

DEATH PENALTY NEWS

JUNE 1997

A SUMMARY OF EVENTS ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

AI CALLS FOR ABOLITION IN AFRICA

In a report released on 14 April, **AI** has called on all governments in Africa to abolish the death penalty. Twenty-one countries on the African continent have already abolished the death penalty in law or practice. Five countries abolished the death penalty in law in the past four years, and a number of governments are gradually discontinuing its use. For instance, no executions have been reported in the Democratic Republic of Congo (formerly Zaire) since 1990, in Ethiopia since 1991, or in Malawi since 1994, although death sentences are still handed down by the courts. In Zimbabwe the scope of crimes punishable by death was reduced in 1991 to murder, treason and certain military crimes.

Other developments unfortunately run against the trend towards abolition. Thirty countries retain the death penalty and have used it in the last 10 years. Gambia restored the death penalty in 1995 and Comoros, which had not, to **AI's** knowledge, executed anyone since independence in 1975, carried out executions in 1996 and again this year. In February this year Zambia carried out the first executions since 1989. The governments of Rwanda and Guinea have also indicated their intention to resume executions after a period of more than 10 years without judicial executions in either country.

Two major factors have contributed to these setbacks. First, the declining economies of many African states have resulted in growing poverty and a rise in reported crime rates. Some governments have resorted to the death penalty in an attempt to demonstrate their determination to combat crime. Second, the past six years have seen profound political instability in many African states and political violence by armed opposition groups. In repressing agitation for change or attempting to contain political violence, some governments have used the death penalty against leading advocates of reform or against perpetrators of political violence.

In several countries, the courts have played a key role in ending or restricting capital punishment. In its landmark decision in 1995, the South African Constitutional Court abolished the death penalty for murder. In Mali and Malawi, jurisdiction over capital offences was moved from special courts to the regular courts, which apply standards recognized as necessary for a fair trial under the ordinary legal system.

AI's report points out that the death penalty is not just about taking life; it is also a process that entails the infliction of inhuman or degrading treatment. In most African countries which retain the death penalty, condemned prisoners are kept in solitary, unsanitary cells and allowed only very short daily recesses from their cells. In Somalia, under prison regulations of 1976, condemned prisoners were kept permanently chained by the hands and legs. The Commissioner for Human Rights and Administrative Justice in Ghana, Emile Short, after a tour of prisons there, was reported to have said in 1996 that "the death penalty...violates the constitution and those who are sentenced to death go through mental torture. It must be abolished."

(**AI** report entitled *Africa: A New Future without the Death Penalty* (AI Index AFR 01/03/07))

UN SPECIAL RAPPORTEUR SAYS "NO RIGHT TO CAPITAL PUNISHMENT"

In his report to the 1997 session of the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reiterated his views on the desirability of abolishing the death penalty.

Reviewing developments in 1996, the Special Rapporteur welcomed the abolition of the death

penalty in Belgium while noting with concern the expansion of its scope in Estonia and Libya. He expressed regret that executions were resumed after many years in Bahrain, Comoros, Guatemala, Thailand and Zimbabwe.

As in previous years, the Special Rapporteur reiterated the importance of ensuring the highest standards of fair trial in capital cases and cited reports of death sentences imposed in a number of countries after proceedings falling short of international norms for a fair trial. He said he was disturbed by reports of the secrecy surrounding the death penalty in a number of countries, particularly Belarus, China, Kazakhstan and Ukraine.

Referring as a "preoccupying issue" to the decisions by some condemned prisoners not to appeal to a higher court or request clemency, the Special Rapporteur stated that he agreed with the recommendation in resolution 1989/64, adopted by the UN Economic and Social Council on 24 May 1989, that UN member states provide for mandatory appeals or review with provisions for clemency or pardon in all capital cases.

The Special Rapporteur stated that "given that the loss of life is irreparable", he "emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life." He noted that "while there is a fundamental right to life, there is no right to capital punishment."

(Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur... UN document No. E/CN.4/1997/60, 24 December 1996)

AI CALLS ON SOUTHEAST ASIAN COUNTRIES TO HALT EXECUTIONS

Although more than 20 countries and territories worldwide have abolished the death penalty for ordinary crimes or for all crimes since 1989, the nations of the Association of Southeast Asian Nations (ASEAN) - Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Thailand and Viet Nam - are a notable exception to this trend. All retain the death penalty for a wide variety of crimes and in some countries, particularly Singapore and Viet Nam, the number of executions is believed to have risen sharply in recent years.

The governments of these nations do not release adequate information about judicial executions carried out in their countries, nor about prisoners awaiting execution. In several of the countries executions have been carried out in secret.

AI published a report in January 1997, entitled *Against the Tide: the Death Penalty in Southeast Asia* (AI Index ASA 03/06/96). It contains disturbing information on prisoners who have been sentenced to death after unfair trials and reveals that some of those executed may have been innocent of the crimes for which they were convicted. The report also provides information on death penalty laws and practice in each of the ASEAN countries.

INTERNATIONAL TREATIES

Russia signed Protocol No. 6 to the European Convention on Human Rights on 17 April 1997 and **Ukraine** signed the Protocol No. 6 on 5 May 1997.

Twenty-four countries have now ratified Protocol No. 6. Eight other countries have signed the protocol, indicating their intention to become parties at a later date.

NEWS IN BRIEF

CHILE - A bill calling for the abolition of the death penalty was defeated by 22 votes to 19 on 3 June in a surprise vote by the Senate (see **DP News** September 1996). The bill, which had to meet criteria set

down by the Constitutional Court, had not been expected to be ready for a vote until later this year.

EL SALVADOR - Plans by the ruling Nationalist Republic Alliance (ARENA) to seek the ratification of an amendment to the constitution, which would have extended the use of the death penalty for certain common crimes, were abandoned in April (see **DP News** December 1996). The initiative was dropped after the March 1997 Legislative Assembly elections when it became evident that ARENA did not command sufficient support in the Assembly to ensure ratification. However, ARENA made it clear that, although it will not seek ratification of the amendment during the life of the current parliament, it continues to support reinstatement of the death penalty.

ESTONIA - Following an amendment by parliament to the criminal code in December 1996 which introduced life imprisonment as an alternative sentence to the death penalty for serious crimes, the State Court pronounced the country's first life sentence in March. The prisoner, Andrey Antonov, who had been convicted of murder, had been sentenced to death in November 1996 but the State Court commuted the sentence.

IRAN - Two men sentenced to death for apostasy had their death sentences confirmed by the Supreme Court reportedly in January. Dhabihullah Mahrami and Musa Talibi are both Baha'is, a religious minority which is not recognised in Iran. Both men were sentenced to death in 1996 for reverting to the Baha'i religion after converting to Islam.

UKRAINE - President Kuchma commuted two death sentences in March, the first commutations since early 1996. Andrey Yevtemy and Sergey Vysochansky both had their death sentences for premeditated murder commuted to 20-year terms of imprisonment. In a letter to **AI** written by the mother of Sergey Vysochansky, who it was alleged had been subjected to psychological pressure by a police informant held in the same cell, the embassies of Canada, France, the Czech Republic and USA among others were cited as having intervened to prevent his execution

In an unprecedented move, in April 1997, the UN Committee against Torture (CAT) expressed its concerns over the continuing executions in Ukraine and the information about confessions extracted under duress, leading to the death penalty. The Committee recommended that the Ukrainian authorities institute a permanent moratorium on executions, and sign and ratify Protocol No. 6 of the European Convention on Human Rights and Fundamental Freedoms, relating to the abolition of the death penalty (see "International Treaties" above).

ZAMBIA - has carried out its first executions since 1989: eight men were executed secretly at the end of January at Mukobeko Maximum Security prison. **AI** only learned of the executions weeks after the event. Those executed had been under sentence of death for as long as 15 years. To date, the government has not released any details of those executed such as names, age or the offences for which they were convicted. More than 140 other prisoners are currently under sentence of death in the country.

BOOKS AND ARTICLES

La pena de muerte y su abolición en España, edited by AI Spanish Section, Madrid, Los Libros de la Catarata, 1995, ISBN 84-8198-121-4. This book includes essays on the death penalty in wartime, a study of the death penalty in Spain in the 17th and 18th centuries, and an account of AI's campaign for the abolition of the death penalty under the Spanish military penal code.

Christianity and the Death Penalty: Is the Current Death Penalty System Good? by the Korean Presbyterian Church Committee for Abolition of the Death Penalty, South Korea, Koomran, September 1996. The book begins with an historical look at the death penalty and how it relates to Christianity, goes on to explore its legal implications and then presents various arguments for and against its abolition.

The Death Penalty in America: Current Controversies, edited by Hugo Adam Bedau, New York, Oxford University Press, 1997, ISBN 0-19-510438-2, price \$35. Since the first edition appeared in 1964, *The Death Penalty in America* has been one of the most important source books on the subject. The editor, Professor Hugo Adam Bedau, has written many books and articles on the death penalty and has

participated in public debates and abolitionist efforts over three decades.

This fourth edition contains useful new chapters, including a review of literature on the "deterrence" question by William C. Bailey and Ruth D. Petersen.

Serious Crime and the Requirement of Respect for Human Rights in European Democracies. Proceedings of the seminar organised by the Secretariat General of the Council of Europe in cooperation with Intercenter of Messina (Italy), Taormina, Italy, 14-16 November 1996. Council of Europe Publishing, 67075 Strasbourg, Cedex, France, 1997, ISBN 92-871-3289-5. This report reproduces the written and oral statements made at the seminar in Taormina, where the death penalty was a major item of discussion (see **DP News** December 1996).

"War Crimes, Crimes against Humanity and the Death Penalty", by William A. Schabas. *Albany Law Review*, Volume 60, No. 3, 1997, pp. 733-770. The author begins: "There can be no more dramatic evidence of the progress and evolution of human rights norms than in the fact that the first international war crimes tribunals, created in the aftermath of the Second World War, made widespread use of the death penalty and that their successors, created by the Security Council in 1993 and 1994, prohibit it.". He goes on to describe the use of the death penalty in the war crimes tribunals created after the Second World War, the issue of the death penalty in the evolution of an International Criminal Court, and the exclusion of the death penalty from the International Criminal Tribunals for the former Yugoslavia and Rwanda. There is also a short section on the death penalty for war crimes and crimes against humanity in domestic legislation.

"While there is a fundamental right to life, there is no right to capital punishment." -UN Special Rapporteur on extrajudicial, summary or arbitrary executions. (See story, page 2)