

DEATH PENALTY NEWS

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

MALTA, COTE D'IVOIRE ABOLISH DEATH PENALTY

Malta became the first country to abolish the death penalty for all crimes in the new millennium when the Armed Forces (Amendment) Act 2000 was promulgated on 21 March following approval of the Act by the House of Representatives and President Guido de Marco. The bill was moved by the Minister for Home Affairs, Dr Tonio Borg, and had the support of both the government and the opposition. Under its provisions life imprisonment replaces the death penalty for all offences.

Although the death penalty had been abolished in 1971 for ordinary crimes in the Criminal Code, it had been retained under the Armed Forces Act of 1970 for certain offences committed in time of war, such as aiding the enemy, desertion and taking part in a mutiny, by those subject to military law.

Eighteen executions have been carried out in Malta since 1876, the last in July 1943.

Côte d'Ivoire abolished the death penalty for all crimes on 23 July when a new constitution was adopted by referendum. Article 2 of the new Constitution stipulates that: "*toute sanction tendant à la privation de la vie humaine est interdite*" ("all penalties resulting in the deprivation of human life are prohibited"). Under Ivorian law the Constitution takes precedence over penal law, thus courts can no longer hand down death sentences.

Côte d'Ivoire has been abolitionist in practice for several decades although the death penalty remained on the statute books. The country's first president, Houphouët Boigny, who held office from independence in 1960 until 1993, was opposed to capital punishment and never allowed death sentences to be carried out.

In 1995, parliament extended the scope of the death penalty to cover offences such as robbery with violence, to be carried out by firing squad and in public. This was justified by Faustin Kouamé, then Minister of Justice, who publicly supported capital punishment on the grounds that crime was increasing and that this was "likely to compromise the harmonious development of Côte d'Ivoire by discouraging economic initiatives and, above all, foreign investment". This law was not ratified by the President at the time, Henri Konan Bédié, and no executions took place although death sentences continued to be handed down.

On 24 December 1999, President Bédié and his government were overthrown in the country's first military coup. A National Public Salvation Committee, composed of high ranking soldiers led by General Robert Guei, former Chief of Army Staff, took power. The new government drafted a constitution which excluded the death penalty.

Amnesty International groups in Côte d'Ivoire had pressed for abolition during the drafting of the constitution.

"The death penalty is disgusting, particularly if it condemns an innocent. But it remains an injustice even when it falls on someone who is guilty of a crime."

- *Giuliano Amato, Prime Minister of Italy, 14 September*

2000

commenting on a scheduled execution in Virginia, USA

Landmark Ruling on Jamaica - The Judicial Committee of the Privy Council (JCPC) in England on 12 September commuted the death sentences of six convicted prisoners in Jamaica in a judgment which may have far-reaching consequences on death penalty cases in the English-speaking Caribbean.

The JCPC, which serves as the final appeal court for Commonwealth countries such as Jamaica, Trinidad and Tobago, Barbados and the Bahamas, ruled that it is unlawful to execute prisoners whose appeals are pending before international bodies such as the Inter-American Commission of Human Rights and the United Nations Human Rights Committee.

The JCPC also ruled that the Jamaican Privy Council ("Mercy Committee") when considering whether to exercise the prerogative of mercy, must provide prisoners with an effective and adequate opportunity to participate in the mercy process, including notification of the date on which the Mercy Committee will consider the case, and the opportunity to make informed representations to the Committee and to challenge any inaccurate information before it.

USA: Poll Shows Support for Moratorium - A national poll of 802 voters conducted in August has found that 53% of the Americans surveyed are in favour of a moratorium on executions until a study is carried out on the fairness of how the death penalty is used.

The poll also found that the number of Americans who support capital punishment has dropped to 60% with 21% against and 19% undecided. Of those surveyed, 55% said it was necessary to ensure defendants have access to competent and experienced defence lawyers as well as DNA testing. Sixty-nine percent of respondents said they were most worried about an innocent person being wrongly executed with only 24% most worried that a guilty person would escape execution.

Speaking at a news conference launching the results of the poll on 14 September, Congressman William Delahunt, a former prosecutor from Massachusetts said: "These survey results show that most Americans are now appalled at the prospect that we are executing innocent people". The survey was commissioned by some members of Congress and the Justice Project, a group working to prevent wrongful executions. It was carried out jointly by two polling firms: Peter D Hart Research and American Viewpoint.

Campaign against Death Penalty Launched in India - The first National Conference of the Campaign against the Death Penalty was held in New Delhi on 22-23 July. The conference, which brought together eminent jurists and human rights campaigners headed by former Supreme Court Justice Krishna Iyer, was attended by 110 delegates from 15 states who urged the central and state governments of India to amend all laws which provides for the death penalty.

Calling for a "death sentence on the death sentence", the conference pointed out that the state consistently takes no constructive action to prevent crime, fails to initiate effective prosecutions and then turns to the death penalty as the popular response to crime. Outlining the discriminatory nature of the death penalty whereby most death sentences are handed down to the oppressed and marginalised sections of society, the delegates passed a resolution seeking a total moratorium for 10 years to be followed by abolition in all 25 states. The resolution also called for an immediate exemption from the death penalty for women, children, the disabled and persons over 60 years of age.

Executions Continue in Uzbekistan - **AI** has learned that 28-year-old Dimitry Chikunov, who had been sentenced to death for the killing of two men in April 1999, was executed in secret on 10 July in Tashkent. His death sentence was based on a confession reportedly extracted under torture.

Death sentences and executions in Uzbekistan have reached an alarmingly high number with at least 56 death sentences and 20 executions known to **AI** since the beginning of 1999. Since information about the death penalty is a state secret the real numbers may be much higher. The majority of these sentences followed the February 1999 bomb explosions in Tashkent which the Uzbek government claims were attempts on President Islam Karimov's life. President Karimov reportedly told journalists in April 1999: "I am prepared to rip off the heads of 200 people, to sacrifice their lives, in order to save peace and calm in the republic".

Pakistan Condemns Man to Death for Blasphemy - Mohammad Yousuf Ali, aged about 50 years and a member of a small Sufi order, was convicted of blasphemy and sentenced to death on 5 August in Pakistan's capital city, Lahore. He had been arrested in March 1997 but released on bail by order of the Lahore High Court in June 1999.

Mohammad Yousuf Ali was convicted on seven counts of blasphemy under section 295C of the Pakistani Penal Code, which carries a mandatory death sentence, for allegedly defiling the holy name of the Prophet Mohammad and was sentenced to 35 years' imprisonment with hard labour and a fine of 200,000 rupees (about US\$3,900) to be served and paid before execution. The complainant, who had never previously met Mohammad Yousuf Ali, alleged that he had claimed an inappropriate spiritual closeness to the Prophet Mohammad.

More than 3,000 people are under sentence of death in Pakistan, many sentenced by lower courts. **AI** recorded 13 executions in 1999 but as these are rarely publicised the true figure is likely to be much higher.

United Nations Sub-Commission Condemns Death Penalty on Juveniles The UN Sub-Commission on the Promotion and Protection of Human Rights, a panel of 26 human rights experts, held its annual three-week meeting in August in Geneva. Among other measures, the Sub-Commission unequivocally condemned the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence. It called upon states that retain the death penalty for people under 18 at the time of the crime to abolish that punishment for these young offenders as soon as possible and to remind judges that the imposition of the death penalty in such cases violates international law. It recommended that the UN Commission on Human Rights declare that the imposition of the death penalty on persons under 18 years old at the time of the offence is "in contravention of customary international law."

Russian Church Opposes Death Penalty - Meeting in Moscow, the Council of Bishops of the Russian Orthodox Church on 16 August called for an end to the death penalty, according to the ITAR-Tass news agency. The news report stated that the church opposes the death penalty because it can make judicial error irreparable.

USA News: Federal Government Schedules Execution - David Paul Hammer is scheduled to be executed on 15 November, the first prisoner to be executed under federal law since 1963, after he decided to give up his appeals. Another federal death row prisoner, Juan Raul Garza, who had been scheduled to die in August, received a stay of execution from President Bill Clinton so that he could appeal for commutation of his sentence to life imprisonment under new clemency guidelines governing federal capital cases. His execution date is now set for 12 December.

In September, the US Justice Department released the findings of its review of the federal death penalty. Attorney General Janet Reno admitted to being "troubled" by the survey, which showed marked racial and geographical disparities in the application of the death penalty at federal level. Around 80% of federal death row inmates are from racial or ethnic minorities, and such minorities account for about three quarters of the cases in which federal prosecutors seek the death penalty. An example of geographical disparities is that just three federal judicial districts, in Virginia, Puerto Rico and Missouri, accounted for nearly a quarter of the 183 cases since 1995 in which the prosecutor recommended that a death sentence be sought. Federal prosecutors in nearly half of the USA's 94 such districts have never recommended the death penalty.

National Survey - A survey carried out in September by *The New York Times* using government statistics has revealed that over the past 20 years the homicide rate in states with the death penalty has been 48% to 101% higher than in states without the death penalty. Ten of the 12 states without capital punishment have murder rates below the national average, despite having similar demographic profiles to states which retain the death penalty.

Georgia -For what is believed to be the first time in US legal history, DNA testing is being conducted which has the potential to exonerate a man posthumously. Ellis Wayne Felker, who maintained his innocence until his death, was executed in November 1996 for rape and murder.

Although lawyers for Ellis Wayne Felker had gained access some weeks before his execution to the prosecution's files on his case and found undisclosed evidence which had not been subjected to DNA testing, the execution nevertheless took place. Now, three newspapers and a TV network have obtained an

order under the Georgia Open Records Act, to finally perform these tests even though the results in this specific case may no longer prove conclusive.

Eighty-seven people who had been sentenced to death in the US have been proved wrongfully convicted; of those eight were absolved by DNA testing.

Alexander Williams, a mentally ill prisoner who was under 18 at the time of the crime, was 48 hours from execution in August in Georgia's electric chair when the state Supreme Court granted a reprieve, pending its decision in a separate case as to whether that particular mode of execution is constitutional. Alexander Williams would have been the fifth child offender executed in the USA this year, more than in any year since 1954.

Texas - Delma Banks, who was sentenced to death for a murder committed in 1980, had his sentence overturned by a federal court of appeal in August because of the "dismal" performance of his attorney. While the court did not cast doubt on the guilty verdict, the judges found that his lawyer failed to investigate his background and/or possible mitigating circumstances.

About one quarter of the prisoners on death row in Texas have been represented by lawyers who have been disciplined by the Texas State Bar Association, according to a report in *The Dallas Morning News* on 10 September.

INTERNATIONAL TREATIES

Bosnia and Herzegovina signed the Second Optional Protocol to the International Covenant on Civil and Political Rights on 7 September 2000, **Lithuania** on 14 September and **Sao Tomé and Príncipe** on 6 September, bringing the total of countries which have signed but not ratified the Protocol to six. Forty-three countries have ratified the Protocol.

Albania ratified Protocol No. 6 to the European Convention on Human Rights on 21 September 2000 and **Georgia** ratified it on 13 April, bringing the total of countries which have ratified the Protocol to 38.