

DEATH PENALTY NEWS

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

RUSSIA PLEDGES MORATORIUM ON EXECUTIONS

Russia has become the fourth country to agree to establish an immediate moratorium on executions as a condition for joining the Council of Europe. This tendency has been reinforced by a call from the Council of Europe's Committee of Ministers for a moratorium on executions in member states.

On 28 February the Russian Federation formally joined the Council of Europe as its 39th member state. During a debate on 25 January, the Parliamentary Assembly of the Council of Europe had agreed to recommend acceptance of Russia on the understanding that Russia intended "to sign within one year and ratify within three years from the time of accession Protocol No. 6 of the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession [to the Council of Europe]".

Similar pledges were made by Albania and Moldova in June 1995, and by Ukraine on joining the Council of Europe in November (see **DP News** September and December 1995). In Moldova the parliament has since voted to abolish the death penalty in the penal code. **AI** is pressing the Ukrainian authorities to uphold their country's pledge in the face of reports that no instructions to stop executions have been given to local authorities and that executions are continuing.

Executions had fallen in Russia after the end of communist rule but were beginning to rise again. **AI** has been able to confirm that at least 28 people were executed during 1995 and a further 34 faced imminent execution in

November 1995, after their petitions for clemency were reportedly turned down by President Boris Yeltsin. According to unofficial sources in the Presidential Clemency Commission, the number of executions in 1995 was 90. The Ministry of Internal Affairs of the Russian Federation, however, has stated that only 16 executions were carried out in 1995.

AI has learned that since March 1992, when the Clemency Commission was first established, 338 petitions for clemency had been upheld. However, in 1995 there was a decline in the number of successful petitions for clemency. President Yeltsin reportedly granted clemency to only five prisoners during 1995. **AI** estimated that between 500 and 600 prisoners were under sentence of death at the end of last year.

In a related development, the **Committee of Ministers** of the Council of Europe in January called for a moratorium on executions in Council of Europe member states.

In an interim reply adopted on 16 January to proposals from the Parliamentary Assembly for a new abolitionist protocol to the European Convention on Human Rights and a control mechanism over the use of the death penalty (see **DP News** December 1994), the Committee of Ministers stated that the proposals were being examined within the framework of the Committee's Rapporteur Group on Human Rights. The statement continued: "In the meantime, the Committee of Ministers has encouraged member States which have not abolished the death penalty to operate de facto or de jure a moratorium on the execution of death sentences."

BELIZE: LEGAL RULINGS

Following two last-minute stays of execution issued by the Judicial Committee of the Privy Council (JCPC) in London, which serves as the final court of appeal for Belize and other Commonwealth countries, there have been further developments concerning the death penalty in Belize. (See **DP News** September 1995)

On 22 August 1995 death warrants were signed for the execution of Pascual Bull and Herman Mejia to be carried out at 8am the following day. The prisoners were not permitted to contact their families or lawyers before the scheduled hangings. Both had been sentenced to death for murder in 1994 and had had their appeals to the Belize Court of Appeals rejected in February 1995, but had not yet appealed to the JCPC. Learning of the death warrants, lawyers in London submitted a petition to the JCPC, which sent a message to the Attorney General's office in Belize ordering a stay of execution pending the outcome of the petition. The two men, who had been taken from their cells and given their last rites, only learned that their executions had been stayed 30 minutes before the first execution was due. On 4 March 1996 Pascual Bull was granted leave to appeal to the JCPC but Herman Mejia's petition was dismissed. **AI** has urged the authorities to commute his sentence.

In a separate case, Belize Chief Justice Sir George Brown held in September 1995 that the JCPC had no jurisdiction to grant leave to appeal to it once a prisoner's petition for clemency was rejected. This finding was overruled by the JCPC in a judgment in another case delivered on 21 February 1996. The JCPC held that if, for good reason, no appeal against conviction had been brought prior to the refusal to exercise clemency and it was shown that there might have been a wrongful conviction, it had to be possible to set such conviction aside on legal grounds, whether or not the prerogative of mercy had been or would be exercised.

The government of Belize has said it intends to introduce legislation in parliament to abolish the right of appeal to the JCPC.

Only one person has been executed, in June 1985, since the country gained independence in 1981. There are currently nine people on death row.

MOLDOVAN PARLIAMENT VOTES FOR ABOLITION

On 8 December 1995 the parliament of Moldova voted unanimously to drop the death penalty from the country's penal code and replace it with prison terms ranging from 25 years to life imprisonment, according to reports.

In February 1996, death sentences on 19 prisoners awaiting execution were commuted to life imprisonment by presidential decree. Commenting on the decree, a spokesperson for the Ministry of Justice said that Moldova had

"once again demonstrated its firm resolution to continue the reforms necessary for building a truly democratic state."

AI has asked the authorities to clarify whether the parliamentary decision has come into effect. The last execution carried out in Modlova was in 1990 when it was still part of the Soviet Union.

SOUTH AFRICA PREPARES CONSTITUTION

Following the June 1995 ruling of the Constitutional Court that the death penalty is incompatible with the country's interim constitution (see **DP News** June 1995), **AI** has appealed to the members of the Constitutional Assembly to ensure that South Africa remains abolitionist under the permanent constitution which the Assembly is in the process of adopting. Three options relating to the right to life are currently under consideration. One would retain the wording of the interim constitution; the other two would allow for the death penalty as an exception to the right to life. The final text of the constitution is due to be adopted in May.

The African National Congress (ANC), which has nearly a two-thirds majority of seats in the Constitutional Assembly, has a policy in favour of abolition but its members are aware of the strength of public feeling in favour of the death penalty. The second largest party, the National Party, supports the return of the death penalty. The smaller Democratic Party has an abolitionist position. The ANC needs the support of other parties to obtain the two-thirds vote needed to adopt the final constitution. The debate over the death penalty and other contentious issues will be crucial in the lead-up to the May 1996 deadline.

(NOTE: The South African Constitutional

Court judgment has been reprinted in the Human Rights Law Journal, Vol. 16, Nos. 4-7, 30 September 1995, pp. 154-208. An article by William A. Schabas commenting on the judgment appears in the same journal, pp. 133-148.)

USA: DEVELOPMENTS ON THE DEATH PENALTY

The United States continues to defy international trends away from the use of the death penalty.

At the end of 1995 over 3,000 prisoners, an unprecedented number, were under sentence of death in 34 states. A further 14 had been sentenced to death under US federal military or civilian law. Fifty-six prisoners were executed in 1995, a higher total than in any previous year since states revised their death penalty statutes in the mid-1970s. By the end of the year, 313 prisoners had been executed in the USA since 1977.

In March 1995 New York became the 38th state to reintroduce the death penalty (see **DP News** March 1995). The states of Montana and Pennsylvania carried out their first executions since reinstating the death penalty in 1977. Texas was responsible for more than a third of the year's executions with 19. No prisoners are known to have been granted executive clemency during 1995.

Forty-four juvenile offenders were under sentence of death at the end of 1995, an increase of seven from the end of 1994. All had been convicted of murders committed when they were 16 or 17 years old. However, no juvenile offender was executed in 1995.

Several of the prisoners executed were mentally ill or retarded. Racial discrimination in the use of the death penalty continues to be of major concern with 46% of the prisoners executed in 1995 coming from ethnic minorities. There is concern too about the poor quality of legal representation afforded capital defendants at trial, particularly with the passage of legislation by the US Congress removing funding for Post Conviction Defender Organisations (PCDOs) whose attorneys had represented almost half of those on death row.

Congress also attempted to pass legislation which would shorten the time death row inmates spend on the appeal process, and would impose time limits on the filing of habeas corpus appeals for prisoners under sentence of death. (See "United States of America: Developments on the Death Penalty in 1995", AI Index: ACT 51/01/96.)

Since the beginning of 1996 there have been further developments. In **California** a federal appeals court on 21 February upheld a lower (district) court's decision that use of the gas chamber in executions violates the US Constitutional ban on cruel and unusual punishments. "The District Court's findings of extreme pain, the length of time this extreme pain lasts, and the substantial risk that inmates will suffer this extreme pain for several minutes require the conclusion that execution by lethal gas is cruel and unusual", the appellate court held. California will now use lethal injection, a method which critics of the death penalty have denounced as similarly barbaric.

Richard Townes Jr, executed by lethal injection in **Virginia** in January 1996, reportedly had to wait 22 minutes strapped to a table while officials searched for a vein they could use for the injection.

In **Illinois**, Governor Jim Edgar on 16 January commuted the death sentence of Guinevere Garcia, convicted of the murder of her husband, to life in prison without parole, despite her expressed wish to die. Guinevere Garcia, who had a history of abuse and deprivation since early childhood, had waived appeals and fought the efforts of lawyers and abolitionists to save her life. After learning of her reprieve, she issued a statement through her lawyer saying: "Thank God that this has happened".

NEWS IN BRIEF

Colombia - President Ernesto Samper stated on 21 February that he intended to seek the introduction of the death penalty for major crimes such as "kidnapping, massacres and the murder of defenceless people". In order to do this, Colombia would denounce its adherence to international treaties which prohibit the death penalty or its reintroduction, he said. The move has provoked a negative reaction in certain circles in the country.

France - Philippe Maurice, whose death sentence for a double murder was commuted to life imprisonment in 1981 a few months before France abolished the death penalty, earned a doctorate with honours in December 1995 from Tours University. Philippe Maurice's thesis on family life in the 15th century was an exceptional work, according to professor of medieval history Bernard Chevalier. "Studying was the instrument of his own reconstruction," Professor Chevalier was quoted as saying. "This condemns the death penalty. No man is beyond redemption by society".

Japan - For the first time in Japan, a bar association has adopted a resolution calling for a review of the death penalty and an immediate suspension of executions. The Kanto Federation of Bar Associations, comprising major bar associations in the Tokyo and Kanto areas, adopted a resolution on 29 September 1995 citing worldwide trends towards abolition and other factors as reasons for a review.

Philippines - A bill designating lethal injection as the method of execution was approved in February by the House of Representatives, the lower house of the Philippines Congress; the upper house, the Senate, had already approved the measure. The bill also states that executions should be carried out within one year of sentencing. The bill was signed into law by President Fidel Ramos in March.

Taiwan - Three men facing execution may have been wrongly convicted on the basis of confessions extracted under torture. Su Chien-ho, Liu Ping-lang and Chuang Lin-hsiung were sentenced to death for the murder of two people in March 1991. Their appeals were rejected despite widespread concern that they were sentenced after having been tortured and forced to sign "confessions". After their arrest on 15 August 1991, they were held for at least 24 hours by the police during which time they claim to have been tied up, beaten and forced to drink urine and pepper juice. The record of new detainees' health at Shilin Detention Centre states that when they arrived at the centre Chuang Lin-hsiung had scars on his head and Su Chien-ho had swollen hands and a bruised right knee.

Prosecutor General Chen Han has made three special appeals to the Supreme Court on behalf of the prisoners. In March 1995 he is reported to have said: "I do not wish to influence the court ruling or say the defendants are innocent, but there should be more evidence to support the death sentence". The last of these appeals was rejected in August 1995. At the same time, the Shilin District Prosecutor's Office decided not to bring charges against the four police officers who are said to have tortured the three men.

In 1995 Taiwan sentenced at least 15 people to death and executed three.

Thailand - The first execution since 1987 was carried out on 28 January 1996 when Prommas Leamsai, reportedly convicted of murdering a policeman in the 1980s, was killed by a firing squad using machine guns in Bangkwang Maximum Security Prison in the capital, Bangkok. Since 1987 the King has commuted death sentences in a series of pardons to mark royal anniversaries. More than 200 people are currently under sentence of death in Thailand.

Zimbabwe - Zimbabwe carried out its first execution since 1988 on 7 December 1995 when Morgan Dikwi was hanged in Harare Central Prison. A second prisoner, Paisen Beaton, was executed on 6 February 1996. Both men

had been convicted of murder. More than 100 prisoners are under sentence of death in the country.

OVER HALF THE WORLD'S COUNTRIES NOW ABOLITIONIST

AI's latest List of Abolitionist and Retentionist Countries (AI Index: ACT 50/10/95) shows that as of November 1995, 56 countries and territories had abolished the death penalty for all offences and 15 for all but exceptional offences, such as wartime crimes. At least 30 countries and territories which retained the death penalty in law were considered abolitionist in practice in that they had not executed anyone for the past 10 years or more or had made an international commitment not to carry out executions. Ninety-three countries retain and use the death penalty.

NEARLY 3000 EXECUTIONS RECORDED WORLDWIDE IN 1995

AI has released figures for death sentences and executions in 1995. During the year, at least 2,931 prisoners were executed in 41 countries and 4,165 people were sentenced to death in 79 countries. These figures include only cases known to Amnesty International; the true figures are certainly higher. As in previous years, a small number of countries accounted for the great majority of executions with 2,190 documented executions in China, 192 in Saudi Arabia and over 100 in Nigeria.

UN SPECIAL RAPPORTEUR URGES ABOLITION FOR DRUG OFFENCES

In his latest report to the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has called for an end to the death penalty for drug offences and economic crimes.

The Special Rapporteur notes that the 1984 UN Economic and Social Council Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty state that the scope of the death penalty should not go beyond intentional crimes with "lethal or other extremely grave consequences". "It can be concluded from this that the death penalty should be eliminated for crimes such as economic crimes and drug-related offences", he states.

The Special Rapporteur also recommends "that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency. This would prevent the hasty execution of people who have been convicted and prevent the execution of people who still have appeals pending. In addition, officials who are

responsible for carrying out an execution should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and they should be instructed not to carry out an execution while any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence is still pending."

The Special Rapporteur expresses concern over various situations, including

- increases in the number of crimes punishable by death;
- juveniles and mentally retarded people sentenced to death;
- organs taken from executed prisoners to be used in transplant operations;
- secrecy surrounding the use of the death penalty.

(Extrajudicial, Summary or Arbitrary Executions; Report of the Special Rapporteur..., UN document No. E/CN.4/1996/4, 25 January 1996)

INTERNATIONAL TREATY RATIFICATIONS

The number of countries joining international treaties on the death penalty continues to grow. Three countries in 1995 became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, bringing the number of states parties to 29¹. Twenty-three countries were parties to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the abolition of the death penalty at the end of the year. Three countries were parties to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. A number of other countries had signed one or more of the protocols, indicating their intention to become parties at a later date.

The following table shows states parties and signatories to the three anti-death penalty treaties as of 1 January 1996.

INTERNATIONAL TREATY	STATES WHICH HAVE SIGNED BUT NOT YET RATIFIED	STATES PARTIES
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Belgium, Costa Rica, Honduras, Nicaragua	Australia, Austria, Croatia, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Ireland, Luxembourg, Italy, Macedonia, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, Uruguay, Venezuela
Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty	Belgium, Estonia, Greece	Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland
Protocol to the American Convention on Human Rights to Abolish the Death Penalty	Brazil, Costa Rica, Ecuador, Nicaragua	Panama, Venezuela, Uruguay

¹Macedonia acceded to the Second Optional Protocol on 26 January 1995 and Croatia on 12 October 1995. Italy ratified the Protocol on 14 February 1995.

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COUNTRY	DATE	SUBJECT
Albania	9/95	Moratorium on executions
Belgium	12/95	Belgium to abolish death penalty
Belize	9/95	Privy Council grants stay of execution
Botswana	9/95	Five people executed
Canada	9/95	Poll shows public support for death penalty
China	6/95 9/95 12/95	Wide range of crimes punished by death Executions prior to UN conference Death penalty for fraud
Côte d'Ivoire	6/95	Proposed extension of death penalty
El Salvador	6/95	Plans to reinstate the death penalty
Gambia	9/95	Reintroduces death penalty
Guatemala	6/95	Proposed extension of death penalty
Iran	6/95 9/95	Parliament rejects draft death penalty law on profiteers Former anti-drug police head executed
Italy	6/95	Becomes party to Second Optional Protocol of ICCPR
Kazakstan	9/95	AI protest over televised execution
Kuwait	6/95	Death penalty for drug offences
Lithuania	3/95	Legislation allowing for appeals in death penalty cases
Macao	12/95	Abolition to continue
Macedonia	6/95	Becomes party to Second Optional Protocol of ICCPR
Mauritius	9/95	Abolishes death penalty but President refuses to sign bill
Moldova	9/95	Moratorium on executions
Nigeria	9/95 12/95	Public executions Execution of Ogoni leaders
Pakistan	3/95	14-year-old boy acquitted
Papua New Guinea	3/95	First death sentence
Philippines	9/95	Country lacks funds to execute prisoners
Poland	9/95	Abolitionist bill drafted
Rwanda	12/95	Death sentences imposed
Saudi Arabia	6/95 9/95	AI appeals on behalf of seven Somalis Executions provoke protests in Turkey
South Africa	3/95	Hearing of Constitutional Court case

	6/95 9/96	Constitutional Court ruling Backlash follows ruling
Spain	6/95 12/95	Congressional vote Becomes wholly abolitionist
Sri Lanka	9/95	No decision to implement death penalty
St Lucia	12/95	First execution in nine years
St Vincent	3/95	Three men hanged
Trinidad and Tobago	12/95	Privy Council rules re delay on death row
Turkey	3/95	Kurdish members of parliament escape death penalty
Ukraine	9/95 12/95	Statistics released Moratorium on executions
United Arab Emirates	12/95	Philippine maid spared
USA	3/95 3/95 3/95 3/95 6/95 6/95 9/95 9/95 12/95	Mississippi - state sued New York - death penalty reinstated Texas - man executed while guilt in doubt First federal execution scheduled New surveys; study on jurors' role Illinois - doctors and executions Pennsylvania - stay of execution granted Missouri - doctors and executions Pennsylvania - appeal rejected
Vatican	6/95	Papal encyclical
Book Reviews	3/95 6/95	The Machinery of Death... - AIUSA The Chamber - John Grisham
International Treaties on Death Penalty	3/95	Signatories and states parties as of 1 January 1995
Juvenile Executions	9/95	AI study
Pax Christi	12/95	Calls for reformulation in Catholic Church's statement on death penalty
UN	9/95	New UN quinquennial report on capital punishment