

## DEATH PENALTY NEWS September 2006

### A BULLETIN ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

#### PHILIPPINES ABOLISHES THE DEATH PENALTY

On 7 June the Philippine Congress repealed Republic Act 7659 from December 1993 which had amended the penal code to allow for the death penalty, and approved legislation abolishing the death penalty for all crimes. President Gloria Macapagal Arroyo signed the legislation into law on 24 June, making the Philippines the 25th country in the Asia-Pacific region to end capital punishment in law or practice.

In April, President Arroyo had commuted over 1,200 death sentences to life imprisonment in what is thought to be the world's largest ever mass commutation.

The Philippines had previously abolished the death penalty in 1987, when they became only the second country in the region to do so for all crimes. However, President Fidel Ramos reintroduced the death penalty in late 1993 for 46 separate offences. Executions resumed in 1999 until former President Estrada announced a moratorium in 2000 which President Arroyo maintained throughout her presidency.

#### DEATH PENALTY STATISTICS

##### Abolitionist and retentionist countries

Abolitionist for all crimes	88
Abolitionist for ordinary crimes only	11
Abolitionist in practice	30
Totally abolitionist in law or practice	129
<u>Retentionist</u>	68

#### CHILD OFFENDER EXECUTED IN PAKISTAN

Mutabar Khan was executed in Peshawar Central Prison on 13 June. He was sentenced to death for murder in 1998 and all his appeals to overturn the sentence were dismissed by superior courts.

As Mutabar Khan was reportedly aged 16 when he was arrested in 1996, he should have benefited from the Presidential Commutation Order of 2001, which overturned the death sentences of all juveniles then on death row. However, this commutation did not apply to him because of a dispute about his age.

On 6 June, a 15 day stay of execution granted by the Home Department expired. Two days earlier, the family of the man he is said to have killed agreed to pardon him in return for compensation. However, they retracted the pardon and Mutabar Khan lost his battle to stay alive.

Pakistan ratified the Convention on the Rights of the Child in 1990 thereby undertaking not to execute anyone for an offence committed when they were under the age of 18. Since then, four child offenders have been executed in the country, the last one in 2001.

Pakistan's rate of executions is one of the highest in the world. Throughout the country, those from poorer backgrounds are widely denied basic rights at all stages of the judicial process while many wealthier prisoners are able to escape the death penalty under provisions of the *Qisas* and *Diyat* Ordinance that allows families of murder victims to accept compensation and pardon the offender.

Three men were executed in Gujranwala central jail in the province of Punjab on 4 July; they had been convicted of murder. Five men were hanged on 12 July in Sialkot district jail also in Punjab: all had been convicted of gang rape during an armed robbery. A further four men, belonging to the same family, were executed on 20 September in Bahawalpur for the murder of five members of another family.

Mirza Tahir Hussain, a UK citizen, was convicted of murder in 1989 but had his conviction overturned on two occasions, once shortly after his initial conviction in 1989 and again in 1996 when he was acquitted of all charges against him. A week after his acquittal, his case was referred to the Federal Shari'a Court to consider charges from the original case, including robbery involving murder, which fall under Islamic offences against property law. The entire case was reopened and in 1998 the Federal Shari'a Court sentenced Mirza Tahir Hussain to death, despite the judgement being split with two judges in favour and one against this decision.

Mirza Tahir Hussain's execution has been postponed at least three times, most recently when President Pervez Musharraf granted a stay of execution until 1 October. However, no executions are carried out during the religious month of Ramadan which ends this year on 23 October.

Pakistan retains the death penalty by hanging for a range of offences including murder, drug-smuggling, rape, attempted murder, kidnapping and acts of terrorism. In 2005, 52 people were executed. So far this year 70 executions have been reported (60 of them in Punjab province) and at least 250 people have been sentenced to death. More than 7,400 men and 36 women are under sentence of death in prison.

### **STONING TO DEATH REPORTED IN IRAN**

Executions by stoning, which is prescribed by Article 83 of the Iranian Penal Code for adultery by a married person, may have resumed in Iran

According to reports, Abbas Hajizadeh and Mahboubeh Mohammadi were executed by stoning in a cemetery in Mashhad in May. They were convicted of murdering Mahboubeh Mohammadi's husband, and of adultery; a charge which carries the penalty of execution by stoning. Mahboubeh Mohammadi also reportedly received a 15-year prison sentence which should have been served before she was executed.

The stoning allegedly took place in the Behesteh Zahra cemetery in Mashhad, part of which was cordoned off from the public. More than 100 members of the Revolutionary Guards and Bassij Forces, who had previously been invited to attend, participated. They were not allowed to bring in cameras or mobile phones. Abbas Hajizadeh and Mahboubeh Mohammadi were placed in pre-prepared holes in the ground, after having been washed and dressed in shrouds. Following a reading from the Qu'ran, those present began to stone Abbas Hajizadeh and Mahboubeh Mohammadi, who reportedly took over 20 minutes to die.

The Iranian Penal Code is very specific about the manner of execution and types of stones which should be used. For adultery, the stones used should "not be large enough to kill the person by one or two strikes; nor should they be so small that they could not be defined as stones".

There are reported to be up to nine women and two men currently under sentence of death by stoning in Iran. International standards prohibit execution by stoning which violates Article 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the International Covenant on Civil and Political Rights (ICCPR) to which Iran is a party. Further, as a state party to the ICCPR, Iran has made an explicit and unreserved commitment under article 6(2), that if it imposes the death sentence this will be "only for the most serious crimes", and that the full range of procedural rights in the ICCPR apply. Amnesty International also opposes the criminalization of consensual adult sexual relations in private.

### **EGYPT EXECUTES TWO BROTHERS AFTER UNFAIR TRIAL**

Ezzat and Hamdi Ali Hanafi from the Nile village of Nekheila were hanged on 18 June in Alexandria. They were sentenced to death after an unfair trial before an (Emergency) Supreme State Security Court. These are exceptional courts created under the state emergency, in force since 1981, where basic principles for a fair trial, including the right to appeal before a higher tribunal, are lacking.

The brothers had been arrested in March 2004 and reportedly convicted, along with 67 others, of using land belonging to the state to grow drugs, of resisting arrest and of using hostages as human shields.

Ezzat and Hamdi Ali Hanafi are the first defendants known to have been executed in Egypt since 2004.

### **US SUPREME COURT ISSUES TWO JUDGEMENTS**

On 29 June 2006, the US Supreme Court delivered its judgment in *Hamdan v. Rumsfeld*, thereby halting the US administration's plans to try a selected number of foreign nationals detained in the US Naval Base in Guantánamo Bay before military commissions.

The Supreme Court concluded that the commissions as constituted under a Military Order signed by President Bush in November 2001 were unlawful, as they had not been expressly authorized by Congress, and violated international law and US military law.

On 27 and 28 September, Congress passed the Military Commissions Act of 2006 which, among other things, would allow the President to establish military commissions with the power to sentence "alien unlawful enemy combatants" to death.

On 26 June, the US Supreme Court held in *Sanchez-Llamas v. Oregon* that foreign nationals who were not advised of

their rights under the Vienna Convention on Consular Relations are not entitled to the suppression of their statements to the police as a remedy for the treaty violation. The Court also ruled that state courts may apply procedural barriers to prevent the consideration of Vienna Convention claims that were not raised by the defendant at trial or in the earliest stages of appeal, contradicting an earlier decision by the International Court of Justice (see **DP News**, June 2004).

### **POSSIBLE EXPANSION OF SCOPE OF DEATH PENALTY IN PERU**

Peru's Congress is considering three draft bills which would extend the scope of the death penalty. The first includes the rape of children under the age of nine, the rape of physically or mentally disabled people, and the rape of children between nine and 18 years old where the rape is followed by murder of the victim. The second two bills include the rape of children under the age of seven where the rapist also kills the victim.

The draft bills, submitted on 11 and 19 September by the *Unidad Nacional* (National Unity Party) and the ruling APRA party respectively, would involve the expansion of Article 140 of Peru's Constitution (1993) which allows for the death penalty only for those convicted of treason in time of war and for terrorism. Two of the draft bills also suggest the withdrawal of Peru from the American Convention on Human Rights (ACHR), which prohibits the extension of its state parties' death penalty laws.

If Peru were to expand the death penalty by passing this legislation it would be in violation of Article 4(2) of the American Convention on Human Rights (ACHR), also known as the Pact of San José, which Peru ratified in 1978. Article 4(2) states that "the application of ...[the death penalty] should not be extended to crimes to which it does not presently apply". In 1983 the Inter-American Court of Human Rights issued an advisory opinion emphasizing that "the Convention imposes restrictions designed to delimit strictly its application and scope, in order to reduce the application of the penalty to bring about its gradual disappearance..."

### **JORDAN REDUCES SCOPE OF DEATH PENALTY**

In early August, the government announced it had approved draft legislation which will reduce the number of crimes which carry the death sentence including drug-related offences, possession of illegal firearms and explosives. There are currently 16 crimes punishable by death.

King 'Abdallah II bin al-Hussein of Jordan stated in an interview last December (see **DP News** January 2006) that Jordan hoped to modify their penal code and "could soon become the first country in the Middle East without capital punishment". But Saleh Armouti, President of the Jordanian Bar Association, was quoted by IRIN news agency stating the Bar's opposition to the reduction "This is absolutely unacceptable. Dubious human rights groups should not interfere in our legal system."

Eleven executions were reported to have been carried out in Jordan in 2005.

### **INDONESIA: FIRST EXECUTIONS SINCE 2005**

Fabianus Tibo, Domingus da Silva and Marinus Riwu were executed by firing squad on 22 September at a secret location in central Sulawesi province. The men were sentenced to death in April 2001 for premeditated murder and inciting riots, following ethnic and religious violence in the district of Poso, central Sulawesi, in May 2000.

The case had attracted both local and international attention. The European Union condemned the executions and requested a moratorium be instituted. Pope Benedict XVI made a personal appeal for clemency to President Susilo Bambang Yudhoyono on 11 August.

At least 90 people are believed to be under sentence of death in Indonesia. The last previous execution took place in May 2005.

### **SHARP RISE IN EXECUTIONS IN IRAQ**

Executions carried out by the Iraqi authorities increased sharply in the month of September. A few days following the hand-over of the notorious Abu Ghraib prison from US military control to the Iraqi authorities, the Iraqi Prime Minister Nuri al-Maliki announced that 27 people were hanged in Baghdad on 6 September. The 27 individuals reportedly came from a number of Iraq's 18 provinces and included one woman. Only two of those executed were convicted of terrorism, the other 25 were convicted of murder and kidnap, according to an Iraqi Justice Ministry official quoted in the London *Daily Telegraph*.

On 21 September 11 people were hanged in the city of Arbil, in the Kurdish-controlled area of northern Iraq.

These were reportedly the first executions to be carried out in the Kurdish region since 1992. The 11 men, said to be members of the armed group Ansar al-Islam, had been sentenced to death in March after being convicted of killings and kidnappings in the Kurdish region during 2003 and 2004.

Since the re-imposition of the death penalty in Iraq in August 2004, scores of people have been sentenced to death and reports suggest that there are more than 200 people in prison awaiting execution. Exact figures on convictions and executions are not readily available and are not always made public, but it is estimated that approximately 50 individuals have been executed since the reimposition of the death penalty in 2004. The first executions were carried out on 1 September 2005 when three people were executed, and 13 others were executed on 9 March 2006, all for "terrorist activities".

#### **\*NEWS IN BRIEF**

**France:** ERRATA The paragraph which appeared in the May 2006 issue of the **DP News** should have read as follows: On 3 January President Jacques Chirac announced to the Constitutional Council his intention to include abolition of the death penalty in the French Constitution. This announcement was in response to a decision by the Constitutional Council on 13 October 2005 according to which a revision of the Constitution is needed in order for France to be able to sign and ratify the UN Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

In 2002 France signed Protocol No 13 to the European Convention on Human Rights but has yet to ratify it.

**Moldova** - On 29 June the Moldovan parliament voted unanimously to delete from the constitution Clause 3 of Article 24 which provided for the death penalty in exceptional cases, thus abolishing the death penalty in law. This was approved by the President on 10 July.

On 20 September Moldova ratified the Second Optional Protocol to the ICCPR.

Moldova abolished the death penalty in 1995. The last execution took place in 1991.

**Poland** – On 28 July the Polish President, Lech Kaczynski made a speech on radio calling for the restoration of the death penalty in Poland and throughout Europe. On 2 August, the League of Polish Families, a minority party in Poland's governing coalition, announced a Europe-wide campaign to restore the death penalty and for a referendum on its reintroduction in Poland.

A European Commission spokesman responded to the statements on behalf of the European Union on 3 August stating that "the death penalty is not compatible with European values." In an open letter to President Kaczynski, the President of the Parliamentary Association of the Council of Europe wrote that "... the death penalty has no place in the criminal justice system of any modern, civilised country".

**United Arab Emirates** – An appeal court in June commuted Shahin 'Abdul Rahman's death sentence by stoning to imprisonment for a year followed by deportation to his own country of Bangladesh. A married man, he had been sentenced to death for adultery by an Islamic court in Fujairah.

**United States** – The American Bar Association on 8 August unanimously passed a resolution on the death penalty and mental illness which states that "defendants should not be executed or sentenced to death if, at the time of the offence, they had significant limitations in ...their behaviour ... resulting from mental retardation, dementia or a traumatic brain injury." This follows similar resolutions previously passed by the American Psychological Association and the American Psychiatric Association.

### **International Treaties**

Since the beginning of the year, the **Second Optional Protocol to the International Covenant on Civil and Political Rights** has been ratified by Turkey (2 March), Moldova (20 September) and Andorra (22 September).

Philippines signed the Protocol on 20 September.

**Protocol No. 13 to the European Convention on Human Rights** was ratified by Netherlands on 10 February, Turkey on 20 February and Luxembourg on 21 March.

Armenia signed the Protocol on 19 May.

Updated lists of signatures and ratifications are available on:

[www.amnesty.org/pages/deathpenalty-treaties-eng](http://www.amnesty.org/pages/deathpenalty-treaties-eng)

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