

Amnesty International

Statement to Working Session 9: Rule of Law II, including:

- **Exchange of views on the question of the abolition of the capital punishment;**
- **Prevention of torture;**
- **International humanitarian law;**
- **Protection of human rights and fighting terrorism.**

Amnesty International is concerned that OSCE Participating States are failing to ensure respect for the absolute prohibition of torture or other ill-treatment, and are failing to address the issue of impunity.

Despite professed efforts by governments in **Central Asia** to fulfil their human rights obligations, and efforts by some states to remedy the worst abuses, grave human rights violations continue to be committed routinely and with virtual impunity. Thousands of people allege that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a confession, yet very few law enforcement officers are brought to trial and held accountable. 'Evidence' based on confessions extracted under torture is still routinely admitted in court, particularly in Uzbekistan. Corruption in law enforcement and the judiciary contributes to a climate of impunity in the region, which in turn feeds a lack of public confidence in the criminal justice system.

Amnesty International regularly receives reports of torture or other ill-treatment in places of detention across the **Russian Federation**, including in police custody (known by its acronym IVS), pre-trial detention facilities, prison colonies, and the army, as well as in *ad hoc*, unofficial or unacknowledged places of detention, in particular in Chechnya and other regions of the North Caucasus. Amnesty International has also been concerned about the abductions and enforced disappearances of individuals in the North Caucasus. The failure of the procuracy to ensure an effective remedy for violations has contributed to an overwhelming climate of impunity. It remains to be seen whether recent changes to the structure of the office of the prosecutor, creating a new 'investigation committee', will adequately address the authorities' failure to provide a remedy for investigating human rights violations.

Amnesty International urges Russia to authorize the publication of reports of the visits of the European Committee for the Prevention of Torture (CPT) to places where people are deprived of their liberty, and to sign and ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In **Turkey**, as highlighted in a July 2007 Amnesty International report, some positive legislative reforms have been put into place. Although there has been a reduction in the incidence of torture and ill-treatment in police custody, Amnesty International continues to receive such allegations, as well as during unofficial detention, demonstrations, in prisons and during prisoner transfer. Trials where statements allegedly extracted under

torture provide a central part of the ‘evidence’ continue, with courts ignoring torture allegations and refusing to rule the ‘evidence’ inadmissible. The chances of securing justice for torture committed by the police or gendarmerie remain remote and an entrenched culture of impunity prevails. Turkey should introduce mechanisms for independent and impartial investigations of human rights violations; and should ratify OPCAT.

In relation to the negotiations on the future status of **Kosovo**, Amnesty International urges that any settlement should end impunity for war crimes, including enforced disappearances and abductions, and inter-ethnic violence. Amnesty International considers that the OSCE should strengthen its capacity for monitoring human rights in Kosovo, in the absence of any effective independent monitoring institutions.

In the **USA** Amnesty International continues to be concerned about impunity for human rights violations allegedly committed by US forces in its operations abroad in the context of its declared “war on terror”. While there have been a number of prosecutions by courts-martial of mainly low-ranking soldiers, there has been a marked degree of leniency in the sentences handed out for very serious offences. Nobody has been prosecuted under the USA’s War Crimes Act (WCA) or its extraterritorial anti-torture statute, despite compelling evidence that war crimes and torture have occurred. No member of the Central Intelligence Agency (CIA) has been prosecuted for human rights violations, despite evidence of involvement of agency personnel in abduction, unlawful transfer of individuals, enforced disappearance, torture and other ill-treatment, and deaths in custody.

Amnesty International is also concerned by provisions facilitating impunity contained in the recent Military Commissions Act (MCA).

In September 2006, President Bush confirmed for the first time the existence of a secret detention programme operated by the CIA in which “high-value” detainees were kept incommunicado at secret locations outside the USA, including for interrogation using “alternative” techniques. These techniques are widely reported to have included methods that would clearly violate international law. Amnesty International believes that secret detention is not only unlawful, but itself amounts to torture or other cruel, inhuman or degrading treatment. Those who have been held in the secret programme are victims of enforced disappearance, a crime under international law. On 20 July 2007, President Bush signed an executive order allowing the secret detention programme to continue. Amnesty International believes that the secret detention programme must be terminated immediately and the fate and whereabouts of all who have been held in it disclosed, and all interrogation techniques that violate international law rescinded. AI also calls for closure of Guantanamo.

Amnesty International continues to be concerned at the failure of the **UK** government to ensure full accountability for acts of torture and other ill-treatment committed by members of the UK armed forces serving overseas. Evidence which emerged in the course of a court martial in the case of Baha Mousa, an Iraqi civilian, who died after being tortured while in the custody of UK troops in Basra, indicated that the use of techniques such as hooding detainees, keeping them in stress positions and depriving them of sleep had become “standard operating procedure” in the battalion which was

responsible for his arrest and detention, and had been sanctioned at a senior level within the UK armed forces in Iraq.

Measures taken by some Participating States have undermined the principle of *non-refoulement*: that is, the principle that states are absolutely prohibited from sending or returning a person to a country or place where there is a risk that they will face torture or other serious human rights violations.

All governments have a positive obligation to ensure that torture or other ill-treatment does not take place at home and abroad. Yet increasingly we are seeing attempts by governments to circumvent this obligation, including by seeking diplomatic assurances from the country to which they are returning a person that the person will not be subjected to torture or other serious human rights violations.

The most systematic approach to the use of diplomatic assurances has been that of the **UK**, which has sought to formalize such assurances in so-called Memorandums of Understanding (MoUs) with Jordan, Lebanon and Libya. Such assurances are inherently unreliable and legally unenforceable. In July 2007 a UK court found that the MoU would not sufficiently protect two individuals against the real risk that their rights would be violated if returned to Libya.

In the face of a failure to secure an MoU with Algeria, the UK has proceeded to return forcibly a number of individuals, on the grounds of obtaining assurances from the Algerian authorities on a case-by-case basis. Two men who were returned from the UK to Algeria in January 2007 are currently detained there, and are facing charges, reportedly in connection with “participation in a terrorist network operating abroad”. Prior to their deportation they had reportedly received verbal assurances from officials at the Algerian embassy in London to the effect that there was no intention to prosecute them on their return..

A number of challenges to such deportations, accompanied by diplomatic assurances, of individuals suspected of being a threat to “national security” have been heard before UK courts. Such challenges have been severely hampered by special procedures which include secret hearings, and based on secret information, considered in the absence of the individuals concerned and their lawyers of choice.

Amnesty International is concerned at the continued failure of Participating States, including **Poland**, **Romania**, the **UK**, **Germany** and **Italy**, to initiate full, independent and impartial inquiries into various allegations of their involvement in the US-led programme of renditions and secret detention.

The second report of Senator Dick Marty, who led the investigation of the Parliamentary Assembly of the Council of Europe (PACE) into secret detentions and illegal transfers of detainees involving Council of Europe member states, made clear that collusion with the US at the highest levels of government came not only from the countries most directly involved in the secret detention programme, but from all the members and partners of NATO, who signed up to terms that allowed free rein to CIA operations. In June 2007 PACE backed Senator Marty’s concern that concepts of state secrecy or national security, as invoked by many governments, obstructed the conclusion of judicial and/or

parliamentary proceedings aimed at ensuring accountability of the executive in relation to grave allegations of human rights violations.

Recommendations:

AI is calling on OSCE Participating States to ensure that the Committee of Ministers of the Council of Europe and the Council of the European Union act on the recommendations of the investigations carried out by the PACE, the Secretary General of the Council of Europe and the European Parliament. Standards, recommended by the Secretary General of the Council of Europe more than a year ago, should be drafted and should aim at, among others:

- ensuring effective democratic oversight and accountability for all intelligence services – civilian, military, national and foreign;
- creating a framework for the waiver of immunity of state officials reasonably suspected of involvement in grave violations of human rights.

Amnesty International calls on OSCE Participating States:

- to publicly condemn rendition, which includes unlawful transfers of individuals, secret detention, enforced disappearance, torture and other ill-treatment.
- they must demand that the member states initiate independent, impartial and effective investigations; bring those responsible for unlawful conduct to justice; and ensure adequate reparation for the victims of rendition and secret detention.

In relation to **prohibition of torture**:

- Amnesty International calls on OSCE to remind all participating states that human dimension commitments, including those relating to the absolute prohibition of torture and other ill-treatment are not simply matters of internal affairs of the State concerned, but rather are matters of direct and legitimate concern to all OSCE Participating States and (Moscow Document, 1991);
- Amnesty International calls on OSCE Participating States that have not ratified the Optional Protocol to the UN Convention against Torture to ratify it immediately and implement it accordingly.

Impunity under international humanitarian law

In relation to **impunity under international humanitarian law**, and specifically **co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)**, Amnesty International considers that unrealistic deadlines were set under the terms of the “completion strategy” laid down in UN Security Council Resolutions 1503 and 1534, to complete all cases, including appeals, by 2010. This strategy appears to be mostly dictated by financial constraints influenced by a changing geopolitical setting,

where countries of the former Yugoslavia have become less of a priority in the international scene, and based on the assumption that local courts in former Yugoslav countries would be able to perform the ICTY's tasks at a lower cost.

Carla del Ponte, Chief Prosecutor of the ICTY, continued to express serious concerns at the lack of cooperation by the Serbian authorities, until May, when the former Bosnian Serb general Zdravko Tolimir was arrested on 31 May. Serbian police were also involved in the arrest of on 17 June, in cooperation with ICTY and Montenegrin authorities, of former general Vlastimir Đorđević. However, four ICTY indictees remain at large, including key suspects such as Radovan Karadžić and Ratko Mladić.

While domestic courts continue to bring prosecutions, including in cases handed down from the ICTY, concerns remain that often prosecutions (with the notable exception of Serbia) concern mostly, or only, crimes committed by the former enemy, and in all jurisdictions, lower ranking officers. Where prosecutions take place, progress remains painfully slow or verdicts in trials, which appear to have been conducted according to international standards, may be overturned on appeal without any apparent legal reasoning. Moreover, victim and witness protection is generally insufficient to permit effective investigations or successful prosecutions. This has negatively affected proceedings at the ICTY as well.

In relation to **impunity under international humanitarian law** Amnesty International calls on OSCE Participating States to:

- Take all necessary steps to ensure full cooperation by Participating States with the ICTY and to ensure that thorough, independent and impartial investigations into all war crime cases, regardless of the ethnicity of the victims or of the suspected perpetrators, are conducted before domestic courts with a view to bringing the perpetrators to justice.
- OSCE Participating States should ensure that arrangements are made to allow for ICTY indictees still at large to be tried before the ICTY even if, following their arrest, proceedings extend beyond the 2010 deadline.