

DEATH PENALTY NEWS

JUNE 1998

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

DEVELOPMENTS AT THE UNITED NATIONS

Call for Moratorium on Executions

At its annual session in Geneva, the United Nations Commission on Human Rights this year strengthened its call for a moratorium on executions. Resolution 1998/8, adopted on 3 April, states that the Commission "calls upon all States that still maintain the death penalty...to establish a moratorium on executions, with a view to completely abolishing the death penalty".

The language is stronger than that of resolution 1997/12, adopted last year by the same Commission, which called on retentionist states merely to "consider" suspending executions (see **DP News** March 1997). Other features of the 1997 resolution remain unchanged in this year's resolution, including a call "progressively to restrict the number of offences for which the death penalty may be imposed" and a request to the UN Secretary-General to prepare a yearly supplement to the UN quinquennial report on capital punishment covering changes in law and practice worldwide.

This year's resolution attracted significantly more co-sponsors - 65 states (there were 44 in 1997). The vote was slightly lower - 26 in favour, 13 against and 12 abstentions (the numbers were 27, 11 and 14 respectively in 1997). Many of the new co-sponsors had recently abolished the death penalty or suspended executions.

The resolution welcomed the report prepared in accordance with its previous year's request (UN document E/CN.4/1998/82). This report concludes among other things that "the trend towards abolition continues". It includes an annex reproducing information submitted by states. The submission by Mexico, in particular, gives extensive details of steps taken by the authorities of that country to assist its nationals facing the death penalty in the USA

Non-governmental organizations which lobbied in favour of the adoption of a strong resolution at the Commission on Human Rights included Amnesty International and Hands Off Cain. Both organizations made oral statements opposing the death penalty.

Special Rapporteur Calls for Laws to Protect Mentally Retarded; Attacks Use of Death Penalty in USA

In his annual report to the Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions added to his statements in earlier reports referring to the desirability of abolishing the death penalty and the need to ensure the highest standards of fair trial in capital cases (see **DP News** June 1997). This year's report states that governments that continue to use the death penalty against minors and the mentally ill "are particularly called upon to bring their domestic legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards." (*Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur...*, 23 December 1997, UN document E/CN.4/1998/68, paragraph 117)

This was the sixth annual report submitted by Mr Bacre Waly Ndiaye as Special Rapporteur and the fifteenth annual report since the mandate of the Special Rapporteur was established by the Commission on Human Rights in 1982.

In an addendum (UN document E/CN.4/1998/68/Add.3, dated 22 January 1998), also submitted to the Commission on Human Rights, Bacre Waly Ndiaye reported on his mission to the **USA**, carried out in September and October 1997. The Special Rapporteur reiterated the view of the UN Human Rights

Committee that the reservation on the use of the death penalty against juvenile offenders which the USA made when it ratified the International Covenant on Civil and Political Rights (ICCPR) is "incompatible with the object and purpose" of the treaty and should be considered void. He concluded that the US practice of imposing the death penalty on juvenile offenders violates international law, and that "the reintroduction of the death penalty and the extension of its scope, both at federal and at state level, contravene the spirit and purpose of article 6 of the ICCPR". He was also concerned by the execution of mentally retarded and insane persons in contravention of international standards.

The Special Rapporteur said that the "lack of adequate counsel and legal representation for many capital defendants is disturbing", and observed that the imposition of death sentences in the USA seems to continue to be marked by arbitrariness. He wrote that "race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."

The Special Rapporteur raised doubts about the objectivity of the imposition of the death penalty given its politicization in the USA, "particularly during election campaigns". He also wrote that "the discretionary power of the prosecutor as to whether or not to seek the death penalty raises serious concern regarding the fairness of its administration." The Special Rapporteur acknowledged that polls continue to demonstrate an apparently high level of public support for the death penalty, but said that this "cannot justify the lack of respect for the restrictions and safeguards surrounding its use. In many countries, mob killings and lynchings enjoy public support as a way to deal with violent crime and are often portrayed as 'popular justice'. Yet they are not acceptable in any civilized society."

The report acknowledged the difficult struggle against violent crime, but suggested that "the inherent cruelty of executions might only lead to the perpetuation of a culture of violence" and that alternative solutions to the death penalty be sought. He also expressed concern at the current approach to victims rights, and stated that although "victims are entitled to respect and compassion, access to justice and prompt redress, these rights should not be implemented at the expense of those of the accused. Courts should not become a forum for retaliation."

Special Rapporteur Reports on Iraq

A report (UN document E/CN.4/1998/67) presented to the UN Commission on Human Rights in April by the UN Special Rapporteur on Iraq, former Foreign Minister of the Netherlands Max van der Stoep, stated that the government of Iraq executed at least 1500 people last year, mainly for political reasons. Most of the executions were ordered during November and December 1997 reportedly in a mass effort to clear the prisons of prisoners condemned to death or serving sentences of 15 years or more.

Iraqi law allows execution for crimes such as publicly and flagrantly insulting the President of the Republic, double membership in political parties and political activity in the army. The news media is strictly controlled.

ETHIOPIA RESUMES EXECUTIONS

Jamil Yasin Mohamed, a prominent businessman of Eritrean origin, was executed on 2 June in the Central Prison of the Ethiopian capital Addis Ababa. He had been convicted of the murder of Major General Hayelom Araya in April 1996. His judicial appeal and petition for clemency were rejected.

The execution was the first carried out since the overthrow of the Dergue (military government) in 1991. It may herald further executions if death sentences are imposed in the current trial of Dergue members and future trials of more than 2000 former officials charged with genocide. The timing of the execution however, linked it to the outbreak of border fighting in May 1998 between Ethiopia and Eritrea.

AFGHANISTAN: EXECUTION BY CRUSHING

Public executions following unfair trials by rudimentary courts are increasingly being reported. The Taliban authorities who rule the country use methods of execution such as hanging from cranes, throat slitting and collapsing walls. In recent months at least five men, convicted of sodomy by Islamic *Shari'a* courts, were placed next to standing walls and then buried under the rubble as the walls toppled upon

them. Two of the men did not die until the next day in hospital; one survived. In March, 30,000 spectators were told to gather in the capital Kabuls national stadium to watch the brother of a murdered man shoot the alleged killer with a machine gun.

Responding to international criticism, Taleban officials were quoted by Reuters news agency as saying: The Islamic Emirate will bow under no kind of influence in the implementation and enacting of *Shari'a* punishment and divine orders.

RWANDA: EXECUTIONS FOR 1994 GENOCIDE

Twenty-two men and one woman accused of participating in the genocide of 1994 were executed by firing squad on 24 April in the capital, Kigali, and four other towns. The executions, held in public, were attended by large crowds which included scores of children. Many of those executed had had unfair trials, including a former assistant prosecutor whose witnesses had been threatened and intimidated. Several defendants did not have access to a defence lawyer.

Prominent leaders and organizations including Pope John Paul, the UN Secretary General Kofi Annan and the European Union, have strongly protested against the executions.

PAKISTAN: "A MURDER OF JUSTICE"

A recent execution in Pakistan has gone ahead despite strong evidence of the prisoner's innocence.

Maqsood Ahmed was arrested in May 1989 for allegedly shooting a man during a robbery and was sentenced to death several years later. His conviction and sentence were confirmed by the Lahore High Court. He was awaiting execution when two criminal suspects arrested in another context confessed to the murder. In addition, a Superintendent of Police stated that Maqsood could not have committed the offence as he was in police custody in connection with a minor offence at the time of the murder. Despite the new evidence Maqsood was executed in February. His defence lawyer called the execution a "murder of justice".

According to the non-governmental Human Rights Commission of Pakistan some 2855 people were under sentence of death in mid-1997; the number has grown since then. Among the 226 death sentences recorded by **AI** in 1997, at least 84 prisoners had been convicted by special courts set up to combat "terrorist" offences in August 1997. **AI** has pointed out that the procedures of these courts fall far short of international norms for a fair trial.

CHINA: PRISONERS TORTURED TO CONFESS

A case of an apparently innocent person sentenced to death emerged in May in a report in the China Youth Daily newspaper. According to the account, Chen Jinchang, along with three other youths, was arrested in April 1995 in Yunnan Province for murder and robbery. They were tortured for seven days to confess to the crime. Chen was sentenced to death; the others received sentences ranging from five to 15 years' imprisonment. In May 1996 the Higher Peoples Court decided Chens sentence was too harsh and reduced it to a suspended death sentence. Although some 25 people were able to provide alibis for the youths, it was not until another person in custody confessed to the crime that a reinvestigation was instigated. As a result 10 police officers were disciplined, four were dismissed and one was transferred to another team.

Although **AI** has reason to fear that many confessions are extracted from prisoners in China as a result of torture, it is rare for a case where the prisoner is sentenced to death to be reported in the Chinese press.

USA

International Law Defied - On 14 April Angel Francisco Breard, a Paraguayan citizen, was executed in the state of **Virginia** in flagrant disregard of an International Court of Justice (ICJ) ruling that the execution be postponed pending full adjudication by the ICJ.

The arresting authorities had failed to inform Angel Breard of his rights under Article 36 of the Vienna Convention on Consular Relations to seek assistance from the Paraguayan authorities. The execution went ahead despite a plea from the US Secretary of State Madeleine Albright that it be postponed. She cited her fear that it might endanger US citizens' rights to consular access when arrested in other countries.

More than 60 foreign citizens representing 22 nationalities are under sentence of death in the USA. In almost every case, the arresting authorities failed to notify detained foreigners of their right to communicate with their consular representatives. Since 1993 the USA has executed at least five foreign nationals including citizens of the Dominican Republic, Mexico and Cuba.

Racial bias - The Inter-American Commission on Human Rights has found that the USA violated international law in a death penalty case because of racial bias, among other grounds. William Andrews was sentenced to death in Utah in 1974 by an all-white jury. During the trial, a note was found among the jury depicting a hanging with the caption "Hang the Nigger's" (sic). No inquiry was made to determine how many of the jurors had seen or may have been involved in the drawing of the note and what its impact was on their deliberations. William Andrews was executed 18 years later in July 1992.

Kentucky passed a law in April which allows prisoners sentenced to death to seek a review of whether race played a role in their prosecution. Senator Gerald Neal, the bills sponsor, said: "The goal of Senate Bill 171 is to ensure that race doesn't play a role in decisions to seek or impose the death penalty".

Two juvenile offenders executed in Texas - Joseph Cannon was executed on 22 April for a murder committed in 1977 when he was 17 years old. He was a diagnosed schizophrenic who had been badly abused as child. His attorney, Stanley Schneider, had asked the San Antonio District Judge to block the execution by arguing that the law allowing the death penalty for crimes committed by juveniles is unconstitutional. Despite appeals to spare his life from Pope John Paul, members of the Italian parliament, and South African Archbishop Desmond Tutu, Governor George Bush refused to intervene.

Robert Carter was executed in Texas on 18 May for a murder committed in 1981 when he was 17 years old. The jury deliberated for only 10 minutes before sentencing him to death on the basis of a confession he had made without a lawyer present after he was interrogated in isolation. His attorneys failed to inform the jury of potentially mitigating factors such as his significant mental retardation and his extremely abused childhood. His petition to the US Supreme Court to block the execution was rejected.

Seven juvenile offenders have been executed in Texas since the state resumed executions in 1982.

NEWS IN BRIEF

MYANMAR - Six men have been sentenced to death in connection with an alleged anti-government "plot" to "instigate public unrest". All are believed to have been arrested in January.

EGYPT - Two men were executed at al-Isti'naf Prison in Cairo on 24 May. They had been sentenced to death in October 1997 after an unfair trial on charges of carrying out a fire bomb and gun attack on a tourist bus in central Cairo in September 1997 when nine German tourists and their Egyptian driver were killed.

On 11 June two men were executed at Isti'naf Prison who had been sentenced to death by the (Emergency) Supreme State Security Court in Cairo in November 1997. They had previously been acquitted of the same charges at an earlier trial by the same court in 1995 when the court ruled that their confessions had been extracted under torture. Neither of the men were released from detention following their acquittal; instead they were retried at the behest of the Prime Minister and sentenced to death.

Since January, some 30 people have been sentenced to death in Egypt and 25 executed including two women. Since April, television stations have been allowed to show the preparation of the condemned; a journalist even asked one condemned man how he felt before being hanged.

LEBANON - Two public executions took place in the central square of Tabarja, north of Beirut, at 5 am on 19 May. Some 1500 people are believed to have attended the executions, including dozens of human rights activists protesting against the death penalty. The bodies of the two prisoners reportedly remained on display for an hour.

SINGAPORE - Two men convicted for murder in 1996 were executed on 29 May. A 19-year-old youth convicted with them had his death sentence commuted by President Ong Teng Cheong, a rare occurrence in Singapore where in the past 35 years only five other such commutations are known to have been granted.

In June Singapore extended the death penalty as a mandatory punishment to include the crime of trafficking in more than 250 grams of crystal methamphetamine. Since the beginning of 1998, **AI** has recorded eight executions, six of which were for drug offences.

TRINIDAD AND TOBAGO - In a move designed to eliminate appeals by death row prisoners to the Inter-American Commission on Human Rights, the government of Trinidad and Tobago announced in late May that it was withdrawing as a state party from the American Convention on Human Rights. Trinidad and Tobago has also withdrawn from the (first) Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and has filed an instrument to rejoin the Optional Protocol with a reservation which would preclude the Human Rights Committee set up under the ICCPR from considering petitions brought by or on behalf of death row prisoners.

These and similar moves by Jamaica (see **DP News** December 1997), designed to speed up executions, represent significant threats to the international system for the protection of human rights.

EQUATORIAL GUINEA - Fifteen men were sentenced to death by a military court on 1 June in Malabo, the capital. They had been found guilty in May of treason, terrorism and illegal possession of explosives. The defendants claimed they had been tortured to extract confessions from them but despite the fact that most of them showed signs of torture, such as fractured feet and hands, the court disregarded their claims. **AI** understands President Obiang Nguema has suspended the executions but fears the suspension could be lifted at any moment.

UNITED KINGDOM - The House of Commons, the lower house of parliament, voted on 20 May by 294 votes to 136 to incorporate into national law Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty. The government subsequently announced it would ratify Protocol No. 6. The UK is the only member of the European Union not to have ratified Protocol No. 6.

INTERNATIONAL TREATIES

Nepal ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on 4 March 1998, bringing the total number of ratifications to 32. Four other states have signed the protocol.

Costa Rica ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty on 26 May 1998 bringing the total number of ratifications to five. Two other states have signed the protocol.

DEATH PENALTY STATISTICS

Abolitionist and retentionist countries (15 June 1998)

Abolitionist for all crimes**63****Abolitionist for ordinary crimes 16****Abolitionist de facto 24****Retentionist 92**