

# DEATH PENALTY NEWS

## September 1997

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

### POLAND ABOLISHES THE DEATH PENALTY

On 3 July President Aleksander Kwasniewski signed into law a new penal code abolishing the death penalty for all crimes. The new code, adopted by the *Sejm* (lower house of parliament) on 6 June after the Senate (upper house) had approved it in April, supersedes legislation which carried the death penalty as an optional punishment for murder and certain other crimes. It will come into effect on 1 January 1998.

The first Polish national penal code of 1932 provided for the death penalty for murder and political offences. New capital offences were added during the 1940s, including crimes committed during Second World War. Until 1956 most death sentences were passed by military courts in trials of which no records are known to remain. It is estimated that several thousand people were executed between 1944 and 1956.

A new penal code which took effect in 1970 retained the death penalty as an optional punishment for murder, offences against the state and the military offence of failure to carry out an order during combat. From 1970 onwards, the state began to keep statistics on death sentences and executions. According to these figures, the highest annual number of death sentences passed was 33 in 1972, and the highest number of executions, 16, took place in 1976.

The independent trade union, Solidarity, opposed the death penalty and proposed its total abolition in 1981. The initiative failed when martial law was imposed in December 1981 and Solidarity was banned. The country's last execution took place in 1988 when a 28-year-old man identified as Andrzej Cz., convicted of murder, was hanged in Krakow prison.

Since March 1996 the *Sejm* has debated a new penal code which would totally abolish the death penalty. Public sentiment was aroused against abolition following the brutal murder of a student at Warsaw's Polytechnic by a criminal gang. Speaking on television on 30 March 1996, the then Prime Minister, Wlodzimierz Cimoszewicz, acknowledged the need to halt a rise in crime but affirmed that the death penalty was not the right means: "I do not think...that anger and a desire for revenge are a good basis for fighting crime effectively...I have serious doubts whether...taking the life of anyone, even a criminal, should be accepted. There is probably something humiliating in this, not only to the victim but also to the state which applies such methods of punishment..."

AI had long campaigned for the abolition. Polish AI members, working with other local human rights organizations, promoted abolition through the media and by lobbying members of parliament.

### MALAWI: COMMUTATIONS

Responding to an appeal from AI, Malawian President Bakili Muluzi has commuted all death sentences and pledged not to sign any execution orders during his term in office.

President Muluzi announced his decision following a meeting in the Malawian capital, Blantyre, on 22 July with an AI delegation led by AI Secretary General Pierre Sané. The decision was welcomed by Mr Sané as an important step in the abolition of the death penalty in Malawi. Speaking after the audience with President Muluzi, Mr Sané said that the commutations were likely to set a good example for other countries in the region.

### JAPAN: SECRET EXECUTIONS

Four people were hanged in secret on 1 August, including the well-known writer Nagayama Norio, who had been in prison for 28 years. The four prisoners, all convicted of murder, appear to have been selected at random from some 55 prisoners whose death sentences had been finalized. As normally happens in Japan, they and their families were given no advance warning of the executions. One of the four was a woman.

Nagayama Norio, then aged 19 and a minor under Japanese law, killed four people in 1968. He was arrested in 1969, tried over the next 10 years and finally sentenced to death in 1979. The Tokyo High Court commuted his sentence to life imprisonment in 1981 but in 1987, following an appeal by prosecutors questioning the reduction in his sentence, Nagayama Norio was again sentenced to death. In 1990 his death sentence was finalized by the Supreme Court. During his time in prison Nagayama Norio wrote two bestselling books. He gave the royalties from his first book to the families of his victims.

Prisoners sentenced to death in Japan are treated in a cruel and inhuman manner. They are generally held in solitary confinement cells where they are forced to sit in the same position all day. They are under constant surveillance by prison guards, are given no opportunity to converse with other prisoners and are denied visitors apart from their immediate family. Many suffer from psychological problems associated with the stress of knowing they may be executed at any time without warning. **AI** has urged the authorities to stop all executions and improve the treatment of prisoners sentenced to death pending abolition in law.

## **BURUNDI: FIRST EXECUTIONS IN 16 YEARS**

The first executions in Burundi since 1981 were carried out on 31 July when six men were hanged in the grounds of the prison in the capital, Bujumbura, following grossly unfair trials. The men were convicted of participation in massacres or killings following the assassination of the first democratically-elected president of Burundi, Melchior Ndadaye, in 1993. The executions were condemned internationally by governments including those of Uganda and Tanzania, by Zimbabwe, currently holding the presidency of the Organization of African Unity, by the USA and the Presidency of the European Union.

Twenty death sentences were passed in July, bringing to 150 the total number of prisoners under sentence of death in Burundi.

## **CARIBBEAN COURT**

Caribbean states have taken a step towards the creation of a Caribbean Supreme Court. At a meeting on 9 September attorney generals from the 14 Caribbean Community (CARICOM) countries recommended that the court be located in Trinidad. The recommendation must be approved and ratified by CARICOM heads of government and the constitutions of a number of states will have to be amended before the Caribbean Supreme Court becomes a reality. The Legal Affairs Committee of CARICOM reportedly will recommend that a non-partisan legal services commission be established to appoint judges to the proposed new court.

The court would become the final court of appeal for the Caribbean region for criminal appeals, replacing the present system whereby appeals can be made to the Judicial Committee of the Privy Council (JCPC) in London. Civil cases would continue to be submitted to the JCPC.

The JCPC has made important rulings in death penalty cases in recent years which hold that prolonged detention under sentence of death constitutes inhuman or degrading punishment or treatment in violation of the constitutions of various Caribbean countries. In the course of these rulings, the JCPC has set down guidelines for the maximum length of time that would not violate these provisions.

## **SAUDI ARABIA: NURSES' CASE**

**AI** has appealed to the King of Saudi Arabia in the cases of the two British nurses, Deborah Parry and Lucille McLauchlan, who are reported to have been found guilty of murdering their colleague Yvonne Gilford in 1996. They were apparently convicted by the Shari'a court in Khobar, eastern Saudi Arabia, following trials which were held mainly in secret. While the two women were exceptionally allowed access to lawyers before their trial began, their lawyers were not allowed to defend them in court nor scrutinize any evidence produced against them.

So far this year, 114 prisoners, including 73 foreign nationals, have been executed in Saudi Arabia. As far as **AI** knows, none of those executed had access to lawyers at any stage of their trial proceedings. **AI** has urged the King to commute all outstanding death sentences and to bring Saudi Arabia's trial proceedings into line with international standards.

## **NIGERIA: JUVENILE EXECUTED**

In front of a crowd of thousands, Chidiebere Omuoha, aged 17, and five other prisoners were executed on 31 July in Owerri, Imo state, southeast Nigeria. They had been sentenced to death on 30 May by a Robbery and Firearms Tribunal, a special court directly appointed by the military authorities which allows no right of appeal to a higher or independent court. The hasty and public execution contravened the International Covenant on Civil and Political Rights, which Nigeria has ratified, whose Article 6 states: "Sentence of death shall not be imposed for crimes committed by persons below 18 years of age...". Chidiebere Onuoha was aged 15 years at the time of the armed robbery for which he was executed.

A second minor convicted of the robbery, Patrick Obinna Okoroafor, had his sentence commuted to life imprisonment by the Military Administrator of Imo State.

## **PORTUGAL: EXTRADITION LAW**

A proposal by the Portuguese authorities to allow extradition for crimes punishable by death has been abandoned following protests that the change would undermine Portugal's stance as an abolitionist country.

The proposal would have amended Article 33 of the Portuguese Constitution which forbade the extradition of any person for crimes which carry the death penalty under the law of the requesting state. Under the proposed amendment, extradition would have been allowed in exceptional cases if the government was persuaded that it had received "satisfactory assurances" that the death penalty would be commuted and replaced by another penalty of limited duration. Now a new Article 33(4), approved at the beginning of September, reiterates Portugal's existing position on extradition.

Portugal abolished the death penalty for all offences in 1976.

## **TURKMENISTAN, GEORGIA; MASS COMMUTATIONS**

Two hundred twenty-two prisoners sentenced to death for drug offences in **Turkmenistan** have reportedly had their death sentences commuted to prison terms of between 10 and 20 years under the provisions of an amnesty decreed by President Saparmurad Niyazov on 21 June. It was suggested that the commutations were a reaction to growing popular discontent about the extent to which the death penalty is being used for drug offences. Death sentences have continued to be passed since the amnesty, however.

In **Georgia**, President Eduard Shevardnadze issued a decree on 25 July granting clemency to all 54 prisoners under sentence of death at that time and commuted their sentences to 20 years' imprisonment.

A new criminal code which abolishes the death penalty and replaces it with life imprisonment has been approved by the parliament of Georgia at its first reading earlier this year. The second reading is expected to take place later in the year.

## **USA - KENTUCKY**

The first execution in this US state in 35 years took place on 1 July when Harold McQueen was electrocuted. He had been sentenced to death for murder in 1981.

Harold McQueen was tried along with his half-brother and co-defendant Keith Burnell, whose father paid for a private attorney to represent his son while McQueen was represented by a court-appointed lawyer. McQueen's attorney failed to request a separate trial even though he knew Burnell's lawyer would

implicate McQueen as the actual murderer. His attorney also failed to adequately present mitigating evidence during the post-conviction hearing when jury members decide between a sentence of death or imprisonment. The jury was unaware that McQueen had been severely neglected as a child and started drinking alcohol when he was 10 years old. While McQueen was sentenced to death, Burnell was sentenced to 20 years' imprisonment and was paroled in 1988.

During his 16 years under sentence of death, Harold McQueen was a model prisoner, taking part in a program designed to stop juvenile offenders re-offending and working as a janitor in the prison. Prison officials signed statements saying they believed McQueen would not be a danger to the other prisoners were he to be transferred from death row. Despite the irregularities in McQueen's trial and his subsequent good conduct, Kentucky Governor Paul Patton refused to grant clemency.

## **USA - VIRGINIA**

A Mexican national, Mario Benjamin Murphy, was executed on 17 September despite pleas for commutation from the Mexican authorities.

Mario Murphy was one of six people charged with the 1991 murder of a naval officer but was the only one sentenced to death. He was 19 years old at the time of the crime and had no prior criminal convictions for violence. As a citizen of Mexico, Mario Murphy was entitled under the Vienna Convention on Consular Relations, which the USA ratified in 1969, to be informed that he had the right to contact the Mexican Embassy and ask for assistance. At no time from his arrest to the imposition of his death sentence in 1992 was he informed of this right.

Legal authorities in Virginia appeared contemptuous of their obligations under the Convention. When asked to comment on Virginia's violation of Article 36, prosecuting Attorney Robert Humphreys called the issue "ridiculous". State Governor Allen ignored a letter from the Mexican authorities stating they had been "unable to discover a satisfactory reason why our citizen should have been singled out among his codefendants for the especially harsh penalty of death. Our experience in such matters...leads us to believe that if our consul had been involved in Mr Murphy's defence in a timely way...he would not have received the death penalty."