
amnesty international

OSCE HUMAN DIMENSION IMPLEMENTATION MEETING 2006

STATEMENT IN WORKING SESSION 8: RULE OF LAW I

Abolition of capital punishment; prevention of torture; international humanitarian law; protection of human rights and fighting terrorism

1. The death penalty

With regard to the question of the **abolition of capital punishment**: Amnesty International opposes the death penalty in all cases as a violation of fundamental human rights – the right to life and the right not to be subjected to cruel, inhuman or degrading punishment.

Amnesty International therefore welcomes the recent positive steps taken by Moldova in this regard. In July, **Moldova's parliament** voted to remove the clause in the country's constitution which provided for the imposition of the death penalty in extraordinary circumstances, and, in the the same month the government ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and Protocol No 13 to the European Convention on Human Rights and Fundamental Freedoms (ECHR).

However, Amnesty International regrets that a number of participating states retain the death penalty in law and continue to carry out executions; and that in some the conditions of detention on death row amount to cruel, inhuman or degrading treatment. Amnesty International is also deeply concerned about statements made by the President of **Poland**, Lech Kaczyński, on 28 July 2006, in which he called for the restoration of the death penalty in Poland and throughout Europe. President Kaczyński reportedly said that "countries that give up this penalty award an unimaginable advantage to the criminal over his victim, the advantage of life over death". Amnesty International believes that any society that uses the death penalty debases the value it places on human life and risks lowering itself to the moral equivalent of the murderer. Amnesty International calls on the Polish authorities to respect the international obligations Poland has entered into, and uphold its commitments on the abolition of the death penalty.

Amnesty International remains concerned that the **USA**, at both state and federal level, continues to pass death sentences and to carry out executions. By the end of September 2006, 1,047 men

and women had been put to death in the USA since executions resumed in 1977. More than 900 of these executions were carried out since 1990. Forty-three have been carried out so far in 2006.

The capital justice system in the US remains marked by arbitrariness, discrimination and error. Studies have consistently found that race, particularly the race of the murder victim, is a factor in who is sentenced to death. Eighty per cent of those executed in the USA since 1977 had been convicted of crimes involving white victims. Yet black and white persons are the victims of murder in approximately equal numbers in the USA. At least one in six of the 350 African Americans executed in the USA since 1977 was tried in front of all-white juries.

More than 100 individuals have been released from death rows across the USA since 1973 on the grounds of innocence. Others have gone to their deaths despite serious doubts about their guilt.

Amnesty International long campaigned for and therefore welcomed the decisions in recent years of the US Supreme Court outlawing the death penalty for juvenile offenders and offenders with learning disabilities. The organization is now campaigning for people with serious mental illness to be protected from the death penalty. At least 100 people with histories of serious mental illness have been executed in the USA since 1977. Existing protections are clearly not enough.

Concerns remain about: the continued practice of sentencing persons to death in **Kyrgyzstan** and **Uzbekistan**; the failure to commute death sentences, and the secrecy surrounding the death penalty and the burial sites of executed prisoners in these two countries. Information regarding the burial location is not provided to the families, a practice which contravenes both countries' international commitments. In particular, the 1990 Copenhagen Meeting of the Conference of the Human Dimension of the OSCE concluded that: "The Participating States...will make available to the public information regarding the use of the death penalty."

Belarus still maintains the death penalty for "premeditated, aggravated murder" and 12 other peacetime offences. No official statistics on the use of the death penalty are published and according to the human rights group, Viasna, at least one execution was carried out in 2005. In July 2005, the deputy head of the presidential administration said that abolition of the death penalty could be considered "once social and economic preconditions were in place". Despite this statement from the government, there were no moves to end the use of the death penalty.

The internationally unrecognized region of **Abkhazia** in Georgia has a moratorium on executions but not on death sentences. To Amnesty International's knowledge, there are at least two prisoners on death row in Abkhazia who have been there for many years in harsh prison conditions not knowing their ultimate fate. Such a situation amounts to cruel and inhuman treatment or punishment.

Amnesty International is concerned about conditions on death row in a number of participating states which retain the death penalty. In March 2006, for example, a group of 20 prisoners on death row in Bishkek, **Kyrgyzstan** wrote an open letter to President Kurmanbek Bakiev, claiming

that many prisoners on death row had been tortured in order to confess to fabricated charges and were sentenced to death after unfair trials. Many had been on death row since the introduction of a moratorium on executions in Kyrgyzstan in 1998, waiting for years in a state of continued uncertainty as to their ultimate fate, a situation that Amnesty International believes amounts to cruel, inhuman and degrading treatment or punishment.

In one prison in Kyrgyzstan, 136 death row inmates were housed underground, three to a cell with no window. The cells, said to be damp, were originally designed to hold two inmates; placing three to a cell due to overcrowding meant that one man slept on the floor. The inmates were reportedly allowed only an hour of exercise in a roofless cell, every other day. In a newspaper interview in January this year the former head of the prison system said that 73 death row inmates had died since the introduction of the moratorium, the majority of them from tuberculosis (TB) -- which was said to be rife throughout the prison system -- harsh prison conditions or suicide.

According to a local NGO, Mothers Against the Death Penalty and Torture, at least 25 people are held on death row in Tashkent, **Uzbekistan**, of whom 20 were reportedly suffering from TB. A doctor is employed in the prison but reportedly few medicines, including appropriate treatment for TB, are available. Poor prison conditions, including poor diet, may affect the immune system, which in turn may contribute to making a prisoner more susceptible to developing active TB.

2. Torture and other cruel, inhuman and degrading treatment

With regard to the **prevention of torture** Amnesty International is concerned that OSCE participating States are failing to provide sufficient safeguards against torture, and are failing to address the issue of impunity.

In **Ukraine** some positive steps have been taken by the government over the past year to improve laws and practice, but torture and ill-treatment by police continues to be widespread. As highlighted in a report on torture and other ill-treatment in Ukraine published by Amnesty International in September 2005, perpetrators of torture or ill-treatment enjoy effective impunity. When investigations are carried out they do not meet international standards of promptness, thoroughness, independence and impartiality, due largely to the dual role of the prosecution authorities. The Prosecutor plays a central role, not only in the prosecution of cases, but also in the investigation of torture allegations. By its very nature the institution is not independent or impartial. Flawed investigations result in few prosecutions of alleged perpetrators of torture or other ill-treatment; and in the few cases where an official is convicted, often minimal sentences are imposed.

Since 2004, the **Georgian** authorities have introduced or implemented a number of measures to tackle torture and ill-treatment and at least 10 perpetrators of such crimes are serving prison terms. The measures have included legal amendments and extensive monitoring of detention facilities

under the jurisdiction of the Ministry of Internal Affairs conducted in particular by the office of the Public Defender of Georgia (Ombudsman).

However, Amnesty International has continued to receive reports about torture and ill-treatment. It is impossible to make definite statements about the number of people subjected to such treatment as there are no comprehensive and reliable statistics.

In Georgia investigations of torture allegations have often not been conducted promptly or impartially or effectively; they have been tainted by conflicts of interest of the investigating procurators. In some cases procuracy officials were themselves implicated in the alleged torture or other ill-treatment. It is crucial that the body conducting investigations into allegations of torture and other ill-treatment has functional independence.

Bringing perpetrators to justice is key to the eradication of torture and other ill-treatment. However, in dozens of cases in Georgia where the procuracy has opened investigations the perpetrators have not been brought to justice. On a positive note, however, in some cases in which prosecutions have been brought, several police officers have been sentenced to terms of imprisonment. It is important that the authorities regularly inform the public about prosecutions of officials for torture and ill-treatment. Such publicity can encourage victims to come forward and seek justice. In addition, it often has a deterrent effect on other police officers.

Amnesty International received a large number of allegations that the special police unit (Special Operative Department) ill-treated suspects or detainees. In many cases the officers were masked. Against this backdrop the organization is particularly concerned that officers of the special police unit have been exempted from the requirement to wear ID tags that was introduced for other police officers in November 2005. Masks or other means of disguising officers' personal identities should only be used exceptionally, if such measures are necessary for the personal protection or security of the officers concerned or similar reasons of necessity; in such cases the need for each officer to be identifiable by such means as a unique traceable identification number is particularly important.

In the **Russian Federation**, as in Georgia, Ukraine and elsewhere, Amnesty International is concerned that the dual role of the procuracy, responsible both for the investigation and prosecution of serious crimes, and the supervision of the legality of actions of state officials, means that investigations into allegations of torture and other ill-treatment are often not impartial.

Human rights organizations have begun to appeal to the courts regarding the failures of the procuracy in Russia adequately to investigate allegations of arbitrary detention and torture. Sometimes this meets with success; however, such successes do not guarantee that the procuracy will renew their investigation in a more effective way.

A large body of research by human rights groups illustrates that the procuracy routinely fails to ensure an effective remedy against violations of a range of rights guaranteed by the constitution

and human rights treaties to which Russia is a party. This is true, among others, in cases of torture or other ill-treatment by police, violent hazing in the armed forces, and violations of the rights of civilians by military servicemen in the Chechen Republic. In these cases, the procuracy routinely refuses to examine serious allegations of abuse or conducts lacklustre investigations that do not lead to prosecution of the perpetrators. This has contributed to an overwhelming climate of impunity in Chechnya.

Amnesty International regularly receives reports of torture or other ill-treatment in places of detention across the Russian Federation. The allegations relate to torture or other ill-treatment 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 regions of the North Caucasus.

Reports of conditions of detention in police custody and overcrowded pre-trial detention facilities in some cases amount to cruel, inhuman or degrading treatment. Conditions for prisoners serving life sentences violate the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

In 1998, Russia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In doing so, it committed itself to cooperating with the Council of Europe's Committee for the Prevention of Torture (CPT), including giving it access to any place within its jurisdiction where people are deprived of their liberty. The CPT has since visited Russia on 13 occasions and issued reports and recommendations on each visit to the Russian authorities. Russia is the only Council of Europe country not to regularly authorize the publication of the CPT's reports. To date all but one of a total of 13 reports of the CPT's visits remain confidential. While Russia does not have an obligation to authorise publication of the reports of the CPT's visits, it has become an established practice of parties to the convention to do so. Given the ongoing serious problem of torture and other ill-treatment in places of detention across the Russian Federation, Amnesty International considers that Russia should fully cooperate with the CPT, take urgent measures to implement its recommendations, and authorize, without further delay, publication of all CPT reports of its visits to Russia. Russia should also sign and ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment..

Torture and ill-treatment is widespread in **Moldova**. Basic safeguards for pre-trial detainees in police detention are not observed. The cases that AI has worked on demonstrate that detainees are not given access to a lawyer or a doctor, nor are they given the right to inform a family member or a third party. In one case Sergei Gurgurov, who had been tortured while in detention in October 2005 by being beaten and subjected to electric shocks, in order to force him to confess to a theft, was then denied the medical care he needed to treat the injuries he sustained under torture. In this case, police officers also showed blatant disregard for a court decision ordering his release on bail

and immediately detained Sergei Gurgurov after the court session at which his release was ordered. Torture is prohibited by Moldovan law, but many allegations of torture are rejected after cursory investigations. On 29 April, police took Vitalii Kolibaba for a forensic medical examination. The examination was carried out in the presence of the three officers who had tortured him and the forensic expert reportedly only looked at his hands and reported that there was no evidence of torture.

In the USA Amnesty International continues to be concerned about impunity in relation to human rights violations allegedly committed by **US** forces in the “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, including in cases that have resulted in deaths in custody. In addition, not a single person has been prosecuted under the USA’s War Crimes Act or its extraterritorial anti-torture statute, despite compelling evidence that war crimes and torture have occurred, including in cases that resulted in death of the victim.

Investigations into allegations of US abuses in the “war on terror” have not been independent, have failed to apply international standards, and have not reached up the chain of command, despite evidence that torture or other cruel, inhuman or degrading treatment has been authorized and condoned at high levels of government.

On the domestic front, the USA retains many laws, institutions and mechanisms to address human rights violations and provide redress for victims of torture and other ill-treatment. However, there are laws and practices in the USA which are incompatible with the prohibition against torture and other ill-treatment, or which commonly lead to such violations. These include the widespread use of electro-shock devices and other instruments of restraint; cruel conditions of long-term isolation in “supermaximum” security prisons; and situations under which women prisoners remain vulnerable to sexual abuse by male guards. Amnesty International is also concerned about ill-treatment of children in custody, and about more than 2,000 individuals currently serving sentences of life imprisonment without the possibility of parole for crimes committed when they were under 18 years old, in violation of international law. Amnesty International considers that this punishment is inherently cruel, inhuman or degrading when imposed on child offenders.

3. 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 (Tribunal)**, 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. According to this strategy the Tribunal was supposed to have completed all investigations and indictments for war crimes, crimes against humanity and genocide by the end of 2004 and is expected to complete all first instance trials in 2008 and all cases, including appeals, by 2010. The President of the Tribunal,

addressing the Security Council in June 2006, has already acknowledged that the 2008 deadline will not be met (first instance trials are expected to be completed in 2009).

Amnesty International believes that the “completion strategy” should be reviewed as it ignores crucial facts:

- Continuing problems with arrests and surrenders. Despite a number of “voluntary surrenders” in 2005, the countries in the former Yugoslavia that have been asked to arrest and surrender accused persons or to provide other assistance to the Tribunal are continuing to fail to do so in a number of significant respects. Six accused are still at large, including key suspects such as Radovan Karadžić and Ratko Mladić.
- Lack of political will to investigate and prosecute crimes in national courts throughout the former Yugoslavia. There are serious concerns about the political will to investigate all war crimes, crimes against humanity and genocide and to prosecute the suspects, in particular those who occupied leadership positions in the government, police and military. Domestic criminal justice systems in these countries, including new special chambers in certain countries, are not yet up to the task of investigating and prosecuting these crimes, and police and prosecutors in other states where suspects are located have not made investigations and prosecutions of these crimes a priority.
- National law is inadequate. Domestic legal frameworks define crimes and principles of criminal responsibility in a manner that is inconsistent with international law.
- Absence of effective victim and witness protection, participation and support. Victim and witness protection is generally non-existent or insufficient to permit effective investigations or successful prosecutions.
- Resource constraints on the Tribunal. The Tribunal’s “completion 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 Tribunal’s tasks at a lower cost

In light of the inability of domestic judicial systems to deal effectively with war crimes cases and of the serious financial problems that have hampered the work of the Tribunal, Amnesty International is calling for an extension of the Tribunal’s mandate beyond the originally envisaged deadline of 2010, including by extending the 2004 deadline for issuing new indictments, until an effective action plan for ending impunity in the countries of the former Yugoslavia has been adopted and put into effect.

4. Protection of human rights and the fight against terrorism

In relation to the **protection of human rights and fighting terrorism** Amnesty International is particularly concerned by concerted efforts by some Participating States to undermine the principle of *non-refoulement*, under which states are absolutely prohibited from sending or returning a person to a country or place where there is a risk of facing 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 their obligations under this principle, 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.

Diplomatic assurances have been sought and obtained during the process of deportations, as well as in renditions and in extraditions. The most extreme form of diplomatic assurances has been the systematization of them in the **UK** in what have been called Memorandums of Understanding (MOUs). The UK government has signed MOUs with Jordan, Lebanon and Libya in which the government is given an assurance that a returned person will not be subjected to torture. The MoU with Jordan allows for an NGO in Jordan to intermittently monitor the treatment of the returned person. There is no remedy if this assurance is not honoured. The UK government now argues that it can deport people to Jordan on the basis of this Memorandum of Understanding. However, diplomatic assurances, and MoUs, cannot be relied upon if signed with countries which have a proven record of serious human rights violations, including torture or other ill-treatment and unfair trials.

The governments of the **UK, Lithuania, Portugal and Slovakia** – all OSCE Participating States – are also attempting to undermine the absolute prohibition of torture or other ill-treatment, and the principle of *non-refoulement*, by seeking to persuade the European Court of Human Rights to reconsider its jurisprudence in the case of *Chahal v UK*, establishing that the prohibition of torture or other ill-treatment encompasses an absolute prohibition against sending a person to a country where there is a real risk that they would be subjected to such a treatment.

In October 2005 the governments were given permission to intervene in a case already lodged against the Netherlands at the European Court of Human Rights by Mohammed Ramzy, a 22-year-old Algerian challenging deportation. His asylum application was rejected and he is challenging a decision to deport him, arguing that he would face a real risk of torture or other ill-treatment in Algeria. The government of the Netherlands is not seeking to reverse the *Chahal* precedent; it is simply arguing that the Mohammed Ramzy's return to Algeria would not expose him to a real risk of torture. The intervening governments, by contrast, are seeking to persuade the court to abandon its jurisprudence in *Chahal v the UK* in favour of a position that the risk to the individual should be balanced against the national security interests of the state. In November 2005 Amnesty International, together with other NGOs, made a written intervention to the case of *Ramzy v*

Netherlands, arguing for the absolute prohibition on torture, including on returning people to face risks of torture, to be upheld.