



IHF Intervention to the 2006 OSCE Human Dimension Implementation Meeting

WORKING SESSION 8, RULE OF LAW I:

Abolition of the Capital Punishment

Friday, 6 October 2006

The International Helsinki Federation for Human Rights (IHF) believes that the death penalty is a violation of the right to life and of the right not to be subjected to cruel, inhuman or degrading treatment. It urges all OSCE participating States to abolish the death penalty to enable the OSCE to become a death-penalty free region

Out of the 56 participating states, 49 have abolished the death penalty.¹ Of the seven remaining states, four countries have moratoria: Kazakhstan, Kyrgyzstan, the Russian Federation, and Tajikistan, and three still retain the death penalty: Belarus, Uzbekistan and the United States. The Russian Federation has had a moratorium on executions in place since 1996, whereas in Central Asia moratoria have been introduced more recently.² The IHF trusts that these states will soon transform their commitment to respect the right to life into the full abolition of the death penalty. The IHF welcomes a recent statement by a senior Kyrgyz official to the effect that the death penalty would soon be abolished.³

In **Belarus** executions continue to take place and the introduction of a moratorium is not foreseen. The death penalty is envisaged for 14 crimes⁴ and executions are carried out by firing squad. Being aware of the serious violations of international fair trial standards in Belarus, we are very concerned that innocent people may wind up being killed by the state every year.

The only recent official statistics on the number of executed persons in Belarus were provided on 9 February 2006 by the chairman of the Supreme Court, who stated that two death sentences had been passed in Belarus in 2005 and four death row prisoners had been executed.⁵ The government did not, however, publish the total number, nor the names, of people on death row, the prisoners' families were not informed of the date of execution, and the bodies were not handed over to them for burial. The places of burial were also kept secret.

¹ Forty-six for all peace and war time crimes and three for peace time crimes.

² Kazakhstan: December 2003 through a presidential decree; Kyrgyzstan: in 2006 the moratorium existing since 1998 was extended indefinitely; Tajikistan: July 2004.

³ Radio Free Europe/Radio Liberty, "Minister Says Kyrgyzstan To Abolish Death Penalty Soon," 8 September 2006, <http://www.rferl.org/featuresarticle/2006/09/ADD26775-4A20-49D8-81F4-49C5A9BEF1D3.html>.

⁴ Including international terrorism and terrorist acts, treason resulting in loss of life, conspiracy to seize power, sabotage, murder of a police officer and murder with aggravating circumstances.

⁵ Information from the Belarusian Helsinki Committee in IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006, Events of 2005*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4255.

Both the UN Human Rights Committee⁶ and the Committee Against Torture⁷ have denounced the aura of secrecy surrounding executions in Belarus. In particular, the Human Rights Committee stated that the “complete secrecy surrounding the date of execution, the place of burial, and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress.”⁸ This information blackout also amounts to inhuman treatment of the families, in violation of article 7 of the ICCPR.⁹

Such a lack of information is also in clear contravention with OSCE commitments by which participating States have committed themselves to making “available to the public information regarding the use of the death penalty.”¹⁰

Uzbekistan shares many of the practices surrounding the death penalty in Belarus. The authorities disclose even less information on the number of executions and prisoners on death row, while the families are subjected to the same information blackout as in Belarus.

Notwithstanding the gradual reduction in the number of offences carrying the death penalty in Uzbekistan to two¹¹ and the announcement that the death penalty will be abolished as of 1 January 2008,¹² the IHF fears that the number of persons currently being executed in Uzbekistan is high. With the human rights record of the Karimov government at an all-time low, terrorism charges being used as a smokescreen for any type of dissenting activity, and a crumbling judiciary, death sentences can be presumed rife.

As in Belarus, there is no independent judiciary in Uzbekistan, its role often being limited to executing the orders of the president. This factor can only strengthen the need for an end to all executions, as lack of accountability and transparency considerably increases the risk of judicial error.

The presidential decree announcing the abolition of the death penalty as of January 2008 is a welcome development. Nevertheless, it does not appease concerns about what will occur during this interim period. The IHF urges the Uzbek authorities to take this gesture one step further and announce an immediate moratorium on executions and death sentences.

In the **United States** the death penalty is authorized by 38 states, the Federal Government and the US military.¹³ The United States Code identifies 42 crimes for which the death penalty can be used. These differ from state to state, with all states envisaging the death penalty for murder.¹⁴ The UN Human Rights Committee recently expressed its regret that the United States had “extended the number of offences for which the death penalty is applicable” and that no “reviews of federal and state legislation have been carried out with a view to assessing whether offences carrying the death penalty are restricted to the most serious crimes.”¹⁵ Most executions are carried out by lethal injection, a method currently under legal challenge.

⁶ CCPR/C/79/Add.86, paragraph 8, 19 November 1997.

⁷ A/56/44, para. 45. 20 November 2000.

⁸ CCPR/C/77/D/887/1999

⁹ CCPR/C/77/D/886/1999

¹⁰ Paragraph 36, Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE.

¹¹ Murder with aggravating circumstances and terrorism.

¹² Decree of the President of the Republic of Uzbekistan “On abolition of the death penalty in the Republic of Uzbekistan,” 1 August 2005.

¹³ Death Penalty Information Center, www.deathpenaltyinfo.org/state/.

¹⁴ OSCE ODIHR, *The Death Penalty in the OSCE Area, Background Paper 2005 HDIM*.

¹⁵ CCPR/C/USA/Q/3/CRP.4, paragraph 29, July 2006.

Sixty prisoners were executed in the US in 2005. This figure brought the total of executed prisoners since the reinstatement of the death penalty in 1976, to 1,004. In addition, as of 1 April 2006, 3,370 convicted murderers were awaiting execution on death row.¹⁶

A positive development was the March 2005 ruling of the US Supreme Court in *Roper v. Simmons*, in which it declared executions of juvenile offenders unconstitutional as they violate the Eighth Amendment's prohibition on cruel and unusual punishment.¹⁷ While juvenile offenders can therefore no longer be executed, they can still be sentenced to life imprisonment without parole. The Convention on the Rights of the Child, ratified by every country in the world except the United States and Somalia, forbids sentencing child offenders to life imprisonment without parole.¹⁸

The prohibition on executing juvenile offenders joins previous Supreme Court rulings prohibiting the execution of mentally ill persons, as doing so is considered a cruel and unusual punishment under the Constitution. Nevertheless, executions of mentally ill persons continue to take place, as states have defined the term "mentally incompetent" so narrowly as to render it virtually meaningless.¹⁹

Lastly, the seemingly discriminatory application of the death penalty in the United States remains a pressing concern. Studies have repeatedly shown that race is linked to probability of being sentenced to death. In Philadelphia, the odds of receiving a death sentence are nearly four times higher when the defendant is black.²⁰

The 4th World Day Against the Death Penalty will be held on 10 October 2006. This year's theme, "The Death Penalty: A Failure of Justice", will highlight the failures in systems which administer the death penalty, including race and class bias.

As long as the death penalty is maintained, the risk of executing the innocent can never be eliminated.

Recommendations

1. To the governments of **Kazakhstan, Kyrgyzstan, the Russian Federation, and Tajikistan**, all which have moratoria currently in place:
 - Take steps to fully abolish the death penalty as a matter of priority;
 - Pending full abolition, the authorities of Kyrgyzstan and Kazakhstan should ensure that legislation allows for the commuting of all death sentences into other prison terms. Also, they should disclose the number of persons currently on death row and improve living conditions for death row prisoners, which often fail to meet international standards.

¹⁶ Clark County Prosecuting Attorney, The Death Penalty, www.clarkprosecutor.Org/organization/html/death/dpusa.htm.

¹⁷ See Human Rights Watch, "U.S.: Supreme Court Ends Child Executions," 1 March 2005, <http://hrw.org/english/docs/2005/03/01/usdom10231.htm>.

¹⁸ See Human Rights Watch World Report 2006, <http://hrw.org/english/docs/2006/01/18/usdom12292.htm#The%20Death%20Penalty%20and%20Other%20Cruel%20Sentences>

¹⁹ Report prepared by the National Association of Criminal Defense Lawyers for the examination of the United States by the UN Human Rights Committee (July 2006), <http://www.ohchr.org/english/bodies/hrc/docs/ngos/death%20penalty%20shadow%20rpt%20final.pdf>.

²⁰ Ibid.

2. To the government of **Belarus**:

- While taking steps to completely abolish the death penalty, enact an immediate moratorium to end all executions and death penalty sentences;
- Commute all death sentences to other prison terms;
- Release information relating to the current number of death row prisoners, disaggregated information on the number of executions per year, locations of the graves of executed persons, and dates of future executions, amongst others;
- Take measures to improve prison conditions, especially for death row prisoners so as to meet international standards.

3. To the government of **Uzbekistan**:

- Enact an immediate moratorium to end all executions and death penalty sentences;
- Commute all death sentences to other prison terms pending full abolition of the death penalty;
- Release information relating to the current number of death row prisoners, disaggregated information on the number of executions per year, locations of the graves of executed persons, and dates of future executions, amongst others;
- Ensure that when individual complaints have been filed to the UN Human Rights Committee relating to the right to life, executions are stayed while awaiting a decision of the Committee;
- Take measures to improve prison conditions, especially of those prisoners who will be serving long prison terms once abolition is enacted.

4. The authorities of the **United States**:

- While taking steps to completely abolish the death penalty, enact an immediate moratorium to end all executions and death penalty sentences;
- Withdraw its reservation to article 6 of the International Covenant on Civil and Political Rights;
- Reduce the number of crimes which carry the death penalty so that only the most serious crimes are punishable by the death penalty;
- Take measures to improve conditions for death row prisoners;
- Take measures to prevent executions of mentally ill persons.

5. To the **OSCE and its participating States**:

- Actively seek to ensure that commitments regarding the death penalty are upheld by all participating States, in particular with regard to the public availability of information concerning the death penalty.²¹

²¹ Paragraph 36, Document of the 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE.