

Amnesty International

Statement for Working Session 5: Rule of Law II, including:

- Prevention of Torture
- Human Rights and Fighting Terrorism
- Abolition of capital punishment

Prevention of Torture

Allegations of torture and other forms of ill-treatment in official places of detention have declined in recent years, however reports of such ill-treatment in **Turkey** continue. Excessive use of force by law enforcement officials during street demonstrations is routine, resulting in the death and injury of protestors. Criminal prosecutions brought against public officials for alleged acts of torture and other ill-treatment are seldom subjected to effective investigations and the chances of bringing such abuses to justice remains remote. The retrial of public officials accused of the death in custody of Engin Çeber in Istanbul in 2008 continues following overturning of their conviction by the Supreme Court of Appeals. Turkey ratified the Optional Protocol to the UN Convention for the prevention of torture in 2011. However, as of July 2012 no domestic mechanism for its implementation had been introduced. A draft bill for the introduction of an independent national human rights institution fails to meet the independence requirements set out in the *Paris Principles*.

Amnesty International has continued to receive numerous reports of human rights violations by police in **Greece** during anti-austerity and other demonstrations and frequent allegations of torture and other ill-treatment of individuals during arrest and/or detention particularly against members of vulnerable groups including detained asylum-seekers and migrants. These human rights violations are compounded by the persisting failures in police accountability and thus effective impunity that exist amongst the ranks of law enforcement officials.

According to local human rights groups, thousands of people in **Ukraine** are tortured or otherwise ill-treated by police each year. Corruption and inadequate investigations into police criminality combine to create an environment of impunity for officials who abuse detainees. Under the current system, local prosecutors are relied on to investigate criminal allegations against police officers with whom they work closely with on a regular basis. Predictably, the prosecutors are slow and extremely reluctant to open a case against their colleagues, and frequently reply to well-grounded complaints against police with the standard response that there is "no evidence of a crime."

Amnesty International is working to persuade the Ukrainian authorities to establish an independent police oversight and complaints procedure. This would put an end to the practice of local prosecutors investigating local police and allow for genuinely impartial investigations into complaints against police misconduct. We have urged the authorities to use the new State Investigation Bureau created by the recently adopted Criminal Procedure Code to investigate complaints against the police.

Based on reports by the UN Special Rapporteur on Torture on **Kazakhstan, Kyrgyzstan and Tajikistan** from 2009, 2011, and 2012 respectively, the use of torture and other ill-treatment in Kazakhstan “certainly goes beyond isolated instances”, in Kyrgyzstan, it is “a widespread phenomenon”, and “it happens often enough [...] in a wide variety of settings” in Tajikistan.

By Amnesty International’s own assessment, torture and other ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan continues to be routine and is abetted by corruption and impunity.

Problems relating to torture and other ill-treatment are shared across the three countries and include:

1. Lack of legal safeguards for detainees in the period between the arrest and the official acknowledgement of detention. No rights envisaged by law for criminal suspects (right to a lawyer, right of notification, right to know one’s rights, right to choose not to testify) apply to these unacknowledged detainees despite constitutional provisions on security for all regardless of the state of one’s liberty.
2. The habitual choice of pre-trial detention over other restrictions before trial, sometimes beyond legal grounds.
3. Reliance on self-incriminating statements by detainees during investigations and non-application of exclusionary rules by courts at trials.
4. Lack of effective investigation of complaints of torture due to: absence of an independent (unbiased) authority to investigate torture complaints; lack of incentive, skills, and capacity of investigating bodies; imperfect legislation allowing for the closure of the prosecution case due to withdrawal of the complaint by the victim; no accessible independent medical examinations; extended checks into validity of allegations of torture resulting in the loss of evidence and promoting impunity.
5. Ineffective investigation of defendants’ statements of torture made during trials. This can be explained by the political dependence of judges on the executive power, especially on cases related to terrorism. In Kyrgyzstan, observers also report frequent and unacceptable connections between judges, prosecutors and law enforcers, of whom many are appointed on family or clan references.
6. Torture continues to remain common in cases of alleged terrorism or religious extremism. Here, reporters mention the use of preset pack of evidence against suspects across the region; repressive legislation on freedom of religion and national security; and lack of judicial independence.
7. The last twelve months have revealed serious problems with the use of firearms and force by law enforcers, especially in Kazakhstan, where the use of firearms and force is not properly regulated in law and often comes unchallenged and unaccountable in absence of any independent control.
8. Absence or lack of proper public oversight over places of detention, particularly temporary police detention facilities. In Kazakhstan, despite the deadline of establishing a National Preventive Mechanism (NPM) long being passed, this institution has still not been established. Tajikistan has not yet ratified the

The above problems can be illustrated by the following key cases:

Of 40 defendants tried by court following the violent events in December 2011 in Zhanaozen in Kazakhstan, 37 said they had been tortured by law enforcement agents to extract confession or to punish them for the crimes they were suspected of having committed. None of those statements were found to be substantiated by prosecutors in the case and were dismissed by the judge as not truthful but aimed to obstruct justice. Yet, according to the human rights organisations, the investigation into those complaints was neither independent nor timely or full-scale.

Dilmurat Khaidarov from Osh, Kyrgyzstan, has been kept in jail on charges related to the violent events in the south of Kyrgyzstan in June 2010 for more than two years now. He was tortured along with others on similar charges, but unlike most of those men, Dilmurat did not confess in spite of the severe torture. His case still lingers in courts, and his torture allegations have not yet been investigated.

One recent case from Tajikistan that heightened Amnesty International's concerns is the case of Ilhom Ismonov who was detained on 3 November 2010 and is believed to have been subjected to severe physical torture while in incommunicado detention. Ilhom Ismonov was tried in December 2011 in a case which grouped together 53 other men on similar charges of extremism. The trial fell short of international standards of fairness. Their cases show that the authorities of Tajikistan use the pretext of national security for committing human rights abuses with impunity.

Recommendations

Amnesty International condemns the use of torture worldwide and calls on OSCE participating member states, in particular authorities in Turkey, Ukraine, Kazakhstan, Kyrgyzstan and Tajikistan to:

- Bring their laws prohibiting torture into full compliance with international standards.
- Establish effective National Preventive Mechanisms.
- Establish unbiased and effective mechanisms for investigating all and any statements of torture.
- Provide for effective public oversight of the law enforcement and justice systems.

Human rights and fighting terrorism

Amnesty International welcomes the OSCE's commitment to ensuring that counter-terrorism measures conform with participating states' human rights obligations. The work of the Office for Democratic Institutions and Human Rights (ODIHR) in

capacity-building and legislative assistance is of particular note. Of key concern to Amnesty International, however, is accountability for human rights violations that have occurred in the context of counter-terrorism operations, in particular accountability for European complicity in the US Central Intelligence Agency's (CIA) rendition and secret detention programmes, which involved the illegal abduction and transfer, secret detention, enforced disappearance, and torture and other ill-treatment of persons suspected of links to terrorism.

Thus, we welcomed the "Resolution on Extraordinary Rendition Investigations" adopted at the July 2012 OSCE Parliamentary Assembly in Monaco, which followed-up on the 2006 Brussels Declaration that called on states "to investigate promptly and thoroughly allegations that their territory has been used to assist CIA-chartered flights secretly transporting detainees to countries where they may face 'disappearance', torture or other ill-treatment." The absence of such accountability has created an environment of impunity, leaving victims without effective redress and sending the signal that, in the context of counter-terrorism, states may violate people's human rights without those responsible being held to account or brought to justice.

The lack of effective investigations is particularly disturbing as credible evidence of European complicity in the CIA operations continues to mount. The September 2012 European Parliament report focused on countries alleged to have housed secret CIA detention centers, including **Lithuania, Poland** and **Romania**. Despite new information about rendition flights to and from Lithuania released by the non-governmental organisation Reprieve on 11 September 2012, the Lithuanian authorities continue to refuse to re-open a criminal investigation into secret CIA sites that they openly acknowledge were established there in 2002 and 2004. In Poland, an on-going investigation regarding a CIA secret detention site has made some progress, but the prosecutor has invoked "state secrets" to refuse to release enough information to keep either the parties or the public adequately informed. Credible allegations of a secret CIA prison in Romania have gone unanswered as the authorities in Bucharest flatly deny any involvement in the CIA programmes and decline to investigate further, despite the identification of the location of a CIA site by former CIA officials in December 2011. Although flight data and information released in 2011-2012 clearly implicate some Scandinavian countries -- such as **Denmark, Finland, and Norway** -- in the rendition programme, all three governments, among a number of others, refuse to conduct a fully human rights compliant investigation into their involvement.

European accountability for counter-terrorism operations that involved the torture and enforced disappearance of persons is both a legal obligation for implicated states and absolutely vital to ensuring that the ban on torture is observed and supported, that victims have access to justice, and that lessons are learned so that egregious violations such as those attendant to the CIA programmes never happen again.

Recommendations

Amnesty International calls on the OSCE to:

- Monitor regularly participating states' implementation of the 2012 "Resolution on Extraordinary Rendition Investigations" and to report back in one year on states' progress;
- Convene a high-level meeting of state representatives, criminal and civil law experts, UN and EU actors, and non-governmental and civil society actors to examine what constitutes a human rights compliant investigation in cases of torture and enforced disappearance, with a special focus on what constitutes "complicity" in such cases.

The government of Poland to:

- Continue its investigation of allegations that Poland hosted a secret CIA detention site in full conformity with its human rights obligations including by not invoking "state secrecy" to shield the government from accountability for complicity in human rights violations.

The government of Lithuania to:

- Re-open as a matter of urgency the criminal investigation into the presence on Lithuanian territory of two secret CIA detention centres and the human rights violations alleged to have been committed therein.

The government of Romania to:

- Open as a matter of urgency an independent, impartial, thorough and effective investigation into allegations of a secret CIA detention centre on Romanian territory;

The governments of Denmark, Finland, Germany, Ireland, Lithuania, Macedonia, Norway, Poland, Portugal, Romania, Spain, Sweden, the United Kingdom, and all OSCE participating governments that have been implicated in the CIA rendition and secret detention programmes to:

- Commence immediately or continue independent, impartial, thorough and effective investigation into allegations of complicity in these CIA operations;
- Bring to justice in fair trials any individuals responsible for crimes under international law;
- Provide victims of these programmes with effective redress;
- Ensure that necessary reforms are implemented, in particular with respect to the practices and oversight of security and intelligence agencies, to ensure that the human rights violations attendant to the CIA rendition and secret detention programmes never happen again.

Abolition of capital punishment

Amnesty International deplores the continued use of the death penalty in the OSCE area. In 2011, the **USA** and **Belarus** were the only two of the 56 Member States of

the OSCE to have carried out executions.¹ Both continued to execute in 2012, with 27 executions carried out in the USA as of mid-September.² In Belarus, two executions were carried out in secret in March 2012 after proceedings which had failed to meet international fair trial standards, including no possibility of appeal to a higher court. No prior notification of the executions had been given, and the bodies were not released to the family afterwards, or the place of burial disclosed, in violation of international standards on the use of the death penalty.³

Amnesty International welcomes the steps taken by some OSCE participating States to ratify international treaties aiming at the abolition of the death penalty. With effect from January 2012, **Latvia** became the 97th fully abolitionist country worldwide, when it removed the death penalty for all remaining crimes from national law. It also ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (concerning the abolition of the death penalty in all circumstances). Previously Latvia had been abolitionist for ordinary crimes only.⁴ At its UPR in March 2012, **Tajikistan** supported recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) (aiming on the abolition of the death penalty).⁵ In 2011, the UN Human Rights Committee expressed concern that in **Kazakhstan** inconsistencies existed with regard to capital crimes allowed under in the Constitution and the criminal code, as the latter provided for wider list of capital crimes than the former.⁶ Amnesty International views Kazakhstan as abolitionist for ordinary crimes⁷ and calls on the government to abolish the death penalty for all crimes.⁸

The **Russian Federation** is abolitionist in practice, and the only Member State of the Council of Europe not to have ratified Protocol 6 to the ECHR (concerning the abolition of the death penalty).

Recommendations

- Amnesty International urges the **USA** and **Belarus** to immediately establish moratoriums on executions as a first step towards abolition of the death penalty.

¹ *Death Sentences and Executions 2011* (Index: ACT 50/001/2012), p. 5.

² <http://www.deathpenaltyinfo.org/execution-list-2012> (accessed 13 September 2012).

³ <http://www.amnesty.org/en/news/belarus-must-release-bodies-convicts-executed-over-minsk-metro-bombing-2012-03-19>.

⁴ The OSCE classified Latvia as a "partly abolitionist State"; *The Death Penalty in the OSCE Area: Background Paper 2011*, OSCE/ODIHR, Warsaw, 2011, p. 2.

⁵ <http://www.amnesty.org/en/library/info/EUR60/002/2012/en>.

⁶ A/66/40, Vol. 1, para. 94 (12).

⁷ Kazakhstan abolished the death penalty for ordinary crimes in 2007.

⁸ Article 15(2) of the Constitution of Kazakhstan states: "No one shall have the right to arbitrarily deprive life of a person. The death penalty shall be established by law as an exceptional punishment for terroristic crimes which have resulted in death casualties, and also for especially grave crimes, committed in wartime, with granting to a sentenced person a right to appeal for pardon".

- Amnesty International calls on the government of **Kazakhstan** to abolish the death penalty for all crimes.
- Amnesty International calls on the abolitionist OSCE participating States **Armenia, Azerbaijan**⁹ and **Poland**¹⁰ to follow Latvia's example and ratify Protocol No. 13.
- All OSCE participating States which have not done so yet are urged to ratify, without reservations, the Second Optional Protocol to the ICCPR, and to support the fourth resolution on a moratorium on the use of the death penalty that will be considered by the UN General Assembly at its 67th session. Taking these steps would turn the OSCE into a death penalty free area, in line with the Vilnius Declaration of the OSCE Parliamentary Assembly of 2009.¹¹

⁹ Azerbaijan abolished the death penalty for all crimes in 1998 and acceded to the Second Optional Protocol in 1999, but has not yet ratified Protocol 13 to the ECHR.

¹⁰ Poland signed the Second Optional Protocol to the ICCPR (in 2000) and Protocol 13 to the ECHR (in 2002), but has ratified neither.

¹¹ <http://www.amnesty.org/en/library/info/IOR52/003/2009/en>.