

## AI NEWSLETTER AUGUST 1995

### August '95 Focus

#### United States of America:

The United States of America (USA) is repeatedly flouting international human rights standards. Violations include the use of the death penalty, brutality and excessive force by police officers, and torture and ill-treatment in prisons. The most common victims in many areas are members of ethnic minorities.

The USA ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992 and yet the violations continue and even increase. In March 1995 the United Nations Human Rights Committee, which monitors states' compliance with the ICCPR, met to consider the USA's initial report on implementation of the treaty. AI sent a report\* detailing widespread violations in the country.

In its comments of 6 April 1995, the Human Rights Committee expressed concern about the excessive number of offences punishable by death in a number of states and the expansion of the death penalty under federal law; it also "deplored" the US practice of executing offenders under 18 at the time of the crime, and regretted the lack of protection from the death penalty of the mentally retarded.

Deaths in custody and ill-treatment by the police, racial discrimination, conditions of detention in maximum security prisons, and the "serious infringement of private life" in some US states which criminalize sexual relations between consenting adults of the same sex in private, were also exposed by the Committee as matters of serious concern.

#### Reservations

The Human Rights Committee recommended that the USA withdraw its reservations to the ICCPR, which it said were incompatible with its object and purpose. In particular to Article 6(5), where the US Government reserved the right of the US states to execute juvenile offenders; and to Article 7, (prohibiting torture and other cruel, inhuman or degrading treatment), where the US Government considered itself bound only to the extent that cruel, inhuman or degrading treatment met the definition of "cruel and unusual punishment" prohibited under the US Constitution.

AI considers that the above restrictions seriously undermine the rights guaranteed by these treaties. If every government were to ratify treaties only after making reservations to ensure that there is no change in existing state practice, the whole concept of international human rights protection, and the authority of such treaties, would become meaningless. AI has urged the US Government to withdraw the conditions limiting acceptance of its obligations under the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to demonstrate a genuine commitment to human rights. This *Focus* sets out what AI's concerns are and what can be done to address them.

\* See *USA: Human Rights Violations – a summary of Amnesty International's concerns*. (AI Index: AMR 51/25/95).

More than 3,000 prisoners are under sentence of death across the USA and more than 280 prisoners have been executed since capital punishment was reinstated in the 1970s. Currently 38 US states and the federal jurisdiction have the death penalty.

Numerous US studies have shown that murders involving white victims are far more likely to result in death sentences than those involving black victims. There is evidence that black offenders are disproportionately sentenced to death in some judicial districts. Also, many black prisoners on death row were sentenced to death by all-white juries after prosecutors had deliberately excluded black people from the jury pool. Although this practice was ruled unconstitutional in 1985, the law does not apply retroactively to the many prisoners whose sentences had already been confirmed on direct appeal.

Current legal safeguards to prevent and remedy errors in capital cases to ensure that innocent people will not be sentenced to death or executed are inadequate. In October 1993 a Congressional report by the House Subcommittee on Civil and Constitutional Rights listed 48 condemned men who had been freed from death row since 1972. The report blamed inadequate legal safeguards to prevent wrongful executions and listed numerous inherent flaws in the criminal justice system, including racial prejudice, official misconduct, shoddy legal representation, inadequate post-trial review of innocence claims and the politicization of the clemency process. The report concluded: "Judging by past experience, a substantial number of death row inmates are indeed innocent, and there is a high risk that some of them will be executed."

There have been serious incidents of police ill-treatment and excessive force, often towards ethnic minorities, in several major US cities, including New York, Detroit, Miami and Los Angeles. Each year US city and county authorities pay out millions of dollars in damages to the victims of alleged police abuse. However, although there are penalties under both state and federal law for officials who use excessive force or otherwise violate civil rights, police officers have rarely been criminally prosecuted for such offences.

There have been widespread complaints of police brutality in New York where a number of suspects have died in police custody as a result of alleged ill-treatment in recent years. In December 1994 Anthony Baez died from asphyxia during a struggle with police officers after his football had accidentally hit two parked patrol cars. One officer – who had 11 previous complaints of police brutality filed against him – was charged with criminally negligent homicide in the case and the trial was still pending at the time of writing. No police officer in New York City has been convicted of a homicide while on duty since 1977. Overall in the city, complaints against the police are reported to have risen by more than 30 per cent between 1993 and 1994.

"Hogtying" (where a suspect's ankles are bound from behind to the wrists), is used in many cases in the USA. Medical experts have indicated that "hogtying", particularly when someone is placed face down, can severely restrict respiratory movement and is inherently dangerous, especially when a person is under the influence of drugs or in a highly agitated state. The procedure can lead to death from what is known as "positional asphyxia". A study on deaths in custody conducted by the San Diego Police Department in 1992 reportedly recorded more than 90 deaths from "hogtying" across the USA since 1982, but the survey was not comprehensive and the true figure could be higher. According to reports, some police departments have now banned the procedure but it is still used by a number of law enforcement agencies. At least two people died as a result of being "hogtied" by police in Los Angeles in 1993. One was Michael Bryant, an unarmed black barber who was arrested after a car chase in March 1993 and who died after being shot twice with a taser-gun, hit with batons, "hogtied" and placed face down on his stomach in a police car. The Los Angeles Police Department (LAPD) was already under scrutiny following the March 1991 video taped beating by officers of black motorist Rodney King. A report published by AI in 1992 found that the LAPD and the Los Angeles Sheriff's Department regularly resorted to excessive force, particularly in black or latino neighbourhoods, and this had gone unchecked for many years.

More than a dozen black youths, most of them teenagers, were shot dead or injured by police officers in disputed circumstances in New Jersey between 1990 and 1992. They include Phillip Pannell, an unarmed 16-year-old fatally shot in the back while running away from police officers from Teaneck, New Jersey, in April 1990. The officer was acquitted on a state charge of reckless manslaughter by an all-white jury in 1992. The US Justice Department reviewed the case and in 1994 decided not to file federal civil rights charges against the officer involved.

Although most firearms incidents involve state police (which are responsible for most law enforcement in the various states), there have been incidents in which federal officials have been

accused of using excessive force. Concern has been expressed about the tactics used by Federal Bureau of Investigation (FBI) agents during the handling of a 51-day stand-off in 1993 between FBI agents and members of the Branch Davidians, a religious community in Waco, Texas, who were believed to have stockpiled weapons. In a final assault on the compound, FBI agents rammed the walls with tanks and pumped CS gas and liquid gas into the compound for three and a half hours. Seventy-five Branch Davidians died, 24 of them children and infants, when the siege ended in fires that were allegedly started by some cult members during the CS gas attacks. Inquiries by the Treasury and Justice Department were critical of the initial raid on the compound but cleared the FBI of any blame for events during the siege and the final assault. AI wrote to the Justice Department expressing concern at the prolonged use of CS gas during a final assault on the compound, but the government did not reply.

Ill-treatment in prisons is widespread throughout the USA. In December 1994 it was reported that the Texas prison authorities were investigating allegations that some 30 prison guards had systematically ill-treated inmates in four Texas prisons.

Michael McCoy, a prisoner in Terrell Unit, near Livingston, was reportedly beaten to death by guards on 7 November 1994. AI has received a letter from prisoners alleging that two guards entered McCoy's cell and kicked him to death in retaliation for his having spat at a female guard earlier during the day; no one intervened and his body was reportedly not found until the next shift of guards came on duty. Two guards were subsequently charged with his murder and their trial was still pending at the time of writing. Four other guards were charged with assaulting another prisoner in the same unit on the same date.

In January 1995 a federal judge issued a 345-page opinion condemning what he described as a pattern of brutality and neglect at Pelican Bay State Prison, California, a high-security prison complex which opened in 1989. The ruling called upon the state of California to discontinue practices which included repeated assaults on prisoners; a pattern of punitive violence towards prisoners during "cell extractions" (the forcible removal of prisoners from cells); the punitive shackling of inmates to toilets or other cell fixtures; and grossly inadequate medical and mental health care. The ruling also found that guards resorted to firearms too quickly and in circumstances that did not warrant the use of lethal force. The ruling referred to a number of individual cases including the case of Vaughn Dortch, a mentally disturbed

prisoner who suffered third-degree burns over one third of his body after guards forced him, handcuffed behind his back, into a bath of scalding water. The judge found that guards were rarely disciplined for excessive force and that their accounts of incidents were routinely accepted at face value, ignoring any other evidence.

Women prisoners have also suffered serious violations in custody. In 1993 the US Justice Department opened an investigation into allegations of widespread sexual abuse by guards of inmates at the Georgia Women's Correctional Institution. The abuses, which had reportedly been going on for some years until they were exposed in a lawsuit in 1992, included coercion of inmates into having sex with guards and forcing inmates into guard-run prostitution rings. At least 12 employees were also charged with criminal offences under state law and others were dismissed or transferred.

Another area of serious concern regarding prison conditions is the trend in the USA in recent years towards building super-maximum security institutions, often special units within maximum security prisons. Prisoners in these super-maximum units are often confined for 23 hours a day in sealed, sometimes windowless cells, with no work, training or other programs. The facilities are designed to minimize contact between staff and inmates and prisoners are subjected to regimes of extreme social and often sensory deprivation. In May 1994 AI published a report on H-Unit, a super-maximum

facility opened in 1991 as part of Oklahoma State Penitentiary at McAlester which combines all the above conditions. At least 36 states were reported to have constructed super-maximum units by 1994. AI believes that such conditions violate international standards and amount to cruel, inhuman or degrading treatment.

AI believes that more could be done to prevent abuses by better monitoring and investigation of complaints of ill-treatment, and stronger disciplinary actions against those responsible for the abuses. The organization has urged the federal authorities to take stronger steps to ensure that conditions in state and federal prisons conform to minimum international standards for the humane treatment of prisoners.

The right to freedom of thought and expression is well-established in US law. Nevertheless, AI has regularly worked on behalf of prisoners of conscience in the USA.

The organization has investigated cases in which prisoners convicted of criminal offences in the USA have alleged that they were “framed” on account of their beliefs or origins or that their trials were unfair on political grounds. Although the US criminal justice system contains many procedural safeguards for a fair trial, it has been alleged in some cases that the prosecuting authorities fabricated evidence or knowingly introduced perjured testimony, or that they improperly withheld evidence favourable to the defence. In October 1981 AI published a report calling for a commission of inquiry into FBI intelligence operations which it believed had undermined the fairness of trials of several Black Panther Party members and members of the American Indian Movement in the 1970s. More recently in 1991–1992 AI campaigned for the release of more than 30 military personnel imprisoned for their conscientious objection to the Gulf War.

AI’s work for the release of prisoners of conscience includes individuals who have been imprisoned solely because of their homosexuality, including the practice of homosexual acts in private between freely consenting adults. AI has campaigned for the repeal of discriminatory sodomy laws in the US states of Montana, Arkansas, Missouri, Kansas and Tennessee, which provide penalties of imprisonment for consensual sexual acts between persons of the same sex.

AI has continually urged the US Government to repeal these laws and to withdraw its limiting reservations to the ICCPR. Until it does, the human rights of US citizens will continue to be seriously undermined.

### **August ‘95 News**

#### **Burund**

Immediate action is needed to stop the army and armed opposition groups in Burundi from continuing their daily catalogue of deliberate and arbitrary killing.

An AI delegation, which returned from the country in June, has called for an international commission of inquiry to be set up urgently. The delegates reported that the fact that no one is being brought to justice for the killings, is perpetuating impunity and reprisals and setting the stage for more human rights abuses.

Thousands of people have been murdered and others “disappeared” in Burundi since January 1995 because of their ethnic identity or political beliefs. In late March and early April at least 1,000 people were slaughtered, most of them solely because of their ethnic origin.

In the worst single incident in early April, 400 or more Hutu villagers were shot, slashed and clubbed to death by soldiers and Tutsi militants in Gasorwe, in the northeast of the country.

Elsewhere, Tutsi civilians have been murdered by armed Hutu groups. Many Rwandese Hutu refugees who had fled from the carnage in their own country since 1994 have met a violent death in refugee camps in northern Burundi at the hands of Tutsi soldiers and armed civilians.

Mass killings claimed an estimated 50,000 lives in Burundi in late 1993 after the coup attempt of 21 October 1993, during which the president and other political leaders were murdered. Those

responsible for these deaths and the hundreds of thousands of other political murders in Burundi's recent history have never been identified by any formal investigation or brought to justice.

Many of the killers are members of the Tutsi-dominated security forces who have committed widespread human rights violations against the Hutu majority. At the heart of the present crisis is the failure of the international community to carry out an inquiry into the coup, called for by Burundi's President Sylvestre Ntibantunganya. This is essential if the cycle of impunity is to be broken.

AI has recommended that the international commission of inquiry be set up by the Organization of African Unity and the United Nations, along international guidelines and comprise independent, professional investigators. The commission of inquiry should investigate all aspects of the 1993 coup attempt and subsequent abuses, and oblige all witnesses – both members of the security forces and civilians – to give evidence. It should recommend measures to prevent further killings and other abuses in the country.

The commission of inquiry should identify and recommend ways in which the current Tutsi-dominated judiciary can be reformed to bring the perpetrators to a fair trial, regardless of their political or ethnic affiliation.

#### Pakistan

AI is urging the Government of Pakistan to review its laws concerning the use of leg fetters and chains as instruments of restraint and punishment in prisons.

Bar fetters, consisting of iron rings locked around the ankles with bars that link to the prisoner's waists, cause great discomfort and considerably restrict movement. The rods are of one standard size, and prisoners who are not of average height suffer additional discomfort if the bars are too long or too short for them.

Pakistani law permits the use of bar fetters for prisoners in specific circumstances, including during transportation and as a punishment for breach of prison discipline.

There is also evidence that illegal cross fetters are being used. These are bar fetters with the addition of a 50cm iron bar between the ankles so that the prisoner's feet are kept permanently apart, making any movement impossible without causing pain. Both cross fetters and bar fetters are reportedly used unlawfully as instruments of torture, to extract money, gain information or humiliate and intimidate prisoners, violating several human rights standards.

Leg chains are also commonly used to restrict movement of prisoners sentenced to hard labour or if they are working outside prison grounds.

AI has called on the Government of Pakistan to abolish both in law and in practice the use of iron fetters as instruments of restraint or punishment, and to bring to justice all prison staff using fetters as instruments of torture.

#### Iran

Despite official secrecy in Iran and the authorities' attempts to hide their appalling human rights record from outside scrutiny, AI has found a persistent pattern of serious human rights violations.

No reasons are given to detainees for their arrest and they may not be notified of the charges against them until months, or years, later. Access to lawyers is almost always denied and political detainees have spent up to 10 years behind bars before their relatives have been told of their whereabouts.

Despite repeated attempts by AI to visit Iran, the government has rejected all requests to observe trials, conduct fact-finding visits and hold talks.

A recent AI report\* documents cases of long-term prisoners held without trial or after unfair trials, the large number of executions, and the suspected extrajudicial execution of government opponents inside and outside Iran.

Abbas Amir Entezam, a former Deputy Prime Minister, was arrested in December 1979, charged with espionage for the United States of America and sentenced to life imprisonment by an Islamic

Revolutionary Court. He was denied family visits for more than three years and is reportedly suffering from various illnesses, allegedly caused or exacerbated by torture.

In 1994 he wrote a letter from prison: "...I spent 15 months in prison before I was told why I had been incarcerated... My own trial took place in Evin Prison [where he is being held]; I was denied hearing before a jury... I have been subjected to various forms of torture...a number of times I was told my execution was imminent and was instructed to write my will."

AI has expressed concern about the torture allegation and the unfairness of his trial and has repeatedly called for a review of his trial in accordance with international standards. If there is no evidence that he committed a criminal offence he should be released.

AI is urging the Iranian Government once again to introduce necessary legal and practical measures to end these violations, and to release immediately all prisoners of conscience. AI is also calling for a review of the detention of all political prisoners held without trial or unfairly tried, and for immediate, thorough and independent investigations into all allegations of torture and possible extrajudicial killings both inside and outside Iran.

\*See *Iran: Official Secrecy Hides Continuing Repression* (AI index: MDE 13/02/95).

#### Turkey

On 1 June 1995 the lawyer and human rights defender Eren Keskin began a two-year prison sentence under Turkey's Anti-Terror Law. She was charged under Article 8, which outlaws "separatist propaganda", after a message she had sent to the Belgian parliament was published in the newspaper *Ozgur Gundem* (Free Agenda) on 14 June 1993, under the headline: "The world's debt to the Kurds."

The article, far from containing any advocacy of violence, contains a strongly worded plea for a cease-fire in the 10-year-old conflict between security forces and armed members of the Kurdish Workers' Party (PKK) in southeast Turkey. The fighting has claimed 16,000 lives since 1984.

Eren Keskin, a former secretary of the Istanbul branch of the Turkish Human Rights Association (HRA), has experienced harassment and death threats in the course of her work for human rights.

+Please write, asking for the repeal or revision of Article 8 of the Anti-Terror Law and for the immediate release of Eren Keskin, to: President Süleyman Demirel/ Cumhurbaşkanlığı/ 06100 Ankara/ Turkey. Copies of your appeals and messages of support to the prisoner can be sent to: Eren Keskin/ C-Blok/ Kadınlar Kogusu/ Sigmalcılar Cezaevi/ Bayrampasa/ Istanbul/ Turkey.

#### Saudi Arabia

Five Somali nationals have been sentenced to death after unfair trials in Saudi Arabia. 'Abd al-'Aziz Muhammad Isse, 'Abd al-Qadir Muhammad Muqtar, Muhammad Jamal 'Ali, Faqay Haji Cusman and Muhammad 'Abu 'Abd al-Qadir Ade were convicted on charges which included murder, and are at imminent risk of execution. 'Abd al-'Aziz Muhammad Isse is said to have arrived in the country after the crime for which he was convicted occurred.

Two other Somalis, Sa'id F. Yacqub and Muhammad Nur Muhammad, who were reportedly convicted with the above five, were executed on 31 May 1995.

AI's concern is heightened by an alarming increase in the number of executions (a total of 102) in Saudi Arabia between January and the end of May 1995. Executions are carried out after trials which invariably fail to meet internationally agreed safeguards for prisoners facing capital punishment. Defendants have no right to legal representation, and confessions obtained under torture may be accepted as evidence. Non-Arabic speakers are not always provided with adequate interpretation facilities.

In April AI appealed for commutation of the death sentences of the above seven Somali prisoners, and called for a halt to executions.

+Please send appeals calling for commutation of these death sentences and for a halt to executions, to: The Custodian of the Two Holy Shrines/ King Fahd bin 'Abdul-'Aziz/ Office of H.M. The King/ Riyadh/ Kingdom of Saudi Arabia.

Viet nam

The Venerable Thich Quang Do, a 68-year-old Buddhist monk and well-known writer and scholar, was arrested on 4 January 1995, after he denounced the detention of 23 monks and lay-Buddhists since October 1994. He is Secretary-General of the Unified Buddhist Church of Viet Nam (UBCV), which was banned in 1981.

After first denying his arrest, the authorities said that Thich Quang Do would stand trial for "provoking trouble contrary to Vietnamese law" and that he would be tried as "a Vietnamese delinquent and not as a Buddhist".

He has subsequently been charged with "destroying national unity" and "misuse of democratic rights to encroach on the rights of citizens and of the State". His trial has not yet taken place. He is believed to be detained at Vu Ban Pagoda in Nam Dinh province, north Viet Nam.

First arrested in February 1982, he was banished to his native village in north Viet Nam for his protests against government persecution, human rights violations and the creation of the state-controlled Viet Nam Buddhist Church in 1981. He remained there under house arrest until 1992, when he returned to the Thanh Minh Thien Vien Pagoda in Ho Chi Minh City. He was confined to its immediate surroundings.

AI believes that Thich Quang Do is a prisoner of conscience, detained solely for exercising his rights to freedom of association and religion.

+Please write, asking for the immediate and unconditional release of Thich Quang Do, to: Vo Van Kiet/Prime Minister/ Hoang Hoa Tham/ Ha Noi/ Socialist Republic of Viet Nam.

Cuba

Four prisoners of conscience adopted by AI were released a month after a delegation of human rights organizations visited Cuba in May 1995.

The prisoners of conscience were Sebastián Arcos Bergnes, Pedro Castillo Ferrer and Agustín Figueredo Figueredo, who had been serving sentences for spreading "enemy propaganda", and Yndamiro Restano Díaz, who was arrested in December 1991 and sentenced to 10 years' imprisonment for "rebellion".

The charge against Yndamiro Restano Díaz related to his peaceful activities as the President of an unofficial political group called Movimiento de Armonía (MAR), Harmony Movement.

The visit came about after President Castro agreed to a request by the former French President's wife, Danielle Mitterand (who heads France-Libertés), to permit a human rights delegation to visit the country to investigate the cases of 43 prisoners of conscience on a list compiled by AI. The organization believes there are a total of some 600 prisoners of conscience imprisoned in Cuba.

Two days after his release on 1 June, Yndamiro Restano Díaz flew to France at the invitation of Mrs Mitterand. While acknowledging that his release resulted from her intervention, he told the French Section of AI that it would not have happened without the campaign AI and other human rights organizations had undertaken since the moment of his arrest, and urged AI to keep up its work.

The authorities have told Díaz that in future his group will be respected. His release was unconditional and he intends to return to Cuba.

Romania

Five years after the overthrow of President Nicolae Ceausescu serious human rights violations persist in Romania, in spite of the government's assurances to the international community.

Since 1993 two people have been held in detention as a result of the peaceful exercise of their right to freedom of expression. One was held in detention for 18 months for painting a sign on the side of his car which the prosecutor considered offensive to public authority. In the same period at least 11

people have been imprisoned under a law which criminalizes consensual homosexual acts between adults in private.

Torture and other ill-treatment of detainees by law enforcement officers in Romania is widespread. Victims have little redress and investigations into violations by officers are seldom thorough or impartial.

Members of the Roma minority have been detained apparently solely because of their ethnic origin. On 27 November 1993 Costel Moldovan, a Rom, was returning to his home in Hadareni, when four police officers stopped him and kicked and punched him repeatedly. Costel Moldovan believes that he was beaten because he had been repairing Roma homes damaged during racist violence.

His mother, Maria Moldovan, went to the police with her son to complain about the beating. While she went home to get her ID card the police beat Costel again. Mother and son were each fined 10,000 lei for disturbing the public peace. Maria Moldovan appealed. The court then issued an arrest warrant for her, converting the fine to 33 days' imprisonment. She was arrested on 15 June 1994, imprisoned for two days in Tirgu Mures Penitentiary and then released. The case was dismissed on 7 October 1994.

The officers who beat Costel are still on duty in Hadareni. No investigation has taken place. AI has expressed its concern to the Minister of Justice that Maria Moldovan was a prisoner of conscience, imprisoned for her ethnic origin, and has asked him to review

the case. For further information, see *Romania: Broken commitments to human rights* (AI Index: EUR 39/09/95).