

DEATH PENALTY NEWS

DECEMBER 1999

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

NO ACTION AT UN GENERAL ASSEMBLY

Meeting in New York in November, the Third Committee of the United Nations General Assembly decided to take no action on a draft General Assembly resolution calling for a worldwide moratorium on executions.

Draft resolution A/C.3/54/L.8 had been drawn up by the European Union and attracted 73 co-sponsors. In language identical to that of the resolution adopted by the UN Commission on Human Rights in April (see **DP News** June 1999), it would have called on all states that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty".

The draft resolution ran into fierce opposition from retentionist countries led by Egypt and Singapore. The opposition crystallised around two proposed amendments to the resolution. One amendment would have recalled "the purposes and principles of the Charter of the United Nations, in particular, Article 2, paragraph 7, which clearly stipulates that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State". The other would have affirmed that "every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State". Both amendments attracted over 74 co-sponsors.

The amendments were unacceptable to some of the resolution's co-sponsors, who feared that they would reopen arguments about human rights being subject to national sovereignty. When informal discussions had reached an impasse, the co-sponsors of the resolution and of the amendments agreed that the Third Committee would take no action, leaving open the possibility of raising the matter again at the General Assembly next year.

Meanwhile, the **African Commission on Human and Peoples'Rights** agreed to call for a moratorium on executions. Meeting from 1 to 15 November in Kigali, Rwanda, the Commission adopted a resolution expressing concern that some States parties [to the African Charter on Human and Peoples'Rights] impose "the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples'Rights". The Commission "urges all States parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter". It "calls upon all States parties that still maintain the death penalty to: a) limit the imposition of the death penalty only to the most serious crimes; b) consider establishing a moratorium on executions, especially in cases where there may not have been full compliance with international standards for a fair trial; c) reflect on the possibility of abolishing the death penalty."

In another important development, the death penalty was abolished in **East Timor** (see story on page 2).

UN High Commissioner: No Use of Death Penalty against Child Offenders

"The Convention on the Rights of the Child clearly stipulates that capital punishment shall not be imposed for offences committed by persons below 18 years of age. The Convention has been ratified by almost every State, but not by the United States. The overwhelming and growing international consensus that the death penalty should not apply to juvenile offenders, stems from the recognition that young persons lack maturity and judgement and therefore cannot be

expected to be fully responsible for their actions. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults."

- Mary Robinson, UN High Commissioner for Human Rights, in a message to a press conference organised by the Death Penalty Information Center, New York City, USA, 12 October

DEATH PENALTY ABOLISHED IN EAST TIMOR

The United Nations Transitional Administration in East Timor (UNTAET) has abolished the death penalty in East Timor, a territory under UN administration after elections in August in which a majority of voters supported independence. UNTAET regulation No. 1999/1, promulgated on 27 November, states in section 3.3: "Capital punishment is abolished." The death penalty had been in force under the preceding period of Indonesian rule.

INDIA - APPEAL REJECTED IN GANDHI ASSASSINATION CASE

A high-profile case has put the spotlight on the death penalty in India. In January 1998, a trial court in the southern state of Tamil Nadu sentenced 26 people to death in connection with the 1991 assassination of former Prime Minister Mr Rajiv Gandhi. Those sentenced were detained, charged and tried under provisions of the Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) under conditions which **AI** believes did not conform to international norms for a fair trial.

In May 1999 the Supreme Court of India upheld the sentence of death against four of the 26 - Nalini, Murugan, Santhan and Perarivalan - under charges of conspiracy to murder. One of the three judges hearing the appeal argued that Nalini's sentence should be commuted on the grounds that her child's father, Murugan, was also sentenced to death and that her sentence would orphan the child. As his was the only dissenting judgement on this issue, the death sentence against Nalini was upheld, although the widow of Rajiv Gandhi has also urged that Nalini should be spared execution. A review petition appealing against the Supreme Court's order was rejected in October. A clemency petition is now under consideration by the President of India, who has the power to commute death sentences in consultation with the cabinet.

The government is made up of a coalition of several parties at least two of which have expressed opposition to the death penalty. However, the Home Minister has supported the death penalty and since early this year has advocated extending it to the crime of rape.

The death penalty remains in force for a number of offences including murder. The Supreme Court has ruled that the death penalty can only be applied in the "rarest of the rare" cases. Most of those executed are poor and illiterate. Amnesty International is aware of at least 35 people currently under sentence of death in India; the true figure could be much higher. Official statistics on the death penalty in India are unavailable.

TURKEY - OCALAN APPEAL REJECTED

On 25 November the Turkish Appeal Court confirmed the death sentence imposed on 29 June on Abdullah Ocalan, leader of the Kurdistan Workers'Party. The defence lawyers may apply for a correction of the verdict within one month. If the Head Prosecutor of the Appeal Court finds the application for a correction "reasonable" (which is considered unlikely), the case will be discussed again by the Appeal Court.

Death sentences finally upheld by the Appeal Court are then submitted to the Judicial Parliamentary Committee which may suspend the procedure by not reviewing the case. If the Judicial Committee proceeds, it prepares a draft act recommending or not the execution and submits it to parliament. Parliamentary approval requires a simple majority. The act must be ratified by the President who has the power to commute death sentences on grounds of age, disability or ill-health. Once the act is ratified and has been announced in the Official Gazette (*Resmi Gazete*), the Ministry of Justice is responsible for carrying out the execution, which usually happens within days, sometimes even hours.

AI is concerned that fair trial standards were violated throughout Abdullah Ocalan's pre-trial detention and during the trial and has called for a full retrial before an independent and impartial tribunal.

A member of the Council of Europe and party to the European Convention on Human Rights, Turkey is one of the few European states not to have abolished the death penalty although there has been a *de facto* moratorium on executions for 15 years. In a bill setting out a new penal code, prepared by a parliamentary committee in 1996-97, the death penalty was eliminated but the bill is currently being reviewed by a parliamentary committee and is not expected to be presented to the parliament in the near future.

Considering the case, the European Court of Human Rights requested Turkey on 30 November "to take all necessary measures to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of ... the applicant's complaints". Both the Turkish President and the Prime Minister have said that Turkey will respect a ruling by the European Court of Human Rights, but following the European Court of Human Rights' request the Prime Minister noted that domestic remedies had not yet been exhausted and stated that "the government will evaluate the developments when the judicial decision arrives at the parliament."

The last execution in Turkey took place in October 1984, provoking an international outcry. Since then, death sentences have continued to be imposed by the courts. At least 47 prisoners are currently under sentence of death.

UKRAINE - THREAT TO MORATORIUM

More than two years after his arrest in 1996, Anatoly Onuprienko was sentenced to death by a court in the town of Zhytomyr in Western Ukraine on 1 April after being convicted of committing 52 murders. The Ukrainian Supreme Court upheld the verdict on 26 August. President Leonid Kuchma reportedly stated on 25 October during a live television broadcast, one week before the first round of the presidential elections, that he would not commute the death sentence.

The Ukraine was warned in June by the Parliamentary Assembly of the Council of Europe that it would commence the procedure for the annulment of the credentials of the Ukrainian delegation to the Parliamentary Assembly if substantial progress was not made by January 2000 towards meeting Ukraine's human rights commitments to the Council of Europe, including the abolition of the death penalty (see **DP News** March 1999).

PHILIPPINES - EXECUTIONS FOLLOW REPRIEVES

Executions in the Philippines have again resumed after a series of presidential reprieves (see **DP News** Sept 1999). Pablito Andan, who was sentenced to death in 1994 for rape and murder, on 26 October became the sixth person to be executed in the country since the resumption of executions in February 1999. Following his execution, Roman Catholic Bishop Francisco San Diego resigned from the Presidential Conscience Committee which reviews the cases of prisoners scheduled for execution because, he said, as a bishop of the Roman Catholic Church he could not vote for the death penalty. The Catholic Bishops Conference of the Philippines renewed its appeals for an end to the death penalty, stating: "We hope our President will finally listen to our call to stop the cycle of violence and vengeance in our city. Killing Pablito Andan and the other people on death row diminishes all of us and is a sign of growing disrespect for human life".

The execution went ahead despite concerns that Pablito Andan had been tortured to coerce a confession. The authorities are not known to have carried out any investigation into the torture allegations.

Prior to Pablito Andan's execution, President Estrada commuted four other death sentences including that of Josefina Esparas, the first woman scheduled to be executed in the Philippines since the reintroduction of the death penalty in 1993. Convicted of drug-trafficking, her sentence was commuted on the grounds that the Presidential Conscience Committee had determined she was "just a carrier and not the mastermind".

TRINIDAD AND TOBAGO - EXECUTIONS RESUME

A man was hanged on 28 July, in violation of an order by the Inter-American Court of Human Rights to the government to preserve his life until it had considered his case and despite the fact that the Inter-American Commission on Human Rights had recommended commutation of his sentence. Anthony Briggs, sentenced to death in June 1996, had filed a petition with the Inter-American Commission on Human Rights in October 1997, following unsuccessful appeals in national courts, claiming that his rights guaranteed under the American Convention on Human Rights had been violated.

In October, the murder conviction of Indravani Pamela Ramjattan was reduced to manslaughter by the Trinidad and Tobago Court of Appeal based on a psychiatrist's report which showed that Indravani Pamela Ramjattan was suffering from battered women's syndrome when she murdered her abusive common law husband. In September 1998 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions had urged the government not to execute Indravani Pamela Ramjattan (see **DP News** December 1998).

NEWS IN BRIEF

Ethiopia - On 9 November a former district governor was sentenced to death *in absentia* by a court in the capital, Addis Ababa, for ordering the execution of five alleged government opponents during the so-called "red terror" campaign of 1977-78. Getachew Terba was the first to be condemned to death of over 5000 people who face mandatory death sentences if convicted of charges of genocide and crimes against humanity during the regime of former President Mengistu-Haile-Mariam and the Dergue from 1974 to 1991. A second death penalty was imposed, also *in absentia*, on 17 November on Kebede Kibret, a district administrator, for ordering the extrajudicial execution of 17 alleged "counter-revolutionaries" during the same period.

Inter-American Court ruling - On 2 October the Inter-American Court of Human Rights issued its Advisory Opinion N° 16, requested by Mexico, on the individual rights of detained aliens, particularly those charged with crimes punishable by death. The Court ruled that the right to be informed of consular assistance under Article 36 of the Vienna Convention on Consular Relations is integral to international standards on human rights. Non-observance of this right affects guarantees of due process, the Court ruled; under these circumstances, the Court ruled, the imposition of the death penalty constitutes a violation of the right to not be subjected to arbitrary deprivation of life, as set forth in international human rights instruments such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights.

Iran - Two teenagers were hanged in northern Iran in October for murder and robbery. The Tehran daily newspaper Keyhan reported on 24 October that Milan Zamin-Afshan, aged 18, and Ebrahim Qorbanzadeh, aged 17, were hanged in the city of Rasht after they were found guilty of murdering a man and his 16-year-old son. The court reportedly decreed that they be hanged outside the house where they had committed the crime.

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Italy - From 12 December throughout the year 2000 whenever a death penalty is suspended or converted anywhere in the world, or a country votes for a moratorium on the death penalty, the ancient Colosseum arena in Rome will be lit with a bright golden light for 48 hours. The initiative is sponsored by the Italian government, the Vatican, Hands Off Cain, the Sant'Egidio Community, **AI** and the city's electrical utility.

United Arab Emirates - Official sources reported on 21 October that a federal law proclaimed by President al-Sheikh Zayed bin Sultan al-Nahyan provides the death penalty and heavy fines for violators "who import any banned materials or nuclear waste and dump or store them in any form inside the country". The law, purportedly to protect the environment in the oil-producing Gulf state, was introduced after UN experts issued warnings about pollution levels in the region.

Zimbabwe - The Constitutional Commission, appointed in May, delivered their proposal for a new constitution to President Robert Mugabe on 29 November.

The proposed constitution retains the death penalty but only as an optional punishment for murder - it is mandatory for murder and treason under the current law. In accordance with Zimbabwe's commitments as a party to the International Covenant on Civil and Political Rights, it excludes the use of the death penalty

against people under the age of 18 at the time of the crime and the imposition or carrying out of the death penalty against pregnant women. The proposed constitution also establishes that anyone sentenced to death must have a right to seek pardon or commutation of the penalty from the President.

USA NEWS

Decreasing support for the death penalty - An opinion poll published on 5 November by Gallup International reveals support for the death penalty in the United States is decreasing. In response to the question "Are you personally in favour of or against the use of the death penalty?" 66% of a representative sample of over 2000 respondents replied that they were in favour of the death penalty, 27% were against and 7% were undecided. Past public opinion surveys have indicated support for the death penalty among respondents as high as 77%.

Joint Jewish-Catholic statement -The National Jewish/Catholic Consultation, co-sponsored by the National Council of Synagogues and the National Conference of Catholic Bishops' Committee for Ecumenical and Interreligious Affairs, meeting in Washington, issued a joint statement on 3 December calling for an end to the death penalty. "We have committed ourselves to work together, and each within our own communities, toward ending the death penalty", the statement read. Representatives of the two faiths said they will aim to develop joint educational materials for use in schools and congregations and hope to work together in local, state and national anti-death penalty coalitions.

Illinois -The Chicago Tribune newspaper claims in a study conducted in November that "capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken". The five part report is available at the Chicago Tribune website, <http://chicagotribune.com/news>.

Nevada - The US Supreme Court ruled on 1 November that it will not consider the appeal lodged by Michael Domingues to commute his death sentence on the grounds that it violates US obligations under the International Covenant on Civil and Political Rights not to execute child offenders (see **DP News** September 1999). The Court's decision came less than a month after the US government filed its appeal with the Court urging it not to examine the claim. The Court last looked at the issue of the minimum age for the death penalty in 1989 when it ruled that US "standards of decency" allowed the execution of 16- and 17-year-old offenders.

North Carolina - Alfred Rivera walked free from Forsyth County Jail in North Carolina, after being acquitted at his retrial on capital charges. He is the 84th person freed from death row since 1976, and the ninth since November 1998, after evidence of their innocence emerged (see **DP News** December 1998).

The **DP News** of September 1999 contained a review of Commissie Justitia et Pax's translation of the working documents of a 1997 seminar on the death penalty. This free 81-page booklet can be obtained from The Netherlands Section of **AI**, Keizersgracht 620, 1017 ER Amsterdam, Netherlands.

INTERNATIONAL TREATIES

Poland signed Protocol No.6 to the European Convention on Human Rights on 18 November 1999, bringing the total of countries which have signed but not ratified the Protocol to six.

DEATH PENALTY STATISTICS

Abolitionist and Retentionist Countries
(December 1999)

Abolitionist for all crimes

70

Abolitionist for ordinary crimes

13

Abolitionist de facto

23

Retentionist

90