

Lethal Injustice in Asia: End unfair trials, stop executions

(Index: ASA 01/022/2011)

ERRATA AND UPDATE

p. 2, paragraph 2, last sentence, should read:

In September 2011 a military court formally acquitted Chiang Kuo-ching, ~~ruling that Chiang's statement had been made against his will.~~

p. 4, paragraph 4, first sentence, should read:

There are at least 55 capital offences in China, 28 in Pakistan, ~~49~~57 in Taiwan and 21 in Viet Nam.

p. 9, paragraph 3, second sentence, should read:

Brunei Darussalam, Laos, Malaysia, North Korea, Pakistan, ~~and Singapore and Thailand~~ and all impose such sentences for possession of drugs over a certain amount regardless of whether the person was in possession of a relatively small quantity or was dealing in substantial amounts.

p. 10, table

column: Laws that provide for mandatory death sentences including drug offences and other non-violent crimes

row: Thailand

Box should be grey and not green

p. 16, paragraph 1, first sentence, should read:

Special courts like those found in ~~China~~, North Korea and Pakistan routinely violate the right to legal representation, to appeal and not to be coerced into confessing guilt.

酷刑

亚洲反死刑网络 PENYIKSAAN

불공정한 재판 قاتونی مشیر/وکیل کا حق

PARUSANG KAMATAYAN

不公平審判 ASIA 死刑

死刑に反対するアジア・ネットワーク

不公审判 TORTYUR ความบริสุทธิ์
KEGAGALAN PENEGAKAN Keadilan

사형 DEATH PENALTY
KARAPATANG MAGKARON NG ABUGADO

고문 酷刑
強迫自白

معصومیت/جرم کو قبل از وقت سچ سمجھنا

HUKUMAN MATI

強制性死刑

무죄추정

SAPILITANG HATOL NA KAMATAYAN

ได้รับการสันนิษฐานไว้ก่อนว่าเป็นผู้บริสุทธิ์

PERBICARAAN TIDAK ADIL

MANDATORY DEATH SENTENCES

無罪の推定

قاتونی تقاضے پورے کرنے میں قانونی نظام کی ناکامی

NETWORK SA ASYALABAN SA PARUSANG KAMATAYAN

聘請律師的權利

การพิจารณาคดีที่ไม่เป็นธรรม

推定有罪

ITURONG NA WALANG SALA HANGA'T HINDI NAPAPATUNAYAN

死刑

ANGGAPAN TIDAK BERSALAH
死刑
SEKSAAN
死刑
การประหารชีวิต
FORCED CONFESSIONS

誤判 تشدد

强迫作出的供述

弁護人をつける権利

강제자백

唯一死刑

HUKUMAN MATI MANDATORI

MISCARRIAGE OF JUSTICE

不公正な裁判

판결 오류

การบังคับให้แก้

DI MAKATARUNGANG PAGLILITIS
PRESUMED GUILTY
PENGAKUAN PAKSAAN
การพิจารณาหาตัวผู้ต้องหา

LETHAL INJUSTICE IN ASIA

End unfair trials, stop executions

ANTI
DEATH
PENALTY
ASIA
NETWORK

INTRODUCTION

More people are executed in the Asia-Pacific region than in the rest of the world combined. Add to this the probability that they were executed following an unfair trial, and the gross injustice of this punishment becomes all too clear. Failures of justice in trials that end in a death sentence cannot be reversed. In the Asia-Pacific region, where 95 per cent of the population live in countries that retain and use the death penalty, there is a real danger of the state executing someone in error following an unfair trial.

“My son was killed for a crime he did not commit... our family has lived in shame and neighbours never spoke to us. Whatever apology or compensation the government promises, it is too late.”

Wang Tsai-lien, mother of Chiang Kuo-ching who was coerced into making a confession and subsequently executed in 1997 in Taiwan

In January 2011, Taiwan's Ministry of Justice admitted that Chiang Kuo-ching, a private in the Air Force, had been executed in error in 1997 for a murder committed 15 years previously. The authorities acknowledged that his statement “confessing” to the crime had been made as a result of torture and that his conviction had been rushed through a military court. The court had ignored his allegations of torture and his pleas of innocence. In September 2011 a military court formally acquitted Chiang Kuo-ching.

His is not an isolated case. Across the region, as elsewhere in the world, people are condemned to death after proceedings which manifestly fail to meet international standards of fair trial.

More than two thirds of all countries in the world have abolished the death penalty in law or are not using it in practice. Out of 41 countries in the Asia-Pacific, 17 have abolished the death penalty for all crimes, nine are abolitionist in practice and one – Fiji – uses the death penalty only for exceptional military crimes (see table, pp. 10-11). This trend towards abolition reflects a growing awareness in the region among activists, lawyers, judges, parliamentarians and the general public of the unfairness of the death penalty.

However, 14 countries in the region still retain the death penalty and have carried out executions in the past 10 years. **Thailand** resumed executions in 2009, despite declaring its commitment to abolishing the death penalty in its Human Rights Action Plan 2009-13. **Taiwan** began executing again in 2010 after a four-year lull, despite having declared a policy of “gradual” abolition since 2000.



Amnesty International activists
protest in Hong Kong, March 2008.

SEE ENCLOSED APPEAL CASES AND TAKE ACTION

The Anti-Death Penalty Asia Pacific Network (ADPAN) opposes the death penalty in all circumstances. We recognize the devastating impact of violent crime and sympathize with victims and their families, but ADPAN maintains that the death penalty is not an effective means of combating crime. Victims are doubly victimized by unfair trial procedures, which can result in the innocent being executed and the real perpetrators never being brought to justice. The death penalty violates the right to life and is the ultimate form of cruel, inhuman and degrading punishment. As long as this view does not prevail throughout the Asia-Pacific region it is crucial, notwithstanding our principled opposition, to also ensure that the right to a fair trial is fully respected for each and every person facing this punishment.

APPEAL CASES

AFTAB BAHADUR
PAKISTAN

CHIOU HO-SHUN
TAIWAN

DEVENDER PAL SINGH
INDIA

HAKAMADA IWAO
JAPAN

HUMPHREY JEFFERSON
INDONESIA

LENG GUOQUAN
CHINA

REZA SHAH
MALAYSIA

YONG VUI KONG
SINGAPORE

WHAT IS A FAIR TRIAL?

The basic principles of the right to a fair trial are reflected in law throughout the world and set out in the 1948 Universal Declaration of Human Rights (UDHR), the cornerstone of human rights law. These principles were elaborated in 1966 in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), summarized on p. 5. The right to fair trial has become legally binding on all states as part of customary international law, whether or not they have ratified relevant treaties. Of those countries that retain and use the death penalty in the Asia-Pacific region, only **Malaysia, Myanmar and Singapore** have not signed or ratified the ICCPR (see table, pp. 10-11).

THE RIGHT TO FAIR TRIAL IN DEATH PENALTY CASES

In cases where the life of the accused is at stake it is all the more important that fair trial principles are rigorously applied. In 1984, the UN Economic and Social Council (ECOSOC) introduced safeguards to further protect the right to a fair trial for those facing the death penalty (see p. 5). These are based on the premise that in death

penalty cases, safeguards should go “above and beyond” the normal protections given to people facing criminal charges. This is because death penalty cases involve the right to life, and the arbitrary deprivation of life is prohibited under Article 6 (right to life) of the ICCPR. Sentencing someone to death following a trial that does not respect basic fair trial standards violates the right to life of that person.

Despite UN guidelines specifying that the death penalty can only be imposed for intentional crimes with lethal consequences, people in the Asia-Pacific region are executed for crimes ranging from drug trafficking to theft.

There are at least 55 capital offences in **China**, 28 in **Pakistan**, 57 in **Taiwan** and 21 in **Viet Nam**. In **North Korea**, a number of political offences are punishable with death including “conspiracy to overturn the state” and “treason against the fatherland”. In some countries, the death penalty is imposed for actions which, under international law, should not be treated as a criminal offence at all. In **Pakistan**,

blasphemy carries the death penalty, although no one is known to have been executed on these grounds. In **Afghanistan**, people have been sentenced to death for converting from Islam to another religion, even though “apostasy” is not included as an offence in Afghanistan’s Penal Code.

“It is a commonplace that due process serves to protect defendants. However, due process is also the mechanism through which society ensures that the punishments inflicted in its name are just and fair.”

UN Special Rapporteur on extrajudicial, summary or arbitrary executions

KEY PRINCIPLES OF FAIR TRIAL

Everyone has the right to

- ◆ equality before the law and courts
- ◆ a fair and public hearing by a competent, independent and impartial tribunal established by law
- ◆ be presumed innocent until proven guilty
- ◆ not be compelled to testify against themselves or confess guilt
- ◆ be tried without undue delay
- ◆ be present at trial and to defend themselves in person or through a lawyer of their own choice
- ◆ have a lawyer assigned for their defence at no cost to them if they do not have the means to pay
- ◆ have adequate time and facilities to prepare their defence
- ◆ call defence witnesses and examine prosecution witnesses
- ◆ an interpreter and translation if they do not understand the language used in court
- ◆ appeal to a higher court
- ◆ compensation for miscarriages of justice

UN ECOSOC SAFEGUARDS PROTECTING THE RIGHTS OF THOSE FACING THE DEATH PENALTY (1984)

In countries that have not abolished the death penalty, people may be sentenced to death only

- ◆ for the “most serious crimes”, that is, intentional crimes with lethal consequences
- ◆ when the guilt of the accused is based on clear and convincing evidence leaving no room for an alternative explanation of the facts
- ◆ after a trial that meets at least the fair trial standards set out in the ICCPR.

Death sentences must not be imposed

- ◆ on those aged under 18 at the time of the alleged crime, anyone suffering from a mental illness, pregnant women or new mothers
- ◆ while an appeal or any procedure to seek commutation or pardon is underway.

Anyone sentenced to death has the right to seek pardon or commutation of sentence.
Any execution must be carried out so as to inflict the minimum possible suffering.

CHALLENGES TO THE RIGHT TO A FAIR TRIAL

In many countries in the region the right to a fair trial is impeded by laws which deny due process. Even in countries where due process safeguards exist in principle, they often do not apply in practice.

Courts continue to rely on confessions extracted through **torture** as evidence in criminal trials – despite the international ban on torture. They impose **mandatory death sentences** for crimes such as drug trafficking. They place the burden of proof on the accused, **depriving** them of the **right to be presumed innocent**. **Access to a lawyer** before, during and after trial is regularly denied, and in some countries the **independence of the judiciary** is far from assured. And in times of alleged security or political crises, states often resort to **special courts**, condemning people to death after hasty proceedings.

Once the accused has been sentenced to death, he or she has the right under international law to **appeal** to a higher court against the sentence, and to seek **clemency** or commutation of that sentence. But in some countries, neither of these avenues are available.

“**The death penalty cannot be analysed in isolation from the context within which its imposition occurs... the widely acknowledged possibility of error in the process leading to conviction and its disproportionate application on those from lower socioeconomic groups are powerful arguments against the retention of the death penalty.**”

Government officials in many Asia-Pacific states argue that the enforcement of criminal justice falls exclusively within the authority of each state, but the conduct of trials is subject to international law and standards. These laws and standards are never more important than in circumstances where the state uses its power to take the irreversible step of depriving someone of his or her life.

The Advisory Council of Jurists of the Asia-Pacific Forum of National Human Rights Institutions, 2000

Human rights activists demonstrate against the death penalty on the eve of the World Day Against the Death Penalty in Hyderabad, Pakistan, October 2010.

NO
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PENALTY

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TORTURE AND OTHER ILL-TREATMENT

APPEAL CASES

AFTAB BAHADUR
PAKISTAN

CHIOU HO-SHUN
TAIWAN

DEVENDER PAL SINGH
INDIA

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INDONESIA

LENG GUOQUAN
CHINA

“ Nearly every wrongful
verdict in recent years relates
to illegal interrogation. ”

Deputy Procurator-General of the Supreme
People's Procuratorate, China, 2006

The ban on torture and other cruel, inhuman or degrading treatment is absolute in international law. International fair trial standards are explicit that no one should be forced to testify against themselves or to confess guilt. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) states that information extracted through torture must not be used as evidence in court. Yet most countries in the region that retain the death penalty tolerate torture or other ill-treatment as a means of inducing confessions (see table, pp. 10-11), even though their own laws forbid its use. Courts regularly ignore evidence of torture and other ill-treatment when sentencing people to death.

China ratified the Convention against Torture in 1988 and Chinese law prohibits the use of torture to extort confessions. The authorities have also passed a number of regulations in recent years aimed at strengthening this prohibition and reinforcing procedures to tackle the use of other illegally obtained evidence, especially in death penalty cases. Nevertheless, Chinese law still fails to include an explicit ban on the use of all evidence extracted through torture and ill-treatment in court cases. People continue to be executed despite strong evidence that their conviction was based on confessions extracted through torture.

Indonesia's Constitution prohibits the use of torture. The Indonesian Criminal Code states that any information a suspect provides to police must be free from coercion, but Indonesia has yet to make torture a criminal offence. Similarly, the law in a number of other countries including **Afghanistan** and **India** contains specific protections against coerced confessions. Yet torture by police is widespread in these countries and forced confessions are regularly relied upon as evidence during trials. In **Japan** and **Taiwan** heavy and sometimes sole reliance is placed on confessions.

A candle-lit vigil outside Changi prison for Nguyen Tuong Van of Australia during the hours before his execution in Singapore, December 2005. The 25-year-old was convicted for drug trafficking. Singapore reverses the burden of proof in drug cases, with the onus placed on defendants to prove their innocence.



© REUTERS/Luis Enrique Ascui

MANDATORY DEATH SENTENCES

APPEAL CASES

REZA SHAH
MALAYSIA

YONG VUI KONG
SINGAPORE

Mandatory death sentences prevent judges from exercising their discretion and from considering all factors in a case. Mandatory death sentences are prohibited under international law as they have been found to constitute arbitrary deprivation of life and cruel, inhuman or degrading punishment. Many courts and judicial bodies have ruled them unconstitutional.

In 2010 the Supreme Court of **Bangladesh** ruled the mandatory death sentences for murder after rape as unconstitutional. The **Indian** Supreme Court has ruled such sentences for murder unconstitutional, and in June 2011 the Bombay High Court ruled that mandatory death sentences for repeat offences under the Narcotics Drug and Psychotropic Substances Act violated the right to life. In 2006 the mandatory death penalty was removed from two laws in **Taiwan**.

A number of countries continue to impose mandatory death sentences, particularly for drug offences (see table, pp. 10-11). **Brunei Darussalam, Laos, Malaysia, North Korea, Pakistan** and **Singapore** all impose such sentences for possession of drugs over a certain amount regardless of whether the person was in possession of a relatively small quantity or was dealing in substantial amounts. Imposing the death penalty for drug offences breaches international law which permits the death penalty only for the “most serious crimes”.

“A provision of law which deprives the court of the use of its wise and beneficent discretion in a matter of life and death, without regard to the circumstances in which the offence was committed, and therefore without regard to the gravity of the offence, cannot but be regarded as harsh, unjust and unfair.”

Supreme Court of India in *Mithu v. Punjab* (1983)

A man walks past a sign outside Pudu Jail warning people of Malaysia's mandatory death penalty for drug offences, Kuala Lumpur, Malaysia, November 2007.



© Tengku Bahar/AFP/Getty Images

10 LETHAL INJUSTICE IN ASIA

End unfair trials, stop executions

		UN International Covenant on Civil and Political Rights (ICCPR) 1976	Second Optional Protocol to the ICCPR 1991	UN Convention against Torture (CAT) 1987	Laws that provide for the death penalty which do not meet fair trial standards	Legal clauses which restrict the right of appeal and review by a higher court	Laws that provide for mandatory death sentences including drug offences and other non-violent crimes	Practice on the death penalty that falls short of international standards for fair trial	Torture and other ill-treatment used to extract confessions
States that retain the death penalty	Afghanistan	1983	1987						
	Bangladesh	2000	1998						
	China	1998	1988						
	North Korea	1981							
	India	1979	1997						
	Indonesia	2006	1998						
	Japan	1979	1999						
	Malaysia								
	Mongolia	1974	2002						
	Pakistan	2010	2010						
	Singapore								
	Taiwan *	2009							
	Thailand	1996	2007						
	Viet Nam	1982							
Abolitionist in practice	Brunei								
	Laos	2009	2010						
	Maldives	2006	2004						
	Myanmar								
	Nauru	2001	2001						
	Papua New Guinea	2008							
	South Korea	1990	1995		**				
	Sri Lanka	1980	1994						
	Tonga								
Death penalty for exceptional crimes	Fiji								

		UN International Covenant on Civil and Political Rights (ICCPR) 1976 Second Optional Protocol to the ICCPR 1991 UN Convention against Torture (CAT) 1987		
Abolitionist for all crimes	Australia	1980	1990	1989
	Bhutan			
	Cambodia	1992		1992
	Nepal	1991	1998	1991
	New Zealand	1978	1990	1989
	Philippines	1986	2007	1986
	Samoa	2008		
	Solomon Islands			
	Timor-Leste	2003	2003	2003
	Tuvalu			
	Vanuatu	2008		2011

STATE RESPONSIBILITIES AND PRACTICE ACROSS THE ASIA-PACIFIC

Signed	
Ratified	
Acceded	
Yes	
No	

signed: the state shows its intention to examine a treaty with a view to ratifying it. Signature requires a state to refrain from acts that undermine the treaty's objective.

ratified/acceded: a state formally joins the treaty and is legally bound by it.

*Taiwan is not a UN member state

**only in military trial cases

INNOCENT UNTIL PROVEN GUILTY

APPEAL CASES

REZA SHAH
MALAYSIA

YONG VUI KONG
SINGAPORE

A core principle of international law is that anyone charged with a criminal offence must be presumed innocent until and unless proved guilty according to law in a fair trial. The right to be presumed innocent applies not only at trial but before trial as well. It applies to suspects before criminal charges are filed, and carries through until a conviction is confirmed following a final appeal. The ECOSOC safeguards elaborate on this right, stressing that the death penalty may be imposed only when “the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”

“Responses to crime, drugs and terrorism must be sure to protect the rights of vulnerable individuals who risk becoming the subject of criminal law and penalties.”

UN Office on Drugs and Crime, March 2010

However, the laws in a number of Asia-Pacific countries violate this right, providing in effect for a reversal of the burden of proof in the case of certain crimes. Defendants charged with such crimes in those countries are presumed guilty and bear the onus of proving their innocence.

In **China**, the principle of presumption of innocence is entirely absent from the Criminal Procedure Law. In **Taiwan**, the law was only recently changed to include the presumption of innocence. Those found to be knowingly carrying drugs over a certain quantity in **Malaysia** and **Singapore** are presumed to be guilty of trafficking, for which there is a mandatory sentence of death.



People sign a petition to save 19-year-old Yong Vui Kong, currently on death row for drug offences in Singapore, August 2010 (see appeal case). Drug offences in Singapore carry a mandatory death sentence.

RIGHT TO LEGAL COUNSEL

APPEAL CASES

HAKAMADA IWAO
JAPAN

HUMPHREY JEFFERSON
INDONESIA

LENG GUOQUAN
CHINA

Access to a lawyer from the outset of detention is a key safeguard against torture and other ill-treatment, and vital to ensuring a fair trial. The right to a fair trial requires that the accused has access to a lawyer not only during the trial itself, but also immediately on arrest, during detention, interrogation and preliminary investigations. The right to a lawyer generally means that a person has the right to legal counsel of their choice. If defendants do not have their own lawyers, they are entitled to have lawyers assigned by a judge or judicial authority. If the defendant cannot afford to pay, assigned counsel must be provided free of charge, and in death penalty cases, should reflect the choice of the accused.

The right to counsel means the right to competent counsel. The Human Rights Committee has stated that counsel for those facing the death penalty must be “effective in the representation of the accused” at all stages of the trial. It has also said that if they show “blatant misbehaviour or incompetence” the state may be responsible for a violation of the right to fair trial.

The right to be defended by counsel includes the right to confidential communications with counsel and to adequate time and facilities to prepare the defence. In death penalty cases, the accused should be given time and facilities to prepare their defence that goes above and beyond that given for other cases. This includes providing free translation and interpretation services where needed. The accused and their counsel should have opportunities equal to that of the prosecution to present their case. If the authorities hinder lawyers from fulfilling their task effectively, the state may be held responsible for violating the right to a fair trial.

Across the region, prisoners facing the death penalty have little or no access to lawyers following arrest and when preparing for trial or appeal processes.

In **China**, authorities may block or make it very difficult for defence lawyers to meet with their clients, gather evidence and access case documents. Lawyers defending clients involved in politically sensitive cases have been intimidated. Others have had charges filed against them for advising their clients to withdraw forced confessions or for trying to introduce evidence that challenges the prosecution’s case.

In **Japan**, the *daiyo kangoku* system allows the police to detain and interrogate suspects for up to 23 days. The detainee has no access to a lawyer during interrogation on the assumption that a lawyer’s presence would make it harder for police to “persuade the suspect to tell the truth”.

“Those sentenced to death often had no access to lawyers, and were convicted following trials in which no evidence was produced or no defence witnesses called.”

UN Special Rapporteur on extrajudicial, summary or arbitrary executions, commenting on Afghanistan, 2009



RIGHT TO REVIEW AND CLEMENCY

APPEAL CASES

CHIOU HO-SHUN
TAIWAN

The right to appeal to a higher court against one's conviction and sentence is a crucial safeguard of defendants' rights. The ECOSOC safeguards state that such appeals should be mandatory. Reviews by a higher court permit judicial oversight of how the death penalty is being implemented in relation to individual cases. They expose failure to respect safeguards for fair trial, in some cases pointing to the need for retrials or for amendments to legislation or other reforms. But in **Japan, North Korea, South Korea**, and parts of **Pakistan**, there is no mandatory requirement for appeal to a higher court.

In 2007, the Supreme People's Court in **China** reclaimed its power to review all death sentences passed by lower courts. In November 2010, Hu Yunteng, head of the court research department, said the court had rejected, on average, 10 per cent of all death sentences passed by lower courts nationwide every year since 2007. He said most were rejected because the evidence was inadequate, the process of deciding the punishment was inappropriate or there were other procedural flaws.

Once all judicial appeals have been exhausted, the accused has the right to seek **clemency**. However, in several countries, clemency procedures are either absent or exist only on paper. The Human Rights Committee has stated that the right to seek clemency – which is not part of a legal procedure – requires procedural guarantees if it is not to become a meaningless formality.

Although the Constitution provides for special pardons in **China**, no clemency procedure exists for those sentenced to death and no prisoner has been pardoned since 1975. Similarly, pardons or commutations are rare in **Japan** and **Singapore**. The opacity of many clemency processes that do exist in the region permits the executive – whether it be ministers or presidents – to wield their considerable power over the life and death of those under sentence of death in a largely unaccountable manner.

Left: South Korean activists release doves symbolizing prisoners on death row during a rally in Seoul, December 2007.

A young activist wears a sign that reads: "Sentenced to death because of black money production – China" as part of a protest against the death penalty in Baden, Switzerland, March 2010.



SPECIAL COURTS AND RUSHED PROCEEDINGS

APPEAL CASES

AFTAB BAHADUR
PAKISTAN

DEVENDER PAL SINGH
INDIA

Special courts like those found in **North Korea** and **Pakistan** routinely violate the right to legal representation, to appeal and not to be coerced into confessing guilt. In some special courts, military officials, rather than an independent judge, sit in judgement.

In other countries, during high profile anti-crime campaigns, courts pass death sentences following truncated court proceedings or execute for crimes which normally would not be punished so harshly. This has been the case in **China**, where “Strike Hard” campaigns are regularly conducted against drug trafficking and other offences.

“A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”

UN Human Rights Committee, General Comment on Article 14 of the ICCPR, 2007

In **Pakistan**, provisions in the Anti-Terrorism Act 1997 allowed civilians to be tried in military courts but two years later the Supreme Court ruled this unconstitutional. Anti-terrorism courts continue to sentence people to death, operating with restricted public access and with the requirement for trials to be completed within seven working days, putting judges under extreme pressure to convict. In June 2011 the President of Pakistan signed into law the Action (in Aid of Civil Powers) Regulations giving security forces fighting the Taleban in tribal areas of the country powers to arbitrarily and indefinitely detain people. The regulations also grant powers to the security forces to establish tribunals and sentence people to terms of imprisonment or death. A statement by any member of the security forces is enough to convict an accused person and there are no procedures in place for appeal against conviction and sentence.



ADPAN members from the Taiwan Alliance to End the Death Penalty and Murder Victims' Families for Human Rights join other activists at the 4th World Congress against the Death Penalty, Geneva, February 2010.

INDEPENDENT JUDICIARY

Judges must be able to decide matters impartially on the basis of facts and in accordance with the law, free from restrictions, improper influences, inducements, pressures, threats or interferences. This is enshrined in Principle 2 of the UN Basic Principles on the Independence of the Judiciary. There are also UN standards for lawyers and prosecutors that require independence and freedom from improper interference. Despite these standards, in several countries including Afghanistan, Bangladesh, China, Indonesia, Maldives, North Korea, Pakistan, Sri Lanka and Viet Nam, guarantees of a fair trial become meaningless when parts of the criminal justice system – police, prosecutors, lawyers, the judiciary – fail to operate professionally and independently of political or other influences.

Letters in support of Chiou Ho-shun, detained for over 23 years in Taiwan. His is the longest running criminal case in Taiwan. Speaking of the letters, he said: "Every one of these friends offers me sincere love. All these letters are very precious to me."



© Lin Hsin-Yi / TAEDP

TRANSPARENCY

“In order for every organ of government and every member of the public to have at least the opportunity to consider whether punishment is being imposed in a fair and non-discriminatory manner, the administration of justice must be transparent.”

UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 2006

Under international law, governments are required to be transparent in the way they apply the death penalty. The Economic and Social Council has urged states to publish regular information about the number of death sentences, executions, sentences overturned on appeal, and commutations or pardons.

If people are given reliable information about how capital punishment is applied, and are able to assess whether fair trial standards have been upheld, they are more able to make an informed decision about whether to retain the death penalty. It was just such information that shifted opinion towards abolition in the **Philippines** in 2006.

The work of campaigners in documenting death penalty cases continues to be crucial to uncovering injustice. But that work is regularly frustrated in the Asia-Pacific region. In several countries, the number of executions and related information are state secrets. In **Japan** and **Taiwan**, prisoners are executed without warning, with families and lawyers informed only after the fact. The governments of **China**, **Malaysia**, **Mongolia**, **North Korea** and **Viet Nam** routinely fail to provide public information about judgements in death penalty cases and executions.



The gallows at the Tokyo Detention Center, Japan, August 2010. The trapdoor is marked with red squares on the floor.

CONCLUSION

Every person charged with an offence has the right to a fair trial. When defendants are denied due process in criminal trials they are denied justice.

In the Asia-Pacific region, thousands of people are being sentenced to death and executed every year after unfair trials which fail to comply with international standards, undermining the rule of law and violating the right to life, the right to a fair trial and the ban on torture and other ill-treatment.

In compiling this report, a number of cases have been reviewed which clearly demonstrate the very real dangers of applying the death penalty. Who will be executed and who will be spared is often determined not only by the nature of the crimes but also the defendants' ethnic or other identity, the economic or social status of the individual, or their ability to understand and negotiate through the trial process, the availability or adequacy of legal aid and defence counsel, and other factors that determine whether they are able to challenge unfairness in a criminal justice system that propels them towards death.

Only abolition of the death penalty can guarantee that no innocent person is executed. ADPAN opposes the death penalty as a matter of principle and is asking all states to take measures to suspend its use with a view to total abolition. It is abolition that demonstrates a society's true commitment to fairness and justice rather than apologies after wrongful executions. Apologies can never be enough.

“The law is the law but I wish Parliament would abolish the death sentence because if a mistake is made, it would be irreversible. There are other ways of dealing with heinous crimes.”

Former High Court and Court of Appeal judge Datuk K.C. Vohrah, Malaysia

A protest outside the office of the Chinese representative in Hong Kong, August 2010.



RECOMMENDATIONS

To states that retain the death penalty

- ✳ Establish a moratorium on use of the death penalty as provided by UN General Assembly resolutions.
- ✳ Commute all death sentences.
- ✳ Revise laws, policies and practices to ensure fair trials in line with international standards, especially upholding the presumption of innocence, the right to legal counsel, and the protection against forced confessions and discrimination.
- ✳ Pending abolition, ensure full compliance with international standards restricting the use of the death penalty, particularly applying it only to the “most serious crimes” and abolishing the mandatory death penalty.



From top: Youth activists in India, October 2008.
A protest on World Day Against the Death Penalty in Indonesia, October 2010 (CC BY-NC-SA 2.0).
Campaigners take part in Cities for Life, an annual global anti-death penalty event held on 30 November 2010 in Hehwa-dong, Seoul, South Korea.

**ANTI
DEATH
PENALTY
ASIA
NETWORK**

The Anti-Death Penalty Asia Network (ADPAN)

Launched in 2006, ADPAN is an independent cross-regional network that campaigns for an end to the death penalty across the Asia-Pacific Region. ADPAN is independent of governments and any political or religious affiliation. Members include lawyers, NGOs, civil society groups, human rights defenders and activists from 23 countries. ADPAN's work is made all the more urgent by concerns around the injustice of unfair trials across Asia. See folder for a list of all member organizations. www.facebook.com/groups/358635539514/

Index: ASA 01/022/2011
English
December 2011

Printed by:
Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom