

DEATH PENALTY NEWS

June 2005

USA: CHILD EXECUTIONS BANNED

In a stunning decision, the US Supreme Court has ruled by five votes to four that the use of the death penalty against people under the age of 18 at the time of the offence contravenes the US Constitutional ban on "cruel and unusual punishments".

The decision, delivered on 1 March in the case of *Roper v. Simmons*, meant that the lives of over 70 child offenders currently on US death rows would be spared and no others would be sentenced to death.

In 1989 the Supreme Court had ruled that the use of the death penalty against offenders aged 16 or 17 was not unconstitutional. One of the grounds for the decision was that there was insufficient evidence in the form of state legislation to indicate a "national consensus" against the use of the death penalty for offenders under 18.

In the new decision, the Court noted that five states since 1989 had outlawed the use of the death penalty against offenders under 18 and none had reinstated it. Moreover, of the six states that had executed child offenders since 1989, only three had done so during the past 10 years. In its opinion, written for the majority by Justice Kennedy, the Court concluded that "today our society views juveniles. . . as 'categorically less culpable than the average criminal'".

The Court also took account of international trends, noting "the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty". It noted that the use of the death penalty against child offenders is prohibited under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights; that only seven countries other than the USA have executed child offenders since 1990 and that "since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice". It concluded that "the United States now stands alone in a world that has turned its face against the juvenile death penalty".

With the March decision, there is now no country that openly executes child offenders as part of its regular criminal justice system. However, there are believed to be at least three and possibly as many as six detainees held as "enemy combatants" at the US Naval Base in Guantánamo Bay in Cuba who were under 18 years old when they were taken into custody. The US administration maintains that constitutional protections do not apply to the Guantánamo detainees and intends to try some of them before military commissions, executive bodies with the power to impose death sentences. Concerns remain that the detainees could be sentenced to death and executed despite the *Roper v. Simmons* ruling.

MEXICO ABOLISHES THE DEATH PENALTY

Mexico has abolished the death penalty for all crimes bringing to 85 the number of totally abolitionist countries in the world.

On 21 April the only remaining provision in Mexican criminal law permitting the death penalty was abolished. The Mexican Chamber of Deputies unanimously voted to reform the military penal code and replace the death penalty with prison terms of 30 to 60 years for serious offences. Although the last execution for ordinary crimes took place in 1937, and the last execution under the military penal code in 1961, military courts have continued to pass death sentences which have then been commuted by the president. Mexican and international human rights organizations have for many years urged the Mexican government to go a step further and eliminate the death penalty in law.

The Mexican government has promised to abolish the death penalty in the constitution. To date, Congress has failed to adopt this reform, and a number of other proposed constitutional amendments, to strengthen the protection of human rights

UN CALLS ABOLITION "ESSENTIAL" FOR HUMAN RIGHTS

A UN resolution calling for a worldwide moratorium on executions has been co-sponsored by 81 countries, five more than in 2004 and the highest number ever.

Resolution 2005/59 on "The question of the death penalty" was adopted by the UN Commission on Human Rights on 20 April at the Commission's annual session in Geneva. It was the ninth such resolution adopted by the Commission on Human Rights since 1997.

As in previous years, the resolution calls upon all states that still maintain the death penalty "to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions". It urges states that still maintain the death penalty to observe agreed UN safeguards and restrictions on the death penalty and "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person".

The resolution also contains new elements. It affirms the right of everyone to life and states - for the first time - that abolition of the death penalty is essential for the protection of this right. This statement represents the closest the UN has yet come to condemning the death penalty as a violation of human rights.

The resolution also condemns the application of the death penalty on the basis of any discriminatory legislation, policies or practices and the disproportionate use of the death penalty against persons belonging to national or ethnic, religious and linguistic minorities and calls on states not to impose mandatory death sentences. It calls on states that have recently lifted or announced the lifting de facto or de jure of moratoriums on executions once again to commit themselves to suspend such executions.

Resolution 2005/59, backed by the European Union (EU), was co-sponsored by all EU countries and attracted many co-sponsors from other parts of the world. The resolution was adopted by a vote of 26 countries in favour and 17 against, with 10 abstentions - a slightly narrower margin than in 2003, when there were 29 countries in favour, 19 against and five abstentions. Nigeria, which had voted against the resolution in previous years, abstained this year; its representative explained that the death penalty was currently under review in the country. But the Congo Republic and Gabon, both of which had voted yes in 2004, abstained this year, and Guinea, which had previously abstained, voted no.

As in previous years, a group of countries submitted a statement dissociating themselves from the resolution. This year's statement of dissociation was signed by 66 countries, two more than in 2003 and the highest number yet. Chad and Guinea signed the statement for the first time.

NEW UN QUINQUENNIAL REPORT ON CAPITAL PUNISHMENT

Every five years the UN Secretary-General is mandated to produce a report on capital punishment. These reports are a unique source of information because they are based on information supplied by governments, as well as non-governmental organizations and other experts.

The Secretary-General's latest quinquennial report, the seventh in the series, was issued in March 2005. Fifty-two governments responded to the Secretary-General's request for information, down from the 53 which supplied information for the previous report in 2000. Only eight countries that retained and enforced the death penalty replied to the survey.

A worldwide reduction in executions

The report notes that the number of abolitionist countries continued to increase in the period covered by the survey (1999-2003). While the pace of change to full abolition was slower, there has been a very substantial reduction in the number of countries that regularly execute their citizens. Furthermore, the rate of executions has fallen.

As far as could be ascertained from the data available, 16 of the 43 countries that remained retentionist throughout 1999-2003 executed fewer than 10 people during the period, and 11 of the countries executed fewer than five people. Only 19 countries were known to have carried out 20 or more judicial executions during this time. In only one country, Viet Nam, did the estimated number of executions appear to have increased substantially and regularly during the period.

The report includes calculations of the per capita rate of executions in countries reported to have carried out 20 or more executions between 1999 and 2003. As in the previous period, Singapore was found to have the highest per capita rate of executions (6.9 executions per one million population); it was followed by Saudi Arabia (3.66) and Jordan (2.08).

Safeguards

This year's report again covers both the question of capital punishment as such and the implementation of the UN safeguards on the death penalty.

Although safeguard 7 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, provides that anyone sentenced to death shall have the right to seek pardon, or commutation of sentence, the report found that in a number of retentionist countries the person who has been sentenced to death plays no part in the process [of clemency] nor is the pardoning process subject to the requirements of the process, or subject to review. Furthermore, not all the responding retentionist countries stated that they abided by the eighth safeguard guaranteeing that no person would be executed pending

any appeal or other recourse procedures. The report highlighted the necessity of clarifying the safeguards to be applied to the mentally ill as opposed to the insane or the mentally retarded. Also, of particular concern in a number of countries are the conditions under which persons are kept in confinement while under sentence of death or under a moratorium.

(Capital Punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General, UN document E/2005/3. (For information on the sixth quinquennial report, see **DP News** June 2000.)

List of Abolitionist/Retentionist Countries

Abolitionist for all crimes:	85	
Abolitionist for ordinary crimes only:	11	
Abolitionist in practice:		24
Total abolitionist in law or practice:	120	

Retentionist:

76

UN EXPERT ATTACKS MANDATORY DEATH PENALTY, CALLS FOR TRANSPARENCY

In his report to the 2005 session of the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, has called into question the mandatory application of the death penalty – laws that provide for death as the only punishment for certain crimes. He has stated that "The mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".

The report also calls for full and accurate reporting of executions, and for regular periodic reviews of the use of the death penalty in light of international standards (see box).

The Special Rapporteur on extrajudicial, summary or arbitrary executions is mandated to examine and act upon instances of arbitrary deprivation of the right to life, including death penalty cases falling short of agreed international standards including the Safeguards Guaranteeing the Rights of Those Facing the Death Penalty adopted by the UN Economic and Social Council in 1984. His report includes information on messages sent to the governments of 17 countries in 2004 and the responses, if any.

This was the first annual report submitted by Philip Alston since he succeeded Asma Jahangir in 2004 as Special Rapporteur and the 23rd annual report since the mandate of the Special Rapporteur was established by the Commission on Human Rights in 1982. (*Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur*, 22 December 2004, UN document E/CN.4/2005/7)

Comments by the Special Rapporteur

"Countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty. For a government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied is unacceptable...

"Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on an annual basis."

"Experience shows that even in the most sophisticated legal systems, mistakes occur which result in wrongful executions. This is a constant risk and no country's legal system can comprehensively and reliably ensure that such errors do not occur. In relation to lesser punishments, the penalty is neither so severe nor so final, and mistakes can always be rectified. Capital punishment, however, is in a class all of its

own and the appropriate legal regime governing it cannot be compared to that relating to other sentences."

"It is therefore incumbent upon those countries that retain the death penalty to undertake regular periodic reviews, staffed by persons independent of the criminal justice apparatus, to evaluate the extent to which international standards have been complied with and to consider any evidence (such as DNA) that might be available which casts doubt upon the guilt of an executed person."

- from the 2005 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the UN Commission on Human Rights

IRAN EXECUTES ANOTHER CHILD OFFENDER

Iman Farokhi was executed on 19 January for allegedly committing a crime when he was 17 years old. On the same day, an Iranian government delegation in Geneva stated that Iran does not execute children under the age of 18.

Since 1990, 11 child offenders have been executed in Iran. At present, there are at least 30 others awaiting execution.

RESUMPTION OF EXECUTIONS BY PALESTINIAN AUTHORITY

Four men were executed on 12 June in the Gaza Strip after Palestinian Authority (PA) President Mahmoud Abbas authorized the resumption of executions, ending a three-year moratorium.

Three of the men were executed by hanging and one by firing squad. Wa'el Sha'ban al-Shoubaki, Salah Khalil Musallam, and 'Oda Muhammad Abu 'Azab were sentenced to death for murder in 1995 and 1996. The fourth man, Muhammad Daoud al-Khawaja, was convicted of murder in 2000 after a trial before the notoriously unfair State Security Court, which has since been abolished.

President Abbas reportedly ordered the resumption of executions as a response to increased crime and lawlessness in areas of the Occupied Territories which fall under PA jurisdiction.

EXECUTIONS IN SAUDI ARABIA

Six Somali nationals were executed in Saudi Arabia on 4 April. The six men had not been aware that they were at risk of death.

On 21 February **AI** wrote to the Saudi Arabian Minister of Interior regarding the status of the six Somalis who were being detained despite having served their sentences of imprisonment and corporal punishment. **AI** never received a reply to this letter but learned in April that the men had been executed.

This brings the total number of executions in the country to the end of June to at least 50. Almost two-thirds of those executed were foreign nationals.

GUATEMALA TO CONSIDER ABOLITION

Following the death of Pope John Paul II in April, Guatemalan President Oscar Berger announced that he will seek to have the death penalty abolished in his honour. A draft law on abolition is currently before a Congressional commission on legislation and constitutional issues and will present its recommendations within two months.

In July 2002 the National Assembly rejected a bill for abolition submitted by then President Alfonso Portillo.

The death penalty is a controversial issue in Guatemala, which in 1996 televised the execution of two men by shooting. The last execution took place in June 2000 by lethal injection.

USA NEWS

Connecticut - On 13 May, the state of Connecticut carried out its first execution since 17 May 1960. Michael Ross had been sentenced to death for the murder of four female teenagers in 1983 and 1984. He was executed after dropping

his appeals against his death sentence.

At least 115 people have been put to death in the USA since 1977 after they gave up appeals against their death sentence. This is more than 10 per cent of the total judicial death toll.

Any number of factors may lead a prisoner not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless.

New York state - In April, the Codes Committee of the New York Assembly (the state legislature) voted 11-7 against considering legislation to reinstate the death penalty in New York, effectively ending reinstatement of the death penalty in that state during the current session.

New York's 1995 death penalty law had been declared invalid by a ruling from the state's highest court in 2004. No executions were carried out under that law.

Puerto Rico - In May, a federal jury in Puerto Rico rejected the prosecution's appeal for the death penalty against two defendants convicted of murder in the course of an armed robbery in 2002. Puerto Rico has not had an execution since 1927, and prohibits the death penalty in its constitution. However, the US federal death penalty applies to Puerto Rico, in the face of widespread public opposition.

Clemency issues - In January, outgoing Indiana Governor Joe Kernan granted clemency to death row inmate Michael Daniels and commuted his death sentence to life imprisonment. The governor noted that Daniels had an IQ of 77, indicating borderline mental retardation, and that evidence casting doubt on his guilt had never been presented in court.

In contrast, Stanley Hall was executed in Missouri on 16 March. His lawyers had appealed for clemency on a number of grounds, including on the claim that Hall had mental retardation, with an IQ in the 70-75 range, and that his execution would violate Missouri and US law prohibiting such executions.

Innocence - On 28 February, an Ohio judge dismissed all charges against Derrick Jamison in a murder for which he had been sentenced to death in 1985. His conviction had been overturned on appeal in 2002 and the prosecuting authorities eventually decided not to retry him.

Derrick Jamison became the 119th person since 1973 in the USA to be released from death row on the grounds of innocence. At his original trial, the prosecution had withheld exculpatory evidence from the defence.

NEWS IN BRIEF

Canada - National homicide statistics released for 2003 indicate that the homicide rate in Canada dropped by 7% to its lowest rate in over 30 years. The homicide rate has generally declined since 1976 when Canada abolished the death penalty for ordinary crimes. The 2003 rate of 1.73 victims per 100,000 people was about one-third that of Canada's neighbour, the United States, which has a rate of 5.69 victims per 100,000 people.

India - In May, a human rights group, the People's Union for Democratic Rights (PUDR), called on the government of India to make public all information on executions since independence in 1947. PUDR challenged the figure of 55 executions reported by the press in August 2004 at the time of the execution of Dananjay Chatterjee (see **DP News** December 2004), stating that according to a 1967 Law Commission report, at least 1,422 people were executed between 1953 and 1964.

Indian state authorities appear divided with regard to disclosure of death penalty statistics. The Delhi Deputy Director General of Prisons stated it was not "in the public interest" to publish such figures while officials in Maharashtra state disclosed them upon request.

Kyrgyzstan - On 10 January President Askar Akayev signed a decree extending the moratorium on executions for another year. A law to abolish the death penalty is being drafted.

Pakistan - Appeals against the revocation by the Lahore High Court in December 2004 of the Juvenile Justice System Ordinance, which banned the execution of child offenders, (see **DP News** December 2004) are currently pending in the Supreme Court of Pakistan. The revocation has been stayed until the Supreme Court reaches a decision.

USA - The annual Gallup poll of America's "Moral Values and Beliefs", which has been carried out every year since 1936, was conducted from 2 to 5 May. According to the poll results, support for the death penalty for a murder

conviction is currently at 74%, up from last year, while 23% of Americans are against it. The highest figure in support of the death penalty occurred in 1994 with 80%; the lowest was in 1966 when it was at 42%.

According to the poll, a significant number of Americans, 61%, believe that the death penalty is applied fairly in the USA, despite the fact that 119 prisoners have been released in the USA since 1973 after evidence emerged of their innocence of the crimes for which they were sentenced to death. There were six such cases in 2004 and two to June 2005.

Death Sentences and Executions in 2004

During 2004, at least **3,797** people were executed in 25 countries according to **AI**. At least **7,395** people were sentenced to death in 64 countries. These figures include only cases known to **AI**; the true figures were certainly higher
As in previous years, the vast majority of executions worldwide were carried out in a tiny handful of countries. In **China**, limited and incomplete records available to Amnesty International at the end of the year indicated that at least 3,400 people were executed, but the true figure was believed to be much higher. In March 2004 a delegate at the National People's Congress said that "nearly 10,000" people are executed per year in China. **Iran** executed at least 159 people, and **Viet Nam** at least 64. There were 59 executions in the **USA**, down from 65 in 2003.

TO OUR READERS

Regretfully we announce the impending retirement from the International Secretariat of Amnesty International of Eric Prokosch, Editor of the *Death Penalty News* and Theme Research Coordinator of the Policy and Evaluation Program, after 26 years of outstanding service in the cause of human rights.
