



Promoting fair and
effective criminal justice

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Working session 8: Rule of Law

Statement of Penal Reform International

Working Session 8: Abolition of the Death Penalty

25 September 2015

Dear Chairperson,
Dear delegates,

Penal Reform International (PRI)¹ welcomes the opportunity to speak at this session of the OSCE. We would like to comment on the debate around the death penalty.

Firstly, we commend the strong support given by OSCE member states to the 2014 UN General Assembly Resolution on a death penalty moratorium, with 54 OSCE members again voting in favour. We encourage all states to abolish the death penalty, which we believe should be prohibited absolutely.

In the year that the UN Human Rights Committee has begun drafting a new authoritative interpretation of the right to life in its General Comment 36, we believe it is helpful to think again about the minimum standards that need to be followed to avoid an arbitrary use of the death penalty. We have written extensively about this in our publication *Strengthening death penalty standards*, which is available at our website. Some of the points that we wish to share here include:

The '**competent tribunals**' that are permitted to pass a sentence of death should not include military courts or special courts (such as those set up to try terrorism cases). These bodies frequently operate using different judicial procedures from ordinary civilian courts, with lack of independence from prosecuting authorities, and increased levels of secrecy compared to civilian courts, being among the most concerning elements. They do not meet fair trial standards and should not be allowed to pass death sentences.

¹ Penal Reform International (PRI) is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment, for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

Secondly, abolitionist states that retain the death penalty for '**the most serious offences in wartime**' should tightly restrict what offences are included. Currently, some states retain execution for damage to any items that might be used for defending the country, for cowardice or voluntary self-mutilation aimed at making oneself unfit for service in time of war. We believe these and other examples go unreasonably far beyond the peacetime most serious offences definition of 'intentional killing'. Perhaps an appropriate wartime restriction would be: 'intention to kill resulting in the loss of life outside the scope of lawful acts of war'.

Thirdly, **pardon and commutation**. There needs to be much more detailed guidance on what a meaningful exercise of this power should look like. We believe there should be automatic consideration for amnesty, pardon and commutation in all death penalty cases, in accordance with Article 6(4) of the International Covenant on Civil and Political Rights. Prisoners and their lawyers should have information about the process of application and the type of information that will be considered, so that they can make a timely and relevant request.

Finally, we believe that once a state has abolished the death penalty, there are moral, legal and political obligations on it not to assist, by action or omission, use of the death penalty in other states. This means that abolitionist states should not engage with retentionist states in ways that can or do cause the use of the death penalty. These include:

- Not extraditing or deporting persons at risk of facing the death penalty, whether they are suspected or convicted of capital offences;
- Not exporting to retentionist states goods that can be used in the imposition of the death penalty, such as drugs used for lethal injection; and
- Not providing financial, technical, legislative or other support for law enforcement programmes (such as drug enforcement programmes), where the offences targeted can receive the death penalty.

Thank you for your attention.

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