

DEATH PENALTY NEWS

June 2000

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

USA: INCREASING CONCERN OVER EXECUTION OF THE INNOCENT

For the first time since the death penalty was reinstated in the United States in 1976 it has come under intense public scrutiny both within the USA and abroad. Concern is increasing over the fairness and reliability of the US capital justice system. A statistical study released by Columbia University Law School in June of death sentences passed between 1973 and 1995 found that they were "persistently and systematically fraught with error". The study concluded that courts had found serious errors in 68 percent of the 4,578 cases reviewed.

Since 1973 some 87 prisoners have been released from US death rows after evidence of their innocence emerged; this is equivalent to a rate of approximately one acquittal to every seven executions. The number may become much higher if DNA testing is allowed in all death penalty cases.

Much of the current discussion was sparked by the decision in January by Governor George Ryan of Illinois to impose a moratorium on executions in the state because of its "shameful" record of wrongful convictions (13 exonerations, 12 executions since 1977; see **DP News** March 2000). In November 1999 the *Chicago Tribune* newspaper had published its own study based on its investigation into 285 death sentences passed in the state which found that "capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken".

Texas has come under particular scrutiny because it executes people at a far higher rate than any other US state, because it does not have a statewide public defence system, because of alleged racial disparities in sentencing and because of Governor George Bush's repeated assertions that all prisoners executed during his tenure have been "guilty of the crime charged".

Those assertions were called into question by the execution in Texas on 22 June of Gary Graham who was convicted on the basis of apparently unreliable evidence of a fatal shooting committed in 1981 when he was 17 years old. His lawyers failed to interview corroborating eyewitnesses, none of whom identified Gary Graham as the murderer. No physical evidence linked him to the shooting. The jury never heard forensic evidence that a gun found on him at the time of his arrest could not have fired the fatal bullet. One of his lawyers has admitted: "I have serious questions whether we presented a fair and adequate defence."

A spokeswoman for the French Foreign Ministry, speaking for the European Union, which had put pressure on Governor Bush to halt the execution, said on 24 June: "We regret that the authorities in Texas knowingly took the risk of putting an innocent man to death. We will make the campaign for a moratorium on executions in the US one of the themes of our [forthcoming] presidency of the European Union."

The USA, with eight of the 10 known executions of child offenders worldwide since 1997, leads the world in the execution of child offenders. Gary Graham was the second man to be executed in Texas this year for a crime committed when he was under the age of 18 years (see **DP News** March 2000).

Both of the presidential candidates in the US election in November this year, Governor Bush and Vice President Al Gore, support the death penalty. But in the 29 May issue of *Newsweek* magazine, the American ambassador to France, Felix Rohatyn, wrote an article entitled "The Shadow Over America: How our use of the death penalty hurts our image abroad" saying that when he speaks to audiences in France, "the question always comes up. The death penalty is viewed as a violation of human rights...it is seen as both racist and discriminatory, affecting a disproportionate number of minorities...I think we should recognize [the criticism] and explore changes in our approach to criminal punishment..."

Now, with US public support for the death penalty declining, according to a recent ABC News survey, to 64%, the lowest in 19 years, there may be grounds to hope that America may one day join the many nations in the world which have abolished the barbaric and archaic practice of capital punishment.

Other USA News

On 14 May the American Psychiatric Association Assembly passed a resolution at its plenary session requesting the APA Board of Trustees to develop a policy statement calling for a moratorium on capital punishment in the United States. Cited among the reasons were facts such as that "death sentences are reserved for the poor with about 90 per cent of people facing the death penalty unable to afford an attorney", "ample evidence that the death penalty is applied in a racist manner" and "the severe curtailment of prisoner appeals which increases the risk of ...execution of innocent people".

UN COMMISSION ADOPTS DEATH PENALTY RESOLUTION

The UN Commission on Human Rights held its 56th session in Geneva in May. The European Union again tabled a resolution on the death penalty. The text was similar to that adopted last year (see **DP News** June 1999) calling for a worldwide moratorium on executions and adherence to UN safeguards in capital cases.. This year's resolution included an additional paragraph welcoming the Secretary-General's sixth quinquennial report on capital punishment.

The resolution was co-sponsored by 68 countries and was adopted on 27 April by 27 votes to 13 with 12 abstentions. After the resolution was adopted, 51 states dissociated themselves from the text, asserting that "it is inappropriate to make a universal decision on this question or to propose such action in the forum of an international organisation".

AI Website Page on the Death Penalty <http://www.amnesty.org>.

The AI website on the death penalty can be found on the Internet at the above address (click on "Campaigns" and then "the Death Penalty"). The information on this page is updated regularly. Back issues of the **DP News** as well as other death penalty -related material issued by AI since 1996 is also available.

NEW UN QUINQUENNIAL REPORT ON CAPITAL PUNISHMENT

Every five years the UN Secretary-General is mandated to produce a report on capital punishment. These reports are a unique source of information because they are based on information supplied by governments, as well as non-governmental organizations and other experts.

The Secretary-General's latest quinquennial report, the sixth in the series, was issued on 31 March 2000 with an addendum issued shortly thereafter. Fifty-three governments responded to the Secretary-General's request for information, down from the 63 which supplied information for the previous report in 1995 (as revised in 1996). Only 11 countries that retained and enforced capital punishment at the end of 1999 replied to the survey.

Pace of Abolition Quickens

The report compares recent information with that from previous periods and concludes that "at the advent of the new millennium, the gathering pace of the abolitionist movement has shown no sign of faltering". In the five years from 1994 to 1998, when fewer new states came into existence than in the previous five-year period, 17 countries abolished capital punishment. Four more did so in 1999, making a total of 21 countries.

Citing figures from different regions, the report states that "there is evidence that the abolitionist movement is becoming more widespread across the regions of the world." It notes, however, that one country reintroduced the death penalty, although it did not enforce it, and eight countries or territories which had not carried out any executions for at least 10 years resumed doing so during the period.

UN Safeguards

This year's report again covers both the question of capital punishment as such and the implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the

UN Economic and Social Council in 1984. It notes that the problem identified in the previous quinquennial report with regard to the first safeguard (restriction of the death penalty to the "most serious" crimes, those with "lethal or other extremely grave consequences" still persists, namely "that capital punishment has been retained in the laws of many countries for a wide range of offences far beyond the crime of murder". There remains "considerable scope for reducing the number of offences for which it is applied", the report states.

Because of the paucity of responses from retentionist countries, "very little could be gathered about the actual number of ...executions carried out in retentionist states throughout the world", the report notes. It recommends that "some means of ensuring that the Secretary-General is furnished with more complete information from retentionist countries should be a matter for serious consideration".

(Capital Punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General, UN document number E/2000/3 and addendum: E/2000/3/Add.1. (For information on the fifth quinquennial report, see **DP News** September 1995.)

China: Extradited Man Sentenced to Death - Fang Yong, a 36-year-old former bank employee, was sentenced to death on 8 June for alleged embezzlement of public funds. Fang Yong had fled China in 1990 and sought asylum in Canada but when his case was rejected by the Canadian immigration authorities he went into hiding. Fang Yong remained undetected until November 1999 when he was discovered as a result of a traffic violation and subsequently returned to China.

Although China had issued a warrant for Fang Yong's arrest through Interpol, Canadian authorities claim they did not know that Fang Yong was facing criminal charges in China that could lead to the death penalty. It is normal practice for abolitionist countries such as Canada not to return people to states where they are likely to face capital punishment.

Guatemala: More Televised Executions President Alfonso Portillo granted clemency on 1 June to an illiterate Kekchi-speaking peasant farmer, Pedro Rax Cucul, who had been sentenced to death for a 1996 murder. Concerns had been raised about the severe mental disorders from which Pedro Rax suffers which had not been taken into account at his trial, and the fact that the trial proceedings and his court-ordered mental evaluation were conducted entirely in Spanish, a language he does not speak.

At the same time as he granted clemency to Pedro Rax Cucul however, President Portillo turned down three more clemency pleas that had been pending when he came to office, and on 29 June, two of the prisoners were executed by lethal injection. The prisoners, Tomás Cerrate Hernández and Luís Amílcar Cetino Pérez had been convicted in March 1998 of the kidnapping and murder of a wealthy elderly woman. As in 1998, the lethal injection machine malfunctioned, and one of the executions was delayed when a pump failed. Once again, as when Manuel Martínez Coronado was executed in February 1998, the executions were televised live on Guatemalan television and the men's relatives could be heard and seen sobbing nearby.

AI has urged the Guatemalan Congress to reverse its recent decision to rescind the presidential power of pardon, a power which exists in most of the countries which retain the death penalty and which is recognised under international law. The case of Pedro Rax Cucul illustrates the need for the prerogative of clemency to correct mistakes made in flawed judicial proceedings.

There are some 30 people under sentence of death in Guatemala.

Iran Considers Reforms - An effort is being made to reform the penal code under the head of the judiciary, Mahmoud Hashemi-Shahrudi, appointed in 1999. In an interview with Reuters news service in March, Justice Ministry spokesperson Hossein Sadeqi said: "Some of the hangings envisaged in our laws are not necessary from a religious point of view and the system can replace them with other sentences. We should resort to the death sentence in very exceptional and unique cases and not hang people for crimes that are not too heavy."

Mr Sadeqi also commented: "Stoning may not be in our country's interest....the head of the judiciary believes we should avoid acts which could insult religion and taint our image."

NEWS IN BRIEF

Bosnia-Herzegovina - Parliamentary deputies of the Republika Srpska entity of Bosnia-Herzegovina on 22 June adopted a new criminal code which does not provide for the death penalty. The Federation of Bosnia and Herzegovina, the other Bosnian entity, had already done so in November 1998 to conform with the provisions of the Dayton, Ohio Framework Agreement for Peace in Bosnia-Herzegovina signed in December 1995, which ended the civil war in the country .

Canada - Homicide statistics released for 1998 by *Statistics Canada* in October 1999 show the lowest murder rate in 30 years. The rate is 1.83 homicides per 100,000 people compared with 3.02 homicides per 100,000 in 1975, the year prior to abolition of the death penalty in Canada.

Democratic Republic of Congo - Despite a declaration in December 1999 by the Minister for Human Rights that the government was observing a moratorium on executions, a 14-year-old child soldier named Kasongo was executed on 15 January within 30 minutes of his trial by the *Cour d'ordre militaire* (COM), Military Order Court. He and four other soldiers had been found guilty of murdering a driver. Those convicted by the COM can only appeal to the President for clemency but with execution taking place so soon after sentencing it is doubtful that the President had time to consider appeals.

Lebanon - **AI** delegates visiting Lebanon in June welcomed the refusal of Prime Minister Salim al-Huss in March to sign a death warrant on the grounds that it was contrary to his beliefs. He told **AI** that in the course of nine years of various terms of office as Prime Minister he had never signed a death warrant.

Fourteen executions were carried out between 1994, when the death penalty was made mandatory for first degree murder, and the appointment of Salim al-Huss as Prime Minister in late 1998.

Qatar - Executions resumed after 12 years when two men and a woman, all Indian nationals, were executed in Doha prison on 14 June. Qader Aktar Hassan, Anis Qassem Dahnassi and Fatima Yussef al-Din Sayed had been convicted of murder. The death sentences were upheld by the Court of Appeal and ratified by the Amir.

Saudi Arabia - Two men convicted of committing rape under the influence of alcohol in the city of Medina were beheaded by sword in May. An Egyptian, Muhammad Abd-al Kadir Jadu, was convicted of murder and also decapitated. Because the murder of Yusuf bin Muhammad Zaghbi during a bungled robbery attempt in the town of Jizan was particularly gruesome, the corpse of the convicted murderer was crucified in line with a law that prescribes a public example being made of criminals executed for particularly atrocious crimes.

In other cases, Salem Mash'ali, an Iraqi, was beheaded in Hafer al-Batin for drug trafficking, and an Indonesian woman, Warni Samiran Awdi, was executed in al-Ihsa region for murder.

More than 65 people have been executed by the authorities since the start of the year, including seven Nigerians charged with armed robbery who were decapitated on 13 May in Jeddah..

BOOK REVIEWS

Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted, by Barry Scheck, Peter Neufeld and Jim Dwyer, Doubleday, \$24.95. Written by the criminal defence lawyers acting for O.J. Simpson this book shows the merits of DNA identification in establishing guilt or innocence. There are case studies illustrating the pitfalls of US justice such as racial prejudice, forensic fraud and politically-motivated prosecutors, and suggestions for improving the judicial system.

Uppington by Andrea Durbach, published by David Philip. This book tells the moving story of the 26 South Africans convicted of murder on the basis of "common purpose" in 1989 under the former apartheid government of South Africa.