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AGAINST THE TIDE

The death penalty in Southeast Asia

INTRODUCTION

As the 21st century approaches, an increasing number of countries from widely different regions and cultural traditions are moving to abolish the death penalty. Over half the countries in the world are now abolitionist in law or in practice. Since 1989 more than twenty countries and territories have abolished the death penalty for ordinary crimes or for all crimes. They include countries and territories in Asia (Cambodia, Hong Kong), Africa (Angola, Mauritius, Mozambique, South Africa) and Latin America (Paraguay). The nations of ASEAN¹ are a notable exception to this trend. All retain the death penalty for a wide variety of crimes and in some countries - notably Singapore and Viet Nam - the number of executions is believed to have risen sharply in recent years.

Although there are known to have been high numbers of executions in some of the ASEAN countries, two have not carried out any executions for many years. Brunei Darussalam is not known to have executed any prisoners since 1957, leading observers to consider it abolitionist *de facto*. In the Philippines there have been no executions since 1976, although since 1994 more than 200 people have been sentenced to death and there are fears that executions may resume in 1997.

Other neighbouring countries have followed the worldwide trend towards abolition. Australia and New Zealand, both members of the ASEAN Regional Forum, abolished the death penalty in 1985 and 1989 respectively. Both countries have also acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), a binding international agreement to abolish the death penalty. Cambodia abolished the death penalty in April 1989. Seven countries in the Pacific have abolished the death penalty for all crimes, one has abolished it for common crimes and three are abolitionist *de facto*.

A factor contributing to concern about the death penalty in ASEAN is the failure of ASEAN governments to release information about judicial executions carried out in their countries. In several of the countries executions have been carried out in secret. The lack of official statistics means that the true number of executions remains unknown. There is also very little public information about prisoners currently on death row in the majority of the countries.

Nationals of ASEAN member states have been executed or are currently under sentence of death in neighbouring ASEAN countries, a situation which has often caused an increase in the number of ASEAN voices - both government and non-government - against the death penalty. One prominent case was the execution in Singapore of Flor Contemplacion, a Filipino domestic worker and mother of four

¹ASEAN - the Association of Southeast Asian Nations - was established in 1967 with three main objectives: (1) to promote the economic, cultural and social development of the region (2) to safeguard regional peace and stability and (3) to serve as a forum for the resolution of intra-regional differences. The five original members are Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined on gaining independence in 1984 and Viet Nam became the seventh member in July 1995.

children, who was convicted of murder. She was hanged in March 1995 despite international concern about the fairness of her trial and a last-minute appeal by President Ramos of the Philippines for clemency. Her execution caused public outrage in the Philippines and sparked a diplomatic row between Singapore and the Philippines, leading to both countries withdrawing their ambassadors for several months. In other cases, however, interventions by government officials on behalf of nationals of their state have been successful. A number of Indonesians sentenced to death in Malaysia, for example, have reportedly had their sentences commuted to prison terms following pressure from the Indonesian Government.

The tension created by the possible execution of each others' nationals prompted the Attorneys General of the ASEAN states to discuss this at a meeting in July 1995. Following the meeting the Attorneys General signed an ASEAN statement known as the Jakarta Consensus on Cooperation in the Legal Field, in which they agreed *inter alia* to exchange information on ASEAN nationals under sentence of death in each others' countries. Amnesty International welcomes this new forum for discussion of the death penalty but hopes that it will lead not only to greater openness about all ASEAN nationals on death row in ASEAN countries, but also to debate about the use of the death penalty in the region.

Many people in Southeast Asia point to rising crime rates as a compelling reason to impose the death penalty. Indeed public anger at examples of the most heinous of crimes, such as the rape and murder of children, have fuelled support for punishment by execution, in countries such as the Philippines. There is justifiable concern within ASEAN about increasing drug addiction and drug-related crimes. Yet there is no convincing evidence to support the assertion that the death penalty deters crime more effectively than any other punishment. A survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded that "[r]esearch 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...."²

Despite an array of harsh legislation and a high number of executions in the region for drug offences, both the supply of drugs and the level of addiction have continued to rise. Those executed for drugs offences tend to be at the lower levels of the narcotics trade and comprise mostly small-time addicts and individual couriers who are often ill-educated, young or economically vulnerable, while those who organize and profit from the crimes frequently escape capture and prosecution.

Another major concern is that some ASEAN countries have enacted laws which undermine international norms for a fair trial, including for people who face the death penalty. In Malaysia and Singapore, for example, the presumption of innocence is weakened by the provision in certain laws that the possession of drugs shall be taken as evidence of trafficking unless the contrary is proved. Furthermore, in a number of the ASEAN countries there are mandatory death sentences for certain crimes which provide no leeway at all for mitigating circumstances. Foreigners, including nationals of

²Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, 1996, page 238.

other ASEAN states, may be tried for offences which carry the death penalty, but in some of the countries facilities for courtroom interpretation are inadequate or totally lacking, often in contravention of that country's own legal procedures.

No criminal justice system in the world is completely immune to errors. Yet a single mistake which leads to the execution of an innocent person represents a shocking failure of justice. The risk of such failures may be heightened when justice systems are vulnerable to political pressure or to undue influence by the powerful or wealthy. The death penalty is often imposed on those with fewer resources available for their defence, or whose social status has made them vulnerable to unfair conviction. In some cases in the region, Amnesty International has recorded instances of executions of people who may well have been completely innocent of the crime for which they had been convicted.

The country studies which follow serve to outline the use of the death penalty in ASEAN. As the countries of the region become economically vibrant it is likely that they will also become increasingly assertive in seeking to influence international opinion. The tendency for increased use of the death penalty in the region is a growing source of concern for Amnesty International and all those working in support of the United Nations General Assembly's position that it is desirable to abolish the death penalty in all countries and that the crimes to which it applies should be progressively reduced. Amnesty International urges the ASEAN countries to call a halt to any further executions and to work towards abolition of the death penalty.

AMNESTY INTERNATIONAL AND ITS WORK AGAINST THE DEATH PENALTY

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The organization has more than one million members in 192 different countries and territories, including in ASEAN countries. Amnesty International is impartial and is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the protection of the human rights involved in each case.

Amnesty International opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of one of the most fundamental of human rights - the right to life. Amnesty International does not condone the crimes for which people may be sentenced to death and it recognizes the suffering of the victims of crime and their families. The organization believes however that the death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is provided.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE ASEAN GOVERNMENTS

The death penalty is not proven to be a uniquely effective deterrent against crime. As this document shows, those sentenced to death or executed in ASEAN countries are often poorer, less educated and more vulnerable than average. In many capital cases there are serious concerns that the trial proceedings were unfair. Amnesty International calls on the ASEAN governments to abolish the death penalty for all crimes. Pending total abolition, the organization urges the ASEAN governments to:

- < Address within the Jakarta Consensus on Cooperation in the Legal Field shortcomings in legislation and trial procedures, so that any individual facing the death penalty is tried in accordance with international human rights standards for fair trial;
- < Ensure that no ASEAN state has legal provisions under which the onus is put on the defendant to prove their innocence;
- < Work towards the abolition throughout ASEAN of legal provisions which make the death penalty mandatory for certain offences;
- < Reduce the number of crimes for which the death penalty may be imposed;
- < Ensure that there are adequate government records which are publicly available about individuals sentenced to death.

BRUNEI DARUSSALAM

FACTS AND FIGURES AT A GLANCE	
Capital offences	The death penalty is mandatory for murder, unlawful possession of firearms and explosives, and drug trafficking.
Appeals procedure	Appeals are heard by the President of the Court of Appeal. The Sultan of Brunei is empowered to commute death sentences to terms of imprisonment.
Number of prisoners under sentence of death	Not known
Number of executions carried out	No executions are known to have been carried out since 1957.
Method of execution	Hanging

The Sultanate of Brunei became a British protectorate in 1888 but took control of internal matters in 1959. Since an abortive rebellion in December 1962 the Sultanate has been ruled by emergency legislation which has been extended every two years. The Sultanate became fully independent in January 1984 under the new name of Brunei Darussalam, but emergency legislation remains in force.

The number of offences punishable by death has increased since 1979 with the introduction of new legislation or amendments to existing laws. The death penalty is provided for by the Penal Code; the Internal Security Enactment 1982; and the Public Order Enactment 1982. However, in December 1982 the death penalty for drug offences was introduced and is embodied in the Second Schedule to the Misuse of Drugs Enactment 1978, as amended by the Emergency (Misuse of Drugs) Amendments Order 1984. This order provides for the death penalty as a mandatory punishment for the unauthorized trafficking, import or export of over 15 grams of morphine or heroin; possession of over 30 grams of morphine or heroin for the purpose of unauthorized trafficking; and unauthorized manufacture of morphine or heroin. According to news reports, the death penalty was extended in July 1992 to cover possession of more than 200 grams of cannabis or opium.

Amnesty International is only aware of three death sentences having been passed in Brunei Darussalam since 1967. The first occasion was in 1987, when a 44-year-old farm labourer was reportedly sentenced to death for murder and firearms possession. The following year, on 29 August 1988, Bruneian Sanli bin Sunggoh, 26 years old, and Omar Usman Mohammad alias Majid bin Amara, a

22-year-old Filipino, were convicted of murdering and robbing Ong Hong King, a fishmonger, on 15 October 1987. The two men were sentenced to death by the Brunei High Court.

The outcome of the two preceding cases is not known. No executions are known to have been carried out in Brunei Darussalam since 1957.

INDONESIA

FACTS AND FIGURES AT A GLANCE	
Capital offences	Crimes against state security, assassination of senior state officials, murder, theft resulting in murder, piracy, drug offences.
Appeals procedure	Prisoners sentenced to death by civilian and military courts have the right to appeal to the relevant high court and then the Supreme Court. A request for Presidential Clemency can be made any time after the initial sentence, but is usually made if the death sentence has been upheld in the courts.
Number of prisoners under sentence of death	At least 26, five of whom are political prisoners who have been on death row for over 20 years. The remaining prisoners are mainly convicted of murder or drug trafficking offences.
Number of executions carried out	39 people have been executed since 1978. Of these, 30 were political prisoners.
Method of execution	Shooting by firing squad

The death penalty in Indonesia is used to punish both political and criminal offences. Apart from the inherent cruelty of the death penalty, there are elements within the trial and appeal procedures in Indonesia which further exacerbate the cruelty of this form of punishment and heighten the risk that an innocent person may be executed. In particular, Amnesty International is concerned that corruption and a lack of judicial independence sharply increase the risk of wrongful execution; that non-Indonesian defendants facing the death penalty do not have access to adequate translation facilities during both trial and appeals; and that delays in the appeal process result in prolonged confinement under sentence of death.

In the seven years from 1985 to 1992 there were 30 executions compared to four in the previous decade. Between December 1992 and the beginning of 1995 there were no executions, which led many observers to believe that Indonesia may have been moving towards at least *de facto* abolition of the death penalty. Indeed, some government and judicial authorities appeared sensitive to arguments against the death penalty. In an unprecedented decision taken in 1988, the Indonesian Supreme Court ruled that the

death penalty was inconsistent with the state ideology - *Pancasila*. However, three executions were carried out in early 1995 raising concerns again that other prisoners on death row may now be at increased risk of execution.

Chan Ting Chong (alias Steven Chong) - one of those executed in 1995 - had been on death row for nine years prior to his execution. Sentenced to death in 1986 by the District Court in West Jakarta, Malaysian national Chan Ting Chong was the first person to be executed in Indonesia for drug-related offences. Chan Ting Chong always claimed he was innocent and that he had been set-up. In 1990 he asked for his trial to be reviewed after another Malaysian involved in the case withdrew his statement which accused Chan Ting Chong of being the owner of the heroin. Previous appeals to both the High and Supreme Courts had also failed, as did his request for presidential clemency in 1991. As is generally the case in Indonesia, little or no warning was given before Chan Ting Chong was executed.

At least 26 people are currently on death row in Indonesia. This number includes at least five people, all non-Indonesians, under sentence of death for drug offences and 15 for murder. There are also five political prisoners on death row - Asep Suryaman, Sukatno, Bungkus, Nataneal Marsudi and Isnanto. All five were sentenced to death for their alleged role in the 1965 coup or for membership of the Communist Party of Indonesia (PKI) and have been on death row for between 21 and 28 years.

Twenty-two people have been executed since 1985 for their alleged links with the coup attempt. The threat that the remaining five will be executed remains very real. In August 1995, the Minister of Justice, Utoyo Usman announced that two political prisoners in Cipinang Prison, Jakarta, would be executed imminently. The names of the two were not given but they were widely believed to be Bungkus and Nataneal Marsudi. In the end the executions did not take place. However, the threat that all five men may be executed has not been lifted since all but Isnanto are believed to have had their appeals for presidential clemency rejected, the last legal obstacle before the sentence is carried out.

At least four of the five remaining prisoners sentenced to death in connection with the 1965 alleged coup attempt are believed to be in poor health and many others have already died in prison from old-age and illness. One, Ruslan Wijayasastra, arrested in 1968 and sentenced to death six years later, died in April 1995. Prior to his death, he had become partially paralysed, almost blind and unable to walk. One Indonesia human rights activist commented on Ruslan's death that, "[t]hey gave him a death sentence - but they saved on the bullet."

A major concern on the use of the death penalty is the lack of an independent judiciary in Indonesia. The courts are administered by the Ministry of Justice. Judges, court officials and public prosecutors are therefore dependent on the executive branch for their salaries, promotions and other benefits. All government employees, including judges, must be members of the sole civil servants' organization, KORPRI, which operates under the auspices of the powerful Ministry of Home Affairs. The President may intervene directly in judicial matters, by indicating cases which he wishes to see pursued.

Those facing the death penalty are often powerless to challenge the prosecution. One example is the trial of Kamjai Khong Thavorn, a Thai seaman, who was arrested in August 1987 in Samarinda, East Kalimantan, after Indonesian customs officials found 17.76 kilograms of heroin in his cabin. Kamjai Khong Thavorn's original trial, as well as subsequent appeals and legal procedures, were conducted in Indonesian, which he could neither speak or understand at the time. There have also been suggestions that some of the prosecution evidence may have been falsified. In addition, some stages of the appeals process appear to have been carried out without the knowledge or agreement of either the defendant or his lawyers. Evidence emerged after the trial that strongly suggests that Kamjai Khong Thavorn is innocent or else a very minor actor in a large drugs smuggling operation. Despite this, Kamjai Khong Thavorn's appeals to the High and Supreme Court have been turned down as has his request for presidential clemency. There is now no legal obstacle to prevent his sentence from being carried out.

Cases involving offences punishable by death are tried either in regular criminal courts, or, if the accused is a member of the armed forces or police, in a military court. The Criminal Procedure Code requires that defence counsel is provided in all cases where the death penalty may be imposed. An individual sentenced to death in either a military or civilian court may appeal to the relevant high court and then to the Supreme Court. Delays in the appeals process are often lengthy. One man allegedly involved in the 1965 coup attempt, Norbertus (Noor) Rohayan, was sentenced to death by a Regional Military Court in Jakarta. He appealed immediately, but heard nothing about the status of his appeal until 3 February 1987 (18 years later), when he was told that his appeal had been made too late. Norbertus Rohayan's appeal for presidential clemency was turned down in the same year and he was executed in February 1990.

A prisoner may request clemency from the President at any stage after the initial sentence, but clemency appears to be granted rarely. Some prisoners refuse to request presidential clemency fearing that if it is refused then there is nothing preventing the sentence from being carried out. Sukatno, another of the 1965 prisoners and a member of parliament prior to the alleged coup who was sentenced to death in 1971 has consistently refused to request clemency. Pressure was exerted on him by military and prison authorities to make the request or to state in writing that he does not wish to do so. It later became known that the District Court of Central Jakarta had requested clemency in 1986 without Sukatno's knowledge. The request was formally rejected on 13 May 1992. Sukatno, now aged 67, remains on death row at Cipinang Prison Jakarta and is said to be seriously ill both physically and mentally.

MALAYSIA

FACTS AND FIGURES AT A GLANCE	
Capital offences	The death penalty is mandatory for trafficking in a number of specified drugs. The Dangerous Drugs Act stipulates that any person found in possession of at least 15 grams of heroin, 1,000 grams of opium or 200 grams of cannabis is presumed, unless the contrary can be proved, to be trafficking in the drug. The death penalty is also mandatory for murder and certain firearms offences.
Appeals procedure	Death sentences may be passed by the High Court. Appeals are made to the Supreme Court. The final stage in the judicial process is an appeal to the <i>Yang di-Pertuan Agong</i> (the King of Malaysia and Supreme Head of State) who has the power to grant clemency.
Number of prisoners under sentence of death	245 people were under sentence of death in July 1996
Number of executions carried out	349 people were executed between 1970 and March 1996, according to government statistics. 139 of these executions have been carried out since 1990, mostly for drug-trafficking. Amnesty International recorded three executions in the first few months of 1996.
Method of execution	Hanging

Until recently Amnesty International was unaware of the true number of executions in Malaysia as official statistics are not made public. However, the authorities revealed recently that between 1970 and March 1996, a total of 349 people were executed. It is believed that the majority of executions were for drug offences. Since 1993 Amnesty International has recorded at least 43 new death sentences, although the real figure may be higher. This figure includes death sentences passed on three Thai nationals - Arwae Puteh, Ahmad Yusof and Tuan Mat Tuan Ismail - all of whom were convicted of drug trafficking. In 1992 a total of 39 people were executed, the highest figure recorded for any one year. Since then the

figure has declined steadily (29 executions in 1993, ten in 1994, five in 1995 and three in the first few months of 1996). Amnesty International welcomes this decline and hopes that the trend towards fewer executions will continue.

Drug abuse is a major issue of concern in Malaysia, partly due to the country's proximity to the opium-producing countries of Laos, Myanmar (Burma) and Thailand, known as the "Golden Triangle". The International Narcotics Control Board in its 1994 report commented that the increasing availability of heroin has contributed to the growing demand for the drug in Malaysia. It is becoming increasingly apparent that imposition of the death penalty is not having a deterrent effect on drug-trafficking or drug abuse in the country; the number of drug addicts is reported to have risen by more than 18 percent in 1995. According to police records there are more than 207,000 drug addicts in the country.³ In June 1996 the Minister of Health announced that those found guilty of trafficking in the drug Ecstasy would also be sentenced to death.

The Dangerous Drugs Act stipulates a mandatory death sentence for drug trafficking and places the onus on the accused to prove their innocence rather than on the State to prove their guilt. This contravenes a basic principle of Malaysian jurisprudence as well as international legal safeguards which stipulate that the accused has the right to be presumed innocent until proven guilty. In its 1995 report the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions⁴ urged the Malaysian Government to review its anti-drug-trafficking legislation, expressing particular concern about the provisions contained in the Dangerous Drugs Act which lay the burden of proof upon the defendant. The Special Rapporteur also expressed concern that under the Act evidence provided by *agents provocateurs* - who may be police or customs officers - is admissible and rewards are authorized to be paid for such evidence.

In the early 1990s five young Filipinos were sentenced to death under the Dangerous Drugs Act. Basar Jikirie, Assidin Itting, Kullah Lawari, Roger Anang and Rudy Jamjali were all aged under 18 at the time their alleged crimes were committed. International human rights standards⁵ stipulate that no one under 18 at the time of the crime may be sentenced to death. Roger Anang's death sentence was commuted to life imprisonment and six strokes of the cane in October 1993. Basar Jikirie's sentence was commuted in 1994. Amnesty International is unaware of the fate of the three other young men.

In 1993 another Filipino national, Hassim Escandar, was convicted of drug- trafficking under the Dangerous Drugs Act on the basis of two keys which were allegedly found in his possession. The keys

³Report in the Malaysian *Star* newspaper of 23 May 1996.

⁴E/CN.4/1995/61

⁵Safeguards adopted by the UN Economic and Social Council and endorsed by the UN General Assembly in 1984 in Resolution 39/118.

fitted the padlock of a bag containing about five kilograms of cannabis which was discovered under the seat of the conductor of the bus in which Hassim Escandar was travelling. Hassim Escandar always maintained his innocence, but was hanged for drug-trafficking in April 1993.

Five Indonesians are currently under sentence of death in Malaysia for crimes ranging from drug-trafficking to murder. A number of other Indonesians are reported to have had their sentences commuted to prison terms following pressure from the Indonesian Government.

In the last two years Amnesty International has recorded several commutations of death sentences to life imprisonment. The majority were cases in which charges were reduced on appeal from trafficking in drugs, which carries a mandatory death sentence, to possession of drugs, which is not a capital offence. In a number of reported cases prisoners previously sentenced to death were released on appeal. In July 1996, S. Arulpragasam, a 28-year-old Malaysian lorry driver, was acquitted on appeal by the Supreme Court. He had been sentenced to death by the Penang High Court in December 1992 for trafficking in just over one kilogram of cannabis. In his appeal his lawyer submitted that the trial judge had "seriously misdirected himself in law" and that the prosecution had failed to prove the case beyond reasonable doubt.

Amnesty International is gravely concerned by the risk that other innocent people sentenced to death may already have been executed, or at the very least, have spent years on death row before being acquitted.

PHILIPPINES

FACTS AND FIGURES AT A GLANCE	
Capital offences	The death penalty may be imposed for a wide range of "heinous crimes": treason, piracy, bribery, murder, infanticide, kidnapping and serious illegal detention, robbery with violence, arson, rape, plunder, certain drugs offences, theft of a vehicle with rape or murder. Under certain aggravating circumstances a mandatory death penalty is stipulated. The death penalty cannot be imposed on those aged under 18 or over 70 at the time of the crime.
Appeals procedure	Death sentences are automatically reviewed by the Supreme Court. Executions are to be carried out no earlier than one year and no later than 18 months following confirmation of the sentence. Death penalty convicts may also submit a petition for clemency to the President.
Number of prisoners under sentence of death	202 as of October 1996. About half have been convicted of rape.
Number of executions carried out	52 people were executed between Philippine independence in 1946 and 1976, when the last execution took place. It is feared that executions may resume again in mid-1997.
Method of execution	Lethal injection

The last execution in the Philippines was carried out by electrocution in 1976. In 1986, when President Corazon Aquino came into office following the "People's Power Revolution" against then President Ferdinand Marcos, a new constitution was drawn up which included a Bill of Rights and provided for abolition of the death penalty. In the same year the Philippines ratified two important international human rights standards: the UN Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR). The new constitution and the ratification of international treaties signalled a new era of hope for a greater respect for human rights. At the time of abolition of the death penalty over 500 prisoners were reported to be under sentence of death and President Aquino announced that their sentences would be commuted to life imprisonment.

Within six months of abolition members of the armed forces began lobbying for the death penalty to be restored. General Fidel Ramos, then Chief of Staff of the Armed Forces of the Philippines (later elected President of the Philippines in 1992) was among those who called publicly for its reintroduction.

Widespread public alarm about an increase in serious crime - particularly murder, drugs offences and kidnappings for ransom - led to an intense debate, both in the Philippine Congress and in the media, about the reintroduction of the death penalty. At the same time, local human rights groups and the Roman Catholic Church mounted a sustained campaign against its re-introduction. The official Commission on Human Rights also expressed its opposition to the death penalty, stating: "*The Commission is not fully convinced that the death penalty is the answer to rising criminality. The proper response to criminality lies in effective law enforcement, the quick and impartial delivery of justice, and a responsive penal system....The administration of justice in this country needs a stronger foundation, not in terms of the restoration of the death penalty, but in the strict implementation of penal laws and the equitable administration of justice, in accordance with international human rights laws*"⁶. Despite the efforts of abolitionist groups, in a retrograde step for human rights the death penalty was finally restored in December 1993. Since its reintroduction, however, there has been no indication of a decrease in crime.

Since 1994 more than 200 people, including three women, have been sentenced to death. Around half of those on death row have been convicted of rape. The rate of new sentences passed has increased steadily to an average of 12 each month in the first six months of 1996. Death penalty convicts are held in extremely cramped conditions in the National Penitentiary in Metro Manila. Female convicts are held in a separate women's prison, also in Metro Manila. All those on death row are believed to be of Filipino nationality apart from one Japanese national, Hideshi Suzuki who was sentenced to death in December 1994 for possession of 1.9 kilograms of marijuana. Hideshi Suzuki has claimed that he is innocent. Amnesty International is concerned that his trial may have been prejudiced by the fact that he does not speak or read English. It is believed that he was interrogated without an interpreter and was required to sign documents that he could not understand.

A recent study of death penalty convicts by the Free Legal Assistance Group (FLAG) - a leading Philippine association of human rights lawyers - shows that the death penalty in the Philippines has frequently been imposed on the poor and uneducated. Furthermore, as the study points out, English is the language of the courts in the Philippines so it is doubtful that poorly educated people accused of capital crimes can understand the proceedings against them. FLAG also expressed its concern that trials are often prejudiced by the fact that the poor are unlikely to be able to afford to hire an experienced lawyer.

In 1989, amidst the debate on whether to restore the death penalty, Amnesty International published a report⁷ examining how the death penalty was applied in the Philippines prior to abolition. The report documented cases of innocent people sentenced to death, many of whom spent more than ten years awaiting the outcome of appeals before eventually being acquitted by the Supreme Court. In one case in 1976 the execution of an innocent man, Felipe Santos, was halted just five minutes before he was due to be sent to the electric chair. The report also described a high incidence of people being sentenced to death on the basis of forced "confessions" or other testimony extracted under duress. Amnesty

⁶Resolution no. A91-033 of the Commission on Human Rights.

⁷See *Philippines: Case studies in the use of the death penalty*, AI Index: ASA 35/08/89.

International remains concerned that the risk of innocent people being sentenced to death remains high today.

In March 1996 President Ramos signed into law Republic Act 8177 which provides for execution by lethal injection. Supporters of lethal injection in the Philippines have claimed that it is both the cheapest and most “humane” method of execution. The Department of Justice has subsequently been instructed to start building an execution chamber.

In June 1996 the Supreme Court confirmed the death sentence passed on Leo Pilo Echegaray. This was the first death sentence to be confirmed since the death penalty was re-introduced. Leo Pilo Echegaray, a 35-year-old house painter, had been convicted in 1994 of the rape of his step-daughter. Appeals against the sentence have been lodged by his lawyer and by FLAG, who have argued *inter alia* that the fairness of his trial was prejudiced due to the judge’s alleged lack of impartiality. The judge concerned has gained notoriety in the Philippines for founding an organization known as the “Guillotine Club” whose members are all reported to be judges who have passed death sentences. Members of the organization are perceived to be strong advocates of the death penalty. FLAG is further arguing that the death penalty is an excessive and disproportionate punishment for rape and other crimes which do not lead to the death of the victim.

The Supreme Court has considered a number of other cases so far, commuting at least two death sentences to life imprisonment and sending several other cases back to the lower courts for re-trial. In one case the Supreme Court acquitted a man convicted of rape, ruling that the prosecution had failed to prove its case beyond reasonable doubt. To Amnesty International’s knowledge no further death sentences have been confirmed.

Amnesty International fears that the first execution may take place in mid-1997.

SINGAPORE

FACTS AND FIGURES AT A GLANCE	
Capital offences	Singapore has a discretionary death sentence for seven different offences, and a mandatory death sentence for murder, treason, certain firearms offences and trafficking in certain drugs. Anyone over 18 found in possession of more than 15 grams of heroin, 30 grams of morphine or cocaine, or 500 grams of cannabis is presumed, unless the contrary can be proved, to be trafficking in the drug and faces a mandatory death sentence.
Appeals procedure	Appeals may be made to the Court of Criminal Appeal. Death penalty convicts may also submit a petition for clemency to the President, but it is extremely rare for clemency to be granted.
Number of prisoners under sentence of death	Not known. Amnesty International is aware of at least 34 death sentences passed in 1995, and at least 16 so far in 1996. However, the figures are likely to be far higher, as many death sentences are not publicised.
Number of executions carried out	Amnesty International is aware of at least 50 executions which took place in 1995, and at least 32 which have taken place in 1996. However, the organization fears that the real figure may be far higher as many executions are not publicized. According to the Ministry of Information, 76 people were executed in 1994.
Method of execution	Hanging

Amnesty International is seriously concerned by the continuing high rate of executions in Singapore, especially in light of the fact that the small city-state has a population of only about three million.

In recent years there has been a sharp increase in the number of executions. Since 1994 well over 150 people, including many foreigners, have been executed, mostly for drugs-related offences. There are fears that the total figure may be significantly higher, as many executions are not publicised.

The death penalty was employed in Singapore during the colonial period and was retained after the country became an independent republic in August 1965. Singapore's Penal Code provided for a discretionary death sentence for seven different offences and a mandatory death sentence for murder and offences against the President's person. However, in 1975 the Misuse of Drugs Act, introduced two years earlier, was amended to provide a mandatory sentence of death for any person convicted of importing, exporting or trafficking in certain amounts of drugs (see above chart). Furthermore, under Section 15 of the Act, "Any person who is proved or presumed to have had in his possession" the amounts of the drugs listed above "shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein".

Subsequently the Arms Offences Act was also amended to provide for an automatic death sentence for anyone found guilty of using a firearm or explosive in the course of a crime, and anyone who is an accomplice to such a crime - even if the crime resulted in no deaths. In 1993, the Arms Offences Act was amended so that the prosecution no longer had to prove any intent to cause injury to people or property - anyone who uses or attempts to use arms during a crime, and any accomplice present at the scene who fails to "take all reasonable steps to prevent" their use, is presumed to intend injury unless it can be proved otherwise, and therefore faces death.

The trend of extending the scope of the death penalty to new offences not previously considered capital crimes in Singapore is inconsistent with the UN General Assembly's determination that the main objective in the field of capital punishment is the reduction in the number of offences carrying the death penalty, with a view to its abolition. Amnesty International is particularly concerned about the extension of the use of the mandatory death sentence - by removing the right of judges to distinguish between dissimilar cases and take mitigating circumstances into account, mandatory death sentences deny defendants the equal protection of the law.

Many of those executed have been foreigners, including people from other ASEAN countries. Three Malaysian workers, Muhammad Hazani Ghani, Zulkifli Awang Kachik and Pauzi Abdul Kadir, were hanged at Changi Prison in the early morning of 20 September 1996 for drug trafficking.

Despite the mandatory use of the death penalty for those convicted of drug trafficking, drug addiction has increased in Singapore. In October 1994 the Minister of Home Affairs reportedly stated that between December 1990 and December 1993 the total addict population in Singapore's five drug rehabilitation centres rose by 30 percent to 7,400. According to Ho Peng Kee, senior parliamentary secretary for Law and Home Affairs, by 1994 the average daily population in the rehabilitation centres reached a record high of 8,700. Furthermore, due to the fact that possession of certain amounts of drugs is legally considered to be trafficking, unless proven otherwise, addicts are frequently executed while those behind the crime of drug trafficking escape prosecution.

On 29 September 1995, Thai national Navarat Maykha was executed after having been found guilty of drug trafficking. The 32-year-old uneducated mother of two claimed that she was tricked into carrying drugs by a Nigerian acquaintance in Bangkok. He reportedly told her that he was in the garments business and persuaded her to carry what she believed was just a bag of clothes to Singapore. She was arrested at Changi Airport when officials discovered 3.2 kg of heroin concealed inside the lining

of the bag. Navarat Maykha continued to maintain her innocence, even after her petition for clemency was rejected by the President of Singapore.

On 15 March 1996, Thai migrant workers Prawit Yaowbutr, Manit Wangjaisuk, Panya Marmontree, Prasong Bunsom and Panya Amphawa were hanged at dawn after having been convicted of the murder of two Indian nationals and a Burmese national. Singapore police stated that the men were part of a gang that had staged robberies at a series of work-sites.

Appeals for clemency by Thai non-governmental groups and representations by Thai officials failed to halt the executions. Although funds were raised in Thailand to enable the families of the condemned men to visit Singapore, the hangings took place before relatives of three of the men arrived.

In 1995, the United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions named Singapore as one of 19 countries on which reports were received of death sentences imposed on defendants who did not fully benefit from the rights and guarantees for a fair trial provided by international instruments.⁸ Amnesty International is concerned that the death penalty in Singapore and other countries is often imposed on those with few resources for their defence, or those whose social or migrant status makes them vulnerable to instances of unfair conviction. Furthermore, there is a grave danger that the Singapore Government's pursuit of judicial "efficiency" at the expense of internationally accepted norms on the right to fair trial and the use of the death penalty may result in more frequent miscarriages of justice.

⁸UN Economic and Social Council, E/CN.4/195/61, para. 376

THAILAND

FACTS AND FIGURES AT A GLANCE	
Capital Offences	The death penalty is mandatory for: premeditated murder, murder of an official on government business and regicide, production, import or export of heroin. It is discretionary for: robbery, rape, kidnapping, arson and bombing if death results, insurrection, treason and espionage, possession of more than 100 grams of heroin, aircraft hijacking.
Appeals procedures	Prisoners sentenced to death by criminal courts have the right to appeal to the Appeals Court and then the Supreme Court. Prisoners sentenced to death by military courts have no right of appeal. Once all appeals have been exhausted, prisoners sentenced to death are allowed 60 days to petition the King for commutation. The Ministry of the Interior makes a recommendation on the request.
Number of prisoners under sentence of death	About 100
Number of executions carried out	One person has been executed since 1987.
Method of execution	Shooting

In the first execution in nine years, Prommas Leamsai, aged 38, was shot dead on 28 January 1996 by a firing squad at Bangkwang Maximum Security Prison near Bangkok, the capital. He had reportedly been convicted of murdering a policeman in the 1980s. His execution took place in great secrecy. According to a Ministry of Interior statement, Prommas was considered to be beyond rehabilitation. The statement also said that he was killed to set an example to other criminals. Amnesty International is concerned that the resumption of executions after nine years sets a very negative precedent in Thailand. Information about the death penalty in Thailand is difficult to obtain because death sentences are usually not reported. Many prisoners under sentence of death have received commutations by Royal Pardon. In June 1996 some 120 people under sentence of death had their sentences commuted to life imprisonment in a Royal Pardon which marked the 50th anniversary of the King's reign. However the Royal Pardon did not include people convicted of drugs offences. At least three death sentences were imposed during 1996.

SOCIALIST REPUBLIC OF VIET NAM

FACTS AND FIGURES AT A GLANCE	
Capital offences	The death penalty is applicable for a wide range of offences. Altogether 34 articles in the Criminal Code stipulate the death penalty as an optional punishment. These range from crimes such as rape and murder, to offences classified as a “grave violation of national security” including espionage, terrorism, rebellion and attempted prison escapes. Other offences include crimes against “socialist property” such as misappropriation, embezzlement and damage of state property and “economic offences” including manufacturing and selling counterfeit products. The manufacture and trafficking of narcotics was made a capital offence in December 1992.
Appeals procedure	Defendants sentenced to death by a first court are allowed the right of appeal to the People’s Supreme Court, which together with the Chief Procurator should make a decision on a case within two months. If the sentence is upheld, defendants have the right to appeal to the President for clemency; this appeal must be lodged within seven days.
Number of prisoners under sentence of death	In November 1996 the People’s Supreme Court announced that during the first nine months of the year 81 people had been sentenced to death. According to official figures, a total of 104 people were sentenced to death during 1995.
Number of executions carried out	No official statistics are available for the number of executions carried out. In 1995 Amnesty International heard of 11 executions, but an Australian delegation visiting Viet Nam in April 1995 was told by a Supreme Court official that 90 people were executed during 1994. Amnesty International cannot confirm this figure, but fears that most of the 104 people sentenced to death during 1995 may already have been executed.
Method of execution	Firing squad

The death penalty can be imposed for a wide number of offences in Viet Nam, including so-called “economic crimes” such as fraud and misappropriation of state property. In the last two years, Amnesty International has noted with grave concern the increasingly reported use of the death penalty, and statements from the authorities calling for the imposition of the death sentence on people found guilty of corruption. In April 1996 Phung Thi Tho, a 34-year-old woman was sentenced to death for fraudulently obtaining US\$320,000. According to press reports, this was the first time the death penalty had been imposed for fraud. A second such case was reported later in the year.

For many years executions were not publicised, and the fate of those sentenced to death was not known. Since 1995, the Vietnamese authorities have published the names of a number of convicted criminals who have been executed. However, the number reported is thought to be only a small percentage of the executions carried out.

Amnesty International has long been concerned that defendants in Viet Nam may not receive fair trials. This concern is heightened when the death penalty is applicable as a punishment and therefore any risk of error is irreversible. Often defendants are not assigned a defender until just before the case is brought to trial, leaving insufficient time to prepare a defence. Defenders are not allowed to communicate with their clients during the course of a trial hearing and they are not allowed to call and examine witnesses for or against the defendant. In many cases the sole role of a defender appears to be to appeal for clemency on the client’s behalf.

At present there is a campaign against “social evils” in Viet Nam, which includes a crackdown against drug-related crime. It is likely that people arrested in connection with this campaign may face the death penalty. Amnesty International has no information about the treatment of prisoners on death row in Viet Nam. The organization received reports in April that Duong The Tung, a 19-year-old man sentenced to death for murdering a policeman, was tortured by police with electric batons in an anteroom at the court while awaiting the verdict. Amnesty International wrote to the Vietnamese Government in October 1996, asking for information about the fate and whereabouts of Duong The Tung.