

DEATH PENALTY NEWS

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AI Index: ACT

A BULLETIN ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

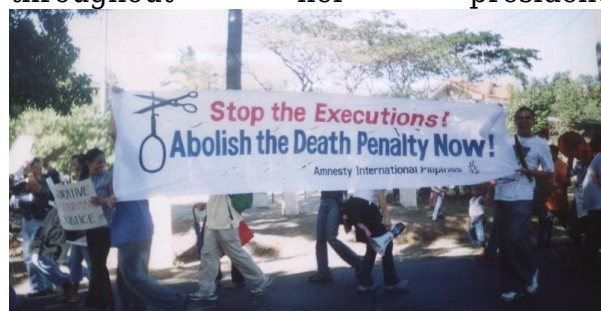
MASS COMMUTATIONS IN PHILIPPINES

On 15 April President Gloria Macapagal Arroyo commuted all death sentences to life imprisonment. This is thought to be the world's largest ever commutation of death sentences, which will lead to the reprieve of at least 1,230 people.

Legislation to repeal the 1993 law allowing for the death penalty is currently under consideration in Congress. Hopes for total abolition of the death penalty rose significantly when the President prioritized the legislation on 19 April.

In 1987 the Philippines set an historic precedent by becoming the first Asian country in modern times to abolish the death penalty for all crimes. However, the death penalty was reintroduced in the Philippines in late 1993 and executions resumed in 1999 after a period of 23 years. Former President Estrada in 2000 announced a moratorium on executions, which President Arroyo has continued

throughout her presidency.



©AI Philippines anti-death penalty demonstration

20,000 PRISONERS AROUND WORLD ON DEATH ROW

On 20 April Amnesty International (AI) released its annual death penalty statistics for 2005. They showed that at least 2,148 people were executed in 22 countries and at least 5,186 were sentenced to death in 53 countries. These were only minimum figures as the true figures were certainly higher.

As in previous years, the vast majority of executions worldwide were carried out in a tiny handful of countries. Ninety-four per cent of all known executions took place in China, Iran, Saudi Arabia and the USA.

Based on public reports available, Amnesty International estimated that at least 1,770 people were executed in China during the year, although the true figures were believed to be much higher. A Chinese legal expert was recently

quoted as stating the figure for executions is approximately 8,000 based on information from local officials and judges, but official national statistics on the application of the death penalty remained classified as a state secret.

Iran executed at least 94 people, and Saudi Arabia at least 86. There were 60 executions in the USA.

The total figure for those currently condemned to death and awaiting execution is difficult to assess; AI estimates the number at between 19,474 and 24,546 based on information from human rights groups, media reports and the limited official figures available. Again, the true total is probably higher.

MEMBERS ELECTED TO NEW UN HUMAN RIGHTS COUNCIL

The United Nations General Assembly on 9 May elected 47 member states to serve on the new Human Rights Council (UNHRC) which replaces the Commission on Human Rights. All 191 UN-member countries took part in the vote which Secretary-General Kofi Annan stated reflected "the widely shared commitment to...make a fresh start in [the] vital work of upholding the highest standards of human rights".

This was the first election to a UN political body by absolute majority of the General Assembly with each new member of the Council having to achieve at least 96 votes to secure a seat. All candidate countries were encouraged to make human rights commitments, for example to ratify human rights treaties, invite the UN's independent experts - the Special Rapporteurs - to visit their countries, and to strengthen national institutions.

Sixty-five candidates stood for 47 places distributed among the five regional groups. The terms on the Council will in future be for three years; however, for

this first round a third will serve for one, two and three years each.

The Human Rights Council was formed on 15 March when the General Assembly adopted Resolution 60/251 by a vote of 170 countries in favour, four against and three abstentions.

The UNHRC is mandated to conduct regular reviews of the human rights record of all countries, beginning with those serving on it. It is expected to meet at least three times a year with the first meeting to take place in Geneva on 19 - 30 June 2006.

PRIVY COUNCIL ABOLISHES MANDATORY DEATH SENTENCE IN BAHAMAS

The Judicial Committee of the Privy Council (JCPC), based in London, which is the highest court of appeal for most of the countries in the English-speaking Caribbean, has ruled that the mandatory death sentence is in violation of the Bahamian constitution.

The landmark judgement, which gives judges the discretion to consider mitigating circumstances in individual cases, brings the Bahamas into line with evolving international standards. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".

The ruling was delivered on 8 March in connection with the appeal cases of Forest Bowe Jr and Trono Davis who have been on death row in Foxhill prison in the Bahamas for six and eight years respectively following convictions for murder.

Sixteen people have been executed in the Bahamas since 1973, six

in the last 10 years. The last execution took place in January 2000.

UNLAWFUL EXECUTIONS IN TRIBAL AREAS OF PAKISTAN

Hayatullah Gul, was executed on 26 March in Tiarza, South Waziristan on the orders of a *shura*, or council of persons, described in Pakistani media as "local Taleban". He was shot dead by the father of a taxi driver whom Hayatullah Gul is alleged to have murdered around two weeks earlier. The "trial" reportedly took only a few hours to complete.

The accused had no legal counsel to assist him and no possibility to challenge the conviction and punishment. He reportedly pleaded guilty and was allowed to ask forgiveness from the victim's family, which was refused.

Hayatullah Gul's execution is widely seen in Pakistan as an instance of "local Taleban justice under Shariah law". Many observers believe that people described as Taleban appear to have consolidated their control over parts of the tribal areas of Pakistan and to have assumed policing and judicial functions.

However, it would appear that Hayatullah Gul was denied even the minimal legal safeguards available to persons accused of crimes in the tribal areas of Pakistan. He was not brought before a duly constituted *jirga* (informal council), his case was not decided by the Political Agent for South Waziristan and, if the Frontier Crimes Regulation had been applied, the death penalty could not have been imposed on him as it does not provide for the death penalty for any offence.

IRAN EXECUTES YET ANOTHER CHILD OFFENDER

On 13 May, an unnamed 17-year old male and an unnamed 20-year old male were executed by hanging in Khorramabad, the capital of Lorestan province. According to reports, they were sentenced to death for the rape and murder of a 12-year old boy, and were tried in an extraordinary session.

Virtually all governments have recognized that the execution of a person for a crime committed when they were under 18 years of age is now unlawful under international law. During the last decade, the judicial killing of children has all but stopped and only a tiny minority of countries now threaten to carry out such executions. In 2005 Iran was the only country to do so.

Ten men were executed on 19 April in Tehran's Evin prison. They had all been convicted of murder.

SOMALIA: CHILD PUBLICLY EXECUTES FATHER'S KILLER ON ORDERS OF SUMMARY COURT

Omar Hussein was publicly executed in Mogadishu on 2 May. He was tied to a stake, hooded and stabbed to death by the 16-year-old son of his alleged victim. Omar Hussein had been sentenced to death hours earlier by an Islamic (Shari'a) court. Shari'a courts in Somalia do not allow the right to legal representation or appeal.



© Shabelle Media Network the execution of Omar Hussein

A Shari'a law of retribution (*qisas*, ie "like-for-like") was applied after the victim's family reportedly refused to accept financial compensation (*diya*). Such a retribution execution is unprecedented in Somalia and Somali customary law. It is also contrary to Somalia's former Penal Code, which would be the basis for court proceedings in state courts.

Of particular concern is the court's use of a child under the age of 18 years to inflict the death sentence. The teenager, as designated by his family, repeatedly stabbed the condemned man in the head and neck. A large crowd gathered to witness the public execution, with several fainting at the distressing sight of Omar Hussein, whose body was left exposed for his family to collect later.

Somalia has been a collapsed state since 1991. The Transitional Federal Government which was formed in late 2004 after two years of peace and reconciliation talks in Kenya has still not been able to establish control of any part of the country. There is no rule of law or national system of justice. Several death sentences have been imposed and carried out by Islamic courts and their militias in recent years, although most death sentences have been replaced by

compensation negotiated between the clans of the victim and the perpetrator, according to Somali customary law.

CHINA RATIFIES EXTRADITION TREATY ON DEATH PENALTY

China has ratified an extradition treaty with Spain, signed by President Hu Jintao in Madrid in November 2005, that includes "an unprecedented pledge not to execute repatriated criminals" according to a Xinhua News Agency report dated 29 April. The report highlights Chinese concerns about recovering billions of US dollars embezzled by corrupt officials since the Chinese economy was reformed in 1978 who fled abroad to avoid prosecution. Economic crimes such as fraud and bribery are punishable by death in China and many foreign countries have been unwilling to extradite Chinese nationals who might be executed if they were returned to China.

CHINA: NEW REGULATIONS ON ORGAN TRANSPLANTS

On 28 March, the Chinese Ministry of Health released new regulations on organ transplants which will take effect on 1 July 2006. They reportedly ban the buying and selling of organs and stress that organs may only be removed with the written consent of the donor. However, medical experts such as Professor Chen Zhonghua, a transplantation specialist from Wuhan, have criticized the regulations for not offering guidance on transplants from live donors and for failing to address key issues such as the source of organs.

Extracting organs from executed prisoners has been a widespread and highly profitable practice in China since

the *de facto* privatization of health care several years ago; it is estimated that around 99% of transplanted organs in China may come from executed prisoners. International medical standards state that transplants may only take place voluntarily and with the free and informed consent of the donor; it is unlikely that those faced with the trauma of imminent execution are in a position to provide such consent. The secrecy surrounding the application of the death penalty in China also makes it difficult to verify whether such consent was given.

VIET NAM: POSSIBLE REDUCTION IN SCOPE OF DEATH PENALTY

A proposal to reduce the number of crimes punishable by death from nine to 20 was sent in February by the Ministry of Public Security to the Central Judicial Reform Commission. The offences to be dropped from incurring the death penalty would be mainly economic ones such as fraud, embezzlement, bribery and counterfeiting. Dang Anh, a deputy director of the Ministry of Security's judicial department, said that "the reduction will be in tune with the general tendency around the world which Viet Nam should follow". Viet Nam had already reduced the number of crimes punishable by death in 1999, from 44 to 29. In March, President Tran Duc Luong commuted the death sentences of two Australians convicted of drug trafficking, Nguyen Van Chinh and Mai Cong Thanh, following petitioning by the Australian government. However, on 21 March Phung Long That, the former head of the anti-smuggling division of the Ho Chi Minh City customs department, was executed. He had been sentenced to death in April 1999 after being convicted of accepting bribes and

smuggling goods worth 70 million US dollars.

There were 21 known executions and at least 65 people were sentenced to death in Viet Nam in 2005. The real number is believed to be much higher.

SOUTH KOREA DEATH PENALTY BILL UNDER REVIEW

In February the Justice Ministry reported that it wants to "reform the criminal justice system in a way that best protects human rights" and that it "will closely review abolishing the death penalty". It has commissioned a study to determine how abolition would affect society and the crime rate. The Justice Ministry's support of abolition could be crucial to South Korean parliamentarians who have tried but failed in recent years to abolish the death penalty.

In April, the Legislation and Judiciary Committee (LJC) of the South Korean National Assembly held a public hearing on the death penalty as part of their consideration of the Death Penalty Abolition Bill. The backing of the LJC is vital for the passage of the bill which will then go to the National Assembly, where a majority of members support abolition of the death penalty, for a final vote.

More than 900 executions have been carried out since 1948 when the Republic of South Korea was created. There have been no executions since 1998.

USA NEWS

123rd Exoneration

John Ballard, who was sentenced to death in **Florida** in 2003 for two murders committed in 1999, has had his conviction overturned by the Florida

Supreme Court. In its ruling in February, the Court held that the evidence against Ballard was legally insufficient to support the conviction, and ordered the trial court to enter a judgment of acquittal. John Ballard becomes the 22nd person to be exonerated in the state of Florida, which leads the nation in exonerations, and the 123rd person to be released from death row on grounds of innocence in the USA since 1973.

Moratorium in New Jersey

.In January, Governor Richard J. Codey signed legislation suspending executions in New Jersey. The bill created a 13-member commission to study all aspects of capital punishment in the state. The Commission was required to report on its findings and recommendations not later than 15 November 2006.

The death penalty and the mentally ill

On 27 February, a **Pennsylvania** county judge ruled that George Banks was mentally incompetent for execution. Judge Michael Conahan found that the prisoner's "longstanding delusions render him unable to rationally comprehend his death sentence, its reasons or its implications." The state has appealed the ruling to the Pennsylvania Supreme Court.

In February, the Supreme Court of **South Carolina** found that death row prisoner Mar-Reece Aldean Hughes was mentally incompetent to waive his post-conviction appeals. The Court ruled that Hughes did not understand the post-conviction proceeding he was trying to waive the right to pursue.

Both these cases were among the many included in **AI's** January 2006 report on the execution of the mentally ill in the USA

(<http://web.amnesty.org/library/Index/EN.GAMR510032006>). **AI** found that at least one in 10 of the prisoners put to death in the USA since 1977 had suffered from serious mental disorders. The report concluded that the USA's constitutional prohibition against executing the mentally incompetent offered only minimal protection.

Lethal injection issues

On 26 April, the **US Supreme Court** heard oral arguments in the case of Clarence Hill, a Florida death row inmate. The issue that the Court was considering was a procedural one, namely whether a death row inmate can bring a challenge to the constitutionality of lethal injection as a civil rights lawsuit, rather than as part of a normal appeals process.

State lethal injection protocols have been the subject of ongoing legal challenges in recent years. Medical and other evidence indicates that an inmate undergoing execution may be subjected to a painful and protracted death, but that the combination of chemicals used in the executions may mask such suffering.

The varying judicial responses to these legal challenges have led to yet another inconsistency in the death penalty process. In some instances stays are granted, while in others they are not and the defendants are executed, with no legal principle offered to justify the difference in outcome. So far, the US Supreme Court has refused to consider a direct challenge to the constitutionality of lethal injection, suggesting that the Justices are not yet prepared to enter into this particular issue.

On 2 May in **Ohio**, an execution team took more than 20 minutes to find a suitable vein in which to lethally inject Joseph Lewis Clark. The execution

process took 86 minutes to complete. Dr Jonathan Groner, associate professor of surgery at the Ohio State University College of Medicine and Public Health, said that Clark's execution "... demonstrates the terrible dilemma of lethal injection as medical charade. On the one hand, this 'medicalized' killing procedure, ... becomes torture in the hands of unqualified individuals. On the other hand, the involvement of ... physicians and nurses in executions violates the fundamental ethics of these professions."

NEWS IN BRIEF

Botswana - Modisane Ping was executed in secret on 1 April. He had been sentenced to death for murder and the sentence was upheld by the Court of Appeal, Botswana's highest court. There was no notification of the impending execution and Modisane Ping's family had no access to him immediately before or after the execution. The family learned of his execution over the radio.

Equatorial Guinea - Fernando Esono Ndjeng was publicly executed by a firing squad on 20 April in Evinayong, the provincial capital of the Centro-Sur province. He had been convicted of murder in early 2004. The death penalty is mandatory for murder in Equatorial Guinea. The last execution in Equatorial Guinea took place in December 2004.

France - On 3 January, President Jacques Chirac made an announcement to the Constitutional Council of his intention to officially remove the death penalty from the Constitution. Although the death penalty had been abolished in law by President Francois Mitterand in 1981, France's Constitution, which allows for the death penalty, remained unchanged. Revising the Constitution to

exclude the death penalty will confirm total abolition as irreversible.

In 2002 France ratified Protocol No. 13 to the European Convention on Human Rights which prohibits the death penalty in all circumstances, but France has yet to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) prohibiting the death penalty.

Iraq - Thirteen men were executed on 9 March. They had been convicted of "terrorist activities". Only one man was identified: Shuqair Farid, said to be a former police officer. No other details were disclosed regarding their trials.

Liberia - Following the abolition of the death penalty in Liberia in September 2005, a law adopted in December 2005, which imposed the death penalty for gang rape, was subsequently changed to life imprisonment in keeping with the country's abolitionist status

Papua New Guinea - The new Minister for Justice, Mr Bire Kimisopa, has been outspoken in his opposition to the death penalty which was reintroduced for wilful murder in 1991. He stated that "killing Papua New Guineans is out of my calendar and I will work towards aborting the death penalty".

Three men who had been under sentence of death since 1997 had their death sentences changed to life imprisonment. The appeal court found that the trial judge had mistakenly assumed that he was required by law to impose the death penalty.

Puerto Rico - In a judgment on 5 May, the Supreme Court of Puerto Rico ruled that Puerto Rican Juan Martinez Cruz can be extradited to the US state of Pennsylvania to stand trial for murder.

This ruling reverses an earlier decision on 17 October 2005 by the

Court of Appeals against the extradition of Juan Martinez Cruz to Pennsylvania which retains the death penalty for murder, unlike Puerto Rico which abolished capital punishment in 1929.

DEATH PENALTY STATISTICS
Abolitionist and retentionist
countries

Abolitionist for all crimes

86

Abolitionist for ordinary crimes

only.....11

Abolitionist in practice.....

27

Total abolitionist in law or practice...

....124

Retentionist.....

72

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forms part of AI Index:

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ABOLITION

DEATH PENALTY NEWS INDEX FOR 2005

(an annual overview of the previous year's articles)

COUNTRY	DATE	SUBJECT
Barbados	December	First death penalty cases to be brought to new court
Canada	June December	Homicide rate lowest in over 30 years Ratifies Second Optional Protocol to the ICCPR
China	December	Supreme Court review of death sentences to be reinstated
Guatemala	June December	Guatemala to consider abolition Inter-American court issues two judgements
India	June December	Human rights NGO challenges death penalty statistics President calls for reform of death penalty
Iran	June December	Another child offender executed Eight juvenile offenders executed in 2005
Iraq	December	First judicial executions since Saddam Hussain era
Japan	December	New Minister of Justice "will not sign execution warrants"
Jordan	December	King would like to "modify penal code to become first country in Middle East without capital punishment"
Kyrgyzstan	June	Moratorium extended for another year
Kuwait	December	Four men hanged in public
Liberia	December	Death penalty abolished
Mexico	June December	Death penalty abolished Constitutional amendments abolishing the

		death penalty adopted by Congress
Monaco	December	Ratifies Protocols Nos 6 and 13 to the European Convention on Human Rights
Pakistan	June	Appeals against revocation of Juvenile Justice System Ordinance pending in Supreme Court
Palestinian Authority	June	Resumption of executions
Saudi Arabia	June	Executions in Saudi Arabia
Singapore	December	Execution of Van Tuong Nguyen for drug trafficking
South Korea	December	Three new justices to the Supreme Court approved by parliament
Sudan	December	Constitution allows execution of children
Tonga	December	Tevita Siale Vola sentenced to life imprisonment for murder
USA	June	Child executions banned
USA (cont.)	June	Annual Gallup poll shows support for the death penalty for murder is 74%
	December	Connecticut – first executions since 1960 New York – state legislature voted against reinstating the death penalty Indiana – governor commutes Michael Daniels’ death sentence to life imprisonment Missouri – Stanley Hall executed Ohio – all charges against Derrick Jamison dismissed More than 1000 executions since 1977 Two exonerations in 2005: Derrick Jamison and Harold Wilson Georgia - Posthumous pardon granted to Lena Baker Indiana – governor commutes Arthur Baird’s death sentence
Uzbekistan	December	President signs decree abolishing death penalty from 1/1/2008
Yemen	December	Fuad’Ali Mohsen al-Shahari executed by firing squad
United Nations	June	UN calls abolition “essential” for human rights New UN quinquennial report on capital punishment UN expert attacks mandatory death penalty, calls for transparency
World Coalition	December	Third annual World Day against the Death

against the Death
Penalty (WCADP)

Penalty commemorated in 50 countries