

# THE DEATH PENALTY WORLDWIDE: DEVELOPMENTS IN 1999

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# THE DEATH PENALTY WORLDWIDE: DEVELOPMENTS IN 1999

## Abbreviations

The following abbreviations are used in this paper:

|               |  |
|---------------|--|
| <b>ACHR</b>   | American Convention on Human Rights  |
| <b>AI</b>     | Amnesty International  |
| <b>COE</b>    | Council of Europe  |
| <b>CRC</b>    | Convention on the Rights of the Child  |
| <b>ECHR</b>   | European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights").                                       |
| <b>ECOSOC</b> | United Nations Economic and Social Council   |
| <b>EP</b>     | European Parliament (the parliamentary body of the European Union)   |
| <b>EU</b>     | European Union   |
| <b>IACHR</b>  | Inter-American Commission on Human Rights  |
| <b>ICCPR</b>  | International Covenant on Civil and Political Rights   |
| <b>JCPC</b>   | The Judicial Committee of the Privy Council in London which serves as the final court of appeal for a number of countries which were formerly British colonies |
| <b>OAS</b>    | Organization of American States  |
| <b>OSCE</b>   | Organization for Security and Cooperation in Europe  |
| <b>UDHR</b>   | Universal Declaration of Human Rights  |
| <b>UN</b>     | United Nations   |
| <b>UNCHR</b>  | United Nations Commission on Human Rights  |

## COUNTRIES WHICH ABOLISHED THE DEATH PENALTY IN 1999

### Albania

On 10 December a decision by the Albanian Constitutional Court that the death penalty was contrary to the new constitution effectively abolished the death penalty in peacetime in Albania. When announcing this decision Fehmi Abdiu, Chairman of the Constitutional Court, said that provisions in the post-communist penal code allowing the death penalty to be imposed for 11 crimes were incompatible with the new constitution. The Constitutional Court's decision followed an opinion which was adopted by the Council of Europe's Venice Commission, which had deemed the death penalty to be inconsistent with the Albanian Constitution. This decision does not apply to crimes in time of war or when war is imminent, for which the death penalty can still be imposed. The Court also announced that the sentences of the 20 prisoners currently condemned to death would be commuted. The last execution in Albania took place in 1995.

### Bermuda

On 18 December the House of Assembly (Bermuda's lower house of parliament) voted to abolish the death penalty and corporal punishment. This was followed by a similar vote in

the Senate (the upper house) on 22 December. On 23 December the Abolition of Capital and Corporal Judicial Punishment Act 1999 was signed into law by Governor Thorold Masefield. The last execution in Bermuda was in 1977.

### **Cyprus**

On 18 February the House of Representatives unanimously voted for the abolition of the death penalty from the domestic Criminal Code where it had been retained for exceptional crimes such as treason, instigating invasion and piracy with violence. This change came into effect on 26 February. At the same time the Council of Ministers approved the ratification of Protocol No. 6 to the ECHR. Cyprus still retains the death penalty under the Military Code for six wartime offences.

### **East Timor**

In October, after a ballot in which integration with Indonesia was overwhelmingly rejected by the people of East Timor, the administration of the territory was transferred from Indonesia to the UN Transitional Administration in East Timor. The first Regulation (No. 1999/1) signed by the UN Transitional Administrator, Sergio Vieira de Mello, contained section 3.3 which stated "Capital punishment is abolished." The regulation repealed a number of laws which had been in operation during the period of Indonesian occupation from 1975 to October 1999. Regulation 1999/1 entered into force on 27 November.

### **Latvia**

On 1 June Latvia ratified Protocol No. 6 to the ECHR which provides for the abolition of the death penalty in peacetime. The *Saeima* (parliament) had debated abolition on a number of occasions but without reaching a consensus, and the process of abolition has reportedly not been completed in Latvian law where the new Criminal Code adopted in June still retains capital punishment. However the ECHR, being international law, has priority over national law and thus Latvia has become abolitionist with regard to crimes committed in time of peace.

### **Nepal**

The death penalty was formally removed from the country's laws in May when King Birendra gave the royal assent to two legislative amendments. Although there is no provision for the death penalty in the Constitution of 1990, it had been retained for acts of high treason in the "Succession to the Throne Act" of 1988. The King, who had exclusive power to amend or repeal this law, has now repealed it, replacing the death penalty for treason with a maximum term of 25 years' imprisonment and confiscation of assets.

### **Turkmenistan**

On 29 December the Turkmen *Halk Maslahaty* (People's Assembly) decided to abolish the death penalty. On the same day President Saparmurat Niyazov signed an appropriate constitutional law. The most severe punishment for crimes will now be a prison term of 25 years. The decision to abolish the death penalty follows a moratorium on executions which has been in force since January 1999 (see item under "Moratoria on Executions", page 8)

### **Ukraine**

The death penalty has been abolished for all crimes as a result of a decision of Ukraine's Constitutional Court. The court said that all reference to the death penalty should be removed from the criminal code as soon as possible, although it did not set a time limit for this move (See item under "Court Decisions", page 18).

#### **Move towards Abolition - Armenia**

Addressing the UN Human Rights Committee in October 1998 Armenia's representative had stated that the death penalty would be abolished as of 1 January 1999 when a new criminal code would be adopted, and that it would be replaced by a maximum sentence of life imprisonment. The draft criminal code which would abolish the death penalty, and which was passed on its first reading in parliament in 1997, had still not become law by the end of 1999 and at the end of December the head of the General Prosecutor's Office said that there were currently 31 men under sentence of death, this figure including three men sentenced during 1999.

### **REDUCTION IN SCOPE**

#### **Iraq**

In July the Iraqi Council of Ministers announced the formation of a committee which, according to Justice Minister Shabib al-Maliki, would examine the usefulness of the arbitrary laws and whether they needed to be repealed or amended. He said that the committee's work would not limit itself to examining punitive legislation and the sanctions and measures that this involves, but would include all the procedures which come within the context of the arbitrary laws. This would be with the aim of formulating practical recommendations that would ensure that President Saddam Hussein's orders are carried out.

Following the formation of this committee it has been reported that on its recommendation President Saddam Hussein has decreed that the death penalty will no longer be imposed for political offences, provided they do not include bombings and terrorist operations which lead to the killings of citizens or officials or on military personnel accused of involvement in any political activities (unless undertaken on behalf of the ruling Ba'th Party) in the armed forces.

#### **Viet Nam**

In December the National Assembly approved amendments to the Criminal Code which included reducing the number of capital offences from 44 to 29. The amendments will not come into effect until mid-2000, but a directive has been given that with immediate effect no death sentences should be imposed or upheld for the 15 offences for which it has been removed as a punishment. However the death penalty remains for those offences for which it is most frequently imposed, i.e. drug offences, murder, rape and economic offences involving corruption and fraud when the sums involved are over a certain amount.

## **ATTEMPTS TO REDUCE SCOPE**

### **Zimbabwe**

The Constitutional Commission, appointed in May, delivered a proposal for a new constitution to President Robert Mugabe on 29 November. The proposed constitution retained the death penalty but only as an optional punishment for murder. Under the present law it is mandatory for murder and treason. [The new constitution was put to a referendum in February 2000 but was the proposal was rejected.]

## **MORATORIA ON EXECUTIONS**

### **African Commission on Human and Peoples' Rights**

The above Commission at its 26th Ordinary Session held from 1 - 15 November in Kigali, Rwanda, passed a resolution urging states to envisage a moratorium on the death penalty (see item under Intergovernmental Organizations, page 10).

### **European Parliament**

The adoption of Resolution 1999/61 by the UNCHR (see item under "Intergovernmental Organizations, page 14 ) was followed in May by the adoption of a resolution by the European Parliament requesting that the issue of a universal moratorium on capital punishment be entered on the agenda for the 54<sup>th</sup> session of the UN General Assembly in September. A further resolution on a world-wide moratorium was passed by the European Parliament in November in the context of the death sentences passed on Joaquin Jose Martinez, Mumia Abu Jamal and Larry Robinson in the USA and following the decision not to table a resolution on the death penalty at the 54th session of the UN General Assembly (see item under "Intergovernmental Organizations", page 15).

### **Italy**

From 12 December and throughout the year 2000, whenever a death sentence is suspended or commuted anywhere in the world or a country votes for a moratorium on executions or abolition of the death penalty, the ancient Colosseum in Rome will be lit with a bright yellow-gold light for two consecutive nights. This initiative is sponsored by the Municipality of Rome, the Italian Cultural Heritage Ministry, Acea (the city's electrical utility) and three non-governmental organizations - the Italian Section of AI, the Sant' Egidio Community and Hands off Cain.

### **Sant' Egidio Community Petition**

During 1999 three petitions calling for moratoria on executions were circulating. One of the largest international petitions is being coordinated by the Sant' Egidio Community in Rome. The Sant' Egidio Community was founded in 1968 and was originally a voluntary organization which was involved in various services to the poor, however over the years it has developed a wider role in international peacemaking. It has now chosen to coordinate a



drive to make the whole world free of judicial executions from the year 2000 and hopes to present its petition, together with the signatures, to the UN General Assembly on Human Rights Day, 10<sup>th</sup> December 2000. Amnesty International is supporting this initiative by collecting signatures on the petition. By the end of 1999 over 1,800,000 people had signed it.

Two other petitions with the same objective were also circulating in 1999, one by Hands off Cain, an abolitionist organization allied to the Italian Radical Party and the other by an organization in the USA entitled Moratorium 2000 which is collecting signatures in the USA.

### **Turkmenistan**

In a letter to the UN Secretary-General dated 6 January, the Permanent Representative of Turkmenistan to the UN said that he had been instructed by his government to announce that the President of Turkmenistan, Mr Saparmurat Niyazov, had signed an Act of Turkmenistan and a Decree concerning the introduction of a moratorium on the use of the death penalty. The Act had come into force on 1 January. The moratorium would also extend to persons sentenced to death before its introduction. In his comments on this decree the President said that, amongst other reasons, this step had been taken "*.....on the basis of consistent adherence to an implementation in its domestic and foreign policy to the universal norms of international law and the principles and goals of the UN and the OSCE, guided by the ideals of humanism, good will and justice.....*" Turkmenistan subsequently abolished the death penalty in December 1999 (see item under "Countries which abolished the death penalty in 1999", page 6).

### **UN Commission on Human Rights**

In April, at its annual session in Geneva, the UNCHR renewed its call for a worldwide moratorium on executions. The resolution was co-sponsored by 72 states and was adopted by a vote of 30 in favour, 11 against and 12 abstentions. (See item under "Intergovernmental Organizations", page 14).

## **ATTEMPTS TO INTRODUCE MORATORIA**

### **USA**

#### **Illinois**

Illinois had reinstated the death penalty in 1977. Between that date and the end of February 1999, 12 men had been executed by the state and 11 men under sentence of death had been released after being proved to be innocent. Faced with this disturbing state of affairs, in March the Illinois House of Representatives passed a resolution calling for a six-month moratorium on executions and the setting up of an independent group to study the application of the death penalty in the state. However the measure failed in the Illinois Senate. [In January 2000 State Governor Ryan suspended executions while the state's death penalty procedures were reviewed.]

### Nebraska

On 20 May the Nebraska legislature passed a bill calling for a moratorium on executions. The bill would have suspended executions during a period of two years during which a study would have been made into whether the death penalty was being applied fairly. During this time, however, death sentences could still have been imposed. On 27 May the Governor of Nebraska, Mike Johanns, vetoed the bill, giving as his reason that the death penalty was the law in Nebraska and he had an obligation to enforce the law. This is the first time a state legislature has passed a bill calling for a moratorium on executions.

## **COMMUTATIONS**

### **Russian Federation**

In February, following the ruling of the Constitutional Court that no further death sentences could be imposed until all citizens can be granted the right to trial by jury (see item under "Court Decisions", page 17) the Chairman of the Presidential Clemency Commission, Anatoly Pristavkin, announced that all prisoners under sentence of death would have their sentences commuted by June. On 3 June at the opening of the All-Russia conference on the Abolition of the Death Penalty, Minister of Justice Pavel Krasheninnikov announced that President Boris Yeltsin had signed a decree commuting the sentences of all 716 prisoners under sentence of death. The Secretary General of the Council of Europe, Daniel Tarschys, who was attending the conference, welcomed President Yeltsin's decree saying:

*“This is an important step forward beyond the present moratorium. There are now no more death sentences to execute. The next logical step should be to eliminate this penalty from the criminal code.”*

### **South Africa**

In September a further 11 prisoners formerly under sentence of death had their sentences commuted to life imprisonment by the Supreme Court of Appeal. The commutations followed the ruling in 1995 by South Africa's Constitutional Court that capital punishment was inconsistent with constitutional guarantees of the right to life and certain other rights and the subsequent abolition of the death penalty in law. The commutations are part of the on-going re-sentencing of the 453 prisoners who were under sentence of death when the death penalty was abolished.

### **Thailand**

Although in December the death sentences of 30 prisoners were commuted to life imprisonment to mark the 72nd birthday of King Bhumibol Adulyadej, at least 116 prisoners remained under sentence of death.

## **INTERGOVERNMENTAL ORGANIZATIONS**

### **African Commission on Human and Peoples' Rights**

The African Commission on Human and Peoples' Rights, at its 26th Ordinary Session held from 1 - 15 November in Kigali, Rwanda, passed a resolution urging states to envisage a moratorium on executions and to reflect on the possibility of abolition. Point 2 calls upon: "*all States parties [to the African Charter on Human and People's Rights] that still maintain the death penalty to:*

*"limit the imposition of the death penalty only to the most serious crimes;  
consider establishing a moratorium on executions, especially in cases where  
there may not have been full compliance with international standards for a  
fair trial;*

*and to*

*,,,reflect on the possibility of abolishing the death penalty."*

### **Council of Europe**

The commitments made concerning the abolition of the death penalty in Albania and Ukraine were on the agenda of the January session of the Parliamentary Assembly of the COE.

Albania joined the COE in June 1995 making a commitment to introduce an immediate moratorium on executions and to ratify Protocol No. 6 to the ECHR within three years. Despite the moratorium which had been in place since then Albania had still not signed or ratified Protocol No. 6 and death sentences were still being imposed. The Parliamentary Assembly, expressing concern at recent public statements made by prominent Albanian politicians suggesting that the moratorium might come to an end, issued a Declaration at its January session in which it reminded Albania that any step back on this commitment would have serious consequences for Albania's membership of the COE.

Ukraine joined the COE in November 1995 and made the same commitments as Albania. However executions continued until March 1997, although a *de facto* moratorium has been in place since then. The other commitments were unfulfilled by the end of the three-year period, November 1998, and although the *Verkhovna Rada* (parliament) had debated the question of the death penalty on a number of occasions, consensus on abolition in law had not been reached.

The Parliamentary Assembly at its January session adopted Resolution 1194(1999) concerning Ukraine, stating that should substantial progress not be made in these and other areas by the opening of the June 1999 part-session of the Assembly, it would proceed to the annulment of the credentials of the Ukrainian parliamentary delegation and would recommend that Ukraine be suspended from its right of representation at the Assembly.

In May the COE's Committee on the Honouring of Obligations and Commitments by Member States, which monitors implementation of commitments entered into by COE states, voted to recommend suspension of Ukraine. At its June session the Parliamentary Assembly accepted that although certain progress had been made, much still remained to be done and it decided that it would be appropriate to start the procedure aimed at suspending the rights of

the Ukraine delegation to table official documents, take on duties and vote in the Assembly.

On 30 December the Constitutional Court of Ukraine ruled that the death penalty violated the Ukrainian Constitution and called for domestic legislation to be changed to reflect this. (See item under “Court Decisions”, page 18.)

### **European Union**

The EU made several declarations and statements concerning the death penalty including those on:

- 11 February - Regretting the execution of Sean Sellers in the USA (see item under “Executions of Child Offenders”, page 26)
- 21 April - Welcoming the ratification by Latvia of Protocol No. 6 to the ECHR
- 4 May - Regretting the resumption of executions by Uganda
- 3 June - Welcoming the decision by Nepal to abolish the death penalty
- 4 June - Regretting the decision of the Trinidad and Tobago authorities to break their *de facto* moratorium on executions and also their denunciation of the ACHR
- 25 June - Regretting the decision by the Cuban authorities to make increased use of the death penalty

The Common Strategy on Russia, adopted by the EU on 4 June, contained the following clause:

*“The EU shall focus on the following areas of action in implementing this Common Strategy:*

*1. Consolidation of democracy, the rule of law and public institutions in Russia. To enhance democracy, institution-building and the rule of law in Russia, which is a prerequisite for the development of a market economy, the Union will undertake efforts to:*

- (a) Strengthen the rule of law and public institutions..... by enhancing programmes to promote the abolition of the death penalty.”*

### **European Parliament**

In February the EP passed a resolution (B4-0188/99) in which it referred to the USA and its failure to abide by its commitments under the Vienna Convention on Consular Relations (see item under “Court Decisions”, page 16).

On 6 May resolution B4-0461, 0473, 0475, 0480, 0496 and 0502/99 on the issue of the death penalty and a universal moratorium on capital punishment was passed welcoming the adoption by the UNCHR of a resolution on the abolition of the death penalty and requesting that the issue of a moratorium be entered on the agenda for the next session of the UN General Assembly.

In June the EP passed a resolution calling on Turkey to commute the death sentence passed

on Abdullah Öcalan, pointing out that the execution could harm Turkey's integration into the EU. In the same resolution the EP called on the PKK, the organization led by Mr Öcalan, to end terrorism and to collaborate in seeking a peaceful solution to the Kurdish problem, and on the Turkish government to change the *de facto* moratorium (in place since 1984) to formal abolition of the death penalty.

On 16 September the EP passed resolution B5-0079, 0093, 0098 and 0107/1999 on the situation of the prisoners accused of spying in Iran. The resolution referred to the announcement by the Iranian Minister for Information that he would be bringing a prosecution in the case of the Muslim and Jewish Iranians accused of spying and that proceedings were being started against students in connection with the July pro-democracy student protests. The EP noted that the new Iranian criminal code provides for the death penalty for anyone guilty of espionage for Israel or the USA and that several prisoners had already been executed on this charge, the most recent being a Jew aged 60. Four people had already been sentenced to death in connection with the student demonstrations. *Inter alia* the EP expressed its indignation at the proceedings being taken against the prisoners accused of spying, called for the suspension of the execution of the death penalty and the continuance of judicial review of the case and demanded the prisoners' immediate release in order to enable them to freely prepare their defence with lawyers of their choice.

At an emergency debate on 7 October the EP adopted four resolutions, one of which (B5-0144, 0155, 0159, 0169 and 0171/1999) recommended the establishment of a worldwide moratorium on death sentences. In the resolution the EP praised the EU Council for having decided to submit a resolution to the UN General Assembly on abolition of the death penalty and called on Finland as Presidency-in-Office of the EU to ensure that the text made explicit reference to the establishment of a universal moratorium on executions. It also expressed the hope that provision would be made for the appointment of a special rapporteur responsible for ensuring its implementation. Other issues of concern referred to in the resolution were the death sentence imposed on Abdullah Öcalan, the fact that several countries had revived capital punishment despite having dispensed with it for several years and the plight of European nationals condemned to death in third countries.

In November the EP passed resolution B5-0272, 0274, 0282, 0283, 0284, 0287, 0297 and 0306/1999 on establishing a worldwide moratorium on capital punishment. In the resolution the EP also expressed its concern at different aspects of the administration of the death penalty in the USA with particular reference to the death sentences against Joaquín José Martínez, Mumia Abu Jamal and Larry Robinson and deplored the postponement of the negotiations on the adoption of a resolution on a moratorium on capital punishment at the UN General Assembly.

## **United Nations**

### **United Nations Commission on Human Rights (UNCHR)**

At its annual session in Geneva the UNCHR renewed its call for a worldwide moratorium on executions. Resolution 1999/61, adopted on 28 April, stated that the Commission “...*calls upon all States that still maintain the death penalty... (t) o establish a moratorium on executions, with a view to completely abolishing the death penalty*”.

The language of the moratorium call was the same as in resolution 1998/8, adopted last year

by the same Commission (see The Death Penalty Worldwide: Developments in 1998, AI Index ACT 50/04/99, page 19). In other respects the 1999 resolution was stronger, urging states that still maintain the death penalty not to impose the punishment “*for non-violent financial crimes or for non-violent religious practice or expression of conscience*”; “*(n)ot to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person*” and “*(n)ot to execute any person as long as any related legal procedure, at international or at national level, is pending*”. States were also urged not to enter any new reservations under Article 6 of the ICCPR which may be contrary to the object and purpose of the Covenant and to withdraw any such existing reservations. This was a reference to the USA which has entered a reservation to the provision of Article 6 of the ICCPR which forbids the use of the death penalty against persons for crimes committed when they were under the age of 18. The resolution also requested states which have received requests for extradition on capital charges to reserve the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting state that capital punishment would not be carried out.

The 1998 resolution attracted 65 co-sponsors; the 1999 resolution attracted 72. The 1998 resolution was adopted by a vote of 26 in favour, 13 against with 12 abstentions. The 1999 resolution was adopted by a vote of 30 in favour, 11 against and 12 abstentions.

UN Sub-Commission on the Promotion and Protection of Human Rights  
(previously the Sub-Commission on Prevention of Discrimination and Protection of Minorities)

On 24 August the above UN Sub-Commission, in resolution 1999/4 adopted by secret ballot, condemned “*unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence*”. The vote was 14 in favour and 5 opposed with 5 abstentions. The Sub-Commission also called upon all states that retained the death penalty not to apply it for refusal to serve in or desertion from military service when such actions were the result of conscientious objection to military service. It also called upon retentionist states to apply a moratorium on executions throughout the year 2000 in order to mark the millennium and to commute the sentences of those under sentence of death on 31 December 1999. The resolution was controversial not only because it was the first time that the Sub-Commission has adopted a resolution on this subject but also because the unusual step was taken of making reference to specific countries in a preambular paragraph.

The resolution also requested the UN Secretary-General to report to the Sub-Commission at its next session on the number of executions of juvenile offenders and on the total number of executions worldwide.

UN General Assembly

Meeting in New York in November, the Third Committee of the UN General Assembly decided to take no action on a draft General Assembly resolution calling for a worldwide moratorium on executions. Draft resolution A/C.3/54/L.8 had been drawn up by the EU and had attracted 73 co-sponsors. In language identical to that of the resolution adopted by the UNCHR in April (see above), it would have called on all states that still maintain the death penalty “*to establish a moratorium on executions, with a view to completely abolishing the death penalty*”.

The draft resolution ran into fierce opposition from retentionist countries led by Egypt and Singapore. Two wrecking amendments introduced by these countries attracted 74 co-sponsors. The amendments were unacceptable to the majority of the draft resolution's co-sponsors as they would have reopened arguments about the death penalty being a criminal justice issue instead of a human rights issue and that they would attempt to make the death penalty an issue for national sovereignty. When informal discussions had reached an impasse, the co-sponsors of the resolution and of the amendments agreed that the Third Committee would take no action at this session.

## **COURT DECISIONS**

### **International Courts**

#### **The Vienna Convention on Consular Relations**

The Vienna Convention on Consular Relations was adopted in 1963 to codify consular rights and obligations. Article 36 of the Convention provides that foreign nationals must be notified of their right to communicate with consular officials when detained in member states. This article is particularly important when foreign nationals are facing criminal charges which could attract the death penalty. The USA ratified the Vienna Convention in 1969.

Notwithstanding this commitment, a Paraguayan national, Angel Fransisco Breard, was executed in Virginia in 1998 while his case was before the International Court of Justice and despite an instruction from the Court that the execution should not go ahead. Paraguay had appealed to the Court on the basis that Breard's rights under the Vienna Convention had been violated.

Since then there have been further developments where the failure of the USA to respect the rights of foreign nationals under the Convention has been challenged in the international courts.

#### **Karl and Walter LeGrand**

On 2 March Germany brought a case against the USA at the International Court of Justice in the Hague in a dispute concerning the alleged violations of the Vienna Convention on Consular Relations with respect to Karl and Walter LeGrand, two German nationals convicted of murder in Arizona and sentenced to death. Germany argued that the failure of the US authorities to advise the prisoners or the German Consulate of their rights to consular assistance as required by the Vienna Convention precluded Germany from protecting its nationals' interests at both the trial and appeal level in the state courts. Karl LeGrand had already been executed (on 24 February). Walter LeGrand was executed on 3 March despite an order by the Court for "precautionary measures" requiring that his execution be halted pending a final decision in the proceedings.

#### **Stanley Faulder**

Stanley Faulder, a Canadian citizen who had been under sentence of death in Texas for 22

years, was not informed of his right to contact the Canadian consulate for assistance. In June his case was appealed before the Inter-American Commission on Human Rights which formally issued an order for “precautionary measures”. On 9 June the Commission recommended that his execution be stayed while a full hearing was convened and an on-site investigation through a special commission carried out. Despite these requirements Joseph Stanley Faulder was executed on 17 June 1999.

#### Execution of Mexican nationals

On 2 October the Inter-American Court of Human Rights issued its advisory opinion (Advisory Opinion OC16/99) as requested by Mexico in 1997 following the execution of two Mexican nationals in the USA, on the legality of the USA's refusal to grant access to consular representation to foreign detainees (under Article 36 of the Vienna Convention on Consular Representation) particularly those charged with crimes punishable by the death penalty. The Court held that the execution of an individual whose rights under the Vienna Convention have been violated is an arbitrary deprivation of life and violates international law. Although the advisory opinions of the Inter-American Court are not legally binding and the USA does not recognize the Court's authority, this is the first time that an international court has conclusively held that the USA is in violation of international human rights norms by failing to comply with the terms of the Vienna Convention and by not providing a remedy for past violations of the treaty.

As of 31 December 1999 there were reported to be 82 foreign nationals representing 30 different nationalities under sentence of death in the USA. In virtually every case they were put on trial without ever being informed of their guaranteed right to consular assistance.

#### National Constitutional Courts

In February the Constitutional Court of the Russian Federation ruled that no more sentences of death could be imposed until the right to trial by jury is available in all the Federation's 89 republics, regions and territories, such trials only being currently available in nine of them. The Constitution guarantees trial by jury for crimes which can attract the death penalty although there is a provisional clause in the Constitution that allows for such trials to be heard by judges without a jury until the appropriate law is passed. However, although the Constitution was adopted over five years ago the relevant law has never been passed. The Constitutional Court ruled that enough time has gone by to enable the appropriate legislation to be introduced and confirmed that the lack of the right to trial by jury contravened the Constitution, as it did not ensure equality before the law. The Court further ruled that until a law is passed to ensure that all citizens of the Russian Federation can be guaranteed the right to jury trials, the death penalty cannot be handed down by any court at all, including one with jurors. The effect of this decision is that the Constitutional Court has imposed a de facto moratorium on executions.

On 10 December the Constitutional Court of Albania announced that the death penalty was incompatible with the new Albanian constitution. This decision followed an opinion by the Council of the European Commission for Democracy through Law (Venice Commission) which deemed the death penalty to be inconsistent with the Albanian constitution. Twenty men under sentence of death have had their sentences commuted.

On 30 December, following an appeal by 51 members of the *Verkhovna Rada* (parliament)



against the items in the Criminal Code providing for the death penalty which they claimed were inconsistent with the country's constitution, the Constitutional Court of Ukraine ruled that the death penalty violated the principle of the right to life enshrined in the country's constitution and called for changes in the domestic legislation to remove the legal contradiction. The Court declared that:

*“Ukraine’s constitution does not contain any item excepting the death penalty from item 1, Article 27, concerning the inherent human right to life”*

and ruled that the death penalty also contravened Article 28 of the constitution, under which *“no person may be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”*

The court concluded that *“ the inherent human right to life is inseparable from the right to human dignity, which cannot be abridged or abrogated.”* The decision of the Constitutional Court is final and is not open to appeal.

### **Other National Courts**

#### **Botswana**

A case heard in the Botswana High Court could have a lasting effect on the treatment and trials of those charged with capital offences. Tlhabologang Maauwe and Gwara Brown Motswetla were convicted of murder in 1995, their conviction was upheld by the Court of Appeal and their requests for clemency to the President were refused in 1998. However the night before their execution, scheduled for 16 January 1999, DITSHWANELO (the Botswana Centre for Human Rights) successfully brought an application for a stay of execution pending investigation into the treatment and trial of the offenders. This is the first time that a stay of execution has been granted in Botswana once the proceedings have been through the processes of trial, appeal and failed clemency attempt.

At a hearing held in April, Mr Justice Dibotelo ruled that the two men should be allowed to speak to their lawyers in private, ruling that to deny such access restricted the prisoners' constitutional rights to free access to their lawyers. Until this decision prison regulations had stipulated that such discussions must be with sight and hearing of at least two prison officers. A further hearing was held in August in which a range of issues was raised including the allegation that they did not received a fair trial as they were illiterate and did not speak the language in which the trial was conducted and therefore did not understand the proceedings. They also claimed they had not received adequate legal representation and their instructions that they no longer wished to be represented by their *pro deo* counsels had been ignored. The decisions from this hearing were announced on 29 October. Their claim that they had not received a fair trial was allowed, their convictions and sentences were set aside and a new trial was ordered.

#### **USA**

Michael Domingues, a prisoner in the state of Nevada who is under sentence of death for a crime committed when he was 16 years old, appealed to the US Supreme Court on the grounds that his sentence violated the USA's obligations under the ICCPR, Article 6(5) of which states that

*“Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”*

On 7 June the Court issued an order asking the US Solicitor General to provide it with the government's view of its international obligations as they related to the use of the death penalty against those convicted of crimes committed when they were under the age of 18. On October the Solicitor General submitted an *amicus curiae* brief with the Court which maintained that the USA has the right to execute child offenders and that the US reservation to Article 6 (made when it ratified the ICCPR in 1992) is valid. The brief recommended that the Supreme Court should not consider the appeal. On 1 November the Supreme Court announced that it would not consider Michael Domingues' claim that his sentence was illegal. As a result he and some 70 other convicted child offenders remain under threat of execution in the USA.

## **ATTEMPTS TO REINSTATE THE DEATH PENALTY**

### **Bolivia**

The rape and murder of a ten-year-old girl at the end of August in La Paz sparked calls for reinstatement of the death penalty. However the Interior Minister, Walter Guiteras, said that while he agreed with the murdered child's parents that the death penalty should be used for crimes against children, the reintroduction of capital punishment would require a congressional amendment to the Bolivian Constitution. In a congressional debate, held at the beginning of September, a bill to reinstate the death penalty was rejected by a majority of parliamentarians. The last execution in Bolivia took place in 1974.

### **Hungary**

A petition for a referendum on reinstatement of the death penalty with 160,000 signatures was refused by the Hungarian authorities in March. The National Election Committee, which would have been the organizing authority for such a vote, said that there could be no referendum on issues stemming from Hungary's international obligations.

### **South Africa**

In his last State-of-the-Nation address as President given to the South African parliament on 5 February, Nelson Mandela said that the government would not reintroduce the death penalty but stated there was a need to tighten existing legislation to combat the scourge of crime in the country.

Despite his words public concern over the rapidly rising levels of crime generated widespread calls for a referendum on the reintroduction of the death penalty. An organization called the Association for the Restoration of Capital Punishment held a meeting on 24 February in Cape Town at which it was agreed that the government should be requested to hold a referendum as part of the elections to be held in June. It was suggested that the government should

incorporate the question of reinstatement into the ballot paper where a simple tick would indicate support or otherwise for the return of the death penalty. If the government turned down this request the association stated that consideration could be given to forming a political party to contest the election, thus enabling their presence on the ballot paper and giving voters the opportunity to indicate support for their purpose. However, despite claims of widespread support for this policy the association did not form a political party and did not succeed in influencing the government to organize a referendum. Some opposition political parties which had made restoration of the death penalty a key pre-election call also failed to win substantial votes. The African National Congress, the ruling party, were returned to power with an overwhelming majority.

### **USA**

#### **Massachusetts**

Following the defeat by just one vote of a bill to reintroduce the death penalty in 1998 the state Governor, Paul Cellucci, introduced a similar bill in 1999, widening the scope to include the death penalty for domestic violence murders. On 29 March, after a day-long debate, the bill was defeated in the state legislature by a margin of seven votes. Under procedural rules the bill cannot be brought up again during the same session, which means that it cannot now be brought up again for two years. The last execution in Massachusetts was in 1949.

## **EXPANSION OF SCOPE**

### **Cuba**

On 15 February 1999 Cuba's National Assembly passed new legislation (Law 87) introducing the death penalty for serious cases of drug-trafficking, corruption of minors and armed robbery. These modifications to the Penal Code became effective on 15 March 1999. They followed a speech by President Fidel Castro in January when he expressed the hope that judges would not hesitate to use the death penalty since stronger measures were needed to combat crime. The EU passed a resolution in June regretting Cuba's increased use of the death penalty (see item under "Intergovernmental Organizations", page 12).

### **Oman**

According to reports in April by the official Omani news agency, the Sultanate of Oman has expanded the scope of the death penalty for drug-related crimes to include offences previously punishable by imprisonment.

### **United Arab Emirates**

According to official reports, the United Arab Emirates passed a new federal environmental protection law in October which, among other punishments, provides for the death penalty for those who import any banned materials or nuclear waste and dump or store such materials in any form inside the country. The law was introduced following warnings from UN experts about the level of pollution in the region.

### **ATTEMPTS TO EXPAND SCOPE**

#### **Philippines**

In August the House of Representatives, the lower house of the Philippine Congress, endorsed a measure entitled the Dangerous Drugs Act, to expand the scope of death penalty offences. Led by the Committee on Health the legislators sought the death penalty for persons possessing at least 200 grams of marijuana, 10 grams or more of cocaine or cocaine hydrochloride, or other drugs in volumes determined to be more than the therapeutic requirement as promulgated by the Dangerous Drugs Board. Sentence of death was also proposed for dealers using minors as runners, couriers, messengers or in similar capacity connected with dangerous drugs and their preparation for sale in the open and underground markets; also persons maintaining an establishment where narcotics are used in any form. The bill had not been adopted by the end of the year.

### **RESUMPTION OF EXECUTIONS AFTER A PERIOD WITH NONE**

#### **Philippines**

Leo Echegeray was executed by lethal injection on 5 February after being convicted of the rape of his stepdaughter. It was the first execution in the Philippines for 23 years and the first since the death penalty was reintroduced in late 1993. During the period from February to August another four prisoners were executed. However on 18 August President Joseph Estrada announced that executions in the Philippines would be temporarily suspended pending the creation of a special review committee. He said he had been persuaded by his spiritual advisers to create a "conscience committee" which would consider each execution and decide whether or not it should go ahead. The "conscience committee" had five members: Executive Secretary Ronaldo Zamora, Catholic Bishop Francisco San Diego, the chair of a pro-death penalty citizens' group Crusade against Violence, Carina Agarao and two psychology professors, Violeta Villaroman Bautista and Grace Namon.

On 13 October President Estrada commuted the death sentence of Josefina Esparas, a woman under sentence of death for drug trafficking. This was the first death sentence he had ever commuted and he said he reached his decision on the advice of the newly-created review committee. On 14 October the President commuted three more death sentences, again on the advice of the committee. However, the committee did not recommend clemency for one prisoner, Pablito Andan, who was executed on 25 October. On 18 October the Integrated Bar of the Philippines, an organization composed of 40,000 lawyers, called for the committee's abolition, saying that its functions undermined the judicial system and that until the 1993 act that restored capital punishment in the Philippines is repealed, the statute should be implemented "without fear or favour". The President rejected the call.

On 26 October, the day after the execution of Pablito Andan, Bishop Francisco San Diego resigned from the committee saying that he was pro-life and as a Bishop of the Roman Catholic Church he could not vote for the death penalty. The President announced that the

bishop would be replaced as a member of the committee.

During the year six prisoners were executed, the sentences of four prisoners were commuted and the death sentences of over 50 prisoners were reported to have been confirmed by the Supreme Court. At the end of the year well over 1,000 prisoners remained under sentence of death.

### **Trinidad and Tobago**

Nine people were executed in early June, the first executions for five years and despite pleas for mercy from such international figures as Archbishop Desmond Tutu from South Africa, the Reverend Jesse Jackson from the USA and Tony Blair, UK Prime Minister. During the course of the legal proceedings concerning the nine men a motion was filed with the JCPC challenging the constitutionality of hanging as a method of execution in Trinidad and Tobago. However the JCPC ruled that hanging was not prohibited by the constitution.

Anthony Briggs was executed on 28 July despite the fact that Inter-American Commission on Human Rights had recommended that his death sentence be commuted and the Inter-American Court of Human Rights had issued an order to the Trinidadian government to preserve his life until the Court had considered his case.

### **Uganda**

Twenty-eight people were executed in Uganda on 28 April 1999. These executions were the first since 1996.

## **ATTEMPTS TO RESUME EXECUTIONS**

### **Sri Lanka**

On 13 March the government announced a policy change as part of a larger review of the President's prerogative of granting remissions of sentences imposed by the courts. In an announcement from the Presidential Secretariat it was stated that death sentences imposed in cases of murder and drug trafficking would be carried out and would not be commuted to life imprisonment if, in accordance with the relevant constitutional and statutory procedure, the judge who heard the case, the Attorney General and the Minister of Justice unanimously recommended the execution of such sentence. It is 23 years since anyone was executed in Sri Lanka, the last execution being on 25 June 1976. No executions had taken place by the end of the year.

### **Turkey**

Abdullah Öcalan, leader of the armed opposition group Kurdistan Workers' Party (PKK) in Turkey, was sentenced to death on 29 June after being found guilty of treason and separatism after a trial which did not comply with international standards for fair trial. The sentence was upheld by the Appeal Court on 25 November 1999.

Turkey has not executed anyone since 1984 although death sentences have continued to be passed by the courts during the period since then and by June 1999 at least 47 death sentences had been ratified by the Appeal Court. Death sentences are submitted to the Judicial Commission of the parliament which has in the past effectively stopped the procedure by not

reviewing the case. If the Commission proceeds, it prepares a draft law recommending or not the execution and submits it to the general assembly of parliament. Parliamentary approval requires a simple majority.

Turkey is a member state of the COE but is one of the few members not to have abolished the death penalty or to have ratified Protocol No. 6 to the ECHR. The establishment of an immediate moratorium on executions, followed by abolition of the death penalty and ratification of Protocol No. 6, are now criteria for becoming a member of the COE. On 10 December 1999 Turkey was formally accepted as a candidate for membership of the EU, all member states of which are abolitionist. EU officials and governments have strongly urged Turkey to formally abolish the death penalty and on 22 July the European Parliament passed a resolution condemning the death sentence of Abdullah Öcalan, urging the Turkish authorities not to carry it out and to formally abolish the death penalty.

Concern at this possible execution has also been voiced by Asma Jahangir, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and Mary Robinson, the UN High Commissioner on Human Rights. Considering Öcalan's case, the European Court of Human Rights requested Turkey on 30 November "*to take all necessary measures to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of ...the applicant's complaints*". In accordance with the Court's ruling the Turkish government decided not to send Öcalan's case file to the parliament for the time being.

In a bill for a new Turkish penal code, prepared by a parliamentary commission in 1996-1997, the death penalty is eliminated and replaced with an "enhanced" life sentence. This bill is currently under review by a parliamentary committee.

## **USE OF THE DEATH PENALTY AGAINST CHILD OFFENDERS**

**Child offenders** are defined as those who committed the crime for which they were sentenced to death when they were under the age of 18.

International human rights treaties prohibit anyone under 18 years of age at the time of the crime (child offenders) being sentenced to death. The ICCPR, the ACHR and the CRC all have provisions to this effect. More than 100 countries which retain the death penalty have laws specifically excluding the execution of child offenders or may be presumed to exclude such executions by being parties to one or other of the above treaties.

### **Iran**

Information was received concerning an execution of a child offender in Iran. In October Ebrahim Qorbanzadeh, found guilty of murder and robbery, was hanged outside the house where the crime was committed. He was reported to be aged 17 when executed.

### **Pakistan**

In 1998 Mohammad Saleem, said to have been aged 13 or 14, was arrested for suspected

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involvement in the murder of three police officers. He was sentenced to death by a military court in December 1998 but his sentence was overturned for lack of evidence and the appellate military court acquitted him in January 1999. Following his acquittal he was examined by a civil surgeon who stated that the birth certificate was false and that Mohammad was actually over 20 years old. He was re-arrested in May for the same crime under an order from Pakistan's Supreme Court that those convicted and sentenced by military courts should be re-tried as the military courts were abolished in February as unconstitutional. The re-trial court is taking the position that Mohammad Saleem is over 18. This does not alter the fact that he was originally tried and sentenced to death on the assumption that he was a minor.

Around 50 children are currently under sentence of death in Pakistan. Pakistan has ratified the CRC in which death sentences of child offenders are expressly forbidden.

### **Philippines**

Concerns that procedures in the lower courts are flawed arose when it was revealed by the Department of Social Welfare that when reviewing the cases in 1999 of more than 1000 offenders condemned to death they discovered that, despite the fact that the Death Penalty Act stipulates that no person below the age of 18 at the time of the crime can be sentenced to death, there were at least five people in prison under sentence of death who had been aged under 18 when the crime was committed. They included Larina Perpunan, who, together with ten others, was sentenced to death for kidnapping, reportedly at the age of 17. The government also disclosed that there were at least 12 children under the age of 14 in custody who were accused of rape (which is a crime for which the death penalty can be imposed) although not yet sentenced.

The debate about whether child offenders should be executed for heinous crimes which followed a call by the President for the execution of three 17-year-olds (who were among five accused of rape and the murder of a prominent businessman) led to a proposal that a law be passed lowering the age to 16 or 17 years.

### **Saudi Arabia**

At the beginning of December there were fears that a Saudi Arabian known as 'Abdel 'Aziz, who had been accused of murder, would be executed on 8 December 1999 if he was unable to raise US\$1.3 million in financial compensation demanded by the victim's family. Some reports stated that 'Abdel 'Aziz was aged 17 at the time of the killing. The victim was reported to have died after being struck on the head with a stick during a traditional dance. The daily newspapers *Al-Madinah* and the *Arab News* were reported to have started a campaign to help raise the money through donations, but by 1 December they had only raised just over half the amount needed. On 7 December there were reports that 'Abdel 'Aziz was granted a further week to raise the money by an Islamic court in Mecca. The two newspapers are said to have set up telephone lines for the public to donate money. At the end of the year no further details were known about the case.

### **USA**

On 4 February Sean Sellers was executed in the state of Oklahoma. He committed the crime for which he received the death sentence (the murder of three people) when he was aged only 16. He is the first person to be executed for a crime committed at the age of 16 since the USA resumed executions in 1977.

The German Presidency of the EU published a Declaration concerning the execution on behalf of all the 15 EU states in February. The Declaration stated that Article 6 of the ICCPR, to which the USA is a party, expressly states that the death penalty shall not be imposed for crimes committed by persons below 18 years of age. (See item under "International Organizations", page 12.) The EU recognized that the USA made a reservation to this article when it ratified the ICCPR in 1992, but expressed the belief that Article 6 enshrined the minimum rules for the protection of the right to life and the generally accepted standards concerning this right. The EU noted that in the view of the UN Human Rights Committee (the expert body set up to monitor countries' compliance with the ICCPR) the US reservation should be withdrawn as it contravenes the object and purpose of that treaty.

In November the US Supreme Court decided that it would not consider an appeal by Michael Domingues, a prisoner under sentence of death in the state of Nevada for a crime committed when he was 16 years old. He had appealed to the US Supreme Court on the grounds that his sentence violated the USA's obligations under the ICCPR and was illegal under international law (see item under "Court Decisions", page 19).

#### **UN Sub-Commission on the Promotion and Protection of Human Rights**

On 24 August the above Sub-Commission adopted by secret ballot a resolution which *inter alia* condemned the imposition of the death penalty on persons for crimes committed when they were under the age of 18. (See also item under "Intergovernmental Organizations", page 15)

#### **Statement by the UN High Commissioner for Human Rights**

Mary Robinson, the UN High Commissioner for Human Rights, when commenting on the rights of the child in October, said:

*"The Convention on the Rights of the Child clearly stipulates that capital punishment shall not be imposed for offences committed by persons below 18 years of age. The Convention has been ratified by almost every State but not by the United States. The overwhelming and growing international consensus that the death penalty should not apply to juvenile offenders, stems from the recognition that young persons lack maturity and judgment and therefore cannot be expected to be fully responsible for their actions. More importantly, it reflects the firm belief that young persons are more susceptible to change and thus have greater potential for rehabilitation than adults."*



**TABLE 1. EXECUTIONS OF CHILD OFFENDERS  
(JANUARY 1990 - DECEMBER 1999)**

| <b>Country</b> | <b>Name of prisoner</b>      | <b>Age</b>                                     | <b>Date of execution</b> |
|----------------|------------------------------|--|--------------------------|
| Iran           | Kazem Shirafkan              | 17 at time of execution                        | 1990                     |
|                | Three young males            | One aged 16, two aged 17 at time of execution  | 29 September 1992        |
|                | Ebrahim Qorbanzadeh          | 17 at time of execution                        | 24 October 1999          |
| Nigeria        | Chiebore Onuoha              | 15 at time of offence, 17 at time of execution | 31 July 1997             |
| Pakistan       | One juvenile<br>Shamun Masih | 17 when executed                               | 15 November 1992         |
|                |                              | 14 at time of offence, 23 at time of execution | 30 September 1997        |
| Saudi Arabia   | Sadeq Mal-Allah              | 17 when sentenced to death                     | 3 September 1992         |
| USA            | Dalton Prejean               | 17 at time of offence                          | 18 May 1990              |
|                | Johnny Garrett               | 17 at time of offence                          | 11 February 1992         |
|                | Curtis Harris                | 17 at time of offence                          | 1 July 1993              |
|                | Frederick Lashley            | 17 at time of offence                          | 28 July 1993             |
|                | Christopher Burger           | 17 at time of offence                          | 7 December 1993          |
|                | Ruben Cantu                  | 17 at time of offence                          | 24 August 1993           |
|                | Joseph John Cannon           | 17 at time of offence                          | 22 April 1998            |
|                | Robert Anthony Carter        | 17 at time of offence                          | 18 May 1998              |
|                | Dwayne Allen Wright          | 17 at time of offence                          | 14 October 1998          |
|                | Sean Sellers                 | 16 at time of offence                          | 4 February 1999          |
| Yemen          | Nasser Munir Nasser al'Kirbi | 13 at time of execution                        | 21 July 1993             |

## **USE OF THE DEATH PENALTY AGAINST WOMEN**

### **Thailand**

Samai Pan-intara, aged 59, was executed on 23 November after being found guilty of drug trafficking. She was the first female prisoner to be executed in Thailand in 20 years and was one of 17 people executed in 1999, the highest number for 59 years.

### **Trinidad and Tobago**

In October the murder conviction of Pamela Ramjattan, who had been sentenced to death, was reduced to manslaughter by the Trinidad and Tobago Court of Appeal. Manslaughter is not a capital crime. The decision was based on a psychiatrist's report which showed that Pamela Ramjattan was suffering from battered women's syndrome when she murdered her violent and abusive husband. In 1998 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions had appealed to the Trinidad and Tobago authorities on Pamela Ramjattan's behalf, saying that the death penalty was too harsh a punishment for crimes committed in such situations (see *The Death Worldwide: Developments in 1998*, AI Index: ACT 50/04/99, page 27).

### **Saudi Arabia**

Three Nigerian women, Hawa Farouk, Aisha Saada Kassem and Safera Onunbi Slami, were condemned to death for drug trafficking and were decapitated in public in Riyadh in May, July and September respectively.

## **INNOCENCE**

### **USA**

By the end of 1999 84 people had been released in the USA since the resumption of executions in 1977 after evidence of their innocence had emerged.

#### **Illinois - Anthony Porter**

On 5 February 1999 Anthony Porter was released on bail after more than 16 years under sentence of death, having been convicted of murder. Proceedings, beginning on 1 February, were under way to establish his mental competence to be put to death, ie whether or not he understood his punishment, but were suspended on 2 February because new evidence was produced to show that he had been wrongfully convicted. Following his release his conviction was finally overturned on 12 March. Five journalism students and a professor from Northwestern University had been investigating the case and, together with a private investigator, had unearthed evidence which exonerated Anthony Porter. This same group has provided evidence which has proved the innocence of other prisoners formerly under sentence of death in Illinois. Following Anthony Porter's release two of Chicago's biggest newspapers - the Sun-Times and the Tribune - called for a moratorium on executions.

#### **Illinois - Stephen Smith**

Stephen Smith, sentenced to death in 1986 for murder, was released on 19 February 1999. His conviction was overturned by the Illinois Supreme Court on the grounds that it was based on unreliable evidence. He is not subject to retrial.

#### Illinois - Ronald Jones

DNA tests, finally taken eight years after he was sentenced to death for rape and murder, proved that Ronald Jones could not have committed the crime, which he said he had confessed to because the Chicago police beat him so severely. In May the state dropped all charges against him.

Illinois reinstated the death penalty in 1977. Between that date and the dropping of the charges against Ronald Jones in May, 12 men had been executed by the state. During the same period in Illinois 12 men under sentence of death had been released after being proved to be innocent. (See item under "Attempts to Introduce Moratoria", page 9.)

#### North Carolina - Alfred Rovera

Alfred Rovera was sentenced to death for murder in 1997 but his conviction was overturned by the North Carolina Supreme Court who discovered that at his trial the jury had not been allowed to hear testimony that might have shown that he had been framed by others. In November he was released from jail after having been acquitted at his re-trial.

## **RELIGIOUS PERSPECTIVES**

### **Belgium**

At its meeting held in Belgium in November the Executive Committee of Pax Christi International, the Roman Catholic organization for peace, announced its firm resolution to fight for abolition of the death penalty worldwide. It said that a recommendation for abolition had been prepared by several of its national sections (Netherlands, Belgium, UK, Ireland, New Zealand, USA, Switzerland and the Philippines). The organization appealed to all UN member states which had not abolished the death penalty to suspend executions with a view to the abolition of the death penalty worldwide.

### **The Dalai Lama (Tibet)**

During a public talk in London, UK, in May the Dalai Lama was asked about his feelings on the subject of capital punishment. He replied:

*"I am against the death penalty. I think it is bad, and it makes me very sad. Whenever I see photographs of convicted prisoners who are condemned to death row I feel very disturbed and uncomfortable."*

### **Holy See (Italy)**

In his Angelus address at the Vatican on 12 December, referring to the coming Great Jubilee (a year-long celebration in the Roman Catholic Church to mark the millennium), Pope John Paul II once again called upon world leaders to abolish the death penalty saying:

*"This evening a demonstration will be held at the Colosseum as part of the world campaign for a moratorium on the death penalty. The Great Jubilee is an excellent opportunity to promote in the world ever more mature forms of respect for the life and dignity of every person. I therefore renew my appeal to all leaders to reach an international consensus on the abolition of the death penalty, since 'cases in which the execution of the offender is an absolute necessity are very rare, if not practically non-existent' (Catechism of the Roman Catholic Church n.2667)."*

### **Japan**

The Tendai School, one of the most important Buddhist movements of Japan, issued a report concerning the death penalty. In 1997 they had formed a Commission to debate the issue of the death penalty and six meetings had been held, resulting in the issuing of a report which concluded that Buddhism teaches that no one living should kill other living beings and that if one had a respect for life the death penalty should be abolished because it authorised human beings to kill their fellows. The report recommended that the death penalty should be replaced by life imprisonment without parole.

### **Philippines**

In October the Roman Catholic Bishops' Conference of the Philippines renewed its appeals for an end to the death penalty, stating:

*"We hope our President will finally listen to our call to stop the cycle of violence and vengeance in our city. Killing Pablito Andan and the other people on death row diminishes all of us and is a sign of growing disrespect for human life."*

### **Sri Lanka**

The government's announcement in March that it intended to resume executions provoked varying reactions from religious figures and organizations in the country.

Some Buddhist prelates welcomed the move. The Ven. Rambukwelle Sri Vipasi Thera said that the wave of mass killings had been due to the failure to impose tough laws and that the death penalty was one way to contain rising crime, and the Ven. Maduluwawe Sobitha Thera said that to maintain law, peace and justice in a country it is the duty of the government to impose the necessary laws. A spokesman at the Sri Lanka Islamic Centre said that the move should be welcomed as innocent people lived in fear since criminals escape punishment. However Roman Catholic Bishop Malcolm Ranjith said that although the Catholic Church appreciated the government's interest to restore law and order the Church was not in favour of using the death penalty. The General Secretary of the All Ceylon Hindu Congress said that no man had the right to take a person's life, be he the King or the President, and that they were not in favour of the death penalty.

### USA

In January Pope John Paul II made an official visit to the USA. While in Missouri he asked the state Governor to commute the death sentence of a prisoner, with the result that the Governor reduced the sentence to life without parole. During his visit the Pope also appealed for an end to executions saying:

*"Modern society has the means of protecting itself without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary".*

In February, prior to the execution of Sean Sellers in Oklahoma, the Roman Catholic Archbishop of Oklahoma City, Eusebius J. Beltran, urged Oklahoma's Catholic Governor, Frank Keating, to commute Sellers' sentence. Mr Keating did not do so and later said that he thought the Pope was wrong to speak for all Catholics against the death penalty. Archbishop Beltran wrote a letter in reply criticizing Mr Keating's position. The letter was read aloud in many local churches at Sunday mass.

In March, in Lansing, Michigan, the Board of Directors of the Michigan Catholic Conference issued a statement opposing the reinstatement of the death penalty in the state of Michigan, saying that the Catholic Church today stood against lethal means to solve social problems and quoting Pope John Paul II's statement made during his visit to Missouri.

Also in March, in Illinois, a group of religious leaders comprising bishops, ministers, rabbis and priests and led by officials of the Greek Orthodox Church, publicly called on the state governor to commute the sentence of Andrew Kokoraleis, and urged all Illinois legislators to impose a moratorium on executions. They denounced the imminent execution as "*...a destructive symmetry of violence mirroring violence.*" Chicago's Episcopal Bishop also commented on the case saying "*The Episcopal Church is on record opposing the death penalty and I am very opposed to it personally.*" Andrew Kokoraleis was executed on 17 March.

On Good Friday (in April) in California, Roman Catholic Cardinal Roger Mahony presented a statement on behalf of the Bishops' Administrative Board of the US Catholic Conference calling for an end to capital punishment. The Board said:

*"On this Good Friday, a day when we recall our Saviour's own execution, we appeal to all people of good will, especially Catholics, to work to end the death penalty."*

Also on Good Friday the Protestant Bishops in Indiana declared their support for abolition in the state of Indiana stating that their primary reason for opposition to the death penalty was on moral grounds. However they also stressed what they termed "abundant rational measures" - that it was not an effective deterrent against crime; that capital punishment is not applied fairly or justly; errors are made leading to innocent persons being put to death; publicly sanctioned executions cheapen human life and executions cost the average taxpayer more than life imprisonment. The Bishops expressed their support for the call of the American Bar Association for a moratorium on executions.

In December in Washington the National Jewish/Catholic Consultation, after what it termed an "exhaustive study of the collective wisdom and moral insights" of Judaism and Roman Catholicism, issued a joint statement calling for an end to the death penalty. Affirming a shared understanding of the sanctity of human life, the members of the Consultation said: *"We have committed ourselves to work together, and each with our own communities, toward ending the death penalty"*. They also said they expected to develop joint educational materials for use in schools and looked forward to working together in local, state and national anti-death penalty coalitions.

## **THE ENGLISH-SPEAKING CARIBBEAN**

On 29 January, the Attorneys General of the 12 English-speaking nations of the Caribbean signed a statement advising their governments to withdraw from the American Convention on Human Rights and the [first] Optional Protocol to the ICCPR and then re-accede with reservations concerning capital punishment. This followed the ruling of the JCPC on 27 January that the executions in Trinidad and Tobago should be stayed while the Inter-American Commission on Human Rights ruled on their cases.

### **Bermuda**

On 23 December a bill abolishing the death penalty was signed into law by Governor Thorold Masefield. (See item under "Abolition", page 5)

### **Guyana**

Following Jamaica's withdrawal from the [first] Optional Protocol to the ICCPR in 1998 and Trinidad and Tobago's withdrawal as a state party to the ACHR in the same year, Guyana also withdrew from the Optional Protocol to the ICCPR (see item in The Death Penalty Worldwide: Developments in 1998, AI Index: ACT 50/04/99, page 15) and re-acceded to it with a reservation stating that the UN Human Rights Committee would not be competent to consider communications from persons under sentence of death.

As communicated to the UN the reservation stated in part:

*".....the Government of Guyana feels compelled to denounce the Optional Protocol. Before doing so, however, it held public discussions and obtained Parliamentary approval for the denunciation of the aforesaid Protocol.*

*Notwithstanding that it is the desire of the Government of Guyana to recognise the competence of the Human Rights Committee to receive and consider communications from individuals, in terms of that Instrument, to the extent that no constraints upon its constitutional authority set out above would arise. To this end, Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to Article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any person who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence, or the execution of the death sentence and any matter connected herewith."*

The action was effected on 5 January and entered into force for Guyana on 5 April 1999.

### **Jamaica**

In February the Attorney General, Senator A J Nicholson, announced that the Attorney General's Department was researching the effect of the death penalty on persons who are inclined to commit murder, in Jamaica and in other countries. He said that research was also being done to determine the effect of retaining the death penalty in different jurisdictions. The findings are expected to inform the Jamaican government's decision as to whether or not the death penalty should be retained for capital murder. Senator Nicholson said that all the issues concerning capital punishment should be put before the government so that an informed decision could be taken. He added that other member countries of the Caribbean Community were doing similar research and that help was being sought from other countries on the matter. The Attorney General said that the research was a separate matter from

the government's efforts to resume hanging, which should be done according to existing laws.

### **Trinidad and Tobago**

Nine people were executed in early June, the first executions for five years (see item under "Resumption of Executions after Periods with None", page 23). A tenth man was hanged in July.

## **ACTION BY THE MEDICAL PROFESSION**

### **USA**

In June the Committee on Psychiatric Medicine of the Medical Society of the State of New York (MSSNY) debated a resolution on the death penalty. The resolution referred to the American Bar Association's call for a moratorium on executions in 1997 and to the fact that, despite ethical proscriptions against such participation, numerous jurisdictions require the involvement of physicians in carrying out the death penalty. It also referred to the involvement of psychiatrists and other physicians in

*"..... examinations to determine the competency of death row inmates to be executed and the treatment of seriously mentally ill death row inmates with the foreseeable purpose to restore their competency to be executed."*

The resolution required that the MSSNY:

*"1) develop a policy statement calling for the abolition of capital punishment in the State of New York; and  
2) instruct the New York State delegation to the House of Delegates of the American Medical Association to introduce a resolution calling for the abolition of capital punishment in the USA."*

The resolution passed unanimously in the Committee.

## **OPINION POLLS**

### **American Samoa**

When a bill to introduce lethal injection as a method of execution was before the *Fono* (parliament) a poll was organized in September on the Internet. The questions posed asked whether the method should be lethal injection, hanging,



electrocution or any other method and whether the law should be repealed. At the end of September the results stood as 31.4 per cent in favour of lethal injection, 15.57 per cent for hanging, 1.3 per cent for electrocution and 1.3 per cent for other method. 46.8 per cent wanted to repeal the law altogether and 3.4 per cent were not sure. On 23 August a bill was introduced providing for lethal injection as a method of execution. However the Governor, Tauese Sunia, refused to sign the legislation into law. No executions have been known to have been carried out since the 1920s.

### **Japan**

In early December the Prime Minister's Office reported on the results of a survey on the death penalty which had been conducted in September. The poll covered 5,000 men and women aged 20 years or older. Almost 80 per cent of those polled expressed approval of Japan's continued use of the death penalty, an increase of 6 per cent over the results of the last such poll taken in 1994. Support for its abolition fell to an all-time low of 8 per cent. This is the first time that this figure has fallen below 10 per cent.

### **USA**

A Millennium Survey Opinion Poll published on 5 November by Gallup International Association showed that support for the death penalty in the USA, although high, is decreasing. In answer to the question "*Are you personally in favour of or against the death penalty?*" 68 per cent of respondents replied that they were in favour of the death penalty. Past public opinion polls in the USA have indicated support for the death penalty among respondents as high as 77 per cent.

## **DEATH SENTENCES AND EXECUTIONS**

During 1999 at least 1,813 people were executed in 31 countries and at least 3,857 people were sentenced to death in 63 countries.

Although the number of recorded worldwide executions is less than those recorded in 1998, certain countries such as Iran, Saudi Arabia and USA actually increased the numbers of executions in 1999.

In Saudi Arabia the rate of executions rose significantly. In 1998, 29 people were officially reported to have been executed; in 1999 103 executions were officially announced although the real figure is probably much higher. A significant proportion of those executed were denied any formal legal representation and their "confessions" were often the sole basis for conviction.

China executed more people than the rest of the world put together. In 1999

limited records available at the end of the year indicated that the authorities carried out at least 1,077 executions, though the true figures are believed to be far higher. Many prisoners in China are sentenced to death after trials that are often grossly unfair and in which confessions extracted through torture are used as incriminating evidence. Furthermore, many of the over 60 offences that carry the death penalty in China fall far short of the minimum standard set forth in the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted by the UN Economic and Social Council in 1984, which permits the use of the death penalty only for “intentional crimes with lethal or other extremely grave consequences”.

As many as 100 people were executed in the Democratic Republic of the Congo after being sentenced to death by the *Cour d'ordre militaire* (COM), Military Order Court.

The USA executed 98 prisoners last year, 30 more than were executed in 1998. Among these was one child offender. The only other country believed to have executed a child offender during 1999 was Iran, whose 165 executions recorded during the year far exceeded the 66 executions recorded in 1998.

The figures for China, the Democratic Republic of the Congo, Iran, Saudi Arabia and the USA accounted for 85 per cent of all known executions in 1999. Hundreds of executions in Iraq were reported but in many cases it was not possible to determine whether they were judicial or extrajudicial, given the secrecy surrounding them.

## **INTERNATIONAL TREATIES**

The community of nations has adopted three international treaties providing for the abolition of the death penalty as follows. One is of worldwide scope; the other two are regional. Signature indicates an intention to become a party to a treaty at a later date. Some states sign and then ratify, some move immediately to accession without taking the preliminary step of signing. A state becomes a party to a treaty upon accession or ratification and is then bound under international law to respect its provisions.

**The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty**, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain it in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

During 1999 two states signed and ratified the Second Optional Protocol. **Bulgaria** signed it in March and ratified in August; the **United Kingdom** signed it in March and ratified in

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December. One state already signatory, **Slovakia**, ratified in June. Three states acceded to it - **Azerbaijan** in January, **Cyprus** in September and **Georgia** in March. Azerbaijan and Cyprus both entered reservations allowing use of the death penalty in time of war or if war were imminent.

**At the end of 1999 41 states were parties to the Second Optional Protocol; two other states had signed but not ratified it.**

**Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights" )(ECHR) concerning the abolition of the death penalty**, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war".

Three states signed Protocol No. 6, **Cyprus** in May, **Georgia** in June and **Poland** in November. One state, **Latvia**, which was already a signatory, ratified it in May. Three states both signed and ratified the protocol in 1999 - the **United Kingdom** signed in January and ratified in May; **Bulgaria** signed in May and ratified in September; **Lithuania** signed in January and ratified in July.

**At the end of 1999 34 states were parties to Protocol No. 6 and five other states had signed but not ratified it.**

**The Protocol to the American Convention on Human Rights to Abolish the Death Penalty**, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

**Paraguay** signed the Protocol in June, Nicaragua ratified it in November.

**At the end of 1999 seven states were parties to the Protocol and one other state had signed but not ratified it.**

The dates of signature, ratification and accession given above are the dates of deposit of the instrument of signature, ratification or accession.

(Please see Table 2, page 40)

**TABLE 2: STATES PARTIES AND SIGNATORIES TO INTERNATIONAL TREATIES PROVIDING FOR THE ABOLITION OF THE DEATH PENALTY (as of 31 December 1999)**

| INTERNATIONAL TREATY   | STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED          | STATES PARTIES  |
|--|--|---|
| <b>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</b>  | Honduras, Nicaragua,<br>(Total: 2)                     | Australia, Austria, Azerbaijan, Belgium, Bulgaria, Colombia, Costa Rica, Croatia, Cyprus, Denmark, Ecuador, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Malta, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Uruguay, Venezuela<br>(Total: 41) |
| <b>Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the abolition of the death penalty</b> | Cyprus, Georgia, Poland, Russia, Ukraine<br>(Total: 5) | Andorra, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom (Total: 34)  |
| <b>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</b>  | Paraguay<br>(Total: 1)                                 | Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Uruguay, Venezuela<br>(Total:7)   |

**TABLE 3: RECORDED WORLDWIDE EXECUTIONS BY YEAR 1980 - 1999**

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| Year | No. countries carrying out executions | No. executions recorded | No. countries with over 100 executions | % of all recorded executions carried out in countries with over 100 executions |
|------|---------------------------------------|-------------------------|--|--|
| 1980 | 29                                    | 1229                    |  |  |
| 1981 | 34                                    | 3278                    |  |  |
| 1982 | 42                                    | 1609                    |  |  |
| 1983 | 39                                    | 1399                    |  |  |
| 1984 | 40                                    | 1513                    | 4                                      | 78%  |
| 1985 | 44                                    | 1125                    | 3                                      | 66%  |
| 1986 | 39                                    | 743                     | 3                                      | 56%  |
| 1987 | 39                                    | 769                     | 3                                      | 59%  |
| 1988 | 35                                    | 1903                    | 3                                      | 83%  |
| 1989 | 34                                    | 2229                    | 3                                      | 85%  |
| 1990 | 26                                    | 2029                    | 4                                      | 84%  |
| 1991 | 32                                    | 2086                    | 2                                      | 89%  |
| 1992 | 35                                    | 1708                    | 2                                      | 82%  |
| 1993 | 32                                    | 1831                    | 1                                      | 77%  |
| 1994 | 37                                    | 2331                    | 3                                      | 87%  |
| 1995 | 41                                    | 3276                    | 3                                      | 85%  |
| 1996 | 39                                    | 4272                    | 4                                      | 92%  |
| 1997 | 40                                    | 2607                    | 3                                      | 82%  |
| 1998 | 37                                    | 2258*                   | 2                                      | 72%  |
| 1999 | 31                                    | 1813 **                 | 4                                      | 80%  |

\*The total for 1998 differs from that given in ACT 50/04/99, The Death Penalty Worldwide: Developments in 1998 because it was updated as further information emerged over the year.

\*\*The total for 1999 may similarly be subject to alteration at a later date if further information becomes available.

**TABLE 4: NUMBER OF ABOLITIONIST COUNTRIES AT YEAR END  
1980 - 1999**

| Year | No. countries abolitionist for all crimes | No. countries abolitionist in law or practice |
|------|---|---|
| 1981 | 27  | 63  |
| 1982 | 28  | 63  |
| 1983 | 28  | 64  |
| 1984 | 28  | 64  |

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| <b>Year</b> | <b>No. countries abolitionist for all crimes</b> | <b>No. countries abolitionist in law or practice</b> |
|-------------|--|--|
| 1985        | 29   | 64   |
| 1986        | 31   | 66   |
| 1987        | 35   | 69   |
| 1988        | 35   | 80   |
| 1989        | 39   | 84   |
| 1990        | 46   | 88   |
| 1991        | 46   | 83   |
| 1992        | 50   | 84   |
| 1993        | 54   | 90   |
| 1994        | 55   | 96   |
| 1995        | 59   | 101  |
| 1996        | 60   | 100  |
| 1997        | 64   | 102  |
| 1998        | 70   | 105  |
| 1999        | 73   | 108  |