

DEATH PENALTY SEPTEMBER 1996 NEWS

AMNESTY INTERNATIONAL

1 Easton Street

AI Index: ACT 53/03/96 London WC1X 8DJ

Distribution: SC/DP/PO/CO/GR United Kingdom

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

TOTAL ABOLITION IN BELGIUM

Belgium abolished the death penalty for all crimes in August 1996 following promulgation of the bill outlawing it by King Albert II and its publication in the official gazette on 1 August.

In December 1989 the government had submitted draft legislation calling for the complete abolition of capital punishment but by March 1990 agreement had only been reached to abolish the death penalty in peacetime. The Council of Ministers eventually approved a bill in September 1991 giving three reasons for abolition: that the death penalty is an ineffective punishment, that its inclusion in Belgian legislation is misleading, and that it has detrimental consequences for Belgium's international relations. However, parliament was dissolved before the bill could be tabled.

In November 1995 the Council of Ministers approved a draft bill to abolish the death penalty for all offences in both peace- and war time. This bill also addressed the structure of penalties by replacing the death penalty with life imprisonment and life imprisonment with detention for 20 to 30 years.

In June 1996 the Chamber of Representatives, one of two houses of the federal parliament, passed the bill by a vote of 129 to 13, and, with the Senate's implicit approval, Belgium became the 58th country to become wholly abolitionist in law.

The oldest known legislative proposal for abolition of capital punishment in Belgium dates from 1832, two years after the country's independence. Following this initiative, between 1835 and 1863 only 55 of the 848 prisoners sentenced to death were executed.

Under the Penal Code of 1867 the death penalty was provided for common crimes by public beheading, and firing squad for a military offence or a crime against the security of the state. Mandatory death sentences were introduced in June 1975 for kidnapping and in June 1976 for hijacking an aircraft, in both cases when aggravating circumstances could be proved. However, since 1863 death sentences for common criminal offences have always been commuted, with one exception: in March 1918 a soldier sentenced to death for the murder of a pregnant civilian was executed in Veurne (Furnes).

Some 15 people were executed in the course of the First World War for crimes against external state security; and following the Second World War, 242 people were executed by firing squad for war-related crimes against the external security of the state. The last execution in Belgium was in August 1950 of a woman sentenced to death for a war-related offence.

Belgium signed the Sixth Protocol to the European Convention on Human Rights, abolishing the death penalty for peacetime offences, on 28 April 1983. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was signed by Belgium on 12 July 1990.

The Flemish and French-speaking Amnesty International sections in Belgium had worked for many years for total abolition in the country by bringing the issue to public awareness and lobbying members of parliament.

CHILE DEBATES ABOLITION

A bill put forward by Senator Sebastián Piñera proposing the abolition of the death penalty is currently being debated by the Chilean Senate. Previous attempts by the government in 1990 to abolish the death penalty were blocked in Congress and since 1992 proposals to widen its scope have been studied in parliament.

Although no executions have been carried out in recent years, the courts continue to hand down death sentences both for political prisoners and people convicted of common crimes. Cupertino Segundo Andaur Contreras was sentenced to death by the Santiago Appeals Court on 30 May for the 1992 rape and murder of a nine-year-old boy. The sentence was upheld by the Second Chamber of the Supreme Court on 19 August but was commuted to life imprisonment on 29 August by President Eduardo Frei Ruiz-Tagle. In his statement commuting the sentence, President Frei stated "...I cannot believe that to defend life and punish the person that kills, the state should in its turn kill. The death penalty is as inhuman as the crime which motivates it."

The Chilean Section of AI is currently mounting a campaign in the country promoting abolition of the death penalty.

GUATEMALA EXECUTES TWO MEN

The first executions since 1983 were carried out in Guatemala on 13 September when Pedro Castillo Mendoza and Roberto Girón were shot by a firing squad. Guatemala's Supreme Court had turned down their appeal against their death sentences for the rape and murder of a four-year old girl in April 1993. Human rights organizations and the Inter-American Commission on Human Rights had succeeded in having the executions postponed three times because of concern about the safety of the verdicts. But President Alvaro Arzú, citing public support for the executions, denied clemency to the prisoners and stated he would act in accordance with the Supreme Court decision.

The executions were carried out at a penal institution 60 kilometres south of Guatemala City in the presence of the sentencing judge, Gustavo Gaitán Lara, and were observed by about 100 reporters who filmed the proceedings. When rifle volleys failed to kill one of the men, he was shot in the head by the commander of the firing squad. Coverage of the events, which were later televised and depicted in graphic press reports, led to a congressional committee studying a bill that would change the method of execution to lethal injection.

Along with Cuba, Guatemala is one of only two countries in Latin America which have carried out judicial executions during the past 10 years.

CALLS FOR SOUTH AFRICA TO REINSTATE DEATH PENALTY

Both President Nelson Mandela and former Archbishop Desmond Tutu have reaffirmed their opposition to the death penalty. Their statements follow calls for its review by African National Party (ANC) leaders meeting at a security summit in Cape Town in early September to discuss the problem of a burgeoning crime rate which the government admits is out of control. But, President Mandela told a news briefing, "There will be no review by this government. We have outlawed the capital sentence." And, he said, "We are determined that the death sentence will never come back in this country. It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain as it is."

While current ANC policy remains opposed to the death penalty, the summit heard Justice Minister Dullah Omar say that "the ANC ..should not be afraid to reassess its position on the death penalty". Reinstatement of the death penalty would have the support of parties in opposition to the ANC such as the National Party, the Freedom Front and the Inkatha Freedom Party, as well as 93% of South Africans according to a recent nationwide poll. However, Archbishop Tutu said that "It is obscene in its

illogicality to say we want to show our reverence for life by taking another life", adding that he opposed the death penalty as passionately as he had opposed apartheid. The Constitutional Assembly, which had had the constitution referred back to it for further amendment, completed the process on 11 October, retaining the unqualified right to life clause. The Constitutional Court can now finally certify the constitution. (See **Death Penalty News**, June 1996)

USA - Oregon

Douglas Wright became the first man in 34 years to be executed in the US state of Oregon when he died by lethal injection on 6 September. Wright had been sentenced to death in 1993 for the murder of three men two years earlier. Although other prisoners in Oregon have been under sentence of death far longer than Douglas Wright, he had waived appeals of his conviction, stating that he deserved to die. Governor John Kitzhaber, though reported to be opposed to the death penalty, did not commute the sentence.

Illinois

Four men were freed from Chicago's Cook County Jail in July, two of whom had been sentenced to death, as a result of investigations initiated by three journalism students.

Dennis Williams, Verneal Jimerson, Kenneth Adams and William Rainge spent 18 years in prison for a murder they did not commit. The ordeal of the so-called Ford Heights Four, black boyhood friends from a poor neighbourhood who had maintained their innocence throughout, began in May 1978 when a young couple, Carol Schmal and Lawrence Lionberg, were taken from a petrol station at gunpoint to a derelict house where Carol Schmal was raped and both were shot in the head. Police arrested the four after a tip-off. Even though the case relied largely on the evidence of 17-year-old Paula Grey who could neither read nor write and twice changed her testimony, the police failed to follow up further evidence. After Dennis Williams and William Rainge were convicted the Illinois Supreme Court ruled they had been provided with ineffective counsel; they were rearrested and faced a second trial which again found them guilty. Dennis Williams was again sentenced to death and William Rainge to life imprisonment. Prosecutors had refused to reopen the case until a Northwestern University journalism class studying the case as a project, found copies of police files implicating other men. One of them, Arthur Robinson, signed a confession in February which led to the case being reopened and DNA testing carried out on the victims which proved conclusively that none of the Ford Heights Four had been involved in the murders.

The County Attorney, Jack O'Malley, offering his regrets for the miscarriage of justice, called the convictions "a glaring example of the justice system's fallibility". The case has also highlighted the dangers of new federal limits on appeals in death penalty cases.

JESUIT PUBLICATION OPPOSES THE DEATH PENALTY

The deputy editor of the fortnightly journal of the Jesuit Society of Jesus Civiltà Cattolica (Catholic Civilization) has launched an appeal to condemn the death penalty. As reported in the daily newspaper La Repubblica on 26 July, Father Giuseppe De Rosa suggests that a definitive and unequivocal pronouncement by the Church and by the Pope on the issue of the death penalty would serve to counter a growing movement in favour of capital punishment as a perceived deterrent to rising crime. While noting that the 1992 Catechism of the Roman Catholic Church maintains that the death penalty is allowed only in cases of "extreme seriousness" in the context of the state's right to

exercise legitimate self-defence against those guilty of barbarous crimes, Father De Rosa invites the Catholic leadership to take action to "exclude also the theoretical possibility of the death penalty which is a medieval inheritance of the Church" alien to the early Christian communities.

NEWS IN BRIEF

Bahrain - The first execution in nearly 20 years was carried out by a firing squad on 26 March. 'Issa Ahmad Hassan Qambar had been sentenced to death by the High Criminal Court for the murder of a police sergeant in Nuwaidrat in March 1995 in the wake of clashes with security forces following mass demonstrations for more civil and political rights. The sentence had been upheld by an appeal court and the Court of Cassation and was ratified by the Amir, Shaikh 'Issa Bin Salman Al Khalifa, despite the fact that the trial did not comply with internationally recognised standards. 'Issa Ahmad Hassan Qambar had been denied access to a lawyer throughout his pre-trial detention and only saw him for the first time when he appeared in court. The trial was held *in camera*, family visits were denied during the last month before execution and the family was not notified of his impending execution.

Comoros - The first execution since independence in 1978 was carried out on 18 September when Ali Youssouf was executed by firing squad just one day after his sentence was passed. He had been convicted of murder by a religious court in the capital, Moroni, on 17 September and was executed without recourse to appeal against his sentence as the judges for the Appeals Court have yet to be named by the National Assembly.

Iran - A Tehran newspaper reported on 22 August that the parents of 22-year-old Said Hosseini pardoned their son's murderer at the foot of the gallows after watching three other condemned men hang. Ahmad Reza Pajar, 21 years old, was convicted of killing his friend and neighbour last year and was sentenced to be hanged in front of the family of his victim. The executioners had already blindfolded him and slipped the rope around his neck when his victim's parents asked that the sentence be revoked. The newspaper which reported this event added that Said Hosseini's parents received a warm welcome in their neighbourhood for their magnanimity.

According to an article in the Tehran daily newspaper Kayhan, a convicted murderer identified only as Niazali is appealing to his victim's family to pardon him because he has already survived one hanging. The newspaper quoted Niazali describing his hanging, which lasted for 20 minutes: "That first second lasted like a thousand years...I felt my arms and legs jerking out of control...Up on the gallows in the dark I was trying to fill my lungs with air but they were crumpled up like plastic bags. I have died once and paid for my mistake." **AI** has not been able to discover Niazali's fate.

Canada, which abolished the death penalty for ordinary crimes in 1976, agreed in July to extradite two of its citizens to the USA to stand trial for the murder of one of the men's relatives. Atif Rafay and Sebastian Burns, both aged 20, from Vancouver in British Columbia, are charged with the murder of Atif Rafay's parents and sister in 1994 in the US state of Washington, whose laws provide for the death penalty. Minister of Justice and Attorney General Allan Rock approved the extradition order by British Columbia's Supreme Court and stated that "the crimes...were committed on foreign soil and are subject to the foreign judicial system". The two men are appealing the decision.

In contrast, **Italy's** Constitutional Court has ruled that provisions in the country's Code of Penal Procedure which permit extradition for offences punishable by death in the country requesting

extradition are unconstitutional. The Ministry of Justice had earlier agreed to extradite Pietro Venezia, a 43-year old Italian charged with a murder committed in Miami, Florida in 1993, to the USA after receiving assurances from the US authorities that he would not be sentenced to death. The written ruling by the Court states that "the participation of the Italian State in the execution of penalties which in no case and for no type of crime could be imposed in Italy in peacetime is in itself in violation of the Constitution".

Poland - The Sejm (parliament) on 11 October rejected by 374 to 41 votes a draft law that would have lifted the moratorium on death penalty executions, in force since July 1995.

UN SAFEGUARDS ON THE DEATH PENALTY

Further progress in the tightening of UN safeguards on the death penalty was achieved in July when the UN Economic and Social Council (ECOSOC) adopted a resolution on "Safeguards Guaranteeing Protection of the Right of Those Facing the Death Penalty" (ECOSOC resolution 1996/15, adopted on 23 July 1996 without a vote).

The resolution, originally proposed by Austria, had been adopted by the UN Commission on Crime Prevention and Criminal Justice on 31 May and forwarded to ECOSOC for its consideration. ECOSOC adopted the resolution without amendment.

The resolution encourages UN member states "to ensure that defendants who do not sufficiently understand the language used in court are fully informed by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court" in capital cases.

It calls on member states "to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings as well as petitions for clemency".

Member states are also called upon "to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question". This paragraph is designed to prevent the situation which has arisen occasionally where a prisoner is executed even though an appeal is pending, ostensibly because the prison officials carrying out the execution were not aware of the appeal.

The resolution also urges member states "to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering". This paragraph makes it clear that prisoners under sentence of death should benefit from the provisions of the UN Standard Minimum Rules for the Treatment of Prisoners, such as its provisions for adequate food and exercise and for correspondence and visits with family members and friends.

BOOK REVIEWS

The Death Penalty: A Worldwide Perspective, Clarendon Press, Oxford, price £13.99 (paperback).

This new edition of the classic study by Roger Hood, Director of the Centre for Criminological Research at Oxford University, United Kingdom, was published in mid-1996.

Roger Hood's report was originally prepared for the UN Committee on Crime Prevention and Control in 1988. The new edition retains the chapter headings of the 1988 report but is longer and contains much new material, as well as an extensive bibliography and citations of over 60 court cases from different countries, an indication of the increasing importance of court rulings in setting international standards on the death penalty.

In the preface, Roger Hood states that in the six years since the first edition of the report, "the number

of countries which have abolished the death penalty has increased at an unprecedented rate, although a few have re-introduced it; the range of offences subject to the death penalty has contracted in many countries, but expanded in others; there are new facts to report on the number of executions carried out; much more is known about the extent to which states abide by the [1984] United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty; and much has been published, particularly in the United States of America, on the legal, ethical and practical aspects of administering capital punishment and on public attitudes towards it".

Roger Hood reaches two important conclusions on the lack of a proven unique deterrent effect of the death penalty:

- "The fact that all the evidence continues to point in the same direction is persuasive *a priori* evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty" (paragraph 253, page 187)

- "Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis and, in any case, needs to be weighed against other objections to the death penalty, such as the risk of wrongful conviction, arbitrariness and discrimination in its enforcement, and the suffering it causes" (paragraph 328, page 238)

Capital Punishment: Global Issues and Prospects, Waterside Press, United Kingdom, edited by Peter Hodgkinson and Andrew Rutherford, price £13.50 (paperback).

This book comprises 11 essays with much new material on the death penalty today in different parts of the world.

Especially valuable on chapters on the death penalty in the USA (by Hugo Adam Bedau), Russia and the Commonwealth of Independent States (Ger Pieter van den Berg), Post-Communist Europe (Stanislaw Frankowski), and English-speaking Africa (John Hatchard and Simon Coldham).

There is an intriguing article by Andrew Rutherford analysing the processes of change which led to the abolition of the death penalty in England and Wales but not in the USA.

INTERNATIONAL TREATIES

Moldova signed the Sixth Protocol to the European Convention on Human Rights on 2 May 1996 and the former Yugoslav Republic of **Macedonia** signed the Sixth Protocol on 14 June 1996.

Twenty-four countries have now ratified the Sixth Protocol. Five other countries have signed the protocol, indicating their intention to become parties at a later date.

DEATH PENALTY STATISTICS

Abolitionist and retentionist countries (30 September 1996)

Abolitionist for all crimes 58

Abolitionist for ordinary crimes only 15

Abolitionist de facto 26

Retentionist 95

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