalty Worldwide and the World Coalition against the Death Penalty. Reports and articles by journalists and academics were also analysed.

The research was completed in January 2012.

Executive Summary

The Eastern European region presents a unique picture of a region in various stages of the abolition process: Ukraine has abolished the death penalty for all crimes in law, Russia is abolitionist in practice, and Belarus continues to carry out executions. While Belarus and Russia are the last two countries in Europe to abolish the death penalty in law, it is important to note that both of their constitutions emphasise the exceptional and temporary nature of this punishment.

Belarus is the only country in Europe that continues to execute. The last executions took place in March 2012. The death penalty is retained for 14 criminal offences (12 in time of peace and two in time of war). However, since 1989, it has almost always been applied for aggravated murder. According to the Ministry of Internal Affairs, between 1998 and 2010, 102 men have been sentenced to death in Belarus.

Over the last ten years, the government have made a number of positive statements in various national and international forums indicating that Belarus is moving towards a position of moratorium. A governmental Working Group on the death penalty was established in February 2010 to facilitate wide discussions on the issue of abolition. However, following the disputed presidential elections in December 2010, discussions towards a moratorium have stalled. The 2011 terrorist attack on the Minsk underground has also resulted in a more negative approach towards establishing an official moratorium. It is important to note that politicians in Belarus continue to rely on perceived public opinion as an argument for retaining the death penalty. In particular, politicians rely on the results of a 1996 public referendum according to which 80.44 percent of the public were against abolition.

It should be noted that in the last ten years, the number of executions have decreased considerably in Belarus, from 47 executions in 1998, to an average of two per year since 2008. However, the total secrecy surrounding the procedures relating to the implementation of the death penalty, flawed fair trial procedures and the harsh prison conditions for those on death row raise fundamental human rights concerns regarding its continued use.

Life imprisonment was established as a new sanction for 14 criminal offences (the same offences as for the death penalty) in Belarus in 1997. At least 144 men have been sentenced to life imprisonment since

its introduction, and a further 156 death sentences have been commuted to life imprisonment. Life imprisonment does not have a maximum tariff however that sentence may be substituted for a definite term of imprisonment after serving a minimum of 20 years in prison. To date no lifers have been paroled since life imprisonment has only been in place for the last fifteen years.

While Russia retains the death penalty in its Criminal Code for five offences, an official moratorium on both sentencing and executions has been in place since February 1999, when the Constitutional Court found that the death penalty would be unconstitutional until jury-trials were established in all 89 regions of the Russian Federation. The moratorium was extended by the State Duma in 2006 until 2010. Chechnya was the final region to establish jury trials in 2010, and in anticipation of this, the Constitutional Court extended the moratorium indefinitely in November 2009 until Russia ratifies Protocol No. 6 to the European Convention on Human Rights.

Executions have not been carried out in Russia since September 1996 (although executions were carried out until 1999 in Chechnya, which de facto was not then under control of the Russian Federation), and despite the clear direction set out by the Constitutional Court, debates on the reinstatement of the death penalty occasionally resurface. The issue of retaining the death penalty for those convicted of committing acts of terrorism has received significant public coverage following the Moscow Metro bombings in March 2010 and the Moscow Domodedovo Airport bombing in January 2011. Furthermore, like Belarus, public opinion on the death penalty has been an important part of its continued retention, and law makers continue to refer to the high percentage of the public who are against abolition.

Life imprisonment as an alternative to the death penalty was established by the Russian Federation in 1992, and in 1996 it was established as a stand-alone punishment for 13 offences in the Criminal Code. At least 1,780 men have been sentenced to life imprisonment since its introduction. Life imprisonment does not have a maximum tariff; however a lifer may apply for parole after serving a minimum of 25 years in prison. To date no lifers have been paroled.

Ukraine is the only country in the region to have abolished the death penalty in law for all crimes. Following its membership to the Council of Europe in 1995, Ukraine promised to abolish the death penalty, however executions continued until a moratorium on executions was established on 11 March 1997. Death sentences continued to be handed down until the Constitutional Court ruled the death penalty to be unconstitutional in December 1999 and the President of Ukraine signed a law abolishing all 24 death penalty applicable offences from the Criminal Code in February 2000. Following the abolition of the death penalty, a new sanction of life imprisonment was established in 2000, and all 612 death row prisoners had their sentences commuted to life sentences.

Life imprisonment may be imposed for nine offences as set out in the Criminal Code, and unlike Belarus and Russia, women can be sentenced to life imprisonment in Ukraine. At least 1,883 prisoners are currently serving a life sentence in Ukraine, including approximately 20 women. Life imprisonment in Ukraine does not have a maximum tariff; however a lifer may apply to the President for a pardon of his/her life sentence after serving a minimum of 20 years. If the President grants a pardon, the life sentence is replaced with a determinate term of 25 years imprisonment. A prisoner may then apply for parole after serving a minimum of three-quarters of their sentence. However, the law is unclear as to whether the 25 year determinate term includes the 20 years already served, or whether the 25 years must be served in addition to the first 20 years. As such, there is a lack of clarity as to when the three-quarter minimum term will be reached by the prisoner. It should be noted that no lifer has been paroled in Ukraine since life imprisonment was introduced.

Across the region, all three countries have growing life populations, and sentences that can be characterised as disproportionate in length and overly punitive in nature. People are sentenced after proceedings which

fail to meet international standards for a fair trial as guaranteed under article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which all three countries are state parties. Although the right to a fair trial is not impeded by a lack of legal guarantees, it is impeded in practice. The two fundamental problems across all three countries lie in the fact that the judiciary is overly influenced by the executive and lacks independence; and secondly, the quality of legal defence, and in particular legal aid, is poor and under-resourced. This results in notoriously low acquittal rates and raises questions over the fairness of sentences handed down, in particular, death sentences issued in Belarus.

A harsh and discriminatory prison regime, and a lack of rehabilitation for life or long-term prisoners, reinforces the punitive¹ nature of life imprisonment. Prison conditions across the region are far below international standards. Improvements are desperately needed to be made in terms of accommodation, nutrition, sanitation, access to medical and psychological care, visitation rights, sentence planning, and rehabilitation and social reintegration programmes including work and education programmes. Life and long-term prisoners are often separated from the rest of the prison population and kept under a much harsher and stricter regime—including solitary confinement and semi-isolation—which is unrelated to prison security, but based on their legal status as lifers.

In Belarus, there is no official information regarding the treatment and conditions of prisoners on death row, however, reports indicate that conditions are poor and that death row prisoners are not provided with fundamental legal safeguards. Independent monitoring of places of detention is also severely lacking across all three countries, and only Ukraine has ratified the Optional Protocol to the Convention against Torture (OPCAT), although it has yet to designate its National Preventive Mechanism (NPM).

¹ While the purpose of sentencing is ultimately punitive, the nature of the sentence should be proportionate to the seriousness of the offence and individualised to the specificities of the crime, including the circumstances in which it was committed. Sentences should not, therefore, be used to serve wider political purposes or purely to punish the offender. Effectively locking away criminals for life and creating a discriminatory and arbitrary regime purely because of the type of sentence a prisoner is serving fails to tackle the structural roots of crime and violence. Prisoners serving life or long-term imprisonment often experience differential treatment and worse conditions of detention compared to other categories of prisoner. Examples include separation from the rest of the prison population, inadequate living facilities, excessive use of handcuffing, prohibition of communication with other prisoners and/or their families, inadequate health facilities, extended use of solitary confinement and limited visit entitlements. Punitive conditions of detention and less favourable treatment are known to be particularly prevalent for reprieved death row prisoners. Sentences should reflect international human rights standards and norms, and provide the offender with a meaningful opportunity for rehabilitation and reintegration back into society, thereby leading to law-abiding and self-supporting lives after their release.

Republic of Belarus

I Basic country information

Geographical region: The Republic of Belarus is the biggest landlocked country in Europe. It is situated in Eastern Europe and bordered by Russia, Ukraine, Poland, Lithuania and Latvia. The capital is Minsk.

Type of government: According to Article 1 of the Constitution, the Republic of Belarus is a unitary, democratic, social state. Belarus is governed by a President and a National Assembly.

Language: The official state languages are Belarusian and Russian.

Population: According to the 2009 census, the population of Belarus is 9.5 million people² composed of about 130 nationalities and ethnic groups. Belarusians account for the majority, with Russians, Poles and Ukrainians make up the majority of the minority.

Religion: The majority of Belarusians are Orthodox Christians.

II Overview of the status of the death penalty in Belarus

In 1928, the Criminal Code of the Belarusian Soviet Socialist Republic applied the death penalty to 60 different offences. Although, the 1960 Criminal Code greatly decreased this number, it remained high at more than 30 offences. An important point is that both Codes, like the Constitution, emphasised that the death penalty was only a temporary measure.

Article 24 of the Constitution of the Republic of Belarus states, “**until its abolition**, the death penalty may be applied in accordance with law as an **exceptional measure** of punishment for especially grave crimes and only in accordance with a court sentence” (emphasis added).

The reduction in the scope of application of the death penalty happened in parallel with an increase in the categories of people exempt from the application of the death penalty. Under the 1960 Criminal Code, those under the age of 18 at the time the offence was

committed, and pregnant women were prohibited from being sentenced to death. An amendment was made on 1 March 1994 which extended the categories prohibited from a death sentence for women entirely.

Belarus’ Criminal Code adopted on 9 July 1999, and entered into force on 1 January 2001, reduced the number of death penalty applicable crimes to 14 offences (12 in time of peace and two in time of war), and exempt from this form of punishment those over the age of 65 at the time of sentencing.

The death penalty continues to be applied in Belarus, making it the only country in Europe that carries out executions. The last two executions were in March 2012. It should be noted that the number of executions has decreased dramatically in the last ten years, from 47 executions in 1998, to an average of two per year since 2008.

One of the key arguments in favour of its retention is its alleged strong public support. On 24 November 1996 a public referendum was carried out on the question of the death penalty in Belarus. 80.44 percent of those polled were against abolition. Opinion polls carried out in 2000 and 2003 demonstrated that approximately 70 percent of the population were still in favour of the death penalty. However, data obtained in 2008 from a national poll, carried out by the research centre ‘NOVAK’, showed that 48.2 percent of those polled were in favour of the death penalty, and 39.2 percent were in support of abolition. It should be noted that the general public are not given full information about the effect and efficacy of the death penalty in practice, which can have a negative impact on the outcome of public opinion.

Over the last ten years, the government have made a number of positive statements in various national and international forums indicating that Belarus is moving towards a position of moratorium.

In May 2002, parliamentary hearings on the political and legal aspects of the death penalty were organised by the House of Representatives of the National Assembly (the lower house of parliament). This represented a serious step forward on the road to debating the question of abolition in Belarus. The

2 Belarusian National Committee of Statistics, <<http://belstat.gov.by/homep/ru/perepic/2009/itogi1.php>>.

House of Representatives recommended that the Belarusian cabinet of ministers study the issue of the death penalty based on the possibility of gradually introducing a moratorium. This recommendation indicated a willingness of the Belarusian state legislature to adopt a positive approach to abolition.

Following a request from the House of Representatives, the Constitutional Court considered whether the death penalty was constitutional in March 2004. The Court recalled amendments made to the 1999 Criminal Code in order to bring national legislation in line with international standards prevailing in the area of application of the death penalty. It also made specific reference to the importance of the 1996 referendum in the retention of the death penalty. However the Court paid particular attention to Article 24(3) of the Constitution which permits the application of the death penalty while emphasising the exceptional and temporary nature of this punishment, and subsequently ruled³ that a number of provisions of the Criminal Code were inconsistent with the Constitution due to their lack of reference to the temporary nature of the death penalty.⁴ The Court's ruling providing for the possibility of either the abolition of the death penalty or the imposition of a moratorium on executions as a first step towards full abolition. However, the Court ruled that such measures may only be enacted by the head of state and the Parliament

The recommendations of the Constitutional Court were welcomed in 2005 by the Special Rapporteur on the situation of human rights in Belarus,⁵ who encouraged the government to abolish the death penalty in law, or, as a first step, to introduce a moratorium.

However, instead of taking these recommendations forward by abolishing the death penalty, the President submitted a draft law to parliament in June 2005 that, inter alia, supplemented the Criminal Code with

a reference to the temporary nature of the death penalty, which, until its abolition, may be applied as an exceptional measure for cases of premeditated murder with aggravating circumstances. On 23 June 2006, the law was adopted by the Parliament.

Neither the President nor the Parliament took any further steps towards a moratorium, however, in June 2009 the Parliamentary Assembly of the Council of Europe (PACE) voted in resolution 1671 that they would restore Belarus' special guest status in the Assembly if they would implement an official moratorium on the death penalty (Belarus' status was removed in 1997).⁶

Following the adoption of resolution 1671, Belarusian high-ranking officials and independent experts expressed their opinion that a moratorium could be introduced in the near future, not only as a step towards gaining special guest status in PACE, but also because public opinion had shifted since the 1996 referendum took place.⁷

In July 2009, a Belarusian representative of government stated at an OSCE Permanent Council Meeting that "in Belarus, too, there is a movement in favour of gradually limiting the application of (capital) punishment" and that "the Belarusian authorities and, in particular, the national parliament are continuing to give this subject the attention it deserves in order to gradually pave the way for an examination of the possibility of introducing a moratorium on the death penalty."⁸

In November 2009, the President announced a special information campaign aimed at the issue of abolition of the death penalty, stating "[w]e are planning to conduct a number of events in Belarus aimed to change public attitude towards the death penalty."⁹ However the official campaign was conducted very formally and did not attract public interest.

3 Decision No. 3-171/2004, Constitutional Court of the Republic of Belarus, 11 March 2004.

4 Articles 48(1)(11) and 50 of the Criminal Code were found to be inconsistent with the Constitution.

5 Report of the Special Rapporteur on the situation of human rights in Belarus (Mr. Adrian Severin), 18 March 2005, E/CN.4/2005/35, para. 85.

6 Resolution 1671 (2009) Situation in Belarus, Parliamentary Assembly of the Council of Europe, 23 June 2009.

7 Belarusian authorities will go to a moratorium on death penalty, NewsBY.org, 1 July 2009, <<http://newsby.org/by/2009/07/01/text8425.htm>>.

8 OSCE Permanent Council Meeting, Statement by the Republic of Belarus, Vienna, 20 July 2009, PC.DEL/656/09.

9 Belarus takes steps towards abolition of the death penalty, In Victory, <<http://news.invictory.org/issue26466.html>>.

In February 2010, a parliamentary working group on “the discussion of the death issue” was established. The working group comprised members of both chambers of the Belarusian parliament. Nikolay Samoseiko, the head of the Standing Parliamentary Commission on Legislation, became the chairperson of this Working Group.

One of the group’s aims was to facilitate wide public discussion on the issue of abolition. It was anticipated that the work of the group would result in parliamentary hearings on the application of the death penalty in practice. However, shortly after its establishment, Belarus executed two men in March 2010. PACE subsequently suspended high-level contacts with the Belarusian parliament and governmental authorities, noting a “lack of progress towards the standards of the Council and a lack of political will to adhere to its values”.¹⁰

On 12 May 2010, during the Universal Periodic Review of Belarus, 15 States raised the question of the death penalty; 14 recommended ending its practice and 13 to introduce an immediate moratorium on executions. Belarus, however, rejected all of these recommendations.¹¹

In September 2010, the government of Belarus did acknowledge 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.¹² Shortly after, on 6 December 2010, at the fourth All Belarus People’s Assembly, President 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.¹³

However, following the disputed presidential elections on 19 December 2010, President Lukashenko ceased all activities of the governmental working group and

discussion towards a moratorium stalled. This was due in two parts: firstly, to the negative reaction of European countries to the presidential elections, and secondly, the terrorist attack on the Minsk underground on 11 April 2011. The Chairman of the Standing Committee on Legislation and Judicial Issues (and Chair of the death penalty Working Group), Nikolay Samoseiko, stated that if the April 2011 terrorist had not occurred, a moratorium could have been discussed in 2011.¹⁴ Two men, Dzmitry Kanavalau and Uladzislau Kavalyou, accused of committing the 2011 bomb attack were sentenced to death by the Supreme Court in November 2011, and executed in March 2012.

III Legal framework: application of international human rights standards in Belarus

According to Article 8 of the Constitution “Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith”. However, treaties that contradict the Constitution cannot be ratified.¹⁵

Belarus is party to a number of international human rights instruments that are relevant to the death penalty.

Belarus ratified the International Covenant on Civil and Political Rights (ICCPR) on 12 November 1973, and the First Optional Protocol to the ICCPR on 19 December 1996, however is not a signatory to the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty). Belarus ratified the Convention against Torture and Other Cruel and Degrading Treatment or Punishment (CAT) on 13 March 1987, but is not a signatory to its Optional Protocol (OPCAT). It ratified the Convention on the Rights of the Child (CRC) on 1 October 1990. It is not a signatory to the Rome Statute on the International

¹⁰ PACE suspends its high-level contacts with the Belarusian Government and Parliament, Parliamentary Assembly of the Council of Europe, 29 April 2010.

¹¹ Report of the Working Group on the Universal Periodic Review on Belarus, 21 June 2010, A/HRC/15/16.

¹² Country entry on Belarus, Annual Report 2011: The state of the world’s human rights, Amnesty International, 2010.

¹³ Lukashenko urges a revisiting of the death penalty issue, BelTA, 6 December 2010, <<http://news.belta.by/en/news/president?id=598428>>.

¹⁴ Interview on Euroradio, 13 December 2011, <<http://euroradio.fm/ru/report/samoseiko-esli-ne-terakt-my-uzhe-obsuzhdali-moratorii-na-kazn-81829>>.

¹⁵ Article 8 of the Constitution.

Criminal Court. Belarus is not a party to the European Convention on Human Rights, or its related Protocols.

Belarus abstained from voting in the three United Nations General Assembly resolutions calling for a moratorium on the death penalty in 2007 (resolution 62/149), 2008 (resolution 63/168) and 2010 (resolution 65/206).

IV Legal framework: the death penalty in Belarus

Death penalty applicable crimes

The Criminal Code, which was adopted on 9 July 1999 and came into force on 1 January 2001, provides for the death penalty as an exceptional measure of punishment for particularly serious crimes involving the deliberate deprivation of life under aggravating circumstances. Twelve articles specify the offences for which the death penalty may be imposed in peace-time and a further two in time of war:

1. Initiation or waging of aggressive war: Article 122(2).
2. Act of terrorism against a representative of a foreign state: Article 124(2).
3. International terrorism: Article 126.
4. Genocide: Article 127.
5. Crimes against human security: Article 128.
6. Use of weapons of mass destruction: Article 134.
7. Violation of the laws or customs of war [associated with intentional murder]: Article 135(3).
8. Aggravated murder: Article 139(2).
9. Terrorism [associated with murder or committed by an organised group]: Article 289(3).
10. Treason [associated with murder]: Article 356(2).
11. Conspiracy or other acts committed with the aim of seizing state power [resulting in death or associated with murder]: Article 357(3).

12. Act of terrorism: Article 359.

13. Sabotage [committed by an organised group or resulting in death]: Article 360(2).

14. Murder of a police officer: Article 362.

None of these offences provide for a mandatory death sentence.

Since 1989 the death penalty has only been applied for intentional aggravated murder (Article 139 of the Criminal Code). The only exceptions are two sentences handed down in 1995 for rape of an under-aged girl leading to aggravated consequences (Article 115(4) of the 1960 Criminal Code), and in 2011, two people were sentenced to death for terrorism (Article 289(3)).

In its review of Belarus in 1997, the Human Rights Committee expressed its concern over the use of the death penalty and recommended a “thorough review of relevant legislation and decrees be restricted to the most serious crimes [...], and that its abolition be considered by the State party at an early date.”¹⁶ The Committee against Torture also renewed this recommendation in its review of Belarus in 2011.

Prohibited categories

According to Article 59 of the Criminal Code, the death penalty cannot be applied to:

- Persons under 18 years of age at the time the crime was committed.
- Women.
- Men who reached the age of 65 at the time of sentencing.

Article 28 of the Criminal Code provides that a person who, during the commission of a socially dangerous act, was “insane” i.e. could not realise the actual character and social dangerousness of his action (inaction) due to chronic mental illness, temporary mental disorder, dementia or a morbid state of mind is not criminally liable. Where mental illness is proved, the court may apply compulsory medical measures.

¹⁶ UN Human Rights Committee Concluding Observations: Belarus, 19 November 1997, CCPR/C/79/Add.86, paras. 8 and 11.

A person who commits a crime in the state of limited mental illness is not exempt from criminal liability, but the fact may be taken into account as mitigating factor during the sentencing hearing.¹⁷

Article 92 of the Criminal Code also provides that a person who becomes ill (“mentally disordered”) after sentencing shall be exempt from punishment and may be subjected to compulsory medical measures by the court’s decision. In case of recovery, the court may decide to re-apply the death sentence or another punishment.

V Legal framework: alternative sanctions to the death penalty in Belarus

Life imprisonment as a relatively new form of punishment was first introduced into the 1960 Criminal Code on 31 December 1997. Following the adoption of the new Criminal Code in 1999, Article 58 made provision for life imprisonment as an alternative to the death penalty for the offences associated with intentional infliction of death under aggravating circumstances.

Length of life imprisonment

According to Article 58(4) of the Criminal Code, a person sentenced to life imprisonment, may have that sentence substituted for a definite term of imprisonment after serving a minimum of 20 years imprisonment. The court takes into account the prisoner’s behaviour, the state of health, and age.

Life sentence applicable crimes

The Criminal Code sets out 14 articles whereby a life sentence may be imposed (they are the same offences as for death penalty applicable crimes). None of these offences provide for a mandatory life sentence:

1. Initiation or waging of aggressive war: Article 122(2).
2. Act of terrorism against a representative of a foreign state: Article 124(2).
3. International terrorism: Article 126.
4. Genocide: Article 127.
5. Crimes against human security: Article 128.
6. Use of weapons of mass destruction: Article 134.
7. Violation of the laws or customs of war [associated with intentional murder]: Article 135(3).
8. Aggravated murder (Article 139 part 2);
9. Terrorism [associated with murder or committed by an organised group]: Article 289(3).
10. Treason [associated with murder]: Article 356(2).
11. Conspiracy or other acts committed with the aim of seizing state power [resulting in death or associated with murder]: Article 357(3).
12. Act of terrorism: Article 359.
13. Sabotage [committed by an organised group or resulting in death]: Article 360(2).
14. Murder of a police officer: Article 362.

Prohibited categories

The restrictions on the application of life imprisonment are the same as for the death penalty:

- Persons under 18 years of age at time the crime was committed.
- Women.
- Men who reached the age of 65 at the time of the passing of a sentence by a court.
- Mentally-ill.

¹⁷ Article 29 of the Criminal Code.

VI Application of the death penalty/life imprisonment: fair trial procedures

Presumption of innocence

Article 26 of the Constitution legally guarantees the right to be presumed innocent.

However, according to independent experts, the presumption of innocence is often undermined in practice due to a lack of judicial independence, ineffective legal assistance and inequality between the prosecution and the defence. The Working Group on arbitrary detention recommended that legislation be aligned with international standards in order to ensure the respect for the presumption of innocence, for the principles of opposition and adversarial procedure and equality of means in all phases of the criminal procedure.¹⁸

Trial by jury

In Belarus, trial by jury does not exist in law.

Article 32 of Criminal Procedure Code stipulates that offences punishable by long-term (over 10 years) imprisonment or by death must be heard by a panel of one judge and two lay judges called People's Assessors. According to Article 354(4) of the same Code, the death penalty may be imposed on the accused only if she/he is found guilty by a unanimous decision of all three judges. This system is not equivalent to trial by jury, and lay judges as a rule follow the opinion of the professional judge.

On 10 October 2011, President Lukashenko signed decree No. 454 "On measures to improve the activity of general courts of the Republic of Belarus", which includes, inter alia, consideration of the possibility of introducing jury trials to Belarus. However, no steps have been taken yet to implement this decree in practice.

The right to adequate legal assistance

Articles 17 and 20 of the Code of Criminal Procedure guarantee the right to a legal defence. If a person is accused of committing a crime of "high gravity", which includes those that warrant a sentence of death or life imprisonment, the participation of a lawyer is compulsory.¹⁹ The Ministry of Justice administers legal aid for indigent defendants.

Local human rights activists have raised concerns about the quality and independence of legal representation in criminal cases, especially legal defence undertaken by legal aid lawyers. In 2006, an inquiry was conducted among life-sentenced prisoners.²⁰ Out of 100 lifers questioned, only 30 percent were satisfied with the services of their legal aid defence. Complaints concerned the fact that the lawyers were negligent and indifferent in relation to their cases, or that their lawyers were frequently replaced. Many of those interviewed noted that lawyers do not play any significant role in the judicial system.

Furthermore, the rights of the defendant are often not observed in practice. Article 60(2)(8) of the Code for Criminal Procedure stipulates that a person who has confidentially assisted on a case cannot be questioned as a witness without his or her consent and the consent of the prosecuting authority. Due to this rule, the prosecutor has the opportunity to use sources of information that cannot be cross-examined by the defence, thereby undermining the equality of arms between prosecution and defence.

The UN Working Group on arbitrary detentions raised concerns about adequate legal assistance, raising examples of court-appointed lawyers for indigent defendants demanding to be paid to be present during interrogations.²¹ The Working Group also raised concerns that defence lawyers have limited or nonexistent access to prosecutorial evidence and expertise and thus have difficulty preparing and executing a defence.²²

18 Report of the Working Group on Arbitrary Detention: Mission to Belarus, 25 November 2004, E/CN.4/2005/6/Add.3, para. 83.

19 Article 45 of the Code of Criminal Procedure.

20 Information received from Irina Kuchvalskaya, Belarusian Association of Women-Lawyers.

21 Report of the Working Group on arbitrary detentions: Belarus, supra n. 18, para. 42.

22 Ibid, para. 79.

Independence of the judiciary

A lack of judicial independence in Belarus is a major concern. The selection, promotion and dismissal of judges are neither based on objective criteria nor transparent. In practice, judges are appointed by the President on the advice of the Ministry of Justice and the Chairperson of the Supreme Court,²³ which implies political influence over the appointment of the judiciary. Furthermore, the law lacks clear criteria on the tenure of judges' appointment (from five years to life).

The report²⁴ of the Special Rapporteur on the independence of judges and lawyers on his country visit to Belarus in June 2000 raises concerns that Belarusian judges are not unbiased. He expresses concern that a large number of inexperienced judges, poor working conditions and their dependence on the government enhance opportunities for exerting pressure on the judiciary and creates opportunities for corruption. Low levels of remuneration of judges and their dependence on the executive branch and the Presidential administration in matters of promotion and sustaining their conditions of service threaten the ability of judges to make decisions free of political influence.

In its consideration of Belarus in 2011, the Committee against Torture also indicated that the independence of the judiciary was still not being fulfilled and raised concerns about provisions in Belarusian law on discipline and removal of judges, and their appointment and tenure, which does not guarantee their independence towards the executive branch of government.²⁵

Language of the court

Article 13 of the Code on Judicial System and Status of Judges provides that legal proceedings are conducted in Belarusian or Russian. Those participating in the proceedings who do not know these languages have the right to get acquainted with the materials of the case and to participate in

proceeding through an interpreter, and to speak in their native language. Article 365 of the Criminal Procedure Code provides that the verdict must also be read out in the native language of the accused or in another language which she/he understands. In accordance with Article 163 of the Criminal Procedure Code the procedural costs associated with the provision of an interpreter are covered by the state budget.

If the defendant does not speak Belarusian or Russian, the participation of a defence lawyer is also compulsory. However, judges and prosecutors have in the past rejected motions for interpreters.²⁶

Open hearings

Under Article 23 of the Criminal Procedure Code, criminal trials are open to the public in all courts. The trial of a criminal case in a closed court session shall be permitted only in the interest of protection of state secrets and other secrets protected by law, as well as in cases of crimes committed by persons under the age of sixteen, in cases of sexual offences and other cases in order to prevent disclosure of information about intimate aspects of life of those involved in the case, or when it is necessary for the safety of the victim, witnesses or other parties to the proceedings, as well as their family members.

Those present in an open court session have the right to conduct a written transcription or tape-recording of the trial. Photography and video filming are allowed with the permission of the judge presiding at the hearing and with the consent of the parties.

However, in January 2007, the UN Special Rapporteur on the situation of human rights in Belarus noted that "trials are often held behind closed doors without adequate justification, and representatives of human rights organisations are denied access to courts to monitor hearings."²⁷

All verdicts are announced publicly.

23 National report to the Human Rights Council: Belarus, 22 February 2010, A/HRC/WG.6/8/BLR/1, para. 22.

24 Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2001/65/Add.1, 8 February 2001.

25 Concluding observations of the Committee against Torture, 7 December 2011, CAT/C/BLR/CO/4, para. 12.

26 2010 Human Rights Report: Belarus, USA Department of State Bureau of Democracy, Human Rights and Labor, 8 April 2011, p. 7.

27 Report of the Special Rapporteur on the situation of human rights in Belarus (Adrian Severin), A/HRC/4/16, 15 January 2007, para. 14.

Right to an appeal by a court of higher jurisdiction

The defendant has the right to appeal (to the Supreme Court) against the decision of the court of first instance. Cassation must be submitted within ten days after the verdict has been announced. If the defendant is being held in custody, cassation may be submitted ten days after they have received the copy of the sentence. If a cassation trial relates to the death penalty, it is compulsory for the defendant and his lawyer to participate in the trial.

However, some death sentences have been handed down by the Supreme Court acting as a court of first instance, thereby negating any right to an appeal by a court of higher jurisdiction.²⁸

Right to seek pardon or commutation of the sentence

According to Article 59(3) of the Criminal Code, the death penalty may be commuted to life imprisonment by pardon. The President has the power to grant pardon.²⁹

The pardon procedure is determined by Presidential Decree No. 250 (3 December 1994) which created a Commission on Pardon Issues under the President of Belarus. Appeals are initially considered by the Commission before being decided by the President.

All individuals sentenced to death are automatically considered for pardon by the President regardless of whether a request has been submitted by the prisoner, or even where the Commission has given a negative recommendation. The implementation of the death sentence is suspended pending the pardon.

According to the Ministry of the Interior, 156 persons sentenced to death have had their sentences commuted to life imprisonment between 1998 and 2010.

Petitions for pardon of persons sentenced to life imprisonment are only considered by the President if there is a positive recommendation by the Commission on Pardon Issues.

VII: Implementation of the death penalty: method of execution

The death sentence is executed upon receipt of an official notification of rejection of the petition for pardon.

The death penalty is executed non-publicly, by a shot to the back of the head.³⁰ Where more than one prisoner is to be executed, executions are carried out separately.

Those sentenced to death generally spend between six to eighteen months on death row before being executed.³¹ For example, Sergei Morozov, Valeri Gorbatii and Igor Danchenko, whose sentence came into force on 9 October 2007, were executed on 5 February 2008: spending about four months on death row.

The execution takes place in presence of a prosecutor, prison officer and a doctor. The doctor ascertains the death of the prisoner. The prison administration notifies the court that issued the sentence that the execution has been carried out, and the court then informs the family of the executed person.

The condemned prisoner is not informed of the date of his impending execution. His family are only informed that the execution has happened after it has taken place. The family are not given the opportunity for a last visit to the prisoner. The body is not returned to the family, and the place of burial is not disclosed.³²

28 See for example the recent case of Dzmitry Kanavalau and Uladzislau Kavalyou who were sentenced to death for the Minsk metro bombings by the Supreme Court acting as a court of first instance in November 2011.

29 Article 59(3) of the Criminal Code.

30 Article 59(1) of the Criminal Code.

31 International Fact-Finding Mission: Conditions of Detention in the Republic of Belarus, International Federation for Human Rights (FIDH) and the Human Rights Centre "Viasna", June 2008, p. 31.

32 Article 175 of the Criminal Executive Code.

The Human Rights Committee has raised concerns regarding the secrecy surrounding the procedures relating to the death penalty in Belarus.³³

In 2003, after considering the *Banderenko v. Belarus* case, the Human Rights Committee considered that the refusal by the authorities to tell the mother about her son's execution and the refusal to let her know the burial place were in violation of Article 7 of the ICCPR.³⁴ To date, Bandarenko's family still does not know where their relative is buried. The same is true for the families of all of those executed in Belarus.

In 2011, the Committee against Torture asked Belarus to "remedy the secrecy and arbitrariness surrounding executions so that family members do not experience added uncertainty and suffering."³⁵

VIII Application of the death penalty: statistics

The Republic of Belarus is notoriously secretive about the application of the death penalty, and has historically never published official statistics on the number of death sentences issued and executions based on its state secrecy laws.

In a resolution 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".³⁶ The Human Rights Committee and the Committee against Torture have also expressed their concern at the secrecy surrounding the procedures relating to the death penalty at all stages.³⁷ The Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that Belarus publish annual statistics on the death penalty, and provide the names or details of individuals who have already been executed.³⁸

In 2010, the Ministry of Justice reported for the first time that 321 people had been sentenced to death between 1990 and 2009. The largest number of death sentences was handed down in the period 1990–1999. In 2011, the Ministry of Internal Affairs published on its website, for the first time, some information on the number of death sentences issued between 1998 and 2010.³⁹

Year	Number of people sentenced to death
2011	2
2010	2
2009	2
2008	2
2007	4
2006	9
2005	2
2004	2
2003	4
2002	4
2001	7
2000	4
1999	13
1998	47
1997	46
1996	29
1995	37
Total	216

33 Concluding Observations of the Human Rights Committee, supra n. 16, paras. 8 and 11.

34 UN Human Rights Committee, Communication 886/1999, 3 April 2003, CCPR/C/77/D/886/1999.

35 Concluding Observations Committee against Torture, supra n. 25, para. 27.

36 Situation of human rights in Belarus, 12 April 2005, E/CN.4/2005/L.32, item 2(j); and Comments of Belarus to the concluding observations of the Committee against Torture (CAT/C/BLR/C/4), 16 January 2012, CAT/C/BLR/CO/4/Add.1, para. 6.

37 Concluding Observations of the Human Rights Committee, supra n. 16, para. 8.

38 Report on the transparency and imposition of the death penalty, Special Rapporteur on extrajudicial, summary or arbitrary killings (Philip Alston), 24 March 2006, E/CN.4/2006/53/Add.3, para. 17.

39 Official website of the Ministry of Internal Affairs <<http://mvd.gov.by/ru/main.aspx?guid=9091>>.

Statistics about the number of executions carried out still remains a state secret. However, various sources, including Belarusian human rights organisations, local media and international organisations such as Amnesty International, provide information about the number of executions of which PRI have been able to collate.

Year	Number of people executed
2012 (to date)	2
2011	2
2010	2
2009	0
2008	4
2007	At least 1
2006	Unknown
2005	At least 4
2004	Unknown
2003	Unknown
2002	5
2001	7
2000	10
1999	13
1998	47
1997	46
Total	At least 143

Judicial practice shows that for several years the death penalty has been applied primarily in cases of premeditated murder with aggravating circumstances.⁴⁰

2012 Executions

On 15 March 2012, Dzmitry Kanavalau and Uladzislau Kavalyou were reportedly executed soon after President Alexander Lukashenka refused clemency

appeals.⁴¹ Kanavalau and Kavalyou were sentenced to death by the Supreme Court, acting as the Court of first instance, for an alleged series of bomb attacks in Belarus, including an explosion in a Minsk metro station on 11 April 2011. According to Amnesty International,⁴² their sentence followed a flawed trial that fell short of international fair trial standards and left no recourse for appeal, other than to the President for clemency. There were allegations that the two men were forced into confessing and there was no forensic evidence linking either of them to the Minsk explosion including no traces of explosives were found on either of them. During the trial Kavalyou retracted his confession. His mother claimed that both men were beaten during interrogation. Belarus considered the complaint for violation of the right to life⁴³ submitted by Kanavalau and Kavalyou to the UN Human Rights Committee on 15 December 2011 as invalid, arguing that national remedies had not been exhausted.⁴⁴

2011 Executions

Some day between 11 and 19 July 2011, Andrei Burdyka and Aleh Hryshkautsou were executed despite their cases pending at the UN Human Rights Committee. The Human Rights Committee had explicitly requested, under rule 92 of its Rules of Procedure, that Belarus take preliminary measures to not carry out executions until the results of their review had been submitted. Andrei Burdyka and Aleh Hryshkautsou alleged that they had been subjected to torture at the pre-trial investigation stage and had not received a fair trial. Burdyko and Grishkovets had been sentenced to death on 14 May 2010 by the Grodno Regional Court for the murder of three people; their sentence was upheld by the Supreme Court on 17 September 2010. A request for clemency was refused.

On 21 July 2011, the Human Rights Committee sent a letter to the Belarus Permanent Mission in Geneva,

40 Prospects for abolition of the death penalty in the Republic of Belarus, Grigory A. Vasilevich and Elissa A. Sarkisova, *The death penalty in the OSCE area: Background Paper 2006*, OSCE-Office for Democratic Institutions and Human Rights, p. 11.

41 Statement by the International Commission against the Death Penalty on Belarus: Execution of Dmitry Konovalov and Vladislav Kovalyov, 19 March 2012, <<http://www.icomdp.org/cms/wp-content/uploads/2012/03/ICDP-Statement-on-Belarus-March-2012.pdf>>.

42 Death Sentences and Executions 2011, Amnesty International, ACT 50/001/2012, p. 30.

43 Article 6 of the International Covenant on Civil and Political Rights.

44 The Human Rights Committee shall not consider any communication of an individual who has not exhausted all available domestic remedies, unless these would be unreasonably prolonged (Article 5(B) of the Optional Protocol to the ICCPR).

expressing concern over the execution of Burdyka and Hryshkautsou, in violation of the Committee's request for interim measures of protection. The Committee's Chairperson, Ms. Zonke Zanele Majodina, stressed on that occasion to "deplore the fact that, by proceeding to execute these two individuals, Belarus has committed a grave breach of its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights. [...] The imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts to a violation of articles 14 and 6 of the Covenant."⁴⁵

2010 Executions

Andrei Zhuk and Vasily Yuzepchuk were believed to have been executed in Minsk around 18 March 2010.⁴⁶ The Human Rights Committee had also requested interim measures for Zhuk and Yuzepchuk. According to the testimonies of Andrei Zhuk and Vasily Yuzepchuk and as supported by medical records, they had been repeatedly subjected to torture. Vasillii Yuzepchuk stated that he was beaten, starved, given unknown pills and forced to take alcohol. As a consequence he lost the ability to adequately evaluate what was happening to him. There had been no proper investigation into these allegations.⁴⁷

2008 Executions

Sergei Morozov, Valery Gorbaty and Igor Danilchenko were reportedly executed on 5 February 2008.⁴⁸

IX Application of life imprisonment: statistics

According to the Ministry of Internal Affairs,⁴⁹ in the period from 1998 to 2010, 144 life sentences were issued, and 156 death sentences were commuted to life imprisonment, meaning at least 300 men are currently serving a life sentence in Belarus. Statistical information for 2011 is unavailable.

Year	Number of people sentenced to life imprisonment	The number of people whose death sentence was commuted to life imprisonment
2010	2	4
2009	5	3
2008	9	3
2007	7	4
2006	7	5
2005	8	6
2004	12	5
2003	12	5
2002	15	18
2001	11	20
2000	18	24
1999	29	27
1998	3	32
Total	144	156

In August 2010, the government Working Group on the death penalty visited Zhodino prison where life-sentenced prisoners are incarcerated, and found that the number of offenders serving this sentence has noticeably reduced in recent years.

45 Press release of the UN Human Rights Committee, 27 July 2011, <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11268&LangID=E>>.

46 Belarus executes two men: Andrei Zhuk and Vasily Yuzepchuk, Amnesty International, 22 March 2010.

47 Human Rights House Network letter of concern to Alexander Lukashenko, President of the Republic of Belarus, 18 April 2010, <<http://humanrightshouse.org/Articles/13997.html>>.

48 Council of Europe Secretary General Terry David condemns executions in Belarus, Council of Europe, 6 February 2008.

49 Official website of the Ministry of Internal Affairs, <<http://mvd.gov.by/ru/main.aspx?guid=9091>>.

X Implementation of the death penalty/life imprisonment: prison regime and conditions

Location of imprisonment for death row and life sentenced prisoners

Death row inmates are held at the pre-trial detention centre No. 1 in Minsk. Executions are carried out in the same place.

Those sentenced to life imprisonment are incarcerated in:

- Pre-trial detention centre No. 8 in Zhodino (approximately 45km from Minsk).
- Colony No. 13 in Glubokoye (approximately 160km from Minsk).

Zhodino was established in 2000 and has facilities for 100 prisoners. By 2003 the institution was overcrowded and the administration had to place four prisoners in cells built for two. In 2008 it was decided to transfer lifers who have served at least ten years without breaching the prison rules or committing additional crimes to the colony in Glubokoye, where the regime is less strict. The colony in Glubokoye has subsequently also become overcrowded, meaning that the living conditions for lifers do not reflect international standards.

Cost of imprisonment

There is no information regarding the cost of imprisoning a prisoner on death row or of a life sentence.

An estimation of the financial cost is difficult to assess due to a restriction of information and the high levels of inflation in Belarus. However, expenditures on death row and for lifers are much higher than other prisoners because of the high security measures imposed.

Prison regime

According to the Criminal Executive Code of Belarus, adult offenders serve their prison sentence in correctional facilities, which are subdivided into four regimes:

1. Correctional colony-settlement.
2. Penal colonies for first-time prisoners.
3. Correctional colonies for repeat offenders.
4. Correctional colonies of special regime.

Prisoners on death row and those serving a life sentence must serve their sentence in a correction colony of special regime, which has higher security requirements and stricter conditions for inmates.

Conditions and treatment of detention

There is no official information regarding death row conditions in Belarus, and researchers were unable to visit these prison cells. However, reports indicate that death row inmates are being held in solitary confinement, with limited access to fresh air or exercise. The conditions of imprisonment for those sentenced to death are set out in Article 174 of the Criminal Executive Code. A prisoner on death row is entitled to visits from their defence lawyer or other persons having the right to provide legal assistance, without limitation in number and duration; to send and receive letters without limits; to have one short family visit per month (up to four hours); to have visits from a priest; to receive parcels ever three months; and to receive necessary medical assistance.

In November 2011, the Committee against Torture expressed concern at reports of the poor conditions of persons sentenced to death in Belarus and that some death row prisoners were not provided with fundamental legal safeguards.⁵⁰ The Committee called on Belarus to take all necessary measures to improve the conditions of detention of persons on death row; and to ensure they are afforded all the protections provided by the CAT.

The conditions of imprisonment for those sentenced to life are established in Article 173 of the Criminal Executive Code. Lifers are housed in cells and are

⁵⁰ Concluding observations Committee against Torture, *supra* n. 25, para. 27.

required to wear dark robes marked by the first letters of the words “life imprisonment”. Legally, prisoners are to be incarcerated two persons per cell; in practice in Zhodino colony there are usually four or more prisoners per cell, while in colony No. 13 of Glubokoye, there may be four or even six prisoners per cell.⁵¹ Overcrowded cells have become the norm over the last ten years. At the request of the prisoner, or if there is a threat to the safety of a prisoner, he may be placed in solitary confinement subject to the decision of the prison administration.

The living conditions of lifers during the first ten years of their sentence are especially harsh. They are entitled to two short visits per year (visits can be up to two or three hours through a glass partition); to receive two parcels per year; to walk for 30 minutes per day; and to spend a specific amount of money from their accounts on food and essentials. According to the Criminal Executive Code, lifers may spend funds from their personal account on food and essentials “in the amount of three basic amounts”. The “basic amount” is a universal measure, which is currently set at 35,000 Belarusian rubles or 3.4 Euros. From 1 April 2012 it will go up to 100,000 Belarusian rubles or 9.4 Euro).

From the time they wake up until the time they go to bed, life sentenced prisoners can walk or sit at a table on benches screwed to the floor. Lying on their bed is forbidden. When a prisoner is taken out of their cell (for a walk, for a visit, or to talk with a prison official) he is only allowed to move in a certain position – with arms held behind his back in handcuffs, bending down and looking at the floor.

Those who violate the prison rules can be deprived of visits, parcels, moved to a disciplinary cell, or sent to solitary confinement for up to six months.

If a lifer has served at least ten years of their sentence without any violations of the prison rules or committing any further criminal offences, they may be transferred from the special regime colony to a correction colony which has slightly less harsh conditions and a reduced security regime. Transfer is decided by court on the basis of an application

submitted by the prison administration approved by a local monitoring commission.

Following a transfer, a lifer would be entitled to one additional visit per year; to spend additional money from his account (in the amount of four basic amounts); to receive an additional two more parcels per year; and to exercise for up to one hour per day.

The sanitary conditions of the cells are very poor. Prisoners have requested that they be allowed to use their own tableware and clothes; that they can remove their coats when it is hot; and to allow them to wash their uniforms themselves. There is a lack of time or facilities for washing clothes and bed linen and drying facilities. Prisoners have also complained about the improper distribution of sleeping facilities (“legs of another convict are in front of my face”).⁵²

There is a lack of well-balanced and nutritional food for prisoners. This is caused by a lack of appropriate resources as well as various problems in the food supply chain. Lifers are only permitted to receive two parcels per year, which means that even if their family had the means to supplement their diet, they could not do so on a regular basis.

Access to medical care

According to Article 10(6) of the Criminal Executive Code, all prisoners have the right to access health care. From a 2006 inquiry of life sentenced prisoners, approximately 90 percent of those interviewed reported health problems.⁵³ More than half of the respondents (52) had some form of chronic illnesses, the majority being gastrointestinal problems. The spread of TB has also been a serious concern for prisoners, which is compounded by overcrowded cells, and a lack of appropriate nutrition. The UN Developmental Programme reported in September 2009 that none of Belarus’ prisons fully comply with the World Health Organisation’s TB infection control guidelines.

The majority of lifers interviewed in 2006 were not satisfied with the level of psychiatric care provided.

51 How Belarusian Lifers Serve Their Sentences, Olga Antsipovich, *Komsomolskaya Pravda*, 4 August 2009, <www.kp.by/daily/24337/528445/>.

52 Information received from Irina Kuchvalskaya, Belarusian Association of Women-Lawyers.

53 Ibid.

Approximately 30 percent suffered from some form of mental health issues.

A psychologist based in Zhodino colony stated that a prisoner is subject to obligatory psychological testing, and prisoners may speak with a psychologist if they wish, but not all of them do.⁵⁴ There is only one psychologist available at Zhodino.

Mr. A.A. Kralko, the head specialist of medical services of the Department of Execution of Punishments (PED) of the Ministry of Internal Affairs has stated that the financing of penitentiary facilities, including that needed for adequate health care, is not enough.⁵⁵ This is especially compounded by the rising costs of resources (staff, food, medicines etc), and the growing number of inmates.

Rehabilitation and social reintegration programmes

Those sentenced to life imprisonment spend at least 23 hours a day in their cell. There are virtually no out-of-cell activities, and minimal in-cell activities. There is a lack of access to education, employment, or any other rehabilitative programmes, and most lifers are only entitled to a small number of family visits per year, often under very restrictive conditions.

Article 173(2) of the Criminal Executive Code makes provisions for lifers to undertake some form of work programme, however there are none available in practice. Prison officials explained that this was due to the special security requirements for lifers.

Article 10 of the Criminal Executive Code establishes that all prisoners should have access to exercise and sports. However, lifers are only entitled to 30 minutes of walking per day and up to one hour if transferred from the special regime colony. A prison officer, in response to why sports and exercise are severely limited for lifers, stated that the “prison personnel do not want serious criminals to have good muscles, [and] the metal parts of training equipment may be used improperly, and there is a high risk of traumas....

We’ll have to write a lot of explanations if a convict gets hurt from sporting equipment and not from us”.⁵⁶

Almost all prisoners have demonstrated some interest in accessing books, newspapers and magazines. A high proportion of inmates have expressed a desire to access educational literature including legal texts. Life sentenced prisoners have also made requests for educational programmes, particularly secondary education and to study foreign languages, information technology, and psychology; to train in some kind of profession (carpenter, builder, tailor, electrician, accountant etc); to take part in creative activities; and to have access to sports equipment.

The possibility to perform religious rites and access priests is permitted in Zhodino and Glubokoye, and there are some rooms provided for prayers.

Conditions for parole

Article 90 of the Criminal Code stipulates that parole (or conditional release) can be applied only if the prisoner’s behaviour is very good and shows rehabilitation.

Parole can be applied for only after the prisoner has served at least 20 years of his sentence.

Parole is decided by courts, who may substitute life imprisonment with imprisonment for a definite term. While taking the decision the court takes into account the prisoner’s behaviour, age, and state of health.

Life imprisonment was introduced in Belarus in 1998, thus to date no lifers have served the minimum 20 years. As a consequence, there is currently no practice of application of parole for this category of prisoner.

Monitoring prisons

Belarus has yet to ratify the Optional Protocol to CAT (OPCAT), and therefore establish a National Preventive Mechanism (NPM).

54 Sentenced to Live, Yekaterina Nechayeva, BELTA, 25 August 2010.

55 Medical and sanitarian provision of convicts: condition and problems—situation at detention facilities of Belarus (Assessment of achievements and reformation prospects), A.A. Kralko, PRI, 2008, p. 80.

56 Sentenced to Live, supra n. 54, 25 August 2010.

Chapter 4 of the Rules of Internal Order of Correctional Facilities regulates inspections of correctional facilities. According to its provisions, only the Minister of Internal Affairs and the Head of the Penalty Execution Department has the right to perform such inspections. Others may be authorised in written form by them.

Monitoring commissions have also been set up under the local executive and regulatory authorities to monitor correction facilities. According to Belarusian legislation⁵⁷ only members of monitoring commissions have the right to exercise public control over the activities of bodies and institutions administering penal activities. Control over who can be part of a monitoring commission is exercised by the Ministry of Justice — a commission may comprise 3 to 11 members. Members must be a Belarusian citizen, and a member of a duly registered organisation, whose statutes provide for the protection of citizens' rights.

In order to visit a penal institution or a pre-trial detention facility, the commission files a request with the head of the Department of Corrections and upon receiving permission, negotiates the time of the visit with the correctional facility administration. The commission is permitted to visit a facility if permission has been granted, contact the warden and other officials of the facility, and talk with prisoners in the presence of a facility administration representative. Members of the commission are not allowed to: acquaint themselves with the materials of the operative activities, personal files of inmates, or other documents related to the execution of sentences; to film, photograph, and make video- and audio-records; or to take written requests from prisoners. At the same time, the Regulations emphasise that in case of violation of these rules, as well as “providing false information about activities of bodies and institutions administering corrections to a foreign state, foreign or international organisations, and the media”, a commission member may be expelled.

It is worth noting that commissions are not made up of representatives of independent NGOs — commissions are made up of members of pro-government organisations and in the course of their

work the public is not informed of any concerns that may be raised by the commissions.

Civil society and the media are also heavily restricted in terms of visiting prison facilities or reporting on the conditions and treatment of prisoners.

As such, there is no real independent or regular monitoring of detention facilities in Belarus, meaning there is little transparency and accountability as to how they are being operated.

In its consideration of Belarus' state report, the Committee against Torture also raised concerns surrounding the lack of independence of the national monitoring system and the lack of information on effective procedures and reporting practices, and recommended that Belarus establish fully independent bodies with the capacity to perform independent and effective unannounced visit to places detention and to speak privately with detainees, and that their findings and recommendations are made public in a timely and transparent manner.⁵⁸

XI Abolitionist movement in country

Human rights NGOs are often unable to function effectively in Belarus: they are denied registration, and where they are registered, face interference from government officials. The Belarusian Helsinki Committee, for example, one of the rare registered NGOs, has, for a number of years, faced a suit for dissolution pending before the High Economic Court; in 2011 it received two admonitions of the Ministry of Justice for violations of the legislation on public associations which allows the Ministry to commence proceedings with a view to dissolve the organisation. Another leading organisation, “Viasna” (Belarusian for Spring), was denied registration in 2003 despite the UN Human Rights Committee stating in *Byalyatski et al v. Belarus*⁵⁹ that the denial of registration constituted a violation of the ICCPR. Activities on behalf of unregistered organisations are a criminal

57 Regulation No. 1220 by the Council of Ministers of Belarus of 15 September 2006 “On Approval of Regulations of the order of exercising control by national and local public associations over the activities of bodies and institutions administering penal activities and other measures of criminal liability”.

58 Concluding observations of the Committee against Torture, *supra* n. 25, para. 13.

59 *Byalyatski et al v. Belarus*, UN Human Rights Committee Communication no. 1296/2004, 24 Jul 2007.

offence punishable by up to two years in prison.⁶⁰ It is also prohibited for unregistered organisations to obtain and spend funding.⁶¹

Despite such interference, there are a small number of human rights organisations who continue to work on the abolition of the death penalty or related criminal justice reforms in Belarus. These include:

- Association “Legal Initiative”.
- Belarusian Association of Women Lawyers.
- Belarusian Helsinki Committee.
- Human Rights Centre “Viasna”.
- Platform.

These organisations are most prevalent in the collection and publication of information on the application of the death penalty, making statements and commentary, calling on the government to stop executions and introduce a moratorium, and to inform the general public on the effect and efficacy of the death penalty in Belarus as well as globally.

On 9 December 2011, representatives of Amnesty International, Viasna and Belarus Helsinki Committee, were turned away while attempting to deliver a petition with over 250,000 signatures from around the world to President Lukashenko, calling for an end to executions.⁶²

On 26 January 2012, PRI hosted a national conference on “The development of the criminal justice system in Belarus” in Minsk to discuss criminal policy, legislation and practice in Belarus, as well as prospects for abolition of the death penalty, including steps towards a moratorium, and humane alternative sanctions to death penalty. PRI also hosted a film festival on 27 January in Minsk with the aim to restore public discussion about the death penalty and changing opinion from inside the country. Five films were shown, two of which focused on Belarus, including a new film, “Capital Measure”, which was produced by PRI. The film focused on the independence of the courts and the protection of human rights for those charged with a capital offence. Two specific death penalty cases were highlighted in the course of the film, aimed to demonstrate how the sentence is implemented in practice. Other documentaries looked at the application of the death penalty and its alternative sanction of life imprisonment in Central Asia and the South Caucasus. PRI have also remained active in training local journalists on how to report on the death penalty in Belarus, as well as in undertaking national and international advocacy activities.

60 Article 193(1) of the Criminal Code.

61 Article 20 of the Public Associations Act.

62 Death Sentences and Executions 2011, *supra* n. 42, p. 30.

XII Recommendations to the Republic of Belarus

1. Fully abolish in law the death penalty by eliminating it as a form of punishment from the 14 articles in the Criminal Code and from Article 24 of the Constitution. As an interim measure, reduce the application of the death penalty by abolishing those crimes which do not meet the “most serious crimes” threshold, and establish an official moratorium on sentencing and executions.
2. Undertake a process to commute all death sentences to a fixed-term sentence. Each case should be reviewed individually, taking into consideration the length of sentence already served, the behaviour of the prisoner and the type of crime committed.
3. Undertake a campaign to educate the public on the need to abolish the death penalty. The campaign should incorporate elements of implementing humane alternative sanctions.
4. Ratify and implement the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.
5. Vote in favour of the upcoming fourth UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions.
6. Make definite steps towards becoming a state party to the Rome Statute on the International Criminal Court, to the European Convention on Human Rights and its relevant Protocols (including the Sixth and Thirteenth Protocols).
7. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length and place of sentence. Publish historical information on the application of the death penalty, including data on those executed and those sentenced to death. Provide the family members of those who are to be executed an opportunity to say goodbye, and after the execution, information on the location of their graves.
8. Shorten the minimum length of term which a life-sentenced prisoner must serve before being able to apply for parole (currently 20 years). According to the UN Crime Prevention and Criminal Justice Branch’s 1994 report ‘Life Imprisonment’⁶³, all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
9. Humanise the system of punishment by reducing the number of crimes (currently 14) for which life imprisonment may be prescribed, and limit these cases to only the “most serious crimes”.
10. Undertake legislative and policy steps to ensure the independence of the courts and the transparency of the judicial system. This should include guaranteeing that judicial appointment, compensation, and tenure are made according to objective criteria, and are not dependent on the executive branch of government.
11. Reform the system of legal aid in Belarus to ensure that indigent defendants accused of an offence for which the death sentence or life imprisonment may be imposed can obtain free legal assistance at all stages of the case: pre-trial, trial, appellate, pardon and parole. Ensure all legal aid lawyers are independent of the state, adequately paid, have the same rights vis-à-vis the prosecutor, and are well-trained in courtroom advocacy methods for capital trials and sentencing hearings.
12. Draft and adopt a strategy to reform the penal system in Belarus with a clear vision that makes specific reference to reforming life imprisonment which is consistent with international human rights standards and norms, including eliminating discriminatory practices and regulations applicable to life sentenced prisoners. Organise a public debate on the strategy, with participation from all interested parts of civil society.

⁶³ Life Imprisonment, UN Office in Vienna, Crime Prevention and Criminal Justice Branch, 1994, ST/CSDHA/24.

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13. Carry out reforms to the penitentiary system so that it is in compliance with international human rights standards including the UN Standard Minimum Rules for the Treatment of Prisoners. This should include improving the cell size and living conditions for prisoners at Zhodino and Glubokoye institutions, reducing overcrowding, and improving access to health care including mental health care. Prioritise resources of the Belarus prison administration so that they can effectively implement those international standards and norms.
 14. Ensure that prison conditions of life-sentenced prisoners approximate as closely as possible to the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration. This should include the possibility to undertake education, to work, to have contact with the outside world, and to receive psychological or medical treatment.
 15. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of visits for lifers, to reduce the restrictive requirements for visits, and to increase the number of parcels which family members can send in to prisoners.
 16. Improve daily activities for life-sentenced prisoners. Such activities should be aimed at supporting their rehabilitation and reintegration back into society by organising targeted training for them, and providing them with appropriate work skills and education. This should include:
 - a. Providing lifers with regular access to sporting activities.
 - b. Providing lifers with the opportunity to engage in employment.
 - c. Regularly renewing the library.
 - d. Implementing all necessary measures in order to provide lifers with the right to education.
 - e. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as drug or alcohol abuse, anger management, psychological or psychiatric support.
 17. Abolish the systematic use of handcuffing of lifers when being taken out of their cell. Any security or disciplinary measures should only be implemented on a case-by-case basis, based on an individual risk-assessment, and not based on the type of sentence being served.
 18. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff is appropriately trained in international human rights standards.
 19. Improve the parole system, making procedures clear, and ensure that judges who have the responsibility to review parole applications are specialised penal judges, with experience of dealing with such cases.
 20. Ratify the Optional Protocol to the Convention against Torture and establish a National Preventative Mechanism, which is independent, competent to monitor all places where people are deprived of their liberty, and are well resourced. Ensure that any allegations or reports of torture and/or inhuman or degrading treatment or punishment are effectively investigated by state officials in a timely manner, and that perpetrators are brought to justice.
 21. Encourage further collaboration between government officials and civil society, including journalists, on criminal justice issues.
 22. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Belarus at both the financial and political level.
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Russian Federation

I Basic country information

Geographical region: Russia is the largest country in the world. It is situated partially in Eastern Europe and partially in Northern Asia. The capital is Moscow.

Type of government: According to Article 1 of the Constitution, the Russian Federation is a democratic federal State with a republican form of government. The President is the head of state and the Prime Minister is the head of the government.

Language: The official state language is Russian.⁶⁴ National republics within the Russian Federation may establish their own state language along with Russian, and 23 republics have done so.

Population: Russia is a multinational state with a population of 143 million people as of 1 January 2012.⁶⁵ 73.7 percent of the population are urban. More than 80 percent of the population are ethnic Russians, however more than 180 ethnic groups are represented in Russia.

Religion: The dominant religion in Russia is Orthodox Christianity. Islam and Buddhism are also considered traditional Russian religions.

II Overview of the status of the death penalty in Russia

Article 20 of the Constitution provides that everyone shall have the right to life and that capital punishment, until its complete elimination, may be envisaged by federal law as an exclusive penalty for especially grave crimes against life. Thus, the constitution regards the death penalty as a temporary measure until its full abolition.

On 28 February 1996, the Russian Federation joined the Council of Europe. One of the requirements of the Council of Europe was the abolition of the death penalty. On 16 May 1996, President Yeltsin issued decree No. 724 "On Phasing out the death penalty

in connection with Russia's accession to the Council of Europe". The Decree requested the Russian government to draft a federal law on accession to Protocol No. 6 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). On 16 April 1997, Russia signed Protocol No. 6 to the ECHR. On 6 August 1999, a draft federal law on ratification of Protocol No. 6 was submitted to the State Duma (parliament) along with a letter from the President. However, to date, the State Duma has not yet ratified Protocol No. 6.

The last execution was carried out on 2 September 1996. Executions were however carried out until 1999 in Chechnya, but which de facto was not then under control of the Russian Federation.

On 2 February 1999, the Constitutional Court of Russia issued Ruling No. 3-P, which declared the application of the death penalty in the absence of jury trials in the country's then-89 regions as unconstitutional, and thereby imposed a temporary moratorium on sentencing and executions until jury trials could be established across all regions of the Federation.⁶⁶ At the time of the court ruling, jury trials were only available in nine of then 89 regions. However, the new Criminal Procedure Code, which entered into force on 1 July 2002, foresaw the introduction of juries throughout the entire Federation.

Following the Constitutional Court's landmark ruling, 703 prisoners on death row were pardoned by presidential Decree No. 698 of 3 June 1999, which commuted their sentences to life imprisonment.

President Vladimir Putin expressed his firm views against the resumption of executions in 2001. In televised remarks from a meeting with the head of the World Bank in the Kremlin on 9 July, President Putin said that "[t]he state should not assume the right which only the Almighty has—to take a human life. That is why I can say firmly I am against Russia reinstating the death penalty." President Putin was also quoted as saying he believed that state-sponsored cruelty did nothing to fight crime and only engendered new violence. He said that Russia

⁶⁴ Article 68 of the Constitution.

⁶⁵ Russian Federation Federal State Statistics Service, <<http://www.gks.ru/wps/wcm/connect/rosstat/rosstatsite.eng/>>.

⁶⁶ Article 20 of the Constitution provides that those accused of a capital crime shall be granted the right to have his case examined by a jury trial.

⁶⁷ Death Penalty News: 2001, Amnesty International, September 2001, ACT 53/004/2001.

should continue to uphold the moratorium on the death penalty despite widespread public support to reinstate executions.⁶⁷

Russia's State Duma extended the moratorium in November 2006 until 2010 while regions take steps to implement jury trials. Chechnya became the final Russian region to institute jury trials on 1 January 2010. Anticipating this event, the Supreme Court sought clarification from the Constitutional Court on the future of the moratorium. On 19 November 2009, the Constitutional Court ruled that the moratorium be extended indefinitely notwithstanding the introduction of juries throughout the entire Federation. Court Chairperson Valery Zorkin reportedly confirmed that an "irreversible process to abolish capital punishment" was occurring in Russia.⁶⁸ The moratorium would be in place "until the ratification of Protocol No. 6 to the ECHR."⁶⁹

The Russian Federation confirmed to the UN Human Rights Committee that legislative abolition of the death penalty is one of the goals of the juridical and legal reforms currently under way and that government departments are engaged in intensive preparations for the State Duma's ratification of Protocol No. 6 and the introduction of relevant amendments to the criminal legislation.⁷⁰ A bill "On the abolition of the death penalty in the Russian Federation" was submitted to the State Duma by its Legislative Committee on 20 February 2008;⁷¹ however no further developments towards abolition by the State Duma have been reported.

On 5 October 2009, during the Universal Periodic Review (UPR) of Russia, in its interactive dialogue, the UPR Working Group raised the question of the death penalty and a number of states made recommendations that Russia abolish the death

penalty in law and ratify the Second Optional Protocol to the ICCPR.⁷² Russia's response to these recommendations was that the abolition of the death penalty will depend on whether a majority of Russian public opinion will come to favour abolition of the death penalty in law.⁷³

Public opinion on the death penalty has been a very important part of its continued retention, and law-makers continue to raise the high percentage of the public who are not in favour of abolition.

A 2007 survey, conducted by the Levada Analytical Centre on behalf of PRI, found that the number of people in favour of abolition is growing. The number of people supporting a moratorium had increased from 23 percent in 2006 to 31 percent in 2007. Up to 11 percent of Russians polled said they could not condone the death penalty at all. Interestingly, the 2007 survey identified ineffective law enforcement agencies as the main cause of insecurity in the country, as well as "an ineffective judiciary that regularly commits errors."⁷⁴

According to results revealed in 2012 by a major Russian polling centre – the Public Opinion Foundation⁷⁵ – 62 percent of the country's residents want the moratorium on the death penalty lifted and executions to resume. Respondents suggested using capital punishment for sexual offenses against teenagers (72 percent), murder (64 percent), terrorism (54 percent), drug trafficking (28 percent), and treason (12 percent). Meanwhile, 21 percent of those polled suggested that Russia should maintain the moratorium, and five percent were in favour of full abolition.

A poll conducted in 2001 had indicated that 80 percent of respondents were in favour of the death

68 Russia prolongs moratorium on death penalty, contemplates ban, RIA Novosti, 19 November 2009, <<http://en.rian.ru/russia/20091119/156902623.html>>.

69 Ruling of the Constitutional Court of the Russian Federation No. 1344-O-P of 19 November 2009 "On Clarification of Paragraph 5 of Operative Part of Constitutional Court Resolution No 3-P of 2 February 1999".

70 Comments by the Government of the Russian Federation to the concluding observations of the Human Rights Committee, 2 February 2005, CCPR/CO/79/RUS/Add.1, para. 11.

71 The death penalty in the OSCE area: background paper 2008, OSCE-Office for Democratic Institutions and Human Rights, p. 5.

72 Report of the Working Group on the Universal Periodic Review: Russian Federation, 5 October 2009, A/HRC/11/19, para. 85, recommendations 1 and 2 (German, Australia, Brazil).

73 Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review, 5 June 2009, A/HRC/11/19/Add.1/Rev.1, recommendations 1 and 2.

74 Russian citizen's opinion on crime, justice and the death penalty, Yuri Levada Analytical Centre, 2007.

75 Capital punishment: Russians want return of death penalty, RT Question More, 29 March 2012, <<http://rt.com/news/death-penalty-return-russia-787/>>.

penalty, which means that there has been at least an 18 percent reduction in public opinion support for this form of punishment in ten years.

Despite the clear direction set out by the Constitutional Court, debates on the reinstatement of the death penalty occasionally resurface. The issue of retaining the death penalty for those convicted of committing acts of terrorism received significant media coverage following the Moscow Metro bombings in March 2010 and the Moscow Domodedovo Airport bombing on January 2011. Immediately after the bombings, the Committee on Judicial and Legal Affairs of the Federation Council (the upper house of the Russian parliament) reportedly began work on a draft law to introduce the death sentence for organisers of terrorist attacks resulting in multiple deaths.⁷⁶ According to reports of a statement made by State Duma Speaker Boris Gryzlov to two visiting members of the Parliamentary Assembly of the Council of Europe (PACE), “terrorist activities in Russia have been the factor that has prevented the country from abolishing capital punishment.”⁷⁷

The Communist Party of the Russian Federation has also called for the reinstatement of the death penalty for large-scale corruption cases. Following the terror attacks, party leader Gennady Zyuganov also suggested that the death penalty be restored for especially grave crimes.

The Liberal Democratic Party has also called for the moratorium to be dropped for acts of terrorism, and to introduce the death penalty for corruption by high-ranking officials.⁷⁸

Russian President Dmitry Medvedev stating that, even though he would not have introduced the moratorium in 1996, Russia would adhere to its international obligations.⁷⁹ However, until Russia fully abolishes the death penalty in law, there is an elevated risk that this sentence could be reintroduced.

III Legal framework: application of international human rights standards in Russia

According to Article 15(4) of the Constitution, “The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system.” However, where an international treaty undermines the rights or guarantees set out in the Constitution, the Constitutional Court can nullify the international agreement.⁸⁰

After the dissolution of the Soviet Union in 1991, the Russian Federation was recognised by the international community as the successor to the USSR.

The Russian Federation became a party to a number of international human rights instruments relevant to the death penalty.

The Soviet Union (and the Russian Federation as its successor) ratified the International Covenant on Civil and Political Rights (ICCPR) on 16 November 1973, and the First Optional Protocol to the ICCPR on 1 October 1991, however is not a signatory to the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty). Russia ratified the Convention against Torture and Other Cruel and Degrading Treatment or Punishment (CAT) on 3 March 1987, but is not a signatory to its Optional Protocol (OPCAT). It ratified the Convention on the Rights of the Child (CRC) on 16 August 1990. It is a signatory to the Rome Statute on the International Criminal Court, but has not yet ratified it. Russia ratified the European Convention on Human Rights on 5 May 1998, and signed Protocol No. 6 to the ECHR (concerning the abolition of the death penalty) on 16 April 1997, but has not yet ratified it. Upon accession to this Convention, Russia made a reservation for a phased accession to Protocol No. 6. Russia has neither signed nor ratified Protocol No. 13 (concerning the abolition of the death penalty in all circumstances).

76 Death Penalty Lingers in Former Soviet Republics, Kester Kenn Klomegah, IPS News, 5 April 2010, <<http://ipsnews.net/news.asp?idnews=50912>>.

77 Russia can't abolish death penalty due to terrorist threats, Interfax, 23 March 2010, <<http://www.interfax-religion.com/?act=news&div=7068>>.

78 News article by the Liberal Democratic Party, <http://www.ldpr.ru/#party/Program_LDPR/A_practical_program_for_the_Liberal_Democratic_Party>.

79 Authorities identify teen as Moscow subway bomber, Maxim Tkachenko and Matthew Chance, CNN, 2 April 2010, <http://articles.cnn.com/2010-04-02/world/russian.bombing_1_park-kultury-umalat-magomedov-female-suicide-bombers?_s=PM:WORLD>.

80 Article 125(6) of the Constitution.

Russia voted in favour of the UN General Assembly moratorium resolutions in 2007, 2008 and 2010. In 2010 the Russian Federation co-sponsored the UN GA moratorium resolution for the first time.

IV Legal framework: the death penalty in Russia

Death penalty applicable crimes

While there is a moratorium on sentencing and executions, the death penalty remains in law. The 1960 Criminal Code (which was in place until 1 January 1997) established the death penalty for 31 offences. The 1996 Criminal Code reduced the number of death penalty applicable crimes to five offences, permitting the death penalty “only for especially grave crimes encroaching on human life”:⁸¹

1. Aggravated murder: Article 105(2).
2. Encroachment on the life of a statesman or a public figure: Article 277.
3. Encroachment on the life of a person administering justice or engaged in a preliminary investigation: Article 295.
4. Encroachment on the life of an officer of a law enforcement agency: Article 317.
5. Genocide: Article 357.

None of these offences envisages a mandatory death sentence. Each of them may be punished by life imprisonment, or by a definite term of imprisonment for up to 20 years.

There is no information about the application of the death penalty for offences other than aggravated murder during the period between 1989 and 1996.

Prohibited categories

According to Article 59(2) of the Criminal Code, the death penalty cannot be applied to the following persons:

- Persons under 18 years of age at time the crime was committed.
- Women.
- Men who reached the age of 65 at the time of sentencing by a court.
- Persons extradited to Russia by a foreign state for prosecution in accordance with an international treaty of the Russian Federation or on the basis of reciprocity, if the law of the foreign country that has extradited the person, does not envisage the death penalty for a crime committed by this person or non-use of death penalty is a condition of extradition or a death sentence can not be applied to them for other reasons.

Article 21 of the Criminal Code also provides that “[a] person who, at the time of the commission of a socially dangerous act, was insane, that is, was unable to understand the actual character or social danger of his actions (inaction) or to govern them as a result consequence of a chronic or temporary mental derangement, mental deficiency or any other mental condition, shall not be subject to criminal responsibility”. Compulsory medical treatment may instead be imposed by the court.

⁸¹ Article 59 of the Criminal Code.

V Legal framework: alternative sanctions to the death penalty in Russia

Life imprisonment was first introduced in the Criminal Code in 1992⁸² as an alternative to the death penalty for commutations and pardons. It was introduced as a stand-alone sentence in the 1996 Criminal Code.

Length of life imprisonment

Life imprisonment in Russia has a minimum tariff of 25 years.

Life sentence applicable crimes

The 1996 Criminal Code established that life imprisonment can be imposed for the most serious crimes against human life, as well as for committing serious crimes against public health and public morality, public safety, sexual integrity of minors under the age of fourteen years of age.⁸³

The 1996 Criminal Code sets out thirteen offences for which life imprisonment may be imposed (four of these offences were recently introduced to the Criminal Code in 2012):

1. Aggravated murder: Article 105(2).
2. Rape under aggravating circumstances: Article 131(5).⁸⁴
3. Sexual assault under aggravating circumstances: Article 132(5).⁸⁵
4. Sexual intercourse and other sexual acts with a person under fourteen years of age: Article 134(6).⁸⁶
5. Act of terrorism: Article 205(3).

6. Hostage-taking resulted in death: Article 206(4).
7. Organisation of a criminal association or participation in it: Article 210(4).
8. Smuggling of narcotic drugs, psychotropic substances and their precursors or analogues, plants containing narcotic drugs, psychotropic substances or their precursors, or parts thereof, containing narcotic drugs, psychotropic substances or their precursors, tools or equipment that are under special control and used for the manufacture of narcotic drugs or psychotropic substances: Article 229(1)(4).⁸⁷
9. Encroachment on the life of a statesman or a public figure: Article 277.
10. Sabotage resulting in death: Article 281(3).
11. Encroachment on the life of a person administering justice or engaged in a preliminary investigation: Article 295.
12. Encroachment on the life of an officer of a law enforcement agency: Article 317.
13. Genocide: Article 357.

None of these offences provide for a mandatory life sentence.

Prohibited categories

The restrictions on the application of life imprisonment are the same as for the death penalty:

- Persons under 18 years of age at time the crime was committed.⁸⁸
- Women.⁸⁹
- Men who reached the age of 65 at the time of the passing of a sentence by a court.⁹⁰
- Mentally-ill.⁹¹

⁸² The Law of the Russian Federation No. 4123-I of 17 December 1992 "On Amendments to Article 24 of the Criminal Code of the RSFSR".

⁸³ The Criminal Code of the Russian Federation, adopted by The State Duma on 24 May 1996.

⁸⁴ Introduced into the Criminal Code by Federal Law No. 14-FZ of 29 February 2012.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Introduced into the Criminal Code by Federal Law No. 18-FZ of 1 March 2012.

⁸⁸ Article 57 of the Criminal Code.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Article 21 of the Criminal Code.

VI Application of the death penalty/life imprisonment: fair trial procedures

Presumption of innocence

Article 49 of the Constitution and Article 14 of the Criminal Code provides that everyone accused of committing a crime shall be considered innocent until his guilt is proved in accordance with the law. The Code of Criminal Procedure also requires that a guilty verdict cannot be based solely on suppositions.

However, there is a lack of trust by the public in investigating bodies and the court system, and a heightened concern that enforcement bodies are corrupt. Although there is a presumption of innocence, the court often gives undue weight to evidence presented by the prosecution and takes a more accusatory approach. The acquittal rate of just over one percent leads to the assumption that the principle of presumption of innocence is not consistently enforced in practice.⁹²

Trial by jury

With the adoption of the new Constitution in December 1993, the right of a defendant to have his case tried by a jury was established. Article 47(2) provides that those accused of a criminal offence shall have the right to a jury trial. However, Federal Law No. 321-FZ of 30 December 2008 “On Amendments to Individual Legislative Acts of the Russian Federation on the Issues of Combating Terrorism” excludes from this list a number of offences against the state, including some of those punishable by life imprisonment. Article 20 of the Constitution, however, does provide that a jury trial is compulsory for those accused of a capital offence.

For several years jury trials were available in several pilot regions, however by 2010 jury trials were established in all regions of the Russian Federation.

In 2011, Prime Minister Putin commented that jury trials are ineffectual and should be abolished on a local level and only used on the federal level. President Dmitry Medvedev stated that although jury trials should remain, they should not be allowed to consider corruption cases because of their “exposure” to outside influence. However, Medvedev said there was no getting away from the fact that “our juries are vulnerable” and “I am not so sure that a jury trial is a good form in the administration of justice, for example, in bribery cases.”⁹³

The right to adequate legal assistance

Article 48 of the Constitution guarantees the right to a legal defence. In certain cases, legal aid shall be provided, and paid out of the federal budget.⁹⁴ This includes those circumstances where the accused has a physical or mental illness; where the accused does not have a good command of the language of the criminal proceedings; or if the person is accused of committing a crime punishable by imprisonment for a term of over fifteen years, life imprisonment, or capital punishment.

In practice, defence lawyers have much fewer powers of investigation than the prosecution, and often become the target of intimidation and coercion.

The UN Committee against Torture has expressed concern about a lack of respect for the right to a lawyer.⁹⁵ In 2009, the Special Rapporteur on the independence of judges and lawyers observed that a failure to understand the role of defence lawyers in the justice system and interference by the executive has undermined the public’s confidence in the administration of justice.⁹⁶ For example, cases have been reported in which defence lawyers

92 Report of the Special Rapporteur on the independence of judges and lawyers (Leandro Despouy), Russian Federation, 23 March 2009, A/HRC/11/41/Add.2, para. 37.

93 Medvedev opposes abolition of jury trials, Mikhail Klimentiev, RIA Novosti, 2 February 2011, <<http://en.rian.ru/russia/20110202/162424910.html>>.

94 Article 50(5) of the Criminal Procedure Code.

95 Committee against Torture Concluding Observations: the Russian Federation, 6 February 2007, CAT/C/RUS/CO/4, para. 8.

96 Report of the Special Rapporteur on the independence of judges and lawyers: Russia, supra n. 92, paras. 93–97.

have experienced difficulties in obtaining access to and extracting files of case materials during the investigative stage.⁹⁷

There is no independent entity responsible for organising the legal aid system as a whole.⁹⁸ In the absence of a specific federal legal framework, legal aid is regulated by a number of laws and regulations, notably the Criminal Procedure Code and the Federal law on Legal Practice and the Bar. While existing legislation provides for a separate legal aid budget line in the budgets of the investigation authorities, no such line is defined in the courts' budgets.⁹⁹

Public centres, staffed on a part-time basis by lawyers, continue to offer free legal aid and remedies under the law; however, they are not permitted to handle individual cases.¹⁰⁰

According to a 2009 report by the Special Rapporteur on the independence of judges and lawyers, the method used for legal aid in criminal cases is *ex officio* appointment. Decisions to appoint a lawyer are made by investigation agencies or courts depending on the stage of the proceedings. There appear to be diverging systems of cooperation between the bar associations on the one side and the courts and the investigation bodies on the other to ensure proper appointment. While some systems seem to allow for objective appointment of a defence lawyer, others seem to cause arbitrary appointments. According to the law, advocates are obliged to provide the same quality of defence work for *ex officio* appointment as for paid services. In spite of this, existing legislation appears to only envisage paying advocates for participation in investigative proceedings and court appearance. There is no compensation provided for other services or costs. Decisions to pay the legal counsel are made by investigation authorities or the courts. For different

reasons, both may tend to allocate fewer resources than needed in the interest of effective defence work. This does not only affect the quality of legal defence but also the adherence to the principle of equality of arms. Furthermore, low tariffs, difficulties and delays with payments adversely affect advocates' motivation to perform high-quality work.¹⁰¹

Independent judiciary

The law provides for an independent judiciary.¹⁰² However this right is not always realised in practice. Judges remain influenced by the executive, particularly in high profile cases.¹⁰³ The UN Committee against Torture has raised concerns about the system of tenure of judges and its impact on the independence of the judiciary.¹⁰⁴

The Government itself acknowledges that the practice of "telephone justice" or "justice for money" persists in the country. In addition, it has been reported that judges have sometimes failed to make independent decisions as they feared to have their judgement overturned after they received "advice" from the prosecutor's office, the respective appeal court or their own court chairperson.¹⁰⁵

Judicial salaries have been significantly raised several times in the past years. While in 2000, a judge's average monthly salary was less than \$200, the monthly salary in 2008 was 50,000 roubles for district court judges (about \$2,000).¹⁰⁶

Language of the court

Criminal proceedings are conducted in Russian, or the state language of the Republics (except

⁹⁷ Ibid, para. 39.

⁹⁸ Ibid, para. 44.

⁹⁹ Ibid, para. 45.

¹⁰⁰ 2010 Human Rights Report: Russia, USA Department of State Bureau of Democracy, Human Rights and Labour, 8 April 2011, p. 8.

¹⁰¹ Report of the Special Rapporteur on the independence of judges and lawyers: Russia, supra n. 92, para. 45.

¹⁰² Article 120 of the Constitution.

¹⁰³ 2010 Human Rights Report: Russia, supra n. 100, p. 7.

¹⁰⁴ Conclusions and recommendations of the Committee against Torture, supra n. 95 para. 13.

¹⁰⁵ Report of the Special Rapporteur on the independence of judges and lawyers: Russia, supra n. 92, para. 58.

¹⁰⁶ Ibid, para. 64.

Supreme Court hearings which are conducted only in Russian).¹⁰⁷ However, Article 26 of the Constitution provides that everyone shall have the right to use his or her native language in court. The Criminal Procedure Code provides that the state must provide interpreter's services free of charge to a defendant who does not speak the language of the court, this includes to make statements, lodge petitions and complaints, be acquainted with the materials of the criminal case, and to take the floor in the court using their native language. When the sentence is given, the interpreter is required to read out a translation of the sentence.¹⁰⁸

Open hearings

All court hearings are open to the public¹⁰⁹, aside from those involving state secrets protected by federal law, where the accused is under the age of 16 years, cases involving sexual offences, or where it is necessary to guarantee the security of the participants of the proceedings or their close relatives.¹¹⁰

Persons attending an open court session have the right to carry out audio recording and to make records of the proceedings in writing. Photography or video recording are only admissible with the permission of the presiding judge of the court session.

Public judgments

Court sentences are announced in public court. If the criminal case has been conducted in camera, only the content of the judgement may be made public.¹¹¹

Right to an appeal by a court of higher jurisdiction

Sentences may be appealed within ten days after the sentence has been announced, or if the defendant is in pre-trial detention, ten days after the sentence has been given to him. Appeal is made to the district court/court of appeal, or to the cassation court

(Supreme Court), which can consider the legality of the sentence.¹¹² The accused has the right to participate in the hearing of the court either directly or through video-conferencing. The filing of an appeal suspends the execution of the sentence.

Right to seek pardon or commutation of the sentence

The right to issue a pardon or commutation of all sentences rests exclusively with the President.¹¹³ Applications for pardon are submitted by the administration of the penal institution to a Clemency Commission in the relevant region of the Russian Federation. The application will include a copy of the sentence, a health certificate of the petitioner, their criminal record, and any other relevant information. The Commission prepares a recommendation regarding the appropriateness of a pardon, and submits it to the Governor of the region. The Governor submits his recommendation on the appropriateness of a pardon to the President.

All death sentences are automatically considered for pardon regardless of whether a request has been submitted by the prisoner. In the case of a life sentenced prisoner, they must submit an application themselves.

If successful, a pardon decree will be signed by the President, and sent back to the relevant Governor as well as to the institution where the prisoner is being incarcerated. If the application for pardon is rejected, the petitioner is notified by the Governor.

Death sentences are not executed until a decision on clemency has been issued.¹¹⁴

On 3 June 1999, a presidential decree commuted the sentences of all 703 individuals on death row to life imprisonment. Since then, no pardons have been issued for those sentenced to serious offences.

¹⁰⁷ Article 18 of the Criminal Procedure Code.

¹⁰⁸ Ibid, Article 310.

¹⁰⁹ Article 123(1) of the Constitution.

¹¹⁰ Article 241 of the Criminal Procedure Code.

¹¹¹ Ibid, Article 241(7).

¹¹² Chapter 43 of the Criminal Procedure Code.

¹¹³ Article 89(c) of the Constitution.

¹¹⁴ Article 184 of the Criminal Execution Code.

VII: Implementation of the death penalty: method of execution

The method of execution in Russia is by a shot to the back of the head.¹¹⁵ Prior to the moratorium, the body of the executed prisoner was not returned to the family and the place of burial was not disclosed.¹¹⁶

VIII Application of the death penalty: statistics

The last execution in the Russian Federation took place in September 1996 (although executions were carried out until 1999 in Chechnya, which de facto was not then under control of the Russian Federation). The moratorium on sentencing and executions was established in 1999.

Year	Number of people sentenced to death	Number of people executed ¹¹⁷
2000	Moratorium on sentencing	Moratorium on executions
1999	19	Moratorium on executions (although it is known that Chechnya continued to execute until 1999).
1998	116	Moratorium on executions (although it is known that Chechnya continued to execute until 1999).
1997	106	Moratorium on executions (although it is known that Chechnya continued to execute until 1999).
1996	153	53
1995	143	40
1994	160	10
1993	157	123
1992	159	18
1991	147	37
1990	223	Unknown
1989	100	Unknown
Total	1,483	At least 281

¹¹⁵ Ibid, Article 186.

¹¹⁶ Ibid, Article 186(4).

¹¹⁷ Criminality of XX century: global, regional and Russian trends, V.V.Lumeev, Wolters Kluwer: Russia, 2005.

IX Application of life imprisonment: statistics

As of March 2012, there are 1,788 lifers in Russia. The figure includes the 703 people whose death sentence was commuted to life imprisonment by President Yeltsin in 1999.

Year	Number of people sentenced to life imprisonment (this figure does not include the 1999 death row commutations)
2012 (March)	14
2011	62
2010	60
2009	71
2008	70
2007	68
2006	45
2005	64
2004	89
2003	93
2002	96
2001	124
2000	98
1999	75
1998	55
1997	16
Total	1,100

X Implementation of the death penalty/life imprisonment: prison regime and conditions

Location of imprisonment for death row and life sentenced prisoners

Prior to the moratorium, death row prisoners were kept in solitary confinement at pre-trial detention centres or prisons all around the country. Executions were performed in the pre-trial detention centre or the prison where the inmate was held.

Prisoners convicted to life imprisonment are kept in five special regime penal colonies in the following regions:

- Vologda.
- Sverdlovsk.
- Orenburg.
- Yamalo-Nenets autonomous district.
- Perm.

There is also a separate building for lifers within the special regime colony in the Republic of Mordovia.

Prison conditions and treatment

The execution of life sentences is detailed in the Criminal Code and the Criminal Executive Code.

Lifers serve their sentences in isolation from other prisoners in correctional colonies of special regime. They are placed in the cells, usually no more than two people per cell.¹¹⁸ At the request of a prisoner, or in case of threats to his personal safety, a prisoner may be transferred to solitary confinement, subject to the decision of the head of the colony.

The cells are designed with a double door – the outside door is wooden covered with steel and the inside door is made of steel bars. The inner door has a small window to pass food, books etc to prisoners. The outside door has both mechanical and electric locks, with a watch hole installed. Each cell has a window. Electricity is controlled from outside the cell. A radio is provided. The cells are provided with a signalling button connected to the junior inspector's monitor.

While serving a sentence under the special regime, prisoners have the right to spend a specified amount of money on food and essential from their special prison account (money earned while serving their sentence or received as a pension or social welfare), plus an additional 700 rubles (approximately 18 Euros) per month that may come into their account

from another sources, such as from their family;; to receive one large parcel (up to 20 kg) and one small parcel (up to 2 kg) per year; to have two short (four hour) family visits per year; and to have a daily walk for ninety minutes, or if they have demonstrated good behaviour up to two hours, in a walking yard.¹¹⁹ Lifers are permitted to send and receive letters without limitation. They may also receive visits from a priest. However, it should be noted that penal colonies for lifers in the Russian Federation are situated far from cities which makes it very difficult and expensive for family members to visit.

Following ten years of imprisonment under the special regime, a lifer may be transferred to general conditions if he has not violated any prison rules or committed a criminal offence while in prison.

After being transferred to general conditions, a prisoner has the right to spend additional money from his special prison account (up to 1,000 rubles or 26 Euros per month if available from other sources, such as being deposited by their family members); to receive three large and three small parcels per year; and to have two short (four hour) and two long (three day) family visits.

After ten years under the general conditions, a lifer may be transferred to less strict conditions. Additional benefits include three short and three long family visits per year; four large and four small parcels per year; and to spend additional money from their special prison account (up to 2,000 rubles or 52 Euros per month if available from other sources, such as being deposited by their family members).

Very few prisoners sentenced to life imprisonment are able to access employment programmes, and there are no rehabilitation or social reintegration programmes.

Conditions for parole

A person who is sentenced to life imprisonment may be released on parole if the court finds that he does not need to serve any further punishment, if he has

¹¹⁸ Article 127(1) of the Criminal Executive Code.

¹¹⁹ Ibid, Article 125(3).

served at least 25 years of his sentence, and has not committed any violations of the prison rules in the last three years.¹²⁰ If a prisoner commits another crime while imprisoned, he loses his right to apply for early release.

To date, no lifer has been released on parole.

Prison staff and management

All penal colonies for lifers are situated far from cities; as such it is not easy to recruit appropriately trained staff. There is a lack of well-developed educational programmes or psychological trainings designed specifically for the staff working with lifers and long-term prisoners.

Monitoring prisons

Russia has not ratified the Optional Protocol to the CAT (OPCAT), and has not yet established a National Preventive Mechanism. Monitoring of prisons is currently undertaken by the government through the following three bodies: Ministry of Justice, the Federal Service of Execution of Punishments (FSIN), and the General Prosecutor's Office.

In addition, the following officials have the right to visit penal institutions without special permission while performing their official duties: the President of the Russian Federation, the Prime Minister, members of the Federal Assembly (parliamentarians), the Human Rights Ombudsman; and judges.

Public monitoring can also be undertaken by the Public Oversight Commission (POC) in line with Federal Law No. 76-FZ of 10 June 2008 "On Public Control of human rights in places of detention and assistance of persons in places of detention". The POCs are composed of between 5 and 20 members who are nominated by all-Russian, inter-regional or regional NGOs, which have been registered, operational for at least 5 years. The appointments are made by the Council of the Public Chamber of the Russian Federation (an advisory body under the President of the Russian Federation). There are no criteria against which the candidates should be

assessed by the Council of the Public Chamber. This has led to inconsistent, if not arbitrary, practices in the selection of candidates.

POCs can visit places of detention and consider individual complaints across all regions of the Russian Federation. However, they are not permitted to make unannounced visits; the POC must receive prior notification from the relevant penitentiary authority. POCs cannot meet with detainees in private, and they are not allowed to take written complaints out of the detention facilities unless the complaints are registered by the penitentiary administration (the POC members themselves are unable to register such complaints while meeting the detainees). Acting upon the complaints the POC can contact the office of the prosecutor to open an investigation.

Strategies and practices of the POCs vary depending on the region and composition of the POC. While some POCs aim to visit as many detention facilities as they can, others try to examine detainees' individual complaints, and yet others lobby for changes in the penitentiary systems. Few combine them all (strategies may vary within one POC, two members' agreement is enough to act) and not all of them prepare reports following their visits (or other activities). Such reports may be ignored or taken into account in decision-making. The decisions of the POCs on the complaints are not binding, but are forwarded to the Commissioner for Human Rights and the Public Chamber of the Russian Federation (not to the regional public chambers).

XI Transparency and accountability

Federal Law No. 8-FZ of 9 February 2009 "On Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government" obliges government bodies to give individuals and organisations access to information on their activity.

As such, general information and statistics are provided by the Federal Service of Execution of Punishments on their website (<<http://fsin.su/>>) and websites of their regional departments.

¹²⁰ Ibid, Article 176.

Federal Law No. 262-FZ of 22 December 2008 (effective from 1 July 2010) “On Providing Access to Information on the Activities of the Courts in the Russian Federation” sets forth the requirement for the court to provide public access to court judgements, and judicial statistics (accessible online <<http://www.sudrf.ru>>). The law also allows individuals and representatives of organisations to be present in public court proceedings; and for the publication of information on the courts’ activity in the media.

XII Current reform processes in the Russian criminal justice system

During the last twenty years the criminal justice system and the judiciary have been subject to various reform processes. In 2008, President Dmitry Medvedev announced the beginning of a new stage of judicial reform, the aim of which is to “actually achieve independence of the judiciary”. To regain the trust of citizens in the judicial system, the President proposed to eliminate “unlawful decisions on telephone call”¹²¹ (‘Telephone justice’ is a term which originated in Soviet times. When a top official wanted a particular result in court, he would simply phone the judge and tell him what the party line was. While Soviet rule long gone, pressure on courts continue to exist).

In 2010–2011 the President submitted to the State Duma three packages of amendments to the criminal laws with the aim of introducing alternatives to imprisonment. This included house arrest, imposing fines for some economic crimes previously punishable by imprisonment, and other alternatives for less serious crimes. At the same time it should be noted that the list of offences punishable by life imprisonment was broadened in 2012 and now

includes four additional life sentence applicable crimes which include various sexual-and drug-related offences.

In October 2010, the government approved a new reform package for the prison system. The aim was to raise the prison system up to European standards, to reduce re-offending of paroled prisoners, to improve the conditions of detention, and to observe human rights of offenders by 2020.

According to the reform package, the majority of the prison colonies for adults are to be transformed into prisons in a “European style”, and the institutions for juveniles are to become educational centres. However independent experts have raised a number of concerns regarding these reform packages:¹²²

- Re-labelling a correctional institution as “prison” will not achieve the required reform.
- The European instruments (such as the European Prison Rules) concerning deprivation of liberty are not well known to Russian law-makers and practitioners and need to be studied in-depth before embarking on such a vast reform.
- National legislation (both the Criminal and Criminal Executive Codes) would need radical amendments.
- A new system of staff training would need to be introduced to enables staff to work according to European standards.
- Resources for the reform must be guaranteed from the state budget.

¹²¹ News article <<http://www.kommersant.ru/doc/894260>>.

¹²² Improving detention conditions through effective monitoring and standard-setting, Natalya Khutorskaya, Council of Europe, 14 March 2010, <<http://www.coe.int/t/dghl/standardsetting/prisons/Conferences/Speech%20by%20Ms%20KHUTORSKAYA.pdf>>.

XIII Recommendations to the Russian Federation

1. Fully abolish in law the death penalty by eliminating it as a form of punishment from the five Articles in the 1996 Criminal Code and from Article 20 of the Constitution.
2. Undertake a campaign to educate the public on the need to abolish the death penalty. The campaign should incorporate elements of implementing humane alternative sanctions.
3. Ratify Protocol No. 6 and Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty.
4. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.
5. Co-sponsor and vote in favour of the upcoming fourth UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
6. Shorten the minimum length of term which a life-sentenced prisoner must serve before being able to apply for parole (currently 25 years). According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment',¹²³ all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
7. Humanise the system of punishment by reducing the number of crimes (currently 13) for which life imprisonment may be prescribed, and limit these cases to only the "most serious crimes".
8. Undertake legislative and policy steps to ensure the independence of the courts and the transparency of the judicial system.
9. Reform the system of legal aid in Russia to ensure that indigent defendants accused of an offence for which a death sentence or life imprisonment may be imposed can obtain free legal assistance at all stages of the case: pre-trial, trial, appellate, pardon and parole. Ensure all legal aid lawyers are independent of the state, adequately paid, have the same rights vis-à-vis the prosecutor, and are well-trained in courtroom advocacy methods for capital trials and sentencing hearings.
10. Draft and adopt a strategy to reform the penal system in Russia with a clear vision that makes specific reference to reforming life imprisonment which is consistent with international human rights standards and norms, including eliminating discriminatory practices and regulations applicable to life sentenced prisoners, such as requiring that all lifers be imprisoned under a special security regime for at least the first ten years of their sentence. Security measures should be implemented on a case-by-case basis, based on an individual risk-assessment, and not based on the type of sentence being served. Involve academics and public organisations on the reform programme. Organise a public debate on the strategy, with participation from all interested parts of civil society.
11. Carry out reforms to the penitentiary system so that it is in compliance with international human rights standards including the UN Standard Minimum Rules for the Treatment of Prisoners. This should include improving the cell size and living conditions for prisoners, improving access to health care including mental health care. Prioritise resources of the Russian prison administration so that they can effectively implement the reforms, including the 2010–2020 government-led reform programme.
12. Ensure that prison conditions of life-sentenced prisoners approximate as closely as possible to the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration. This should include the possibility to undertake education, to work, to have contact with the outside world, and to receive psychological or medical treatment.

123 1994 Life Imprisonment report, supra n. 63.

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13. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of long- and short-term visits for lifers, to reduce the restrictive requirements for short-term visits, and to increase the number of parcels which family members can send in to prisoners.
 14. Improve daily activities for life-sentenced prisoners. Such activities should be aimed at supporting their rehabilitation and reintegration back into society by organising targeted training for them, and providing them with appropriate work skills and education. This should include:
 - a. Providing lifers with regular access to sporting activities.
 - b. Providing lifers with the opportunity to engage in employment.
 - c. Implementing all necessary measures in order to provide lifers with the right to educational and vocational programmes.
 - d. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as drug or alcohol abuse, anger management, psychological or psychiatric support.
 15. Develop a system of regular assessment of prisoners convicted to life imprisonment, with the view of preparing them for release on parole. Improve the parole system, making procedures clear, and ensure that judges who have the responsibility to review parole applications are specialised penal judges, with experience of dealing with such cases.
 16. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff are appropriately trained in international human rights standards.
 17. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a National Preventive Mechanism (NPM). Ensure that the NPM is independent, competent to monitor all places where persons are deprived of their liberty, and is well resourced and financed to ensure its effectiveness.
 18. Ratify the Rome Statute of the International Criminal Court.
 19. Encourage further collaboration between government officials and civil society, including journalists, on criminal justice issues.
 20. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Russia at both the financial and political level.
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Ukraine

I Basic country information

Geographical region: Ukraine is the second largest country in Europe. It borders Russia, Belarus, Poland, Slovakia, Hungary, Romania and Moldova. Its capital is Kiev.

Type of government: Ukraine is a republic under a presidential-parliamentary system.

Language: The official language is Ukrainian. Russian is also widely spoken.

Population: Ukraine is home to approximately 46 million people; 77.8 percent of whom are ethnic Ukrainians, with sizable minorities of Russian, Belarusian and Romanian.

Religion: The dominant religion in Ukraine is Eastern Orthodox Christianity.

II Overview of the status of the death penalty in Ukraine

Following its membership to the Council of Europe in 1995, Ukraine made a commitment to abolish the death penalty. However, Ukraine continued to pass death sentences and carry out executions. At least 180 people were executed in Ukraine between 1995 and March 1997,¹²⁴ including 167 executions in 1996 alone.¹²⁵ Many Ukrainians favoured retaining the death penalty as crime rates soared after the collapse of the Soviet Union in 1991.

On 29 January 1997, the Parliamentary Assembly of the Council of Europe (PACE) passed Resolution 1112 in which it condemned Ukraine's failure to honour the commitment made on accession to the Council to put in place a moratorium on the use of the death penalty and deplored the executions which took place in 1996. Resolution 1112 continued, "The Assembly warns the Ukrainian authorities that it will

take all necessary steps to ensure compliance with commitments entered into. In particular, should any more executions of the death penalty be carried out following the adoption of this resolution, the Assembly may consider the non-ratification of the credentials of the Ukrainian parliamentary delegation at its next session."

On 11 March 1997, a moratorium on executions was established by the President. Courts continued to pass death sentences.

Ukraine eventually abolished the death penalty in February 2000, with an overwhelming majority vote from the members of the then Ukrainian parliament (the 'Verkhovna Rada'). The vote followed a landmark ruling of the Constitutional Court on 30 December 1999, judging the death penalty unconstitutional. The Court found that the punishment violated the principle of the right to life, which is enshrined in the country's constitution, and contravened the constitutional provision that no one should be subjected to torture or to cruel or inhuman treatment or punishment.

The last death sentence was issued in 1999, and the last 612 death row prisoners had their sentences commuted to life imprisonment. On 22 February 2000, Law No. 1483-III established life imprisonment as the alternative to death penalty in Ukraine.

Article 27 of the Constitution was amended to provide that "Every person shall have the inalienable right to life. No one shall be arbitrarily deprived of life. Protection of human life shall be the duty of the State."

In April 2001 Parliament approved the new Criminal Code which formally abolished the death penalty (entering into force on 1 June 2001). Ukraine ratified Protocol No 13 to the ECHR banning the death penalty in all circumstances on 11 March 2003, and subsequently ratified the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) on 25 July 2007.

¹²⁴ Ukraine, Hands off Cain, <<http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=20&nome=ukraine>>.

¹²⁵ Ukraine: 1996 execution figure—second highest in the world—reveals international abolition commitment being openly flouted, Amnesty International, 11 February 1997, EUR 50/04/97.

III Legal framework: application of international human rights standards in Ukraine

Article 9 of the Constitution provides that international treaties ratified by Ukraine form a part of the domestic legislation.

Ukraine is party to almost all international human rights instruments relevant to the death penalty.

Ukraine ratified the International Covenant on Civil and Political Rights (ICCPR) on 12 November 1973, the First Optional Protocol to the ICCPR on 25 July 1991, and the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) on 25 July 2007. Ukraine ratified the Convention against Torture and Other Cruel and Degrading Treatment or Punishment (CAT) on 24 February 1987, and its Optional Protocol (OPCAT) on 19 September 2006. It ratified the Convention on the Rights of the Child (CRC) on 28 August 1991. It is a signatory to the Rome Statute on the International Criminal Court, but has not yet ratified it. Ukraine ratified Protocol No. 6 to the ECHR (concerning the abolition of the death penalty) on 4 April 2000, and Protocol No. 13 (concerning the abolition of the death penalty in all circumstances) on 11 March 2003.

Ukraine co-sponsored and voted in favour of UN General Assembly moratorium resolutions in 2007, 2008 and 2010.

IV Legal framework: the death penalty in Ukraine

Death penalty applicable crimes

Prior to abolition in 2001, there were 24 crimes punishable by death in the Criminal Code of Ukraine. These included:

1. Aggravated murder.
2. Encroachment on the life of a statesman.
3. Encroachment on the life of a representative of a foreign state.
4. Encroachment on the life of a person administering justice or a preliminary investigation, or a law enforcement officer.
5. A number of crimes committed during wartime.

Prior to abolition, the death penalty was primarily used for those accused of aggravated murder.

Prohibited categories

Prior to abolition, the death penalty could not be applied to the following persons:¹²⁶

- Individuals under the age of 18 at time the crime was committed.
- Pregnant women.

V Legal framework: alternative sanctions to the death penalty in Ukraine

In February 2000, the death penalty was replaced with life imprisonment as the maximum punishment in Ukraine.

Article 64(1) of the Criminal Code provides that life imprisonment is imposed for “special grave” offences and shall apply only in cases “where a court does not find it possible to impose imprisonment for a determinate term”.

Length of life imprisonment

Life imprisonment in Ukraine means a whole life sentence, however a pardon may be applied for after serving a minimum of 20 years imprisonment. If the pardon is issued, the life sentence will be substituted by a definite term of 25 years imprisonment.

¹²⁶ Article 24 of the Criminal Code.

Life sentence applicable crimes

Under the Criminal Code, life imprisonment as a punishment is foreseen for the following nine offences:

1. Aggravated murder: Article 115.
2. Terrorism-related offences resulting in death: Article 258.
3. Encroachment on the life of a state-person or a public figure: Article 112.
4. Murder or attempted murder of a law enforcement official, a judge, an associate judge, a serviceperson, a defender or his/her representative: Articles 348, 379, 400.
5. Resistance to military authorities resulting in murder: Article 404.
6. Violation of laws and customs of war related to intentional murder: Article 438.
7. Application of weapons of mass destruction if it led to the death of people or other severe consequences: Article 439.
8. Genocide: Article 442.
9. Murder or attempted murder of a foreign representative: Article 443.

In some circumstances, the Criminal Code provides that life imprisonment may be imposed for offences where there are no lethal consequences.

None of these offences provide for a mandatory life sentence.

Prohibited categories

The prohibitions on the application of life imprisonment are set out in Article 64(2) of the Criminal, and include:

- Individuals under the age of 18 at time the crime was committed.
- Pregnant women.
- Individuals over 65 years of age at the time of sentencing.

Article 66 of the Criminal Code also allows the state of health of the accused to be taken into consideration as a mitigating factor. If a person is assessed as being mentally ill (i.e. a person who could not be conscious of his/her activities at the time of the offence and be in charge of them due to a mental illness, or got ill at the moment of adjudication), then a person may not be found to have criminal responsibility, and compulsory medical measures could be imposed by the court.¹²⁷

If a person becomes mentally ill while serving his/her sentence, which renders him/her incapable of realising his/her actions, he/she may be discharged from further punishments, and subjected to compulsory medical measures.¹²⁸

VI Application of the death penalty/life imprisonment: fair trial procedures

Presumption of innocence

The constitution legally guarantees the right to a fair trial, including the right to be presumed innocent;¹²⁹ however, high conviction rates call that presumption into question.¹³⁰

Trial by jury

The constitution provides for jury trials in Ukraine,¹³¹ and the Verkhovna Rada (parliament) plans to adopt a new Code for Criminal Procedure in April 2012 which will introduce the concept of trial by jury for very serious crimes. At present, most cases are decided by judges who sit alone. Trials on charges carrying a maximum sentence of life imprisonment are heard

¹²⁷ Ibid, Article 19(2).

¹²⁸ Ibid, Article 84.

¹²⁹ Article 62 of the Constitution.

¹³⁰ 2010 Human Rights Report: Ukraine, USA Department of State Bureau of Democracy, Human Rights, and Labor, 8 April 2011, p. 15.

¹³¹ Article 129 of the Constitution.

by two judges and three public assessors who have some legal training. The right to adequate legal assistance

The Criminal Procedure Code guarantees the right of a legal defence,¹³² and makes it compulsory that those accused of an offence for which life imprisonment may be imposed must have the services of a defence lawyer.¹³³ The court may appoint a defence lawyer through the legal aid agency for an indigent defendant or those accused of life sentence applicable offence.¹³⁴ Legal aid can also be provided at the appeal stage.

According to reports by local civil society organisations, the quality of the legal defence provided by a legal aid lawyer is extremely low. It has been reported that such lawyers do not actively work to protect the interests of their clients, and are neglectful of their duties. The payment legal aid lawyer's receive is not regulated, and as a consequence they are reluctant to take on such work.

The law specifies that a defendant may consult a lawyer in private; however, human rights groups have also reported that officials occasionally deny this lawyer-client privilege.¹³⁵

Independence of the judiciary

The constitution provides for an independent judiciary;¹³⁶ however, in practice the judiciary remains subject to political pressure, suffers from corruption and inefficiency, and lacks public confidence.

The right to a fair trial is undermined by lengthy court proceedings, by political pressure on judges, and inadequate court funding and resources. Judges also continue to complain about pressure from high-ranking politicians interfering in cases.¹³⁷

All courts, except for the Supreme Court, are funded through the State Judicial Administration, which is also responsible for staffing. The Ministries of Justice and Education are responsible for the training of judges. The judiciary's lack of adequate staff and funds contributed to inefficiency and corruption and increased its dependence on the executive branch.¹³⁸

On 7 July 2010, parliament adopted a new law on the "Judicial System and Status of Judges". Under the law a new High Specialised Court for Examination of Civil and Criminal Cases was established, which greatly reduced the powers of the Supreme Court and the number of Supreme Court justices. The legislation also gave the 20-member High Council of Justice a more prominent role in nominating and dismissing judges, chairpersons and deputy chairpersons of courts except for the Supreme Court. Under the law the number of judges in a court is determined by the Minister of Justice upon the proposal of the State Judicial Administration.¹³⁹

In their addendum to the PACE report on 4 October 2010, co-rapporteurs Wohlwend and Reps highlighted concerns over the enlarged powers of the High Council of Justice.¹⁴⁰ They noted the Venice Commission's statement that the legislation creates "an evident danger of politically motivated nominations to the High Council of Justice guided by political considerations."¹⁴¹

132 Article 21 of the Criminal Procedure Code.

133 Ibid, Article 45(1) and (2).

134 Ibid, Article 45(1) and (2).

135 2010 Human Rights Report: Ukraine, supra n. 130, p. 7.

136 Article 126 of the Constitution.

137 2010 Human Rights Report: Ukraine, supra n. 130, p. 6.

138 Ibid, p. 6.

139 Ibid, p. 6.

140 The functioning of democratic institutions in Ukraine, Addendum to the report, Parliamentary Assembly to the Council of Europe, Doc 12357, 4 October 2010, para. 10.

141 Comments on the Law of Ukraine on amending certain legislative acts of Ukraine in relation to prevention of abuse on the right to appeal, Ms Hanna Suchocka (Member, Poland), European Commission for Democracy through Law (Venice Commission), CDL(2010)086, para. 5.

Open court hearing

By law trials are held in public, and defendants have the right to confront witnesses. However, courtroom space is often limited, and media personnel are at times not able to attend and report on court proceedings.¹⁴²

Right to an appeal by a court of higher jurisdiction

In July 2011, the Verkhovna Rada (parliament) established a new law to provide the district courts of Ukraine with jurisdiction to impose a life sentence. Prior to this, only the Court of Appeal (as a trial court) had jurisdiction to hear cases of those accused of aggravated and especially grave offences. Following the 2011 law, the court of appeals now has jurisdiction to review petitions for appeal, meaning that those sentenced to life imprisonment can now pass through all levels of appeal to the Supreme Court.

Right to seek pardon or commutation of the sentence

The Secretariat of the President has a special Clemency Commission to hear pardon applications. The Commission is made up of the delegates of the Supreme Council of Ukraine. The prison administration prepares the materials on request of the Commission (a copy of the sentence, a certificate of good conduct, a medical certificate, and proof of payment for fines levied on the prisoner) and submits them to the Commission. The Commission makes a preliminary recommendation to the President of Ukraine who bears the final responsibility for signing the pardon application.

Following abolition of the death penalty, approximately 612 death row prisoners had their sentences commuted to whole life imprisonment.

VII: Implementation of the death penalty: method of execution

Before the moratorium, the death penalty in Ukraine was carried out by shooting. It was executed in a non-public location, with participation of the public prosecutor, a penal committee representative and a doctor. Where there was more than one execution to be carried out, they were conducted individually.

Relatives were not informed about the date of the execution in advance, but were notified after the execution had taken place. The body of the executed person was not returned to the relatives, and the place of burial was not disclosed.

VIII Application of the death penalty: statistics

In 1996, according to Amnesty International, Ukraine executed 167 persons, making them the second highest executioner in the world after China for that year.¹⁴³

The last executions in Ukraine were carried out in 1997: 13 people were executed¹⁴⁴ despite the country adopting a moratorium on executions in March of the same year. At least 73 people were sentenced to death in 1997.¹⁴⁵

The last death sentence in Ukraine was issued in 1999.

IX Application of life imprisonment: statistics

As of 1 March 2012, the number of prisoners serving a life sentence in Ukraine was 1,883. In January 2011 the number was 1,696, in February 2010 there were 1,617 lifers, and in June 2009 the number was 1,560. As such, the number of lifers has risen by 323 in less

¹⁴² 2010 Human Rights Report: Ukraine, *supra* n. 130, p. 7.

¹⁴³ Ukraine: 1996 execution figure—second highest in the world—reveals international abolition commitment being openly flouted, Amnesty International, 11 February 1997, EUR 50/04/97.

¹⁴⁴ Ukraine: Death Penalty, Amnesty International, 9 September 1997, EUR 50/15/97.

¹⁴⁵ *Ibid*.

than three years meaning more than 100 people are sentenced to life imprisonment on average per year.

The data published by the Department for Execution of Sentences indicate that as of 1 June 2010, 20 women were serving a life sentence in Ukraine. According to the media, all women currently serving a life sentence in Ukraine had been sentenced to death for aggravated murder before having their sentences commuted to life.

X Implementation of life imprisonment: prison regime and conditions

Those who have been sentenced to life imprisonment are incarcerated in special wings of 12 prison colonies and 22 pre-trial detention centres throughout Ukraine. Approximately one third of all lifers are incarcerated in the Vinnitsa region.

Article 150 of the Penitentiary Code provides that those serving a life sentence must serve it in the highest security penal colonies and must be kept isolated from other prisoners.

Women are housed in a specialised wing of a middle security colony.

Cost of imprisonment

The government does not provide official information on the cost of imprisonment. However, in 2009, the Department for the Execution of the Sentences published an article on its website which stated that the cost of maintenance for a life-sentenced prisoner is approximately 13 thousand hryvnas (about \$ 1,650 or € 1,200) per year.

Conditions and treatment of detention

Life-sentenced prisoners are required to be incarcerated in a two-person cell segregated from

the rest of the prison population and required to wear a specific uniform.¹⁴⁶ In practice though, lifers are housed with three to four prisoners per cell. A lifer may be retained in a solitary cell by request of the prisoner in order to protect him from possible infringements on his life, or to prevent an offence by this person, subject to authorisation by the head of the prison colony.

People sentenced to life imprisonment have the right to spend money earned in the colony on food and living essentials once a month in the amount of 50 percent of the minimal salary; to have one short family visit (up to four hours) every three months via a glass partition in the presence of prison officials; to receive visits from a priest; to receive small parcels; to have a one-hour daily walk in the exercise yard; and to order books from the prison library (which has not be renewed for some time).

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) raised concerns regarding severe restrictions on the visiting entitlement of life sentenced prisoners during their 2009 visit. The CPT called on Ukraine to ensure that special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences.¹⁴⁷

The European Court of Human Rights found in February 2012 that Ukraine had violated Article 8 (right to respect for private and family life) of the European Convention on Human Rights by imposing restrictions on family visits.¹⁴⁸ The applicant, who is currently serving a life sentence for murder, was allowed to see his relatives no more than once every six months. Following an amendment to the Enforcement of Sentences Code, he was granted family visits once every three months. The visits could last no longer than four hours and no more than three visitors could be present at once. The Court underlined that it was an essential part of a detainee's right to respect for family life that the authorities enabled him to maintain contact with his close family. Restrictions on the number of family visits constituted an interference with the detainee's right under Article 8.

¹⁴⁶ Chapter 22 of the Penitentiary Code of Ukraine "The Procedure and Conditions of the Execution and Service of Life Imprisonment Sentence".

¹⁴⁷ Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 September 2009, CPT/Inf (2011) 29, para. 92.

¹⁴⁸ *Trosin v. Ukraine*, application no. 39758/05, European Court of Human Rights, 23 February 2012.

Those convicted to life imprisonment are legally entitled to engage in work programmes. However, as the prison administration is required to take into consideration that lifers must remain in cell-type rooms this prohibits any real involvement in proper work programmes. There are no other efforts by the prison administration to provide any social rehabilitation programmes for lifers. The main principle behind this is the assumption that such prisoners will never be released back into society, and therefore there is no need to encourage social, educational or work programmes.

The CPT raised concerns that no progress has been made as regards the regime of activities offered to life-sentenced prisoners: "These inmates spent 23 hours a day in their cells in a state of enforced idleness, their main activity being watching TV and reading books. Further, the exercise yards to which they had access one hour every day were of an oppressive design and too small for real physical exertion."¹⁴⁹ The CPT called upon the Ukrainian authorities to develop a programme of purposeful activities for prisoners sentenced to life imprisonment (including work, education, association, sports and cultural activities, as well as targeted rehabilitation programmes).

Furthermore, every ten days prisoners are required to move cell (including prisoners with tuberculosis). This is considered a security requirement. However it puts considerable strain on the prisoner by never allowing them to feel settled in the prison.

In 2008, Ukraine underwent its Universal Periodic Review (UPR) by the UN Human Rights Council. Two countries (Russia and Canada) made specific recommendations to Ukraine to improve the conditions and treatment of detainees.¹⁵⁰

In January 2010, the parliament approved amendments to the Criminal Procedure Code and the Code of Criminal Law Administration. The amended legislation eased restrictions for prisoners serving life sentences. According to the amendments, after fifteen years imprisonment under a high security regime, a lifer may be transferred to a general regime prison, where they can interact with the general prison population and take part in group activities

such as educational or cultural programmes. However, as the amendments do not make the transfer compulsory, and it does not set out what pre-conditions have to be fulfilled in order for the prisoner to be transferred, it is difficult for the prison service to implement this law in practice. Furthermore, the amended legislation does not apply to those with health issues, including mental illness, tuberculosis and venereal diseases.

According to the amendments, which are scheduled to enter into effect in 2012, the minimum living area per inmate at penitentiary facilities shall be increased from 3m² to 4m². However, according to the Ombudsman's office, in practice the prison service will not be able to implement this as the numbers of life sentenced prisoners continues to increase contributing to overcrowding in prison cells. Approximately 100 people are sentenced to life imprisonment every year, and none have been released on parole to date.

The living conditions and treatment for female life-sentenced prisoners is slightly better than for male lifers. Women are not incarcerated in cells, but in separate rooms with several people in each, they sleep in ordinary beds, and can engage in joint work programmes. There is a greater sense of community and structure for female prisoners, and a reduced security regime.

Access to medical care

Access to medical health care for life-sentenced prisoners in Ukraine is basic to say the least. In cases of minor illnesses a medical assistant may not always be available to treat the prisoner, and if he/she does provide treatment, the main source of medicine available in an analgin injection (which reduces fever, and has an anti-inflammatory and strong analgesic effect). Where injections are given, it is always through the food opening in the cell door.

There is no medical room for examination of patients in the prison, and in the case of a serious illness, patients may have to spend up to three months waiting for a doctor to examine them, which takes place in the prison officers room where 5–6 prison

¹⁴⁹ CPT Report to the Ukrainian Government, supra n. 147, para. 90.

¹⁵⁰ Report of the Working Group on the Universal Periodic Review: Ukraine, 3 June 2008, A/HRC/8/45, recommendations 16 and 17.

officers will be present. Prisoners have complained that prison officers often laugh at their medical conditions or give humiliating remarks during examination. The physician is not able to refer a prisoner for external treatment at a hospital. Internal treatment is often not effective as medicines are given to prisoners in limited quantity, irregularly, and they may be removed by a security officer during cell searches.

If a prisoner wants to obtain medication from their relatives, prison rules require that they must submit an application for permission for the required medicine. The application is taken for consideration by the prison authorities, and in many cases, permission is refused. Following approval, the prisoner must send the permission to their relatives, who then can then send in the required medicines by post. The process can take 2–3 months.

Those with tuberculosis remain incarcerated in the same wing as healthy prisoners. They are not quarantined in special medical facilities, and their cells are not sanitised. The cells are damp with concrete floor, small windows and without ventilation, which is not conducive to treating TB patients.

Parole

Life imprisonment in Ukraine does not have a maximum tariff; however a lifer may apply to the President for a pardon of his/her life sentence after serving a minimum of 20 years. If the President grants a pardon, the life sentence is replaced with a determinate term of 25 years imprisonment. A prisoner may then apply for parole after serving a minimum of three-quarters of their sentence. However, the law is unclear as to whether the 25 year determinate term includes the 20 years already served, or whether the 25 years must be served in addition to the first 20 years. As such, there is a lack of clarity as to when the three-quarter minimum term will be reached by the prisoner.

To date, no lifer has been paroled in Ukraine since life imprisonment was introduced. There are no clear parole procedures for those sentenced to life imprisonment. Parole procedures for non-lifers are more clear and transparent, with the decision belonging to the court.

Monitoring prisons

Despite being a party to the Optional Protocol to CAT (OPCAT) since 2006, Ukraine has yet to designate its National Preventive Mechanism (NPM). However, it is worth noting that a number of state institutions can monitor places of detention. This includes: the office of the executive, the office of the prosecutor, and the Ombudsman. Furthermore, following a 2004 Decree of the Cabinet of Ministers, Oversight Commissions were created in all regions of Ukraine.

In November and December 2011 a delegation of the CPT carried out a one-week visit to the country. It was the CPT's sixth visit since 1998. A report of the CPT's findings has not yet been made public (reports are only made public subject to the state's agreement). However, the CPT's 2009 visit provided an opportunity to review the situation of prisoners sentenced to life imprisonment.

XI Transparency and accountability

Ukraine does not provide official statistics on individuals serving life sentences. The latest data published by the Department for the Execution of Sentences was in 2009,¹⁵¹ on their own initiative.

The Supreme Court of Ukraine also provides some information on the number of life sentences handed down by the courts on an annual basis.

151 Department for the Execution of Sentences <<http://www.kmu.gov.ua/punish/control/uk/publish/article>>.

XII Current reform processes in the criminal justice system of Ukraine

In January 2010, the parliament amended the Penal Code, prohibiting racial, religious, and other types of discrimination against inmates at penitentiary institutions. It added additional groups to the list of individuals authorised to visit penitentiary institutions without special permission, including the Justice Minister, members of the CPT, and members of Oversight Commissions monitoring prison conditions.

In the beginning of 2011 the State Department for Execution of Punishments was restructured under the new name the State Penitentiary Service (SPS) of Ukraine. It is now coordinated by the Minister of Justice. According to the reforms, all regulations and/or agreements relating to the SPS that previously could be signed by the Head of Department must now be signed by the Minister of Justice. This, along with a change of personnel, has lengthened the time it takes to get proposed regulations approved by the government.

The government also established a Working Group to prepare a new concept of developing the criminal executive system. The Working Group's mandate lasts until 2015 and they have already drafted a concept to prioritise reforms. This includes:

- Strengthening state policy in the area of execution of punishments and ensuring that the prison service continues to function in a stable environment.

- Ensure prison conditions reflect what is required under national legislation.
- Implementation of European standards for prison conditions and treatment (such as the European Prison Rules) and recommendations made by the European Committee for the Prevention of Torture (CPT).
- Increased effectiveness of prison management based on principles of accountability, transparency and interaction with other central and regional state bodies.
- Develop and introduce new forms of social-educational and psychological assistance to offenders.
- Widen and strengthen communication with mass media regarding the operation of the prison service aiming at forming a positive public attitude.
- Improve the system of training and re-training of prison personnel.
- Strengthen cooperation with scientific and public organisations.

The SPS is preparing amendments to the current legislation taking into account the recommendation set out in the draft concept of the Working Group. At present, SPS initiatives are being fully supported by the government.

XIII Recommendations to Ukraine

1. Abolish the use of whole life sentences. All life sentenced prisoners in Ukraine should have a realistic right of parole. According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment',¹⁵² all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.
2. Humanise the system of punishment by reducing the number of crimes (currently nine) for which life imprisonment may be prescribed, and limit these cases to only the "most serious crimes".
3. Undertake legislative and policy steps to ensure the independence of the courts and the transparency of the judicial system.
4. Reform the system of legal aid in Ukraine to ensure that indigent defendants accused of an offence for which life imprisonment may be imposed can obtain free legal assistance at all stages of the case: pre-trial, trial, appellate, pardon and parole. Ensure all legal aid lawyers are independent of the state, adequately paid, have the same rights vis-à-vis the prosecutor, and are well-trained in courtroom advocacy methods for trial and sentencing hearings.
5. Complete and implement the reform programme for the penal system in Ukraine as established by the government Working Group. Ensure the programme makes specific reference to reforming life imprisonment which is consistent with international human rights standards and norms, including then European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners. This should include improving the cell size and living conditions for prisoners, improving access to health care including mental health care and those suffering from tuberculosis. Involve academics and public organisations on the reform programme. Organise a public debate on the strategy, with participation from all interested parts of civil society. Prioritise resources of the Ukrainian prison service so that they can effectively implement the reforms.
6. Eliminate discriminatory practices and regulations applicable to life sentenced prisoners such as requiring all lifers to be imprisoned under a special security regime for at least the first fifteen years of their sentence. Security measures should be implemented on a case-by-case basis, based on an individual risk-assessment, and not based on the type of sentence being served. A system of progressive transfer from high security, to medium security, to open prisons should be established based on the behaviour and genuine dangerousness of the prisoner rather than type of sentence, with the aim of eventual release back into society.
7. Ensure that prison conditions of life-sentenced prisoners approximate as closely as possible to the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration.
8. Special efforts should be made to prevent the breakdown of family ties of prisoners serving life sentences and to increase the number of short-term visits for lifers, and introduce long-term visits for lifers.
9. Improve daily activities for life-sentenced prisoners. Such activities should be aimed at supporting their rehabilitation and reintegration back into society by organising targeted training for them, and providing them with appropriate work skills and education. This should include:
 - a. Providing lifers with regular access to sporting activities.
 - b. Providing lifers with the opportunity to engage in employment.
 - c. Implementing all necessary measures in order to provide lifers with the right to educational and vocational programmes.
 - d. Renewing the selection of books available in the prison libraries.
 - e. Consider developing other rehabilitation and reintegration programmes that will assist a lifer to deal with any underlying issues or problems linked to their crime, such as drug or alcohol abuse, anger management, psychological and/or psychiatric support through a dedicated psychologist employed by the prison.

¹⁵² 1994 Life Imprisonment report, *supra* n. 63.

10. Develop a system of regular assessment of prisoners sentenced to life imprisonment, with the view of preparing them for release on parole. Improve the parole system, making procedures clear for lifers, and ensure that those who have the responsibility to review parole applications are specialised and have experience of dealing with such cases.
 11. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff are appropriately trained in international human rights standards. Develop and publish a set of recommendations for prison personnel on how to treat those sentenced to life imprisonment.
 12. Establish a National Preventive Mechanism (NPM). Ensure that the NPM is independent, competent to monitor all places where persons are deprived of their liberty, and is well resourced and financed to ensure its effectiveness.
 13. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence and place of sentence. Publish historical information on the application of the death penalty prior to abolition, including data on those executed and those sentenced to death.
 14. Ratify the Rome Statute of the International Criminal Court.
 15. Co-sponsor and vote in favour of the upcoming fourth UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
 16. Encourage further collaboration between government officials and civil society, including journalists, on criminal justice issues.
 17. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Russia at both the financial and political level.
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Comparison of the application and implementation of the death penalty and its alternative sanction in Eastern Europe

	Republic of Belarus	Russian Federation	Ukraine
Death penalty			
1. Death penalty status	Retentionist	De facto abolitionist	Abolitionist
2. Date abolished, if applicable	N/A	N/A	30 December 1999
3. Date of last execution	March 2012	2 September 1996 (although executions were carried out until 1999 in Chechnya, which de facto was not then under control of the Russian Federation).	1997
4. Date last death sentence	2011	June 1999	1999
5. Death penalty applicable crimes	<ol style="list-style-type: none"> 1. Initiation or waging of aggressive war. 2. Act of terrorism against a representative of a foreign state. 3. International terrorism. 4. Genocide. 5. Crimes against human security. 6. Application of weapons of mass destruction. 7. Violation of the laws or customs of war. 8. Murder. 9. Terrorism. 10. Treason 11. Conspiracy or other acts committed with the aim of seizing state power. 12. Act of terrorism. 13. Sabotage. 14. Murder of a police officer. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Encroachment on the life of a statesman or public figure. 3. Encroachment on the life of a person administering justice or a preliminary investigation. 4. Encroachment on the life of a law enforcement officer. 5. Genocide. 	<p>Prior to abolition there were 24 crimes punishable by death, including:</p> <ol style="list-style-type: none"> 1. Aggravated murder. 2. Encroachment on the life of a statesman. 3. Encroachment on the life of a representative of a foreign state. 4. Encroachment on the life of a person administering justice or a preliminary investigation, or a law enforcement officer. 5. A number of crimes committed during wartime.
6. Is the death sentence mandatory?	No.	No.	Prior to abolition, no.

	Republic of Belarus	Russian Federation	Ukraine
7. Categories excluded from the death penalty	<ul style="list-style-type: none"> Juveniles under 18 years at time of committing crime. Women. Men over 65 years at the time of sentencing. Mentally-ill. 	<ul style="list-style-type: none"> Juveniles under 18 years at time of committing crime. Women. Men over 65 years at the time of sentencing. Mentally-ill. Persons extradited to Russian by a foreign state for prosecution in accordance with an international treaty, whereby the non-applicability of the death penalty is a condition of the extradition. 	<ul style="list-style-type: none"> Juveniles under 18 years at time of committing crime. Pregnant women.
8. Is there a moratorium?	No.	In 1999, the Constitutional Court established a moratorium on executions and sentencing. In 2009, the Constitutional Court further extended it until the ratification of Protocol No. 6 to the ECHR.	An official moratorium on executions was established on 11 March 1997.
9. Have there been any death row commutations?	Approximately 156 prisoners sentenced to death have had their death sentences commuted to life imprisonment.	703 death row prisoners had their death sentences commuted to life imprisonment in 1999.	Following abolition of the death penalty, approximately 612 death row prisoners had their death sentences commuted to life imprisonment.
10. Method of execution	Shooting.	Shooting.	Prior to abolition: shooting.
11. Are relatives informed about the execution / place of burial?	Executions are carried out in secret. Relatives are not informed of the time or place of execution, and are not notified of the place of burial.	Relatives were not notified of the place of burial.	Prior to abolition, relatives were not informed of the time or place of execution, and were not notified of the place of burial.
12. Location of death row	Pre-trial detention centre No. 1 in Minsk.	N/A	N/A
13. Number of prisoners on death row	Approximately 102 men.	None.	N/A
14. Right to apply for clemency or pardon	The President has the power to issue a pardon or clemency.	The President has the power to issue a pardon or clemency.	Prior to abolition, the President has the power to issue a pardon or clemency.

	Republic of Belarus	Russian Federation	Ukraine
15. Cost of imprisoning one death row inmate for a day/year	Unknown.	N/A	N/A
16. Number of death sentences in 2010 and 2011	2011 – 2 death sentences. 2010 – 2 death sentences.	None	N/A
17. Number of executions in 2010 and 2011	2011 – 2 executions. 2010 – 2 executions.	None	N/A
18. Have there been any recent opinion polls on death penalty, and if so, key findings	In 1996 a public referendum demonstrated that 80.44 percent of the public were against abolition. Opinion polls carried out in 2000 and 2003 demonstrate that approximately 70 percent of the population was still in favour of the death penalty. A national poll carried out by research centre 'NOVAK' in 2008 demonstrate that 48.2 percent were in favour of the death penalty, and 39.2 percent were in support of abolition.	According to a 2012 poll by the Public Opinion Foundation, 62 percent of the country's residents are in favour of the death penalty, 21 percent want to maintain the moratorium, and five percent were in favour of full abolition.	In March 2011, an opinion poll carried out by the Research & Branding Group found that 45 percent of respondents wanted Ukraine to bring the death penalty back, 43 percent were in favour of maintaining abolition, and 12 percent were unable to answer.
Alternative sanctions			
19. Alternative sanction to death penalty	Whole life imprisonment, which may be substituted for a definite term of imprisonment after serving a minimum of 20 years in prison.	Whole life imprisonment, with a possibility of early release after serving a minimum of 25 years in prison.	Whole life imprisonment, which may be substituted for a definite term of imprisonment (25 years) after serving a minimum of 20 years in prison.
20. Is there a mandatory life sentence?	No	No	No

	Republic of Belarus	Russian Federation	Ukraine
21. Life imprisonment applicable crimes	<ol style="list-style-type: none"> 1. Initiation or waging of aggressive war. 2. Act of terrorism against a representative of a foreign state. 3. International terrorism. 4. Genocide. 5. Crimes against human security. 6. Application of weapons of mass destruction. 7. Violation of the laws or customs of war. 8. Murder. 9. Terrorism. 10. Treason. 11. Conspiracy or other acts committed with the aim of seizing state power. 12. Act of terrorism. 13. Sabotage. 14. Murder of a police officer. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Rape under aggravating circumstances. 3. Sexual assault under aggravating circumstances. 4. Sexual intercourse and other sexual acts with a person under fourteen years of age. 5. Act of terrorism. 6. Hostage-taking resulted in death. 7. Organisation of a criminal association or participation in it. 8. Smuggling of narcotic drugs, psychotropic substances and their precursors. 9. Encroachment on the life of a statesman or a public figure. 10. Sabotage resulting in death. 11. Encroachment on the life of a person administering justice or engaged in a preliminary investigation. 12. Encroachment on the life of an officer of a law enforcement agency. 13. Genocide. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Terrorism-related offences resulting in death. 3. Encroachment on the life of a state-person or a public figure. 4. Murder or attempted murder of a law enforcement official, a judge, an associate judge, a serviceperson, a defender or his/her representative. 5. Resistance to military authorities resulting in murder. 6. Violation of laws and customs of war related to intentional murder. 7. Application of weapons of mass destruction if it led to the death of people or other severe consequences. 8. Genocide. 9. Murder or attempted murder of a foreign representative.
22. Categories excluded from life imprisonment	<ul style="list-style-type: none"> • Juveniles under 18 years at time of committing crime. • Women. • Men over 65 years at the time of sentencing. • Mentally-ill. 	<ul style="list-style-type: none"> • Juveniles under 18 years at time of committing crime. • Women. • Men over 65 years at the time of sentencing. • Mentally-ill. 	<ul style="list-style-type: none"> • Juveniles under 18 years at time of committing crime. • Pregnant women. • Men over 65 years at the time of sentencing. • Mentally-ill.
23. Location of life sentenced prisoners	<ul style="list-style-type: none"> • Pre-trial detention centre No. 8 in Zhodino. • Glubokoye colony. 	<p>Prisoners convicted to life imprisonment are kept in five special regime penal colonies in the following regions:</p> <ul style="list-style-type: none"> • Vologda. • Sverdlovsk. • Orenburg. • Yamalo-Nenets autonomous district. • Perm <p>There is also a ward for lifers in the special regime colony in the Republic of Mordovia.</p>	<p>Life sentenced prisoners are kept in special wings of 12 prison colonies and 22 pre-trial detention centres throughout Ukraine.</p>

	Republic of Belarus	Russian Federation	Ukraine
24. Number of lifers	Approximately 300 men (144 life sentences and 156 death sentence commutations).	1,780 men.	1,883 lifers (1,863 men and 20 women).
25. Can lifers apply for a pardon or clemency?	The President has the power to issue a pardon or clemency.	The President has the power to issue a pardon or clemency.	The President has the power to issue a pardon or clemency.
26. Cost of imprisoning one lifer for a year/ day	Unknown.	Unknown.	The cost of imprisoning one life-sentenced prisoner is approximately 13 thousand hryvnas (about \$ 1,650 or € 1,200) per year.
27. Number of life sentences issued in 2010 and 2011	2011 – Unknown. 2010 – 2 life sentences.	2011 – 62 life sentences. 2010 – 60 life sentences.	Unknown.
28. Number of lifers paroled in 2010 and 2011	None	None	None
Fair trial standards			
29. Presumption of innocence	Presumption of innocence is legally guaranteed, however there are criticisms about its weak realisation in practice.	Presumption of innocence is legally guaranteed, however there are criticisms about its weak realisation in practice.	Presumption of innocence is legally guaranteed, however high conviction rates call that presumption into question.
30. Trial by jury	No trial by jury.	Trial by jury is legally guaranteed and has been established in all regions of Russia.	Trial by jury is legally guaranteed, however the right has not been implemented in practice.
31. Access to legal aid	Legal aid is legally guaranteed, however there are criticisms about the quality of legal aid defence provided.	Legal aid is legally guaranteed, however there are criticisms about the quality of legal aid defence provided and the lack of budget to pay legal aid lawyers.	Legal aid is legally guaranteed, however there are criticisms about the quality of legal aid defence provided.
32. Appeal process	Defendants are legally entitled to appeal their sentence to a higher court; however that is not always implemented in practice when the Supreme Court acts as the court of first instance.	Cases can be appealed to the Court of Appeal (District Courts) or the Cassation Court (Supreme Court).	Cases can be appealed to the Court of Appeal and then to the Supreme Court.

	Republic of Belarus	Russian Federation	Ukraine
Civil society			
33. Key civil society organisations working on abolition/ alternative sanctions	<ul style="list-style-type: none"> • Association “Legal Initiative”. • Belarusian Association of Women Lawyers. • Belarusian Helsinki Committee. • Human Rights Centre “Viasna”. • Platform. 	<ul style="list-style-type: none"> • Amnesty International (Russia Office). • Moscow Helsinki Group. • Penal Reform International (Moscow Office). 	<ul style="list-style-type: none"> • Donetsk Memorial. • Kharkive Human Rights Group. • Vinnitsa Human Rights Group.
International and regional human rights standards			
International Covenant on Civil and Political Rights (ICCPR)	12 November 1973	16 October 1973	12 November 1973
First Optional Protocol ICCPR	30 September 1992	1 October 1991	25 July 1991
Second Optional Protocol ICCPR	Unsigned	Unsigned	25 July 2007
Convention Against Torture (CAT)	13 March 1987	3 March 1987	24 February 1987
Optional Protocol CAT (OPCAT)	Unsigned	Unsigned	19 September 2006
Convention on the Rights of the Child	1 October 1990	16 August 1990	28 August 1991
International Criminal Court / Rome Treaty	Unsigned	Signed, but not ratified	Signed, but not ratified
2007 UN GA moratorium resolution 62/149	Abstained	Voted in favour	Voted in favour Co-sponsored resolution
2008 UN GA moratorium resolution 63/168	Abstained	Voted in favour	Voted in favour Co-sponsored resolution
2010 UN GA moratorium resolution 65/206	Abstained	Voted in favour Co-sponsored resolution	Voted in favour Co-sponsored resolution
Protocol No. 6 European Convention on Human Rights	Unsigned	Signed 16 April 1997, but not ratified	4 April 2000
Protocol No. 13 European Convention on Human Rights	Unsigned	Unsigned	11 March 2003

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