

DEATH PENALTY NEWS DECEMBER 1997

A SUMMARY OF EVENTS ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

GEORGIA BECOMES 100TH ABOLITIONIST COUNTRY

On 11 November the Georgian parliament adopted a law abolishing the death penalty for all crimes and replacing it with life imprisonment. The motion abolishing capital punishment, which was overwhelmingly approved by a vote of 148 to one, had been proposed by President Eduard Shevardnadze and came into effect on 16 November.

Parliamentary speaker Zurab Zhvaniya applauded the vote, reportedly stating: "Now our compatriots can be proud that they live in a country where the state does not have the right to take their life." Linking the vote to abolitionist developments in Europe, he added: "This decision propels Georgia into the ranks of civilized European states".

Capital punishment was abolished while Georgia was an independent republic between 1918 and 1921 but was reintroduced when Georgia was incorporated into the Union of Soviet Socialist Republics. Following the break-up of the USSR at the end of 1991, Georgia continued to use an amended version of the criminal code inherited from its time as a republic of the USSR.

In March 1991 Georgia became the first republic of the former Soviet Union to reduce the scope of the death penalty when parliament removed it as a punishment for four economic offences in the criminal code. Several months later the death penalty was abolished for a further two offences. In 1992 a moratorium on executions was declared by the Military Council then ruling pending discussion of a new criminal code. In August 1993 the death penalty was abolished for 14 military crimes. However, the death penalty was extended to two new offences in the criminal code, in March and July 1993 respectively.

In March 1994 the moratorium on executions was lifted; at least 14 men were executed between then and February 1995 when a *de facto* moratorium on executions was put in place. The moratorium became official in an announcement by President Shevardnadze in December 1996; in the same month, parliament reduced the number of capital offences from 13 to seven. A total of 54 prisoners, all men, were under sentence of death when President Shevardnadze commuted their death sentences in July 1997. AI knew of at least one prisoner on death row when the death penalty was abolished in November 1997.

In a letter to AI in November 1997, Deputy Minister of Foreign Affairs M. Kakabadze wrote that the decision to abolish the death penalty "was preconditioned *inter alia* by ... the experience gained as a result of the moratorium proclaimed by the President of Georgia". Mr Kakabadze said he hoped that the decision to abolish the death penalty "will substantially contribute to protection of human rights in Georgia".

Abolition of the death penalty by Georgia brings to 100 the number of countries in the world which are abolitionist in law or practice.

JAMAICA: EXECUTIONS FEARED AFTER WITHDRAWAL FROM HUMAN RIGHTS PROTOCOL

AI has joined the UN Human Rights Committee in expressing concern about recent decisions by the Jamaican Government undertaken with the intention of hastening the resumption of executions in the country. The last execution was in 1988.

Prisoners sentenced to death in Jamaica may appeal their conviction to the Court of Appeal of Jamaica. The final court of appeal is the Judicial Committee of the Privy Council in England (JCPC), which will consider cases involving constitutional matters or points of law of "great public importance". Once these remedies have been exhausted, prisoners can file communications with the UN Human Rights

Committee alleging violation of the rights provided under the International Covenant on Civil and Political Rights (ICCPR). There is a similar possibility of filing communications to the Inter-American Commission on Human Rights (IACHR) alleging violations of the American Convention on Human Rights (ACHR). The right of Jamaicans to appeal to these two international bodies is a result of the fact that Jamaica is a party to the ICCPR and its (first) Optional Protocol which grants jurisdiction to the Human Rights Committee to consider individual complaints and is a party to the ACHR and a member of the Organization of American States. In many Jamaican cases, mostly filed on behalf of death row prisoners, the Human Rights Committee has found violations of human rights and has recommended remedies.

In August the Jamaican Government issued instructions imposing time limits for communications by death row prisoners to the Human Rights Committee (HRC) and to the IACHR. According to these instructions, executions will not be postponed unless the prisoner and the HRC or the IACHR meet all the time limits set out in the instructions. Before the government issued these instructions, both the HRC and the ACHR had informed the government that the proposed time limits were unworkable in view of the functioning and resources of these bodies. The government nevertheless issued the instructions.

On 23 October the Jamaican Government took the unprecedented step of informing the UN Secretary-General that it was withdrawing as a state party from the Optional Protocol to the ICCPR. Unless this decision is reversed, the withdrawal will become effective on 22 January 1998.

In October the Human Rights Committee examined Jamaica's long overdue second periodic report to the HRC on measures it is taking to implement the provisions of the ICCPR. In its concluding observations, issued subsequently, the HRC expressed its "utmost regret" over Jamaica's intention to withdraw from the Optional Protocol. It said it considered that the instructions issued by the government in August "cannot be invoked as justification for any measure that would deviate from the Covenant, the Optional Protocol or requests by the Committee for interim measures of protection." The Committee said it was concerned about the current state of legal aid which was "particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 [the right to life] *juncto* article 14 [the right to a fair trial] of the Covenant." It urged Jamaica "to monitor on a continuing basis the availability and quality of legal aid representation, and to ensure that experienced counsel be assigned to individuals accused of capital and other serious offences."

AI expressed concern that the instructions issued in August could lead to the execution of prisoners while their petitions to international bodies were still pending. It said that the government's withdrawal from the Optional Protocol denied all Jamaicans an avenue of redress for violation of internationally recognized human rights and threatened to undermine the international system of human rights protection.

TRINIDAD AND TOBAGO: POSSIBLE EXPANSION OF DEATH PENALTY

AI has urged the authorities of Trinidad and Tobago to reconsider plans to extend the death penalty to the crime of rape. **AI's** appeal was in response to the announcement by the Attorney General, Ramesh Lawrence Maharaj, in November that he had asked the country's Law Commission to prepare a report on a proposal to introduce the death penalty for rape.

At present in Trinidad and Tobago the death penalty is the mandatory punishment for murder and treason; it is also an optional punishment for certain offences under military law. Expansion of the death penalty would be in violation of the country's obligations under the American Convention on Human Rights (ACHR), which Trinidad and Tobago ratified in 1991. Article 4(2) of the ACHR states that the application of the death penalty "shall not be extended to crimes to which it does not presently apply".

Earlier, in October, the government followed Jamaica's example (see separate story) by issuing instructions setting strict short time limits for appeals by death row prisoners to the UN Human Rights Committee and the Inter-American Commission on Human Rights. These instructions would permit the government to execute a convicted prisoner even while their petition to the Human Rights Committee or the Inter-American Commission on Human Rights is pending if either the petitioner or the body considering the petition fails to meet the new time limits.

PAKISTAN: JUVENILE OFFENDER EXECUTED

Two prisoners were hanged at the Central Jail in Hyderabad on 30 September. Javed Masih and Shamun Masih had been sentenced to death in August 1991 for an armed robbery and triple murder committed in Karachi in 1988. Shamun Masih was aged 14 years at the time of the crime. His execution contravened international human rights standards precluding the use of the death penalty against people under the age of 18 at the time of the offence.

In March the death penalty was extended to the crime of gang-rape. At least 48 people were sentenced to death in Pakistan in 1997.

TURKEY: MOVE TOWARDS ABOLITION, BUT DEATH SENTENCES CONTINUE

A new draft penal code abolishing the death penalty and introducing a life sentence in its place was submitted to Turkish Minister of Justice Oltan Sungurlu for approval at the end of September, according to the Anatolia news agency. The Minister of Justice reportedly said the draft could be approved by parliament in one voting session and could come into force in 1998.

In a separate development, Metin Sahin, said to be 17 years old, was sentenced to death in July for separatist activities under Article 125 of the Turkish Penal Code, which carries the death penalty. The Deputy Chair of the Turkish Human Rights Association (IHD), who is now dealing with his case, claimed that he had not been represented by a lawyer at his trial, and that the court had accepted a registry document showing his birth date to be 1974 rather than 1979 as indicated on his identity card. Under current legislation, no one under the age of 18 at the time of the offence may be sentenced to death.

In early December it was reported that 33 people were sentenced to death by the State Security Court in Ankara, the capital, for their roles in a mob attack in Sivas in 1993 in which 37 people were killed. The appeal against the verdicts is pending.

The death sentences in December bring to more than 60 the number of people sentenced to death in 1997 although Turkey remains an abolitionist *de facto* country. The last execution was in 1984.

USA: VISIT BY AI SECRETARY GENERAL

Amnesty International's Secretary General, Pierre Sané, denounced the use of the death penalty in the USA during visits to death rows in Pennsylvania and Texas in October and November. He also visited the states of Alabama, Georgia, Louisiana and Mississippi in an attempt to publicize the disproportionate numbers of people from ethnic minorities, most of whom come from poor and abusive backgrounds, who are sentenced to death in these states, and to the inadequate standard of legal representation provided to them by the state at their trials.

In press conferences during the visits Pierre Sané condemned as discriminatory the practice of excluding African-Americans from juries despite a ruling by the US Supreme Court declaring the practice unconstitutional. "It cannot be fair that minorities are both subjected to the death penalty in such high numbers and systematically removed from participating in the judicial process", Mr Sané said.

In Pennsylvania Pierre Sané drew attention to doubts about the fairness of the trials of death row inmates Mumia Abu-Jamal and Scott Blystone.

Pierre Sané also condemned the USA for executing the mentally retarded and juveniles. In Louisiana, for example, a juvenile offender was sentenced to death at the age of 16. Nationwide there are more than 50 prisoners on death row for crimes committed when they were under the age of 18 years.

Texas - All 21 of the state's Roman Catholic bishops signed a statement in October calling for an end to the use of the death penalty. The statement was precipitated by a US Supreme Court judgment which upheld a Texas law prohibiting juries from being told that life imprisonment was an available option where death sentences were involved. The bishops accused the Texas authorities of "contributing to a climate of violence" by "usurping the sovereign domain of God over human life".

By the end of the year 37 prisoners had been executed in Texas, the same number of executions during 1997 as in all other US states combined. Among the 37 was Kenneth Ransom, executed on 28 October for murder despite a confession from another man and a new statement from his co-defendant that Kenneth Ransom had neither known of the intended crime beforehand nor taken any part in it.

Massachusetts - On 28 October the state House of Representatives voted to reintroduce the death penalty by 81 votes to 79. However, following the widely-reported case of Louise Woodward, a British child minder convicted of murdering an infant in her care while working in Massachusetts (but later released on appeal), one House of Representatives member switched his vote because, he said, of the risk of wrongful conviction, after which the bill was defeated on 6 November in an 80-80 tie vote.

UKRAINE: COUNCIL OF EUROPE SENDS MISSION AFTER DISCLOSURE OF FURTHER EXECUTIONS

Ukraine has continued to execute prisoners in 1997, in violation of its commitment to institute an immediate moratorium on executions on joining the Council of Europe in November 1995 and despite the threat by the Council's Parliamentary Assembly in January 1997 that the country could be expelled from the organization should executions continue (see **DP News** March 1997).

In August former Ukrainian Minister of Justice Serhiy Holovatyj stated to the press that 13 executions had been carried out in the first half of 1997. In October Ukrainian President Leonid Kuchma told Leni Fischer, President of the Parliamentary Assembly of the Council of Europe, that the last execution was in March 1997 - more than a month after the Parliamentary Assembly threatened the country with expulsion. President Kuchma also told Leni Fischer that he had not refused clemency to any prisoner under sentence of death since 29 November 1996.

In November the Parliamentary Assembly's Committee on Legal Affairs and Human Rights sent one of its members, Renate Wohlwend, on a fact-finding mission to Ukraine. During the mission Mrs Wohlwend was informed that 13 prisoners whose petitions for clemency had been refused by President Kuchma on 29 November 1996 were executed between 1 January and 11 March 1997. Despite her repeated requests, Ukrainian officials were unable to give her the dates of execution or the names of the prisoners executed.

She was also told that there were currently 264 prisoners under sentence of death. The number was continually rising because the Ukrainian courts continued to impose death sentences, which however were no longer carried out, she was told.

Mrs Wohlwend was told that there is an unofficial moratorium on executions since President Kuchma no longer refuses requests for clemency, but that no order has been sent by the Ministry of the Interior to regional prison administrations to inform them of the existence of a moratorium, and that no such order will be sent.

Mrs Wohlwend's report on the mission, released in November, states that the procedure for carrying out executions "is shrouded in secrecy". In particular, "relatives of executed prisoners are not informed where their sons, husbands or fathers are buried, which I consider an affront to human dignity".

Mrs Wohlwend visited three pre-trial detention centres where prisoners under sentence of death were held. Her report states: "I was ... shocked by the inhumane and degrading conditions on Ukraine's death rows". She cited, in particular, lights being left on day and night, a lack of daylight in prisoners' cells, and prisoners not being able to leave their cells except to have a shower once every five to 10 days.

On 15 December the Committee on Legal Affairs and Human Rights decided to ask the Parliamentary Assembly to suspend the Ukrainian delegation unless the Council of Europe receives official notification from the Ukrainian authorities that a *de jure* moratorium on executions has been imposed. The Parliamentary Assembly is expected to consider the matter at its January 1998 session.

PHILIPPINES: THREAT TO RESUME EXECUTIONS IN 1998

The Philippine Supreme Court has confirmed the death sentence of Leo Pilo Echegaray, convicted in

September 1994 of raping his 10-year-old stepdaughter, and ruled that his execution, by lethal injection, can be carried out between February and August 1998. He has exhausted all legal avenues for appeal but may still petition President Fidel Ramos for clemency, although the President is a staunch supporter of the death penalty and is thought unlikely to be in favour of granting clemency. If this execution is carried out it will be the first for more than 20 years in the Philippines. Five other prisoners have had their death sentences confirmed by the Supreme Court and may also be at risk of execution in 1998.

Since the Philippines reintroduced the death penalty in December 1993 well over 400 people have been sentenced to death, and new death sentences continue to be passed at an alarming rate. The majority of those on death row come from the poorer, most disadvantaged sectors of society who often cannot afford competent legal defence.

In October **AI** published a report *Philippines - The Death Penalty: Criminality, Justice and Human Rights* (AI Index ASA 35/09/97) detailing credible allegations made by a number of death row inmates that they had been tortured during interrogation to force them to confess. The report also referred to a lack of safeguards to ensure that those facing the death penalty receive a fair trial. Both factors increase the risk of executing an innocent person.

NEW BOOKS AND ARTICLES

The Abolition of the Death Penalty in International Law, by William A. Schabas, second edition, Cambridge University Press, Cambridge, United Kingdom, 1997, ISBN 0 521 58887 1, paperback price £27.95. Originally published in 1993, this extensively revised edition is an authoritative study of the evolution of key international standards on the death penalty including relevant parts of the International Covenant on Civil and Political Rights, its Second Optional Protocol, and statements by the UN Human Rights Committee which monitors the implementation of the ICCPR.

The International Source Book on Capital Punishment edited by William A. Schabas, Northeastern University Press, USA, 1997, ISBN 1 55553 299 3. This book includes articles, book reviews, documents and statistics on capital punishment worldwide as well as excerpts from judicial rulings.

The Death Penalty: An Historical and Theological Survey by James J. Megivern, Paulist Press, New Jersey, USA, 1997, ISBN 0-8091-0487-3, price US\$29.95, August 1997. This comprehensive collection of Christian views on the death penalty over the past two thousand years attempts to explain in its first half how Christianity could until recently support the death penalty as a necessary institution and a right of the state. The second half of the book describes the divergence of opinion between Christian laity in the USA, which largely support the death penalty, and the clergy, which increasingly oppose it.

"Deterrence and the Death Penalty: The Views of Experts" by Michael Radelet, *Journal of Criminal Law and Criminology*, Northwestern University School of Law, USA, Vol. 87, No. 1, Fall 1996. This article describes the attitudes to the death penalty of past and present presidents of the three major criminological associations in the United States in response to a questionnaire which requested answers on the basis of their knowledge of the literature and research in criminology. Their answers are compared to the results of a similar poll of senior police chiefs surveyed in 1995.