

DEATH PENALTY NEWS

September 2002

AMNESTY

INTERNATIONAL

1 Easton Street
London WC1X 0DW
United Kingdom

AI Index: ACT 53/004/2002
Distribution: SC/DP/PO/CO/GR

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

ABOLITION IN TURKEY, YUGOSLAVIA AND CYPRUS

On 3 August the Turkish parliament adopted a law abolishing the death penalty except in time of "war or imminent threat of war". The law was approved by Turkish President Ahmet Necdet Sezer on 8 August and entered into force with its publication in the Official Gazette the next day.

A constitutional amendment, passed in October 2001, had abolished the death penalty for criminal acts but retained it in time of war and for "terrorist crimes". Death sentences continued to be passed by the courts: as of July at least 36 people, three of whom had been convicted for criminal offences, had been sentenced to death this year.

The new law replaces the death penalty with life imprisonment with no possibility of release for certain prisoners. More than 100 prisoners who had been sentenced to death will now have their sentences reviewed by the Ministry of Justice.

Since the foundation of the modern Republic of Turkey in 1923, 588 have people have been executed for criminal and political offences. The last executions were in 1984. Turkey is a member of the Council of Europe and is expected to ratify Protocol No. 6 to the European Convention on Human Rights (ECHR) providing for the abolition of the death penalty in peacetime, as a prerequisite for membership in the European Union (EU).

Turkey is the third country to have abolished the death penalty in 2002. On 18 June the **Federal Republic of Yugoslavia** became free from the death penalty when the penalty was removed from the laws of **Montenegro**, the only part of the country where it still existed. The death penalty was replaced with a 40-year prison sentence without the right of pardon. The Federal Republic of Yugoslavia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), providing for total abolition. In **Cyprus**, where the death penalty had been abolished for all crimes committed in peacetime in 1999, the Military Criminal Code was amended on 19 April to remove the death penalty for the remaining two military offences of treason and piracy, thus making Cyprus wholly abolitionist. The last execution was in 1962.

Cyprus is a party to the Second Optional Protocol to the ICCPR; it intends to withdraw its previous reservation allowing it to retain the death penalty in wartime. It is also a party to Protocol No. 6 to the ECHR and has signed Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances.

STOP PRESS: On 3 October the State Security Court in the Turkish capital, Ankara, commuted the death sentence of Abdullah Öcalan, leader of the Kurdistan Workers' Party, to life imprisonment. He had been sentenced to death in 1999 for "treason and separatism".

PHILIPPINES SUSPENDS EXECUTIONS

President Gloria Macapagal-Arroyo has suspended all executions while the Philippine Congress debates a bill abolishing the death penalty. Her decision was announced by the Secretary of Foreign Affairs on 30 September following a meeting with ambassadors from EU countries. The EU has been working to prevent the resumption of executions in the Philippines.

The President had earlier granted 90-day reprieves to three prisoners who were scheduled to be executed in August and September 2002. The reprieves were to allow the President more time to determine whether their death sentences should be commuted.

Executions were resumed in the Philippines in February 1999 after 23 years. Seven people were executed by lethal injection before former President Joseph Estrada declared a moratorium in 2000. In March 2001 the newly-inaugurated President Arroyo announced she would not carry out any executions but she reversed her position in October that year saying she was in favour of executing convicted kidnappers.

In March 2002, however, the President told members of the Malacañang Press Corps that she would sign a bill then before Congress to repeal the death penalty. Convicted criminals should be subject to "rehabilitation, not revenge", she was quoted as saying.

According to the Philippine Free Legal Assistance Group (FLAG), almost half the members of the House of Representatives (the lower house of the Philippine Congress) and a majority of senators have signalled their intent to vote for the abolition of the death penalty. In May, Committees on Revision of Laws and Civil, Political and Human Rights of the House of Representatives approved bills providing for abolition. The Catholic Bishops' Conference of the Philippines has urged the President to certify the bills as urgent.

More than 1,000 people, most of them impoverished, are currently under sentence of death.

MORATORIUM IN GUATEMALA

In July 2002, on the occasion of Pope John Paul II's third visit to Guatemala, President Alfonso Portillo announced his personal opposition to the death penalty and stated he would try to ensure that no further death sentences were carried out during his term of office. He also said he would send legislation to Congress calling for the abolition of the death penalty.

The President's comments led to the first debate in Guatemala for several years about the death penalty, which is strongly supported by both the public and parliamentarians. In 2000 Congress rescinded the President's prerogative to commute death sentences. The current Congressional president is General Efraín Ríos Montt who, as head of state in 1983, ordered six executions to proceed on the eve of Pope John Paul's first visit to the country.

Following the overthrow of General Ríos Montt in late 1983, no executions were carried out until 1996 when two men were executed by firing squad. The executions were televised as they occurred and the subsequent widespread revulsion at the macabre scenes led Congress to approve lethal injection as the approved method of execution. The first execution by lethal injection, which was again televised, was carried out in 1998 followed by two further executions in June 2000.

Five other death sentences were revoked by the Constitutional Court in November 2000. There have been no further executions. (Two death sentences have been passed since President Portillo's pledge, bringing the total number of people under sentence of death in Guatemala to 39.)

BARBADOS, BELIZE - MOVES TO RESTRICT APPEALS

Proposed constitutional amendments in two Caribbean countries to restrict appeals in capital cases could lead to executions being resumed.

In **Barbados**, the proposed Constitutional (Amendment) Act 2002 would prevent condemned prisoners from challenging their executions on the grounds of the length of time they have spent under

sentence of death, or of the conditions under which they are held, and would place limits on the time allowed for intergovernmental bodies to examine complaints from prisoners. Adoption of the amendment would invalidate previous court rulings currently binding on Barbados. The Act was passed in August by the lower house of Parliament and now goes to the Senate for approval.

In **Belize**, Prime Minister Said Musa on 6 September presented to the House of Representatives the Belize Constitution Amendment Bill 2002. The proposed constitutional amendment would remove the right of appeal to the Judicial Committee of the Privy Council (JCPC) in England - currently the final court of appeal for Belize - in the case of Class A murder. This would make the Belize Court of Appeal the final appellate court in such cases. Appeals to the JCPC in other criminal and civil cases would be retained.

Class A murder, comprising the most serious forms of murder, carries a mandatory death sentence in Belize. In a decision affecting Belize and other countries, the JCPC had ruled in March that the imposition of a mandatory death sentence, where the defendant has no opportunity to advance personal or offence-based mitigation, was unconstitutional (see **DP News** March 2002). The proposed constitutional amendment, which has considerable political and public support, would enable Belize to evade the impact of this ruling in future cases.

The last executions in the two countries were in 1984 and 1985 respectively.

MASS DEATH SENTENCES IN SUDAN

Eighty-eight people, including two 14-year-old children, were sentenced to death by a "special" court in the city of Nyala on 17 July. They were convicted of participating in clashes between two ethnic groups, the Rizeigat and the Maalyia, in southern Darfur during which at least 10 people were killed.

The "special" courts fall far short of international standards for fair trial and are not obliged to try cases according to Sudan's own Criminal Procedures Act of 1993. An appeal against the convictions was rejected on 11 August by the Chief Justice of Darfur. Defense lawyers then requested a re-examination of the trial proceedings (from which the "special" courts are normally exempt) by the Chief Justice in the capital Khartoum. On 25 August it was reported that the Minister of Justice, Ali Mohamed Osman Yassin, had stated the government would not overturn the sentences.

Darfur has been the scene of strife between various ethnic groups for many years, often exploited by the government in its long war against its main armed opposition, the Southern People's Liberation Army. A State of Emergency has existed in the region since 1999 when the "special" or "emergency" courts were established to deal summarily with offences such as murder, armed robbery and smuggling of weapons.

"TRIBAL JUSTICE - GANG RAPE IN PAKISTAN

Six men were sentenced on 1 September to death by hanging for participating in the gang rape of Mukhtaran Mai Bibi in the Punjab village of Meerawali in June. Eight other men were acquitted of the charges.

The rape had allegedly been ordered by 10 village elders, from a tribe considered "higher" in the caste system, in retaliation for an alleged relationship between the victim's young brother and a woman from their tribe.

The case, which was described by the Supreme Court of Pakistan as "the most heinous crime in 21st century Pakistan", has highlighted Pakistan's illegal tribal council system.

The six convicted men have appealed against their convictions and sentences in the provincial high court and the state has appealed against the acquittal of the eight other accused. No action has been taken by government authorities with regard to the tribal justice system itself which has continued to unlawfully conduct trials.

LANDMARK DECISIONS BY US SUPREME COURT

On 20 June, in the case of *Atkins v Virginia*, the US Supreme Court ruled that the execution of people with

mental retardation was unconstitutional, violating the Eighth Amendment's prohibition on "cruel and unusual" punishment. The decision overturned *Penry v Lynaugh* of 13 years earlier which had allowed such executions to continue. In *Atkins*, the Court found that in those intervening years, "standards of decency" in the USA had evolved to the extent that there was now a "national consensus" against the use of the death penalty against people with mental retardation.

At the time of *Penry* in 1989, only one US state had legislated against such executions; by the time of *Atkins* the figure had reached 18. The majority of Justices on the *Atkins* decision also acknowledged that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved".

On 24 June, in *Ring v Arizona*, the US Supreme Court ruled that a death sentence where the necessary aggravating factors are determined by a judge violates a defendant's constitutional right to a trial by jury. The ruling has called into question around 800 death sentences in several states, although it is not yet clear what the eventual outcome in such cases will be.

TWO US JUDGES FIND FEDERAL DEATH PENALTY UNCONSTITUTIONAL

On 1 July in New York, in *USA v Quinones*, US District Judge Jed Rakoff concluded that the risk of executing the innocent was so great in the USA that he would not allow the death penalty to be an option at the forthcoming trial of two federal defendants. He ruled that the federal death penalty is unconstitutional, saying that "the unacceptably high rate at which innocent persons are convicted of capital crimes...is tantamount to foreseeable, state-sponsored murder of innocent human beings".

On 24 September in Vermont, in *USA v Fell*, US District Judge William Sessions also ruled that the Federal Death Penalty Act of 1994 was unconstitutional. The basis for his decision was that the law allowed a "relaxed evidentiary standard" to determine eligibility for a death sentence. He stated: "If the death penalty is to be part of our system of justice...the kinds of evidence juries may consider must be rigorous...To relax those standards invites abuse, and significantly undermines the reliability of decisions to impose the death penalty". Judge Sessions noted that "[c]apital punishment is under siege".

USA - TWO CHILD OFFENDERS EXECUTED IN TEXAS

TJ Jones was executed on 8 August and Toronto Patterson was executed on 28 August, both in Texas. Both men were convicted of crimes committed when they were 17 years old. Texas has executed three child offenders this year (see **DP News** June 2002), the only recorded executions of child offenders during 2002.

In September **AI** published two documents on child offenders: a 105-page report, *USA: Indecent and Internationally Illegal: The death penalty against child offenders* (AI Index: AMR 51/143/2002) and a shorter document on *Children and the Death Penalty: Executions worldwide since 1990* (AI Index: ACT 50/007/2002).

FIJI ABOLISHES DEATH PENALTY EXCEPT IN MILITARY LAW

On 11 March Fiji removed the death penalty from its penal code when President Ratu Josefa Iloilo Uluivuda assented to the passage by the Fijian Senate of the Penal Code (Amendment) Act No. 5 of 2002. The Act abolishes the death penalty for treason, instigating a foreign invasion with an armed force, and genocide involving killing -- the only crimes for which it remained in the code. It had been abolished for murder in 1979.

The death penalty is retained in the Military Act. The last execution was in 1964.

TWO EXECUTIONS WITHOUT WARNING IN JAPAN

Hamada Yoshiteru and Haruta Tatsuya, both convicted for murder, were executed on 18 September. Their families had not been advised of the execution date.

At least 54 people are on death row in Japan. It appears that the date of the two executions was chosen to coincide with Japanese Prime Minister Koizumi Junichiro's historic visit to North Korea. All media attention

in Japan had been focussed on this meeting and therefore public criticism of these executions was avoided. The Japanese Parliament (the Diet) was also in recess at the time; this is when executions are often carried out.

Peter Schieder, the President of the Council of Europe's Parliamentary Assembly, called on the Japanese authorities to put an end to "this barbaric practice...because it is inhumane, intolerable and unworthy of a civilised country". Japan's observer status with the Council of Europe is currently under scrutiny (see **DP News** June 2002).

NEWS IN BRIEF

Iran - Five men who were sentenced to death in connection with allegations of rape, abduction and robbery were publicly hanged on 29 September in the capital, Tehran. One of those hanged, Amir Karbala'i, just prior to his execution reportedly said, "It was not the judge who sentenced us to death but public opinion." According to some Iranian newspapers, the executions reflected the wish of judicial officials to show that they took seriously the public's anxiety over security.

Iran - Execution by stoning remains a concern in Iran. In 2001, at least two people were executed by stoning. There are credible reports that a man and a woman were executed by stoning in Naghdeh, western Iran, in October. Four women reportedly remain under sentence of execution by stoning; the exact charges are not known to AI.

Jamaica - The current government of the People's National Party has promised that if they are re-elected in the forthcoming elections they will amend the country's constitution to nullify previous court rulings that have prevented executions (see **DP News** September 2000).

Prime Minister PJ Patterson criticised the Judicial Committee of the Privy Council (JCPC) in England, the final court of appeal for Jamaica, saying, "Its actions are undermining the very foundation of our legal system". The Jamaican government intends to replace the JCPC as the final court of appeal with the Caribbean Court of Justice.

The last execution was in 1988.

Tajikistan - Two brothers, Sherali and Dovud Nazriev, were secretly executed on 21 June despite widespread doubts of their guilt and the fairness of the trial. They had been convicted in May 2001 for attempting to assassinate Makhmadsaid Ubaydullayev, the mayor of the capital, Dushanabe.

AI published a report on 30 September titled *Tajikistan: Deadly Secrets - The death penalty in law and practice* (AI Index: EUR 60/008/2002) describing the secrecy which surrounds the death penalty in Tajikistan, the lack of fair trials and how prisoners are executed with no warning to their families.

Togo - On 5 September, Komlan Agbeviade was sentenced to death for the premeditated murder of his brother. An appeal against the sentence has been lodged. The last execution in Togo was in 1978.

INTERNATIONAL TREATIES

<p>Protocol No. 13 to the European Convention on Human Rights was signed by Croatia on 3 July and by Slovakia on 24 July 2002 bringing the total signatories to 35.</p>
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