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Belarus/Uzbekistan: The last executioners Summary

Belarus and Uzbekistan are the last states of the former Soviet Union where death sentences are still pronounced and executed. Their criminal justice systems are flawed thus providing a fertile ground for judicial error. Amnesty International receives credible allegations of unfair trials, and torture and ill-treatment, often to extract "confessions", on a regular basis from both countries. Neither death row prisoners nor their relatives are informed of the date of the execution in advance, denying them a last chance to say goodbye. The body of the prisoner is not given to the relatives for burial and they are not informed of the place of burial.

While all newly independent states retained the death penalty when the Soviet Union collapsed in December 1991, nine have now abolished it. With Kazakhstan's declaration of a moratorium on executions in December 2003 and Tajikistan's moratorium on death sentences and executions that took effect from April 2004, four countries currently have moratoria in place. Russia is the only country of all 45 members of the Council of Europe that has still not fulfilled its promise to abolish the death penalty, which it made when joining the organization in 1996.

Many countries in the region have deported people to countries where they faced the death penalty. Death sentences in these cases were often passed following unfair trials accompanied by torture allegations. The deportations documented by Amnesty International took place in violation of international treaty obligations undertaken by the countries that facilitated the deportations.

CURRENT STATUS OF THE DEATH PENALTY IN THE FORMER SOVIET REPUBLICS

Countries retaining and using the death penalty

Belarus retains the death penalty for 12 peacetime and two wartime crimes. Belarus has not published comprehensive statistics on death sentences and executions. According to information in the public domain the number of death sentences has decreased since 1999. While from 1991 to 1999 between 20 and 47 people were sentenced to death per year, 13 were sentenced to death in 1999, and between four and seven per year until 2003. On 11 March 2004 the Constitutional Court found that a number of articles of the current criminal code were inconsistent with the Constitution, and that in the current circumstances the abolition of the death penalty, or as a first step, the introduction of a moratorium, could be enacted by the head of state and by parliament.

Amnesty International calls on the authorities of Belarus to build on this landmark ruling by the Constitutional Court and swiftly move towards abolition by at least introducing a

moratorium on sentencing and executions pending a full review of the country's policy on the death penalty.

Uzbekistan retains the death penalty for "premeditated, aggravated murder" and "terrorism". The authorities have consistently failed to disclose comprehensive statistics including figures on the number of death sentences and executions. In September 2001, President Karimov publicly stated that around 100 people were being executed in Uzbekistan each year. Several local human rights groups believe the true figure is around 200 executions per year.

In many cases, Uzbekistan failed to comply with its obligations as a party to the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). At least 14 death row prisoners were executed in spite of requests to stay their execution by the UN Human Rights Committee. In all these cases complaints have been submitted to the Committee alleging serious human rights violations including torture to force "confessions".

Moratoria on executions only

In the internationally unrecognized region of **Abkhazia, the Dnestr Moldavian Republic and Nagorno-Karabakh** (parts of Georgia, Moldova and Azerbaijan respectively) a *de facto* moratorium on executions is believed to be in force. **Kazakhstan** introduced such a moratorium in 2003 and **Kyrgyzstan** in 1998.

Moratoria on death sentences and executions

When becoming a member of the Council of Europe in 1996 **Russia** committed itself to abolish the death penalty within three years following its accession to the organization. However, Russia is the only member of the Council of Europe that has still not abolished the death penalty.

A *de facto* moratorium on death sentences and executions was believed to be in force in the internationally unrecognized region of **South Ossetia**, part of Georgia. Such a moratorium was introduced in **Tajikistan** in 2004.

Abolitionist in times of peace

In 1999 **Latvia** voted for the ratification of Protocol No. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) thereby abolishing the death penalty for all peacetime offences.

Fully abolitionist countries

Armenia, Azerbaijan, Estonia, Georgia, Lithuania, Moldova, Turkmenistan, Ukraine.

SCOPE FOR JUDICIAL ERROR

The criminal justice systems of the last two executioners in the region, **Belarus** and **Uzbekistan**, have been repeatedly criticized by local and international organizations, and Amnesty International has documented dozens of cases where trials in capital cases violated international standards. Such violations included unfair trials, the use of torture and ill-treatment to extract "confessions", and rampant corruption undermining the independence of the judiciary.

Amnesty International is concerned that governments have on many occasions shown disregard for interventions and rulings by the (UN) Human Rights Committee on individual cases. At least seven death row prisoners were executed in **Tajikistan** and 14 death row prisoners in **Uzbekistan** despite interventions by the (UN) Human Rights Committee on their behalf.

Kazakhstan is the only country in the former Soviet Union that has not ratified the ICCPR. Parties to the ICCPR have obliged themselves to ensure that the death penalty is not imposed "*contrary to the provisions of the present Covenant*" which include, among others, the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

SECRECY

In **Belarus** and **Uzbekistan** the state refuses to tell families when their loved one is to be executed and they are not granted a final chance to say goodbye. After the execution the state refuses to reveal where the body is buried.

In his February 2003 report following a visit to **Uzbekistan**, Theo van Boven, the UN Special Rapporteur on torture, stated that the *"complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved one(s)"*. 2003 Special Rapporteur on torture report, para. 65. He described the treatment of family members as *"malicious and amounting to cruel and inhuman treatment"*. Ibid.

Death row prisoners live in constant fear that they could be executed at any time. According to the law in both countries, the execution can be carried out as soon as the President has refused to grant clemency. However, neither the lawyers, nor the relatives nor even the death row prisoners themselves are informed of the date when the question of clemency will be considered or of the outcome.

CONDITIONS ON DEATH ROW

On the basis of information available, the conditions on death row in **Belarus** and **Uzbekistan** fail to meet international human rights standards including the UN Standard Minimum Rules for the Treatment of Prisoners, and the UN Basic Principles for the Treatment of Prisoners. Prison conditions on death row in countries in the region that have a moratorium on executions in place are also believed to fall far short of international standards.

Dmitry Kharkhal was held on death row in **Belarus** for more than one year until his death sentence was commuted to 15 years' imprisonment. He alleged that he was frequently beaten on his head, back, stomach and genitals by prison guards who reportedly forced him to say *"thank you very much"* after each of the beatings. His lawyer reported that he was sometimes taken out of the cell and forced to walk crouching to the bath but was then denied permission to take a bath. He reported that he was forbidden to read books and that not all of his letters including to his mother and complaints to government authorities were passed on by the prison administration. His allegations of ill-treatment and harsh prison conditions were reportedly not investigated by the authorities.

Amnesty International received information from several sources alleging that death row prisoners in **Uzbekistan** are frequently beaten by prison officials. The prisoners are held in small cells usually occupied by two prisoners, sleeping on wooden bunks. Reportedly, there is a pan or a hole under one of the bunks that serves as a toilet, and a pipe with drinking water. There is little or no natural light. One lawyer reported that cells had dim artificial lighting, on all the time. The air is said to be stagnant and the ventilation system not working. Families disputed official claims that prisoners are allowed 30 minutes' outdoor exercise daily, claiming prisoners were not taken outdoors at all. According to death row prisoner Zhasur Madrakhimov, executed in March 2004, death row prisoners are permitted to take a shower for three to four minutes every other week. Food is insufficient and of poor quality, and families are not allowed to deliver food to death row prisoners.

FREEDOM OF EXPRESSION AND PUBLIC OPINION

The authorities of **Belarus** and **Uzbekistan** frequently refer to public opinion as a key argument against introducing a moratorium or abolishing the death penalty.

At the same time both governments continue to withhold vital information about the application of the death penalty in their countries, thereby preventing an informed public discussion about the issue.

In December 2003 the authorities of **Uzbekistan** stopped the conference "Death Penalty:

Analysis, Tendencies and Realities" organized by the Uzbekistan-based non-governmental organization Mothers against the Death Penalty and Torture. The conference was aimed at initiating a public debate about the death penalty and at creating a platform for dialogue with the authorities. Anti-death penalty activists and relatives of death row prisoners struggling for the lives of their loved ones have been harassed and intimidated in **Uzbekistan**.

Amnesty International believes that governments should lead public opinion in matters of human rights and criminal policy. Historically it has almost always been the case that the death penalty has been abolished even though the majority of the public favoured its retention. Yet when the death penalty is abolished there has often been little public outcry, and it almost always remains abolished.

DEPORTED TO EXECUTION

Many governments in the region have facilitated deportations of suspects to countries where they were subsequently sentenced to death, often in unfair trials accompanied by torture allegations.

Kyrgyzstan deported people to face executions in China and Uzbekistan even though it had put a moratorium on executions in place citing its commitment to protect human rights. Despite its obligations as a member of the Council of Europe and other treaty obligations, **Russia** deported people to countries where they were subsequently sentenced to death. **Kazakhstan, Tajikistan, Turkmenistan, Ukraine** and possibly more countries from the region also facilitated the deportation of people who were sentenced to death upon their return, often in trials marred by serious violations including torture to force "confessions".

The international legal principle of *non-refoulement* bars all states from returning individuals to a country where their lives are at risk or where they are likely to face torture.

RECOMMENDATIONS

To the authorities of Belarus and Uzbekistan

To take immediate steps towards abolition of the death penalty by promptly imposing a moratorium on all death sentences and executions.

To commute the sentences of all prisoners currently on death row to terms of imprisonment.

To show leadership in preparing public opinion for the abolition of the death penalty and publish statistics and all procedures relating to the death penalty which would help inform a serious public debate.

To bring the prison conditions on death row into line with international standards.

To bring domestic legislation into line with the country's obligations under international human rights treaties, in particular the ICCPR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and implement the recommendations made by the (UN) Human Rights Committee and the (UN) Committee against Torture.

To the authorities of Kazakhstan, Kyrgyzstan and the de facto authorities of Abkhazia, the Dnestr Moldavian Republic and Nagorno-Karabakh

To build on the moratorium on executions currently in place and fully abolish the death penalty.

To commute the sentences of all prisoners currently on death row to terms of imprisonment.

To publish comprehensive annual statistics on the passing of death sentences and commutations.

To the authorities of the Russian Federation

To ratify Protocol No. 6 of the ECHR.

To the authorities of Latvia

To fully abolish the death penalty in domestic law.

To ratify the Second Optional Protocol to the ICCPR and Protocol No. 13 to the ECHR.

To all countries in the region

To ensure that no one is deported or extradited to a country where s/he would be at risk of serious human rights violations including the death penalty and torture.

To the international community

To press the governments in the region covered in this report to implement the recommendations outlined above.

To ensure that these concerns are included in all discussions of bench marks for human rights performance.

Belarus and Uzbekistan: the last executioners. The trend towards abolition in the former Soviet space-
please see -
<http://web.amnesty.org/library/index/engneur040022004>

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