

5 June 2001

AI Index AMR 51/078/2001 - News Service Nr. 97

USA: Time to recognize international "standards of decency"

Texas has been trying to kill John Paul Penry for over two decades. Its latest attempt floundered yesterday when the US Supreme Court reversed John Penry's death sentence, just as it had 12 years earlier. The question remains, will Texas go for a third death sentence against this man with the mind of a child and an IQ between 51 and 63? It is a sad reflection on the United States that the answer to this question could yet be yes.

In the 21 years since John Penry was first sentenced to death, more than 50 countries have abolished the death penalty, bringing to 108 the number which have rejected this punishment in law or practice. The trend is clear. The world is inexorably turning its back on the judicial killing of anyone, let alone the mentally impaired.

Exactly one month before the Supreme Court overturned John Penry's first death sentence in June 1989, the United Nations adopted a resolution calling on member states to exempt the mentally retarded from the death penalty. While some US states have made such a move in recent years, such executions remain constitutional in the United States.

There have been about half a million murders in the USA since 1977. In the same period, 716 men and women have been executed. This is a punishment, these bare statistics suggest, reserved for the "worst of the worst" of murderers in the USA. But how can that be true if, for example, learning disabled prisoners are among the condemned? How can a punishment that assumes absolute culpability on the part of the defendant and is reserved for a tiny percentage of defendants, justifiably be directed at individuals who rank in the bottom one or two per cent of the population in terms of intellectual functioning?

Later this year, in a North Carolina case, the Supreme Court will consider whether "standards of decency" in the USA have evolved to the point where the

execution of the learning disabled is unconstitutional. The Court's ruling is expected sometime in 2002. But there is no need for the country's leaders to wait for this opinion before acting. It is time they took it upon themselves to measure US standards of decency against the aspirations of the international community on the death penalty. And to acknowledge that the comparison is a damaging embarrassment to the United States, and an affront to the human rights standards that it has so often claimed to support.

Texas can begin such a process by announcing that it will not seek a third death sentence against John Paul Penry. Its Governor, Rick Perry, can sign the bill sent to him by the state legislature prohibiting the death penalty against individuals with mental retardation. Having done that, he should begin to lead his state away from the death penalty entirely.

Governor Perry's predecessor should do the same at federal level. President George W. Bush should announce an immediate moratorium on federal executions. He should do so before the first such execution since 1963 takes place later this month in the face of the government's own evidence that the federal capital justice system is characterised by similar lottery-like qualities as its state level counterpart.

For the execution of mentally impaired prisoners like John Paul Penry is just the tip of a human rights scandal that deserves the growing international condemnation it is receiving and demands human rights leadership at the highest level. Prosecutorial misconduct, inadequate legal representation, discrimination, and the use of the death penalty against children and the mentally ill, remain aspects of this punishment. But while some of these practices can be remedied by legislation, this is a punishment that never be cleaned of its cruelty and freed from its potential for irrevocable error. What is more, the death penalty can offer no constructive contribution to society's efforts to confront violent crime and those victimized by it. It can never be anything other than a calculated imitation of what it seeks to condemn, the deliberate taking of human life.

Next month will see the 25th anniversary of the US Supreme Court decision that allowed executions to resume. It is time for the USA to call a halt to its fatally flawed experiment with the machinery of death.

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Last updated : June 5