

Lethal Injustice in Asia: End unfair trials, stop executions: Appeal cases

(Index: ASA 01/029/2011)

ERRATA AND UPDATE

Separate Appeal Case on Yong Vui Kong, Singapore

p.2, paragraph 1, second sentence, should read:

According to government figures, three people were executed in 2007, six in 2008, five in 2009 ***and none in 2010.***

LATEST UPDATE!!!

Separate Appeal Case on Leng Guoquan, China

On 23 November 2011 following a re-trial in the case of Leng Guoquan, the Dandong City Intermediate Court sentenced Leng Guoquan to life imprisonment.

CHIOU HO-SHUN TAIWAN



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DETAINED FOR OVER 23 YEARS, Chiou Ho-shun has been Taiwan's longest detained criminal defendant in its longest running criminal case. The case was described recently by his lawyers as "a stain on our country's legal [history]."

Chiou Ho-shun and 10 of his co-defendants say they were tortured into making confessions and denied the right to communicate with anyone for the first four months of their detention. They were also denied a lawyer during the investigation and interrogations.

Chiou Ho-shun and his co-defendants later retracted their confessions. They were first tried by the District Court in connection with two separate crimes that took place in 1987: the kidnapping and murder of a nine-year-old boy Lu Cheng and the murder of Ko Hung Yu-lan.

The High Court recognized that violence and intimidation were used during the police investigation. The court did not exclude the full confession from evidence, it only excluded sections of the interrogation tapes where abuse of the suspects could be heard distinctly. The confessions also contained mutual contradictions and discrepancies on key facts.

Chiou Ho-shun was sentenced to death for robbery, kidnapping and murder in 1989. Of 12 defendants, only he was sentenced to death.

Chiou Ho-shun's case has bounced back and forth between the High Court and the Supreme Court for retrial 11 times. All death penalty cases in Taiwan must be confirmed by the Supreme Court, which may choose to refer questionable cases back to the High Court for retrial during which new evidence may be submitted by the defence (the number of times this can be done is unlimited).

In 1994, two public prosecutors and 10 police officers handling the case of Lu Cheng were convicted of extracting confessions through torture. Police also admitted in 2003 that they had covered up and failed to investigate the fact that another death row inmate had confessed to the murders just before he was executed.

After Chiou Ho-shun and his co-defendants were re-convicted at their 10th retrial in the High Court in 2009, the Supreme Court again ruled that the case was flawed, citing among others, claims that the convictions were based on coerced confessions.

The court sent the case back to the High Court for retrial for the 11th time. But again in May 2011 the High Court upheld Chiou Ho-shun's death sentence. After this ruling, Chiou Ho-shun told the court: "I haven't killed anyone. Why

“I haven't killed anyone. Why don't judges have the courage to find me not guilty?”

Chiou Ho-shun

**TORTURE/OTHER
ILL-TREATMENT**

**NO CLEMENCY
PROCEDURES**

don't judges have the courage to find me not guilty?" On 28 July 2011, Chiou Ho-shun lost his final appeal to the Supreme Court and on 25 August 2011 the Prosecutor General rejected a request to seek an extraordinary appeal for a retrial. Chiou Ho-shun could be executed at any time.

Although **TAIWAN** is not a member of the UN, the government ratified the International Covenant on Civil and Political Rights in 2009, passing legislation to incorporate its provisions into domestic law, policy and practice. Revisions to the Code of Criminal Procedure in 2003 stipulate that confessions cannot serve as sole evidence of guilt. The Code also bans courts using information extracted through torture as evidence. Yet, as this case shows, such evidence is still being relied on. The right to seek pardon and commutation of sentence is set out in the Amnesty Act but there are no procedures for exercising it. Prisoners have been executed while awaiting decisions on their applications for clemency. In April 2010, without informing lawyers or relatives, Taiwan executed four prisoners, ending a suspension of the death penalty in place since December 2005. Since 2000, the government has repeatedly stated its intention to abolish the death penalty.

ACT NOW

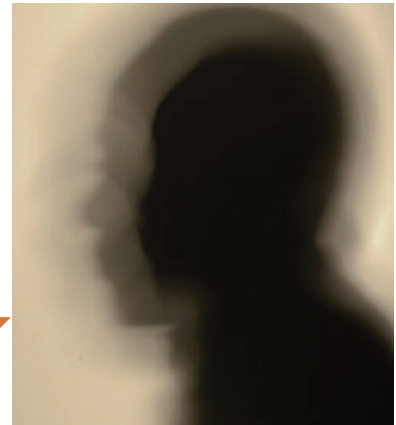
Appeal to the Minister of Justice to:

- ★ Stop the execution of Chiou Ho-shun by whatever judicial or other means available.
- ★ Investigate the reports of torture and other ill-treatment and ensure that all statements resulting from such coercion are completely excluded from any re-trial.
- ★ Ensure Chiou Ho-shun is re-tried in proceedings which comply with international fair trial standards.
- ★ Suspend all executions and the imposition of death sentences as a step towards the total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards.
- ★ Ensure that those sentenced to death have an effective opportunity to exercise their right to seek a pardon or commutation of their sentence in line with international standards.

Write to:

Minister of Justice
Ministry of Justice
No. 130, Sec. 1, Chongqing S. Rd.
Zhongzheng Dist.
Taipei City 100, Taiwan
Email: tyftp@mail.moj.gov.tw

DEVENDER PAL SINGH INDIA



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DEVENDER PAL SINGH (also known as Davinder Pal Singh Bhullar) was arrested by police at New Delhi's international airport in January 1995 for travelling on false documents.

Police claim that following his arrest at New Delhi airport, Devender Pal Singh confessed to being involved in a 1993 bomb attack in Delhi that killed nine people – a statement which was made when he was first detained and had no access to a lawyer.

Devender Pal Singh later retracted the confession, stating that he had been “physically manhandled, threatened with encounter extinction [extra judicial execution] and was forced to sign several blank papers”. He filed a petition with the Supreme Court which refers to “coercion and torture” in extracting the alleged confession.

In his statement to the Supreme Court, Devender Pal Singh said that on the way to the magistrates' court hearing, “he was told that if he made any statement to the Court [about being tortured], he would be handed over to Punjab Police who would kill him in an encounter.”

Devender Pal Singh was tried under the 1987 Terrorist and Disruptive Activities (Prevention) Act (TADA), a law which lapsed in 1995 following widespread criticism from national and international human rights organizations because it had been misused to arbitrarily arrest, detain and torture thousands of people. Despite its lapse, prosecutions under the Act continue against people suspected of terrorist offences committed prior to 1995.

The only evidence against Devender Pal Singh was his retracted confession. Under ordinary Indian law, confessions are only admissible as evidence if they are made before a judicial magistrate; those made to the police are not. TADA, however, made confessions to police admissible at trial.

Devender Pal Singh was taken before a judicial magistrate who was supposed to verify whether his confession was made voluntarily. However, the judicial magistrate asked only one question - whether the statement was recorded on the particular date. The magistrate did not actually see the statement, and allowed police officials to be present during the hearing.

In August 2001, a special TADA court convicted Devender Pal Singh of committing a terrorist act resulting in death, conspiracy to murder and various other offences and sentenced him to death. Ordinarily, all death sentences

“It is for the accused to show and satisfy the court that the confessional statement was not made voluntarily.”

Supreme Court response to Devender Pal Singh's allegations of torture, March 2002

TORTURE/OTHER
ILL-TREATMENT

SPECIAL COURTS

passed by a trial court are reviewed automatically by a High Court, with a possibility of further appeal to the Supreme Court, but under TADA, appeal is only to the Supreme Court.

The conviction and death sentence were confirmed by the Supreme Court in March 2002. However, one of the three judges found Devender Pal Singh not guilty, concluding that there was no evidence to convict him and that a dubious confession could not be the basis for passing a death sentence.

A further review petition was dismissed by the same Supreme Court judges, again by a 2 to 1 majority, in December 2002. A clemency petition to the Indian President was rejected in May 2011 but on 23 August 2011 the Supreme Court admitted a petition to commute the sentence because of the President's delayed rejection of the mercy plea.

The **INDIAN** Constitution protects the right to life. However, a number of offences are still punishable by death, including murder and conspiracy to murder, some drug offences and offences under antiterrorism legislation. Indian courts continue to hand down death sentences and at least 345 people were thought to be under sentence of death at the end of 2008. The last execution took place in 2004 following a seven-year period in which no executions were carried out. No one has been executed for "offences under antiterrorism" legislation since 1992 but eight people, including Devender Pal Singh, remain at risk of execution after being convicted under such laws.

ACT NOW

Appeal to the Prime Minister to:

- ★ Stop the execution of Devender Pal Singh by whatever means available.
- ★ Ensure Devender Pal Singh is re-tried in proceedings which comply with international fair trial standards.
- ★ Investigate his complaints of torture and other ill-treatment and ensure that all statements resulting from such coercion are completely excluded from any re-trial.
- ★ Suspend all executions and the imposition of death sentences as a step towards total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards.

Write to:

Prime Minister
South Block, Raisina Hill
New Delhi 110 001
Fax: +9111 2301 9545
Email: (via form)
<http://pmindia.nic.in/feedback.htm>

YONG VUI KONG SINGAPORE



© Save Vui Kong Campaign

YONG VUI KONG (Yong), a Malaysian man, was arrested in Singapore in 2007, aged 19, for possessing 47g of heroin. Yong had dropped out of school early and had turned to petty crime as a way of earning money.

Under Singapore's Misuse of Drugs Act, anyone caught with more than 15g of heroin is presumed to be guilty of drug trafficking, for which the death penalty is mandatory. As Yong was not able to counter this presumption, the High Court convicted him in 2008 and he was sentenced to death. The court had no discretion to consider mitigating circumstances or pass a lesser sentence.

Lawyers filed an appeal against his conviction but Yong withdrew it in April 2009, saying that he had embraced Buddhism and wanted to acknowledge his crime. Yong petitioned Singapore's president for clemency on the basis of his youth but this was rejected in November 2009.

Yong's lawyer, M. Ravi, has appealed against Yong's sentence by challenging the constitutionality of the mandatory death penalty for drug trafficking and seeking judicial review of the clemency process. But in May 2010, the Court of Appeal rejected the constitutional challenge on the mandatory death penalty for drug trafficking. This was the third time it had rejected such a challenge since 1980.

The Court ruled that the right to life in the Singapore Constitution did not imply a ban on inhuman punishment, and by extension, on mandatory death sentences. It rejected a rule of customary international law that prohibits mandatory death sentences as an inhuman punishment or a violation of the right to life.

M. Ravi's application for judicial review of the clemency process argued that the power to grant pardon had been prejudiced by comments about the case made by the Law Minister, thereby undermining accepted principles of procedural fairness. This was dismissed by the High Court in August 2010. The Court of Appeal dismissed an appeal against the High Court's decision in April 2011, clearing the way for Yong's execution.

The President can only exercise clemency following advice from the Cabinet and thus has little discretion in granting pardons. Clemency for a sentence of execution in Singapore has reportedly been granted only six times since independence in 1965.

“When we say mandatory death sentence it means basically judges don't have discretion. Just close your eyes... and execute. Don't have to look at the person's background and all that.”

M. Ravi, Yong Vui Kong's lawyer

MANDATORY
DEATH SENTENCES

DENIAL OF RIGHT TO BE
PRESUMED INNOCENT

SINGAPORE was long known for having the highest per capita execution rate in the world, but the number of executions has decreased in recent years. According to government figures, three people were executed in 2007, six in 2008, five in 2009 and none in 2010. At least 12 offences are punishable with death and the death penalty is mandatory for murder, sedition, serious firearms offences and drug trafficking. Singapore is not party to the International Covenant on Civil and Political Rights but is obliged under customary international law to respect the right to life and observe the absolute ban on torture and other ill-treatment.

ACT NOW

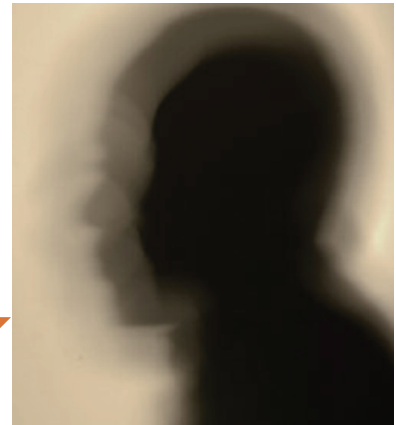
Appeal to the President to:

- ★ Stop the execution of Yong Vui Kong by whatever judicial or other means are available.
- ★ Suspend all executions and the imposition of death sentences as a step towards total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards, in particular laws that reverse the presumption of innocence.
- ★ Abolish mandatory death sentences.
- ★ Ratify the International Covenant on Civil and Political Rights.

Write to:

The President
Office of the President
Orchard Road, Istana
Singapore 0922
Email: s_r_nathan@istana.gov.sg

REZA MOHAMMED SHAH BIN AHMAD SHAH MALAYSIA



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REZA MOHAMMED SHAH BIN AHMAD SHAH (Reza Shah) was arrested by police on the evening of 14 August 2000 in a squatter neighbourhood outside Kuala Lumpur. Police said he was carrying a plastic bag which he threw away when they called out to him.

Police located the plastic bag and said it contained almost 800g of cannabis. Reza Shah denied any knowledge of the bag's contents and stated in court that the police had beaten him to force him to reveal its location.

Following arrest, Reza Shah was held at Brickfields Police District Headquarters, a police station which has been the subject of repeated allegations of torture and other ill-treatment, in some cases leading to deaths in custody.

Reza Shah was detained pending trial for two years and finally tried in August 2002. He was found guilty by the High Court of Kuala Lumpur of possessing 795.3g of cannabis under the Dangerous Drugs Act 1952.

The Act states that any person found possessing any dangerous drug "shall, until the contrary is proved, be deemed to have been in possession" of that drug. It also holds that the person knew the nature of the drug, unless proved otherwise. And it presumes that anyone found in possession of dangerous drugs is also guilty of trafficking those drugs and imposes a mandatory death penalty.

The law thus reverses the suspect's right to be presumed innocent until proven guilty. In a number of cases, judges have handed down mandatory death sentences for drug trafficking with rulings making it clear that their decisions were based solely on the reversal of presumption of innocence in the law, rather than on the basis of the prosecution proving guilt beyond reasonable doubt.

In the case of Reza Shah, once the trial court found that he possessed drugs in the alleged quantities, the law left the court no option but to convict him of trafficking and then to hand down the mandatory death sentence, which it did.

In 2006, the Putrajaya Appeal Court overturned the trial court's verdict. It held that the prosecution had not proved that Reza Shah had knowledge of the bag's contents. It convicted Reza Shah for possession of drugs only but not of trafficking, and sentenced him to a jail term of 18 years and 10 strokes of the cane.

“It is time for Malaysia to abolish the death penalty... No criminal justice system is perfect. You take a man's life and years later, you find out that another person did the crime. What can you do?”

Nazri Abdul Aziz, Malaysian Law Minister, reported in 'The Online Citizen', 31 August 2010

**MANDATORY
DEATH SENTENCES**

**DENIAL OF RIGHT TO BE
PRESUMED INNOCENT**

In January 2009, the Federal Court overturned the Appeal Court's judgement in response to an appeal by the prosecution, concluding that Reza Shah had failed to prove that he was not guilty of drug trafficking. It reinstated the death sentence.

Reza Shah has exhausted all his legal avenues for appeal. He has since appealed to the King to commute his sentence. A decision is pending.

In April 2011, **MALAYSIA'S** Home Minister announced that 441 people had been executed since 1960 and that 696 prisoners were on death row in February 2011. The majority of those sentenced to death have been convicted under the 1952 Dangerous Drugs Act providing for a mandatory death sentence for trafficking. Murder also carries a mandatory death sentence. In 2009, Malaysia stated to the UN that it was considering reducing the maximum sentence for drug trafficking to life imprisonment. Malaysia has not ratified the International Covenant on Civil and Political Rights or the UN Convention against Torture, but is legally bound by customary international law to prohibit the arbitrary deprivation of life and torture and other ill-treatment.

ACT NOW

Appeal to the King to:

- ★ Stop the execution of Reza Shah by whatever judicial or other means are available.
- ★ Suspend all executions and the imposition of death sentences as a step towards total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards, in particular laws that reverse the presumption of innocence.
- ★ Abolish mandatory death sentences.
- ★ Ratify the International Covenant on Civil and Political Rights.

Write to:

King and Supreme Head of State
Istana Negara
50500 Kuala Lumpur
Malaysia
Email: via Foreign Minister
(anifah@kln.gov.my)

LENG GUOQUAN CHINA



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LENG GUOQUAN, a seafood trader, was sentenced to death on 16 December 2009 by the Dandong City Intermediate People's Court in Liaoning province. He was charged with being a leader of a criminal gang engaged in smuggling and trafficking drugs. His conviction followed an unfair trial, and was based on his confession and testimonies from witnesses who have either subsequently retracted their statements or say they were tortured into testifying against him.

Leng Guoquan has always denied the charges and says he confessed because he was tortured. Detained on 19 January 2009, Leng Guoquan said he was tortured for three days and three nights while being interrogated by a special police unit. Three police officers bound him with his hands behind his back. They pushed his head between his legs and punched him. Later, they lit one end of a tube of rolled paper and stuffed the other end into his nose, covering his mouth until he was forced to breathe in the fire. Since January 2009, Leng Guoquan has been interrogated and tortured at least four times.

Leng Guoquan has been held at the Fengcheng County Detention Centre since 2009. He was first registered under a false name (Chen Dong), apparently in an attempt to prevent his lawyer and family finding where he was held. Since discovering his location, they have not been allowed to visit him.

His family have appointed four different lawyers to represent him. The first was forced by the authorities to resign, while the second and third were denied access to him. The fourth lawyer eventually gained access and met him before his first trial.

This lawyer filed a complaint with the Dandong City Procuratorate in July 2009 claiming that his client had been tortured in custody and calling for an investigation. In August 2010, the Liaoning Provincial Procuratorate concluded that the allegations of torture were unfounded.

At the trial, Leng Guoquan's lawyer had no opportunity to cross-examine key witnesses. Those who did testify, retracted their previous statements. The prosecution did not provide any material evidence to support witness statements that claimed he was guilty.

At his appeal hearing on 7 December 2010 at the Liaoning Provincial Higher People's Court, Leng Guoquan showed the court the scars on his head, wrists and legs that he said were inflicted through torture. Of 56 witnesses called by the defence, only three were heard by the court. On 6 May 2011, the Liaoning court sent Leng Guoquan's case back for re-trial due to "uncertainty about the facts" and "lack of evidence." His retrial began on 10 October 2011.

“ Later, they lit one end of a tube of rolled paper and stuffed the other end into his nose, covering his mouth.”

TORTURE/OTHER
ILL-TREATMENT

RIGHT TO A
LAWYER DENIED

At least 55 offences, including non-violent ones such as drug-related offences, carry the death penalty in **CHINA**. Thousands are executed every year – more than the rest of the world put together. The exact number remains secret. In 2007, the Supreme People's Court reclaimed its power to exercise final review of all death sentences. It can either approve the sentence or return it to the lower courts for retrial. The authorities have reported a significant drop in executions as a result, but these claims cannot be confirmed. If the Supreme People's Court approves a death sentence, execution will follow quickly. The Constitution gives the executive power to issue "special pardons" but there is no procedure for individuals to seek pardon or commutation. All trials, including those resulting in death sentences, fall short of international standards for fair trial. China has a near 100 per cent conviction rate in criminal cases.

ACT NOW

Appeal to the Chinese authorities to:

- ★ Stop the execution of Leng Guoquan by whatever judicial or other means available.
- ★ Ensure Leng Guoquan is re-tried in proceedings which comply with international fair trial standards, especially with regard to his right to adequate legal counsel.
- ★ Investigate the reports of torture and other ill-treatment and ensure that all statements resulting from such coercion are completely excluded from any re-trial.
- ★ Suspend all executions and the imposition of death sentences as a step towards total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards.
- ★ Ensure that those sentenced to death have an effective opportunity to exercise their right to seek a pardon or commutation of their sentence in line with international standards.
- ★ Ratify the International Covenant on Civil and Political Rights.

Write to:

President of the Liaoning Provincial
Higher People's Court
Liaoningsheng Gaoji Renmin
Fayuan
132 Huigongjie, Shenhequ
Shenyangshi 110013
Liaoningsheng
People's Republic of China
Email: Infy_mygt@chinacourt.org
or lngfjb@126.com

HAKAMADA IWAO JAPAN



HAKAMADA IWAO (Hakamada), born in 1936 and a former boxer, was arrested for murder in 1966. He was sentenced to death in 1968.

Following his arrest, police subjected Hakamada to 23 days of intensive interrogation from 18 August to 9 September 1966. He was interrogated without a break for an average of 12 hours a day and on three occasions he was interrogated for over 14 hours. He “confessed” after 20 days and was charged three days later. During this time he signed a series of documents purportedly confessing to the crime. Hakamada later signed more confessions, this time prepared by the Public Prosecutor.

Hakamada retracted these statements at his trial, claiming that while he was detained he had been denied food and water, was not allowed to use a toilet, and was kicked and punched. In a letter to his sister he wrote:

“[O]ne of the interrogators put my thumb onto an ink-pad, drew it to the written confession record and ordered me, ‘write your name here!’, shouting at me, kicking me and wrenching my arm.”

Hakamada had had only three short interviews with different defence lawyers prior to trial. During his trial by the Shizuoka District Court in 1968, judges raised concerns that supposed confessions presented by the prosecution with Hakamada’s signature, were not signed voluntarily. Of these 45 documents, only one was deemed to have been signed voluntarily and the remainder were declared inadmissible as evidence. He was convicted and sentenced to death, and the conviction and sentence were upheld by the Supreme Court in 1980.

In 2007, Kumamoto Norimichi, one of the three judges at the Shizuoka District Court that sentenced him to death in 1968, said he believed Hakamada was innocent:

“Objectively the evidence for him committing this crime was almost none; however, the investigator thought from the beginning that he was guilty, so the police conducted the investigation assuming that he was responsible for the crime. He was detained and coerced into making a confession because the police had arrested him.”

Kumamoto Norimichi was forced to condemn Hakamada to death despite believing in his innocence: “I could not bear the burden of my conscience so I resigned from being a judge... I felt very guilty myself.”

“I could not convince the other two judges that Hakamada was not guilty so I had to convict him as the decision was made by majority. Personally the fact that I had to write his judgement was against my conscience, something I still think about to this day.”

Kumamoto Norimichi, Shizuoka District Court Judge, 2007

TORTURE/OTHER
ILL-TREATMENT

RIGHT TO A
LAWYER DENIED

Hakamada's defence counsel appealed for a retrial in 1981 but the application was rejected by the Supreme Court in 1994. A second appeal for retrial was submitted in 2008 to the Shizuoka District Court; the appeal is still pending.

Protesting his innocence for over 45 years, Hakamada is one of Japan's longest serving death row inmates. All prisoners who are sentenced to death in Japan are placed in isolation. Other than brief visits from his sister, his lawyer and a select number of supporters, Hakamada has been kept in isolation for over 30 years. He has shown signs of serious mental deterioration.

JAPAN'S criminal justice system relies heavily on confessions extracted under the *daiyo kangoku* system to secure convictions. The system allows the police to detain and interrogate suspects for up to 23 days without access to a lawyer. During this time, confessions are routinely obtained through torture or other ill-treatment. Japan has a 99 per cent conviction rate. There are 19 offences that carry the death penalty in Japan, but in practice, only those convicted of murder are sentenced to death. More than 100 people are currently on death row. Between 2006 and 2010 there were 37 executions. All were carried out secretly with those condemned informed just hours before their execution and their family members told only after the fact.

ACT NOW

Appeal to the Minister of Justice to:

- ★ Stop the execution of Hakamada Iwao by whatever judicial or other means available.
- ★ Ensure Hakamada Iwao is re-tried in proceedings which comply with international fair trial standards.
- ★ Investigate the reports of torture and other ill-treatment and denial of the right to effective legal counsel.
- ★ Abolish the *daiyo kangoku* system or bring it in line with international standards, including introducing electronic recordings of the entire interrogation process.
- ★ Suspend all executions and the imposition of death sentences as a step towards the total abolition of the death penalty.
- ★ Revise laws and change policies and practices to ensure fair trials in line with international standards.

Write to:

Minister of Justice
1-1-1 Kasumigaseki
Chiyoda-ku
Tokyo 100-8977, Japan
Fax +81 3 5511 7200 (via Public
Information & Foreign Liaison Office)

HUMPHREY JEFFERSON EJIKE ELEWEKE INDONESIA



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HUMPHREY JEFFERSON EJIKE ELEWEKE (Jeff), from Nigeria, was arrested for drug offences in 2003 and sentenced to death in 2004.

Jeff was arrested on 2 August 2003 in Jakarta for possessing drugs after police found 1.7kg of heroin in a room used by one of his employees at the restaurant he owned and ran.

He was charged with offences relating to the import, export, sale and trafficking of drugs – offences which carry the possibility of the death penalty. However, Jeff did not have access to a lawyer at the time of his arrest, interrogation or detention. He was detained for a total of five months without legal representation, in breach of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) as well as of Indonesia's Criminal Procedure Code, which guarantees the right to be assisted by and to contact counsel. Indonesia ratified the ICCPR in 2006.

Jeff has claimed that he was repeatedly beaten during interrogation. He said his interrogators threatened to shoot him if he refused to sign papers confessing to possession of the heroin or if he refused to implicate others. Trial records of April 2004, however, show that Jeff reported that he was not subjected to any form of coercion.

The trial judgement includes the statement that "black-skinned people from Nigeria" are under surveillance by police because they are suspected of drug trafficking in Indonesia. This raises concerns about the impartiality of the trial process. The ICCPR requires that everyone be given a fair and public hearing by a competent, independent and impartial tribunal. The ICCPR places an explicit obligation on states to respect and protect the rights of all individuals "without distinction of any kind" including race, colour, and national or social origin.

Jeff was convicted of possession and sale of drugs by the Central Jakarta district court and sentenced to death in April 2004. His conviction and sentence were upheld by the High Court in June 2004 and the Supreme Court in November 2004.

In November 2004, Charles Kanu, alias Kelly, the former owner of Jeff's restaurant, reportedly told police that he had organized for drugs to be planted in the restaurant so that Jeff would be arrested and convicted. Although he later died in prison, several people testified that they had witnessed Charles Kanu making this confession while in prison on drug charges. Such witness statements formed part of an appeal for a review of Jeff's case to the Supreme Court, which was rejected in September 2007.

“Black-skinned people from Nigeria’ are under surveillance by police because they are suspected of drug trafficking in Indonesia.”

Paraphrase of trial judgement in the case of Humphrey Jefferson

TORTURE/OTHER
ILL-TREATMENT

RIGHT TO A
LAWYER DENIED

That same year the court upheld the constitutionality of the death penalty for drug offences.

Jeff is currently held in the Nusa Kambangan Prison awaiting execution. He has not appealed for clemency from the President as he maintains that he is innocent and should not seek forgiveness for a crime he did not commit.

Indonesia has yet to make torture a criminal offence in its Criminal Code.

More than 100 people are on death row in **INDONESIA**: half have been convicted of drug trafficking; many are foreign nationals. Ten were executed in 2008, compared to 11 executions recorded in the preceding decade. At least seven people were sentenced to death in 2010, but since 2008 there have been no recorded executions. In August 2010, the clemency law was amended so that those sentenced to death can only appeal once for clemency from the President, within one year of the final verdict. The Constitution prohibits torture, but torture by police is widespread and forced confessions are routinely relied upon in court. Those charged with crimes carrying the death penalty can be held for up to 231 days before being tried. There are serious concerns around corruption and lack of independence within the judiciary.

ACT NOW

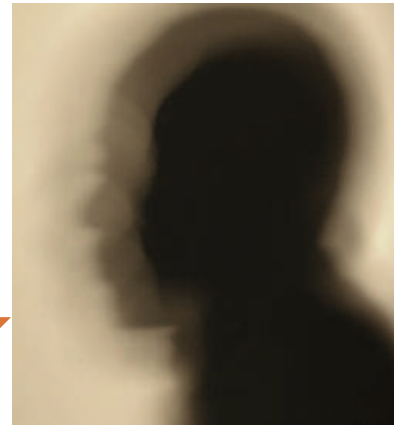
Appeal to the Attorney General to:

- ★ Stop the execution of Humphrey Jefferson Ejike Eleweke by whatever judicial or other means available.
- ★ Ensure Humphrey Jefferson Ejike Eleweke is re-tried in proceedings which comply with international fair trial standards.
- ★ Make torture a criminal offence, investigate reports of torture and other ill-treatment and ensure that all statements resulting from such coercion are completely excluded from any re-trial.
- ★ Suspend all executions and the imposition of death sentences as a step towards total abolition of the death penalty.
- ★ Revise the Criminal Code and other laws and change policies and practices to ensure fair trials in line with international standards.

Write to:

Attorney General of the Republic
of Indonesia
Jl. Sultan Hasanudin No.1
Kebayoran Baru
Jakarta Selatan 12160
Indonesia
Fax +62 21 725 0213 /
+62 21 739 2576

AFTAB BAHADUR PAKISTAN



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AFTAB BAHADUR was arrested by police in Lahore on 5 September 1992 along with another man, suspected of murder. He was held in police detention for a period of several months without access to a lawyer. Detainees are often held in police custody for weeks at a time and sometimes up to a year while charges are prepared. They are rarely given the chance to challenge the lawfulness of their detention before a court or seek bail.

When Aftab Bahadur finally appeared in court in 1993, he pleaded not guilty, claiming that police had taken him to the scene of the crime and forced him to leave fingerprints. His co-defendant Ghulam Mustafa also claimed that he had been tortured and forced to leave fingerprints. The judge noted their claims without comment.

Aftab Bahadur was provided with a state-appointed lawyer at trial who failed to produce any evidence or witnesses in defence of his client. State-appointed lawyers in Pakistan are often poorly trained and paid, and may not represent their clients vigorously unless the defendant also pays them.

Aftab Bahadur was tried before the Special Court for Speedy Trials No.2 in Lahore on 13 April 1993, convicted of murder and sentenced to death. These courts operated between 1987 and 1994 with exclusive jurisdiction over certain scheduled offences, including murder and violent and non-violent political offences for which the death sentence could be imposed. They operated outside the regular legal system, were presided over by retired judges and allowed for appeals only to a Special Supreme Appellate Court, again outside the ordinary Supreme Court bench. Strict time limits were placed on bringing cases to trial after charges had been filed, length of hearings, and the appeal process. Although the laws establishing these speedy courts were repealed in 1994, a number of people remain imprisoned following trials in these courts, some of them, like Aftab Bahadur, under sentence of death.

Aftab Bahadur appealed against his conviction to the Supreme Appellate Court. A lawyer was again appointed by the state to represent him. His appeal application is not dated and simply contains four generic points made on one sheet of paper: that the prosecution failed to establish his guilt beyond reasonable doubt; that there was insufficient reliable evidence to convict him; that Aftab Bahadur is innocent; and that the trial court judgement was arbitrary and based on conjecture.

“The police tortured me and then after smearing my hands with oil, put those hands around the room and thus the impressions were obtained.”

Aftab Bahadur

TORTURE/OTHER
ILL-TREATMENT

SPECIAL COURTS

The appeal court confirmed the conviction and sentence on 27 March 1994. A mercy petition to the President was filed by Aftab Bahadur in 2010. He is detained in a Lahore jail.

Courts in **PAKISTAN** sentence a large number of people, including juveniles, to death, despite a promise made by the President in 2008 that all death sentences would be commuted. Over 8,000 prisoners are said to be on death row; many have been there for years. The death penalty is most frequently imposed for murder, but can be imposed for almost 30 other offences including those without lethal consequences which fall outside the scope of the “most serious crimes” as defined by the International Covenant on Civil and Political Rights. Anti-terrorism courts operate outside the regular judicial system with wide powers given to the police and security agencies. Systemic problems exist within the judicial system including corruption, lack of judicial independence, and discrimination.

ACT NOW

Appeal to the President to:

- ★ Stop the execution of Aftab Bahadur by whatever judicial or other means available.
- ★ Investigate all claims of torture and other ill-treatment and ensure that statements and other evidence resulting from such coercion are completely excluded from any re-trial.
- ★ Ensure Aftab Bahadur is re-tried by a regular court in proceedings which comply with international fair trial standards.
- ★ Suspend all executions and the imposition of death sentences as a step towards the total abolition of the death penalty.
- ★ Fully comply with obligations under the International Covenant on Civil and Political Rights and revise laws and change policies and practices to ensure fair trials in line with international standards.

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