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TABLE 1: STATES PARTIES AND SIGNATORIES TO INTERNATIONAL TREATIES PROVIDING FOR THE ABOLITION OF THE DEATH PENALTY²¹

TABLE 2: RECORDED WORLDWIDE EXECUTIONS BY YEAR, 1980 - 1997 22

TABLE 3: NUMBER OF ABOLITIONIST COUNTRIES AT YEAR END, 1980 - 1997²³

THE DEATH PENALTY WORLDWIDE: DEVELOPMENTS IN 1997

Abbreviations

The following abbreviations are used in this paper:

| | |
|--------------|--|
| <i>ACHR</i> | <i>American Convention on Human Rights</i> |
| <i>ECHR</i> | <i>European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights")</i> |
| <i>EU</i> | <i>European Union</i> |
| <i>HRC</i> | <i>United Nations Human Rights Committee</i> |
| <i>IAHCR</i> | <i>Inter-American Commission on Human Rights</i> |
| <i>ICCPR</i> | <i>International Covenant on Civil and Political Rights</i> |
| <i>OSCE</i> | <i>Organization for Security and Cooperation in Europe</i> |
| <i>UN</i> | <i>United Nations</i> |

Positive developments in 1997 included the abolition of the death penalty for all crimes by Georgia and Poland; for crimes committed in peacetime in Bosnia-Herzegovina; for all crimes except those under the Military Code of Justice in Bolivia; and a Supreme Court ruling which effectively abolished the death penalty for all crimes in Nepal. Executions were suspended in several countries and there were mass commutations in Malawi, Mali and Turkmenistan.

In an unprecedented move the United Nations Commission on Human Rights passed a resolution calling for all states which retain the death penalty to consider suspending executions with a view to abolishing the death penalty. The Council of Europe continued its pressure on the Russian Federation and Ukraine for executing prisoners after having made a commitment not to do so, by passing a resolution representing the first stage in the procedure for expelling the two countries from the Council. The Treaty of Amsterdam, signed by all European heads of state or government included wording which reflected the changed attitude to the use of the death penalty of the United Kingdom government under the Labour Party which took office during the year.

Other topics include the withdrawal from the (first) Optional Protocol to the ICCPR by Jamaica, the use of the death penalty against juvenile offenders and the changed wording of the Catechism of the Roman Catholic Church expressing stronger reservations regarding the use of the death penalty.

1. ABOLITION OF THE DEATH PENALTY

Bolivia

In March the Bolivian Congress adopted Law 1768, removing the death penalty for the crimes of parricide, murder, treason and other crimes against the security of the state under the Penal Code and the Code of Penal Procedure. The law provides instead for a penalty of 30 years' imprisonment without parole for these crimes. Article 17 of the Constitution of Bolivia states that there is no death penalty. However, the death penalty is retained under the Code of Military Justice.

Bosnia-Herzegovina

On 5 September 1997, the Human Rights Chamber of the Human Rights Commission for Bosnia and Herzegovina decided in the case of *Damjanovic vs. Bosnia and Herzegovina* that provision for the death penalty in peacetime is incompatible with the Constitution of Bosnia and Herzegovina (Article II, paragraph 4 of which provides for the enjoyment of the rights and freedoms in a series of international agreements, including the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty). The ruling also makes clear that the imposition of a death sentence or the carrying out of an execution for a crime committed in peacetime would violate the General Framework Agreement for Peace in Bosnia and Herzegovina, Article 1 of which provides that Bosnia and Herzegovina will secure the rights provided in a series of international agreements including Protocol No. 6 to the European Convention on Human Rights (ECHR) concerning the abolition of the death penalty.

The appellant, Sretko Damjanovic, had been sentenced to death by a military court in 1993 for genocide and war crimes against the civilian population. The Human Rights Chamber ruled that the Criminal Law did not define these crimes with sufficient precision to satisfy the restriction of the death penalty under Protocol No. 6 to "acts committed in time of war or of imminent threat of war". The effect of the ruling was to abolish the death penalty in peacetime.

Georgia

On 10 December 1996 President Eduard Shevardnadze declared an official moratorium on executions and the following day the Georgian parliament approved an amendment to the Criminal Code which abolished the death penalty as of 1 February 1997 for six offences, leaving seven offences for which it could still be imposed.

A new draft criminal code was prepared in which the death penalty was replaced with life imprisonment and the relevant bill had its first reading in parliament in May 1997. In July the President commuted the sentences of all prisoners under sentence of

death to 20 years' imprisonment. On 11 November the parliament enacted a law abolishing the death penalty for all crimes. The law was promulgated on 16 November.

In a letter to Amnesty International dated 18 November 1997 the Deputy Minister of Foreign Affairs wrote that the experience gained through the moratorium had been a contributory factor towards the decision to abolish the death penalty and expressed the hope that abolition would substantially contribute to the protection of human rights in the country.

Nepal

The Supreme Court ruled in September that the provision of the death penalty in existing laws became inoperative in 1991, one year after the new Constitution of the Kingdom of Nepal was promulgated in 1990. Article 12 of the Constitution states

".....no law shall be made which provides for capital punishment."

The effect of this ruling was to abolish the death penalty for all crimes.

Poland

In March 1996 the Sejm (the lower house of the Polish parliament) began debating a new penal code which would totally abolish the death penalty. On 3 July 1997 President Aleksander Kwasniewski signed the new code into law. It came into effect on 1 January 1998. Abolition followed a period without executions, a formal moratorium having been introduced in 1995. The last execution in Poland was in 1988.

2. SUSPENSION OF EXECUTIONS

At the end of 1997 25 countries were abolitionist in practice: they retained the death penalty for ordinary crimes but could be considered abolitionist in that they had not executed anyone during the past 10 years or more, or had made an international commitment not to carry out executions.

Armenia

In April parliament passed in its first reading a new draft criminal code which abolished the death penalty but it had not received its second reading by the end of the year. However, the abolitionist stance of the President Ter-Petronian who has refused to sign any death warrants, has produced a de facto moratorium on executions. During the year death sentences continued to be passed but there were no executions. (See also under MOVES TOWARDS ABOLITION below.)

Bulgaria

The moratorium on executions introduced in July 1990 remained in place.

Latvia

In September 1996 President Guntis Ulmanis announced that he would grant all requests for clemency submitted to him pending a decision by the parliament on abolition. No executions were reported in 1997.

Lithuania

President Brazauskas signed a decree on 26 July which suspended executions until the death penalty had been debated by parliament. The decree however had not been approved by parliament by the end of 1997 and therefore legally had no force. However no executions have taken place because the President and the Clemency Commission he chaired refused to act on appeals for clemency submitted by prisoners.

Russian Federation

In October the Head of the Interior Ministry's Department on Execution of Punishments reiterated that the last execution had taken place in August 1996. A motion for a new draft law on a moratorium on executions has been signed by representatives of all parliamentary parties for consideration by the Duma.

3. MASS COMMUTATIONS**Malawi**

In July following a meeting with an Amnesty International delegation headed by the Secretary General, President Bakili Muzuli commuted the death sentences of the ten prisoners then under sentence of death in Malawi. The President said that he was responding to an appeal by the Amnesty International delegation. Upon taking office in 1994 President Muzuli had commuted the sentences of all the prisoners then on death row. He has not signed an execution order since he became President.

Mali

In December President Alpha Oumar Konaré commuted to life imprisonment all outstanding death sentences. Mali's former president, Moussa Traoré, was among those who benefited from this measure.

Turkmenistan

In June to mark the fifth anniversary of his re-election, President Saparmurad Nryazov pardoned or reduced the sentences of over two thousand prisoners. Included in this figure were 222 prisoners who had been sentenced to death for involvement in drug trafficking. Their sentences were reduced to prison terms of between 10 and 20 years.

4. REDUCTION IN SCOPE**Kazakstan**

A new criminal code was signed into law in July by President Nursultan Nazarbayev which will take effect in 1998. The new code reduces the offences for which the death penalty can be imposed in peacetime to three - premeditated aggravated murder, genocide and sabotage. Treason in time of war and eight crimes under military law are still punishable by death. Under the previous criminal code there were 18 crimes in peacetime for which a sentence of death could be imposed.

Kyrgyzstan

In October a new criminal code was introduced which retained the death penalty for six offences, nine less than in the previous criminal code. A proposed extension of the scope of the death penalty to cover large-scale drug possession, as proposed by the Supreme Court, was not included in the new code.

Russian Federation

In January 1997 a new Criminal Code entered into force reducing the number of crimes punishable by death from 27 to five.

5. DEFEAT OF MOVES FOR REINTRODUCTION OR EXPANSION

El Salvador

In October 1996 the Legislative Assembly had approved a motion to amend the constitution to reintroduce the death penalty for rape, kidnapping and aggravated homicide (see *The Death Penalty Worldwide: Developments in 1996, page 6, AI Index: ACT 50/05/97*). The amendment needed to be ratified by two-thirds of the newly-elected Assembly to take office on 1 May 1997. However, the 1996 ruling party and major force behind the move lost its majority in the Assembly in the election and therefore has decided not to pursue ratification. This is the third unsuccessful attempt in the last 10 years to try to expand the death penalty in El Salvador.

Kyrgyzstan

Early in 1997 it was reported that the Supreme Court was drafting an amendment to the Criminal Code which, if approved by the Kyrgyzstan parliament, would have extended capital punishment to the offence of large-scale drug possession. The proposal was however defeated after debate in both the Chamber of People's Representatives (the upper house of parliament) and the Legislative Assembly (the lower house).

Pakistan

The Pakistan National Assembly passed the Anti-Terrorism Act, 1997 on 13 August 1997; it came into force at once. Special courts provided for by the Act began to operate almost immediately.

Under the Act people may be sentenced to death after procedures which have been dangerously shortened and trials which are manifestly unfair. In addition, the Act does not provide for automatic confirmation of death sentences by a higher court, precludes the possibility of appealing against a death sentence in the Supreme Court and does not specify whether the possibility of seeking pardon or commutation of death sentences is retained. Further, Section 22 of the Act opens the possibility for public executions saying *“The Government may specify the manner, mode and place of execution of any sentence passed under this act, having regard to the deterrent effect which such execution is likely to have.”*

The Prime Minister announced that his government would *“bring about ideal conditions of law and order in the country within a matter of months by publicly hanging terrorists - without caring for the objections of the so-called human rights organizations”*.

The Anti-Terrorism Act 1997 contravenes several legal safeguards of the Pakistani constitution and Pakistan law as well as international standards. (For details see: *Pakistan: Legalizing the impermissible: The new anti-terrorism law, AI Index: ASA 33/34/97.*)

Portugal

An attempt was made in May to amend a clause in the constitution which forbids the extradition of any person for crimes which carry the death penalty under the law of the requesting state. The amendment was not adopted. (See entry under “EXTRADITION” below)

USA

Massachusetts

In November in the state House of Representatives a bill to reintroduce the death penalty was narrowly defeated on an 80-80 tie.

Iowa

Proposed legislation to reintroduce the death penalty in the state of Iowa passed the date when it could be debated in the 1997 sitting of the House of Representatives (the lower chamber of the state legislature) and thus was not voted on. The earliest date that such a vote could take place in the House of Representatives is January 1998. Iowa abolished the death penalty in 1965.

(The legislature of the state of Iowa will not debate or vote upon reinstatement of the death penalty during its 1998 session. Proponents of the death penalty decided in February 1998 to drop their plans for a full debate because of lack of support.)

6. MOVES TO EXPAND SCOPE

Pakistan

In March the death penalty was extended to the offence of gang rape. Prime Minister Mian Nawaz Sharif stated that convicted rapists would be hanged in front of the victims' homes. There is no evidence so far that this has happened.

Tajikistan

In May it was reported that the death penalty had been extended to the offence of "hooliganism". If confirmed this would raise the number of crimes for which the death sentence can be imposed in peacetime to 28.

Trinidad and Tobago

Under current legislation in Trinidad and Tobago rape is punishable by terms of imprisonment and by corporal punishment. In November the Attorney General asked the Law Commission, which advises the government on law reform, to prepare a report on the introduction of the death penalty for rape. The government is also considering extending the death penalty to drug trafficking,

If adopted such legislation would be in violation of Trinidad and Tobago's obligations under the ACHR, Article 4(2) of which states that the application of the death penalty "*shall not be extended to crimes to which it does not presently apply*". In 1983 the Inter-American Court of Human Rights ruled that widening the range of crimes carrying the death penalty by a state party constituted a failure to fulfil its obligations under the ACHR. Having ratified the ACHR on 28 May 1991, Trinidad and Tobago is bound to comply with its provisions and thus not to extend the death penalty to any crimes for which it was not a punishment in 1991.

7. OTHER LEGISLATIVE DEVELOPMENTS

Armenia

On 19 March the National Assembly began discussing a new draft criminal code in which there would be no capital crimes either in time of peace or of war. The death penalty would be replaced by a maximum punishment of life imprisonment. The draft version was passed in its first reading on 3 April but had not been given its second reading by the end of the year.

China

Revisions to the Criminal Procedure Law passed in March 1996 came into force on 1 January 1997 (for more information see *The Death Penalty Worldwide: Developments in 1996*, page 5, *AI Index: ACT 50/05/97*).

Revisions to the 1980 Criminal Law were passed at the National People's Congress (NPC) in March 1997 and came into force in October. Revisions to capital offences were reportedly the subject of much debate among law drafters both before and at the congress, with some NPC delegates calling for great reductions. However, the revised Criminal Law includes nearly three times as many capital offences as the 1980 version, since almost all of the capital crimes introduced in the interim through decisions of the NPC Standing Committee have been included. Many of these are economic crimes. For a few crimes (eg. theft and robbery) the definition of "particularly serious circumstances" under which the death penalty may be applied has been clarified. It is too early to say what effect these revisions may have in practice. Executions for theft that Amnesty International documented during the "Strike Hard Anti Crime Campaign" in 1996 indicated that existing limitations were not being followed. "Strike Hard" continued in 1997.

A revision to the criminal law which came into effect in October means that death sentences suspended for two years can no longer be imposed on those who were under the age of 18 at the time the crime was committed. It is not clear whether those already under suspended sentence of death will have their sentences commuted. (See also under "USE AGAINST JUVENILE OFFENDERS" below)

Estonia

In January, President Lennart Meri signed into law an amendment to the penal code which made it possible for the first time for a sentence of life imprisonment to be imposed. In March the State Court imposed its first life sentence under the new law when it commuted a sentence of death passed in November.

South Africa

In November the National Assembly approved the Criminal Law Amendment Act which provided for resentencing of 453 prisoners whose death sentences had been declared unconstitutional in 1995, and deleted provisions in other statutes which had allowed for capital punishment.

Turkey

A draft of a new criminal code which made no provision for the death penalty was completed and submitted to the Minister of Justice for approval in September. It had not been submitted to the parliament by the end of the year.

8. DEVELOPMENTS IN THE CARIBBEAN

Jamaica

In August Jamaica issued instructions setting tight time limits for petitions from prisoners on death row to the Inter-American Commission on Human Rights (IAHCR) and the UN Human Rights Committee (HRC). According to the instructions if either the prisoner or the international human rights body fails to meet the time limits the government may proceed to execute the prisoner even while the petition to the IACHR or the HRC is still pending.

The government has claimed that they issued the instructions in reaction to the ruling in 1993 by the Judicial Committee of the Privy Council (JCPC), the highest court of appeal for some countries in the Caribbean including Jamaica, in the case of *Pratt and Morgan v. The Attorney General of Jamaica*. In this case the ruling was that to execute a prisoner who had spent more than five years on death row violated constitutional guarantees against cruel and inhuman punishment, hence requiring that the sentences of condemned prisoners who had spent more than five years on death row be commuted. According to the Jamaican Government, the instructions represent an attempt to expedite international procedures in order that people can be executed within the stipulated five-year period.

In October the HRC stated that these unilaterally imposed time limits could not be invoked as justification for any course of action (for example executing the prisoner) which would deviate from the ICCPR or requests by the Committee for any interim measure of protection for the prisoner such as a stay of execution.

On October 23 the Jamaican Government notified the UN Secretary-General, that Jamaica was withdrawing as a state party to the (first) Optional Protocol to the ICCPR, the withdrawal to become effective in January 1998. Under this Optional Protocol people who believe that their rights under the ICCPR have been violated by a state which is party to the Protocol and who have exhausted all domestic remedies, can file complaints to the HRC, the UN-based body which monitors states' compliance with the ICCPR.

Although the ICCPR does not prohibit the death penalty, it obliges governments not to execute people whose death sentences have been imposed in cases where their fundamental rights have been violated, for instance if the accused did not get a fair trial due to lack of effective legal representation. Most cases submitted to the HRC from Jamaica have been filed on behalf of prisoners on death row. In many cases the HRC found that the rights of condemned men had been violated and recommended remedies which the government in most cases has failed to implement.

This is the first time that a state has withdrawn from the Optional Protocol. The Jamaican government's stated reason for doing so is was to enable the execution of prisoners sentenced to death within the time frame set out in *Pratt and Morgan* by cutting off an avenue of international scrutiny.

Trinidad and Tobago

Following Jamaica's example, on 9 October Trinidad and Tobago issued identical instructions setting the same tight time limits for the conclusion of appeals by prisoners under sentence of death to the HRC and the IACHR (see item on Jamaica above). Although all citizens of Trinidad and Tobago have the right to petition the HRC and the IACHR, most of the cases filed have been on behalf of prisoners on death row. (See also under "INTERNATIONAL TREATIES" below)

(In January 1998 the Attorney General announced that the government of Trinidad and Tobago was also considering withdrawal from the Optional Protocol to the ICCPR. It was also considering taking measures to withdraw jurisdiction of the IACHR from considering petitions from individuals claiming their rights under the ACHR had been violated.)

Plans for a Caribbean Supreme Court

Another development related to the determination of governments in the Caribbean to remove obstacles to carrying out executions, including the rulings of the JCPC, concerns the establishment of a Caribbean Supreme Court. The court would become the final court of appeal for the Caribbean region for criminal appeals, replacing the present system whereby appeals from some countries can be made to the JCPC in London.

At a meeting on 9 September attorney generals from the 14 Caribbean Community countries recommended that the court be located in Trinidad and Tobago. The recommendation must be approved and ratified by the 14 heads of government and the constitutions of a number of states will have to be amended before the Caribbean Supreme Court becomes a reality. The new court is reportedly expected to be functioning by the end of 1999.

9. USE AGAINST JUVENILE OFFENDERS

As states parties to the UN Convention on the Rights of the Child all of the countries in the following entries, apart from the USA which has signed but not ratified it, have undertaken that "*Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age*" (Article 37(a)).

Iran

In February Somayeh Shahbizina (female) and Shabrokh Vosugh (male), both alleged to be 16 years old, were sentenced to be flogged after being found guilty of “unIslamic and illegitimate relations” and then executed for the murder of Somayeh’s younger brother and sister and the wounding of her mother. It is not known if they have been executed; under the system of **qizas** they could escape the death penalty if Somayeh’s parents decided to forgive them.

Nigeria

In July in Owerri Chidiebera Onuoha, aged 17, was executed by firing squad in front of a crowd of thousands. He had been convicted in connection with an armed robbery committed in May 1995 when he was 15 years old.

Pakistan

In September Shamoun Masih was hanged at the Central Jail in Hyderabad. He had been sentenced to death for his part in an armed robbery and murder in 1988 when he was aged only 14.

USA

At least three juvenile offenders were sentenced to death in 1997, two in Florida and one in Virginia, making a total of one hundred and sixty juvenile offenders sentenced to death in the USA since 1973. No juvenile offenders were executed during 1997. The last such execution was 1993.

Yemen

Muhammad Hussein Ali al-Zandani was scheduled for execution three times in 1997. He was given a stay of execution each time following an appeal by his lawyer and family for a review of his case including on grounds of age. The prosecution argued that he was 19 years old at the time of the crime whereas his lawyer and family said he was aged 16. It is not known whether he has been executed.

China - Change in legislation

A revision to the criminal law which came into effect in October means that death sentences suspended for two years can no longer be imposed on those who were under the age of 18 years at the time the crime was committed. It is not clear whether those already under suspended sentence of death will have their sentences commuted.

10. DEATH SENTENCES AND EXECUTIONS

Worldwide in 1997 at least 2,375 prisoners are known to have been executed in 40 countries and 3,707 people were sentenced to death in 69 countries. These figures

include only cases known to Amnesty International at the end of 1997 and may be revised if new information comes to light.

A small number of countries accounted for the vast majority of executions recorded. Amnesty International received reports of 1,644 executions in China, 143 executions in Iran and 122 executions in Saudi Arabia, while in the United States of America executions rose to 74 in 1997. These four countries alone accounted for 84 per cent of all executions recorded by Amnesty International worldwide in 1997. Known executions in other countries ranged from one to 38. Amnesty International received reports of hundreds of executions in Iraq but was unable to confirm most of the reports or to give an exact figure.

11. RESUMPTION OF EXECUTIONS AFTER PERIODS WITH NONE

Burundi

Six men were executed on 31 July, the first judicial executions in Burundi since 1981. The six were convicted in 1996 of participation in massacres or killings in the *chambres criminelles*, criminal chambers, of courts in Bujurumba, the capital, and Gitega and Ngozi - towns in northern and central Burundi. None of those executed was represented by a lawyer and at least one of them had been tortured.

USA

Kentucky

Harold McQueen, sentenced to death in 1981 for murder and executed on 1 July, became the first prisoner to be executed in Kentucky since 1962.

Colorado

Gary Lee Davis, sentenced to death in July 1987 for kidnap, rape and murder was executed in Colorado on 11 October. This was the first execution in the state of Colorado since 2 June 1967.

Zambia

In January the first executions since 1989 were carried out when eight men were executed in secret at Mukobeko Maximum Security prison. No details of those executed were released by the government during 1997.

12. METHODS OF EXECUTION

Lethal Injection

Lethal injection as a method of execution was introduced in law in the USA in 1977 and the first execution by this method was carried out in the USA in 1982. Taiwan followed suit by introducing lethal injection in law in 1992, although over the following years executions there continued to be carried out by shooting. The Philippines reinstated the death penalty in 1993, stipulating initially that the method of execution should be gas, but in 1996 the decision was taken to change to lethal injection. No one had been executed in the Philippines using this method by the end of the year. In 1997 two further countries, China and Guatemala, introduced lethal injection as an alternative to shooting, bringing the total number of countries with legislation for this method to five at the end of 1997.

In 1997 Taiwan (in May) and China (in July) became the first countries outside the USA to execute prisoners by lethal injection.

(Guatemala carried out its first lethal injection execution on 10 February 1998)

Electrocution

In March in the US state of Florida, during the electrocution of Pedro Medina, flames a foot high erupted from Medina's leather face mask after the electric current was applied.

A Florida judge, after a series of tests on the chair, declared that the chair was working properly and the incident was a result of human error. Following an appeal based on this incident by another prisoner about to be executed by the same method, the Florida Supreme Court ruled that death by electric chair was not "cruel and unusual punishment" saying "In order for a punishment to constitute cruel and unusual punishment it must involve torture or a lingering death, or the infliction of unnecessary or wanton pain."

Stoning

In Iran in August, Zoleykhah Kadhoda was publicly stoned and subsequently confirmed as dead. After being taken to the morgue she revived and was subsequently taken to hospital where her condition was said to be improving. AI has been unable to discover her fate.

13. PUBLIC EXECUTIONS

Executions were carried out in public in at least two countries:

- In **Nigeria** prisoners continued to be shot in front of crowds sometimes numbering thousands.
- In the **Chechen Republic-Ichkeriya** at least five executions in public were recorded. In April a man was publicly executed for murder; in September a man and a woman

were executed and, according to reports, three of the victims' relatives were among the six executioners. Two other prisoners who had been convicted of murder were also executed publicly during the year. It was reported that the executions were filmed.

14. OPINION POLLS

South Africa

The death penalty has become the preferred option of men of all races as a punishment for rape, according to a survey conducted in February. The information used for the analysis was compiled from adult males aged 18 or over and the findings were then scientifically weighted making them fully representational in terms of age and income, according to Research Surveys, the organization which undertook the poll which was carried out in major metropolitan areas of South Africa. The findings were then compared with those obtained in a similar survey in 1994.

In 1994 35 per cent of white males and 20 per cent of black were in favour of capital punishment for rape. In 1997 the figures had become 54 per cent and 35 per cent respectively.

In 1994 life imprisonment as an alternative punishment for rape received 21 per cent of the white and 17 per cent of the black male vote. However, in 1997 14 per cent of white and 28 per cent of black men thought this punishment for rape appropriate.

USA

Kentucky

Two opinion polls taken in the US state of Kentucky in 1997 indicated that Kentuckians would prefer life imprisonment without parole to execution if the former option were available. A state-wide survey found that 66 per cent of respondents were in favour of the death penalty. However, support dropped to 35 per cent when those polled were offered the alternative of a sentence of life without parole coupled with restitution by the prisoner to the victim's family.

In the other survey, 113 jurors who served on cases which could attract the death penalty were polled about their attitudes to this punishment. In order to serve on a jury in a capital case, members of the jury have to state their willingness to impose the death penalty. Despite having made such statements, 60 per cent said that they would prefer the alternative of life without parole. When the clause concerning restitution for the victim's family was added the figure rose to 70 per cent.

Legislation calling for life without parole as an alternative to the death penalty will be considered in the next session of the Kentucky General Assembly in 1998.

15. EXTRADITION

Canada

In *The Death Penalty Worldwide: Developments in 1996*, page 13, *AI Index: ACT 50/05/97* under **Extradition in Capital Cases** the case of Glen Sebastian Burns and Atif Ahmad Rafay, two Canadian citizens in danger of extradition to face charges of capital murder in the state of Washington in the USA was given. The two prisoners had appealed to the British Columbia Court of Appeal and the decision was pending at the time of the paper's publication.

The case was heard by the British Columbia Court of Appeals on 13 May. At the end of June in a split decision 2-1, the court ruled that the rights of the two prisoners under the Canadian Charter of Rights and Freedoms would be violated if they were extradited to a country that would sentence them to death. The Court also strongly criticized the minister who had taken the extradition decision.

The appeal was then considered by the Supreme Court and at the first hearing the judges decided that they needed more details in the case. Meanwhile the two men remain in jail in Vancouver and the next hearings are due to be held sometime in 1998.

Portugal

In May an attempt was made to amend a clause in the constitution which forbade the extradition of any person for crimes which carry the death penalty under the law of the requesting state. According to the proposed amendment, extradition would be allowed in certain exceptional cases if the Portuguese government was persuaded that it had received "satisfactory assurances" that the death penalty would be commuted and replaced by another penalty of limited duration.

However, Article 33(4) of the new constitution, approved at the beginning of September, has not incorporated the proposed amendment. It states "Extradition is not allowed either for political motives or for crimes which, in the law of the requesting state, would carry the death penalty or involve any other irreversible injury to a person's physical integrity."

16. THE RELIGIOUS COMMUNITY

Catechism of the Roman Catholic Church

In 1992 an updated version of the Catechism of the Roman Catholic Church was published. In it the section which referred to the death penalty seemed to put forward limited support for the use of this punishment. However, following worldwide expressions of unease from both Catholics and non-Catholics the Pope issued an encyclical in March 1995 which expressed much stronger reservations about the use of the death penalty although, once again, he did not totally exclude its use.

In September 1997 an amended Catechism was published which strengthened the Church's reservations about the use of the death penalty. In the 1992 version the relevant section stated that the death penalty should not be excluded if it is the only way to defend effectively the life of human beings from an unjust aggressor, but that if "unbloody means" are sufficient to defend and protect people then the authority should limit itself to these means. The new version goes further by adding that as a consequence of the possibilities which the state now has at its disposal to repress effectively the crime by rendering innocuous the one who has committed it, without definitely depriving him of the possibility to redeem himself, the cases of absolute necessity of the suppression of the guilty party are now very rare if not indeed practically non-existent. This statement is contained in paragraph 2267 of the definitive Latin edition of the Catechism.

17. DEVELOPMENTS IN INTERGOVERNMENTAL ORGANIZATIONS

United Nations Commission on Human Rights

In resolution 1997/12, adopted on 3 April, the UN Commission on Human Rights called on states which retain capital punishment "to consider suspending executions, with a view to completely abolishing the death penalty". The resolution also called on all states that have not yet abolished the death penalty "progressively to restrict the number of offences for which the death penalty may be imposed".

The resolution, which was co-sponsored by Italy and 43 other countries, was adopted by a vote of 27 in favour and 11 against. Fourteen states abstained. Malaysia moved seven amendments to the resolution but these were all decisively defeated in separate votes.

The resolution also called for the preparation of a yearly supplement to the UN quinquennial report on capital punishment. The supplement will cover changes in law and practice regarding capital punishment worldwide. The first such supplement was due for consideration by the Commission on Human Rights at its next session, to be held between March and April 1998.

Council of Europe

Russian Federation and Ukraine

An urgent debate was held on 29 January at the Parliamentary Assembly of the Council of Europe in Strasbourg following disclosures of continuing executions in the Russian Federation and Ukraine, in defiance of the commitments to stop executions made by the two states when they joined the Council of Europe. Following the debate the Assembly voted to condemn the two countries for violating their commitments and threatened them with eventual expulsion from the Council should executions continue.

The condemnation came in two resolutions. Resolution 1111 (1997) stated that the Assembly “must condemn Russia for having violated her commitment to put into place a moratorium on executions, and deplores the executions that have taken place. It demands that Russia immediately honour her commitments and halt any executions of the death penalty still pending.” The Assembly also warned the Russian authorities that it would “take all necessary steps to ensure compliance with commitments entered into. In particular, should any more executions of the death penalty be carried out following the adoption of this resolution the Assembly may consider the non-ratification of the credentials of the Russian parliamentary delegation at its next session.” In resolution 1112(1997) Ukraine was condemned in identical terms. The two resolutions represented the first stage in the Council of Europe’s expulsion procedure.

Later in the year the two countries signed Protocol No. 6 to the ECHR concerning the abolition of the death penalty, with a commitment to ratify it within three years. Russia signed on 17 April and Ukraine on 5 May.

Following the disclosure of a further 13 executions in Ukraine in the first half of the year, in December the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly voted to propose that the Assembly suspend the credentials of the Ukrainian delegation unless the Ukrainian authorities sent it an official notification of a moratorium on executions.

(In January 1998 the Parliamentary Assembly adopted a resolution strongly condemning the continuing executions and stating that when the credentials of the Ukrainian delegation “are examined at one of the next sessions of the Assembly or the Standing Committee, it should be taken into account whether the Ukrainian authorities have lifted the secrecy surrounding executions and have furnished documentary and undeniable proof that a moratorium on executions has been established in Ukraine.”)

(See also under MORATORIA ON EXECUTIONS above.)

Summit meeting at Strasbourg

On 11 October the heads of state of the Council of Europe, at their Second Summit Meeting in Strasbourg, adopted a Final Declaration calling for “the universal abolition of

the death penalty and insist[ing] on the maintenance, in the meantime, of existing moratoria on executions in Europe”.

European Union

Amsterdam Treaty

The Amsterdam Treaty, which was signed by all the European Union heads of state or government on 2 October 1997, contains a passage on the abolition of the death penalty. The passage appears under Chapter 1, “Fundamental Rights and Non-Discrimination”, which is a part of Section 1, “Freedom, Security and Justice”.

The passage reads:

“Abolition of the death penalty

Declaration to the Final Act on the Abolition of the Death Penalty

With reference to Article F(2) of the Treaty on European Union, the Conference recalls that Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and which has been signed and ratified by a large majority of Member States, provides for the abolition of the death penalty.

In this context the Conference notes the fact that since the signature of the above-mentioned Protocol on 28 April 1983, the death penalty has been abolished in most of the Member States of the Union and has not been applied in any of them.”

The inclusion of references to the death penalty in terms favouring abolition was a reflection of the changed attitude of the United Kingdom government under the Labour Party, which took office in May following a general election. Under the previous government, it is likely that the UK would have blocked the inclusion of such language in an EU treaty.

Resolution on moratorium

On 12 June the European Parliament (the parliamentary body of the EU) passed a resolution (B4-0468, 0487, 0497, 0513 and 0542/97) reaffirming its strong opposition to the use of the death penalty anywhere in the world and *inter alia* calling on all countries to adopt a moratorium on executions and to abolish the death penalty.

It particularly requested Albania, Bulgaria, Cyprus, Latvia, Lithuania, Poland, Turkey, Ukraine and the United Kingdom to sign Protocol No. 6 to the ECHR and Belgium, Croatia, Estonia, Greece, the former Yugoslav Republic of Macedonia, Moldova and Russia to ratify the protocol.

Measures adopted included that candidate countries for accession to the Council of Europe should undertake to sign and ratify the Second Optional Protocol to the ICCPR as a condition of membership and that a resolution be tabled at the UN General Assembly on the introduction of a universal moratorium on executions.

Resolution on the USA

On 17 July the European Parliament passed resolution number B4-0609, 0630, 0653 and 0678/97, concerning the death sentence passed on Joseph O'Dell in the United States of America in which it launched an appeal to the Governor of the state of Virginia to commute the sentence and to allow Joseph O'Dell to undergo DNA testing. Despite the resolution Joseph O'Dell was not allowed to undergo the test and was executed on 23 July.

Organization for Security and Co-operation in Europe

At the OSCE Implementation Meeting on Human Dimension Issues in Warsaw, 12-28 November 1997, a meeting of government representatives representing 51 OSCE participating states and representatives of 103 non-governmental organizations, a series of information recommendations were adopted, including one on the exchange of information concerning the abolition of capital punishment. This recommendation reads:

"The OSCE participating States should consider introducing measures aimed at facilitating the exchange of information on the question of the abolition of capital punishment to which they are already committed under existing OSCE provisions."

This important recommendation reinforces the work of the OSCE's Office for Democratic Institutions and Human Rights as a clearing house of information on the abolition of the death penalty in member states.

18. INTERNATIONAL TREATIES

(First) Optional Protocol to the International Covenant on Civil and Political Rights

On 23 October Jamaica notified the UN Secretary-General that it was withdrawing as a state party to the above protocol, effective from 22 January 1998. The Jamaican

government took this step without consulting Jamaica's parliament or its people. (See also under "DEVELOPMENTS IN THE CARIBBEAN" above)

*(Note: In January 1998 the Attorney General of **Trinidad and Tobago** indicated that, similarly, consideration of withdrawal from the Optional Protocol was taking place in that country.)*

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

In July **Spain** withdrew its reservation to the above protocol and **Greece** (in May) and **Colombia** (in August) became parties to it, bringing the number of states parties to 31.

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

The **former Yugoslav Republic of Macedonia** ratified the above protocol in April, bringing the number of states parties to 25. The **Russian Federation** and **Ukraine** signed the protocol in April and May respectively but had not ratified it by the end of 1997.

TABLE 1: STATES PARTIES AND SIGNATORIES TO INTERNATIONAL TREATIES PROVIDING FOR THE ABOLITION OF THE DEATH PENALTY (as of 31 December 1997)

| INTERNATIONAL TREATY | STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED | STATES PARTIES |
|---|---|--|
| Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty | Belgium, Costa Rica, Honduras, Nicaragua (Total: 4) | Australia, Austria, Colombia, Croatia, Denmark, Ecuador, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela (Total: 31) |
| Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the abolition of the death penalty | Belgium, Estonia, Greece, Russia, Ukraine (Total: 5) | Andorra, Austria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Moldova, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland (Total: 27) |
| Protocol to the American Convention on Human Rights to Abolish the Death Penalty | Costa Rica, Ecuador, Nicaragua (Total: 3) | Brazil, Panama, Uruguay, Venezuela (Total: 4) |

TABLE 2: RECORDED WORLDWIDE EXECUTIONS BY YEAR,

1980 - 1997

| Year | No. countries carrying out executions | No. executions recorded | No. countries with over 100 executions | % of all recorded executions carried out in countries with over 100 executions |
|------|---------------------------------------|-------------------------|--|--|
| 1980 | 29 | 1229 | | |
| 1981 | 34 | 3278 | | |
| 1982 | 42 | 1609 | | |
| 1983 | 39 | 1399 | | |
| 1984 | 40 | 1513 | 4 | 78% |
| 1985 | 44 | 1125 | 3 | 66% |
| 1986 | 39 | 743 | 3 | 56% |
| 1987 | 39 | 769 | 3 | 59% |
| 1988 | 35 | 1903 | 3 | 83% |
| 1989 | 34 | 2229 | 3 | 85% |
| 1990 | 26 | 2029 | 4 | 84% |
| 1991 | 32 | 2086 | 2 | 89% |
| 1992 | 35 | 1708 | 2 | 82% |
| 1993 | 32 | 1831 | 1 | 77% |
| 1994 | 37 | 2331 | 3 | 87% |
| 1995 | 41 | 3276 | 3 | 85% |
| 1996 | 39 | 4272 | 4 | 92% |
| 1997 | 40 | 2375* | 3 | 80% |

*Limited records available at the end of the year show that at least this number were executed. The true figures are believed to be much higher. This total may be subject to alteration if further information becomes available.

TABLE 3: NUMBER OF ABOLITIONIST COUNTRIES AT YEAR END,

1980 - 1997

| Year | No. countries abolitionist for all crimes | No. countries abolitionist in law or practice |
|-------------|--|--|
| 1981 | 27 | 63 |
| 1982 | 28 | 63 |
| 1983 | 28 | 64 |
| 1984 | 28 | 64 |
| 1985 | 29 | 64 |
| 1986 | 31 | 66 |
| 1987 | 35 | 69 |
| 1988 | 35 | 80 |
| 1989 | 39 | 84 |
| 1990 | 46 | 88 |
| 1991 | 46 | 83 |
| 1992 | 50* | 84 |
| 1993 | 54* | 90 |
| 1994 | 56* | 97 |
| 1995 | 57* | 101 |
| 1996 | 59* | 100 |
| 1997 | 61 | 102 |

* The figures for 1992-1996 as reported in *Abolition of the Death Penalty Worldwide: Developments in 1996* have been changed to reflect the total abolition of the death penalty in Paraguay in 199-2.