

# DEATH PENALTY NEWS

## DECEMBER 1998

A QUARTERLY BULLETIN ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

### TOTAL ABOLITION IN BULGARIA, CANADA, LITHUANIA

Bulgaria, Canada and Lithuania have abolished the death penalty for all crimes, bringing to 67 the number of totally abolitionist countries.

In other important developments in December Kyrgyzstan and Turkmenistan instituted moratoria on executions, while the USA carried out its 500th execution since 1977. In Rome, the Pope issued a strong call for abolition (see stories on pages 2-4)

On 10 December, Human Rights Day, the National Assembly of **Bulgaria** voted to abolish the death penalty from the Penal Code for all crimes. The vote represented the culmination of a process begun in July 1990 when a moratorium on the death penalty was introduced.

In February 1998 President Petar Stoyanov proposed abolition to the Advisory Council on National Security and in July the death penalty was removed from the Penal Code for the offence of intentionally causing death to one or more persons as a result of a transport accident. In October the Legal Committee of the National Assembly recommended that the death penalty be abolished for all crimes. The first vote in the National Assembly was held on 27 November when the majority in favour of abolition included members of all parliamentary parties. About half of the 240 deputies participated in the final vote, where there were 96 votes for abolition, 22 against and three abstentions.

Under the amended Penal Code, the death penalty is replaced by life imprisonment without possibility of commutation.

As with the death penalty which it replaces, this penalty cannot be imposed on women who were pregnant at the time of the offence or at the time of sentencing, people younger than 20, or soldiers younger than 18 for military offences or offences committed in time of war, for whom the maximum penalty is life imprisonment with a possibility of commutation.

The death penalty was introduced in modern Bulgaria in 1896. A total of 915 people were executed between 1951 and 1989. The last execution in Bulgaria was carried out on 4 November 1989, a year in which 14 people were executed. Since then the courts have continued to pass death sentences for aggravated murder.

In **Lithuania**, the *Seimas* (parliament) voted on 21 December by an overwhelming majority to abolish the death penalty in the penal code and replace it with life imprisonment. The parliament also commuted to life imprisonment the sentences of the nine prisoners then under sentence of death.

The decision by the Lithuanian parliament followed a Constitutional Court ruling earlier in the month that capital punishment violated the constitution. A moratorium on executions had been imposed by the then President Algirdas Brazauskas in July 1996.

In **Canada**, a bill removing the death penalty under the National Defence Act was signed into law on 10 December. The effect was to abolish the death penalty for all crimes.

Canada had abolished the death penalty for murder in 1976 but retained it for certain military offences under the National Defence Act. The government had introduced the new bill into parliament in 1997. The bill was adopted by the House of Commons (lower house of parliament) on 11 June and by the Senate on 1 December.

## **SIERRA LEONE - 24 SOLDIERS EXECUTED BY FIRING SQUAD**

Twenty-four soldiers were executed in Sierra Leone on 19 October despite international appeals for clemency. The executions were carried out in public on the outskirts of the capital, Freetown, by a firing squad using automatic weapons.

Together with 10 other soldiers, the 24 had been convicted on 12 October of offences relating to the military coup in May 1997 in which the elected government of President Ahmad Tejan Kabbah was overthrown and the Armed Forces Revolutionary Council (AFRC) seized power. The court martial which convicted them refused to accept arguments that the death penalty was discretionary rather than mandatory for these offences.

Trials before courts martial in Sierra Leone allow no right of appeal against conviction and sentence to a higher jurisdiction, in violation of international standards for fair trial. Those sentenced to death sought clemency from a special committee chaired by the President which commuted 10 of the death sentences to life imprisonment.

Petitions on behalf of 18 of those sentenced to death had been submitted to the UN Human Rights Committee under the (first) Optional Protocol to the International Covenant on Civil and Political Rights. The Committee later asked the government to explain why it had ignored its request for a stay of execution. The UN Secretary-General, Kofi Annan, said on 22 October that he regretted the executions had taken place despite his appeal for a stay.

By December a further 42 civilians and Foday Sankoh, the leader of the armed opposition Revolutionary Front (RUF), which joined the AFRC after the 1997 coup, had been convicted and sentenced to death by the High Court. Unlike soldiers tried by court martial, those sentenced by the High Court have the right to appeal to the Court of Appeal and, if the sentence is upheld, to the Supreme Court.

On 6 January 1999 rebel forces of the AFRC and RUF entered Freetown, breaking into the main prison and freeing those under sentence of death.

**I have promised Amnesty International that I will never sign the death sentence for a fellow human being. I would like to reaffirm this commitment. Life is sacred. I believe a person can reform. I believe that forgiveness makes all of us better persons. In the cause of truth and justice, I invite all heads of state in Africa, our common home, to abolish the death sentence, to work for the removal of violence among our peoples and so to prepare a better future for our children.**

**- Dr Bakili Muluzi**, President of the Republic of Malawi, in a message to the Eighth General Assembly of the World Council of Churches in Harare, Zimbabwe, 6-14 December 1998

## **KYRGYZSTAN, TURKMENISTAN - MORATORIA DECLARED**

Two central Asian members of the Commonwealth of Independent States have instituted moratoria on executions.

The moratorium in Turkmenistan was announced at a meeting of the Council of Foreign Ministers of the Organization for Security and Cooperation in Europe (OSCE) in Norway on 3 December and signed by President Saparmurad Niyazov on 6 December. Addressing the Council, Foreign Minister Boris Shikhmuradov said he was authorised by the President and Government of Turkmenistan to inform them officially that Turkmenistan was declaring a moratorium on the death penalty. He added that the number of articles providing for the death penalty in national law would be radically reduced. In taking this step, "Turkmenistan is demonstrating in a practical way its adherence to the human values and ideals of the OSCE", he said.

In **Kyrgyzstan** the non-governmental Bureau on Human Rights and the Rule of Law reported that a presidential decree for a two-year moratorium on the carrying out of executions was signed by President Askar Akaev on 5 December. The decree came into effect upon publication in the government gazette on 8 December and does not require confirmation by parliament. The decree states that the moratorium was inspired by the principles of humanism, esteem for and observance of the fundamental human rights and freedoms and cites in particular the 50th anniversary of the adoption of the Universal Declaration of Human Rights.

## **POPE CALLS FOR ABOLITION**

Pope John Paul II has made his first unqualified statement of opposition to the death penalty.

In his Christmas message on 25 December the head of the Roman Catholic Church said: "May Christmas help to strengthen and renew, throughout the world, the consensus concerning the need for urgent and adequate measures to halt the production and sale of arms, to defend human life, to end the death penalty...".

The address, delivered to tens of thousands of people from a balcony in St Peters Basilica in Rome, was televised live to 45 countries. After this formal message the Pope called for a ban on the death penalty in informal remarks to the crowd.

Earlier, in November, the Pope had publicly expressed support for a worldwide moratorium on executions during the year 2000.

## **USA**

### **Conference on wrongful convictions -**

A national conference in November brought together nearly half of the 75 men and women who have been exonerated and freed after being sentenced to death in the USA since 1976 for crimes they did not commit. Some had come within hours of their execution before the courts agreed to examine further appeals.

The National Conference on Wrongful Convictions and the Death Penalty, held at Northwestern University School of Law in Chicago, Illinois, was attended by over 1,000 lawyers and activists. Topics discussed included forensic investigation, legal aspects, traumatic effects of incarceration, and techniques of organizing against the death penalty.

The conference left the audience with the strong impression that most of the 75 former prisoners had been freed despite a judicial system riddled with procedural technicalities and mainly thanks to the long-term work of tireless individuals, often working free of charge, who believed in the prisoners cause. As one speaker put it, They were released in spite of the system, not because of it.

**Texas** - Sixty-one year-old Canadian Joseph Stanley Faulder who was sentenced to death in Texas more than 20 years ago received a stay of execution 30 minutes before the execution was due to take place on 10 December following strongly-worded letters from US Secretary of State Madeleine Albright to the Governor of Texas, George Bush, and to the Texas Board of Pardons and Paroles. The case had received attention because Joseph Faulders lawyers claimed he was never informed of his right, under Article 36 of the Vienna Convention on Consular Relations, to seek assistance from the Canadian consulate. **AI** has learned that of more than 70 foreign nationals sentenced to death in the USA only three had been advised of their rights under the law.

**Virginia** - On 14 October Dwayne Allen Wright was executed in Greensville for a crime committed when he was 17 years old. He was the 12th juvenile offender executed in the USA since the country resumed executions in 1977. In denying him clemency, State Governor Gilmore ignored the many appeals directed to him from, among others, US Senator Edward Kennedy, the Reverend Jesse Jackson and the President of the American Bar Association, who reportedly wrote in a letter to the Governor: A borderline mentally retarded child simply cannot be held to the same degree of culpability and accountability for their actions to which we would hold an adult. Affidavits obtained from two jurors in Dwayne Wrights trial in 1991 stated that they would not have sentenced him to death had they known he suffered from brain damage at birth

which left him prone to violent outbursts.

**South Carolina** - On 18 December, Andy Lavern Smith, who had been convicted of a murder committed in 1983, became the 500th prisoner to be executed in the USA since the resumption of executions in 1977.

## **DEVELOPMENTS IN THE ENGLISH-SPEAKING CARIBBEAN**

### **Bahamas - two men executed while petitions pending**

Trevor Fisher and Richard Woods, both convicted of murder, were hanged on 15 October in the Bahamas despite having petitions pending before the Inter-American Commission on Human Rights (IACHR). The executions were the first in the country since 1996. The previous execution had been in 1984.

Expressing dismay, **AI** said the executions showed the government's contempt for the Inter-American system for the protection of human rights. The Bahamas had disregarded its obligation as a member of the Organization of American States to cooperate with the IACHR and comply with its procedures for considering petitions brought by its citizens, AI said.

The hangings followed a decision by the Judicial Committee of the Privy Council in England, which serves as the highest court of appeal for the Bahamas, that it would not be unconstitutional to execute Trevor Fisher while his petition was pending before the IACHR.

With these cases, the Bahamas joined two other Caribbean countries in scheduling executions while prisoners' petitions were pending before the IACHR. Jamaica issued execution warrants in six such cases in 1998 and Trinidad and Tobago issued 10. All those who were scheduled to be executed in the two countries have since been granted stays of execution pending decisions of the states' national courts on the constitutionality of carrying out executions.

In August the Inter-American Court of Human Rights ruled in a case from Trinidad and Tobago that should the government execute people while they have petitions pending before the IACHR it would create an irremediable situation incompatible with the object and purpose of the American Convention on Human Rights and would adversely affect the very essence of the Inter-American System.

### **Trinidad and Tobago - appeal by Special Rapporteur**

On 29 September the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, sent an urgent appeal to the government of Trinidad and Tobago not to execute Indravani Pamela Ramjattan, a woman sentenced to death in connection with the killing of her common-law husband. The Special Rapporteur expressed concern at the fact that the abuse and extreme violence suffered by Indravani Pamela Ramjattan, including beatings, threats to shoot her and repeated rape, had not been taken into account as a mitigating circumstance at the trial.

In a news release announcing the appeal, the Special Rapporteur said she considered that domestic violence of the nature seen in this case must now necessarily be accepted by all jurisprudence as legitimate mitigating circumstances in any crime committed under such pressures. The death penalty is too harsh a punishment for a crime committed in such situations.

At the end of the year the case of Indravani Pamela Ramjattan was pending before the Judicial Committee of the Privy Council in England, which serves as the highest court of appeal for Trinidad and Tobago, and the Inter-American Commission on Human Rights.

Asma Jahangir, a Pakistani lawyer with extensive human rights experience, was appointed in August as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, replacing Bacre Waly Ndiaye who was appointed Director of the Office of the UN High Commissioner for Human Rights at the UN headquarters in New York

### **Guyana - move to block international appeals**

The Government of Guyana on 5 January 1999 reportedly filed an instrument notifying the UN Secretary-General of its withdrawal as a state party from the (first) Optional Protocol to the International Covenant on

Civil and Political Rights (ICCPR). If not reversed, this withdrawal will take effect on 5 April.

On the same day the government notified the UN that it was rejoining as a state party to the Optional Protocol with a reservation purporting to preclude petitions from individuals claiming that their human rights have been violated in the course of capital proceedings against them. Guyana has been a party since 1993 to the Optional Protocol, which grants the Human Rights Committee competence to consider petitions brought by individuals who claim that a state party has violated their rights guaranteed under the ICCPR.

A proposal by the government to take these moves had been approved by the National Assembly of Guyana on 16 November 1998. The vote in the National Assembly followed an earlier declaration by the government that it would not follow the recommendation of the UN Human Rights Committee to release two prisoners, Abdool Saleem Yasseen and Noel Thomas, who had been under sentence of death since 1987. The Human Rights Committee had concluded that the two men's rights to a defence and their rights to a trial without undue delay had been violated.

Guyana follows Jamaica and Trinidad and Tobago in withdrawing from the Optional Protocol, the only countries ever to have done so. Jamaica withdrew as of January 1998 and Trinidad and Tobago as of August 1998. Trinidad and Tobago immediately filed an instrument to rejoin the Optional Protocol with a reservation which aimed to preclude the Human Rights Committee from considering communications from prisoners sentenced to death (see **DP News** June 1998).

## NEWS IN BRIEF

**Japan** - Three men were executed on 19 November after having spent between 10 and 20 years under sentence of death. Tsuda Akira, Ida Masmichi and Nishio Tatsuaki were hanged without prior warning to their families or lawyers. They had been held in solitary confinement with only limited contact with the outside world. In keeping with a new policy, the Japanese government made a public announcement of the executions on the day the sentences were carried out but refused to disclose the names of those executed. The executions were carried out just three weeks after the UN Human Rights Committee had urged the Japanese government to take measures towards the abolition of the death penalty.

**Pakistan** - A 13-year old boy, Mohammad Saleem, was sentenced to death on 19 December along with three men after a trial lasting 12 days, on charges of murdering three police officers. On 7 January 1999 he was acquitted for lack of evidence and ordered to be released. The death sentences of the three men were commuted to life imprisonment.

**Uzbekistan** - During its August session, the *Oliy Majlis* (parliament) removed the death penalty for "unnatural sex" with a person under 14 years of age accompanied by the use of force; "contravening the rules and customs of war"; attempt on the life of the President; espionage; and smuggling weapons of mass destruction or narcotics. The death penalty remains in force for aggravated murder and seven other crimes.

The authorities described the decision as part of a policy of abolishing the death penalty by stages, citing "the international obligations which the Republic of Uzbekistan has taken upon itself in the human rights sphere" and in particular Article 3 [right to life] of the Universal Declaration of Human Rights.

## NEW AI REPORTS

In October AI launched a year-long campaign on human rights issues in the USA including the death penalty. The campaign report, *USA: Rights for All* (AI Index: AMR 51/35/98), includes a chapter on the death penalty. Other papers on the death penalty issued in connection with the campaign include *USA: Fatal Flaws - Innocence and the Death Penalty* (AI Index: AMR 51/69/98), and *On the Wrong Side of History - Children and the Death Penalty in the USA* (AI Index: AMR 51/58/98).

<p><b>Belgium</b> ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on 8 December 1998 and <b>Liechtenstein</b> acceded to the Protocol on 10 December, bringing the total number of states parties to 35.</p>
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**Greece** ratified Protocol No. 6 to the European Convention on Human Rights on 8 September and **Belgium** ratified the Protocol on 10 December, bringing the total of states parties to 30 as of 1 January 1999, the date when Belgium's ratification enters into force.

**Abolitionist and retentionist countries  
(31 December 1998)**

**Abolitionist for all crimes  
67**

**Abolitionist for ordinary crimes  
14**

**Abolitionist de facto  
24**

**Retentionist  
90**