

DEATH PENALTY NEWS

June

2004

AMNESTY INTERNATIONAL
1 Easton Street
London WC1X 0DW
United Kingdom
53/001/2004

AI Index: ACT

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

ABOLITION IN SAMOA AND BHUTAN; 80 COUNTRIES NOW FULLY ABOLITIONIST

The death penalty has been abolished in the Pacific island state of Samoa and the Asian kingdom of Bhutan. Eighty countries have now abolished the death penalty for all crimes. For the first time, totally abolitionist states outnumber retentionist countries and territories in **AI's** list (see below).

The Crimes (Abolition of Death Penalty) Act 2004 was overwhelmingly approved by the parliament of **Samoa** on 15 January. Before its adoption, the crimes of murder and treason had been punishable by death. The maximum penalty in Samoa is now life imprisonment, an option previously used by the head of state when commuting death sentences.

Commenting on the action, the Prime Minister of Samoa stated: "The decision to remove the death penalty was made in the interests of Samoa and the Samoan people. In addition, Samoa, as a good international and regional citizen, recognizes overwhelming

international and regional opinion which is opposed to the death penalty". The decision, he said, showed "how seriously" Samoa takes "its international and regional obligations".

Samoa has never carried out an execution since independence in 1962. The last execution in Samoa was carried out by the New Zealand authorities in the 1950s.

On 20 March the King of **Bhutan** issued a Royal Decree banning the death penalty.

Capital punishment had existed in Bhutanese law since the codification of the *Thrimzhung Chhenmo* (supreme law) in 1953, but the King had the power of commutation. According to information provided by official sources in 1972 to the United Nations, the offences of treason and premeditated murder were punishable by death.

The last death sentences recorded by **AI** were imposed in 1974 on six people who were tried on treason

charges of having plotted to assassinate the King. The King subsequently commuted the sentences.

INCREASE IN CO-SPONSORS FOR UN DEATH PENALTY RESOLUTION

A UN resolution calling for a worldwide moratorium on executions has been co-sponsored by 76 countries, one more than in 2003 and the highest number ever.

Resolution 2004/67 on the question of the death penalty was adopted by the UN Commission on Human Rights on 21 April at the Commission's annual session in Geneva. It was the eighth such resolution adopted by the Commission on Human Rights since 1997.

As in previous years, the resolution calls upon all states that still maintain the death penalty to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions. It also urges states that still maintain the death penalty not to impose it for crimes committed by persons below 18 years of age, not to impose it on a person suffering from any form of mental disorder or to execute any such person, and to observe other agreed UN safeguards and restrictions on the death penalty.

The resolution, backed by the European Union (EU), was co-sponsored by all EU countries and attracted many co-sponsors from other parts of the world. Iraq, Kiribati, Samoa and the Solomon Islands co-sponsored the resolution for the first time.

The resolution was adopted by a recorded vote of 29 countries in favour and 19 against, with five abstentions - a better margin than in 2003, when there were 24 countries in favour, 18 against and 10 abstentions. Buthan and Gabon voted for the resolution for the first time. South Korea, which had voted against the resolution in 2003, abstained this year.

As in previous years, a group of countries submitted a statement dissociating themselves from the resolution. This year=s statement of dissociation was signed by 64 countries, one more than in 2003 and the highest number yet. Niger, Papua New Guinea and Uzbekistan signed the statement for the first time.

NEW UN REPORT

The latest yearly supplement to the UN quinquennial report on capital punishment, prepared by the UN Secretariat, was submitted to the UN Commission on Human Rights in January.

The new report covers changes in law and practice over the past year, international developments, and implementation of UN safeguards on the death penalty. It includes a survey of decisions by the UN Human Rights Committee in cases submitted to that Committee under the individual complaints procedure under the first Optional Protocol to the International Covenant on Civil and Political Rights. Issues considered in these cases included lack of fair trial, mandatory death penalties, secrecy surrounding the death penalty, and deportation by an abolitionist state to a country where the subject was under sentence of death.

In resolution 2004/67, adopted in April (see related story above), the Commission on Human Rights welcomed the report and its conclusions that (in the words of the report) Athe trend towards abolition continues@ and Athere was also a significant increase [in 2003] in the number of countries that have ratified international instruments providing for the abolition of the death penalty@.

The report is available under the UN document number E/CN.4/2004/86.

ZAMBIA AND MALAWI COMMUTE DEATH SENTENCES, MAINTAIN MORATORIA

Zambian President Levy Mwanawasa commuted the death sentences of 15 prisoners convicted of murder and aggravated robbery. According to presidential press aide Jack Kalala, President Mwanawasa replaced the death sentences with prison sentences ranging from 20 to 50 years to be backdated from the time the prisoners were sentenced.

In February, President Mwanawasa had commuted the death sentences of 44 soldiers who were sentenced to death for their role in a failed 1997 coup and reiterated that there would be no more executions during his presidency. "For as long as I remain President, I will not execute a death warrant," he said.

Zambian law retains the death penalty for murder, aggravated robbery and treason. The last execution was in 1997.

In **Malawi**, President Bakili Muluzi commuted 79 death sentences on 9 April (Good Friday in the Christian calendar). There have been no executions in Malawi since 1992 and none since President Muluzi took office in 1994. Approximately 20 people remain imprisoned on death row in the southern town of Zomba.

BELARUS: CONSTITUTIONAL COURT RULING

On 11 March the Constitutional Court of Belarus concluded its assessment of the compliance of death penalty provisions in the Belarusian Criminal Code with the Belarusian Constitution and international standards. The Court found that a number of articles of the Criminal Code are inconsistent with the Constitution, and that in the current

circumstances the abolition of the death penalty, or, as a first step, the introduction of a moratorium, may be enacted by the head of state and the parliament. The ruling empowers them to overturn a 1996 referendum in which 80 per cent of the Belarusian population voted against abolishing the death penalty.

On 4 November 2003 the Belarusian parliament had forwarded a formal request for the assessment to the Constitutional Court. Andreik Nareiko, a member of parliament, had initiated the request for a Constitutional Court assessment, stating that the articles of the Criminal Code providing for the death penalty appeared to be in conflict with Article 24 of the Constitution, which guarantees the right to life and requires the state to protect human life against unlawful injury. Andrei Nareiko based his request on previous decisions by the Hungarian and Lithuanian Constitutional Courts, which had found the death penalty to be contrary to those countries' constitutions.

AFGHANISTAN: FIRST EXECUTION SINCE FALL OF TALEBAN

Afghanistan has carried out its first execution since the establishment of the interim government in late 2001. Abdullah Shah, a military commander from Paghman, was executed in the Afghan capital, Kabul, around 19 April 2004. He had been convicted in October 2002 on 20 counts of murder in special court proceedings which fell far short of international fair trial standards. Abdullah Shah had no defence lawyer at his trial, the hearing was held in a closed court and the chief judge in the initial trial was dismissed for accepting bribes.

Another death sentence was imposed by an Afghan court in May.

Reuters news agency reported on 29 May that a suspected member of the former *Taliban* government, Abdullah Jan, had been sentenced to death in connection with a bomb attack in the southern city of Kandahar which killed 15 schoolchildren and wounded 50 others. Abdullah Jan maintained that he was not involved in the attack. No further information was available on his trial.

AI has urged Afghan President Hamid Karzai to declare a formal moratorium on executions in line with assurances given to **AI** earlier in the year by his office that he would not approve any judicial executions until the criminal justice system was reformed. After **AI** issued a public statement in April concerning the execution of Abdullah Shah, the Presidential chief spokesperson publicly stated that all judicial executions will be suspended for the time being.

TAJIKISTAN: MORATORIUM UNDER CONSIDERATION

On 2 June 2004 the lower house of Parliament (*Majlis namoyandagon*) voted in favour of the law "on the suspension of the application of the death penalty". Under the new law, the maximum penalty in Tajikistan will be 25 years' imprisonment. The law still has to be adopted by the upper house of Parliament (*Majlisi Milli*) and signed by the President before it comes into force.

The text as approved by Parliament on 2 June stipulates a moratorium on death sentences that takes effect from 30 April 2004. **AI** has received contradictory information as to the status of those death row prisoners whose death sentences were handed down before 30 April and has urged the authorities of Tajikistan to ensure that all pending death sentences are commuted without exception. At a joint

session of the two chambers of the Tajik parliament on 30 April that was broadcast by national television, the President had said that a "moratorium on carrying out the death penalty" would be announced. In his speech, the President referred to human rights and freedom as "great and inviolable values" and to the "special place" of the right to life among these. "In fact, the right to life is natural, and nobody has the right to deprive any other person of this right", the President said.

Four prisoners – Rachabmurod Chumayev, Umed Idiyev, Akbar Radzshabov and Mukharam Fatkhulloyev – were reportedly executed shortly before the President's speech in April. The executions of the first two men were reportedly carried out despite requests from the UN Human Rights Committee – that had intervened on the basis of complaints submitted under the individual complaints procedure – to stay the executions while it considered their cases. Their co-defendants Ibrogim Khusseynov and Todzhiddin Butayev, who had been sentenced to death in February 2003, are still believed to be on death row and their relatives have reportedly not been informed about the current status of their cases.

NEWS IN BRIEF

Mexico - In March 2004, President Vicente Fox submitted to Congress a number of proposals for constitutional reform, among them a proposal to abolish the death penalty. Article 22 of the current Constitution restricts the scope of the death penalty but does not outlaw it altogether. Under Mexican law, the death penalty is retained in the military penal code.

In November 2004 President Fox commuted the death sentence imposed on a soldier who had been found guilty

of murder by a military court (see **DP News** December 2003). There have been no executions for more than half a century in Mexico.

Viet Nam - The Vietnamese government, in a decision signed by the Prime Minister on 5 January, has made the reporting and dissemination of statistics on the use of the death penalty a state secret. **AI** said that the decision was contrary to international human rights standards and basic rights surrounding freedom of expression and freedom of access to information.

According to official Vietnamese media sources monitored by **AI**, over 100 people were sentenced to death and at least 64 people executed in 2003. The true figures are believed to be much higher. The number of executions recorded by **AI** in 2003 was nearly twice the figure recorded in 2002.

Japan - 85-year-old death row prisoner Ishida Tomizo had his request for a retrial rejected on 30 March nearly 13 years after the submission of the application. Ishida Tomizo confirmed his intention to make a further submission for a retrial through his lawyer after hearing the result. He could not read the court's decision as he is nearly blind, a disability apparently caused by lack of adequate treatment for a cataract ailment while confined on death row.

USA NEWS

The death penalty against child offenders: Supreme Court - On 26 January the US Supreme Court announced that it would revisit its 1989 decision in the case of *Stanford v. Kentucky*, which allowed the execution of prisoners who were 16 or 17 years old at the time of the crime. The Supreme Court will hear oral arguments in the case of *Roper v. Simmons* during the

Court's October 2004 term. Several prisoners sentenced to death for crimes committed when they were 17 have now received stays of execution pending the Supreme Court's decision, which is to be delivered in early 2005.

The death penalty against child offenders: state legislative activity

- On 10 May Governor Craig Benson of *New Hampshire* vetoed a bill, passed by both houses of the New Hampshire legislature, to raise from 17 to 18 the minimum age at which a person can be eligible for the death penalty in the state. Earlier in the year, Governor Mike Rounds of *South Dakota* and Governor Dave Freudenthal of *Wyoming* had signed similar bills into law after they had passed both chambers of their states' respective legislatures. Nineteen of the 32 US states whose laws provide for the death penalty now exclude its use against people under 18 at the time of the crime.

Challenges to lethal injection

- Several prisoners have received stays of execution following challenges to the lethal injection processes in their states. The challenges surround one of the chemicals used in lethal injections which, it is claimed, may mask a prisoner's suffering (see *USA: A lethal ideology* **AI** Index: AMR 51/149/2003). On 24 May the US Supreme Court ruled that David Nelson, an *Alabama* death row inmate, could challenge his lethal injection in the courts. The lower courts had held that the challenge was an abuse of the appeals process. David Nelson has claimed that the state's proposed use of a surgical "cut-down" procedure to access his damaged veins for lethal injection, would violate the US Constitutional ban on cruel and unusual punishment.

Execution of the mentally ill - At least two prisoners with long histories of mental illness have been executed since the beginning of the year. **Charles Singleton**, executed in *Arkansas* on 6 January, had been on death row for almost a quarter of a century and was regularly on anti-psychotic drugs by the early 1990s. In February 2003 the US Court of Appeals for the Eighth Circuit ruled by a vote of six to five that Arkansas officials could forcibly medicate Charles Singleton even if that made him competent for execution. **Kelsey Patterson** was executed in *Texas* on 18 May after Governor Rick Perry rejected a rare recommendation for clemency from the Texas Board of Pardons and Paroles. He had long suffered from paranoid schizophrenia. In an indication of his delusional thinking, after learning of his execution date Kelsey Patterson wrote rambling letters to various officials referring to a permanent stay of execution that he said he had received on grounds of innocence (see *USA: Another Texas injustice: The case of Kelsey Patterson, mentally ill man facing execution*, AI Index: AMR 51/047/2004).

Innocence and the death penalty - On 18 February a *North Carolina* jury acquitted **Alan Gell** of a 1995 murder for which he had been sentenced to death in 1998. Prosecutors had withheld exculpatory evidence at the time of the trial, and in 2002 a state judge vacated his death sentence. Alan Gell was retried in February 2004. The jury found him not guilty on all counts. He left the court with his family.

Gordon Steidl was freed from an *Illinois* prison on 28 May, 17 years after he was sentenced to death for the 1986 murders of Dyke and Karen Rhoads. In 1999 his death sentence was overturned and he was sentenced to life imprisonment. In 2003 he was granted a

new trial. After reinvestigating the case, and conducting DNA testing, the state decided not to appeal the ruling, and county prosecutors decided not to retry Steidl.

Alan Gell and Gordon Steidl are the 113th and 114th prisoners to be released from US death rows since 1973 after evidence of their innocence emerged.

Consular rights: International Court of Justice ruling - A ruling in the case of *Mexico v. USA* was handed down on 21 March by the International Court of Justice (ICJ), a court established under the UN Charter to decide disputes between states. The complaint, brought by Mexico, concerned the rights of Mexicans - detained in the USA and later sentenced to death - to consular access under the Vienna Convention on Consular Relations (Vienna Convention).

Article 36 of the Vienna Convention provides that the authorities must notify all detained foreign nationals "without delay" of their right to have their consulate informed of their detention. In its ruling, the ICJ found that the USA had violated this provision in 51 of the 52 cases of Mexican nationals brought before it by Mexico. The Court ruled that the US authorities must provide effective judicial review and reconsideration of the impact of the violations on the cases of the foreign nationals involved.

One of the Mexican prisoners subsequently had his death sentence commuted. On 14 May Governor Brad Henry of *Oklahoma* commuted the death sentence of **Oswaldo Torres** to life imprisonment without the possibility of parole. The Governor noted that Oswaldo Torres had been denied his consular rights under the Vienna Convention and said that "that treaty is also important in

protecting the rights of American citizens abroad". He added that the US State Department "contacted my office and urged us to give 'careful consideration' of the fact that the USA is a party to that Convention".

Oswaldo Torres was sentenced to death in 1996 for two murders committed in 1993. At the time of his arrest, Oswaldo Torres was an 18-year-old who had had minimal contact with the US criminal justice system. He was registered with the immigration authorities as a resident alien, a fact that would have become known to the police when they conducted a routine background check on him upon his arrest. Despite this, the authorities never informed him of his rights under the Vienna Convention, and the Mexican authorities only learned of the case in 1996 when his family contacted the Mexican consulate for help. By then Oswaldo Torres had been sentenced to death. Timely assistance from the Mexican consulate could have prevented the imposition of the death penalty, either by persuading the prosecutor not to seek a death sentence or by assisting the defence at the trial. (See *USA: Oswaldo Torres, Mexican national denied consular rights, scheduled to die*, AI Index: AMR 51/057/2004.)

Maryland resumes executions after six years - Steven Oken was executed in *Maryland* on 17 June for a murder committed in 1987, becoming the first person to be put to death in the state since 1998 and the first since a moratorium on executions was announced by the then governor, Parris Glendening, in May 2002. Governor Glendening imposed the moratorium pending the outcome of a study that he had commissioned to look into the fairness of the state's death penalty. On taking office in January 2003, the new

Governor, Robert Ehrlich, lifted the moratorium, stating that he would review death warrants on a case-by-case basis. Governor Ehrlich rejected clemency for Steven Oken.