



AI Index: IOR 52/003/2003
7 October 2003

**Amnesty International's
Written Statement to
the 2003 OSCE Human Dimensions Implementation Meeting
for Working Session 7:
The Question of Abolition of Capital Punishment**

Amnesty International believes that the death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life.

In the last year, there have been a number of positive developments relating to the question of the abolition of capital punishment. Among these, Amnesty International notes in particular **Armenia's** abolition of the death penalty in peacetime by virtue of its ratification of Protocol No. 6 to the European Convention on Human Rights. Amnesty International also welcomes the signature of Protocol No. 13 to the European Convention on Human Rights, banning the death penalty at all times, by 41 OSCE Participating States, and its ratification by 18 of these states: **Andorra, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Hungary, Ireland, Liechtenstein, Malta, Portugal, Romania, San Marino, Sweden, Switzerland and Ukraine.**

Other positive developments include the abolition of the death penalty for women in **Tajikistan** and the reduction of articles carrying a possible death penalty from 10 to five. **Kyrgyzstan** renewed the moratorium on executions in place since 1998 for another year and **Kazakstan** took steps to introduce life imprisonment with a view to replacing death sentences.

However, also over the last year negative trends have continued in a small number of OSCE Participating States - **the United States of America (USA), Belarus, Kazakstan, Tajikistan and Uzbekistan.** It is these we feel compelled to address in this statement.

The **USA** is approaching its 900th execution since the death penalty was resumed in 1976. More than 700 of these executions have been carried out since 1990.

Earlier this year the USA executed Scott Hain, who was 17 years old at the time of the crime. The USA is now almost alone in this internationally illegal aspect of the death penalty. It now accounts for 72 per cent (13 of the 18) of executions of child offenders – those under 18 at the time of the crime – known worldwide in the past five years.

A week before Scott Hain was executed in Oklahoma, James Colburn was put to death in Texas. He had long suffered from paranoid schizophrenia, a serious mental illness. There

was compelling evidence that his illness had contributed to the crime, and that he had not been competent to stand trial. The United Nations Commission on Human Rights has repeatedly urged an end to the use of the death penalty against anyone suffering from “any form of mental disorder”. James Colburn’s execution clearly flew in the face of such resolutions.

The US military authorities are reported to be planning to build an execution chamber at the US Naval Base in Guantanamo Bay, Cuba. While shocking, this is not altogether surprising, given that the US authorities are continuing with their intention to try selected foreign nationals detained in the US-led “war on terror” in front of military commissions, executive bodies, not independent or impartial courts, with the power to hand down death sentences. Defendants would have no right of appeal against their conviction or sentence to any court in the USA or elsewhere. Their right to legal counsel of choice and to an effective defence would be severely curtailed. Amnesty International continues to urge the USA to drop its plans for such trials.

In **Belarus** the death penalty affects death row prisoners and their families alike. On 13 May 2003 the (UN) Human Rights Committee announced its conclusions on two individual complaints of violations of the International Covenant on Civil and Political Rights (ICCPR). In the cases *Bondarenko v. Belarus* and *Lyashkevich v. Belarus*, the mothers of two men, who had been executed after being convicted of murder, alleged that their sons had been executed in secret and no information was provided to them on either the time of the executions or on the location of the burial site of their sons. Igor Lyashkevich was reportedly executed on 15 March 1999. Anton Bondarenko was executed on 24 July 1999. Amnesty International had campaigned on behalf of both men (see AI Index: EUR 49/06/98, Extra 40/98 and POL 10/01/00). The Human Rights Committee concluded that the secrecy surrounding the date of execution and the place of burial, and the refusal to hand over the bodies for burial “had the effect of intimidating or punishing families intentionally leaving them in a state of uncertainty and mental distress” and amounted to inhuman treatment of the families, in violation of Article 7 of the ICCPR. According to reports, five prisoners were executed in Belarus last year.

Scores of people are executed every year after unfair trials in **Uzbekistan**. Many of them were tortured. ‘Confessions’ extracted under torture are routinely used as evidence in trials. The UN Special Rapporteur on torture who visited Uzbekistan in November and December 2002 stated in his report that “*The abolition of the death penalty [in Uzbekistan] would be a positive step towards respect for the prohibition of torture and other forms of ill-treatment.*” Amnesty International has received information indicating that corruption had been an integral part of the investigation, trial and appeal in many death penalty cases. The retention of the death penalty in Uzbekistan provides the ground for the worst and most fatal consequences of Uzbekistan’s flawed criminal justice system.

At least nine people have been executed in Uzbekistan despite interventions by the (UN) Human Rights Committee in recent years; four of them have been executed since the publication of the report by the Special Rapporteur on torture in February 2003, who deplored the authorities “*lack of appropriate consideration of and action in relation to, requests [by the (UN) Human Rights Committee].*”

There are strong indications that allegations in several capital cases that the accused suffered mental disabilities have been ignored by the authorities or that medical examinations were flawed. For example, the authorities appear to have ignored clear signs of mental disturbance in the case of Abror Isayev, who is currently on death row.

Local non-governmental sources believe that hundreds may await execution each year; they believe that the reduction of Articles in the Criminal Code that carry the death penalty to currently four has not had any impact on the number of death verdicts. The authorities have persistently failed to publish comprehensive statistics.

The secrecy which surrounds the use of the death penalty in **Belarus, Kazakstan, Tajikistan and Uzbekistan** not only hides the extent of the use of the death penalty from the public, but also affects the condemned persons and their families directly. Failure to give condemned persons sufficient advance notice of the date of execution may, among other things, prevent them from taking any legal recourse available under national or international law, and from tying up their affairs. Also, families of the condemned persons are usually not informed of the date on which execution will take place and are denied access to the condemned person prior to the execution. They are also not informed of the death of the condemned person or given the opportunity to bury their loved-ones or even visit their graves. In his February 2003 report on **Uzbekistan** the UN Special Rapporteur on torture called such treatment “*malicious and amounting to cruel and inhuman treatment*”.

Amnesty International urges the OSCE to continue to condemn the veil of secrecy surrounding the use of the death penalty in these states, and to continue the work they have been doing, especially with the field operations.

In Amnesty International’s view, the execution of child offenders and the failure to ensure that proceedings meet international agreed fair trial standards amply illustrate some of the aspects of why the use of the death penalty is wrong. Amnesty International’s position as an organization advocating the total abolition of the death penalty throughout the world is well known. We will continue to campaign against the use of the death penalty in the OSCE region until it is completely execution-free. We regret that the existing body of OSCE commitments is not abolitionist.

In the meantime, Amnesty International encourages the those OSCE Participating States that are members of the Council of Europe, which have yet to do so, to support its quest to eradicate capital punishment by signing and ratifying Protocol No. 13 to the European Convention on Human Rights, which abolishes the death penalty at all times.

We also make the following recommendations:

1. Amnesty International recommends that all executions should cease immediately. OSCE States that have not already done so should be encouraged to institute moratoria on executions;
2. The OSCE should seek to secure compliance with existing OSCE commitments as regards capital punishment by investigating practical ways of assisting those Participant States that still apply the death penalty to comply with these commitments. The OSCE should condemn disregard for existing standards on the use of the death penalty

including the ECOSOC guidelines¹ and Article 6 of the ICCPR as well as Articles 9,10 and 14 of the ICCPR² and explore ways of assisting the five states which have yet to impose a moratorium on executions in order to ensure compliance with these standards;

3. The OSCE should condemn the veil of secrecy surrounding the use of the death penalty in some of those states which still apply it, and should explore ways of assisting the authorities in these states to ensure statistical and other information on the death penalty is made public. The OSCE should develop guidelines for participating States as to what exactly the commitment to make information on the use of the death penalty available to the public entails. Such guidelines should also ensure that information about the pending execution of an individual be made available to the family of the prisoner in sufficient time to allow them to visit. In cases where prisoners have been executed, family members should be allowed to collect the prisoner's body and personal effects, and to bury the body. Relatives should have the right to regular and frequent private meetings with the prisoner at all stages after the death sentence has been passed;
4. The OSCE should pay particular attention to the failure to implement OSCE commitments on capital punishment by **Belarus, Kazakstan, Tajikistan and Uzbekistan**. The OSCE should condemn the disregard for existing commitments, and should explore ways of assisting these states to ensure fair trials, including appeal processes. Consideration should be given to use of Human Dimension mechanisms to address this issue;
5. The OSCE should continue to work to ensure that the death penalty is not imposed on any person who was under the age of 18 at the time the crime was committed or on any person who suffers from any mental disorder;
6. The OSCE/ ODIHR should continue to facilitate exchange of information on the question of the abolition of the death penalty through dissemination of information, publications and the organization of round tables and conferences;
7. To help achieve these objectives, the OSCE political bodies should strongly back the efforts of relevant OSCE field operations to place the issue of the death penalty on the agenda for their dialogue with their host governments.

¹ ECOSOC Resolution 1984/50, adopted on 14 December 1984. Also see ECOSOC resolution 1989/64, adopted on 24 May 1989, and ECOSOC Resolution 1996/15, adopted on 23 July 1996.

² NB All participating states except Andorra and Kazakhstan have ratified the ICCPR.