

URGENT ACTION



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Note: Please write on behalf of these persons even though you may not have received the original UA when issued on September 29, 2009. Thanks!

18 November 2009

Further information on UA 253/09 (29 September 2009) and follow-up (06 October 2009) - Death penalty

USA **Kenneth Biros (m)**
 Abdullah Sharif Kaazim Mahdi (m)
 Mark Brown (m)
 Darryl Durr (m)
 Michael Beuke (m)
 Richard Nields (m)

The State of Ohio has announced new lethal injection procedures and is looking to resume executions. It is seeking to execute Kenneth Biros on 8 December. Five other male prisoners in Ohio are also scheduled for execution in the coming months.

Litigation on Ohio's lethal injection process has continued since 15 September, when the state attempted to execute Romell Broom. Over the course of two hours, the execution team repeatedly tried and failed to find a useable vein in which to insert the lethal injection needle, before finally giving up (see UA 245/09). On 13 November, Ohio's Attorney General revealed that the state had decided to alter its lethal injection procedures, arguing that the changes should end all claims raised in the litigation about how the Ohio authorities carry out executions. The authorities have decided to change from a three-drug process to a procedure that uses a large dose of one chemical, thiopental sodium, an anesthetic. Secondly, the state has developed a "back-up procedure" for cases when a suitable vein cannot be found in a condemned inmate for his or her execution. This procedure would involve injecting a combination of two chemicals, midazolam and hydromorphone, into a large muscle of the prisoner, such as the thigh. In addition, the state has rejected the claim that condemned inmates have the right to the presence of their lawyers during the execution process.

The Director of the Ohio Department of Rehabilitation and Correction has said that the changes would become effective by 30 November, "in sufficient time to conduct the execution of Kenneth Biros" on 8 December. On 13 November, the US District Court judge overseeing the litigation rejected the state's bid for an expedited schedule so that it could execute Kenneth Biros with its new method on 8 December. The state has appealed to the US Court of Appeals to have the current stay of execution, previously imposed by the District Court, lifted. The Ohio parole board has voted against clemency for Kenneth Biros. Five other Ohio inmates are currently scheduled for execution: Abdullah Sharif Kaazim Mahdi (7 January 2010); Mark Brown (4 February); Darryl Durr (20 April); Michael Beuke (15 May); and Richard Nields (10 June).

BACKGROUND INFORMATION

Kenneth Biros, aged 51, was sentenced to death for the murder of Tami Engstrom in 1991. In a report sent to Governor Strickland on 17 November 2009, the Ohio Parole Board recommended that the governor deny clemency. The recommendation is not binding on the governor. The Ohio Parole Board also voted against recommending a reprieve while the lethal injection litigation continues, adding that "the courts are the most appropriate place to decide whether additional time is warranted before execution to further litigate the issues surrounding lethal injection". The board previously denied clemency in 2007, but Kenneth Biros received a stay of execution at that time as a result of his case being included in the litigation already underway in relation to Ohio's then three-drug lethal injection protocol.

Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of the method chosen to kill the condemned prisoner. The death penalty is inherently cruel and degrading, a punishment that is incompatible with human dignity. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it.

Today, some 139 countries are abolitionist in law or practice. International law is abolitionist in outlook, seeking to have retentionist countries narrow the applicability of the death penalty with a view to ending its use altogether. Consistent with this, even those tried by international tribunals for the most serious crimes of concern to the international community - crimes against humanity, genocide and war crimes - cannot be subjected to the death penalty. In July 2002, the Rome Statute of the International Criminal Court came into force. Under Article 77 of the Statute, the maximum penalty which the Court can impose is life imprisonment, subject to review after 25 years.

The USA has carried out 1,182 executions since resuming judicial killing in 1977, with 1,010 carried out by lethal injection, the method currently promoted by advocates of the death penalty as "humane." There have been 46 executions in the USA this year, 45 by lethal injection. Ohio has carried out 32 executions, four of them this year. All Ohio's executions have been carried out by lethal injection. Ohio would be the first state in the USA to adopt a one-drug lethal injection method.

Of Ohio's proposal, Jonathan Groner MD, Professor of Clinical Surgery at the Ohio State University College of Medicine, has said to Amnesty International: "Plan A' of the new Ohio execution protocol uses one drug administered *intravenously*. Thus, problems such as occurred with Romell Broom's execution are not solved by 'plan A.' Furthermore, it is not clear how an inmate will react to getting a huge dose of thiopental. In the 3-drug version, a smaller dose of thiopental was given, followed immediately by a paralytic, which blocks all responses. Without the paralytic (and with the huge dose of thiopental), how will the inmate react? Will he jerk, have a seizure, vomit? Will he have agonal respirations for an hour? Or will he just slowly turn blue? 'Plan B' requires intramuscular injection of two drugs. As far as I know, intramuscular injection of drugs is never used in clinical practice to achieve 'surgical plane of anesthesia' (meaning that the patient is so deeply comatose as to be able to endure an operation, or, in the case of lethal injection, death by asphyxiation). Thus, my opinion is that it is, indeed, an experiment."

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible:

- Expressing concern that Ohio is seeking to execute Kenneth Biros on 8 December and has scheduled a number of other executions for the coming months;
- noting the announced change to Ohio's lethal injection protocol, and arguing that the death penalty can never be rendered humane, regardless of the method of execution;
- pointing out that a clear majority of countries have abandoned executions and that the death penalty is not an option even in international tribunals considering the crimes of genocide, war crimes, and crimes against humanity;
- calling for a moratorium on executions in the State of Ohio, pending abolition of the death penalty.

APPEALS TO:

Governor Ted Strickland
Governor's Office
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6108
Fax: 1 614 466 9354
Salutation: Dear Governor

Richard Cordray, Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215
Fax: 1 614 728 7583
Email: richard.cordray@ohioattorneygeneral.gov
Salutation: Dear Attorney General

Terry J. Collins, Director
Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222
Fax: 1 614 752 1171
Salutation: Dear Director Collins

PLEASE SEND APPEALS IMMEDIATELY.

Check with the AIUSA Urgent Action office if sending appeals after 30 December 2009.