

# DEATH PENALTY NEWS

DECEMBER 1991

AMNESTY

INTERNATIONAL

Easton Street

AI Index: ACT 55/05/91

Distribution: SC/DP/PO/CO/GR

London WC1X 8PJ

United Kingdom

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

## CHINA: EXECUTIONS FOLLOW MASS SENTENCING RALLIES IN DRUG CASES

Mass sentencing rallies were carried out in southwestern China on 26 October. According to reports, 55 men and women in Kunming, the capital of the province of Yunnan, were tried in a public stadium packed with 40,000 people and sentenced to death for drug-related offenses. The 55 prisoners were reportedly executed immediately after the mass sentencing rally. Official reports said that some 14 other districts in Yunnan held similar sentencing rallies.

Article 171 of the Chinese Criminal Law and supplementary regulations adopted in 1990 provide the death penalty for many drug-related offenses. On 26 June 1991, at least 70 people were executed for alleged drug-related offenses after mass sentencing rallies held in Kunming and other districts in Yunnan province. Mass executions and the public burning of seized drugs are being used by authorities in the latest drive against crime.

Death sentences announced at mass sentencing rallies follow trials which fall short of minimum international standards for fair trial. Defendants in China do not always have access to lawyers, and when they are available the lawyers in practice have no more than one or two days to prepare a defence. Death sentences are often decided in advance of the trial by "sentencing committees" whose decision is generally binding on the courts. Chinese legal experts have in recent years criticized the practice of pre-trial verdicts but it is reported to still be widespread.

The use of the death penalty in China has drastically increased since 1989. A recorded 746 executions in 1990 and over 920 death sentences. In the first ten months of 1991, 1,437 death sentences have been recorded, 335 of which were for drug-related offenses. These figures are only cases known to AI and the true figures are believed to be several times higher.

## CANADA: PRISONERS EXTRADITED TO FACE CAPITAL CHARGES IN THE USA

The Supreme Court of Canada ruled on 26 September to extradite two prisoners to the United States without seeking assurances that they would not be subjected to the death penalty.

Extradition was sought by the states of California and Pennsylvania for Charles Ng and Joseph Kindler respectively, wanted on charges of murder, a crime punishable by death in both states. Under Article 6 of an extradition treaty drawn up between the two countries it is possible for the extraditing state to seek assurances that the death penalty not be imposed.

Amnesty International filed an *amicus curiae* brief on behalf of Ng and Kindler, asking that Canada not extradite without these assurances. It was hoped that assurances would be sought because of the Canadian Charter's prohibition of "cruel and unusual punishment" and because of Article 6 in the extradition agreement with the U.S. Canada retains the death penalty for exceptional crimes only and has not executed anyone since 1962.

In a four-to-three decision, the Supreme Court held that extraditing Ng and Kindler would not be "cruel and unusual punishment" because "the execution, if it takes place, will be in the United States under American law against an American citizen in respect of an offence that took place in the United States". The court did not seek assurances under Article 6 for fear that Canada would become a "safe haven" for murder suspects.

The attorneys for Ng and Kindler filed individual petitions, as permitted by the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), to the United Nations Human Rights Committee in the hope that this body would rule Canada was violating its obligation under the ICCPR. While the ruling of this body is not binding, a ruling that the men should not be extradited without assurances would have been a formal international censure of Canada. Ng and Kindler were extradited before the Committee could hear their cases, but the Human Rights Committee is retaining the cases for consideration.

## NIGERIA: COMMUTATIONS IN COUP ATTEMPT CASE

In late October 1991, Amnesty International appealed against further executions in connection with a failed coup attempt in Nigeria in April 1990. Eleven prisoners, including two civilians, had reportedly been convicted of treason or concealment of treason after being tried three times, in secret, by a government-controlled military tribunal. It was subsequently announced by the Nigerian authorities that eight death sentences had been commuted to life imprisonment and three life sentences had been reduced to 10 years' imprisonment, but no further details of the convictions were provided.

Following a coup attempt in April 1990 aimed at ousting President Ibrahim Babangida, hundreds of soldiers and civilians were arrested. Most were released without charge after several weeks, but 96 were quickly brought to trial before a Special Military Tribunal headed by a member of the military government (the Armed Forces Ruling Council), of whom 42 were executed in July 1990, nine were sentenced to prison terms and 13 were acquitted. According to information received by Amnesty International, there was insufficient evidence to convict or sentence to death another 31 of the accused, but the government ordered their re-trial and brought in a different member of the military government to preside over the court. In September 1990, after re-trial with at least seven or more other defendants, a further 27 were convicted of treason and executed.

## SWITZERLAND: PROGRESS TOWARDS ABOLITION

A proposed amendment to the Swiss Military Penal Code, abolishing the death penalty in time of war, has been approved by the National Council (one of the two chambers of parliament). The decision was taken on 4 October by a vote of 114 to 0.

The proposal now goes to the Council of States (the second chamber) for approval, expected to be voted on this December.

## INDIA: PRISONER ESCAPES EXECUTION AFTER HANGMAN FAINTS

Raj Gopal Naggar, a prisoner under sentence of death, escaped execution in the northern Indian state of Jammu and Kashmir on 23 October when the hangman fainted as he was about to carry out his first execution. The prisoner's family immediately appealed for the commutation of the sentence saying that it was a "barbaric and inhuman punishment". The appeal was rejected on 29 October. President Ramaswamy Venkataraman also turned down a mercy petition seeking Presidential clemency. However, hours before a renewed execution date, 14 November, the Indian Supreme Court granted Raj Gopal Naggar a reprieve after hearing a petition by Sikh politician Simranjit Singh Mann asking for the death sentence to be commuted because Naggar had already spent a long time on death row.

The death penalty in India is usually carried out by hanging from the neck until dead. An attempt to challenge this method of execution failed before the Supreme Court which stated in a 1983 judgment that hanging did not involve torture, barbarity, humiliation or degradation.

## MONGOLIA: DEATH PENALTY STATISTICS RELEASED

According to the figures produced by the Government of the Mongolian People's Republic, 190 people were sentenced to death and 123 executed by provincial, town and special courts during the period 1980 to 30 June 1991. The figures show that the highest number of people executed per annum was in 1985 with 22 executions. Since then fewer than 10 executions per year have been carried out with five people executed in 1990 and five in the first half of 1991.

The death penalty is presently retained under Mongolia's 1961 Criminal Code as amended in 1986. It can be imposed for espionage, intentional homicide under aggravating circumstances, and certain other crimes. Women are exempt from the death penalty as well as men over 60 years of age or under 18 at the time of the crime.

It has learned that the death penalty for economic crimes was abolished in 1990.

## BOOK REVIEW

### WELCOME TO HELL, by Jan Arriens

(Ian Faulkner Publishing Ltd, Cambridge, UK, 1991. ISBN number 1-85763-000-9. Paperback, £9.95)

This book is a portrait of life on death row in the United States, as seen through the eyes of the prisoners. In their letters to people in Great Britain and Ireland, the prisoners speak of their loneliness, anguish and fear. They describe what it is like to face execution and to be abandoned by society. Often painfully, they look at the wretched childhoods and circumstances that brought them to their present plight. *Welcome to Hell* tells of their remorse and their fight for survival - one prisoner, through correspondence in the three months before his execution, formed a friendship which became intensely important to him and gave him a reason for living just when no time for living was left.

## BOOK REVIEW

### THE DEATH PENALTY IN AMERICA: CURRENT RESEARCH, edited by Robert M. Bohm

(Anderson Publishing Company, Cincinnati, Ohio, and Academy of Criminal Justice Sciences, Highland Heights, Kentucky, 1991. ISBN number 0-87084-013-4)

Eight scholarly articles provide new data and conclusions on several important areas of death penalty research in the USA.

The first, by Victoria Schnitzer and John Ortiz Smykla, is a descriptive analysis of the 14,570 executions carried out in the USA between 1608 and 1987, based on data compiled by Watt Espy over many years - the Espy File.

In Chapter 2, a study by William C. Bailey fails to find support for the idea that the death penalty serves as a deterrent to crime in general.

The third study examines whether post-Furman guided discretion statutes have effectively eliminated racial discrimination in North and South Carolina; Raymond Paternoster compares factors that influence prosecutors' charging decisions and finds strong evidence of victim-based racial discrimination in prosecutorial decision-making in South Carolina, but very little in North Carolina. The subject is further addressed by Thomas Keil and Gennaro Vito who measure the "seriousness" of murders in Kentucky and find this variable to account for just over 40 percent of the variation in Kentucky prosecutors' decisions to seek the death penalty (Chapter 4).

In Chapter 5, Frank P. Williams III and Marilyn D. McShane examine the level of trust that prospective "death qualified" jurors place in psychologists and psychiatrists and their testimony in capital trials. They conclude that psychiatric testimony on the side of the prosecution is afforded more credibility than psychiatric testimony on the side of the defense. The jurors seem to view temporary insanity as an aggravating rather than a mitigating circumstance. At the sentencing phase, however, the authors found that psychiatric testimony produced fewer death sentences for all defendants.

Two chapters are devoted to an examination of what became of the death row inmates whose sentences were commuted as a result of the US Supreme Court's decision in *Furman v. Georgia* (1972). The decision provided a natural experiment allowing for reports on prison behaviour and recidivism. The authors tentatively concluded that the *Furman* parolees performed better than expected. The repeat homicide rate was 1.6 percent (three out of 185 parolees). They also committed three robberies, one rape and one kidnapping.

The final chapter, by Robert M. Bohm, examines public opinion in the USA. Polls are analyzed according to demographic characteristics to determine the kinds of people who are least and most likely to support the death penalty. African-Americans, women, people under 30, Democrats, college graduates, people in the bottom income bracket, Easterners and Southerners support the death penalty less than white people, men, Republicans, high school graduates, people in the top income category, clerical and sales workers, Westerners and Mid-Westerners.