

DEATH PENALTY NEWS

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

SPAIN BECOMES WHOLLY ABOLITIONIST

On 28 November Spain became totally abolitionist when a bill signed by the King removing the death penalty from the Military Penal Code was published in the *Boletín Oficial del Estado*, the official gazette. The Senate had unanimously agreed to the bill on 15 November. Spain is the latest in a series of countries which, having abolished the death penalty for common crimes, have gone on to remove it for all crimes.

The death penalty had been in continuous use in Spain until 1932 when it was abolished for common criminal offences during the reform of the Penal Code under the Second Republic. It was fully reintroduced for murder and other common crimes by the government led by General Franco in 1938. The last executions in Spain took place on 17 September 1975 when five men convicted of murdering public order officials were shot by firing squad. Three years after General Franco's death a new constitution was approved by popular referendum in December 1978 which abolished the death penalty for peacetime offences but retained it for offences under the Military Penal Code in time of war.

For years, Amnesty International groups and others have been lobbying the parliaments of the 10 autonomous communities of Spain to send abolition petitions to the central parliament (*cortes*), which is made up of the Congress of Deputies and the Senate. A motion in 1986 by parliamentary members to remove the death penalty from the Military Penal Code was defeated but in November 1994 the Senate unanimously passed a bill asking the government to abolish the death penalty. On 25 April 1995 the Congress of Deputies passed three bills for abolition which it merged into a proposal of law on 18 September. It is this which, after the Senate's

final approval, has been signed by the King. The extraordinary degree of political consensus for the abolitionist cause was evidenced by the fact that no votes against abolition were cast in the latest vote either in the Congress or in the Senate.

Spain's action brings to 55 the number of countries in the world which have abolished the death penalty for all crimes.

The garotte: a star-shaped knife which severs the spinal cord. As recently as March 1974 two men convicted of murder by a military court were executed in Spain by the garotte.

UAE: PHILIPPINE MAID SPARED

In a case in the United Arab Emirates which attracted international attention, the death sentence on a Philippine maid, Sarah Balabagan, reportedly aged 16, was quashed on 30 October and her sentence was reduced to one year's imprisonment and 100 lashes. The appeal court in the oasis town of al-Ain in Abu Dhabi also ordered her to pay a fine of 150,000 dirhams (about US\$40,000) to relatives of the man she stabbed to death, her employer, Mohammed al-Baloushi, who she alleged had raped her.

In June of this year an earlier trial on the same charge had issued a verdict of manslaughter and sentenced her to seven years' imprisonment and ordered her to pay blood money to Mr al-Baloushi's relatives, while also awarding her 100,000 dirhams (US\$27,000) compensation for rape. For reasons which are unclear, the President of the UAE, al-Sheikh Zayed bin Sultan al-Nahayan, reportedly ordered the retrial of the case. On 15 September an Islamic court found Sarah Balabagan guilty of premeditated murder and sentenced her to death. Her lawyers appealed the decision and following the decision of the relatives of the deceased to give up their right under Islamic law (*Shari'a*) to request her execution, the appeal court commuted the death sentence.

Sarah Balabagan

There was outrage in the Philippines at the death sentence, which was imposed only a few months after another Philippine woman, Flor Contemplacion, had been hanged for murder in Singapore. There was considerable international concern over the case and worldwide appeals came from heads of state, including the President of the Philippines. Appeals are continuing for clemency against Sarah Balabagan's sentence of 100 lashes.

BELGIUM TO ABOLISH DEATH PENALTY

The Belgian Council of Ministers approved the text of a draft bill on 10 November to abolish the death penalty for all offences in both peace- and wartime. The bill is expected to be approved by the parliament in the first half of 1996.

A press release issued by the Council of Ministers stated that apart from moral and ethical considerations, retaining the death penalty posed practical problems such as the refusal of certain countries to extradite criminals to Belgium because of the possibility they might face the death sentence. The draft bill also addresses the structure of penalties by replacing the death penalty with life imprisonment and life imprisonment with detention for 20 to 30 years.

Belgium is the last Western European country which retains the death penalty in law for common crimes, apart from Turkey. The last person to be executed in Belgium was shot by a firing squad in 1950 for war-related crimes.

UKRAINE: MORATORIUM ON EXECUTIONS

Ukraine has agreed to stop executions under a commitment made in connection with its joining the Council of Europe on 9 November. However, the commitment has come under question in Ukrainian government circles.

The commitment was formally noted on 26 September by the Parliamentary Assembly of the Council of Europe when the Assembly voted to

recommend Ukraine for full membership of the Council. At a meeting in Kiev on 17 October between Parliamentary Assembly delegates and government officials, the Minister of Justice, Serhiy Holovatiy, said that the moratorium on executions would have immediate effect and that no executions had been carried out since September. But the head of Ukraine's parliament, Oleksander Moroz, later claimed neither the parliament nor the majority of Ukrainians supported abolition. The newly-appointed Procurator General, Grigory Vorsinov, reportedly claimed that executions are continuing in two regions of the country and said that he personally had filed a report on an execution carried out recently in Dnepropetrovsk region. He is seeking clarification.

Until this year, Ukraine had one of the highest rates of execution in the world with an official total of 60 prisoners executed in 1994.

MACAO: ABOLITION TO CONTINUE

The death penalty will not be reintroduced in Macao, a Chinese territory administered by Portugal, when it comes under Chinese rule in 1999, according to *Radio Renascença*, a radio station in Lisbon. The radio reported on 9 November that the Chinese authorities have accepted Macao's revised penal code. The code had earlier been approved by the Sino-Portuguese Joint Liaison Group, which deals with issues surrounding the transfer of Macao to Chinese administration. The new legislation, which follows four years of negotiations to update the code of 1886 which abolished the death penalty, also prohibits life imprisonment.

Earlier on 11 October the Supreme Court of Macao rejected extradition requests from China for two men, Yeung Yuk-leung and Lei Chan-wa, who might have faced the death penalty had they been extradited. This reversed its decision in April 1994 that Yeung Yuk-leung should be extradited and follows an appeal Yeung Yuk-leung's lawyers had made to Portugal's Constitutional Court which ruled in July this year that the extradition would be unconstitutional. The ruling will have implications for at least four other people awaiting a decision on extradition to China.

CHINA: DEATH PENALTY FOR FRAUD A new law was published in November which provides the death penalty for serious value-added tax (VAT) fraud, according to Reuters news agency. Under the new law, the theft of genuine VAT receipts or the production and trading of false

receipts may be punishable by life imprisonment or death. The severity of the sentence will depend on the amount of money involved in the fraud.

NIGERIA EXECUTES OGO NI LEADERS

The playwright and environmentalist Ken Saro-Wiwa and eight other members of the Movement for the Survival of the Ogoni People (MOSOP) were executed on 10 November despite worldwide appeals for clemency. The executions were carried out after the military Provisional Ruling Council unanimously confirmed the death sentences imposed on 30 and 31 October after two simultaneous trials by a federal Civil Disturbances Special Tribunal in Port Harcourt, the capital of Rivers State.

Ken Saro-Wiwa and the eight others were convicted of the murder in May 1994 of four leading MOSOP members. The trials were widely condemned as grossly unfair and politically motivated. The special tribunal, which falls outside the normal judicial system, was composed of two judges and a military officer nominated by General Sani Abacha, Nigeria's military ruler. There was no right of appeal to a higher independent court. The defendants, who maintained they were innocent, had been detained incommunicado for at least eight months before being charged. They alleged they had been tortured or ill-treated while in military custody.

Since the executions Nigeria has faced condemnation from numerous governments, world leaders, Nobel prize winners and environmental and human rights groups, suspension from the Commonwealth and calls for trade sanctions and boycotts.

Ken Saro-Wiwa

NEWS IN BRIEF

RWANDA - The death sentences imposed on two officers of the Rwandese Patriotic Army on 11 May "are yet to be confirmed and the judicial procedure...has not yet been exhausted", according to the Minister of the Interior and Vice Prime Minister, Colonel Alexis Kangarungwe, in a letter to AI. The officers had been convicted of involvement in an attack on the Tanzanian Embassy in which two night guards were killed. It is not known when a decision on their appeal can be expected.

AI is concerned that if these death sentences - the first passed by a military tribunal since the present government came to power - are confirmed by the Supreme Court they may herald a widespread use of the death penalty in both military and civilian courts.

ST LUCIA - The Caribbean island of St Lucia has carried out its first execution in nine years. Joseph Solomon, who had been sentenced to death for murder, had been pardoned in 1995 after serving 14 years of a life imprisonment sentence for a previous murder. He was executed on 17 October, reportedly by a fellow prisoner acting as the hangman. A day after the execution, the Minister of Legal Affairs and Attorney General, Lorraine Williams, told the Caribbean News Agency that in her view hanging would have a deterrent effect on the rise in crime in St Lucia. The Attorney General reportedly stated that there are currently eight or nine prisoners on death row, most of whose appeals are still pending.

TRINIDAD AND TOBAGO - The Judicial Committee of the Privy Council (JCPC) in London, which serves as the final court of appeal for certain countries in the British Commonwealth, ruled on 6 November that delay on death row justifies commutation of a death sentence to life imprisonment. The council was hearing the appeal of Lincoln Anthony Guerra, who was convicted of murder and sentenced to death in Trinidad and Tobago on 18 May 1989. He had appealed against his conviction in June 1989 but it was not until March 1994 that his petition for leave to appeal to the JCPC was dismissed. The warrant for his execution had been read to him on

24 March 1994 at 2:40pm for execution the following day at 7am.

In the judgment, the JCPC held that to execute the appellant after a lapse of four years and 10 months between the imposition of a death sentence and completion of the entire domestic appellate process would constitute cruel and unusual punishment contrary to the Trinidad and Tobago Constitution. Furthermore, the giving of less than 17 hours' notice to the appellant of his execution constituted a breach of his constitutional rights, the JCPC held.

USA - The appeal by former Black Panther member Mumia Abu-Jamal to have his 1982 conviction for murder overturned was rejected on 15 September by the judge who originally sentenced him. Judge Albert F Sabo wrote in a 150-page opinion that Mr Abu-Jamal "fails to prove by a preponderance of evidence each and every claim presented to this court." A lawyer for Abu-Jamal stated the defence would probably file a further notice of appeal with the Pennsylvania Supreme Court.

Mumia Abu-Jamal received a stay of execution on 7 August (see Death Penalty News September 1995).

PAX CHRISTI - Pax Christi, the international Catholic peace movement, has adopted a resolution calling on the church to reformulate the statement on the death penalty in the Catechism of the Catholic Church issued in 1992 to reflect its subsequent stronger reservations as expressed in the Papal Encyclical *Evangelium Vitae* (see Death Penalty News June 1995). In the resolution, Pax Christi

"1) Strongly condemns the death penalty, which Pax Christi believes to be incompatible with any understanding of the sacred value of human life and more precisely of the mind of Christ.

"2) Welcomes the important progress that has been made on the issue of the death penalty in *Evangelium Vitae*.

"3) Encourages the Holy See to reformulate what is written about the death penalty in the Universal Catechism of the Catholic Church, in order to reflect the stronger reservations about the death penalty in the encyclical *Evangelium Vitae* by many Episcopal Conferences.

"4) Calls with emphasis upon all Pax Christi sections to use their influence so as to steer government policies and legal practice away from the death penalty."