

AMNESTY INTERNATIONAL

Open Letter

AI Index: ASA 25/005/2006 (Public)
News Service No: 156
20 June 2006

South Korea: Key arguments against use of the death penalty

Mr Chun Jung-bae
Minister of Justice

Dear Minister,

I am writing this public letter on behalf of Amnesty International to welcome the Government of South Korea's decision to examine the question of the death penalty and to consider the abolition of capital punishment.

Should South Korea abolish the death penalty, it will join the majority of the world's nations and take an important step strengthening the global trend against executions. One hundred and twenty two of the world's nations have now abolished the death penalty in law or practice and, during 2005, only 22 nations actually carried out executions.

Since South Korea's independence in 1948, at least 900 people have been executed, mostly by hanging. The last executions in South Korea took place in December 1997 when 23 people were executed at short notice. Amnesty International commends the fact that there has been an unofficial moratorium on executions since February 1998 when President Kim Dae-jung, who had been sentenced to death himself in 1980, took office. There have been no executions under the present administration of President Roh Moo-hyun. However, at least three people were sentenced to death in South Korea in 2005 and one in 2006. Currently 63 prisoners remain under sentence of death.

In recent times, numerous countries in different regions around the world have abolished the death penalty. Europe is almost entirely free from the death penalty with only Uzbekistan¹ and Belarus actually carrying out executions in recent years. In the Americas, only the United States of America actually carries out executions on a regular basis. In Africa, huge strides have been made to see the continent free from executions. Senegal and Liberia have recently abolished the death penalty and in 2005 only three of 53 African countries carried out executions.²

Unfortunately the region of Asia stands out as resistant to this global trend. The region contains countries with high rates of executions and no apparent prospect of abolition. Nations such as Japan, China, Singapore and Indonesia appear to be staunch supporters of capital punishment. Amnesty International believes that the abolition of the death penalty in South Korea would provide the region with much needed human rights leadership and be a valuable example of a nation progressing towards the full protection of human rights. Such a step would encourage further positive developments in the region such as the abolition of the death penalty in Cambodia, Nepal and Timor Leste, and the Philippines' decision this month

to abolish the death penalty after it was re-imposed in 1994.

Amnesty International appreciates that the question of the death penalty often prompts heated political and public debate. The death penalty is most commonly used in the belief that it acts as a deterrent to violent crime and governments' therefore find it difficult to abandon a measure they believe protects their citizens. Scientific studies have, however, consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments.

Highlighted below are, according to Amnesty International's views and experiences, some of the key arguments against the use of the death penalty and some of the most commonly used justifications for state killings.

Executions achieve justice for the victims of crimes and their relatives

Politicians and others who advocate executions continually do so using the victims of crime and their relatives as justification. For example, in the USA, prosecutors talk of "closure" for the victims' family that will be achieved by the execution of the perpetrator. However, such arguments are simplistic and ignore the complexities of the emotional pain suffered by those who suffer the loss of a loved one.

In opposing the death penalty, Amnesty International in no way seeks to minimize or condone the crimes for which those sentenced to death were convicted. As an organization deeply concerned with the victims of human rights abuses, Amnesty International does not seek to belittle the suffering of the families of murder victims, for whom it has the greatest sympathy.

Naturally, those who have suffered the loss of a loved-one to homicide often feel great anger towards the perpetrator of the crime and this emotion manifests itself in expressions of wanting revenge. The victims' relatives may also desire the most severe punishment available as an expression of their pain and as a mark of their love for the person lost.

It is imperative that the suffering of those close to a murder victim be supported by the authorities and measures taken to alleviate their suffering. However, the execution of the murderer does little to address the long-term emotional pain suffered by the relatives and only inflicts similar suffering upon the family of the individual murdered.

In reality, the death penalty fails as an expression of the value a society places on the lives of murder victims and the suffering of their loved-ones.

The death penalty as a deterrent to crime – the fear that abolition will lead to higher rates of criminality

"We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system."

Statement made by the Constitutional Court of South Africa, when abolishing the death penalty as unconstitutional in 1995

Many politicians within differing nations and cultures have argued that the death penalty is necessary as a crime control measure and value executions for their alleged deterrent effect on the overall crime situation. For this proposition to be true, it has to be believable that violent criminals contemplate the results of being detected and held accountable for their crimes and then decide that the risk of being executed is not acceptable, whereas long term imprisonment would be. In reality, Amnesty International suspects that criminals do not think they will be caught when committing a crime. The best deterrent to violent crime lies in

guaranteeing a high chance of capture and conviction, not harsher punishments.

Evidence from around the world also indicates that the death penalty has no unique deterrent effect. In the USA, Canada and other countries, evidence does not show that violent crime increases in the absence of the death penalty. For example, in 2004 in the USA, the average murder rate for states that used the death penalty was 5.71 per 100,000 of the population, but in states without capital punishment the murder rate was only 4.02 per 100,000. Furthermore, in Canada, in 2003, 27 years after the abolition of the death penalty, the murder rate had fallen by 44 per cent from the levels in 1975 – before the death penalty was abolished.

One recent example is the US state of New York, where the death penalty was reinstated in 1995. In the late 1990s, the homicide rate of the state reversed an upward trend and started to decline. In June 2004, the state's highest court found the laws allowing for the death penalty to be in violation of the state constitution and struck down the death penalty. To date, law-makers have declined to reintroduce capital punishment. Were the risk of execution to be a deterrent, it would be expected that the removal of capital punishment (which received widespread publicity) would free potential murderers to commit crimes and thus the homicide rate would increase. However the reverse has happened. In the first six months of 2005 (one year after the court struck down the death penalty), homicide had decreased by 5.3 per cent.

The ever present risk of executing the innocent

Wherever the death penalty is deployed, there exists a strong risk of executing a person not guilty of the crime for which they were sentenced to death. Furthermore, the death penalty has been used arbitrarily against perceived political opponents, as was the case in South Korea.

Amnesty International has documented cases of the execution of possibly innocent persons worldwide.³ To date, 123 condemned inmates have been released in the USA since 1973 after evidence of their innocence emerged. Furthermore, in China, Nie Shubin, a labourer, was executed as a murderer and rapist in 1995. Reports suggested at the time that he had confessed to the crimes under torture. In March 2005, a detainee arrested in connection with another case reportedly confessed to Nie Shubin's crimes voluntarily, apparently describing the crime scene precisely.

In other countries, numerous persons have been sentenced to death for crimes they did not commit. In the USA, 122 people have been released from death row after being declared innocent of the crime of which they were condemned. Japan acquitted four prisoners who were condemned to death when it was established that they had been falsely accused; the four men had spent years under sentence of death, in one case 34 years.

Some crimes are so heinous that society must show its revulsion by executing the perpetrator

An execution cannot be used to condemn killing. Such an act by the state is the mirror image of the criminal's willingness to use physical violence against a victim. Additionally, all criminal justice systems are vulnerable to discrimination and error. No system is, or could conceivably be, capable of deciding fairly, consistently and infallibly who should live and who should die. Expediency, discretionary decisions and prevailing public opinion may influence the proceedings from the initial arrest to the last-minute decision on clemency.

Central to human rights is that they are inalienable – they are accorded equally to every individual regardless of their status, ethnicity, religion or origin. They may not be taken away from anyone regardless of the crimes a person has committed. Human rights exist to protect all people; they therefore apply to the worst as well as to the best of us.

In addition, experience demonstrates that whenever the death penalty is used some people will be

killed while others who have committed similar or even worse crimes may be spared. The prisoners executed are not necessarily only those who committed the worst crimes, but also those who were too poor to hire skilled lawyers to defend them or those who faced harsher prosecutors or judges.

The international community has recognised that no crime can be deserving of the death penalty. The International Criminal Court, the international tribunals established to deal with the aftermath of atrocities in the former Yugoslavia and Rwanda and the Special Court on Sierra Leone (all courts established to try crimes involving gross violations of human rights including crimes against humanity, genocide and war crimes) exclude the death penalty as a sentence that can be imposed. This illustrates the strength of the global tide away from the use of the death penalty.

Conclusion

Executions give society the illusion of control over the threat posed to public safety by serious crimes. In the immediate period around an execution there is a feeling that a blow has somehow been dealt against criminality.

However, the reality is that capital punishment serves no useful purpose in the fight against crime. In many societies, it detracts from those actions that may be instrumental in reducing violence. Once abandoned, societies become used to living without the brutality of executions and, with the passage of time, the death penalty ceases to be an issue and is rarely discussed.

On behalf of Amnesty International's worldwide membership, and in the name of human rights, I urge South Korea to take this historic step to abolish the death penalty.

Yours sincerely,

Irene Khan
Secretary General

- (1) The government of Uzbekistan has committed itself to a moratorium on executions from 2008.
- (2) Somalia, Sudan and Libya.
- (3) For example see *Fatal Flaws: Innocence and the death penalty in the USA*, AI index AMR 51/69/98.

Public Document

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