

# AMNESTY INTERNATIONAL

## DEATH PENALTY NEWS

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### SUMMARY

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This issue of Amnesty International's "**Death Penalty News**" (AI Index: ACT 53/002/2008) provides updates on major death penalty developments that occurred between 1 January 2008 and 31 March 2008. It features updates on Mali, Nigeria, Tunisia, Guatemala, USA, China, Indonesia, North Korea, Belarus, Iran, Saudi Arabia, the Arab Charter of Human Rights and on a note verbale that was presented at the 62 session of the United Nations General Assembly.

# AFRICA

## **MALI: Draft bill to be examined in the next Parliamentary session**

The draft bill on the abolition of the death penalty adopted by the government in October 2007 has been tabled for the next parliamentary session which will start in April.

## **NIGERIA : Reactions to our statement**

The AI press release denouncing executions carried out in Nigeria in 2007 published on 17 December triggered a lot of interest in Nigeria and worldwide. (See "Government misleads world about death penalty record", <http://www.amnesty.org/en/for-media/press-releases/nigeria-governmentmisleads-world-about-death-penalty-record-20071217> and "Nigeria: stop executions - adopt a moratorium" <http://www.amnesty.org/en/library/asset/AFR44/030/2007/en/AFR440302007en.html>).

Although Amnesty International has not received any formal reply from the Nigerian Federal Government or from the Kano State Government, the press release did prompt many reactions. Some disputed AI's findings: Aliyu Umar, Kano's Commissioner for Justice, for instance, told AFP that "what Amnesty International said is nothing but a stack of lies which demonstrates its crass ignorance of Nigeria's judicial process". He however did not deny the executions. According to him, "all legal channels were exhausted before the death sentences were carried out and all the convicts had legal representation". The Lagos state prison authorities first described claims of secret execution as not only unfounded, but "a wicked lie fabricated by enemies of the country for self ends" according to Vanguard. Later in January, The Punch reported that a senior prison official recognized that the executions were "perfectly legal and followed due process.

In February 2008 Amnesty International published a report which found that most death-row prisoners who should have been released following an announcement on 17 May 2007 by the previous government, are still in fact on death row. There are approximately 800 prisoners on death row in Nigeria. Some have been on death row for over 25 years. Approximately 200 men never had an appeal because they were sentenced to death by Robbery and Firearms tribunals under the military regime before 1999. These tribunals denied the right to appeal. For more information, see "Nigeria: Prisoners' rights systematically flouted", AI Index AFR 44/001/2008, 26 February 2008. The report is available on line at: <http://www.amnesty.org/en/library/info/AFR44/001/2008/en>).

## **TUNISIA- Draft bill aiming at the abolition of the death penalty introduced in the Parliament**

Twenty-five members of the opposition party introduced a draft bill for the abolition of the death penalty in the Tunisian Parliament on 4 March 2008. The last execution was carried out in 1991.

# AMERICAS

## **GUATEMALA- Proposed resumption of executions**

On 12 February the Congress of Guatemala approved Decree 06-2008, known as the “Law regulating the commuting of sentence for those condemned to death” (“*Ley Reguladora de la Conmutación de la Pena para los Condenados a Muerte*”). This established a procedure for those condemned to death to request a pardon from the President. While this may seem like a positive development, in fact Decree 06-2008 effectively leaves open the possibility of executions to resume. The absence of a presidential pardon process had in practice resulted in a prolonged *de facto* moratorium.

Decree 06-2008 is currently being considered for a second time by Congress, after it was vetoed by the President on 14 March. In the procedure outlined by the bill, there is no mention nor definition of the criteria under which pardons are to be granted. This is in breach of a ruling by the Inter-American Court of Human Rights (IACHR), which ordered Guatemala to specify clear criteria for evaluating individual petitions for pardon. Guatemala’s own Constitution establishes that international human rights treaties prevail over national law, leaving Guatemala in breach of the Inter-American Convention on Human Rights.

In addition, Decree 06-2008 states that the lack of a presidential decision within 30 days of the application for commutation of the death sentence would suffice to consider the request “tacitly rejected”, allowing for the execution to take place. AI is concerned that this could be used to speed up executions, and could result in those condemned to death being denied the opportunity to appeal. AI holds that this approach, known as “negative administrative silence”, is not consistent with Guatemala’s obligation to establish specific criteria for evaluating each case separately and take them fully into account. Moreover, administrative silence could lead to the execution of prisoners who have appealed their sentences to international bodies and whose cases are still pending.

## **USA- US seeks death penalty for seven Guantánamo detainees**

On 11 February the Pentagon announced that charges relating to the attacks in the USA of 11 September 2001 had been sworn against six detainees at Guantánamo Bay, and that the US government was intending to seek the death penalty against the six men at a joint trial. Five of them had been held for more than three years in the secret custody of the Central Intelligence Agency (CIA) at unknown locations before being transferred to Guantánamo in September 2006. The CIA has confirmed that at least one of the men charged, Khalid Sheikh Mohammed, was subjected to torture known as “waterboarding” – simulated drowning. The sixth man, Mohamed al-Qahtani, was subjected to torture and other ill-treatment in late 2002 in Guantánamo, including intimidation by the use of a dog, sexual and other humiliation, stripping, hooding, loud music, white noise, sleep deprivation and to extremes of heat and cold through manipulation of air conditioning.

On 31 March 2008, the Pentagon announced that charges had also been sworn against another of the detainees transferred from secret CIA custody to Guantánamo in September 2006, Tanzanian national Ahmed Khalfan Ghailani. He is charged under the Military

Commissions Act with crimes related to the bombing of the US Embassy in Dar es Salaam in Tanzania on 7 August 1998, in which 11 people were killed and dozens injured. The government is intending to seek a death sentence against Ahmed Ghailani also.

Amnesty International considers that the procedures of the military commissions which these men are now facing do not comply with international fair trial standards. The tribunals lack independence from the branch of government that has authorized human rights violations and are able to turn a blind eye to such abuse. Of particular concern is the fact that the commissions can admit into evidence information obtained under cruel, inhuman or degrading treatment, and that the government may keep secret certain methods used to obtain information.

### **USA, Georgia- No new trial for death row inmate Troy Davis despite innocence concerns**

On 17 March 2008, the Georgia Supreme Court, in a 4-3 decision, denied death row inmate Troy Davis a new trial or an evidentiary hearing on post-conviction evidence of innocence. He has been on death row for more than 16 years for the murder of a police officer which he maintains he did not commit. Many of the witnesses presented by the prosecution at the trial have since recanted or contradicted their testimony. It now appears his case will head back to the state clemency board.

### **USA, Maryland-Establishment of commission to study the death penalty**

In March 2008, the Maryland General Assembly voted to establish a commission to study the death penalty in the state. The Maryland Commission on Capital Punishment will examine racial, socio-economic, and geographic disparities in the state's application of the death penalty, along with its costs and the risk of executing the innocent. The Commission will report on 15 December.

### **USA, Mississippi– Innocent Man freed**

Kennedy Brewer has been freed in Mississippi after post-conviction DNA tests proved his innocence. He was convicted in 1995 and spent 12 years on death row for the rape and murder of a young girl. He was released on bond in 2007, pending a new trial. In February 2008, a judge dismissed the indictment against him.

### **USA, Nebraska– Executions by electric chair banned**

On 8 February, the Nebraska Supreme Court ruled that execution in the electric chair violated the state's constitutional ban on cruel and unusual punishment. "Condemned prisoners must not be tortured to death, regardless of their crimes" the court wrote. The state Attorney General issued a statement that "we'll now move to the legislative process to get a new method of execution. Nebraskans overwhelmingly support the death penalty and justice demands our state has a constitutional method of execution." He also announced that he would be asking the court to reconsider its ruling. On 9 April, the Court refused to do so. The Attorney General issued a statement that his office would appeal to the US Supreme Court.

## **USA, Nebraska– Proposal to abolish the death penalty rejected**

In March, the Nebraska legislature voted 28-20 against a proposal to abolish the death penalty.

## **USA, Pennsylvania- Death sentence overturned for Mumia Abu-Jamal**

A federal appeals court has upheld a lower court decision to overturn the death sentence imposed on the former journalist and political activist Mumia Abu-Jamal for the murder of a police officer. According to the ruling of the Third Circuit Court of Appeals, his conviction should be upheld but he should be granted a new sentencing hearing because of flawed jury instructions over how to consider mitigating evidence. If prosecutors decide not to challenge the ruling or conduct a new sentencing hearing, Mumia Abu-Jamal's sentence will automatically be changed to life imprisonment.

## **USA, Texas- Court ruling violates the Vienna Convention on Consular Relations**

On 25 March 2008, in a case involving the USA's obligation to comply with judgments of the International Court of Justice (ICJ), the US Supreme Court ruled in favour of the State of Texas and against a Mexican national on death row. The 6-3 ruling, *Medellín v. Texas*, concerned the case of José Medellín, a Mexican national and one of five people sentenced to death for the murder of 14-year-old Jennifer Ertman and Elizabeth Pena, 16, in Houston in 1993. All five were teenagers at the time of the crime.

Under article 36 of the 1963 Vienna Convention on Consular Relations (VCCR), the Texas authorities should have notified José Medellín "without delay" after his arrest of his right to have the Mexican consulate informed of his detention. They failed to do so. He subsequently became one of more than 50 Mexicans on death row in the USA named in a case brought against the USA by the government of Mexico in the ICJ, the principal judicial organ of the United Nations (UN). By ratifying the VCCR Optional Protocol on the compulsory settlement of disputes, the United States recognized the authority of the ICJ to order legally binding remedies for its Vienna Convention violations. On 31 March 2004, the ICJ handed down its judgment (the *Avena* decision) finding that the USA had violated article 36 of the VCCR by failing to notify the detainees of their right to contact their consulate after arrest. The ICJ stated that "the remedy to make good these violations should consist in an obligation on the United States to permit review and reconsideration" of the cases in the US courts, to determine any prejudicial impact of the VCCR violation on the defendant.

The Supreme Court ruled on 25 March that the ICJ's *Avena* judgment was not automatically enforceable as federal law, and that a presidential directive for the state courts to give effect to the ICJ ruling did not override this. The majority stated that "the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress." Providing the effective judicial review mandated by the ICJ for José Medellín and the other affected Mexican nationals on death row would thus require the US administration to obtain implementing legislation from Congress.

Under the Vienna Convention on the Law of Treaties, the USA as a whole is obliged to meet its treaty obligations, and may not invoke the provisions of its internal law as justification

for failure to do so. How it meets these obligations is up to the US government, but meet them it must. The Supreme Court has effectively passed the issue on to other branches of government. It is up to them to pick up the issue and ensure compliance with the *Avena* judgment.

### **USA, Virginia- Expansion of the death penalty vetoed by Governor Kaine**

On 5 March 2008 Governor Tim Kaine vetoed legislation that would have expanded the death penalty to include accomplices to murder. Under Virginia's "triggerman rule", only the actual perpetrator of a capital murder is eligible for the death penalty. The bills passed by the House and Senate would have redefined this to allow the death penalty for close accomplices in cases of murder for hire, murder involving a "continuing criminal enterprise", and terrorism. Explaining his veto decision, Governor Kaine said "Virginia is already second in the nation in the number of executions we carry out. While the nature of the offence targeted by this legislation is very serious, I do not believe that further expansion of the death penalty is necessary to protect human life." On 6 March, the House voted to override the veto, but on 7 March a similar effort in the Senate failed.

## **ASIA AND PACIFIC**

### **CHINA- Use of lethal injection will be expanded**

On 3 January Jiang Xingchang, vice-president of the Supreme People's Court, told reporters from the China Daily newspaper that the use of lethal injections would be expanded in China.

Executions by lethal injection were first introduced in China in 1997 by amending the Criminal Procedure Law, but the most common method of execution remains the firing squad. This is changing – for example the Chengdu intermediate People's Court in South-West China decided to stop executions by firing squad from 1 March 2008.

According to Jiang Xingchang, half of the 404 Intermediate People's Courts already use lethal injection to carry out executions. "It is considered more humane and will eventually be used in all intermediate People's Courts", he added. AI disputes that there is a humane method of executions. Numerous executions by lethal injection in the USA and other countries have taken a prolonged time where the prisoner appeared to be suffering.

For more information, please see Amnesty International People's Republic of China: The Olympics Countdown - crackdown on activists threatens Olympic legacy (ASA 17/050/2008, 2 April 2008, available online at: [http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/Olympics/\\$File/ASA170502008.pdf](http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/Olympics/$File/ASA170502008.pdf))

### **INDONESIA- Three Australians spared death penalty in Bali**

On 6 March 2008 the Jakarta Post reported that three members of the so-called Bali Nine had their death sentences reduced to life imprisonment following a judicial review by the Supreme Court. Matthew Norman, Si Yi Chen and Tan Duc Thanh were spared execution by firing squad. The three had been on death row since 2006 when the Supreme Court, ruling on an appeal, had increased their original life sentences imposed for smuggling drugs into Bali, to sentences of death.

Three others of the Bali Nine continue to face execution. Scott Rush, Myuran Sukumaran and Andrew Chan challenged the validity of the death penalty in drugs cases before the Constitutional Court, but had their case rejected in October 2007.

The remaining three are serving long jail sentences. Renae Lawrence is serving a 20-year sentence and Michael Czugaj and Martin Stephens were sentenced to life.

### **NORTH KOREA- Fifteen killed in North Korean summary execution**

North Korean authorities executed 15 people attempting to cross the border into China. The thirteen women and two men were shot on a bridge in the north-eastern town of Onseong in late February.

According to a newsletter from South Korean NGO "Good Friends", a North Korean official reportedly said that the executions were carried out "to send a warning to people."

Due to chronic food shortages, many North Koreans have little choice but to risk the dangerous journey to China in order to access food and other essential supplies. Amnesty International has repeatedly called on the North Korean government to end its policy of summary executions.

# EUROPE AND CENTRAL ASIA

## **BELARUS-Three executions**

Syarhey Marozaw, Ihar Danchanka and Valery Harbaty (Valerii Gorbatii) were executed on 5 February 2008. They were found guilty of grave crimes in the Gomel region between 1990 and 2004. All three men were sentenced to death by shooting by the Supreme Court on 1 December 2006. On 9 October 2007, Syarhey Marozaw, the leader of the gang and his assistant Ihar Danchanka were tried for further crimes and sentenced again to death. Both trials were conducted in the Minsk remand centre where the men were held; the trials were closed and the remand centre was surrounded by security forces. News of the executions was reported to *BelaPAN* news agency by the secretary of the Supreme Court in February 2008. One of the lawyers involved in the case also reported that documents certifying the death of Syarhey Marozaw were delivered to the registration office of the district in Gomel where the deceased was registered.

In November 2007, it was reported in the press that Alyaksandr Syarheychyk had been executed.

Belarus is the only country in Europe and the former Soviet Union that still executes. Belarus maintains the death penalty for "premeditated, aggravated murder" and 12 other peacetime offences. There are no figures available to date for the number of executions carried out in 2007. Execution is by a gunshot to the back of the head, and neither the condemned nor relatives are officially told of the scheduled date of the execution, and the relatives are not informed of where the body is buried.

The secrecy surrounding the executions in Belarus has been found in the past to amount to a violation of the human rights of the families of the deceased. The UN Human Rights Committee noted with regard to communication No. 887/1999, related to a death sentence in Belarus, that "complete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author [prisoner's mother] of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant [prohibition of torture and inhuman treatment]."

## **MIDDLE EAST**

### **Arab Charter of Human Rights providing for the death penalty for juvenile offenders came into force**

Arab Charter on Human Rights (ACHR) entered into force on 24 March 2008, sixty days after receiving the final necessary ratification on 24 January. The Charter allows for the imposition of the death penalty 'only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.'(art.6).

Moreover, Article 7(a) of the Charter contains a watered down prohibition on the imposition of the death penalty against persons under 18 years of age. It states generally that the death penalty shall not be imposed for 'persons under 18 years of age, *unless* otherwise stipulated in the laws in force at the time of commission of the crime' [Emphasis added]. This clearly violates Articles 37(a) of the UN Convention on the Rights of the Child (CRC) and 6(5) of the International Covenant on Civil and Political Rights (ICCPR) which contain an absolute prohibition on the imposition of the death penalty for crimes committed by persons under 18 years of age, with no deference to national law in force at the time of the offence. With the exception of Palestine and Somalia, all the members of the Arab League are States Parties to the CRC, and Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Somalia, Sudan, Syria, Tunisia and Yemen are parties to the ICCPR.

### **IRAN-Death penalty for producers of pornographic audiovisual materials**

On 29 January 2008 the Iranian President Dr. Mahmud Ahmadinezhad promulgated a new law to the Culture and Islamic Guidance Ministry on the punishment of those involved in illegal audiovisual activities. According to article 3, paragraph A, of this law, those who produce pornographic materials by force and with aversion, those who produce pornographic materials in order to exploit others sexually and the main agents behind the production of pornographic material will receive a sentence of death.

### **IRAN-Ban on public executions**

On 29 January 2008 judiciary Chief Ayatollah Mahmoud Hashemi-Shahrudi issued a decree banning public executions in Iran. Public executions will need approval by the Head of Judiciary to be carried out. Mass media are also banned from publishing images from executions.

### **SAUDI ARABIA– Urgent Action on behalf of two foreign nationals**

On 31 March Amnesty International issued an appeal (UA 116/07) on behalf of three foreign nationals who are facing the death penalty in Saudi Arabia.

A 22 years old Jordanian national, Mehanna Sa'd, is known to have been sentenced to death together with Canadian national Mohamed Kohail, aged 23. Both men have appealed; if their appeals are rejected they will be in imminent danger of execution.

Mohamed Kohail's 17-year-old brother, Sultan, who initially was also at risk of being sentenced to death, was sentenced to 200 lashes and one year's imprisonment on 5 April. His sentence will be sent for review to the Court of Cassation, which can recommend that he be retried by a General Court. This court would have the power to sentence him to death, even though he is 17 years old. Saudi Arabia is a state party to the Convention on the Rights of the Child (CRC) and is under obligation not to execute anyone for crimes committed when they were under 18.

Mohamed Kohail and Mehanna Sa'd were charged with the murder of a Syrian boy, who died in a schoolyard brawl in January 2007. They were sentenced to death in March 2008 after proceedings which reportedly fell short of international fair trial standards. They were first held incommunicado for approximately a month and a half, and beaten in an attempt to make them confess. Their trial before the Jeddah General Court took place over nine sessions. Their lawyer was allowed to attend only the last one or two, and was not allowed to challenge the evidence brought against his clients.

# UNITED NATIONS

## **UN- 58 countries sign a statement of disassociation**

On 2 February 2008 representatives of 58 Permanent Missions to the United Nations wrote to the UN Secretary-General Ban Ki-moon, with regards to the resolution 62/149 entitled “Moratorium on the use of the death penalty” adopted by the United Nations General Assembly on 18 December 2007, wishing “to place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law”<sup>1</sup>

Four countries -- Belize, Chad, India and the United States -- which voted against the resolution at the UNGA in December, did not sign the note verbale.

Eight countries that abstained during the plenary -- Central African Republic, Equatorial Guinea, Eritrea, Fiji, Guinea, Laos, Swaziland and the United Arab Emirates -- have signed the statement.

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<sup>1</sup> United Nations General Assembly, Note verbale A/62/658, 2 February 2008