

@DEATH PENALTY NEWS

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

PAKISTAN - 14-YEAR-OLD BOY ACQUITTED On 23 February Salamat and Rehmat Masih were acquitted of a charge of blasphemy, and the death sentence imposed on them was overturned. Salamat Masih was 14 years old when sentenced. On 11 May 1993 a prayer leader of a mosque had lodged a complaint that three Christians had written words on the wall of the mosque which were derogatory of the prophet Mohammed. The three, one of whom was Salamat, were arrested the same day on charges of blasphemy and on 9 February 1995 two of the accused were found guilty as charged and sentenced to death.

One of the three accused was murdered last year while leaving the court; there were frequent violent demonstrations during the trial and appeal; and death threats have been

received by many associated with the trial.

Following their acquittal, several countries offered them asylum, as it is believed their lives will be in danger if they remain in Pakistan. They have fled to Germany.

The case was controversial in Pakistan and aroused international protest. Last year the Pakistani Government dropped plans to introduce procedural changes in respect of the blasphemy law, under which the death penalty is the mandatory punishment for blasphemy since 1992 in the face of protests from Muslim fundamentalists; such procedural changes could have brought to an end the abuse of the law observed since its introduction in 1986.

The UN Convention of the Rights of the Child is one of several international human rights instruments which forbid sentencing anyone to death who was under 18 years old at the time of the crime. As a party to this Convention, Pakistan is bound under international law to respect its provisions and to bring its domestic law into conformity with its provisions. Pakistan is one of only four countries which have executed juvenile offenders since 1990 (see below).

ABOLITIONIST AND RETENTIONIST COUNTRIES

AI's latest list of abolitionist and retentionist countries shows that as of January 1995, 54 countries had abolished the death penalty for all crimes, 15 had abolished it for all but exceptional crimes such as wartime crimes, and 27 countries and territories were abolitionist de facto in that while retaining the death penalty in law, they have not executed anyone for at least 10 years. Ninety-seven countries retain and use the death penalty. Nearly half of all countries are now abolitionist in either law or practice.

PAPUA NEW GUINEA - FIRST DEATH SENTENCE

Papua New Guinea (PNG) has imposed its first death penalty since the death penalty was reinstated in 1991. On 20 February Charles Ombusu was found guilty of wilful murder and rape and sentenced to hang by the National Court in Popondetta. Charles Ombusu's lawyers have lodged an appeal against the sentence to the Supreme Court and a stay of execution has been granted.

The imposition of the death penalty comes at a time of considerable debate in PNG about the level of violent crime in the country. There have been calls recently for greater use of the death penalty but since the sentence was handed down, Prime Minister Sir Julius Chan has spoken out against the death penalty. At a judicial conference in Port Moresby, the capital, attended by judges, magistrates and senior judicial and court officials from throughout the country, Prime Minister Chan said that although PNG society was calling for draconian measures against criminals he believed the death penalty was not a deterrent:

"There are no quick or easy answers. I would like to take this opportunity to say that I see the death penalty as society looking for a quick and easy answers.

... I do not believe in the death penalty, and this is a view I am sure would be shared by many of those gathered here who, as with myself, by virtue of their positions, have a role to play in the handing down of a death sentence."

SOUTH AFRICA

The hearing of the South African Constitutional Court case, In the Matter between Themba Makwanyane, Mavusa Mchunu and the State, was held from 15-17 February 1995 (see Death Penalty News December 1994). The appellants' lawyers argued that the law under which they were sentenced to death is incompatible with the South African constitution which came into force in April 1994 and provides for the right to life and other basic human rights. Amnesty International's observer at the hearing was William A. Schabas, Professor of Law at the University of Quebec at Montreal and author of *The Abolition of the Death Penalty in*

International Law (Grotius Publications, 1993). The court has not yet delivered its ruling in the case.

UNITED STATES OF AMERICA

MISSISSIPPI

An English lawyer, Clive Stafford Smith, is suing the state of Mississippi on behalf of five men sentenced to death in the gas chamber on the grounds that this method of execution is unconstitutional. In 1983 Mississippi adopted the practice of offering death by lethal injection as an alternative to gas, after a case causing a public outcry. However as all five men were convicted before this ruling they cannot be offered the alternative. The contention is therefore that, following the ruling in California (check), their executions would flout the constitutional ban on "cruel and unusual punishment".

NEW YORK - DEATH PENALTY REINSTATED

On 7 March 1995 Governor George E Pataki signed a bill to reinstate the death penalty in New York. For 18 consecutive years the New York legislature approved bills for the reimposition of the death penalty but every time they were vetoed by the state governor, Mario Cuomo for the last 12 years and Hugh Carey for six years prior to that. Mario Cuomo was defeated in the 1994 election. His successful opponent, George Pataki, had made one of his strongest election points his support for the death penalty and, if elected, his intention to reintroduce it in New York as soon as possible. Governor Pataki took office on 1 January 1995.

New York becomes the 10th state to return to the use of executions either in practice or in law in the 1990s. The other nine states are Arizona, California, Delaware, Idaho, Kansas, Maryland, Nebraska, Washington and Wyoming. Thirty-eight states now have the death penalty incorporated in their legislation.

TEXAS - MAN EXECUTED ALTHOUGH HIS GUILT IN DOUBT

On 4 January Jesse De Wayne Jacobs became the first person to be executed by the state of Texas in 1995. Jesse Jacobs had been convicted of the murder of a woman in 1985. Seven months after his trial, at the trial of his sister for the same crime, the District Attorney - the same man who had prosecuted Jacobs - argued that on the basis of new evidence, he had changed his mind and was convinced that Jacobs' sister had committed the murder, not Jacobs. He urged the jury to believe the evidence of Jacobs, one of the chief witnesses at the trial. The jury duly did and convicted his sister, who was sentenced to 10 years' imprisonment for involuntary manslaughter.

Despite several appeals going as far as the US Supreme Court, however, Jacobs was executed for the crime. In a dissenting opinion US Supreme Court Justice Stephen Breyer wrote: "I find this course of events deeply troubling". An editorial in the semi-official Vatican newspaper "L'Observatore Romano" criticised the execution, calling it "incredible" and "monstrous".

EXECUTION OF JUVENILES - CORRECTION

Executions of juveniles who were under 18 years old at the time of the crime are known to have been carried out in four countries during the 1990s - Pakistan, Saudia Arabia, the USA and Yemen (not three countries as stated in the *Death Penalty News*, June 1994).

NEWS IN BRIEF

Lithuania - Legislation which will allow for appeals in death penalty cases came into force on 1 January 1995. It is not yet clear whether this new law complies fully with international standards.

St Vincent - On 13 February 1995 three men were hanged on the same day, the first executions carried out in the country for four years. The decision to proceed with the executions was announced only a few days before the event.

Spain - On 30 November 1994 the Senate voted unanimously for a motion in favour of the total abolition of the death penalty. A final decision on the initiative is expected this year. Spain abolished the death penalty for peacetime offences in 1978 but retains it as an optional punishment for a wide range of wartime crimes.

Turkey - Eight Kurdish members of parliament being tried for "separatism" under an article of the penal code which carried the death penalty were given prison sentences of up to 15 years' imprisonment instead (see *Death Penalty News, June 1994*).

BOOK REVIEW

The Machinery of Death: A Shocking Indictment of Capital Punishment in the United States, published by Amnesty International USA, 322 Eighth Avenue, New York NY 10001, USA, 1995, ISBN 0-939994-94-1. Price: \$17.95

This book consists of some 40 short papers delivered in August 1993 before a "Commission of Inquiry into the Death Penalty as Practiced in the United States" convened by AI's US Section. The contributors were leading abolitionists including academics, lawyers, members of Murder Victims Families for Reconciliation (MVFR), death row survivors, and a former executioner. Their testimonies range from analyses of the legality of the death penalty under international law, through statistical studies of the public's attitude to execution, to statements of impassioned repugnance at the continuing existence of this punishment in the USA.

Singled out for special attention are the executions of juvenile offenders, the mentally ill and retarded, and racial bias. The pursuit of justice continues to lose out to the pursuit of vengeance, according to Stephen Bright, a defense lawyer from Georgia, who claims that legal incompetence rather than guilt determines who lives or dies and "if we just switch the lawyers, we would switch the results in those cases". According to Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions for the UN Commission on Human Rights, "the decision on whether to use the death penalty illustrates the way a people considers itself, either as a human community which cares for those who fail or as a merciless group where the stronger crush the weaker to death". And Roger Hood, Director of the Centre for Criminological Research at Oxford University, England, asks "how the [US] federal and state governments can reconcile their place among nations which execute their citizens with their claims to be upholders of human rights".

There is an abundance of information in the book's well presented 216 pages with an appendix containing extracts from the relevant international instruments concerning the death penalty. **The Machinery of Death** should prove a valuable resource for those wishing

to reinforce moral opposition to the death penalty in the USA with legal, statistical and historical facts.

TEN COUNTRIES RATIFY INTERNATIONAL TREATIES ON THE DEATH PENALTY

The number of countries parties to international treaties on the death penalty continues to grow. Seven countries became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights bringing the number of states parties to 26. Three countries became parties to Protocol No. 6 to the European Convention on Human Rights, bringing the number of states parties to 23. One country ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, bringing the number of states parties to three. One country signed the Protocol to the American Convention, indicating its intention to become a party at a later date.

International Treaties: Signatories and States Parties as of 1 January 1995

INTERNATIONAL TREATY	STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED	STATES PARTIES
<u>Second Optional Protocol to the International Covenant on Civil and Political Rights</u> aiming at the abolition of the death penalty ¹	Belgium, Costa Rica, Honduras, Italy, Nicaragua	Australia, Austria, Belarus, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Ireland, Luxembourg, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela
<u>Sixth Protocol to the European Convention on Human Rights</u> concerning the abolition of the death penalty ²	Belgium, Estonia, Greece	Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, San Marino, Slovakia, Slovenia,

¹Hungary and Denmark became parties on 24 February 1994, Slovenia on 10 March, Switzerland on 16 June, Namibia on 28 November, Seychelles on 15 December and Malta on 29 December 1994.

²Ireland, Romania and Slovenia became parties on 1 July 1994.

		Spain, Switzerland	Sweden,
<u>Protocol to the American Convention on Human Rights to Abolish the Death Penalty</u> ³	Brazil, Costa Rica, Ecuador, Nicaragua,	Panama, Venezuela	Uruguay

DEATH PENALTY NEWS - INDEX FOR 1994

This is an index, by country or organization, of articles which appeared in the Death Penalty News during 1994.

COUNTRY	DATE	SUBJECT
Algeria	6/94	Executions suspended
Belize	9/94	Judicial Committee of the Privy Council reduces two murder verdicts to manslaughter
Bosnia-Herzegovina	9/94	Possible abolition of death penalty
Bulgaria	3/94	Possible lifting of moratorium
China	12/94	Use of organs from executed prisoners
Greece	3/94	Death penalty abolished
Iran	3/94	Consultative assembly approves death penalty for dealers in obscene videos
Italy	3/94 12/94	Abolition of death penalty in wartime postponed Death penalty abolished for all crimes
Japan	12/94	Poll shows public support for death penalty
Kenya	12/94	High Court judge calls for removal of death penalty from statute book
Kuwait	6/94	Twelve death sentences commuted
Lebanon	3/94	Death penalty introduced for politically motivated murder
Macau	9/94	Ban on capital punishment could remain
Malawi	6/94	Commutation of all current death sentences

³Uruguay became a party on 4 April 1994, Brazil signed on 7 June 1994. (The dates given in all cases are the dates of deposit of the instrument of ratification.)

Morocco	3/94	King commutes 195 death sentences	
Nigeria	9/94	Man survives firing squad	
Pakistan	3/94	Possible ban on public hangings	
Philippines	6/94 9/94 12/94	First death sentence passed since reintroduction Local groups petition Supreme Court Warnings on death penalty for drug offences	
South Africa	6/94 9/94 12/94	Moratorium to be maintained calls for abolition Constitutional Court members appointed	AI
Sweden	6/94	Decision not to extradite Iranian	
Tanzania	9/94	Judge rules death penalty unconstitutional	
Trinidad and Tobago	9/94	Man executed while appeals still in progress	
Turkey	3/94 6/94 6/94 12/94	Turkish Medical Association says doctors must not participate in executions University students banned for one year Six Kurdish MPs arrested Anti-death penalty petition presented	
UK	3/94	Parliament rejects reintroduction of the death penalty	
USA	3/94 3/94 6/94 6/94 6/94 6/94 6/94 9/94 9/94 9/94 9/94 9/94 12/94	Supreme Court judge concedes death penalty experiment has failed Virginia uses electric chair for perhaps the last time Kansas - Death penalty reinstated North Carolina - Attempt to televise execution Expansion of federal death penalty debated; racial bias problem considered Maryland - Lethal injection option now available Texas - 30 day limit Arkansas - Three men executed on the same day Massachusetts - Move to reinstate death penalty California - Choice of death by filling in a form New crime bill expands scope of death penalty California - gassing ruled unconstitutional Kansas - Governor vetoes state funding for defence counsel in capital cases	
Yugoslavia	6/94	Death penalty repealed for genocide	

Juveniles	6/94	Information on executions worldwide
Book Reviews	6/94 9/94	Pictures at an Execution - Wendy Lesser Dead Man Walking - Helen Prejean
International Treaties on the Death Penalty	3/94 3/94 6/94 12/94	Signatures and ratifications as of 21 February 1994 Denmark ratifies Second Optional Protocol Third anniversary of Second Optional Protocol Council of Europe calls for anti-death penalty treaty