

£JORDAN

@Executions on the Increase

INTRODUCTION

Amnesty International is gravely concerned about the rising number of executions in Jordan since 1993, after a year in 1992 when no executions took place. Twelve executions were carried out in 1993, the highest number in over two decades. Amnesty International has repeatedly called for all death sentences to be commuted and for legislation providing for the death penalty to be reviewed with the aim of abolishing this punishment.

Successive governments and the Jordanian Parliament, under the leadership of King Hussein bin Talal, have been implementing a program of important political and human rights reforms since November 1989. These reforms and Amnesty International's persisting concerns are outlined in another paper, Jordan: Human Rights Reforms: Achievements and Obstacles (AI Index MDE 16/02/94), published in March 1994. Amnesty International regards the increasing use of the death penalty as a particularly serious setback. This paper includes detailed information about the practice of the death penalty, the legislation surrounding it, and Amnesty International's recommendations to the Jordanian Government.

1. THE PRACTICE

1.1 *Recent executions*

Executions resumed on 30 January 1993 when a 28-year-old man identified as J.M.A. was hanged after having been convicted of the 1991 murder of a 16-year-old boy. This execution was followed on 20 February by that of Muhammad Ibrahim Muhammad, aged 29, who was convicted of the murder of a 90-year-old woman in February 1992. On 25 April, a 34-year-old Egyptian convicted of theft and the murder of a middle-aged woman was also hanged.

Four other men were executed on 14 August 1993. Two of them, identified as Fathi, aged 48, and Muhammad, aged 50, were reportedly convicted by the State Security Court of spying for the enemy (Israel). They did not have the right of appeal against their sentences. A third death sentence was passed *in absentia* in the same case on a third man, also named as Muhammad. The third man to be executed on 14 August, in his twenties and called Ahmad, was convicted of raping and murdering his mother. The fourth, also in his twenties and called Khaldun, was convicted of murdering his father, his stepmother, and his

three-year-old half-brother. Another man, identified as Mundher S., aged 19, was executed on 22 August after being convicted of killing a cousin's husband for money.

A further execution, this time of a 30-year-old man, took place on 23 October 1993. Three other executions were carried out on 18 November. Two men and a woman, identified respectively as Ahmad A.N., 'Abd al-Fattah S.A., and Tamathil S.S., had all been convicted of murder.

Executions began in 1994 on 27 January. Sufyan Shtaywi and 'Ali Qaftan, both in their late twenties, were hung after convictions for murder and robbery.

1.2 Executions up to 1992

Most death sentences passed in Jordan in recent years have been for selling land to Israeli nationals or for murder. Between 1973 and 1987 about 100 people were sentenced to death for land sales to Israeli nationals. All these sentences were passed *in absentia*, entitling defendants to a retrial if they give themselves up or are apprehended within 25 years from the date of the sentence. No retrial or execution for this offence is known to have taken place.

With few exceptions, executions since the mid-1970s have been carried out on people convicted of murder, on its own or sometimes in addition to other offences, including political assassinations. A few have been executed for spying. According to official data provided to the United Nations by the Jordanian authorities and published in the 1986 Report of the Secretary-General on Capital Punishment, 19 people were executed in Jordan between 1979 and 1983, 18 of them for crimes against the person. No executions were recorded in 1984.

According to Amnesty International's records, from January 1985 until the end of 1991, at least 32 people were executed, 13 of them after trials before the Martial Law Court in which they had no right of appeal. They were all convicted of murder except for two convicted of spying. In this period, no more than seven executions were recorded in any one year.

1.3 People on death row

Amnesty International does not know the number of prisoners currently awaiting execution. It knows of one political prisoner, **Isma'il al-Wahwah**, who has been under sentence of death since conviction by the State Security Court in January 1994 for conspiracy to kill King Hussein. He is currently awaiting appeal. Amnesty International has also learned of two prisoners who have apparently been held under sentence of death since 1976. One is

Uthman Sa'id Dhaher Subh, reportedly arrested on 19 June 1976 and convicted of spying by the now abolished Martial Law Court. The other is **Muhammad Fadl Abu Zinah**, reportedly sentenced to death on 7 December 1976 also by the Martial Law Court. Neither had the right of appeal. Amnesty International was not able to obtain clarification of these cases from the Jordanian authorities. In an appeal to the Prime Minister in 1992, sent also to Amnesty International, Muhammad Abu Zinah asked that his execution be carried out, saying:

"It has been 16 years, and I have been waiting for death every minute, every hour and every day throughout these 16 long years ... If it appears to you that there is 1% [of truth] in the charge [against me], I want you to carry out the sentence immediately and without hesitation".

2. LEGISLATION AND PROCEDURES

2.1 Capital offences

The death penalty in Jordan is provided for by a high number of capital offences in the 1960 Penal Code, the 1952 Military Penal Code and several ordinary laws.

According to the Penal Code, the death penalty in Jordan is mandatory for crimes committed against the external security of the state, international law and the internal security of the state. Those in the first category include acts of treason such as serving in the ranks of the enemy, conspiring with the enemy and undermining national defence (Articles 110 to 113). Such crimes are punished by death also if committed against an allied country or committed by foreign nationals residing in Jordan, when relevant (Articles 116 and 117). The recruitment of soldiers to fight on behalf of an enemy country is considered a crime against international law and is also punished by death (Article 120).

Crimes against the internal security of the state punished by death include crimes against the constitution, such as attempts on the life or liberty of the King and other members of the royal family; working to change the constitution by illegal means or to stir up armed rebellion; and attempting to prevent the authorities from exercising their constitutional functions (Articles 135 to 138). Conspiracy to commit any of these crimes is also punished by death (Article 139), as is provoking civil strife or encouraging looting or massacres (Article 142) and conspiring to commit acts of terrorism resulting in death or partial or total destruction of an inhabited building (Article 148.4).

The killing, torture or "barbaric treatment" by three or more people roaming public roads or the countryside as an armed gang (Article 158.3) is also punished by death. Murder is punished by death if it is premeditated, committed to facilitate other crimes or to

protect other criminals, or committed against one of the murderer's forbears (Article 328). The death penalty is also mandatory in cases of arson or acts of sabotage of public property during a riot or armed rebellion resulting in death (Articles 371 and 381).

The Military Penal Code of 1962 punishes with death forms of dishonourable behaviour in combat and of active cooperation with the enemy. The death penalty is discretionary for offences relating to passwords and mutinies (Articles 11, 13 and 15).

Manufacturing, possessing or dealing in guns without permission and for illegal purposes is punished by death by the Law on Firearms and Ammunition No. 34 of 1952 (Article 11.1). Spying offences on behalf of an enemy state, such as entering prohibited areas to obtain secret documents, stealing such documents, and passing them to an enemy state are punished by death under the Law on Protection of State Secrets and Documents No. 51 of 1971 (Articles 14 to 16). In 1973 the death penalty was introduced to punish the sale of land to Israeli nationals in the Israeli occupied West Bank. In 1988 Article 292 of the Penal Code was amended to introduce a mandatory death penalty for the rape of a girl aged under 15.

The Law on Drugs and Stimulants No. 11 of 1988 greatly expanded the scope of the death penalty for drug-related offences. Offences including production, possession, transport and trafficking of drugs or relevant plants (Article 8) as well as offering or facilitating procurement of drugs, misusing legally possessed drugs or providing facilities for their handling (Article 9) are punishable by death in cases of recidivism; if the perpetrator is a law enforcement official entrusted with implementing such law; and if drugs were offered to a minor or the offender involved a minor in the offence. In the above cases the death penalty is mandatory in the instances of Article 8, discretionary in those of Article 9. The death penalty is mandatory in the instances contemplated by both articles if the offender was connected with an international drug syndicate or the offence is linked to another international offence such as illegal arms trade or counterfeiting currency. The death penalty is also mandatory for an assault on an official entrusted with the enforcement of the law leading to his or her death (Article 21); this was the only offence for which the previous Law on Dangerous Drugs No. 10 of 1955 provided a mandatory death penalty (Article 16, f).

2.2 Offenders exempted from the death penalty

Offenders aged below 18 are exempted from the death penalty according to the Law on Juveniles No. 24 of 1968. The punishments provided for by the law instead of the death penalty are imprisonment of from four to 10 years if the offender is older than 12 but younger than 15 (Article 19a), and of from six to 12 years if the offender is older than 15 but

younger than 18 (Article 18.3). People deemed insane at the time of the crime are not punishable by death, in accordance with Article 92 (1) and other provisions of the Penal Code governing criminal responsibility.

There are two contradictory provisions regarding pregnant women and capital punishment. According to Article 17 (2) of the 1960 Penal Code, if a woman sentenced to death is found to be pregnant, the death sentence shall be commuted to life imprisonment. However, article 358 of the 1961 Code of Criminal Procedure states that a death sentence passed on a pregnant woman cannot be carried out until three months after the birth of the child. According to Article 331 of the Penal Code, a woman who murders her child may not be sentenced to death if her child was less than one year old and she killed it while incapacitated by the birth or by breast-feeding.

2.3 Procedures in death penalty cases

Capital cases tried by ordinary criminal courts of first instance are automatically reviewed by the Court of Appeal and subsequently by the Court of Cassation. Murder and rape cases are tried by the Court of Major Felonies, a special court established in 1976 apparently to ensure speedy trials in order to avoid blood feuds breaking out. Death sentences passed by this court are automatically reviewed by the Court of Cassation. Defence counsel must be ensured in all capital cases.

Several capital offences are within the jurisdiction of the State Security Court, a special three-member military court which has operated since 1991. They include offences against the security of the state and drug-related offences. Initially defendants had no right of appeal against verdicts of this court. In May 1993 a right of appeal to the Court of Cassation, on questions of both fact and law, was introduced and made automatic in cases of death sentences.

In addition to the State Security Court other special courts are authorized to try capital cases. Members of the armed forces and the General Intelligence Department (GID) are tried by internal tribunals. Their verdicts are reviewed by the Commander-in-Chief of the armed forces and the Director General of the GID respectively. There is no right of appeal to a higher tribunal from these courts. Members of the Public Security Directorate (PSD) are tried by an internal tribunal, with reviews by the Director General of the PSD and the Court of Cassation. People charged in connection with land sales to Israeli nationals in the Israeli occupied West Bank are tried by a special military court. There is no right of appeal to a higher tribunal against the verdict of this court. Amnesty International does not know of any retrials or executions in connection with verdicts of this court.

The Code of Criminal Procedure provides for a retrial of defendants who were sentenced to death *in absentia* if they subsequently give themselves up or are arrested before the death sentence lapses (Article 254), that is within 25 years from the date of the sentence (Articles 342.1 and 343.1).

According to Article 357 of the Code of Criminal Procedure, once a death sentence has become final at the end of the relevant judicial proceedings, the President of Public Prosecution submits the case accompanied by a report summarizing it and containing recommendations to the Minister of Justice. This is for transmission to the Prime Minister and discussion at the Council of Ministers, which then submits the case to the King with its recommendations. The King makes the final decision on all death sentences and may confirm or commute them. He may also grant a special pardon to a specific offender. Pardon to categories of prisoners may be granted only by Parliament through an amnesty law.

The current Law on Prisons prescribes that prisoners under sentence of death must be kept under 24-hour watch and, where possible, isolated from other prisoners (Article 34).

Access to outside visitors is allowed only by written permission of the prison director (Article 24). Such prisoners are exempt from the forms of corporal punishment provided by the law (Article 29.4.b). Prisoners on death row are held with prisoners who have committed similar offences even though they may have received lighter sentences.

2.4 The execution

According to Article 358 of the Code of Criminal Procedure, executions are carried out by hanging, usually at dawn and in a prison. The King, however, may choose a different place. Executions cannot be carried out on official holidays or the prisoner's religious holidays. Until 1988 executions took place in al-Mahatta prison in Amman, and since they have been carried out in the Swaqa Reform and Vocational Rehabilitation Centre to the south of Amman. In time of war, members of the armed forces are executed by firing-squad.

Prison officials in Swaqa prison told Amnesty International in 1990 that prisoners on death row are not told when their execution will take place until about 15 minutes beforehand. Their families do not have an opportunity for a last visit and are informed of the execution only afterwards. This practice has been justified as an attempt to reduce the suffering accompanying executions.

The procedures for each execution are regulated in detail by Articles 359 to 362 of the Code of Criminal Procedure. When all previous procedural requirements have been met, the President of Public Prosecution notifies the Minister of the Interior and requests that the execution be carried out. Officials who must be present at the execution include representatives of the prosecution, the prison administration and the PSD; the prison doctor; an official of the prisoner's religion; and the clerk of the court which passed the sentence. The prisoner is asked by the prosecution for any final statement which would be recorded by the clerk. The clerk also drafts a report of the execution, which must be signed at the end by all those present. The body of the prisoner is buried by the authorities, with no religious ceremony, unless it is claimed by the family.

3. THE DEATH PENALTY: A VIOLATION OF HUMAN RIGHTS

The Jordanian authorities have argued that the death penalty is a sanction required by society and Islamic law. Without holding any views on Islam or other religions, Amnesty International opposes the death penalty in all cases as a violation of the fundamental right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as recognized in the Universal Declaration of Human Rights. There is no reliable evidence that the death penalty helps to prevent other serious harm, for example by deterring crimes. The risk of error is inescapable, yet the penalty is irrevocable. No measure that may be devised can ever make it less inhumane.

The United Nations (UN) General Assembly, in Resolution 32/61 of 8 December 1977, reaffirmed that:

"...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment".

In December 1984 the General Assembly endorsed the "Safeguards guaranteeing protection of the rights of those facing the death penalty" adopted by the UN Economic and Social Council (ECOSOC). The safeguards include the requirements that, in countries which have not yet abolished the death penalty, capital punishment be imposed "only for the most serious crimes"; that pregnant women or new mothers not be executed; and that the strictest guarantees for fair trials, including the right of appeal to a higher tribunal, be afforded.

In his report to the 1994 session of the UN Commission on Human Rights, Bacre Waly Ndiaye, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, expressed strong support for the conclusions of the Human Rights Committee that: *"all measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life"*. He recalled that the *"desirability of abolition was also expressed repeatedly by the General Assembly"* and emphasized that in his view *"the abolition of capital punishment is most desirable"*. Focusing on the safeguards for due process in death penalty cases, the UN Special Rapporteur stated (paragraph 679):

"In particular, proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the fullest guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has been proven without leaving any room for reasonable doubt, in application of the highest standards for the gathering and assessment of evidence. All mitigating factors must be taken into account. A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. In addition, the defendants' right to seek pardon or commutation of the death sentence must be ensured."

4. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

4.1 Commutation of all death sentences

The Jordanian Government should, as a matter of policy, recommend the commutation of all death sentences pending a full review of the death penalty and its future abolition. Amnesty International appeals to King Hussein to exercise clemency in all cases.

4.2 Change of Execution Procedures

Prisoners on death row and their families should be given adequate notice of impending executions to allow final visits and other preparations to be made.

4.3 Full safeguards in all capital cases

The ECOSOC safeguards should be introduced with regard to all courts with death penalty jurisdiction, including all military and other special courts empowered to impose death sentences.

4.4 Review of capital punishment

Existing Jordanian legislation should be reviewed in order to reduce the number of capital offences with a view to abolishing the death penalty, in line with the conclusions of the Human Rights Committee and the General Assembly.

4.5 Ratification of the Second Optional Protocol

Jordan should consider signing the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

APPENDIX 1 LIST OF PEOPLE EXECUTED SINCE 1985

Name	Date Executed	Type of Court
1994 (until end of February)		
Sufyan Shtaywi	27 January	Ordinary courts
'Ali Qaftan	27 January	Ordinary courts
1993		
Ahmad A.N	18 November	Ordinary courts
'Abd al-Fattah S.A.	18 November	Ordinary courts
Tamathil S.S. (Female)	18 November	Ordinary courts
Unnamed man	23 October	Ordinary courts
Mundher S.	22 August	Ordinary courts
Khaldun	14 August	Ordinary courts
Ahmad	14 August	Ordinary courts
Fathi	14 August	State Security
Court		
Muhammad	14 August	State Security
Court		
Saber 'Abd al-Hamid al-'Abed (Egyptian)	25 April	Ordinary courts
Muhammad Ibrahim Muhammad	20 February	Ordinary courts
J. M. A.	30 January	Ordinary courts
1992		
NO EXECUTIONS		
1991		
Khaled Muhammad Abu al-Sa'ud	11 July	Ordinary courts
Unnamed man	May	Martial Law Court
M.A.	26 May	Martial Law Court?
N.S.	26 May	Martial Law Court?
S.D.	26 May	Ordinary courts?
Lt. 'Ali 'Abd al-Hafez	3 February	Martial Law Court
Ahmad Muhammad Ahmad	3 February	Martial Law Court

1990

'Itaf Sulayman Ahmad (female)	26 March	Ordinary courts
Muhammad Ahmad Abu al-Ful	26 March	Ordinary courts
Mahmud Salamah Fares	20 February	Ordinary courts
Salim Muhammad al-Atrash	20 February	Ordinary courts

1989

Zayed Sulayman Nimr al-'Atawneh	18 October	Ordinary courts
Muhammad Taleb Hamed al-Ma'adelah	14 October	Ordinary courts
Isma'il 'Abdullah Saleh 'Ali	5 October	Ordinary courts

1988

Fa'eq al-Salti	19 July	Martial Law Court
Tayel al-Salti	19 July	Martial Law Court
Faisal al-Salti	19 July	Martial Law Court
A soldier	April	Military tribunal
Samir M. al-Ahmad	28 April	Ordinary courts
Naser Muhammad 'Ali	28 January	Martial Law Court
Ahmad Salim Jum'ah	28 January	Martial Law Court

1987

Nayef Khalil al-Bayed	29 January	Martial Law Court
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1986

Hani Musa Sulayman al-Jalal	25 September	Ordinary courts
'Abd al-Naser 'Abd al-Razzaq	11 September	Martial Law Court
Ahmad Ahmad Qutb 'Ayyadah (Egyptian)	24 July	Ordinary courts
'Iyad Wasef 'Abd al-Rahim	6 June	Martial Law Court

1985

Sihan Muhammad Mahmud Natur (female)	7 November	Ordinary courts
'Asri Sayyed Muhammad	7 November	Ordinary courts
Sulayman Dawud Sulayman	7 November	Unknown
Ahmad Dib Ahmad Mahmud Kan'an	8 July	Ordinary courts
Fathi 'Abbas Muhammad	9 May	Ordinary courts
Sayyed Ibrahim 'Abd al-Mu'ti	9 May	Ordinary courts