



CRIME & JUSTICE

Abolishing the Death Penalty

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Mario Lubetkin

Preface

Rome - It was a historic year. In 2007 the tide of opinion against the death penalty gathered in strength as never before, sweeping to every corner of the world. The number of abolitionist countries rose. The number of executions declined. Long in place moratoriums held and new ones came into force. And as the year drew to a close, proof of this seemingly irresistible tide of change came with the powerful vote in the U.N. for a global moratorium on executions.

The IPS 'Death Penalty Abolition Project', supported by the European Union, has recorded the voices of many of those who have played a key role in this fast-moving journey towards a death-penalty-free world. In doing so, IPS has been guided by the purposes and principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Collected here are some 100 reports from dozens of countries and every continent. The voices of those who have spoken out here - many hundreds in number - include activists, academics, lawyers and, of course, those waiting for that dreaded last knock on their cell door.

The reports are immensely varied. They range from dispatches from Central Asia to one on the bunged lethal injection execution in Florida that dragged out for minutes - 34 excruciatingly painful ones - not seconds. As a follow-up to this, an IPS correspondent reports on the U.S. supreme court calling a country-wide moratorium while it reviews the legality of this form of execution. There are many scores of different datelines here from IPS correspondents around the world.

Filing the dispatches here required considerable reporting skills and enterprise; despite the claims that the death penalty is a deterrent, most countries keep the workings of their machinery of death well hidden from the eyes of prying journalists. When those on the other side of prison gates do speak out, they do so at personal risk; at least one dissident jail official lost his job and was transferred out of reach for expressing his opposition to capital punishment to IPS.

The features first appeared in English on the IPS 'death penalty' website which has been operating since 2006. They have been re-published widely in many other languages. Within minutes of release, they have also been placed on

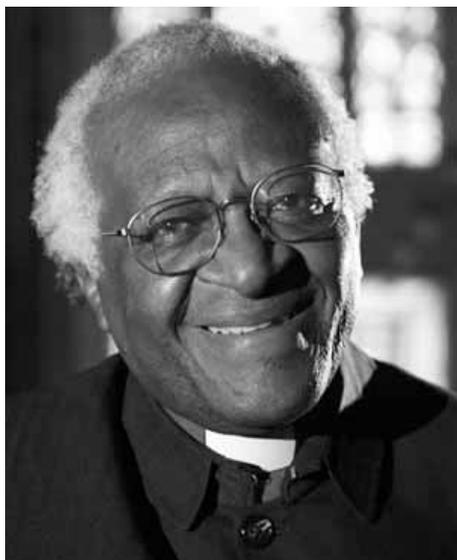
NGO websites and copied into diverse human rights blogs. The reports represent a part of IPS coverage on the death penalty. News stories for the general IPS service have not been included.

After two days of debate in the U.N. human rights committee in November, 99 countries voted for a global moratorium on executions. Everyone who has raised awareness about the death penalty and the call for its abolition can feel justified pride at this achievement.

I would like to express my thanks here to everyone involved in this IPS project, particularly to the project coordinator, Ramesh Jaura, the editors Alison Langley (2006), Petar Hadji-Ristic (2007) and all the IPS correspondents whose names you will see here.

But the U.N. vote (99-52) was still far from unanimous. It was an important milestone in a campaign that has captured the world's imagination. In 2007 worldwide death penalty abolition did seem within reach - as long as this great human rights endeavour continues.

Mario Lubetkin, Director-General IPS



Archbishop Desmond Tutu Help Stop Cycle of Revenge

Cape Town - For most of the 20th century the majority of the world's nations used the death penalty. But as the millennium approached, many societies questioned whether killing their fellow citizens through the judicial system served a positive purpose. I am delighted that the death penalty is being eliminated from the globe. As a Christian whose belief system is rooted in forgiveness, the death penalty is unacceptable. One hundred and thirty countries from every region of the world have abolished the death penalty in law or in practice. Since 1990, 50 countries have abolished the death penalty for all crimes. In 2006, only 25 countries carried out executions, six of them in Africa.

Such is the world sentiment against the death penalty - with some notable exceptions, like the USA, China, and Singapore - that a resolution calling for a moratorium on executions and the abolition of capital punishment is to go before the United Nations General Assembly. The world community will decide what its position is on the morality of capital punishment. As an opponent of the death penalty, I have experienced the horror of being close to executions, not just in the Apartheid era of South Africa, which had one of the highest execution rates in the world, but in other countries as well.

I have witnessed the victims of the death penalty that the authorities never speak of: the families of the person put to death. I

remember the parents of Napoleon Beazley, a young African American man executed in Texas after a trial tainted by racism. Their pain was evident as the killing of their son by the state to which they paid taxes approached. I can only imagine the unbearable emotional pain they went through as they said their final goodbye to him on the day of his execution.

Advocates of the death often ask, "*What if your child was murdered?*" and it is a natural question. Rage is a natural reaction to the homicide of a loved one, and the desire for revenge is understandable. But what if the person condemned to death were your son? No one raises his or her child to be a murderer, yet many parents suffer the grief of knowing their child is to be killed. In 1988, the parents of those on death row in South Africa wrote to the President, "*To be a mother or father and watch your child going through this living hell is a torment more painful than anyone can imagine.*"

We must not put the sons and daughters, the mothers and fathers of our neighbours to death. It is to inflict horrific and unacceptable suffering upon them. Retribution, resentment, and revenge have left us with a world drenched in blood. The death penalty is part of that process. It says it is acceptable to kill in certain circumstances and encourages the practice of revenge.

If we are to break these cycles, we must eliminate government-sanctioned violence. The time has come to abolish the death penalty worldwide. The case for abolition becomes more compelling with each passing year. Everywhere experience shows us that executions brutalise both those directly involved in the process and the society that carries them out. Nowhere has it been shown that the death penalty reduces crime or political violence. In country after country, it is used disproportionately against the poor or against racial or ethnic minorities. It is often used as a tool of political repression. It is imposed and inflicted arbitrarily. It is irrevocable and results inevitably in the execution of people innocent of any crime. It is a violation of fundamental human rights.

I urge the governments of Africa to vote yes for a moratorium on executions at the United Nations. This should be seen as a first step towards total abolition of the death penalty on the continent. Let us all join South Africa, Rwanda, Senegal, Liberia, Namibia, Mozambique, and the many other countries that have denied the state the right to kill.

*Desmond Tutu, Archbishop of Cape Town,
Nobel Prize for Peace 1984*

EUROPE & CENTRAL ASIA

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Kuban Abdymen

Abolition Close - Spectre Of Death Remains

Bishkek - The hastening end to state executions across Central Asia could turn out to be only a temporary reprieve for many as the new category of 'lifers' face the prospect of decades in jails often plagued with highly-infectious diseases and meagre, unhealthy rations barely sufficient to survive. All five Central Asian states - Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan - inherited capital punishment from Soviet times. Since independence in 1991, they have moved with varying degrees of speed towards the abolition. *"In Central Asia, there has been a clear move towards abolition. It's been step by step process. The states all retained the death penalty when they gained independence in 1991,"* Gulnara Kaliakbarova, Penal Reform International's regional director for Central Asia, based in Almaty, the capital of Kazakhstan, told IPS. *"But now in reality the death penalty has been abolished in four of these countries."*

Turkmenistan was the first state to abolish the death penalty in 1999. Then followed Kyrgyzstan last year, finally completing the process in June when capital punishment was removed from its criminal code. Kazakhstan put in place a moratorium in 2003 and Tajikistan in 2004. In May, Kazakhstan all but abolished the death penalty with constitutional amendments banning any taking of life. The sole exceptions to this were for terrorist killings and for *"the most serious crimes in times of war"*.

"Uzbekistan has not yet introduced a moratorium but it is also taking steps towards abolition," Gulnara Kaliakbarova said. *"In August 2005, President Islam Karimov signed a decree stipulating the death penalty would be abolished on Jan. 1, 2008. In June this year, the Uzbekistan senate passed amendments to the criminal code replacing the death penalty with life imprisonment."* But the steady progress towards the abolition of the death penalty had not been matched by a modernisation of prisons and adoption of progressive penal policies for the most serious offenders to prepare them for eventual successful release back into the community.

Only in oil-rich Kazakhstan, had there been a big increase in spending on prisons, according to Penal Reform International. *"Over the past three to four years, the Kazakhstan prison budget has approximately tripled,"* Gulnara Kaliakbarova said. *"Spending on each inmate is currently 2,000 dollars a year. This means prisoner living conditions and their nutrition needs are adequate."* But elsewhere in Central Asia, there was an urgent need to *"to provide minimal international standards of treatment for prisoners"*, said Gulnara Kaliakbarova, whose staff monitor and advise on penal policies across the enormous region. The worst prison conditions may well be in Tajikistan, the smallest and poorest of all the central Asian states, Gulnara Kaliakbarova suggested. A five-year-long devastating civil war in the 1990s had



Photo: Scott Langley

thrown the country back economically. *"Official figures indicate that 86 percent of the seven million population live below the poverty line,"* she said. Tuberculosis, AIDS, gastro-intestinal and other infectious diseases were "acute" problems in the Tajikistan jails. Overcrowding, malnutrition and inadequate hygiene and medical facilities increased the vulnerability of inmates, she said, adding that there were no state funds to finance the collection of reliable statistics. *"The political will to change the system is there, but the prison authorities lack the expertise and resources for professional training and re-training. There is also a high level of corruption in the system,"* she said. In Kyrgyzstan, a neighbouring republic to the south, prisons were also death traps with rampant tuberculosis, particularly in the two underground jails where most of the long-term lifers were held, Akin Toktaliev, chairman of the rights organisation, Committee for the Protection of the Dignity and Honour of the Kyrgyz nation, told IPS in the capital Bishkek.

Adequate medical care for those who fall sick in prison, particularly for treatment of highly-contagious tuberculosis was lacking, Toktaliev said, adding: *"Instead of keeping them in such unacceptable conditions, it would be more humane if they were sent to death."* *"Some are held in narrow, dark underground cells without access to fresh air. The average space allotted to the long-term prisoners is 2.5 square metres. They virtually never leave their cells,"* Gulnara Kaliakbarova

confirmed, describing conditions generally throughout the Kyrgyz prison system as *"inhumane"*.

Primitive sanitary conditions, foul-smelling cesspits and insufficient water were problems throughout its prison system, Gulnara Kaliakbarova said. *"Prisoners have noticed some improvement in the quality of the meals. But their variety and nutritional level is still below standard, except in the case of bread rations. Meat and fish are served in a concentrated form. Potatoes and other vegetables are inadequate. The daily menu is porridge for breakfast, steamed cabbage, macaroni or borsch for lunch and a supper of a soup."* Relatives were allowed to supplement prison rations by bringing in sacks of potatoes, fruit and vegetables during their once-monthly visits, Nargiza AkyI of the Kyrgyz Ombudsman Office told IPS. Despite the abolition of the death penalty and more openness about the prison conditions, Kyrgyz prison authorities were still refusing to tell relatives where the bodies of those executed in the past had been buried, Gulnara Kaliakbarova said.

Penal Reform International has no information about the penal systems in Turkmenistan and Uzbekistan, two neighbouring, resource-rich countries in the region. Ironically, secretive Turkmenistan was the first country in Central Asia to abolish the death penalty under its despotic leader Saparmurat Niyazov, who died suddenly last December. He was succeeded by the former

deputy prime minister Gurbanguly Berdimuhamedow. But in Uzbekistan prison conditions were described as *"unsatisfactory"* by Surat Ikramov, chairperson of the Initiative Group of Independent Human Rights Activists of Uzbekistan, told IPS. About 40 percent of the 70,000 Uzbekistan prison inmates had been unjustly charged, he said. *"Many are tortured, especially religious believers who number 7,000,"* he said. Relatives were only allowed to visit four times a year. The official information blackout on the death penalty inmates was total. *"Nobody will say how many people have been sentenced to death."* He did not know the date of the last execution or the name of the person. *"Officials never publish any figures on this issue."* Ikramov estimated there were currently about 120 people on death row.

But Penal Reform International sources suggest the number could be as high as 1,000. Penal Reform International is now calling on countries in the region to take the final remaining steps for it to become absolutely *"death-penalty-free"*. It also has a detailed list of recommendations to improve prison life for lifers and their families. *"Life imprisonment should now be orientated towards re-socialisation and re-integration into the community,"* Gulnara Kaliakbarova said. *"Now with the abolition of the death penalty, the time has come to adopt the most humane alternative punishment strategies."* (Reported in September 2007) ■

Kuban Abdymen

Central Asia Nearing Abolition



Bishkek - The vast region of Central Asia is moving closer to becoming death-penalty-free and hopes are high that legislation banning all executions will be adopted in all countries in the near future. But other human rights challenges remain. *"There's a lot of expectation in the air. We've seen some very positive steps in the last couple of years,"* Maria Luisa Bascur, regional project director based in Brussels with the International Helsinki Federation of Human Rights, told IPS. *"I think in a couple of years the region will be death penalty free. And we are pressing for that."*

The resource-rich, strategically important region is comprised of five countries which gained independence after the 1991 breakup of the Soviet Union: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Their combined population is around 61 million. Kazakhstan, the size of Western Europe, has vast untapped oil reserves. Kyrgyzstan and Tajikistan are rich in minerals and potential hydroelectric energy. Uzbekistan has big natural gas reserves and is also the world's third largest exporter of cotton. Turkmenistan has large gas reserves.

"Only Uzbekistan is still executing people," Bascur said, adding that Turkmenistan had already abolished the death penalty in 1999. *"We estimate from our sources that Uzbekistan is executing about 100 people a year. There are no reports from there because it's a state secret. The president (Islam Karimov) actually signed a decree*

in 2005 saying he would abolish the death penalty in 2008." But a spokesperson from Amnesty International, campaigning for a death-penalty-free zone in the region, told IPS that *"secrecy remains an issue in all the countries"*. Turkmen author Sapargul Mamedova, writing in the March 2007 issue of the Internet magazine Oasis, said she had received reports that three prominent people have died in Turkmenistan prisons since the declared abolition of the death penalty there. They included journalist Ogulsapar Muradova who allegedly died after being tortured late last year.

The two others - the former head of the Turkmen security service Mukhammed Nazarov, and chairman of the Turkmen parliament, Taghandurdy Khallyev - had been accused of abuse of power. Bascur confirmed that extra-judicial killings had taken place in Turkmenistan. Last December Kyrgyzstan took what was interpreted as a genuine lead in the region by abolishing the death penalty through a constitutional amendment that guarantees the *"inherent right to life to everyone"*. Lawmakers were then expected to agree to revisions in the country's criminal code to bring it in line with the constitutional changes - a task to be completed within six months. But this has been delayed by building pressure from the opposition - led by former prime minister Felix Kulov - for President Bakiev to step down. There have been reports that Kyrgyz judges have been handing down death sentences despite the constitutional changes. This was



Photo: Scott Langley

due to "ignorance", Justice Minister Marat Kayipov reportedly responded, adding that they clearly "had not read the constitution." Yet more constitutional changes are expected in Kyrgyzstan shortly, sources here say. Bakiev has agreed to set up a joint working group to re-write the new constitution.

Human rights activists and politicians expect this will also contain a ban on executions. This was confirmed to IPS by Nurbolot Kurmanov, head of the justice department in Bishkek, the Kyrgyz capital. "Kyrgyzstan's abolition of the death penalty will have repercussions for the entire region," Bascur said. She predicted that Kazakhstan would quickly follow suit. "It might not happen right away. But the ground is fertile with civil society pushing for it. Kazakhstan is listening to its neighbours and the international community." Next in line for abolishing the death penalty would be Tajikistan, Bascur speculated. "They've already converted all death sentences to a fixed-term sentence, so in a sense they have done the main work."

The big question for rights activists is whether Uzbekistan will honour its pledge to abolish the death penalty on Jan. 1, 2008. "Uzbekistan is the more extreme case," Bascur agreed. "The non-governmental organisations are suffering constant persecution there. If you do work, you risk not only fines but going to prison." No one was allowed to monitor the number of executions. Not even the rela-

tives of the people executed were informed of the execution date or where they were buried, she said.

Experts here agree that Uzbekistan will be the last country in the region to abolish the death penalty. "There is little hope that Karimov will follow the way of Kyrgyzstan," Nur Omarov, professor of politics at the Kyrgyz-Russian University, one of the leading universities in the country, told IPS. Karimov's top concern was maintaining political stability and there would be no softening in his stance towards political dissent. But there was every reason to be optimistic that change was in the air in Turkmenistan after the sudden death in December 2006 of its hard-line president Saparmurat Niyazov, said Omarov. "The Turkmen people are expecting changes," he said. Even before the election of Gurbanguly Berdimukhamedov as president in February, some high ranking politicians sentenced to long terms in prison had been released and one state prison closed down completely, Omarov said. "Something will happen hopefully, especially in Turkmenistan," Bascur agreed.

Rights organisations are especially pressing for all countries in the region to introduce death penalty bans into their constitutions. "It's important to transform moratoriums into something more concrete," Bascur said, adding that the region had experienced considerable turmoil in the first years after the break-up of the Soviet Union. "Moratoriums are very positive. But in countries where power rests

mostly with the president, just a presidential whim could set them aside. What is needed is something more concrete: full abolition reflected in the constitution and the criminal code." Activists also point out that as long as a moratorium is in place, judges will continue to hand down death sentences. This means the numbers on death row in the region will continue to grow. Those on death row live under constant fear that the moratorium could be lifted and an execution order carried out.

Bascur believes that with death penalty bans in place, more attention will be focused on reforming the judiciary systems in the region. "There isn't an independent judiciary in any of these countries," she said. "Most of the death sentences were pronounced in faulty trials. Maybe confessions were extracted by torture and the victims were not heard." Reforming the penal systems is also a priority for activists. The end of death rows would mean that those convicted of serious crimes must now spend decades in prison. "They don't get proper food there," said Bascur. "Many die from tuberculosis and disease because there is no access to medical treatment." She added: "We are striving for more humane conditions in prisons and the rehabilitation of those having served their sentences. Sometimes even NGOs think the battle is won once the death penalty has been abolished. It is an important step. But the battle ahead of us is even greater." (Reported in March 2007) ■



Mario de Queiroz

Ignoring Poland, Europe Declares Day Against Death Penalty

Lisbon - The Council of Europe was the formula that was found to get around Poland's veto and declare Oct. 10 the European Day Against the Death Penalty. An initiative by the presidency of the European Union, which is currently held by Portugal, was blocked by Poland because the bloc can only adopt such decisions by a unanimous vote among its 27 members. But the Council of Europe, which was founded in 1949 to promote democracy, human rights and the rule of law on the continent, does not need a unanimous vote to reach a decision involving its 47 member states, which are home to a total of 800 million people.

Poland's conservative Catholic government explained on several occasions that it was opposed to the initiative, on the argument that such an event should also condemn abortion and euthanasia. At an international conference, *"Europe Against the Death Penalty"*, held Tuesday in Lisbon, Europe confirmed it was a *"death penalty-free zone,"* said Serbian Foreign Minister Vuk Jeremi, chairman of the Committee of Ministers of the Council of Europe. The death penalty is not a deterrent, and merely perpetuates the cycle of violence, he said. Portuguese Prime Minister José Sócrates said that putting an end to capital punishment is an achievement of civilisation that began with Portugal, *"the first country in the world to abolish*

the death penalty," in 1867. However, Venezuela was actually the first to do so, in 1863. *"Crime cannot be prevented or stopped with death, or with state vengeance, but with justice,"* said Sócrates. He stressed that to abolish the death penalty worldwide, political will is needed, as well as a multilateral diplomatic offensive to convince governments that continue to defend capital punishment that it is not effective in fighting crime and that countries where it is still applied are not safer than other nations.

In fact, the statistics show just the opposite, said the Portuguese leader, who noted that innocent people are executed, and that any mistake made in a capital punishment case is definitive. José Manuel Durão Barroso, the president of the European Commission - the EU executive arm - said he hoped that soon all of the members of the bloc will have signed the protocol to the European Convention on Human Rights on abolishing the death penalty during wartime, which has not yet been signed by Italy, Latvia, Poland or Spain. Durão Barroso, who headed Portugal's conservative government from 2002 to 2004, praised *"today's ratification of the protocol by France."* Portuguese Justice Minister Alberto Costa, who hosted Tuesday's conference, said *"this broad consensus against the death penalty"* reflects *"a Europe that acts in the name of its values, its history and*



Amnesty International campaign against death penalty in Spain and Portugal | Photo: Amnesty International

its struggles." The message is simple, he said: the death penalty should be removed from the books in the countries where it is still applied, and its application should be immediately suspended. Europeans do not accept that capital punishment can be decreed by the state as a form of atonement of guilt or public vengeance, he said, adding that *"The death penalty does not reduce crime, does not appease victims and does not serve as an example for future behaviour."* Terry Davis, secretary general of the Council of Europe, said *"The year 2007 marks a decade without the death penalty in the member states of the Council of Europe."* Noting that Russia is the only member that has not actually abolished the death penalty, he said it has done so *"in practice but not in the law,"* and added that *"we are still waiting for them to keep the promise they made at the time of joining the Council of Europe."*

However, Davis said it would be irresponsible to ignore the fact that *"there are many people in Europe who continue to support the death penalty."* *"We need to go out and explain to people why the death penalty is wrong, why it has been abolished,"* and *"demonstrate that there is no contradiction between the effective fight against crime, including terrorism, and a criminal justice system which respects human rights,"* said Davis. He lamented that *"Some of our*

closest friends and observers at the Council of Europe continue to execute people," such as the United States and Japan. Although the EU was unable to adopt a common stance because of the position taken by Poland, Franco Frattini, vice president of the European Commission, recommended *"optimism and realism."*

Optimism, because 130 countries in the world have already abolished the death penalty, but realism as well because worldwide abolition cannot be considered guaranteed, since a United Nations resolution on a universal moratorium does not yet have the necessary majority of votes, he pointed out. The European Commission will continue supporting civil society, non-governmental organisations and the Council of Europe to disseminate the message: killing human beings can never be an act of justice, said Frattini.

The initial plan for Tuesday's conference entailed the signing of a joint EU declaration making Oct. 10 the European Day Against the Death Penalty, but in the end it was only declared by the Council of Europe. Despite the indignation of the other 26 EU members over Poland's stance, as expressed to IPS by several delegates at the conference, Warsaw refused to budge. But Frattini said it was an error to *"isolate and criticise"* Poland, *"which is really against the death penalty."* None of the speakers directly mentioned Poland. But when

Hélène Flautre, chairwoman of the European Parliament Subcommittee on Human Rights, referred to *"internal populisms"* that kept the EU from declaring the European Day Against the Death Penalty, it was clear who she meant. *"This incident"* shows how important it is to remain vigilant and determined with respect to capital punishment, she added.

In less diplomatic terms, socialist deputy to the European Parliament, Ana Gomes, told IPS that *"it is absolutely shocking that the Polish government has attempted to block the Portuguese presidency's initiative."* Gomes, who forms part of the so-called left wing of Portugal's governing Socialist Party, as opposed to the mainstream majority represented by Sócrates, lashed out at what she described as Warsaw's *"contradictory, opportunistic and unprincipled argument."* Polish Prime Minister Jaroslaw Kaczynski *"is not only doing the EU and its basic values a disservice, but is also offering a very negative image that hurts Poland's good name and prestige,"* she argued. Gomes said that, by isolating itself, *"the Kaczynski administration is calling into question Europe's most essential values, which are respect for human rights and especially the condemnation of the death penalty, which distinguishes civilisation from barbarity."* (Reported in October 2007) ■



Julio Godoy

A Life Defending Lives

Paris - In 2000, when French journalist and publisher Michel Taube founded 'Ensemble contre la peine de mort' (Together against the death penalty), his vision was that the group would become a world voice in the fight for the universal abolition of capital punishment. Few at that time shared his conviction. France had abolished the death penalty back in 1981 and at that time capital punishment stirred only mild controversy. Protests over death sentences and executions were often sporadic and focused on far-away countries, such as China, Vietnam and the United States.

Within seven years the association has become a major global force in the campaign for death penalty abolition. It has organised three world congresses, the latest in Paris in February attended by some 600 experts. It counts among its members renowned international personalities, including the former French minister of justice Robert Badinter, under whose moral leadership France abolished capital punishment, and human rights activist Bianca Jagger.

Since 2002, the world has celebrated World Day Against the Death Penalty on Oct. 10. This is due to the initiative of the World Coalition Against the Death Penalty, which Taube also heads. This coalition focuses global attention on the death pen-

alty issue, stimulating international debate and supporting campaigners against capital punishment. Taube, born in 1967 in the Alsatian city of Colmar, is also a presence at conferences and discussions on capital punishment in Africa, Asia, and Latin America. In mid-May, he took part in a symposium in Morocco, organised by local human rights groups in association with Amnesty International, pressing King Mohammed VI to finally abolish capital punishment. *"The decision of the Moroccan government to abolish the death penalty would be a great step towards the consolidation of the democratic modernisation of the country,"* Taube said in Rabat.

On that occasion, Taube noted that 31 African nations have already abolished the death penalty - well over half the countries on that continent. The battle now was to see capital punishment banned in the rest.

Taube has been working as a journalist since the early 1990s, and directed a publishing house in his native country between 1998 and 2002. But his main call has always been the defence of human rights: He is member of the UNESCO association of human rights and the International League against Racism and Anti-Semitism and author of several books about his campaigns, including *"Open Letter to Americans for the*



Demonstration of Amnesty International members in London 2001 | Photo: Scott Langley

Abolition of the Death Penalty. "We want to promote the universal abolition of the death penalty through a global political view, blending a humane conception of penal justice and the defence of human rights," Taube said in an interview. "Our aim is to universalise the validity of human rights."

His critics often accuse him of over-emphasising the rights of the offenders while ignoring the suffering of the victims and their relatives. They say his arguments dismissing execution as a preventive measure are academic and do not match the real world. Taube responds that among the most passionate opponents of the death penalty in Europe are relatives of the victims of the gravest crimes. He also cites statistics that show that the death penalty in the U.S. has not deterred crime.

But his opposition to the death penalty goes beyond these arguments. It is rooted in a philosophical stand on crime, punishment, and legal values in a democratic society. "European history shows that, paradoxically, it was the confrontation with the worst political horrors and the most barbaric crimes that gave birth to the reasons for abolishing the death penalty," Taube says. "In Central and Eastern Europe, abolition became obvious and politically viable after the demise of the communist totalitarian regimes. Similarly, the death penalty disappeared

from the legal horizon in Spain and Portugal after the end of the right-wing dictatorships of (Francisco) Franco and (Antonio de Oliveira) Salazar. Only a state which is able to control its own power, a democratic state, is able to renounce the death penalty," he says.

"When a state condemns a person to death it is saying: it is enough to punish a crime, the state does not need to bother with solving the reasons for the crime. A death sentence is a confession to a failure of justice. Justice becomes an instrument of vengeance, instead of a means to re-establish a peaceful social order." Taube also underlines that such arguments against the death penalty appear to be gathering supporters worldwide over the last seven years. The number of countries which have abolished the death penalty is steadily rising and the cases of executions dramatically falling.

"When France abolished the death penalty in 1981, there were only other 36 countries around the globe which had done the same," Taube recalls. "Today, 25 years later, there are 97 countries which have officially banned the death penalty from their penal systems and there are more than 20 other countries which have ceased to apply it for more than 10 years." As another illustration, Taube said that in the whole of Europe only

Belarus applies the death penalty. In Latin America only Cuba and Guatemala have not yet abolished it. But capital punishment is applied massively in undemocratic regimes in Asia and Africa. But Taube does not forget that some democracies, such as Japan and the United States, continue to apply the death penalty, impervious to arguments and moral appeals from Europe. "In Japan, executions are shrouded in the deepest of silence. Public opinion there is also completely insensitive to the international debates on the issue," Taube says.

On the other hand, the public perception of the death penalty in the U.S. is changing for the better, he says. "Now, there are better U.S. lawyers trained in the defence of people condemned to death and there are fewer executions than a couple of years ago," Taube says. "Even if the U.S. society continues to avoid discussing the possibility of a general abolition, a quiet evolution has been taking place in the courts and thus some lives have been saved." But Taube admits that no such evolution has taken place in most of the Arab and Muslim world. That is why, he says, that the celebration of the World Day Against the Death Penalty this year, on Oct. 10, will focus on supporting the campaign to abolish capital punishment in these regions of the world. (Reported in May 2007) ■



Julio Godoy

Some Way Yet To Killing Off The Death Penalty

Paris - If it were not for a handful of countries persisting in carrying out executions, activists for the abolition of the death penalty around the world would have departed for home after their Third World Congress which took place in Paris from Feb 1 to 3, saying: "*Mission accomplished*".

The handful of countries still resisting all arguments and evidence - the United States, the People's Republic of China, Saudi Arabia, Iran, and North Korea - account for more than 97 percent of all executions carried out annually, some 5,000 or more, according to the 2006 'Death Penalty Worldwide' report by the Italian group 'Hands off Cain'. Another 50 countries are still applying the death penalty, but sporadically. These executed some 156 of their citizens in 2005.

The trend towards abolition is undeniable, the international congress heard. In 1981, France became the 35th country in the world to abolish capital punishment. Today, 25 years later, 142 countries do not carry out executions any longer; either they have abolished capital punishment entirely or are observing a moratorium. The mixed feelings such figures stir up, and the sense of urgency there is to convince the United Nations

General Assembly to approve a worldwide moratorium on capital punishment, dominated the three-day congress in Paris, attended by hundreds of personalities and activists from around the world. Representatives of all 27 European Union member states participated at the meeting, as well as the former French minister of justice Robert Badinter, and delegates from national bar associations and groups such as Amnesty International and the International Federation of Human Rights. Representatives of abolitionist groups from North Africa and the Middle East, where capital punishment continues is still applied, were also present.

Badinter, who in the late 1970s successfully led the French abolitionist campaign, summed up the mood of the congress. "*I am absolutely sure that our cause is just and that universal abolition of the death penalty is upon us,*" he said at the closing ceremony. "*There is an awareness throughout the world that there cannot be a justice that kills.*" Badinter's optimism was tempered by the realism that the "*salt of the earth*" activists still had much work to do. This sentiment reverberated in the final congress declaration. "*We welcome the fact that the death*



German Engraving from 1750

penalty is receding in the world and that since the Montreal Congress (in 2004) Greece, Kyrgyzstan, Liberia, Mexico, the Philippines and Senegal have abolished capital punishment, while no country has re-introduced it," the declaration said. But, he added: "We regret that, during the same period, some countries have resumed executions after prolonged moratoria, such as Bahrain in 2006, and that the death penalty is still applied...in a number of countries including China, Iran, Saudi Arabia, the United States and Vietnam." The declaration urged the United Nations General Assembly to approve a global moratorium on the death penalty. If this came into effect today, some 20,000 people waiting on the world's death rows would be saved, according to 'Hands off Cain' estimates.

Most of these are in China. The Paris congress addressed a specific plea to the Chinese government to introduce a moratorium "in the prospect of the Beijing Olympic Games in 2008 and the Shanghai Universal Exposition in 2010." The congress also called for abolition of the death penalty in China for "non-violent offences, including economic and drug offences." Numerous factors have contributed during the past decades to the growing

number of countries joining the ranks of the abolitionists, Eric Bernard, general secretary of the French human rights group Ensemble contre la peine de mort ('Together against the death penalty'), the organiser of the congress, told IPS. Activists had taken their campaign to the world stage. The capital punishment issue was no longer a national penal issue, but a "central international human rights one," he said. "Executions are no longer seen as an effective deterrent to crime, but as dehumanising for all society. Numerous judicial mistakes in countries applying capital punishment have also contributed to raising this awareness."

Horrific events surrounding executions have also helped to turn the tide of public opinion and governments against the death penalty. One of the most recent was the 34-minute lingering death of Angel Nieves Diaz, executed in Florida last December. The first lethal injection failed and another was needed to finally kill the convict. According to the local county medical examiner, the injections caused 30 cm-long chemical burns on Diaz's arms. Witnesses, including Diaz's lawyer Neal Dupree, reported under oath that Diaz grimaced in pain as the execution dragged on. The botched execution forced Florida

governor Jeb Bush to suspend all planned executions and to set up an investigative commission on the application of the death penalty in his state. The suspension gives respite to 398 people condemned to death in Florida. "The death penalty is being questioned all over the country," Richard Dieter, director of the Death Penalty Information Centre based in Washington told IPS in a telephone interview.

The Diaz execution was the 53rd of 2006, the lowest figure in the United States for 10 years. But the death penalty continues to be applied in 38 of the 50 states in the United States. Ten states have suspended executions, and one, New Jersey, announced in January it will be abolishing the death sentence. "Capital punishment is risky, expensive, and could result in irreversible error. Fewer people are now willing to put their faith in such a flawed policy," Dieter said. A symbol of the strengthening of resolve to see an end to the death penalty for all time was offered by France. Twenty-five years after Robert Badinter won his campaign against death penalty there, the French parliament agreed in February that this decision should be enshrined in its constitution. (Reported in February 2007) ■



Julio Godoy

Death Penalty Better, Say Some, Than Slow Execution

Paris - Twenty-five years after abolition of the death penalty in France, some of its beneficiaries say they would rather face execution. *"We'd prefer an immediate end to our lives rather than being cooked slowly under a flame,"* ten prisoners condemned to life terms wrote in a recent open letter. Before abolition they would have been sentenced to death.

The signatories compared life in French prisons with the prospect of freedom only far into the future with 'slow execution'. French human rights groups and lawyers associations agree the prisoners are right to complain about their long sentences. *"Abolition of the death penalty in France 25 years ago was a great step towards preserving human dignity,"* Paris lawyer Thierry Lévy told IPS. He is author of a book on the death penalty entitled 'Eloge de la barbarie judiciaire' ('In Praise of Judicial Barbarity') which was published in 2004. *"But the price some lawbreakers, and we as society, have to pay for this in the form of life imprisonment, is enormous,"* Lévy added.

Hamida Djandoubi was the last person to be executed in France in September 1977. He was sentenced to death for murdering his former girl friend whom he forced into prostitution.

More than 525 people are currently serving life sentences in France. In the mid 1970s, the number was less than 200. Lévy says the number of life sentences have increased as a "form of compensation" for the abolition of the death penalty. *"In the last years before abolition in 1981, the French judiciary rarely handed down death sentences,"* Lévy said. *"If you consider that the nature and the number of crimes have not worsened since 1981, there is no reason for applying life sentences so much."*

A life sentence in France means at least 20 years in so-called "security detention" with no chance of the usual early release for good conduct or a presidential amnesty. Detention can be increased to 30 years and average is actually 27 years behind bars. Lucien Léger, a "model prisoner", was until recently the longest-serving prisoner in France with 41 years behind bars. It was not until human rights groups took up his cause that he was released after a year-long campaign in 2005.

Philippe Maurice, the last to be handed down a death sentence in 1980, was spared by an order on May 25, 1981. He eventually served 20 years. In prison Maurice studied mediaeval history. After his release, he became a researcher, something of



Cemetery in Southern France | Photo: Paul-Georg Meister | pixelio

an exception for someone so long locked away. Maurice owed his reprieve to Robert Badinter, a criminal lawyer and member of parliament for the Socialist Party. He campaigned against the death penalty throughout the 1970s.

A close friend of François Mitterrand, the Socialist opposition leader at the time, Badinter convinced him to support the abolition of the death penalty during his 1980-1981 election campaign. When Mitterrand won the election in the spring of 1981, one of his first reforms was to abolish of the death penalty. He appointed Badinter as his minister of justice. Today Badinter is campaigning for reduction of prison sentences and for social reintegration of former criminals.

"One thing we should not forget is that all prisoners will one day or another come out of prison - alive. When this happens, they must be ready to live in society as normal human beings," he said at a press conference to mark abolition of the death penalty last October. *"Our judicial system must work on facilitating reintegration."* Many human rights groups consider French prisons especially inhuman. International institutions and the French parliament have also openly condemned the pri-

son system. In 2000, a national parliamentary commission called French prisons *"a dishonour to our Republican institutions."* Four years later, another parliamentary report said the *"shameful conditions"* had worsened. In a report published early this year, Alvaro Gil-Robles, commissioner for human rights at the Council of Europe, Europe's top human rights body, said he was horrified at the *"shocking"* conditions in French prisons, particularly the overcrowding.

Gil-Robles cited the long-prison terms as one reason for the degrading conditions which deprived many inmates of their *"most basic human rights"*. Claude Lucas, released after spending some 20 years in prison for bank robberies, agrees the conditions are appalling. *"The death penalty is a shame for a democratic system,"* he told IPS. *"But to abolish it just to replace it with life sentences is no better. Life imprisonment is torture - abandoned to a degenerative existence."* Lucas said no judicial system should give prison sentences longer than 20 years. *"Beyond that nobody is able to restart a new, normal life. With life sentences, everybody loses - the convicted of course, but also society."* (Reported in January 2007) ■



Julio Godoy

Germans Struggle To Resolve Justice Issues

Berlin - Thirty years after the German's chief federal prosecutor Siegfried Buback was assassinated by left-wing terrorists, a debate has re-surfaced over what should be the appropriate punishment for a convicted killer - and whether politically motivated crimes deserve exceptionally harsh punishment. On April 7, 1977, Buback, his driver and bodyguard were shot as their car was ambushed by two members of the so-called Red Army Faction (RAF), the urban guerrilla group formed by former students of the 1968 protest movement that was responsible for 34 deaths and many injuries in the 1970s and 1980s.

The Buback assassination is considered in Germany as the climax of the so-called 'years of lead', in the late 1970s, when the RAF escalated its urban guerrilla war against the country's political and economic institutions. At the time, the hysteria that accompanied the wave of killings led many German politicians, police and the right-wing media to call for the re-introduction of the death penalty which had been abolished in the 1949 constitution adopted after the end of World War II. The cry was often "to hunt the terrorists down to their graves".

Memories of the heated debate over the appropriate punishment for terrorists have now re-surfaced after Christian Klar, the only RAF member still in prison, requested clemency. Klar was found guilty of participating in the Buback killing along with three other RAF members - Brigitte Mohnhaupt, Knut

Folters and Guenter Sonnenberg. Separate trials were held for these. Klar was also convicted of other terrorist offences. Klar is today the only member of the RAF still held in prison. In February, Mohnhaupt was released on parole.

At his trial 25 years ago, Klar received a maximum life sentence. In Germany this means at least 20 years in prison. Depending on the prisoner's behaviour, this sentence can be prolonged to 27 years, after which a release is mandatory. In a request to German President Horst Koehler, Klar asked for a two-year reduction of his prison term that could continue until 2009. Koehler has not made a decision yet.

But in an effort to keep Klar behind bars to the very end of the maximum 27-year term, right-wing politicians and media, relatives of the RAF victims and even church authorities have joined together to criticise Klar's request for clemency as "shameless". In an open letter of protest addressed to Koehler, Sigrun Schmid, widow of a police officer killed by the RAF in 1971, recently wrote: "I cannot believe that you are seriously considering releasing Klar from prison. Up to now, he has never shown any repentance for his crimes, and you, Mr President, are thinking of pardoning a merciless man?"

Commenting critically also on Klar's request, Ernst Freiherr von Castell, legal counsellor at the Catholic diocese of Augsburg, in the south of the country, said in a radio interview



The grave of Ulrike Meinhof in Berlin | Photo: www.pixelio.de

that "clemency presupposes repentance and truthfulness" from the criminal's side. "I believe that having served out a sentence is not enough, the criminal must be ready to start a new life again," von Castell said.

Even stronger views have come from Guenther Beckstein, minister of the interior of the federal state of Bavaria, a well-known conservative politician and member of the Christian Social Union party. A criminal like Klar "belongs behind bars", he has said, adding: "It is my view of justice that a criminal who does not confess is undeserving of clemency." Beckstein is also against any relaxation in Klar's prison regime and temporary visits outside the prison gates to prepare him for his eventual release. The swirling controversy over Klar and his punishment has been complicated by sensational revelations suggesting that he may not have been as involved in Buback's assassination as the prosecution argued at his trial. According to secret confessions by ex-RAF members, Klar was not "immediately present" when Buback was shot. German police have now admitted that they have known of these confessions for years. But they were kept secret to protect their informants from other former RAF members.

Ex-RAF police informants have also reportedly said that Folters, one of the four found guilty of participating in Buback's assassination, was not even in Germany at the time. He was said to have been staying in Amsterdam. Folters was also sentenced to

life imprisonment for other terrorist offences. The information and the failure of the authorities to act on it, together with the current debate over whether to release Klar or not, throw into question once again the official German assertions that the RAF terrorists were treated like any other criminals. A special, high-security prison wing was built to hold some of them and they were kept in isolation.

In November 1974 Holger Meins died during one of the hunger strikes organised by RAF members to protest against their conditions in prison. In 1976 Ulrike Meinhof was found dead hanged in her cell, apparently after committing suicide.

On October 13, 1977 German special forces stormed a hijacked Lufthansa passenger plane which had landed in Mogadishu, shooting the four Arab hijackers who were demanding the release of 11 RAF terrorists held in the Stammheim prison. Three hijackers died on the spot. All the passengers were released without serious injury. The next day in Stammheim, Andreas Baader was found dead in his cell with a gunshot wound. Gudrun Ensslin was found hanged in her cell. Jan-Carl Raspe died in hospital the following day from a gunshot wound. A fourth RAF member, Irmgard Moeller survived with four stab wounds in her chest. The official version is the three committed suicide. But Moeller has claimed these were extra-judicial killings in answer to the hijacker's demands for their release. (Reported in May 2007) ■



Kuban Abdymen

Abolition Campaigners Press On

Bishkek - The final striking out of all death sentences from Kyrgyzstan's criminal code has been welcomed by rights activists here -- but many are critical of the limitations of this measure and are now urging more reforms to accompany the abolition of the death penalty. On Jun. 27, President Kurmanbek Bakiyev signed into force a "humanised" criminal code. This replaced the maximum sanction of execution by firing squad with 30 years' life imprisonment.

The amendments bring the criminal code in line with the last December 2006 constitution. This had specifically banned all taking of life, making Kyrgyzstan the second country in the five nation Central Asian region to abolish the death penalty. *"Many judges will now breathe easier. They used to pass death sentences with reluctance and the hope they would be softened during the appeal process,"* Ulugbek Azimov, a legal expert with the Independent Human Rights Organisation and former judge, told IPS. *"The new criminal code amendments mean all 174 death row prisoners will now have their sentences reviewed by the courts which originally sentenced them."*

Dinara Sayakova, manager of the Independent Human Rights Organisation, added: *"This is an essential requirement for*

a society to call itself civilised." Abolition and these criminal code changes meant that the focus would now be on reforming killers and rapists. Sayakova, a doctor who once worked as a criminal pathologist, said that she was one of those who had been won over by the arguments of the abolitionists. But some rights activists are critical of the limitations of the criminal code amendments. The criminal code allows an eight-month period for a review of the existing 174 death sentences, Azimov said. *"It is likely there will be a new law to regulate this,"* he added.

But the short period and uncertainty over what kind of review will be permitted has raised concerns among rights activists. The possibility of past judicial mistakes was higher in Kyrgyzstan than in a developed country, Nurbolot Kurmanov, head of the Bishkek city department of justice, told IPS, suggesting he supported a thorough review of all past death penalty cases.

Questions have been raised over the social background of most of the 174 former death row inmates. Not one of them came from well-off Kyrgyz families, according to statistics issued by the Bureau of Human Rights, an independent body supported by U.S. rights organisations. Activists here are pressing for



Wooden figure in Kyrgyzstan | Photo: Jean-Claude Latombe

Kyrgyzstan's life sentence to be reduced to 20 years. The new 30 years' in prison before parole is especially harsh because of the conditions in Kyrgyzstan's prisons, they argue. It is also largely out of step with international practice. Officials have promised improvements to prison conditions for the new category of lifers. Deputy minister for justice, Sergey Zubov has pledged renovations will be made to one of the sections in the Bishkek prison where they are being held. But activists are sceptical that this will be possible without outside help.

"It is interesting that many prisoners have not welcomed the abolition of the death penalty," Nargiza Akyl, head of the Kyrgyz Ombudsman organisation, told IPS. *"They are saying that life imprisonment is just not a humane approach. If the conditions in the prisons approached international standards, they would speak differently."* Lack of money for the prison system meant all prisoners suffered from a poor diet, she said, adding: *"They are receiving less than the specified daily ration of 50-60 grams of meat. Scoop a ladle into the evening soup and you will find only liquid."*

One respected, knowledgeable source has reported to IPS that corruption and theft of food by suppliers and prison staff

are also among the reasons for the poor diet. Independent investigations by IPS have confirmed reports of overcrowding, tuberculosis and lack of medical care for former death row inmates. Most suffered mental illness but received no psychiatric help.

Penal Reform International has called on the authorities throughout the region to provide minimum standards of treatment for the prisoners and introduce a system of public, independent monitoring of penal conditions. Kyrgyzstan activists are now also pressing parliament to ratify the U.N.'s second optional protocol to the International Covenant on Civil and Political Rights. This aims at abolishing the death penalty. It would be an added confirmation of the country's commitment to abolition, they say.

"It is not difficult to change a constitution. This is the reason we need to ratify this protocol," said Sayakova, clearly alluding to the two new constitutions which were passed within the space of two months last year. An attempt to get the parliament to ratify the protocol failed last year. But activists hope there will be a second opportunity soon. Sixty-one nations have ratified the protocol, including the Central Asian state of Turkmenistan. *(Reported in August 2007)* ■



Kuban Abdymen

Spared But Near Starving

Bishkek - The central Asian republic of Kyrgyzstan has adopted a new constitution specifically banning all taking of life and lawyers are now drafting revisions to its legal code replacing the maximum criminal sentence of death by firing squad with long prison terms. Many independent lawyers and human rights activists here have welcomed this as an unequivocal ban on all state executions, saying the reforms were more progressive on this than anything in the constitutions of their immediate neighbours - Kazakhstan, Uzbekistan, Tajikistan and China.

The new Kyrgyz constitution came into full force when President Kurmanbek Bakiev signed it on January 16, 2007. Parliament had given its approval at its last sitting at the end of 2006. It was the second constitution within two months with these changes, but the first was dropped in a presidential tussle with the opposition for the return some of the powers earlier wrestled from him.

"Every person in the Kyrgyz Republic has an inalienable right to life. No one can be deprived of life," article 14 declares. Conspicuously removed is an article specifying the death penalty for murder and some serious crimes, such as rape of minors. This had been in all Kyrgyz constitutions since independence from the Soviet Union in 1991. *"The death penalty*

has been abolished," a spokesperson on the parliamentary judicial reforms committee announced at a press conference immediately after the deputies approved the new constitution on December 30. Confirmation of this was also later provided to IPS by Marat Zhamankulov, head of the justice ministry's department on prison reform: *"There's not a word in the constitution about the death penalty. This means it no longer exists in Kyrgyzstan, either in law or practice,"* he said.

A parliamentary judicial reforms committee spokesperson added that some existing laws now needed altering to bring them into line with what was a clear constitutional ban on state executions. Draft proposals were currently being prepared. The head of a specially created commission on police and law enforcement reform, Kubat Baybolov, confirmed that this was the next step. *"All that's needed now is to bring the legal code in line with the constitutional changes,"* he said. *"There haven't been executions in Kyrgyzstan for some time and there'll never be any again in the future."*

Sources were unable to confirm when the necessary legal changes would be presented to parliament for approval. But the head of Bishkek's department of justice, Nurbolot Kurmanov told IPS that parliament was currently preoccupied



Electrocution sign seen in Paris | Photo: Scott Langley

with other more pressing issues. Iskhak Masaliev, head of the parliament's constitutional committee, told IPS that the necessary changes in the criminal code would be made *"as soon as our society is more ready"*. Until the latest constitutional reforms, all executions had been halted by a death penalty moratorium. This had been in place since 1998 and was renewed annually by presidential decree.

The last renewal was on January 1, 2006 and was to be until the death penalty had been abolished in law in Kyrgyzstan. All sides in Kyrgyzstan now understand that with the latest constitutional reforms another prolongation is no longer necessary. No official would say when the last execution was carried out or the name of the person. But the state prosecutor's office told IPS that the last two sentenced to death were Makhmujan Ruzimetov and Sabyrkul Batyrov. They were found guilty of the murder of the parliamentarian Bayaman Erkinbayev.

There are currently between 160 and 165 people in Kyrgyz jails sentenced to death, the non-governmental organization Civil Society against Corruption told IPS. The final settling of the death penalty issue in Kyrgyzstan by an altering of the constitution, appears to be a deft compromise between those

who had different approaches to how a death penalty ban should be introduced in Kyrgyzstan.

Ombudsman Tursunbay Bakir-uulu had been calling on parliament to pass a specific law abolishing state executions. *"We tried to achieve this - but failed,"* he said. *"This was the idea I put forward together with the heads of the constitutional court and justice ministry. But the deputies rejected both the idea and our draft law. Their response was to suggest the holding of a national referendum on the death penalty issue. But we couldn't accept this. We felt this was an issue that should be decided solely by parliament."*

Bakir-uulu apparently believed that in a referendum the public would have rejected a death penalty ban, according to members of his staff. Nurbolot Kurmanov, the head of the department of justice in Bishkek, also said he believed a referendum would have resulted in the re-instatement of the death penalty in country. Public anxiety over the economy, crime and corruption ran high and the death penalty was still widely perceived as a deterrent.

Opposition to a referendum - and there have been several since independence - was also expressed because of the cost. Kyrgyzstan's 5 million people are among the poorest in the

world, according to the World Bank. With the apparent settling of the death penalty issue, attention is now being focused on the country's dire prison conditions.

The Civil Society against Corruption earlier reported that death-row prisoners in basement jails of Bishkek and Osh were crammed ten to a cell designed for two. Life expectancy behind bars was half that national average because of absence of medical attention and food shortages, one source reported. The tuberculosis was rife and often a reason for early release.

Prisoners barely survived on rations of 8 Kyrgyz Soms (17 US cents) a day, less than a quarter officially specified. This was just enough to buy a kilogram of potatoes, the sources said. The prison system was entirely unprepared to cope with more life-term prison sentences, Kurmanbek Osmonov, the chairman of the Kyrgyz Supreme Court said. The task now was to build new prisons and spend money on improvements and the conditions, said the parliamentary deputy Baybolov. Justice Minister Kajypov has promised the prisons any budget surpluses. *"That means nothing will change in penitentiary system of Kyrgyzstan until situation in economy improves,"* one source commented. *"The exception has been the abolishment of the death penalty"*. (Reported in October 2007) ■



Zoltán Dujisin

Populism Seen Behind Death Penalty Talk

Krakow - Warsaw's head-on clash with the European Union by vetoing a symbolic day against the death penalty is being interpreted here as a pre-electoral attempt to win domestic support for the so-called "Fourth Polish Republic" - a vision of a nation with a far wider sense of morality and democracy than existed under any past government. The latest EU-Polish confrontation has come in the midst of a political crisis in Poland, after Prime Minister Jaroslaw Kaczynski from the ruling Law and Justice Party, PiS, dissolved the governing coalition and called early elections for Oct. 21.

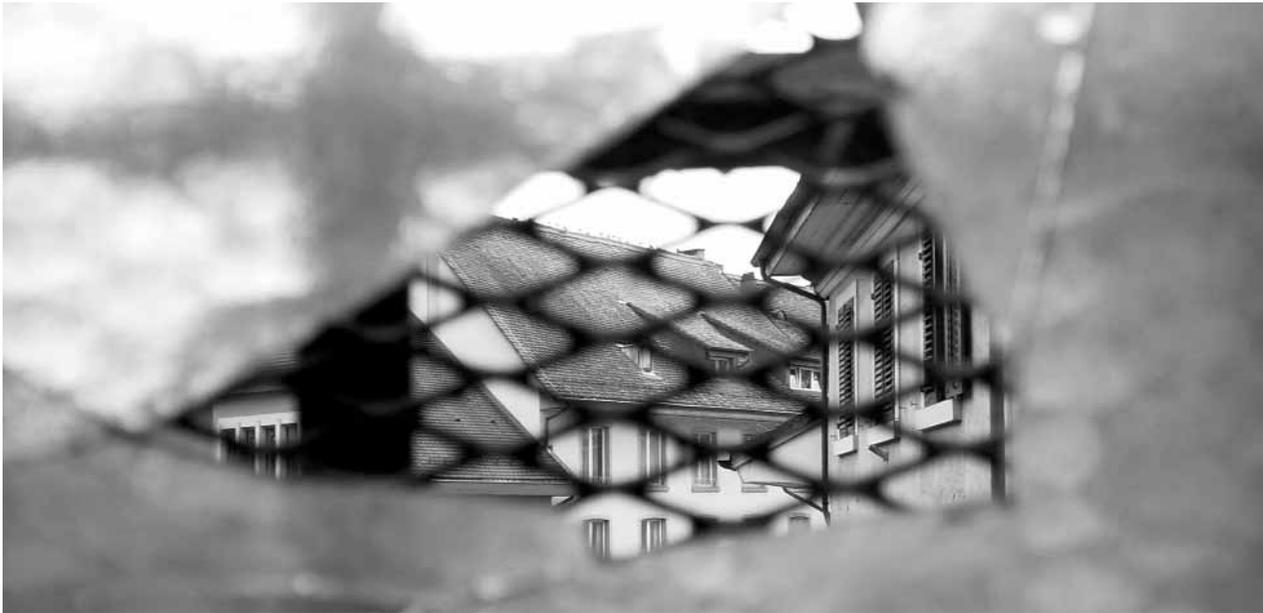
On Sep. 18, Poland blocked a proposal by the Portuguese EU council presidency to mark a "European Day against the Death Penalty" on Oct. 10. This would have been a contribution to the World Day against the Death Penalty held annually by the Paris-based World Coalition against the Death Penalty. Warsaw objected on the grounds that the EU proposal did not take into account the broader principle of the "right to life". *"If someone wants to discuss the death penalty, then he should also discuss banning euthanasia and abortion in the same context,"* Polish foreign ministry spokesman Robert Szaniawski told the press.

Polish Prime Minister Jaroslaw Kaczynski's alternative proposal was a "Day in Defence of Life", Polish foreign minister Ana Fotyga said. *"We would like first to discuss what it really means,"* Interior Minister Wladyslaw Stasiak said, commenting on the contro-

versy. *"But we don't want a debate on reinstating the death penalty, nobody wants that in Poland."* "With the electoral campaign this is a very good topic for them. They know they will not reinstate the death penalty, but it allows them to say something that goes down very well with right-wing voters, without taking any action," Andrzej Bobinski, programme coordinator at the Centre for International Relations in Warsaw, told IPS. He added: *"It's only a media issue, it's not real."*

The Council of Europe, where voting does not require unanimity, reacted swiftly to the Polish veto and the following week itself adopted Oct. 10 as the "European Day against Death Penalty". It also expressed the hope the EU would join in *"as soon as possible"*. On the same day, the European parliament also displayed solidarity by reiterating its support for the European anti-death penalty day initiative and expressing hope the next Polish government would support it.

Italian foreign minister Massimo D'Alema, currently working hard to win worldwide support for an EU-supported death penalty moratorium proposal, shortly to be presented to the UN General Assembly, expressed anger at the Polish veto. It was "reactionary and nationalistic", he said, adding that he hoped the current Polish government would suffer defeat in the upcoming elections. But such public condemnation might only increase the Polish right's Euroscepticism and win over other critics who see the EU stand on the death penalty as an overstepping of its mandate, Bobinski said. It



Former Prison in Baden, Switzerland | Photo: Kurt Michel | www.pixelio.de

gave the ruling PiS party the opportunity to portray the pro-EU camp in Poland as those who "*defend murderers - unlike us*", he said. The death penalty and law-and-order issues have been controversial ones in Poland for months before the EU veto.

Last May, following a murder case involving the killing of a minor by a 19-year-old, who was later released, President Lech Kaczynski, the Prime Minister's twin brother, declared that it was "*inadmissible when judges' views prevail over the moral beliefs of the general public*". Supreme Court President Lech Gardowcki replied by accusing the Kaczynski twins of undermining the justice system with their constant criticism and interference. They were pushing for tougher sentencing although crime rates were falling, he said.

Roman Giertych, the leader of the ultra-Catholic League of Polish Families, until recently a junior coalition partner in the government, has termed Europe's laws on crime as "*anachronistic*" and called for a referendum in favour of the restoration of capital punishment for the most extreme cases of murder and "*paedophile murderers*". Giertych, who was education minister, had proposed schools should count religious lesson results in the final average class marks, mandatory school uniforms and separate schools for "*aggressive youth*", measures all welcomed by the Kaczynski brothers. Giertych also had plans to abolish the teaching of Darwin's evolutionary theory in schools and to introdu-

ce anti-abortion classes to educate pupils about "*the killing of unborn babies*".

According to a March poll, 63 percent of Poles supported the death penalty, compared to 31 percent who opposed it. This reflected a widespread view that murderers often get away with overly light penalties, commentators said. The Kaczynski brothers, to whom very few topics are taboo, have supported the death penalty as an effective tool in fighting corruption and crime. They campaigned for its restoration in the presidential and parliamentary elections of 2005. Many conservatives here argue that the country's transition from communism has been incomplete as a result of powerful and corrupt cliques remaining in power and plundering the state. They have proposed rebuilding the country - a "*Fourth Polish Republic*" - on the basis of a new moral climate.

The EU is often compared by them to a Trojan horse for decadent, liberal values, to which a re-born Poland should not capitulate. Concerned observers in Western Europe have pointed to troubling similarities between the twin brothers' ideology and Poland's pre-communist nationalistic, illiberal and anti-Semitic regime. Poland is one of three EU states which prohibit abortion on demand. Alicja Tysiac was unable to find a doctor for an abortion in Poland in 2000, despite warnings that her pregnancy

could result in damage to her eyesight. After giving birth, her sight did seriously deteriorate, she has claimed. Tysiac filed a complaint against Poland in the European Court of Human Rights in Strasbourg in 2003. The court ruled in her favour last March, but the Polish government appealed against the decision. On Sep. 25, the court rejected Poland's appeal, confirming Tysiac's right to abortion and ordered the Polish government to pay her damages.

Much of the Western media has indirectly blamed Poland's Catholicism, which permeates much of the country's public life, not only for the country's abortion laws, but also for the government's flirting with the idea of capital punishment. Some commentators here have questioned why Pope Benedict XVI has failed to reprimand some of the more extremist sectors of the Polish Church, which is suffering from internal divisions.

Marta Scawicka, who works for the Catholic foundation Lux Veritatis, said the death penalty in Poland was an issue of personal expression. "*But as a Catholic I am against death penalty, John Paul II was against it, and so is the Bible,*" she told IPS. Poland abolished the death penalty, an essential requirement for joining the EU, in 1997. A moratorium had been in place since the time of the last execution in 1988. Poland joined the EU, currently a body with 27 member nations, in 2004. (Reported in October 2007) ■



Julio Godoy

"A Key Step Towards Abolition"

Interview with Amnesty International's Martin Macpherson

London - Amnesty International has been fighting since its foundation for the universal abolition of the death penalty. In the next weeks, the UN General Assembly will be voting on a resolution calling for a global moratorium on executions. Directing Amnesty's campaign for the moratorium is Martin Macpherson. How close are we to an end to all state killings? Macpherson makes no predictions to Julio Godoy, European correspondent of IPS. But the UN vote will be an historic milestone in the campaign to end capital punishment.

IPS: *Why does Amnesty International want the UN General Assembly to adopt a resolution calling for abolition of the death penalty?*

Martin Macpherson: Amnesty International opposes the death penalty in all cases and without exception, believing it to be a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The death penalty legitimises an irreversible act of violence by the state and will inevitably claim innocent victims. Amnesty therefore demands unconditional and worldwide abolition of the death penalty. A resolution by the UN General Assembly - a universal body representing the entire UN membership - calling for a moratorium on executions as a step towards abolition would be an important international milestone in the campaign to abolish the death penalty worldwide.

IPS: *Why is there a push for this resolution on the death penalty just now?*

Martin Macpherson: A death-penalty-free-world is increasingly becoming a real possibility. But to achieve that goal there must be strong political leadership and a well-crafted strategy to create global support. This past year has seen renewed debate on the use of the death penalty prompted in part by the execution of Saddam Hussein. A time has been reached when it should be possible to adopt a resolution

in the UN General Assembly calling for a moratorium on executions.

One-hundred-and-thirty-one countries have abolished the death penalty in law or practice. Only 25 countries actually carried out executions in 2006. In 2006, 91 percent of all known executions took place in China, Iran, Iraq, Pakistan, Sudan and the U.S. Amnesty International's statistics also show an overall decline in the number of executions in 2006 - a recorded 1,591 executions, compared to 2,148 in 2005. These figures demonstrate that there is now a real momentum to end capital punishment. Statements by both the UN Secretary-General Ban Ki-moon and the High Commissioner for Human Rights Louise Arbour have supported the "trend in international law and in national practice towards a phasing out of the death penalty".

IPS: *Has the General Assembly ever taken a position on the death penalty?*

Martin Macpherson: To date, the UN General Assembly has not adopted a resolution either calling for a moratorium on executions or abolition of the death penalty. It has adopted standards to limit the application of the death penalty and safeguards to protect the rights of those facing the death penalty. One of these standards is the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Sixty-one states have now ratified this Protocol and a further eight are signatures to it. Amnesty International believes the UN General Assembly should now call for a global moratorium on executions as a key step towards the ultimate goal of abolition.

IPS: *Calls for a UN General Assembly resolution on the death penalty failed in the past. Why should the efforts be successful this time?*



Ancient execution block in London | Photo: www.pixelio.de

Martin Macpherson: Yes, there were unsuccessful attempts in 1994 and 1999. But since then the number of abolitionist states in law or practice has increased. At the UN General Assembly in 2006, Finland, as the President of the EU, delivered a statement supported by 95 states which expressed "deep concern at the continuing use of the death penalty around the world". The statement went on to call on states that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions.

The international trend is towards abolition. But fierce opposition can be expected now from some states that retain the death penalty who will seek to defeat the resolution on the grounds that this is not a human rights issue that affects the right to life but a question that solely falls within the domestic juris-

dition of states. They will attempt to defeat the resolution, for example, by introducing "wrecking amendments" as happened in the past.

IPS: *What is a "wrecking amendment"?*

Martin Macpherson: "Wrecking amendments", sometimes called "killer amendments", seek to undermine the purpose of the resolution. They are neither friendly nor made in good faith. "Wrecking amendments" in the past have sought to undermine the draft by denying that the question of the death penalty resolution is a human rights issue of concern to the world community and by introducing language which reaffirms the sovereignty of states to decide on issues of criminal justice and sentencing.

IPS: *Surely, though, it is for each UN member state to decide for itself whether it uses the sanction of capital punishment?*

Martin Macpherson: The promotion and protection of human rights is a concern for the international community as a whole. It is not solely a matter for individual states. Amnesty International has declared its total and unconditional opposition to the death penalty, and consequently the organisation does not accept that states have a right to execute people in any situation. Even the best judicial systems are fallible, and innocent people will invariably be put to death. There is no perfect judicial system.

IPS: *Your critics may say this is just another instance of rich countries and their non-governmental organisations seeking to impose their values on developing countries. How would you reply to this?*

Martin Macpherson: Opposition to the death penalty is not exclusive to any particular region, political system, world religion, culture or tradition. States that have abolished the death penalty are to be found in all regions and cut across religious divides. Furthermore,

international human rights law and standards on the death penalty has been elaborated by international and regional bodies, including the UN General Assembly and the development of those standards draws on many different experiences and legal systems. The current initiative to table a resolution on moratorium on executions at the UN General Assembly is supported by states from all regions of the world.

IPS: *The next UN General Assembly -- the 62nd -- opens in the last week of September. We can expect, then, that the moratorium initiative will be introduced into the new Assembly for a vote in the coming weeks. What will it take for it to be successful?*

Martin Macpherson: It must build a strong, broad cross-regional support and be carefully prepared in order to secure a successful outcome. A number of the states that are opposed to such a resolution are influential and determined to defeat or distort it with wrecking amendments. With strong political leadership and a well thought out strategy it will be possible to achieve a resolution on a universal moratorium.

IPS: *Will the resolution you are expecting make any difference to states which are now executing people?*

Martin Macpherson: A UN General Assembly resolution by itself will not prevent a state carrying out an execution as such resolutions are not legally binding. However, a clear call from the UN's highest political body for a moratorium on executions would carry considerable moral and political weight. It would be a very valuable tool in convincing reluctant states to implement a moratorium as a significant step towards worldwide abolition. For us at Amnesty, it would be an important advocacy tool in the campaign for worldwide death penalty abolition. *(Reported in September 2007)* ■



Julio Godoy

"Rational Debate On Capital Punishment Lacking"

Interview with Peter Hodgkinson, Director of Centre for Capital Punishment Studies

London - Peter Hodgkinson founded the world's first Centre for Capital Punishment Studies at the Westminster University Law School, London in 1992. The centre's aim is to inform the death penalty debate from an evidence-led perspective. It also stages a number of practical projects addressing such issues as the alternatives to the death penalty and services for the families of murder victims as well as the condemned. This is the approach which needs to be developed further, he says in an interview with Julio Godoy, European correspondent of IPS. Death penalty supporters and abolitionists still rely on much "mythology" and irrational argument. "Too much discussion takes place at the emotional and high moral ground level and not enough cerebrally," he says.

IPS: *Over the past decade there has been an enormous increase in the number of countries abolishing the death penalty. You must see this as a tremendous achievement for the abolitionist movement?*

Peter Hodgkinson: Removal of the death penalty must be welcomed. But one needs to examine in some detail the nature of the cause and effect relationship implicit in your question. I can recall a number of countries where replacement of the death penalty seemed unrelated to any specific 'abolitionist' campaign. It is important that the abolition industry rigorously scrutinises its strategies to determine the effect of its actions.

The Council of Europe is a case in point. The requirement for membership is suspension of executions, together with an undertaking to ratify the Sixth Protocol of the European Court of Human Rights within three years of accession. Countries were quite prepared

to agree to this in order to join the club. As a death penalty 'expert' to the Council of Europe, my continuing regret is that the essential infrastructure changes for abolition and its aftermath were all too rarely resourced or put into practice. There continues to be an absence of rational, evidence-based debate about the alternative penal policy to capital punishment.

IPS: *So despite the growing number of abolitionist countries, you are disappointed from this perspective?*

Peter Hodgkinson: I believe that a holistic approach needs to be taken to the replacement of the death penalty. The issues I have just referred to should be addressed in this way. Adherence to capital punishment is symptomatic of states with questionable standards in the administration of justice. Removing the death penalty without addressing these fundamental flaws is an opportunity lost. For example, I find it incomprehensible that abolition strategies give little or no thought to the replacement penalty after abolition. While progress to abolition is very welcomed, we need to keep in mind that more than 80 percent of the world's population live in countries where there is still provision for the death penalty.

Paradoxically, abolition of the death penalty itself rarely brings about the improvements that one would expect from such a radical step. Our centre has always promoted a holistic approach in preparing for abolition and its aftermath. This approach requires that attention and resources are given to improving legal services, prison and police practices, crime victims' services, humane and proportionate alternatives to the



The Tower of London | Photo: Stefan Willuda | www.pixelio.de

death sentence and a political philosophy that avoids reinforcing the death penalty mythology.

IPS: *But even with all this, isn't it going to be hard to convince the world's population to support abolition?*

Peter Hodgkinson: It is important to acknowledge that the citizens of any country contemplating the replacement of capital punishment have every right to be nervous about the repercussions of such a policy. This is not because there is any evidence of the benefits of capital punishment but because they have been persuaded by politicians that the death penalty is the solution to serious violent crime. Our centre's response is to initiate what we call a 'public and elites information and reassurance' project. This strives to demonstrate to the public that removing the death penalty will not lead to civil society chaos.

IPS: *You say penal policy is often left out of the debate on the death penalty. Perhaps one of the reasons for this is because it is so complicated?*

Peter Hodgkinson: It is not inherently complicated. It is the duty and responsibility of governments to ensure that penal policy is informed by the data, not by populism. There is a wealth of evidence and experience about life and long-term imprisonment, for example. But one could be forgiven for thinking that policies are adopted at random and in the face of the evidence. Minimum prison sentence lengths as alternatives are plucked out of the sky. Most disturbing is the reliance on whole-of-life imprisonment. There is some confusion in the term 'life imprisonment'. This can be made clearer if you consider it as time spent in prison and time under supervision, subject to recall to prison,

for the rest of one's life. Neither the United Nations nor the Council of Europe guidelines on the management of life and long-term prisoners, concede the need for whole-of-life imprisonment, though they, and I, accept that there may be a few prisoners who may never be deemed safe to release back into the community. The Council of Europe guidelines should be compulsory reading for those shaping penal policy.

IPS: *When should consideration be given to release a 'lifer' into the community?*

Peter Hodgkinson: Subject to the circumstances in each individual case, judges should set the time to be served to meet the needs of deterrence and retribution. This is known as the tariff. Preparation for release back into the community should begin on day one of the sentence and actual release should be possible once the tariff has expired. Release, subject to rigorous support and supervision, should be based on assessment of risk of future offending and evidence of capacity to live a purposeful life in civil society. It should be subject to the possibility of being returned to prison should you violate your parole conditions. The tariff serves as an encouragement and inducement to behave, to improve and address any problems identified as triggers to the offence. It also provides protection for the prison staff who manage the subtle balance between rewards and punishment. Whole-of-life imprisonment provides neither hope nor purpose to prisoners. It also puts prison officers at potentially greater risk.

IPS: *Resistance to abolishing the death penalty often comes from people concerned about the victims. Should the abolitionist movement be campaigning for more to be done for the victims?*

Peter Hodgkinson: With few, but notable, exceptions - I would single out the two U.S. organisations Murder Victims' Families for Reconciliation and Murder Victims' Families for Human Rights - the abolition industry has failed to address the issue of the families of homicide victims and the condemned. Victims have always been exploited as part of the 'law and order' platform of populist politicians. Many hollow promises are made on their behalf. An expressed 'concern' for victims often belies the fact that little or no services are being provided for them. Even when there is action this can take the form of exploiting the victim further by 'using' them as part of the prosecution process. The families of murder victims continue to be marginalised.

IPS: *The UN General Assembly will soon be voting on a resolution calling for a universal moratorium on state executions. Of course, this will not be binding on the world community. But do you think a resolution passed with a significant majority might lead to more countries abolishing the death penalty and focus minds on the often-ignored issues you have mentioned?*

Peter Hodgkinson: I would love it to have this effect and it would represent a symbolic move in the right direction. Those promoting such a resolution are confident of an increase in co-sponsors and securing a majority, a measure perhaps of the increasing consensus about the need to suspend executions and restrict reliance on the death penalty. I am less certain that it will change the behaviour of countries wedded to capital punishment. (Reported in October 2007) ■

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Rosalia Omungo

Call For Abolition As Thousands Await Execution

Nairobi - Politicians from leading parties and prominent human rights activists all seem to agree that the time has come for Kenya to abolish capital punishment. But as they continue to talk, courts continue to pass down death sentences, swelling the numbers on death row. On Jun. 21, Justice and Constitutional Affairs Assistant Minister Danson Mungatana told journalists here that the government was committed to abolishing the death penalty. *"I am aware there is an advanced plan to that effect,"* he said in answer to a question specifically directed at the administration's position on the death penalty.

But he gave no target date for abolition, only adding: *"All this is at a preparatory stage. At the correct time it will finally have to be resolved in parliament."* The last known official executions in Kenya were in 1987 during Daniel Arap Moi's time in office. Among those hanged then were Hezekiah Ochuka and Pancras Oteyo Okumu, accused of masterminding the Aug. 1, 1982 attempted coup. Since then thousands have been sentenced to death and are awaiting execution. IPS was unable to

obtain figures from the prisons department for the exact number on death row at the time of publishing this article. But in the five years from 2001 to 2005, 3,741 were sentenced to be hanged, an average of 748 a year, according to the department's statistics. In the same period less than 200 death sentences were commuted to life sentences on appeal.

In 2003 President Mwai Kibaki also commuted the death sentences of 223 inmates. One of those passed over then for a presidential amnesty because his case file had been lost was Samson Ochanda Owuor, one of the oldest and longest-serving death row inmates, according to press reports. He had been convicted of robbery with violence in 1988. Besides murder and treason, robbery and attempted robbery with violence are capital offences in Kenya.

Environment Minister Kivutha Kibwana told IPS that he was one of those in the government calling for the abolition of the death penalty. *"I believe even if someone has killed another, you do not correct the situation by killing another person. That*



"Peine du mort" | Photo: www.revolt.es.org

leaves two dead people," he said. Prominent opposition politicians have also expressed their support for abolition in statements to the press. This suggests that a government bill to abolish capital punishment would receive cross-party support.

"The death penalty is not a deterrent and should be abolished," Anyang' Nyong'o from the Orange Democratic Movement - which includes members of the former ruling party, the Kenya African National Union (KANU), and the Liberal Democratic Party - said recently. *"Convicts should be given a chance to work and get to learn skills. This way, they would get out of jail useful."* Currently death penalty inmates are not allowed to work. This means that they have no savings or work experience to prepare them for life outside prison in the event of release.

William Ruto, a member of parliament for KANU - now the official opposition party - was even more outspoken, calling the death penalty a *"vengeful"* sentence that served no helpful purpose. *"We need a rehabilitative approach,"* he added.

The Kenya National Commission on Human Rights, an independent public body set up in 2003 to advise the government on protecting and promoting human rights, has also added its influential voice to the debate, recommending that parliament urgently take action to abolish capital punishment. *"Even though it is in our legal books and laws, it is not the right thing for us to be doing,"* Maina Kiai, chairman of the commission, said at the launch of a position paper on capital punishment in April.

The death penalty should be removed from the constitution and laws amended to bring them in line with this change. The commission also called for an immediate moratorium on death sentences to prevent further additions to the number on death row. Those already facing capital punishment should have their sentences commuted to life imprisonment by presidential decree.

Haroun Ndubi, executive director of Haki Focus, a human rights organisation, questioned whether the death penalty was helping to reduce violent crime, which is on the rise in

Kenya - and suggested it may even be contributing to an increase in murders. There were *"a lot of young people"* involved in carjackings who killed their victims to eliminate anyone who could give evidence against them in capital trials for robbery with violence, he told IPS. *"They kill ... for fear of conviction if the witness were to live to testify,"* Ndubi said, noting that the abolition of the death penalty would reduce the number of such murders.

He also raised doubts about the guilt of some of those currently on death row. There had been claims of false accusations, and convictions without adequate evidence, he said. Ndubi added that it was *"inhuman and degrading"* to convict people and then leave them on death row for years on end, living in constant fear of execution. This issue was also raised by Mungatana when he spoke to the press. He said the major issue to be decided was the fate of those already sentenced to death, suggesting that commuting these sentences could be the first step towards abolition of the death penalty in Kenya. (Reported in July 2007) ■



Frank Phiri

Judges And Lawyers Bring Relief To The Condemned

Blantyre - Malawi's death row prisoners are breathing more easily after three High Court judges unanimously agreed in a test case that the courts are not bound to sentence anyone to death for murder, as this would be a violation of that person's human rights. "The mandatory death penalty violates an individual's right that protects one from inhuman treatment or punishment and denies them the right to fair trial and have the sentence reviewed by a higher tribunal," said Justice Elton Singini, reading out the joint judgment on Apr. 27.

This made article 210 of the penal code "invalid". The article stipulates that the only sentence available to judges for a murder conviction is death by hanging. In the crisply-worded ruling the judges took Malawi a step forward along the road to abolishing the death penalty. But they were careful to note that their decision did not ban capital punishment for the crime of taking a life. "For the removal of doubt, we state that our declaration does not outlaw the death penalty for the offence of murder, but only the mandatory requirement of the death penalty for that offence," the judgment said.

The ruling was immediately praised by death penalty abolition campaigners. "This decision is a milestone in the inter-

national campaign against the death penalty," said Saul Lehrfreund and Parvis Jabbar, two human rights lawyers based in the United Kingdom. "The implications for future murder trials will be the introduction of a complete new set of procedures restricting the imposition of the death penalty in the first instance. We are delighted that the jurisprudence from Uganda and other regions in the world has now been accepted in Malawi. The decision reflects the notion that law should move progressively towards greater protection of human rights."

The High Court ruling involved the case of Francis Kafantayeni and five other death row inmates at Malawi's high-security prison, Zomba. Kafantayeni was sentenced to death following his conviction in 2002 for admitting to the killing of his two-year-old stepson. In mitigation he claimed to have been acting in a state of temporary insanity induced by smoking cannabis. The High Court judges ruled that the six must now be brought back before the courts for a review of their death sentences. These could be confirmed, though the ruling suggests that alternative sentences of fixed-term life imprisonment will be handed down. Noel Chalamanda, a member of the local team of lawyers which represented the six death row inmates, assisted



Photo: Scott Langley

by British lawyers, told IPS that the review would take place towards the end of June. He said depending on the outcome, the same legal team would start a similar action for the remaining prisoners on death row. "As of now there are about 30 persons on death row and we have undertaken to do the exercise for them all," he said. "We are confident that the mandatory death sentence could go altogether and the number on death row could start to be reduced."

The number facing execution was substantially reduced when 79 death row inmates had their sentences commuted to life imprisonment by presidential decree in April 2004, according to Amnesty International. The lawyers working for an end to the death penalty in Malawi form part of the Death Penalty Project, an international human rights organisation which has been providing free legal representation since 2003 to those facing capital punishment in the Caribbean and Africa. It is run in association with the British solicitors Simonds and Burton, Keir Starmer QC and Joseph Middleton of Doughty Street Chambers.

One local lawyer stressed the limitations of the ruling. "The death penalty is not only prescribed for murder but for other offences," Blantyre-based Sheen Msusa told IPS. "The

court was only dealing with the mandatory requirement of the death penalty in murder cases. By necessary inference, the judgment has nothing to do with mandatory capital punishment like in case of treason." Apart from murder, the Malawi constitution stipulates that treason, rape, burglary and armed robbery are punishable by death.

At present the courts are dealing with a high-profile treason case involving the vice president, Cassim Chilumpha, accused of plotting to overthrow the government of President Bingu wa Mutharika. Chilumpha denies the charge, but remains under restrictive bail conditions. Human rights activists and lawyers argue that the next logical step is for Malawi to take the death penalty out of its constitution. "It's encouraging that for over 10 years, our two presidents never signed for the hanging of death row convicts. Why then should we have it in the law?" asked

Undule Mwakasungula, executive director of the Centre for Human Rights and Rehabilitation, a vocal rights watchdog in Malawi. Mwakasungula said it was unfortunate that due to lack of civic education, certain sectors of society had rallied behind the death penalty during Malawi's second Constitutional Review Conference in April. The conference was convened by the

Malawi Law Commission, an independent institution established under the constitution to make recommendations on the repeal and amendment of legislation. "The majority of the responses indicated that people are in favour of retaining the death penalty," notes a report by the commission.

The High Court ruling offering hope to all Malawi's death row inmates also puts the spotlight on the kind of life facing them in prison if they are resented to fixed life terms. Amnesty International describes the conditions in Malawi's jails as "life-threatening". In its annual report released in April, the global human rights watchdog noted that there were more than 280 deaths in the prisons last year, an average of 23 inmates a month among the 10,000-strong prison population. "This was a sharp increase from the 14 deaths per month recorded in 2005. Most of the deaths were linked to inadequate diet," Amnesty said. Chalamanda said this was one of the reasons the team of lawyer activists had brought the case of Kafantayeni and others to the High Court. "Most of these inmates are in poor health and desperately need redress. Our focus now is to try and secure less severe sentences for them, depending on the levels of criminal culpability," he said. (Reported in July 2007) ■



Toyé Olori

"Inmates Who Are On Death Row Are Without Legal Representation"

Interview with Anti-death-penalty-campaigner Olawale Fapohunda

Lagos - Olawale Fapohunda is a leading human rights lawyer in Nigeria and managing partner of the Legal Resource Consortium, a non-governmental organisation (NGO) based in the economic capital of Lagos that provides free legal aid to prison inmates. He was secretary of the Presidential Commission on the Reform of the Administration of Justice which early this year recommended the release of many death row prisoners. He is also a member of the International Advisory Board of Penal Reform International. In an interview with IPS writer Toyé Olori, he calls for a formal moratorium on executions and a speedy end to capital punishment in Nigeria.

IPS: *Rwanda and Gabon recently abolished capital punishment. What lessons can they offer Nigeria?*

Olawale Fapohunda: Yes, these two countries have abolished the death penalty, and also Senegal, three years ago. Nigeria will also have to act decisively on this issue of capital punishment. It has been a subject of public discussion here since 2004. But now it is perhaps time for the government to take a lead and show the way forward.

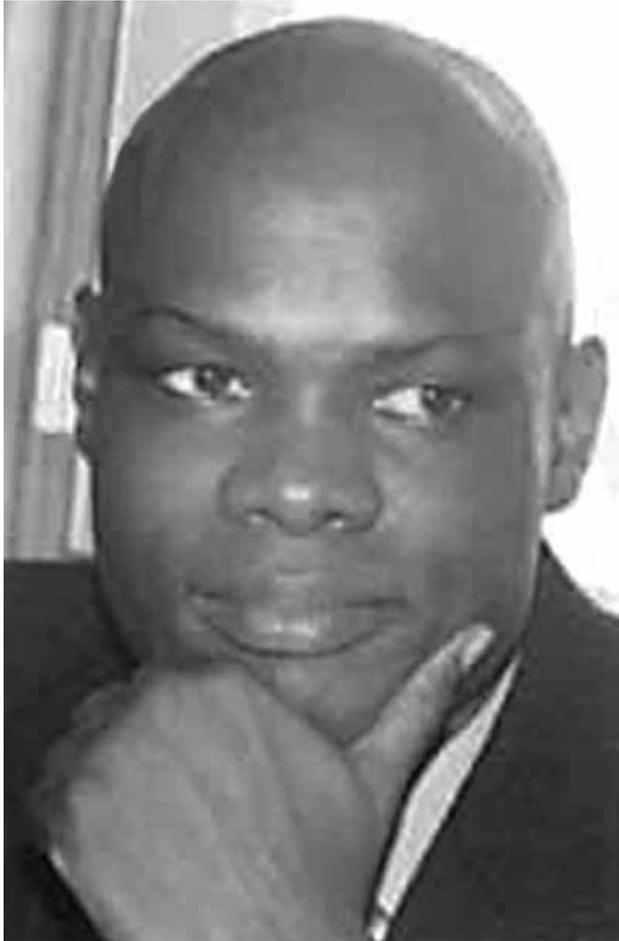
IPS: *But is Nigeria really ripe for abolition, considering its very high crime rate?*

Olawale Fapohunda: The debate on the death penalty in Nigeria is always an emotional one. Sometimes it is rarely backed up

by facts or proper reasoning. You mentioned the high crime rate, yet that assertion does not match the statistics. For example, our population is about 140 million. But the total population of our prisons is 40,000, out of which 25,000 are actually remand inmates. So either this crime rate is exaggerated or the police are not catching the criminals. Whatever it is, the statistics do illustrate a fundamental flaw in our criminal justice system. We do actually have an unofficial moratorium on executions. The simple reason for this is that the state governors who are required to sign death warrants have shown a reluctance to do so. This is largely because of the unreliability of the whole process from arrest to conviction. Standing in the way of abolition, besides the perceptions on crime, is religion. Many Nigerians have a hard-line attitude towards capital punishment and this is influenced by their religious beliefs. In my view Nigeria should abolish the death penalty, but I doubt if there is the political will to do so.

IPS: *Why are the courts still continuing to sentence people to death when there is what you call an "unofficial moratorium"?*

Olawale Fapohunda: The death penalty is still retained in the laws of Nigeria. The constitutionality of the death penalty has been affirmed by our Supreme Court. Therefore courts are still able to hand down death sentences. This will continue to be the case until there is law reform on this issue and the death penalty is removed from our legal code.



Olawale Fapohunda | Photo: private

IPS: *What are rights activists doing to pressure the government to abolish capital punishment?*

Olawale Fapohunda: The Nigerian NGOs have been consistent in lobbying on this issue. Our efforts are ongoing. But it would be a mistake to assume that there is consensus among all Nigerian NGOs on the death penalty. This is not so. There is, however, a coalition of NGOs for the abolition of the death penalty. This is seeking to build a consensus among governmental and non-governmental institutions on this issue. There is also an effort to get parliament to discuss the death penalty. As NGOs, we need to do more in the area of public education. We also need to back our advocacy with concrete facts and figures.

IPS: *What has become of the recommendations of the Presidential Commission on the Reform of the Administration of Justice on which you served as secretary?*

Olawale Fapohunda: We presented three reports to the presidency, including a final one which studied the prisons nationwide. A committee was then constituted to review these reports and submit a white paper to the presidency. The ministers of justice and of the interior have recently begun moves to adopt the key recommendations from the reports, particularly those which related to the prisons and conditions of prison inmates.

IPS: *Your commission was particularly concerned about inmates on death row. You recommended certain categories of these should be released. Has this happened?*

Olawale Fapohunda: Yes, we were concerned about the deplorable conditions on death row. We found that the average period spent on death row is between 10 to 15 years. We also noted that many death row inmates have been diagnosed as having various physical and mental ailments. We were persuaded by the report of the National Study Group on the Death Penalty, set up by the federal government in 2004. This statement encapsulated the findings of that report: *"A system that would take a life must first give justice."* In addition to identifying certain categories of inmates on death row

for immediate release, we also recommended an official moratorium on executions until the Nigerian criminal justice system can ensure fundamental fairness and due process in capital cases. The call for an official moratorium on all executions is borne out by the conviction that the federal government can no longer ignore the systemic problems that have long existed in our criminal justice system. These have been exacerbated by the limited funding of criminal justice agencies, inadequate training of personnel and an inadequate legal aid scheme. We also found that one of the most intractable problems in the administration of the death penalty in Nigeria is the severe lack of competent and adequately-compensated legal counsel for defendants and death row inmates seeking appeals. The limited funding of the legal aid scheme has seriously undermined the support system for lawyers taking on these complex and demanding cases.

It is particularly noteworthy and of concern that the Legal Aid Council presently does not provide legal assistance and advice for people facing capital punishment. The direct consequence of this is that inmates who are on death row in Nigeria's prisons - almost all exclusively poor - are without legal representation. The federal government has yet to implement our recommendations, including our call for an official moratorium on executions and the release of certain categories of inmates on death row. *(Reported in November 2007)* ■



Toyin Olori

Rights Activists Await Break With The Past

Lagos - The return of democracy to Nigeria in 1999 after years of military dictatorship has not brought an end to extra-judicial killings; rather, the number may have doubled in what is now often a daily occurrence, says the Civil Liberties Organisation - a human rights group based in the financial hub of Lagos. "While the period of military dictatorship made the wanton destruction of lives and property near state policy, the new democratic administration has quite shockingly witnessed the aggravation of this ugly phenomenon of unlawful killings of innocent civilians by security agents, especially the police," notes a report issued by the grouping in past months.

The study focuses on the six years from May 1999 to June 2005. But Damian Ugwu, its author and head of the organisation's law enforcement project, told IPS that the situation had not improved since. "We have seen an enormous increase in the number of extra-judicial killings in the past eight years," he said. These were being carried out by the police, army and state-sponsored vigilante groups. Extra-judicial killings are executions not sanctioned by law. Under Nigeria's criminal code, an unlawful killing of a human being is a criminal offence punishable by death.

The Civil Liberties Organisation estimates that on average at least five people are killed every day in extra-judicial circumstances in Nigeria. Most of the killings are said to be at police stations: it's alleged that armed robbery suspects are summarily executed there in the course of investigations. Police claim the killings happen while they are trying to prevent suspects from escaping. "That figure of five a day is a very conservative one," Ugwu said, adding that there were also unreported cases in local police stations and vigilante cells. And, it did not take into account what was now happening in the Niger Delta - the troubled, oil-rich region where police and the army are struggling against growing militancy.

The Civil Liberties Organisation report blames the deteriorating economic situation for the rise in extra-judicial killings. Despite the huge increase in oil revenues during the final years of former president Olusegun Obasanjo's term in office, more than 80 percent of Nigeria's 140 million people still live on less than a dollar a day, according to the United Nations Development Programme. This situation had led to growth in gun crime, robbery and kidnappings. Obasanjo stepped down from office this week. During his eight years in power, some 500,000 workers lost their jobs, Ugwu said. Many were left destitute.



Abolition activists in Nigeria | Photo: Amnesty International

te, struggling to maintain their families. "Children cannot go to school because they cannot pay the school fees. Many of them, youths under 20 years of age, have joined cults and gangs and taken to crime," he added.

The police were "overwhelmed" by the growth in lawlessness. "So what they do is try to eliminate the problem through extra-judicial killings," Ugwu said. "They think if you kill this person, he is not going to come back and disturb you again. They are resorting to extra-judicial killings to reduce the number of perceived criminals." The police were also turning on the people because of resentment over their own economic situation, Ugwu noted. "A policeman who has not been paid for months is angry. They are being prevented now from taking bribes at check-points. But then they see government officials and politicians stealing millions, so they turn their anger on society." IPS reports that governors of states where vigilante groups have been set up claim they are needed to deal with the high incidence of armed robbery. These groups have also been accused of the unlawful execution of alleged criminals.

The outgoing Nigerian government did step in to ban some of these groups, such as the Bakassi boys. It charged they were being used

for political purposes. Only rarely have the authorities acted on complaints of extra-judicial killings, Ugwu said. "In the past eight years, very few policemen have been brought to book by the government or by the police authorities." He knew of no case where a soldier had been accused in court of being involved in extra-judicial killings. The authorities only ever took action after a public outcry. This happened after the killing of six young people by police in Apo in Abuja, Nigeria's capital, two years ago. According to an Aug. 22, 2006 statement from Amnesty International, "...the so-called 'Apo 6' - five young Igbo male traders and a female student - were arrested on suspicion of armed robbery and executed while in custody in Abuja. In this case, their dead bodies were paraded as armed robbers killed in a shoot-out with the police..." Noted Ugwu: "That was a peculiar case because at the time Nigeria was looking for a seat in the U.N. Security Council. A U.N. special rapporteur on extra-judicial killings was also due to visit Nigeria. The government needed to do something, so it set up an enquiry. But since then, thousands have been killed and nothing has been done."

The activist acknowledged that the level of extra-judicial killings was also high during military rule. But, towns and villages were never razed to the ground by soldiers and police in retaliation over kil-

lings while the military was in command of the country - while this had happened to the town of Odi in Bayelsa State in the Niger Delta in November 1999. Two years later soldiers stormed the Zaki Biam and Vaase communities in Benue State, central Nigeria. Many hundreds of civilians died, activists have alleged. IPS approached the Lagos police to comment on the allegations by the rights organisation and Ugwu. A spokesman denied knowledge of any summary executions in Lagos State over the past two years - the period that he had been in his post. "There has not been any extra-judicial killing. That is my comment," said Olubode Ojajuni, a police public relations officer.

The Civil Liberties Organisation said it was this unwillingness by the police to admit to the problem that had caused the group to embark on a "vigorous" public awareness campaign that was also targeting government officials and the international community. In addition, it had set up a network - the National Alert on Torture and Extra-judicial Killings - to monitor acts of torture and extra-judicial executions. The network had more than 3,000 members around the country. "We are hoping that one day, somebody, somewhere, will come up and say 'These people should account for their sins'," said Ugwu. (Reported in May 2007) ■



Toye Olori

Hope Held Out For Death Row Inmates

Lagos - "You see the fear in their eyes. When someone has been on death row for 10 to 20 years and a strange face comes closer, he thinks the hangman is probably coming to take him to the gallows." John Oziegbe, a legal officer with the Legal Resource Consortium in Lagos, was describing the ever-present dread of execution that haunts Nigeria's estimated 700 death row prisoners.

But visitors from the outside world stepping through the gates of Kirikiri maximum security prison in Lagos, where he often visits to give legal aid to inmates, were also likely to quake in their shoes even before setting eyes on a prisoner, he suggested in an interview with IPS. "Nobody would think that human beings are kept in such places," Oziegbe said. At Kirikiri there was a separate building for the condemned. It was falling apart. "The structure is very bad, almost collapsing," he added.

Prison officials agree that nearly all of Nigeria's 227 prisons are like this. "It is sad that the conditions in most of our prisons, even to the most casual observer, are dehumanising," Gabriel Oloyede, deputy comptroller general of prisons, said candidly at last year's opening of a new prison hospital at Kuje, in Nigeria's capital of Abuja. "Most of the prisons are still brutal and squalid."

But he assured those attending the inauguration of one of the five new show-case prison hospitals that measures were being taken "to improve services". His example was how the mortality

rate in Nigerian prisons had been reduced from 1,500 to less than 400 a year. Nigeria's minister of internal affairs, Magaji Muhammed, also chose this opportunity to note that the "monster" issue of prison overcrowding was recognised by officials. "This is why the president set up various committees to look into problems confronting the administration of justice and prison reforms in general," he said.

IPS has obtained a document from the key presidential commission on the reform of the administration of justice, which reports that more than half the country's 40,000 prison inmates have not even been tried or sentenced. Some have been waiting for their trials for over ten years. The overcrowding this caused was "not conducive to the efficient application of rehabilitation and reintegration programmes" it said. The situation showed that the entire criminal justice system in Nigeria was in a state of "dislocation", the report suggested. Last year a U.N. special rapporteur also found that the situation was so chaotic that some 3.7 percent of all case files of inmates had been lost.

Chronic but preventable diseases like malaria, tuberculosis, influenza and pneumonia were also present in the prisons, the report said, adding that the principal cause of these was the decaying buildings and poor prison diet. "In most pri-



Death row cells in Angola | Photo: Amnesty International

sons inmates are being provided with meals that fall short of the minimum dietary requirements," the report observed.

The official daily prison food allowance now stands at about 83 U.S. cents. In the days of the military regimes before the return to civilian government in 1999, it was less than half of this. More than 70 percent of Nigeria's 140 million people live on less than one dollar a day, according to the United Nations Development Programme. The report put much of the blame for the situation on the long years of neglect by successive military regimes. But it also said that "several years of neglect by successive governments" had left the prisons "at the lowest ebb".

The commission, which has already submitted its report to President Olusegun Obasanjo, has made a string of bold proposals that could transform the penal system in Nigeria overnight - and the lives of those living in daily fear of execution. Everyone on death row for more than 15 years should be released, it recommended. All on death row for more than 10 years and the sick or mentally ill should have their cases reviewed. And, all others condemned to death - the number is put at 111, but is steadily increasing - should have their death sentences commuted to life imprisonment. The commission has also recommended that all inmates jailed for more than five years

whose case files have been lost should be set free. "We need an official (death penalty) moratorium," Olawale Fapohunda, secretary of the commission, told IPS. "Officially the constitution allows the death penalty but we are trying to see how the constitution can be changed for the commuting of all those sentences to life imprisonment as it is done in South Africa," he said.

The last known official execution in Nigeria was carried out under the late General Sani Abacha when environmental activist Ken Saro-Wiwa and eight Ogoni activists were executed in 1995. While the commission has been at work, Nigeria's lawmakers have been discussing a bill to enlarge and modernise the country's entire penal system. This is still being debated. Just when the bill will be adopted, no one can say, but Fapohunda said the commission was working hard to see it was adopted during the term of the present assembly.

"The bill has passed a second reading," he said. "It was first presented to the house in 1999, but because it was not adopted in the first four years it started all over again. We want to ensure that it is adopted now, otherwise the next parliament will start it all over again." He said more than 200 of Nigeria's death row prisoners could benefit from a presidential pardon to mark the country's Democracy Day on May 29, when a new government is expected to be inaugurated. (Reported in April 2007) ■



Toye Olori

Grim, Overflowing Death Rows

Lagos - Some 600 people are now crammed into Nigeria's disease-infested death rows and the number is certain to rise with a justice system that critics say has been resisting reform since the end of military rule in 1999. The situation was highlighted dramatically this month when the U.N.'s special rapporteur on torture, Manfred Nowak, ended a week-long visit here on Mar. 10. He charged there were only a "few tangible results" from efforts to reform the justice system, and one death row inmate had been waiting there for more than 20 years.

Novak levelled grave charges against the Nigerian police for breaking the law with impunity and extracting confessions and information by force. Abuse of suspects was "systemic" and "routine", he said at a press conference ending his visit. "Detainees are beaten up. They are suspended from the ceilings for prolonged periods and beaten in that position as a way for the police to extract confessions or other information." The police also shot at their legs.

He also said the justice system discriminated against the poor, who could not pay for lawyers. Femi Falana, a lawyer, former member of the Committee for the Defence of Human Rights (CDHR) and currently president of the West African Bar Association, told IPS that the situation could be even worse than Novak described. The visit was an

official one and he believed Novak was given a "guided tour". Activists campaigning for death row inmates have long claimed that some may have been wrongly sentenced because of improper investigations by the police, while those who had the money could buy their way to freedom. Nowak's charges are likely to be taken up by activists in their efforts to remove the lingering threat to execution which hangs over what must now be one of the largest death row populations in the world.

The last known executions in Nigeria were in November 1995 when Ken Saro Wiwa and eight other Ogoni environmental activists were hanged during the era of General Sani Abacha who ruled from 1993 to 1998. But there could have been secret executions since the return to civilian rule. A government-appointed committee on reform of the country's justice and prison system produced its first report in 2005. It recommended the release of all those who had been on death row for more than 10 years. It also called for the swift execution of all others who had exhausted their appeals, according to a copy of the report received by a leading human rights organisation. This was suggested as a way of reducing overcrowding in the country's prisons.

The report is said to have criticised all levels of officials involved in Nigeria's capital punishment system. Appeals were



Photo: UNESCO

sometimes long delayed. Officials failed to prepare execution orders for signatures. State governors ignored them when they arrived or failed to exercise their pardoning rights. The government did not accept the committee's recommendations, sending it back to do a more thorough job. Its reported recommendation that death row numbers should be reduced by executions has been strongly criticised by rights activists.

John Uziegbe, a legal officer with the Legal Resource Consortium in the commercial hub of Lagos, believes that the way the system now operates shows that Nigerian governors are collectively observing a moratorium on the death penalty. "Most state governors are not ready to sign death warrants, not because of lack of political will but more an unwillingness to kill," he told IPS. "They do not want to associate themselves with taking lives." He added that Nigerian politicians knew from experience that capital punishment was no deterrent to crime. "Even under the military when public executions of armed robbers were carried out in the locality of the criminal, crimes were being committed in the vicinity at the same time," he said.

Other activists and many lawyers agree that capital punishment is unrelated to crime levels. "We have a growing crime rate because our government has not been able to provide for its citi-

zens. So many unemployed youths are pushed into crime to survive," Lawrence Quakar, a lawyer and member of the Human Rights Law Service, said. "If the government had performed its duties by providing the people with basic necessities of life, we would not have cause to start arguing whether the death penalty should be expunged from the constitution," he added, saying that a return to state executions would make criminals even more violent. Unofficially, the unemployment rate is 60 percent.

Besides campaigning for a formal death penalty ban, rights activists have been pressing for an improvement in the conditions for Nigeria's estimated 40,000 prison population. Inmates are said to sleep on bare boards in overcrowded cells. Disease, especially tuberculosis, was rife with many dying because of inadequate medical treatment, Uziegbe said. "Conditions in prisons are very terrible. From what I have seen there, the people awaiting trial suffer more than those already convicted. They are crammed into cells and not taken care of since there's no money for them," he said. The U.N.'s Nowak also raised the issue of medical attention in prisons at his press conference in Lagos. He said the victims of police torture were left without medical treatment for the injuries inflicted. Nowak's eventual report on Nigeria's justice and prison system may well increase the number of Nigerians in favour

of a constitutional ban on the death penalty -- although a spate of gun crime and armed robberies, especially in Lagos, is also certain to keep the numbers in favour of capital punishment high. There are even some who would like to extend the number of capital offences. "Capital punishment is the best antidote to the high level of corruption in Nigeria," said Bilikisu Amoda, a school teacher from Lagos. "If President Obasanjo's anti-corruption crusade is to work, those convicted of corruption should be executed as in China. Many Nigerians have died though the actions and inaction of corrupt officials."

But the enormous interest in Novak's statement and the outpouring of public sympathy over the hanging in Singapore of a 19-year-old Nigerian found guilty of drug smuggling last January, suggest the numbers opposing capital punishment are rising. Civil society groups not only condemned Singapore's government over the hanging, but also their own for being slow to react and failing to prevent the execution.

The press compared the case to that of the well-known Nigerian actress, Hassanat Taiwo, who was arrested in Lagos for trying to smuggle cocaine out of the country to England. She admitted the offence and was able to pay an eight thousand dollar fine and go free in January. (Reported in March 2007) ■



Aimable Twahirwa

Abolition Spurs Quest For Justice

Kigali - Rwanda has moved swiftly to capitalise on the international approval it received for its recent abolition of the death penalty, and signalled that it will now actively seek the extradition of suspects in the 1994 genocide known to be hiding out abroad and evading justice.

"We have already signed extradition agreements with many countries in Africa, Europe and in North America. We are hoping that those countries will co-operate to bring to trial all genocide suspects, or to extradite their cases before Rwandan justice," Justice Minister Tharcisse Karugarama said here Aug. 2. *"If there are other nations which could help we would praise this,"* Karugarama told IPS earlier. Karugarama's statement, coming just a week after the formal abolition of the death penalty on Jul. 25, will go some way to appease genocide victims who are unhappy that perpetrators of the *"ultimate crime"* will now escape death by firing squad.

Some 44,204 Rwandans accused of participating in the genocide are living abroad, according to an institutional judicial report published here in May. The need for Rwanda to continue the quest for justice was underlined by United Nations High Commissioner for Human Rights Louise Arbour, who issued

one of the first and warmest tributes for Rwanda's decision to abolish the death penalty. The thirst for justice remained *"far from quenched"*, she acknowledged, adding: *"With the promulgation of the law banning the death penalty, Rwanda simultaneously takes an important step forward in ensuring respect for the right to life and makes further progress in bringing to justice those responsible for the heinous crimes of the 1994 genocide."*

For most countries, the abolition of the death penalty in Rwanda was a prerequisite for allowing extradition of genocide suspects to the Central African nation. Rwanda's last executions of those convicted for their role in the genocide, in which more than 800,000 minority Tutsis and moderate Hutus were murdered by Hutu extremists, took place in 1998. Twenty-two persons found guilty of helping to plan the killings were publicly shot.

Since then all others convicted of participating in the genocide have been sitting on death row awaiting execution. Death penalty abolition means they - and people sentenced to death for other crimes - will now be spared and serve out life imprisonment terms. In all, about 650 people will avoid capital punishment. In 1996 the U.N. Security Council set up the



Photo: UNESCO

International Criminal Tribunal for Rwanda (ICTR) to "*contribute to the process of national reconciliation*" and try some of the most serious cases of genocide. The tribunal, which will have completed trials of some 70 people by the end of next year, will now be able to wind up its work and transfer 17 cases to the Rwandan justice system, ICTR prosecutor Hassan Babacar Jallow confirmed to IPS in Rwanda's capital - Kigali. Eighteen people indicted by the tribunal are still on the run.

Rwanda can expect police forces around the globe to

co-operate in tracking down these and other suspects. "*It is our duty as police officers to do everything in our power to identify and apprehend these fugitives who are wanted in connection with such serious crimes,*" the president of Interpol, Jackie Selebi, said at its 19th African Regional Conference in Tanzania last month. Interpol has 186 member countries. Rwandan community groups abroad are also likely to campaign vigorously for extradition proceedings to be brought against genocide suspects in their midst.

Days after the news of abolition, the Rwandan community in Canada led the way by calling for the extradition of Leon Mugesera, a former Hutu extremist who had been allowed to stay in Canada while Rwanda's death penalty was in place. Despite the official assurances that Rwanda will now seek a return of these people, many of those who survived the genocide were critical of the death penalty ban when interviewed by IPS. "*This is only going to encourage those bent on our extermination,*" said Gisele Dusabe. "*This is a humiliation. I lost my entire family and up to today have received no compensation.*"

But Paul Kazoba, a Tutsi who fled to Uganda, expressed a different view. "*We need to rebuild our nation,*" he said.

"True reconciliation is only possible if one refrains from retaliatory killing." A Hutu genocide participant who has confessed before the community 'Gacaca' courts, established to speed up the administration of justice, welcomed the ban on capital punishment. "*We deeply regret what we have done. The abolition of the death penalty will surely facilitate reconciliation.*"

The Gacaca courts were first set up in 2001, at a time when more than 100,000 Rwandans were waiting in jails to be tried for crimes connected with the genocide. They have settled many cases after accepting expressions of contrition, and reparations. The state judicial system has continued to hear the cases of those accused of planning and organising the genocide.

Thousands of Rwandans are still awaiting trial for genocide-related crimes. Amnesty International has expressed concern over the conditions they are held in. "We welcome this step taken by the Rwandan government. It is a good move for the Great Lakes region as it is the first country there to abolish the death penalty. But we want to raise concern about the appalling and inhumane prison conditions in Rwanda," said Central Africa researcher Arnaud Royer. (*Reported in August 2007*) ■



Moyiga Nduru

High-Profile Murder Sparks Debate On Violent Crime

Johannesburg - The murder of a world-renowned historian has jolted South Africa into confronting the reality of escalating violent crime, which is destroying the country's social fabric and hurting its international image. David Rattray, an Anglo-Zulu war expert, was murdered Friday near his home, just 500 metres from the spot where British troops and Zulu warriors fought in South Africa's KwaZulu-Natal province 128 years ago.

Police are investigating the motives for this high-profile killing. So far, nobody has been arrested in connection with the shooting of Rattray, who will be buried in South Africa Thursday. Rattray, 49, a friend of Britain's Prince Charles, has joined the list of the estimated 18,000 South Africans who are murdered every year - an average of about 50 a day - some over petty items like mobile phones. Aware that the debate on crime could harm South Africa's image as the country prepares to host the football World Cup in 2010, the government is playing down the effects of the murder. Deputy Foreign Minister Aziz Pahad told journalists Monday in Pretoria, the nation's capital, that South Africa should not allow itself "to be paralysed by individual incidents".

"Obviously the murder of someone of a high profile will definitely strengthen perceptions abroad about crimes in South

Africa," he said. "The murder of Mr. Rattray puts global focus on the crimes in South Africa," Pieter Mulder, leader of the Freedom Front Plus Party, told IPS in an interview. The Front is campaigning for the reinstatement of the death penalty, abolished in 1995, as a deterrent to violent crime.

"In three years, 2.5 million people fell victim to violent crimes such as murder, attempted murder, and robbery at private homes. This means more than 848,000 people fall victim to violent crime in South Africa every year," he said. "From 1994 up to now, 272,000 people were murdered in South Africa. There is an increase of 8.3 percent in house robbery. These are the statistics of the police themselves," Mulder said. "This means people are feeling unsafe in their homes. And this makes South Africa the most unsafe country to live in." Fed up with complaints about crime, safety and security, Minister Charles Nqakula was last year widely quoted by the media as saying that those who were unhappy with living in South Africa were free to leave. "Mr. Nqakula mentioned my name as one of those people," Mulder said.

Mulder urged President Thabo Mbeki and his ministers to refrain from sending confusing messages on crime. In the same breath, he rejected Mbeki's remark that crime rates have fallen by



Women prison in Kigali | Photo: Abolition France

10 percent since the demise of apartheid in 1994. *"The world average for murder is five in every 100,000 of the population. In South Africa the figure is 40 in every 100,000. If this figure is compared to the world figures, South Africa is experiencing a very serious crime crisis which should immediately be acknowledged and addressed by government,"* Mulder said. *"What is worse is that on average only 10 percent of criminal cases end up in court,"* he added.

Among suggestions for addressing crime is to increase the police budget and the number of officers on the force, while also upgrading their training and providing them with the necessary logistics. *"Ministers travel in the latest Mercedes Benz. But if there's a break-in in one's home, police have no vehicle to transport themselves to the scene of the incident,"* Mohamed Zain, a businessman in Johannesburg, told IPS in an interview.

Zain's complaint, however, needs to be taken in context. In early January, Gauteng Province, where Johannesburg and Pretoria are located, bought 250 new vehicles to beef up crime fighting ability in the country's wealthiest province. The vehicles are part of the plan to complement the province's 2006-2014 safety strategy launched in September 2006. Another strategy to

fight crime is to keep youth off the street. Young people between the ages of 14 and 35 make up close to 40 percent of South Africa's population, according to the Department of Labour. *"In South Africa, we have young people being the most affected by problems of underdevelopment, with young people constituting an estimated 70 percent of our unemployed population,"* said the department in a statement this week. The department is *"enlisting (the youth) as volunteers into a diverse range of national service priorities such as the construction of houses and the provision of home-based care giving (for people living with HIV/AIDS). All the projects are crafted in a manner that ensures that upon completion, the young volunteers gain certification that is recognised under our National Qualifications Framework"*.

Tourism officials also fear that the publicity around Rattray's death could affect tourism. More than 4.6 million visitors arrived in South Africa between January and July 2006, a 15 percent increase over the same period in 2005. Statistics South Africa, a think-tank, said 20.3 percent of the visitors came from Africa and the Middle East, 11 percent from the Americas, eight percent from Asia and Australia and 3.1 percent from Europe. *(Reported in January 2007)* ■



Newton Sibanda

Cyberspace Casts Light On The Lives Of Death Row Inmates

Lusaka - "Can governments solve urgent social or political problems by executing a few or even hundreds of their prisoners?" asks Benjamin Mawaya, sweltering on death row in Zambia's Mukobeko high security prison in Kabwe, 150 kilometres from the capital of Lusaka. Before anyone in the cyberspace community has time to click on a reply button, he posts an answer. "Nowhere it has been shown that the death penalty has any special power to reduce crime or political violence; everywhere experience shows that execution brutalizes those involved in the process. It is imposed and inflicted arbitrarily and it is used disproportionately against the poor."

Mawaya then swiftly concludes with a question for anyone who wants to go on debating with him: *"If today's penal system does not sanction the burning of an arsonists home, the rape of a rapist or the torture of a torturer, it is not because they tolerate the crimes. Instead, it is because societies understand they must be built on a different set of values from those they condemn. Why not apply these principles to capital punishment ...?"* The internet platform allowing Mawaya to address an audience outside his stifling cell has been provided by the Canadian Coalition against the Death Penalty, a voluntary organisation. *"We make webpages for death row prisoners*

anywhere in the world," says its director, Tracy Lamourie.

Zambia's death row inmates - who presently number 304 - are the first in Africa to use this opportunity to pour out grief, seek moral and financial assistance, and make friends beyond their prison walls. Just how they found out about the website, Lamourie does not know for certain. But one likely possibility is that the link was passed on during an internet Bible class run from churches in Britain. *"Now every week we are getting more requests. One prisoner will tell another saying 'These people have helped me get some friends and contacts in the outside world',"* Lamourie says.

Mawaya, who is waiting for the appeal against his death sentence to be heard, gives away little about himself on his webpage. His first aim is to exchange opinions about the death penalty, executions, torture and Christianity. Job Kasonda Kapita, a former police officer, tells every would-be pen pal right away why he was sentenced to death in 1994. *"I shot and subsequently killed a violent suspicious suspect I wanted to arrest for disorderly conduct ... all occurred within the station yard five metres from my office."* Behind bars he has become a writer, publishing poetry on his webpage. Certain inmates use their pages to seek *"assistance"* as well as *"mutu-*



Drawing from death row inmate | Photo: Al

al fellowship". Evans Fundula, 33, is one. *"Before conviction, I was blessedly married with two children aged 14 years and 11 years, both girls," he explains.*

His wife left him when she heard of his sentence and now his family needs help to look after the children. He also tells of the 'injustice' of not having the money to hire a lawyer for his defence. *"You are the bridge to us vulnerable...in*

this darkest and uncompromising place." One of the most powerful of entreaties comes from Lewis Kalumba, from the Democratic Republic of Congo. He is the father of three daughters and a son, he writes. His wife has also left him and is now married to another man and living in a "far-away" town. He needs money for his family to visit him: *"I am a poor suffering soul. Reproach has broken my heart. I am full of heaviness."*

Bishop Enocent Silwamba, executive director of the support organisation Prison Fellowship of Zambia, praises the websites for reducing the isolation and suffering on death row. There are six times more inmates in this prison than it was built for. They are shut away from the rest of the prison community. One has been on death row for 30 years, according to prison authorities. It is highly unlikely that any of the inmates will be executed - at least as long as President Levy Mwanawasa is in office. He has pledged not to sign any death warrants, and has also indicated that he will soon commute all death sentences to life terms. But until there is an amendment to the constitution, the courts will continue to condemn people to death - and the webpages from death row to accumulate on the internet. *(Reported in January 2007)* ■



Newton Sibanda

Concerned Zambian Activists Look Beyond Moratorium

Lusaka - Zambian anti-death penalty activists are expressing anxiety over the fragility of the country's current moratorium on executions, as the courts and lawmakers continue to resist formally banning state executions. Since 1964, when Zambia became independent, 53 people have reportedly been executed by hanging. But in 2004 President Levy Mwanawasa declared that he would sign no death warrants as long as he was in office. To underline his commitment to death penalty abolition, he commuted the death sentences of some 46 rebel soldiers convicted of treason after a failed coup plot in 1997.

Mwanawasa was reelected last year, assuring his personal ban on executions would continue until 2011. However, the president's pledge failed to influence the recommendations of the Constitutional Review Commission. In December 2005 this body called for the retention of the death penalty in the country's constitution. Late last year a second major blow to hopes for a formal ban on executions was struck when the Supreme Court rejected a legal challenge to the constitutionality of the death penalty.

Kevin Hang'andu, a prominent lawyer and activist, had argued that because the death penalty was a mandatory sentence

in Zambia, it violated article 15 of the constitution banning "*cruel, inhuman and degrading punishment*". The case involved Benjamin Banda and Cephas Kufa Miti, given death sentences in 2000 for armed robbery - a capital offence in Zambia. "*The Supreme Court judgment has essentially certified the use of the death penalty in whatever circumstances, holding that article 12 of the constitution specifically allows the use of the death penalty derogating from the right to life,*" Hang'andu told IPS.

His concern now was that Zambia's de facto moratorium on capital punishment rested solely on one individual, the president. "*My misgiving as a lawyer is that since the early centuries, the Englishman discovered that the safety of the community does not rest on the benevolence of good rulers but good laws. Good rulers come and go, but good laws are perpetual,*" he said. "*If Levy Mwanawasa, who is in his final term of office, disappears from the scene, we can only speculate about the fate of the prisoners currently on death row.*"

He was critical of the failure of the government to react to the recent Supreme Court ruling and confirm that it was actually against the death penalty. "*There was no word,*" he said.



Photo: Prisoners Fellowship International

Hang'andu also said he found it incomprehensible that Mwanawasa could take such an important ethical stand against the death penalty while the government had not called for a referendum on the issue. The government should be conducting an educational campaign to prepare people for making informed decisions at a time when there was so much controversy about a new constitution.

Enocent Silwamba, a bishop in the Pentecostal Holiness Church and executive director of the Prison Fellowship of Zambia, a Christian non-governmental organisation caring for the welfare of prisoners, echoed the call for citizens to be informed about the death penalty. Two years ago there was a strong campaign, run by civil society. But the public was now preoccupied with other important issues, such as those which had surfaced after the report of the Constitutional Review Commission. *"I think we need to rekindle the campaign,"* Silwamba said, noting that Zambia should be following the global trend towards abolishing the death penalty.

"We should be looking at alternative sentences," he told IPS. *"In Zambia they do not kill immediately but keep convicted*

prisoners on death row for years. "Why are we retaining the death penalty if we are not prepared to hang them once they are convicted? It would be helpful to give another chance even to those who have committed serious offences. We are saying when justice ends, mercy begins." Something had to be done to reduce the numbers on Mukobeko death row, he added.

Mukobeko is the high-security prison 150 kilometers north of the capital, Lusaka. There are currently about 290 prisoners there who have been sentenced to death. Enock Mulembe, of the Permanent Human Rights Commission, a human rights watchdog campaigning for abolition, confirmed that overcrowding at Mukobeko was of grave concern. Inmates were crammed six or seven to a cell meant for one person, he said. The Commission argues that the death penalty is not an effective deterrent against serious crime. *"Therefore we do not see any justification for Zambia continuing to uphold the punishment,"* Mulembe told IPS.

Amnesty International in Zambia has also called on the government to do more to engage the public in a debate on the death penalty. The voice of those opposing the death penalty was now weak and the majority of Zambians favoured retention of

capital punishment, executive director Charles Mulenga told IPS. *"The government must always take leadership on human rights issues and give guidance. Many people are resisting abolition because of ignorance,"* he said.

Abolishing the death penalty would be an encouragement to other countries in the region to do the same: *"It would be an example of how good leadership can go ahead and abolish the death penalty though the majority is still retentionist."* Several activists expressed the view that the time had come for Zambia to take a decisive step and abolish the death penalty. The current debate over the new constitution provided the opportunity to review all the arguments and decide whether the death penalty should remain in the legal system, Chaloka Beyani, a leading constitutional lawyer, told IPS.

It was a challenging and testing time, Hang'andu agreed. The government should now state its unequivocal position on the Constitutional Review Commission's recommendation that capital punishment be retained. *"I think the head of state has done something by refusing to sign any death warrants and I hope his ministers can now draw lessons from him,"* he said. (Reported in June 2007) ■



Tonderai Kwidini

Activists Outmanoeuvred - But Undeterred

Harare - Anti-death penalty activists in Zimbabwe are keeping up their campaign, despite a police clampdown on their meetings and ever-lengthening food queues, power cuts and the relentless rise in prices of many essential items. *"It is now very difficult to obtain police clearance to hold gatherings. Everything we try to do to bring people together is viewed by the police as a political event,"* John Chinamurungu, Amnesty International's chairperson in Zimbabwe, told IPS. *"It's very difficult to get campaigns going."* Amnesty and the Zimbabwe Association for Crime Prevention and the Rehabilitation of Offenders (Zacro) have been co-operating closely to rally public support for the abolition of the death penalty and to get the issue on the national political agenda.

Zacro's new engagement follows an opinion article by an official of the organisation in the state-owned daily, 'The Herald', last January. This announced the opening of a carefully-scripted Zacro campaign, details of which were later outlined to IPS by Edson Chiota, the organisation's national co-ordinator. The plan included carrying the message of abolition to Zimbabwe's 13 million citizens with the printing and distribution of millions of posters and pamphlets.

But campaigning has been hit by the speed and scale of the unfolding economic crisis. In January the year-on-year official inflation rate was 1,600 percent. In September it reached 7,982.1 percent, according to the government's Central Statistical Office. Unofficially, the rate is said to be approaching 25,000 percent.

Paper and fuel, essential for a nationwide campaign, are almost impossible to obtain. The struggle to exist from day to day is now uppermost on people's minds. In the capital, Harare, hour-long queues for bread are normal. Earlier this month, the agriculture ministry announced that the wheat harvest was two-thirds of what was required. Shortly afterwards, the official price of bread was increased by 300 percent. *"There are millions in Zimbabwe who need food assistance,"* Richard Lee of the United Nations World Food Programme, said in August. It was estimated then that some 3.3 million would require the agency's help to survive over the coming months.

Authorities have responded to any street protest or show of dissent by rushing in riot police, creating an atmosphere of fear and intimidation. But despite the unfolding catastrophe, Amnesty and Zacro have refused to be cowed into calling off



Execution chamber in Angola | Photo: Amnesty International

their sensitisation workshops on the death penalty. Amnesty's local vice-chairperson, Francis Mweene, has been a notable participant, having survived death row. He was sentenced to death in white-ruled Rhodesia, as Zimbabwe was known before it gained independence in 1980. *"It was a big surprise to me that I found myself able to live again...It was because Amnesty Zimbabwe stood for my right to life,"* he told IPS, recalling how the organisation's international contacts helped pull him back from the jaws of death. *"It is through testimonies that I think people can be sensitised and understand why we are advocating against (the) death (sentence)."*

Mweene's leading of the testimonies clearly makes it difficult for the authorities to step in and ban such meetings. Zimbabwe's president, Robert Mugabe, led a liberation war against the Ian Smith regime and would certainly have ended up on death row like Mweene had he been captured. Alongside these meetings, Amnesty has been issuing T-Shirts emblazoned with anti-death penalty slogans.

In July, Zacro tried to persuade traditional leaders in the Council of Chiefs to support its anti-death penalty campaign. The chiefs were holding their annual meeting in Harare and the

northern resort of Victoria Falls. But politicians were clearly not willing to see this happen. They stepped in to prevent the death penalty issue being tabled at the meeting, according to sources. *"We hoped to start with the chiefs and use them as leverage to get this issue into the House of Assembly and eventually seek out an audience with the head of state,"* Chakanyuka told IPS.

The chiefs could have raised the issue in parliament, where they sit by appointment. Zacro's focus on the chiefs fitted into the initial thrust of the campaign, which argued that the death penalty was *"alien and contrary to traditional African concepts of justice and beliefs"*. The meeting also showed that opinion among the officially-supported chiefs was divided on the death penalty issue. *"You should be given a sentence in accordance with your crime. If you deliberately kill, you should also be killed,"* Chief Makoni told the meeting, according to a press report at the time in the privately-owned 'Financial Gazette'.

It has been suggested that the chiefs might have been less than enthusiastic about being associated with such a controversial issue and bringing it before Mugabe, for fear of

losing their privileges. They are essentially on the government payroll. *"With the elections coming there is no chance we will be able to talk to the chiefs again until afterwards,"* a disappointed Chakanyuka said. The polls - presidential, parliamentary and local government - are expected to be held in six months. Zacro is now planning to circulate a nation-wide petition calling for abolition of the death penalty. *"We want to present a petition to President Mugabe since he is the man who has been vested with all the powers to decide if one should be sent to the gallows or not,"* Chakanyuka said.

Mugabe has resisted all calls for the repeal of the death penalty, which dates back to the colonial era, in his 27 years of rule - and is unlikely to change his mind now, in the twilight of his beleaguered regime. But by campaigning on this issue now and associating the retention of capital punishment more closely with his name, it may be hoped that one of the first measures to be adopted by his successors will be the abolition of the death penalty. Zacro is also hoping that its campaign will stimulate public interest in further penal reforms. The last execution in Zimbabwe was carried out in 2004. Since 1999 seven people have been executed by hanging, according to Zacro. *(Reported in October 2007)* ■



Stanley Kwenda

Death Penalty Stifling Free Speech

Harare - Zimbabwean rights activists are campaigning with unprecedented vigour for an end to the death penalty as the country's political and economic crisis deepens, arguing that this is essential for an open debate on the nation's future and its joining the "civilised democracies of the world". "The death penalty is a threat to freedom of speech," Edson Chiota, the national coordinator of the Zimbabwe Association for Crime prevention and Rehabilitation of Offenders (ZACRO) told IPS. He was interviewed while attending the Third World Congress against the Death Penalty in Paris at the beginning of February. "The government is trying to silence the opposition. If you publicly criticise the state leader, there's a good likelihood that you will be charged with treason. That's a threat to be feared. Treason carries the death penalty," Chiota said.

Zimbabwe activists recall how two leading politicians were charged with treason in a campaign of intimidation before past elections. Morgan Tsvangirai, the leader of the main opposition party Movement for Democratic Change (MDC) has been charged with treason three times, the last just ahead of the 2002 presidential elections. This trial lasted almost two years. It ended with a surprise acquittal.

Ndabaningi Sithole, the leader of the Zimbabwe African National Union (ZANU) was also charged with plotting to over-

throw the government. This was just ahead of the 1996 presidential elections. But he was found guilty. He was sentenced to five years in prison, but released because of failing health. His sentencing disqualified him from attending parliament until his death three years later. Both politicians claimed they had been framed by the state security service.

Launching ZACRO's national anti-death penalty campaign with a newspaper article on Jan. 4, Wonder Chakanyuka, ZACRO's information and publicity officer, side-stepped the issue of how the death penalty was being used to silence dissent. He stressed rather that it was alien to the country's African traditions and left-over relic from colonial times. "It was used to intimidate and eliminate black people and as Zimbabweans we cannot continue having this law on our books," he wrote in an opinion article. "An increasing number of African states have abolished the death penalty and Zimbabwe cannot afford to be left behind," he added.

The article in the state-backed newspaper 'The Herald', ended with an editorial note that ZACRO's crusade against the death penalty was not party-based and should not be used to "demonise" the country. This appears to confirm ZACRO's view that Robert Mugabe's regime will not block its campaign. "We have never clashed with the government on this issue," Chiota



Photo: UNESCO

said. *"They are letting us go free. This means that they want to leave the public to take up its position."* ZACRO's campaign is likely to gather strong public support from many non-governmental organisations, churches, traditional leaders, lawyers and even members of the justice department. *"Killing someone for an offence will not change or solve anything,"* David Chimhini, executive director of the Zimbabwe Civic Educational Trust (ZIMCET) told IPS. *"No one has the right to kill another."*

ZIMCET advocates life sentences in place of the death penalty for the most serious crime of murder. The Human Rights Trust of South Africa (SAHRIT) has also staunchly come out against the death penalty. The death penalty should be replaced by life imprisonment for *"reflection and reform"*. *"The courts can sentence someone to death, but they cannot be 100 percent sure that the person has committed the crime,"* Noel Kututwa, its executive director, told IPS. He expressed scepticism that the Mugabe regime would listen to the voices of the abolitionists. *"I don't see the government moving an inch on the death penalty law,"* he said.

Zimbabwe lawyers have also expressed concern over the possibility of judicial error and are likely to strongly back the ZACRO campaign on this issue. One of the most tragic cases was that of Sukoluhle Kachipare, a mother who was condemned

to death for allegedly inciting her 17-year-old maid to murder her own new-born child. Only a concerned nation and international campaign saved her from the gallows in 1997. She would have been the first woman to be executed in Zimbabwe since 1898, when the British colonial regime executed the spirit medium Mbuya Nehanda.

Though Kachipare's sentence was first confirmed by the Zimbabwe Supreme Court, lawyers continued her legal battle. She was eventually acquitted, Stanford Moyo, president of the Zimbabwe Law Society told IPS. Church groups are expected to take part actively in the ZACRO campaign - especially Christian churches. There are roughly seven million Christians in Zimbabwe, just over half the population. Anglican bishop Sebastian Bakare has publicly preached that state killing is against *"the word of God and all biblical commandments"*. *"It does not prevent people from committing violent crimes. Rather, it creates an illusion that violent crime is under control and being eliminated,"* he told IPS in an interview.

All groups are likely to rally behind the campaign's call for an end to the secrecy surrounding the death penalty issue in Zimbabwe. *"The lack of public information is the biggest concern,"* Irene Petras, the acting director of Zimbabwe Lawyers for Human Rights, told IPS. ZACRO's Chiota complains that his

organisation is barred from visiting any death row prisoner. *"We can't say anything about them. Only the authorities know their situation exactly."*

High Court records show the number on death row totals 47. But efforts by IPS to obtain a list of the names was met with the response *"classified information"*. ZACRO now intends to take its anti-death penalty campaign to all ten provinces in the country. It has plans to print and distribute millions of pamphlets and posters. Everyone in the country will be offered a campaign T-shirt. But only with outside funds will it be possible to finance such ambitious plans. Though nearly 100 years old, the prisoners' rights organisation still operates from humble offices in the old township of Mbare in Zimbabwe's capital, Harare. Inflation is currently the highest in the world - some 1,600 percent. Unemployment is over 85 percent and the economy is in a free fall. A third of all men and women between the ages of 15 and 49 are HIV positive.

But rather than despairing, ZACRO activists seem undeterred. *"We are trying to get a movement going. There's never been a fully-fledged campaign before to make this issue really visible,"* said Chiota. *"When the death penalty is gone, we believe that people will come out of their shells and express their hopes and wishes."* (Reported in February 2007) ■

MIDEAST & MEDITERRANEAN

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Adam Morrow / Khaled Moussa al-Omrani

Controversy Swirls Over When To Execute

Cairo - Egyptians are likely to watch the upcoming U.N. General Assembly vote on a moratorium on executions - to be held in the coming weeks - with interest. But while many in this majority Muslim country would welcome a resolution aimed at reining in the use of capital punishment, there remain serious reservations about making any pledges for the "total abolition" of the practice. *"Our society has its own beliefs and standards,"* Sayyid Askar, Muslim Brotherhood MP and member of a parliament's religious affairs committee, told IPS. *"Even if there is an international trend towards the abolition of capital punishment, we aren't interested in imitating other societies in this matter."*

Askar was commenting ahead of the tabling in the U.N. of an EU-supported initiative for a worldwide moratorium on executions. The Muslim Brotherhood, formally banned under restrictions against parties based on religion, represents roughly one-fifth of the national assembly which is controlled by the ruling National Democratic Party of President Hosni Mubarak. Under Mubarak, the use of the death penalty has reportedly increased over the past decade, although there is little official data available on the subject. According to the Cairo-based Maat Centre for Judicial and Constitutional Studies, at least 20 death sentences were handed out last year.

Under the current terms of Egyptian law, some 90 different crimes can warrant execution, including premeditated murder,

rape and drug-related offences, as well as a number of so-called "political offences" such as "attempting to overthrow the regime by force". Over the course of the past decade, death sentences have been meted out for most if not all of these transgressions. Islamic Law, by contrast, mandates the death penalty for only a small handful of serious offences, which include premeditated murder, violent crimes such as armed robbery, apostasy, and adultery. Although Article 2 of the national charter states that Islamic Law constitutes "the principle source of legislation," apostasy and adultery are not capital crimes in Egypt today. In agreement with most human-rights organisations, Islamist politicians support the elimination of death penalties for all other crimes that currently carry capital sentences, particularly those of a political nature. They are adamant, however, that the practice of capital punishment not be entirely eliminated. *"Islamic Law maintains that the death penalty for the most serious of crimes is necessary for the cohesion and stability of society as a whole,"* said Askar.

Local opponents of capital punishment, however, argue that the case against such a grave punishment resides in the fact that a death sentence, once carried out, is irreversible. *"It's a penalty that cannot be undone,"* Ayman Aqeel, head of the Maat Centre and coordinator for the Egyptian Coalition against the Death Penalty, told IPS. *"And in Egypt, where there's a good deal of official corruption and negligence, there have been several past*



Photo: www.handsoffcain.com

cases when convicts condemned to death were subsequently vindicated. The alliance therefore supports the abolition of the death penalty for all crimes except premeditated murder," explained Aqeel. "And even in this case, defendants must be subject to impartial investigations and have the right to appeal the verdict more than once."

Askar responded by saying that Islamic Law lays down strict guidelines in order to prevent the erroneous execution of innocent parties. *"Islamic Law provides stringent principles for the implementation of the death penalty, the most important of which is a strong base in careful jurisprudence,"* he said. *"And if there is any doubt about the guilt of the accused, it's better for a Muslim judge to find one hundred guilty people innocent than to convict a single innocent person."*

A recent conference in Cairo on the subject organised by the state-run National Council for Human Rights, NCHR, highlighted the contentious nature of the issue for many Egyptians. Held on Oct. 21 and 22 under the title *"Roundtable on the Principles of Capital Punishment,"* participants reportedly discussed international human-rights protocols dealing with the subject. Days before the roundtable, however, reports appeared in the local press suggesting the event had been organised to discuss the total abolition of the death penalty in Egypt. Some newspapers also reported that Muslim Brotherhood MPs planned to launch a campaign in parliament against the NCHR in response to the council's purported stand on the issue.

Responding to initial news reports, NCHR Deputy Speaker Ahmed Kamal Aboul-Magd issued a statement on the first day of the conference clarifying the council's position. In it he stressed that the roundtable was *"not organised for the purpose of discussing the total abolition of the death penalty"*. *"The council did not suggest, nor is it thinking about suggesting, the total abolition of capital punishment,"* Aboul-Magd noted in the statement. He went on to say that neither he nor the NCHR had *"any knowledge of a disagreement on the issue with members of parliament"*.

Spokesmen for the Muslim Brotherhood, meanwhile, confirmed the non-existence of the purported conflict. *"We didn't even know they were holding the conference in the first place,"* Hamdi

Hassan, spokesman for the Muslim Brotherhood's bloc in parliament, told IPS. Although the news reports turned out to be erroneous, Aqeel pointed out that the council's hasty clarification served to highlight the controversy surrounding the idea of entirely abolishing the death penalty. *"Inaccurate news reports caused a good deal of confusion,"* Aqeel said. *"But the NCHR statement was largely the result of the fear that anyone working to abolish the death penalty will be seen as standing in opposition to Islamic Law."* In any case, the council ultimately issued a number of significant recommendations for the future application of capital sentences. The most notable of these proposed the total abolition of capital punishment for *"political crimes"*. It also called for the Grand Mufti of the Republic (a state-appointed religious authority) to be granted the final word in capital cases and an end to the practice of trying civilians in military courts where death sentences could potentially be handed down.

Whether or not the government will take up any of these recommendations, though, remains open to question. *"I'm not very hopeful that the council's proposals will be implemented,"* said Aqeel. Commenting on the effect that a possible U.N. decision on ending the practice might have on Egypt's capital punishment laws, he said: *"I would be more optimistic if the U.N. issued a resolution stipulating the abolition of the death penalty for all but the most extreme crimes."* (Reported in November 2007) ■



Thalif Deen

U.N. Faults Iraq For Continued Executions

United Nations - A new United Nations report on human rights criticises the government in Baghdad for its continued executions of prisoners despite appeals by the United Nations and its human rights bodies for a moratorium on capital punishment. The death penalty in Iraq - argues the report authored by Leandro Despouy, the U.N. special rapporteur overseeing the independence of judges and lawyers - also denies crime victims the right to the truth.

The study specifically criticises the recent execution of an Iraqi prisoner, who may have possessed key evidence relating to the 2003 bombing of the U.N. compound in battle-ravaged Baghdad. In a report to the upcoming 62nd session of the General Assembly which begins Sep. 18, Despouy says he is "extremely concerned about the circumstances surrounding the execution of Awraz Abdel Aziz Mahmoud Sa'eed," who had confessed to having participated in the attack against the U.N. offices. The Iraqi government, he complains, went ahead with his execution in spite of the fact that the United Nations had specifically requested the "cancellation" of the execution in order to elicit information on the bombing. *"The execution also violated the right to the truth of the*

victims of the attack against the U.N. offices in Baghdad, and frustrated attempts to obtain significant evidence relating to the tragic attack that cost 22 people their lives, including Sergio Vieira de Mello," a senior U.N. official who was a national of Brazil. Vieira de Mello, who headed the Baghdad office at the time of the bombing, also held the substantive posts of U.N. high commissioner for human rights and special representative of the secretary-general in Iraq. In his report, Despouy expresses *"serious concern that individuals sentenced to death are still being executed in Iraq, despite his repeated requests and those of other U.N. bodies that such executions should be discontinued."* Furthermore, in the case of Iraq, he points out, *"The implementation of the death penalty has engendered a serious violation of the right to the truth of the victims of the crimes committed by Saddam Hussein's regime."*

In January, the U.N.'s High Commissioner for Human Rights Louise Arbour made an unusual public appeal to Iraqi President Jalal Talabani asking him to spare the lives of two former colleagues of Saddam Hussein. The two officials, Awad Hamad al-Bandar and Barzan Ibrahim al-Hassan, were co-defen-



Photo: I.C.A.E International Committee against Death Penalty

dants of the former Iraqi president. *"The concerns I expressed just days ago with respect to the fairness and impartiality of Saddam Hussein's trial apply also to these two defendants,"* Arbour said. All of them were executed.

Arbour also pointed out that international law, as it currently stands, only allows the imposition of the death penalty as an exceptional measure within rigorous legal constraints. In a report released last April, the London-based human rights organisation Amnesty International said that Iraq was the world's fourth highest user of the death penalty, ranking behind China, Iran and Pakistan. Since mid-2004, at least 270 people have been sentenced to death, *"often after unfair trials"*, and more than 100 people have been hanged, including several senior officials of the former Saddam Hussein regime.

Under the U.S. occupation, following the ouster of Hussein, the death penalty was suspended. But Iraq's interim government reintroduced the death penalty in August 2004. The government argues that the death penalty would act as a deterrent in view of the grave security situation in Iraq. But Amnesty

International has challenged this argument, pointing out that the extent of violence has increased in Iraq, rather than diminished. AI also said that the death penalty may have contributed to the brutalisation of Iraqi society.

After an ambiguous statement on the death penalty last January, when he virtually justified the hanging of Saddam Hussein, U.N. Secretary-General Ban Ki-moon later made an official pronouncement on capital punishment. Calling for the gradual phasing out of the death penalty worldwide, Ban said: *"I believe that life is precious and must be protected and respected, and that all human beings have the right to live in dignity. International law affirms these values. I recognise the growing trend in international law and in national practice towards a phasing out of the death penalty. I encourage that trend"*.

As member states are taking their decisions, he said, *"I expect they will comply with all aspects of international human rights law. As you know, I have also urged restraint by the Iraqi authorities in the execution of death sentences imposed by the Iraqi High Tribunal."* (Reported in September 2007) ■



Mohammed A. Salih

Kurds Want More Convictions Over Massacres

Arbil - Polishing the picture of her husband hanging on a wall, Samira Jabbar, 44, was euphoric after an Iraqi judge handed the death sentence to several men for the massacre of tens of thousands of Kurds in the late 1980s. Samira lost her husband and four other close relatives in April 1988 when Iraqi army units raided their village Qafade, east of Kirkuk, as part of a large-scale offensive against the Kurdish population.

"Our men asked the women and children to leave the village so that we wouldn't fall into the hands of the army," said Samira. *"We ran away and never saw them again. My baby never saw his father."* Sentiments run high among Kurds over the sentencing. *"They deserve to be hanged,"* said Samira, who still wears black clothes 19 years after her husband disappeared. *"I feel like my unhappy life has ended today. I would love to dance out of joy."* Samira and other survivors are now looking for compensation. After 61 sessions starting last August, Iraq's special tribunal sentenced to death three of

Saddam Hussein's former aides, including his cousin Ali Hassan al-Majid, better known as 'Chemical Ali' for his use of poisonous gas against Kurds. Former defence minister Sultan Hashem Ahmad and former deputy chief of military staff Hussein Rashid were also sentenced to hang.

Two other co-defendants were sentenced to serve life imprisonment, and one was released for lack of evidence. The defendants were convicted for their involvement in the Anfal operations carried out in eight stages from February to September 1988. Anfal is a Quranic term meaning "spoils of wars", and was picked to inspire Iraqi army forces in an offensive that killed up to 180,000 people, mostly civilians. More than 3,000 villages were razed, orchards were burnt down and even animals were killed.

The defendants said in court that they were targeting Kurdish insurgents who were fighting the Iraqi government during the 1980s. International rights groups criticised the



Sentenced to death and executed: Hassan al-Majid, better known as 'Chemical Ali' | Photo: AP

course of the trial, saying that basic standards had not been met. But in the eyes of Kurds the verdicts were fair enough. Public celebrations were held in many towns across Iraq's northern Kurdistan region. People danced on the streets and cars drove around carrying Kurdish flags. But the extent of jubilation was less than expected. This was noticeable particularly in Halabja town, southeast of regional capital Arbil, where around 5,000 people were killed by chemical gases. 'Chemical Ali' got his nickname mainly because of gassing this town.

"People were happy that 'Chemical Ali' was sentenced to hang," said Omar Halabjaji, 28, a schoolteacher from Halabja. *"But because 'Chemical Ali' was not sentenced over the Halabja gassing and because our city is neglected in terms of public services, people didn't show that much enthusiasm."* The Halabja trial will be run separately, and al-Majid will be one of the main defendants in that case as well - unless he is executed first. The verdicts will be sent automatically for

appeal within a month before a panel of judges. The court ruled unanimously that the convicted defendants were involved in genocide, crimes against humanity and war crimes. The verdict appeared a significant gain for Iraqi Kurds. But despite the rulings Sunday, the Anfal case has not ended, and there is a long list of people accused of complicity in the operations who will be called for investigations by the tribunal.

Among these are Kurdish collaborators, known as Mustashar, who were heading paramilitary forces at the time and closely assisting the Iraqi army in carrying out the operations. Many in Kurdistan insist that justice will not be done unless these people are put on trial.

"It was not only these six people in the dock that carried out Anfal," Shwan Mahmoud, 29, a university graduate from Arbil told IPS. *"The verdicts today are only part of the justice, and whoever was involved has to face the families of the victims in the court."* (Reported in June 2007) ■



Dahr Jamail / Ali al-Fadhily

Outrage Over Imminent Execution Of Iraqi Women

Baghdad - Three young women accused of joining the Iraqi insurgency movement and engaging in "terrorism" have been sentenced to death, provoking protest from rights organisations fearing that this could be the start of more executions of women in post-Saddam Hussein's Iraq. The execution of the three - Wassan Talib, Zaineb Fadhil and Liqa Omar Muhammad - and a fourth, Samar Sa'ad 'Abdullah, found guilty of murdering five members of her family, are scheduled to begin Mar. 3, according a member of the BRussells Tribunal.

All four are being held in the Khadamiya female prison in northern Baghdad. One of the three alleged "terrorists", Muhammad, 25, gave birth to a daughter after her arrest and is still nursing the child in prison. A second, Talib, 31, is also in prison with her three-year-old child, according to Amnesty International. Talib and Fadhil, 25, were sentenced to death by the Central Criminal Court of Iraq (CCCI) on 31 August 2006 for the 2005 murder of several members of Iraqi security forces in the Baghdad district of Hay al-Furat. Both women denied any involvement. Fadhil reportedly claimed that she was abroad at the time of the alleged killings, according to Amnesty International.

Muhammad was sentenced to death on 6 February 2006 by the CCCI, for kidnapping an official from the 'Green Zone' in 2005, according to sources in the Iraqi Lawyers' Union. Her husband is said to have been detained and accused of the same crime. It is not known whether the three alleged "terrorists" will lodge appeals. But while this is possible, it is unlikely they will be successful without their own legal representation, according to sources.

An appeal by Abdullah was earlier rejected and she faces imminent execution, according to Amnesty International. Many lawyers here are interpreting the death sentences on the three alleged "terrorists" as an attempt by the Iraqi regime to intimidate insurgents. Two of those sentenced to death - Fadhil and Mohammad - were accused of joining their husbands and two members of their families in their alleged crimes, according to the Iraqi Lawyers' Union. Some Iraqis here have openly expressed surprise and disbelief that these women could have been involved in any insurgency.

It was a question of honour for Iraqi men that their women did not participate in any form of violence, they told IPS. Independent lawyers have expressed strong criticism of the trials,



Demonstration against the execution of women in Iran, Potsdamer Platz Berlin, Germany, on the "World Day against Death Penalty" | Photo: Al

saying they were *"unfair"* and violated international conventions. The accused were denied the right of legal defence, Walid Hayali, a lawyer, said. He was barred from representing the three in court, he added. *"No lawyer was given the opportunity to do his job,"* a close friend of Talib confirmed to IPS. But the right to independent legal representation was guaranteed under international law, lawyers here said. The passing of a death sentence on the mother of a newly born child was also in violation of a specific UN safeguard, they added. Iraqis questioned here said they believed the executions, if allowed to take place, would raise the level of violence across Iraq. *"This won't go unpunished,"* Fadhil Aziz, 40, from the Amiriya district in Baghdad told IPS. *"The U.S. and their Iraqi collaborators must pay for the crimes they are committing against our honour,"* he warned.

The impending executions are likely to increase the exodus of Iraqis out of the country. *"I am taking my family anywhere in the world rather than staying here and facing this,"* Abi Muhannad, an Iraqi teacher from the Kadhamiya district in Baghdad told IPS. The UN estimates that some two million Iraqis have already fled the country. Approximately 50,000 are leaving

every month, threatening to overwhelm other Middle Eastern countries, particularly Syria, Jordan and Lebanon. Approximately one million are today living in Syria and up to 750,000 in Jordan, according to the UN High Commission of Refugees. Roughly 40 percent of Iraq's middle class is believed to have fled the country since the U.S. invasion in 2003, according to the UN. After the overthrow of Saddam Hussein's regime, the American occupation authorities suspended the death penalty. But in August 2004, the new interim Iraqi government reinstated it for crimes including murder, kidnapping and threats to national security. In October 2005 a tough new anti-terrorism law was introduced, setting capital punishment for "proving, planning, financing and enabling" terrorism.

Last year Iraqi courts sentenced 235 people to death and over 6,000 to life imprisonment, according to the London daily al-Sharq al-Awsat. There are over 2,000 women classified as *"security detainees"*, according to Mohamed Khorshid, quoted by the newspaper. It is not known for certain how many have been executed since August 2004, but it is believed the figure is between 50 and 100. During 2006 at least 65 men and women were executed by the Iraqi government, including former Iraqi president Saddam Hussein. *(Reported in March 2007)* ■



Haider Rizvi

U.N. Officials Question Iraq's Rough Justice

United Nations - The U.S.-backed government in Baghdad is facing harsh criticism from the international community for ignoring calls to adopt a policy of restraint with regard to carrying out death sentences against the members of Iraq's former ruling party. Reacting to the hanging of Saddam Hussein's two close aides Monday, senior U.N. officials and human rights organisations warned that the government must end its policy of executions, which they see as serious violation of international human rights standards. *"Those responsible for serious human rights violations must be brought to justice,"* said Louise Arbour, the top U.N. official for human rights. *"But to be credible and durable, the fight against impunity must be based on respect for international human rights standards. The imposition of the death penalty after a trial and appeal proceedings that do not respect the principles of due process amounts to a violation of the right to life,"* she said in a statement.

Hussein's half-brother Awad Hamed Al-Bandar and former intelligence chief Barzan Ibrahim Al-Tikriti were hanged early Monday morning despite calls from Arbour and others to commute their sentences. Both Al-Bandar and Al-Tikriti were condemned

to death for the killings of 148 Shias in 1982. Reports from Baghdad said Barzan's hanging left behind a headless body, bloodied at the neck. Arbour, who opposes the death penalty *"under all circumstances"*, said that in Al-Tikriti and Al-Bandar's case, *"not only is the penalty irredeemable, it may also make it more difficult to have a complete judicial accounting of other, equally horrendous, crimes committed in Iraq."* Like Arbour, Ban Ki-moon, the new U.N. chief, seemed equally displeased with the Iraqi authorities' decision. *"He fully regrets that despite pleas by the high commissioner, they were executed,"* Ban's spokesperson Michele Montas told reporters. Clarifying his views on Hussein's execution, Ban said last week he believed that life *"is precious"* and that it must be *"protected and respected"*.

Noting that international law affirms these values, the U.N. secretary-general said he recognised the *"growing trend in international law and national practice towards phasing out the death penalty."* While Ban and other U.N. officials chose to confine their criticism of the executions to Iraqi authorities, rights activists said the U.S. government must be held equally accountable. *"If the international community is to restore confidence in the rule*



Hangings on Fallujah-Bridge | Photo: I.C.A. International Committee against Death Penalty

of law in Iraq, it must prosecute the individuals for the international crime of aggression against the Iraqi people," said Dr. Curtis Doebbler, an international human rights lawyer.

In Doebbler's view, only by calling for such prosecutions can the international community restore trust in the rule of law. "Failure to do so," he cautioned, "will send a clear message to vulnerable people everywhere who have been subjected to U.S. aggression that they cannot depend on the rule of law to stop the U.S. and its collaborators from violating their most basic human rights." Speaking to reporters in Egypt, U.S. Secretary of State Condoleezza Rice defended the executions by saying that it was an "Iraqi process". However, she expressed her displeasure with the way the executions were actually carried out. "We were disappointed there was not greater dignity given to the accused under these circumstances," she said.

Deploring the executions in strong words, the London-based human rights watchdog group Amnesty International said such actions were nothing but "a further slide into the errors of the past." The group said the Iraqi court failed to meet international standards for a fair trial and raised serious questions about its impar-

tiality and ability to assert independence from political intervention. During the trial of Hussein and his aides, many believe that authorities forced the first presiding judge to step down and blocked the other's appointment while failing to ensure protection for witnesses as well as defence lawyers, three of whom were assassinated during the course of the trial.

Amnesty also noted that Hussein was denied access to legal counsel for the first year after his arrest, and said the appeals process was conducted in "haste and failed to rectify any of flaws of the first trial." In addition to Monday's executions, rights groups expressed concern about the possibility of a death sentence for Taha Yassin Ramadhan, the former vice president. Though already sentenced to life imprisonment, he is likely to face another trial. Reports from Baghdad said the hangings took place in the same building in the city where Hussein was executed on Dec. 30 and that the bodies of Al-Bandar and Al-Tikriti were flown to their ancestral town of Tikrit for burial. According to Amnesty International, the use of death penalty has been on the rise in Iraq since its reintroduction in August 2004. Last year, at least 65 people were executed, many of them after unfair trials, the group said. (Reported in January 2007) ■



Dahr Jamail / Ali al-Fadhily

Furore Over Execution Continues Unabated

Baghdad - Expressions of outrage over the conduct of the trial and the manner of Saddam Hussein's rushed, chaotic execution are continuing unabated here as lawyers and human rights groups voice together their open criticism - although some are still cautiously asking the media to withhold their names from publication. Iraqi and international legal experts appear in agreement that the special court which sentenced the former Iraqi leader to the gallows was illegally set up and failed to meet international recognised standards.

They recalled that former UN Secretary General Kofi Annan said on Sep. 16, 2004 that the invasion and occupation of Iraq violated the UN Charter. This made the setting up of the so-called special Iraqi High Tribunal to try Saddam illegal. Two others sentenced to death, Barzan Ibrahim al-Tikriti, Saddam's half brother and a former intelligence chief, and Awad Hamed al-Bandar, the former head of Iraq's Revolutionary Court, were hanged early Monday. Barzan was decapitated, accidentally, authorities said.

The executions, and the manner of the executions, has added to the disquiet over the execution of Saddam, and the trial

that led to it. Throughout the lengthy trial of Saddam on war crimes many had voiced suspicions that the outcome was a foregone conclusion and had been pre-scripted by politicians in Baghdad and Washington. *"The verdict was pre-judged by the Bush administration and its Iraqi allies. The court was a disgusting comedy,"* a senior member of the Iraqi Lawyers' Union told IPS on condition of anonymity. The resignation of Rezgar Muhammad Amin, the first chief judge of Saddam's Dujail trial provoked serious questions among lawyers in Iraq and outside the country. *"It was clear that he resigned under pressure from the Iraqi government. They wanted him to take the case on another course that it was going."* Amin gave personal reasons for resigning as chief judge on the Iraqi High Tribunal in January last year, three months into the Dujail trial. The Dujail trial focussed on an Iraqi government crackdown after a failed assassination attempt on Saddam in 1982. The action killed 148 Shiites.

A senior advisor at Iraq's Ministry of Justice, also speaking on condition of anonymity, told IPS that Amin's replacement, Judge Raouf, was under clear instructions from his assi-



Photo: Amnesty International

stant judges to deliver harsh verdicts against Saddam and the other co-defendants. Criticism was also levelled at the atmosphere of deadly intimidation throughout the long trial which first started in October 2005. A security colonel at the Ministry of Interior in Baghdad, also requesting not to be quoted by name, told IPS: *"We wrote to the minister suggesting that by protecting the defence lawyers and witnesses we would be investing the court with integrity - but our superiors ignored us. The result was that three defence lawyers were assassinated and some defence subjected to torture. The case should have been halted until proper protection was provided for these people."* He added: *"I and many of my colleagues believe Saddam deserved the death sentence, but not one issued by a weak court that did not serve justice or show even the minimal credibility."*

The unconvincing prosecution witnesses and the courtroom dramas and scandals were also raised by critics here. *"Some witnesses were 10 years old or less at the time of the incident,"* Ahmed Saadoon, a lawyer from the city of Diwaniya, south of Baghdad, told IPS. *"There were many contradictions in their statements."* The aggressive prosecution tactics brought

discredit to the court proceedings, he said. *"The Attorney General was so harassing. That made the trial look so bias,"* he said.

International human rights groups have also voiced their criticisms, calling the trial by a special court illegal and in violation of international law. The UN Working Group on Arbitrary Detentions has ruled that Saddam's "deprivation of liberty" was "arbitrary". Its decision was passed on to Saddam's defence lawyers shortly before the final verdict and sentencing on Nov. 5, 2006. The Working Group, made up of independent legal experts from Iran, Algeria, Paraguay, Spain and Hungary, spent more than two years collecting information before announcing its findings.

It based its decision on its interpretation of international treaties, particularly the International Covenant of Civil and Political Rights. It found article 14 of the Covenant had been violated in numerous ways. Following the outcry over Saddam's hanging, Human Rights Watch issued a statement attacking Iraqi Prime Minister Nouri al-Maliki's fierce defence of the execution. This showed the Iraqi government's "disregard for human

rights and the rule of law," Human Rights Watch said. The rights group had called in vain on the Iraqi government to halt the upcoming execution of Barzan Ibrahim al-Tikriti and Awad Hamed al-Bandar. The two had been sentenced to death with Saddam in the Dujail trial. Human Rights Watch had earlier also criticised the Dujail trial as *"fundamentally unfair"* and Saddam's death sentence as *"indefensible"*. The Iraqi government now faces the prospect of being taken to the International Court of Justice at The Hague over the manner of Saddam's execution and allegations that his body was defiled after being cut down from the gallows.

Bushra al-Khalil, a lawyer on Saddam Hussein's defence team, told reporters here that she was planning to sue the government over the taunting of the former leader by his executioners on the gallows. This captured on video by a mobile phone and generated worldwide outrage when it was broadcast on TV stations across the world and across the Internet. Khalil said she would also file a second action over allegations that executioners had violated Saddam's body after he was hanged, according to the Saudi daily al-Watan. *(Reported in January 2007)* ■



Rebecca Murray

Abolition Linked To Political Stability

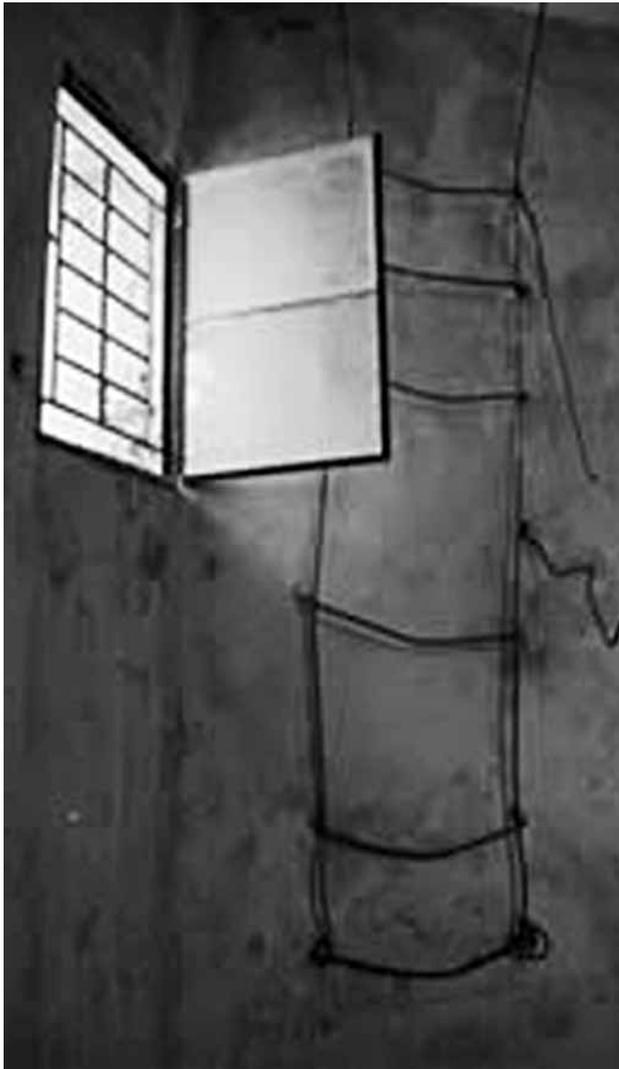
Tyre - Sonele Daas sits on death row in Lebanon's central Roumieh prison, found guilty of murder almost one decade ago. The 60-year-old Bangladeshi had travelled to Lebanon to work and send wages home to his family. However, after a dispute with a fellow compatriot, Daas was arrested, tried and convicted by a Lebanese court for his friend's subsequent death. Today Daas still does not understand Arabic, has lost touch with his family and is entirely dependent on others for help, explains Jihane Morad, a young social worker for the Association for Justice and Mercy (AJEM), a grassroots organization with a daily presence in the prison offering social services and legal aid. *"He doesn't know who his lawyer was"* she says, *"so we have agreed to review his case."*

Daas is one of 40 men in crowded Roumieh prison currently sentenced to die by shooting or hanging. Since Lebanon's independence in 1943, 54 people have been executed by the state, many after the civil war's end in the 1990s. During an enormous national anti-death penalty campaign backed by over 50 civil society organizations a few years ago, a poll conducted by the leading ban activist, Walid Slaybi, determined that 74 percent of Lebanese parliamentarians were in favour of abolition. The next step, recalls Slaybi, was to pre-

sent a draft law on abolition, already signed by a number of deputies, to prime minister Sinoira on July 12, 2006. However, that day the Israel-Lebanon conflict broke out. *"Now with the political crises today, the parliament does not meet. Under these conditions we cannot present it - but it is ready,"* says Slaybi. Lebanon's last series of executions have been high profile and especially controversial, enacted in the wake of national public outrage over the crimes.

In 1998 there was a public hanging in Tabarja town square of two thieves, Hassan Abu Jabal and Wissam Issa, who had killed the owners of a house they had broken into. Hundreds of people and television cameras watched at dawn as the gallows briefly malfunctioned and the lifeless bodies were then left on display for over an hour. *"This was a big trauma for the children of the village,"* recalls Marie Daunay, president of the Lebanese Centre for Human Rights (CLDH). *"It was horrible - the kids were playing at hanging each other afterwards at school."*

The executions coincided with the first known public protest in Lebanon against the death penalty, says Slaybi, when he, Ogarit Younan, a lawyer, and around 30 others staged a sit-in that morning in the town square. After a brief halt of executi-



Prison in Lebanon | Photo: Amnesty International

ons under prime minister Salim Hoss, who virulently opposed the death penalty, the murder of eight, mostly Christian co-workers by a Shiite man, Ahmad Mansour, sparked widespread sectarian anger in 2004. Careful to appease the various political parties, Mansour was executed by hanging. The state also executed by firing squad Remi Zaatara, a Christian, and Badih Hamade, a Sunni, both on death row for unrelated murders.

Since then there have been no executions. *"However those who are condemned are always living in fear that they*

might be executed," says Morad. *"Many are receiving psychiatric treatment because of this constant fear."* In 1998 Nehme al Haj, a 44-year-old from the Beirut area was arrested by Syrian intelligence agents and taken to Anjar, near the Syrian border. He says he was interrogated with torture for up to a month, denied a lawyer and forced to sign a confession that he murdered two Syrian labourers in Lebanon. He was then turned over to Lebanon and transferred to Roumieh prison. His trial, six years later, was based on his signed confession in Anjar, and despite his allegations of torture, he received the death penalty.

Al Haj's case is presently adopted by CLDH and has been reported to the United Nation's Human Rights Council. *"If you study the cases of people sentenced to death [in Lebanon],"* explains Daunay, *"with most of them you will find big contradictions with international law. Their rights during the trial were not respected. So if you don't respect the rights of the accused, you cannot be sure that the decision is right."* Human rights advocates complain Lebanon's court trials are often expedient, the accused lacks adequate counsel (defence lawyers for death penalty cases are scarce and they usually work for without payment), the appeals process is limited and torture to obtain a confession is commonplace. Lebanon is a signatory to international

laws governing civil and political rights, and against torture. *"Lebanon as a state signs everything, but nothing is implemented,"* says Daunay.

Death penalty abolitionists were hoping Lebanon would repeal the death penalty in accordance with international laws currently governing the U.N. special tribunal set up to try the suspects in the killing of prime minister Rafik Hariri in 2005. However, the UN and the Lebanon reached an understanding that the tribunal, which has power to impose penalties leading up to life imprisonment, would have precedence over Lebanese national law where the death penalty would still be valid. (Rwanda recently abolished the death penalty, making it easier for it to apply for the extradition of genocide suspects hiding abroad.)

With widespread public outrage over the Lebanese Army casualties in Nahr el Bared refugee camp at the hands of Fatah al Islam last summer, in addition to the current political crises, passage of a death penalty ban now seems somewhat remote. However, with the abolitionist campaigners having succeeded in getting accidental death struck off the list of charges to merit the death penalty, Slaybi believes the campaign will ultimately triumph. *"If there is stability in Lebanon - then the death penalty will be eliminated,"* he says with conviction. (Reported in November 2007) ■



Georgi Milkov

These Nurses Came To Heal

Tripoli - "Please, do not leave us, we'll die here!" Nasya Nenova, the youngest of the five Bulgarian nurses sentenced to death by a firing squad in Libya on Dec. 19, 2006 shouted out through the bars of her locked cage. She was losing all hope of salvation, although Christiana Vulcheva who had been sharing the same cell for the last 8 years, was trying to give her encouragement. A few minutes later, Judge Mahmud Hueysa entered the courtroom and pronounced the sentences. The five nurses did not understand Arabic and watched transfixed in silence, as if witnessing a drama in which others were the main characters.

The Palestinian doctor, Ashraf al-Khadjudj, their fellow co-defendant, leaned towards Nasya and Christiana and whispered in their ears in English: a sentence of death for them all. The other nurses also grasped immediately that their worst fears had come true. The courtroom suddenly exploded with cries of joy from the parents of the 400 HIV-infected children of Benghazi: *"Allah-u Akbar! God is Great!"* All were on their feet.

The court guards whisked the prisoners away so speedily that none had time to utter a word. Nasya managed just a last glance back to the courtroom where the Bulgarian lawyer, diplomats and

journalists stood. There was horror in her eyes as if crying: 'Help!' This was their second death sentence for allegedly deliberately causing an AIDS epidemic in a childrens' hospital. All deny the charges. Leading world AIDS experts have said they could not be responsible. Human rights groups say they are being made scapegoats for unhygienic practices which spread the infection before they even arrived.

Five years ago when I first visited the nurses in their Tripoli jail, Nasya was the quietest of them all. She hardly spoke. She preferred to ask questions and listen to the stories of the other four nurses locked up with her. I learned then she had attempted suicide to escape the interrogations, torture, electric shock treatment and incessant mental torment from her guards. It was obvious that she was deeply traumatised.

At the end of last year when I last visited the nurses in the Judeyda jail, Nasya was still the least talkative. But I already knew her well and understood her additional torment. She was depressed and remorseful because she had been broken by the torture. Confessions had been extracted. Her sense of guilt was intense and an almost unbearable burden. It was intensified by the



Sentenced to death in Libya: five nurses from Bulgaria | Photo: www.regierung-online.de

nurses blaming each other for their fate. In an outburst of rage one of them had told Nasya: *"If you had not signed, we wouldn't be here now!"*

It was signatures, signed confessions made by Nasya, Christiana and Ashraf under extreme torture that provide the Libyan prosecution with its case against them. This was to condemn them to death by the Libyan judge. *"I wanted to die as I couldn't endure the electric shocks any more,"* Nasya had told me during our meetings in her prison cell, explaining why they had broken her. *"As soon as I saw Colonel Djuma Mishri entering I knew they'd plug the wires to my fingers. I told him 'do whatever you want but not the electric shock treatment'. They gave me papers to sign in Arabic. Djuma always showed up just before and would say: 'You know what to do, you're good girl!' I just couldn't endure it any longer!"*

Each of the five nurses has her own terrifying story to tell about the torture in the cells of the Libyan security services. After confessions had been extracted from the most fragile and vulnerable, their interrogators turned to the strongest in the group: Christiana Vulcheva. Christiana Vulcheva never actually worked

in the infected Benghazi hospital. But the Libyan prosecutor claimed she was the controller of the group of Valya Cherveniyashka, Snejana Dimitrova and Valentina Siropulo. She gave them their duties and flasks of HIV-contaminated blood plasma, he said. Outside in Benghazi the people described her as a hard, heartless, foreign agent. When I met her in the jail I told Christiana what they were saying. *"I cannot cry anymore,"* she replied. *"How could I cry when my tears dried long ago. If I had been a highly-trained agent, the torturing would probably not have broken me. They stripped me naked and stretched me out on an iron grill. They stuck wires in my groin, my ears and my fingers. The convulsions from the electric shocks were sometimes so violent that my grill tipped right over. There were moments when I fainted. They poured buckets of cold water all over me. Djuma Mishri? Yes, he was the man who tortured me the most often. But the scars on my body are actually from somebody else: Abdelmadjid Shaul. In jail they called him 'The Chemist'."*

Valya Cherveniyashka told me of the 'Dog Kennels', the centre for training police dogs where the nurses were imprisoned for some of the time. *"They wrenched me by my hair and thrust*

my head right up to the dog which was barking ferociously. I was terrified but then I thought 'this is an animal with feelings and it will not hurt me'." Valya was spared the electric shocks but they set large insects on her body, she said. During one of our conversations, she pulled off her shoes and displayed her toes. The nails had fallen off. This had happened after several days of severe beatings with a stick on the soles of her feet. Valentina Siropulo's worst torture was being beaten with sticks and a rubber hose. Snejana Dimitrova, the eldest in the group, was strung up on hooks. Each time this happened her limbs were wrenched out of their sockets.

These are the terrifying stories behind those confessions which the Libyan Court accepted. They are the stories that have shocked all Bulgaria and have galvanised the nation behind the nurses. Rossen Markov epitomizes the mood of the ever-growing national sympathy and solidarity. For months he has camped out in a tent before the Libyan Embassy in Sofia. He heads an association in support of the nurses and their families and is always there in the front row of all anti-Libyan rallies in the Bulgarian capital. Pinned to his jacket is a ribbon in the colours of the national flag. It reads: *"You are not alone"*. (Reported in January 2007) ■



Abderrahim El Ouali

King Seen As Final Arbiter In Long-Running Debate

Casablanca - The months-long political impasse over death penalty abolition in Morocco can only be finally broken by King Mohamed VI, according to a leading rights campaigner. "Abolition now depends directly on the king," Mostafa Hannaoui, a member of the Progress and Socialism Party, told IPS. Only the king had the authority to break the current deadlock and put the controversial subject back on the political agenda. For months all political parties in Morocco have maintained a silence on the death penalty abolition issue, even during the recent national elections.

Three parties - the Socialist Union of Popular Forces (USFP), the Progress and Socialism Party (PPS) and the Democratic Forces Front (FFD) - had promised to campaign for abolition in the elections held on September 7. They had publicly pledged to do this at an international conference on the death penalty organised by the Paris-based World Coalition against the Death Penalty in Casablanca last year. This was widely reported at the time in the Moroccan and international press. In February this year, the head of Morocco's state-appointed consultative committee on human rights, Ben Zekri, told delegates at the Third World Congress against the Death Penalty in

Paris that there was general agreement among MPs that the death penalty in Morocco should be abolished. This raised hopes that Morocco would become the first Arab country to abolish capital punishment. But in the September elections no political party campaigned for abolition.

Hannaoui said the parties could drop any mention of the death penalty issue from their election manifestos because of the "lack of internal party democracy". Party leaders decided their political agendas without needing to consider the opinions of the rank and file members, he said. "There was an absence of any real debate when the party manifestoes were drawn up," he said. IPS approached the USFP and FFD parties to confirm this explanation for the omission of the death penalty abolition issue from their election programmes, but they refused to comment. Hannaoui said Morocco's current stiff resistance to abolition was due to the recent "terrorist attacks against Morocco". "These have made it difficult for the state to abolish the death penalty while innocent citizens are being killed," he said.

After a lull of four years and the deadly bombings in Casablanca in 2003, there was a new wave of bombings in the city,



Photo: Amnesty International

Morocco's largest, this March and April. Some five suicide bombers blew themselves up. A sixth was shot dead by the police and three others arrested. A police agent was shot dead in the action. Several innocent bystanders were injured in the blasts, according to press reports. The first political fall-out of these bombings appears to have been in the evaporation of support for a private member's bill to abolish the death penalty. This was introduced last year by Bouchra Khiari, a MP from the FFD party.

"The bill was simply put into the freezer. It is still waiting for approval by the king and then the government," Mostafa Hannaoui said. Hannaoui predicted that royal support for the bill to proceed might eventually be given. The young king had shown his liberal, progressive side, he said. He had agreed to set up the Equity and Reconciliation Board (IER), a symbolic move to make amends to the victims of human rights violations during the rule of his father, Hassan II. Hassan II ruled from 1961 to 1999. During that time, known as "The Years of Lead", thousands of opponents were kidnaped and imprisoned. Some were executed without trial. In 2005, the IER completed its work and issued its final report. One of its conclu-

ding recommendations was that the abolition of the death penalty was necessary to complete the reconciliation process. Hannaoui noted that the King had also adopted a new progressive family law in 2002. This granted emancipation rights to women which were unprecedented in the Arab and Muslim world, including freedom to marry without paternal permission. The king had also backed efforts to stamp out corruption. Several prominent officials had been put on trial and convicted of embezzlement of state funds in a series of trials, he said.

Human rights activists argue that the death penalty issue is the key to reversing the widespread public cynicism over the working of the electoral system in Morocco. This was reflected in the extraordinarily low 37 percent turnout in the September elections. Nearly half of the votes cast then, some 17 percent, were declared invalid. *"Many human rights activists boycotted the elections. If death penalty abolition had been an issue, they would have certainly turned out to vote and the turnout would have been higher,"* Khalid Harakat, a member of the Moroccan Human Rights Association, told IPS. *(Reported in November 2007)* ■



Abderrahim El Ouali

“Islam And Abolition Are Compatible”

Interview with Mustapha Bouhandi, professor of comparative religion

Casablanca - Many in the Arab world find support for the death penalty in the Quran. But this is a false reading of the texts, says Mustapha Bouhandi, professor of comparative religion at Hassan II university in Casablanca. A controversial voice of tolerance, Bouhandi draws fierce criticism from Muslim extremists. Ahead of the U.N. General Assembly vote on a moratorium on executions, he answers questions from IPS correspondent in the region, Abderrahim El Ouali.

IPS: *The world is moving towards total abolition of the death penalty. But still the death penalty is in place throughout the Arab world. Is this because of religion or politics?*

Mustapha Bouhandi: In Arab countries the death penalty is retained by regimes which do not want to lose their most important instrument of repression. Most do not derive legitimacy from the ballot box. They believe that any kind of opposition which enjoys popular support is a threat. The death penalty is for them an effective means to eliminate opposition leaders, or at least to intimidate and curb them.

Often these opponents are liquidated without trial, even without that their families ever hearing of their execution or being able to arrange a funeral for them. Where there are trials, justice in the Arab world does not enjoy a good reputation. It depends on the wishes of the ruling powers. Every death sentence, even in non-political cases, is politically influenced. So, I would say religion has nothing to do with the application of the death penalty in the Arab world.

IPS: *But isn't it a widely held view that to oppose the death penalty is to go against Islam and the Quran?*

Mustapha Bouhandi: Many still believe that the death penalty is closely linked to religion because of the political abuse of religion to justify killings in the past history of Islam. Today many scholars often use the same arguments and the same religious texts as they did in the past to defend the behaviour of a king, minister or judge who orders killings that are forbidden by God. There are also those at Friday prayers or lessons, in books and in the markets of the Islamic communities who incite ignorant people and rulers to execute opponents. I think that a large part of what is attributed to religion regarding the application of the death penalty is not true.

IPS: *What religious arguments would you give to those who say 'to abolish the death penalty would be to go against God's law'?*

Mustapha Bouhandi: God's law, Shariah, is expressed in the basic commandments found in all monotheistic religions. The main commandment is not to kill. The death penalty is a punishment hindering killings by the fear of being killed. But if a killing is prevented without recourse to a killing, then God's law not to kill is, indeed, being followed.

IPS: *But don't most Muslim religious scholars agree that there are four cases where the death penalty applies, even though in some countries the number rises to 865?*

Mustapha Bouhandi: Let me disagree with you that in Islam there are four cases for the death penalty. This is wrongly attri-



Photo: UNESCO

buted to Islam and I could give you very detailed proof. As I have said, in most cases we have states seeking legitimacy in their interpretation of our Islamic religious heritage. These are states that lack popular, democratic support. I think that it is time to denounce this exploitation of religion by the usurpers of power in the Muslim world. The death penalty could be easily abolished by a re-reading the very texts used by the death penalty advocates.

IPS: We've seen in Morocco the beginning of a debate on the death penalty. Is this what is essential for there ever to be the abolition of the death penalty in Arab countries?

Mustapha Bouhandi: Yes, we need real debate on this subject. We need to distinguish between the death penalty, which has no basis in religion or reason and is largely a pretext for oppression in Arab and Islamic countries, and the death penalty as a deterrent. We need a debate about the deterrence alternatives.

IPS: There is a currently a death penalty moratorium in Morocco. Should activists first set their sights on extending this regionally?

Mustapha Bouhandi: I really do not think that this penalty can be abolished at this time in light of the current organised international crime now being conducted against the Arab and Muslim community. We are witnessing the barbaric behaviour of many powers employing the latest in sophisticated arms, aircraft and missiles to implement the ultimate punishment against entire populations of villages, towns and tents. Those who wish to abolish the death penalty

from their criminal codes should first address the international powers causing most of this existing violence on earth. I also believe that we cannot talk about the abolition of the death penalty in light of a global culture that is invading homes all over the world with films of violence, war and murder. This is a culture holding as supreme the reaching of solutions by destructive military force. This criminal culture is devastating our values of compassion, nobility and humanity. Without a restoration of these values, we cannot hope to convince people to support death penalty abolition.

IPS: But did we not see a revulsion throughout the Muslim world over the recent execution, particularly the manner of the execution, of Saddam Hussain. Would this not suggest that many people in the Arab world would support a regional moratorium?

Mustapha Bouhandi: I think there was this expression of anger because the execution was seen as an insult to the Arab and Islamic world. Still, in the Arab and Islamic world, just as in the western world, we do not respect the value of human life, quite separately from religious, sectarian, and political considerations which are dividing the world into groups fighting against each other. When human life becomes a real value in itself regardless of ethnicity, then we can talk about the suspending or abolishing the death penalty.

IPS: But still recently there has been much talk that Morocco might be the first Arab country to abolish the death penalty. If this happened, might this not have a snowball effect throughout the Arab world?

Mustapha Bouhandi: Arab countries have always influenced each other in keeping in step with international trends. Whether Morocco will be the first to abolish the death penalty or some other Arab country, I really do believe that eventually there will be global abolition of this punishment. But, as I have said, there are some global cultures moving in an opposite direction to this, slowing down the realisation of this goal. People should understand the extent of these international influences on the domestic scene and work to bring about a reforming influence.

IPS: What alternative punishments does Islam envisage for the gravest of all crimes?

Mustapha Bouhandi: The alternative punishments are imprisonment, repentance to the relatives of the victim and reform acceptable to the community. The Qur'an says: "*The penalty for those fighting against God and His Messenger is that they would be killed or crucified, or their hands and legs cut off, or exiled.*" Scholars have talked too much about this verse. Some have interpreted it as meaning that those who have killed should be killed, those who have amputated should be amputated, and those who have just helped criminals should be exiled. Other scholars have stated that all the best-suited punishment options are open to an authority. I believe the punishment options are linked to cultural, social norms and legal rules. The verse does not sanction the death penalty, or amputation. There are other punishments that are best suited, especially if these provide deterrence on one hand and mitigation and mercy on the other. (Reported in September 2007) ■



Abderrahim El Ouali

Suicide Bombings Delay Death Penalty Abolition

Casablanca - The Moroccan government has pulled back from presenting to parliament its long-expected bill on the abolition of the death penalty, apparently on the grounds that the recent suicide bombings here call for a delay and re-thinking on how to deal with Muslim extremism. The abolition bill, drawn up by pro-abolitionist politicians and handed over to the government's general secretariat more than six months ago, was to have been introduced to parliament in April.

It was widely predicted that after a lively debate the majority of the deputies would vote it into law before the end of the current parliamentary session in June. King Mohammed VI was known to have expressed his support - an essential requirement for a bill on such a sensitive issue ever to have been drawn up. But on Mar. 11 a bomb went off in a Moroccan Internet cafe, killing a suicide bomber and wounding four other people. A month later three other suicide bombers died when they detonated explosives while being pursued by the police. A policeman was also killed in this security operation.

Since then there has been no official comment on death penalty abolition. All attempts by IPS to find out the fate of the abolition bill have been met with silence. Telephone enquiries

directed at the government spokesman have been unanswered. "There has been a retreat not only on the abolition of the death penalty but on all other public freedoms," Mohamed Abounasr of the Moroccan Association of Human Rights told IPS. The return to dark days of "*repression and torture*" was being justified by the argument that the country was "*fighting terrorism*," he said.

As an example of the clampdown on civil rights, Abounasr pointed to the police action against the May Day rally in the southern city of Agadir. Two demonstrators were arrested. They were later put on trial for defaming King Mohammed VI. They were found guilty and sentenced to two years imprisonment. But on May 4 hundreds of angry pro-capital punishment demonstrators gathered in Beni Mellal in central Morocco. They called for the death sentence for two men suspected of a particularly brutal killing of a 20-year-old woman.

"*It is paradoxical. The government allows one demonstration for capital punishment while moving against another with arrests on Workers' Day*," Abounasr said, adding that he was convinced that the public call for executions for killers was inspired by repressive elements in the leadership now in the



Photo: IPS

ascendancy after the terrorist bombings. The same people were also behind the government's *"hesitation"* over the tabling of the death penalty abolition bill. *"Manipulating a section of the population to call for the death penalty is absolutely wrong,"* Abounasr said. *"The people are not always aware that they are being convinced to take up positions which are actually in violation of their general human rights."*

There is now growing concern among human rights activists that the government may be planning to execute convicted Muslim extremist terrorists on the death row. The executions could take place after the September legislative elections, some are suggesting. Such executions would break the 14-year-long moratorium that has been in place in Morocco. The last person to be executed was Mustapha Tabet, a police commissioner accused of raping many women and girls.

"Executing alleged terrorists would only serve as a propaganda boost for the crimes they have committed," Omar Kharrouj, a lawyer and human rights activist wrote in the magazine 'Attadamoun' (Solidarity), responding to this concern. *"Those who believe that the death penalty would put an end to political violence are either naive or deluded,"* he added. Other

human rights activists are calling on the government to address what they see as the underlying social causes of Islamic extremism. *"Terrorism cannot be fought by capital punishment,"* Abounasr said. *"A policing approach alone is not sufficient. We also need a social approach to the problem."*

All the suicide bombers were from the shantytowns and other poor areas. Most of them were illiterate. The government needed *"to improve the conditions of life of the people and to arm them with education and knowledge so that they can be immunised against extremism and terrorism,"* Abounasr said. The debate over the death penalty is likely to feature in the political campaigning for the next elections in September. Campaigning will begin in August.

Up to now no political parties have published their electoral programmes. But death penalty abolition is likely to be in some election manifestos, some political observers say. The opposition party Le Front des Forces Démocratiques, one of the prime movers behind the drafting of the abolition bill which is apparently now stymied by the present government, is expected to continue to champion hard publicly for a ban on capital punishment. *(Reported in November 2007)* ■



Abderrahim El Ouali

Huge Amnesty Signals Historic Day

Casablanca - A royal birth followed immediately by an amnesty for more than a dozen death row prisoners among others is being interpreted here as a signal that Morocco is on the verge of making history in the Arab world by being the first to abolish the death penalty. On Feb. 28, the wife of King Mohammed VI, Princess Lalla Salma, gave birth to the ruling couple's first daughter, Princess Lalla Khadija. Immediately afterwards Morocco's minister of justice, Mohamed Bouzouba, appeared on nation-wide television announcing the biggest ever royal pardon for almost 9,000 prisoners, including 14 people sentenced to death. Reading from an 'official communiqué', the minister repeated several times that this amnesty included people on the death row. This was taken as a clear sign here that the king supported abolition of the death penalty.

The royal message to the Moroccan people was underlined by the minister's unusual appearance on television in traditional Moroccan attire. It was also a signal that the day of the formal abolition of the death penalty in Morocco is fast approaching. The final decision to abolish the death penalty will be taken by the Moroccan parliament. But the king, who appoints his prime minister and other key ministers, would have to give his support for such a crucial change to the state's exi-

sting constitutional and legal system. At the Third World Congress against the Death Penalty in Paris last February, the head of the Morocco's state-appointed Consultative Committee on Human Rights, Ben Zekri, confirmed there was a general consensus among members of parliament to end capital punishment. The Moroccan press has speculated that a parliamentary vote will be taken on the issue in the current parliamentary session which ends in June. A bill to abolish the death penalty had already been drawn up and put before the government. The king had also set up a special legal commission which was working on the task of removing capital punishment from the country's legal code.

Since 1993 Morocco has operated a moratorium on the death penalty - one of some 20 African countries which have not carried out executions for more than 10 years. Since its independence from the French in 1956, more than 500 people are believed to have been executed, either after court sentencing or extra-judicially. Before the latest amnesty, human rights campaigners said there were 131 people on death row. Opponents of the death penalty world-wide, hope that Morocco's removal of the death penalty from its statute books will set an example to North African and Middle Eastern



King Mohamed II | Photos: World Press

states. None of the 22 states in the region have yet abolished the death penalty. Saudi Arabia and Iran execute more than a hundred every year. Morocco's steady progress along the road to abolition of the death penalty was given a major boost with the final report of the Equity and Reconciliation Committee in 2005. This recommended the abolition of the death penalty as a measure for strengthening the judicial and political reforms carried out since king Mohammed VI's accession to the throne in 1999.

The committee, headed by Driss Benzekri, a close advisor to the king, investigated grave violations of human rights committed between the granting of independence and 1999. It organised public hearings which were broadcast on national television, something unheard of in the Arab world. Moroccan television has also played a major role in the public debate on the death penalty. Last October the national coalition against the death penalty organised a debate on capital punishment at the headquarters of the lawyer's club in the Moroccan capital, Rabat. This was televised nationally.

Later a documentary on the death penalty was also broadcast on television. Nothing like this had ever been produced and shown in an Arab country, one delegate to the recent

Paris World Congress against the Death Penalty said. The documentary appears to have convinced some people to switch from supporting the death penalty to becoming abolitionists. "After watching the programme, I changed my mind," Keltoume Arrouf, a lawyer's assistant, told IPS. The recent videos showing the execution of former Iraqi president Saddam Hussein made her even more staunchly anti-death penalty. "Saddam Hussein was executed on the day of Eid Al-Adha. That was such a terrible scene that I still see it in my dreams," she said.

Not all Morocco's predominantly Muslim population have been won over by the arguments of the abolitionists. Many still find justification for capital punishment in the Koran and sacred texts. Some members of Morocco's legal profession would also not like any change in the law. "The abolitionists have the wrong approach to the right to life," Mohamed Chemssy, a lawyer, told IPS. "This right cannot be used to defend someone who has deprived another of precisely this right. Those who support abolition cannot only consider the criminal. They must also consider the families of the victims."

He added: "The death penalty cannot be tied to democracy, dictatorship, Islam or to any other religion. It is tied to

justice. We do not need to abolish the death penalty. We need to guarantee fair trials for all and an independent judiciary that would give fair sentences no matter what the punishment," he said. But Ahmed Kouza, a doctor and Amnesty International activist, takes an opposite view. "Abolition would improve the image of this country and help reinforce respect for human rights where the right to life comes first of all," he told IPS. "Death penalty sentences and executions have never stopped crime anywhere."

Judicial mistakes could never be ruled out. The emphasis should be on reforming criminals and returning them to society. "As Muslims, we believe that only God gives life and death," he added. Even as the debate goes on with a clear indication that abolition of the death penalty in Morocco is only months away, judges here continue to adjudicate death sentences. In February a court in Rabat sentenced a Moroccan, Karim Zimach, to death for the killing of an Italian diplomat and his Belgian wife. Such sentences should not be interpreted as Morocco having any second thoughts about the issue, Chemssy said. "It's absolutely certain the death penalty will be abolished because the state needs this politically," he stated. (Reported in March 2007) ■



Abderrahim El Ouali

Moroccan Abolition Could Help Expose Political Killings

Casablanca - Morocco continues to be haunted by its many extrajudicial killings in the past - but human rights activists are looking to the long-expected abolition of the death penalty as an essential step towards encouraging more to speak out about what they know about these and help bring those responsible before the courts. King Mohamed VI's accession to the throne in 1999 was followed by a much - welcomed process of reconciliation between the state and the victims of human rights violations during his father's reign. This centred on the Equity and Reconciliation Committee which held public hearings for victims and granted compensation.

The committee concluded its work over a year ago with a final report calling for the abolition of the death penalty. The Moroccan media has speculated that this recommendation could be adopted by parliament during its current session which ends in June. But some leading rights activists remain critical that many of the gravest cases of human rights violations - the "*thousands*" of extrajudicial killings without the sanction of the courts - committed in the long reign of King Hassan II are still shrouded in secrecy.

"Reconciliation cannot be partial," Noureddine Gabbaz, a member of the Moroccan Human Rights Association, told IPS. *"There is only one way to complete reconciliation: truth, all the truth. We need to know all that happened to the victims. We need enough guarantees that this will not happen again. The abolition of the death penalty is necessary to achieve the building of a state*

which respects the rule of law, human rights and freedom." The eventual abolition of the death penalty should play a role in bringing the truth to light.

He added: *"Abolition might help former secret service agents to reveal more useful information about what happened during 'The Years of Lead'. If the death penalty is abolished and the former executioners know they cannot be sentenced to death, they might then be more ready to tell us what happened. The complete truth would then be brought out into the open."* "The Years of Lead" is the graphic term used to describe the repression during the 38-year-long rule by King Hassan II. Dissidents and democracy campaigners were harassed, jailed and disappeared.

Typical of what is seen as only a "partial" dealing with these human rights violations is the case of the disappearance of Mehdi Ben Barka, the main opposition leader in 1965. It was a former secret service agent, Ahmed Boukhari, who cast some light on this, admitting to the press how he coordinated Ben Barka's kidnapping in Paris from his agency's secret Dar al-Moukri detention centre. This is a villa in the exclusive Souissi district of Rabat, the capital. Agents smuggled Barka's dead body back to Dar al-Moukri where it was disposed of in acid without leaving a trace, Boukhari first claimed in 2000. But despite these shocking revelations, no proceedings have been opened against anyone involved in the extrajudicial killing. The Moroccan government has also consistently ignored all



Photo: UNESCO

calls to open up the villa and its gruesome secrets to public scrutiny. Permission to hold a sit-in to pressure the government to do this was refused.

Driss Ould Kabla, a well-known human rights activist, is now conducting his own investigations into the extra-judicial killings in the villa. This April he reported he had obtained information about these, but gave no numbers. Ex-agent Boukhari had earlier reported that it was "common" practice in the centre to dispose of bodies in acid. Activists are also concerned about the continuing refusal of the authorities to investigate and bring to justice those responsible for the violent clampdown on demonstrations during Hassan's rule. The Moroccan Forum for Truth and Equity is campaigning for justice over one of the worse of these, the bloody repression of a demonstration against the high cost of living in Casablanca in June 1981. Activists say security forces shot dead more than a thousand. But the official death toll is 89.

Gabbaz, who is also a member of the forum, told IPS that many of the victims were later buried in mass graves in and around Casablanca. "The official version is that victims were shot by random bullets," Gabbaz said. "But I do not know of any random fire that aims only at heads and hearts." One of the victims was an eight-year-old deaf and dumb child. People watching the demonstration from their windows were also cut down by bullets, Gabbaz claimed. Driss Ould Kabla, a human rights activist, is focusing on the purges

in the army. In April he published details of nine army generals who were executed without trial in 1971 for allegedly plotting a coup. The execution was broadcast live on Moroccan television. King Hussein of Jordan and King Hassan also "watched the execution through binoculars from the Moulay Ismail Barracks," Ould Kabla wrote. Some 30 other officers were also "executed by slow death" at a secret service detention centre in Tazmamart, a small town in eastern Morocco near the city of Arrachidia.

Ould Kabla has claimed that 58 other officers were arrested and imprisoned for other alleged coup attempts in 1971 and 1972. Thirty of them died a terrible death of suffocation, hunger and torture in tiny cells in the Tazmamart prison. Human rights organisations also continue to press for information on the fate of more than 60 political detainees whose disappearance continues to be unexplained. The apparent unwillingness of the authorities to initiate public investigations into the alleged extra-judicial killings, is causing continuing, deep resentment. This is compounded by the pain caused to the families of the victims watching the people they hold responsible appear regularly on state-run television. "Those who committed these atrocities should be brought to justice - or at least leave their functions," Gabbaz said. "It's unbelievable that they all carry on appearing on TV." He identified these people as top military commanders and senior government officials. (Reported in April 2007) ■



Feizal Samath

Legal Aid For Maid - After Close Shave With Sword

Colombo - The dramatic reprieve for a condemned Sri Lankan housemaid won by lawyers, beating a Jul. 16 deadline for filing an appeal in the Saudi Arabian courts, has focused the international spotlight on a closed justice system which condemns people to death without legal representation at their trials. Rizana Nafeek, a 19-year-old migrant worker, was sentenced to death on Jun. 16 for allegedly intentionally killing a four-month-old infant who choked to death while she was giving it a midday bottle feed in May 2005. Nafeek had only one month to file an appeal or she would have been executed by sword and her body put on public display to deter future offenders.

Her beheading would have been one of more than 100 carried out so far this year in a country currently seeing a surge in state killings, according to Amnesty International (AI). Many of those executed are foreigners. Saudi Arabia has a population of 27 million, including 5.5 million foreign nationals. Last year it executed 39 people, 26 of them foreigners, according to AI. Nafeek's last-minute reprieve was secured by the Hong Kong-based Asian Human Rights Commission (AHRC) which launched an international appeal campaign "*under extraordinary circumstances*". The Commission, with the approval of the Sri Lankan embassy in Riyadh, stepped in to pay the legal costs to a Saudi law firm to challenge the death sentence in court. "*We have filed the appeal by the due date,*" Sri Lankan deputy mini-

ster of foreign affairs Hussain Bhaila told IPS in Colombo, before flying out to Riyadh at the end of last week on a mercy mission. With him on the flight were Nafeek's parents and a local Muslim leader. This assembled mission was a separate approach to save the maid who now had a stay on execution. They hoped to meet with the dead infant's parents and through various intermediaries secure a pardon. They also hoped to visit the maid in jail. "*It is not going to be easy meeting them (the parents),*" Bhaila said, adding that they had already refused to see the Sri Lankan ambassador. Under Saudi law only the parents can grant a pardon, something they had declined to do when the death sentence was passed.

The drama over the international efforts to save Nafeek's life illustrates the near-impossibility of other condemned migrant workers to engage Saudi lawyers - even if they are aware they have this right. Nafeek comes from a poor Sri Lankan family and had been working in Saudi Arabia at her employer's home just two weeks when the tragic incident occurred. The legal costs of filing her appeal were first put at Saudi Riyal 250,000 (about 66,000 US dollars). The Sri Lankan embassy eventually negotiated a 28,000 dollar reduction. Although the appeal can now go ahead, lawyers are still waiting for Saudi officials to send them essential documents, including a copy of the final judgement. Even a week before the appeal deadline, the Sri Lankan embassy issued an "*urgent request*" for this and other key documents needed by lawyers.



The family of Rizana Nafeek: her mother and two sisters | Photo: AI

With the appeal being filed, Nafeek for the first time since her arrest has legal representation. At her trial she had no independent legal advice, according to the AHRC. This was also the case in the trials of four Sri Lankan migrants who were executed for armed robbery in February this year, according to AI. The cases are similar in many respects and may be representative of others involving capital trials of foreign workers in Saudi Arabia. Nafeek was put under duress to sign an incriminating statement that was used to condemn her for strangling the child to death. *"At the police station she was very harshly handled and did not have the help of a translator or anyone else to whom she could explain what had happened. She was made to sign a confession and later charges of murder by strangulation were filed in court,"* according to the AHRC.

In the case of the four Sri Lankan men who were beheaded, they told judges at the trial that they had been beaten by the police during interrogation. One of the four, Ranjith de Silva, in

a telephone interview with Human Rights Watch a week before his execution, said he understood that but for his incriminating confession he might not face the death penalty. De Silva had also said that the judge at his trial did not inform him that he could appeal or provide any of the four a copy of the judgement, according to Human Rights Watch. One of the four is believed to have thought he had been sentenced to 15 years' imprisonment, according to AI.

The conduct of the Saudi judges is under scrutiny in the Nafeek case. According to the AHRC she is said to have informed the judge that she was 17 at the time she arrived in Saudi Arabia in 2005 - not 23. Her date of birth on her passport had been falsified by the employment agency. This would have meant that she was just 17 at the time of the infant's death and an underage girl. But the judge failed to call for a medical examination to verify this, according to rights organisations. The Sri Lankan embassy in a statement on Jul. 8 has confirmed that there is a certified copy of Nafeek's birth certificate confirming that she was born on Feb. 4, 1988.

Saudi Arabia sets the minimum age for employment at 22 years, according to Suraj Dandeniya, President of the Association of Licensed Foreign Employment Agencies in Colombo. The practice of falsifying documents is widespread. According to

some estimates, between 10 and 25 percent of Sri Lankan Muslim women who go abroad to work are underage and succeed with bogus documents and passports. There are currently some 300,000 Sri Lankan migrant workers in Saudi Arabia, a third of whom are Muslim women. *"All officials involved in this illegal process are culpable ... not only the recruiting agent,"* said Dandeniya.

David Soysa, director of the Migrant Workers' Centre, a long-standing Colombo-based institution which supports migrant workers, believes Nafeek's case illustrates just how unprepared and untrained many migrant workers are for their duties in Middle East households. The Sri Lanka Foreign Employment Bureau, the main foreign employment promoting arm of the government, provides only 12 days of training. *"There is a serious problem about lack of proper training of migrant workers. The maid didn't know how to burp a child when choking occurs during feeding, which is common. A trained maid would have handled this easily,"* he said. He also believed that this was a case of child trafficking. *"The offenders should be punished,"* he said.

Saudi Arabia is a signatory of the Convention on the Rights of the Child. This bans any member nation from executing anyone for a crime committed while under the age of 18 years. It is not known when Nafeek's case will come before the appeal courts. *(Reported in July 2007)* ■



Emad Mekay

Forgiveness Saves Lives From The Sword

Mecca - The blazing headline read like this: 'Royal intercession saves two lives from the sword'. Literally, the governor of Mecca Province, Prince Makkah Abdelmageed bin Abdelaziz, who heads a committee for securing "forgiveness" for convicted murderers did help spare two from death by the sword. The men were involved in two separate killings in this holy Muslim city. The first murdered his cousin, the second his brother. Both were Saudis, according the Saudi newspaper Al-Madinah. But families of the murderers tapped into a law here that derives from the Islamic Sharia law called the "*Pardon Provisions*". This enables convicted murderers to appeal to the families of the deceased, also known as the "blood-owners", for forgiveness as instructed by the Qur'an.

The cases of the two cases here could then be transferred to the "*Pardon Committee*," a semi-official body formed from public figures and citizens known for their "*wisdom, intellect and piety*". These often are academics, religious men and activists who try to convince the 'blood-owners' to be forgiving. This unique system, which has come under criticism mostly by

Western human rights groups, allows the 'blood-owners', to offer a pardon in return for a dya, a sum of money or other compensation for the death. They may also offer a complete pardon solely "*in pursuit of Allah's own sake and forgiveness*".

Human Rights Watch has estimated that Saudi Arabia carried out more than 100 executions in 2005. It reports that Saudi Arabia imposes the death penalty for drug-related offenses and robbery, crimes which should not be ranked among the most serious. Executions are often carried out by the sword.

But Saudis counter that the practice of "forgiveness" has recently been witnessing a revival as the country sees an upsurge in adherence to Islamic teachings. This means a reduction in the number of executions. The Makkah "*Pardon Committee*" reports that with the its two recent successfully resolved cases, the number of pardons country-wide totalled 105 last year. This is in a country of 25.6 million people. Mohammed Rabei Soliman, a journalist on the Al-Madinah newspaper who has followed such cases over the past 20 years, confirms that the number of victims' families accepting the pardon process is increa-

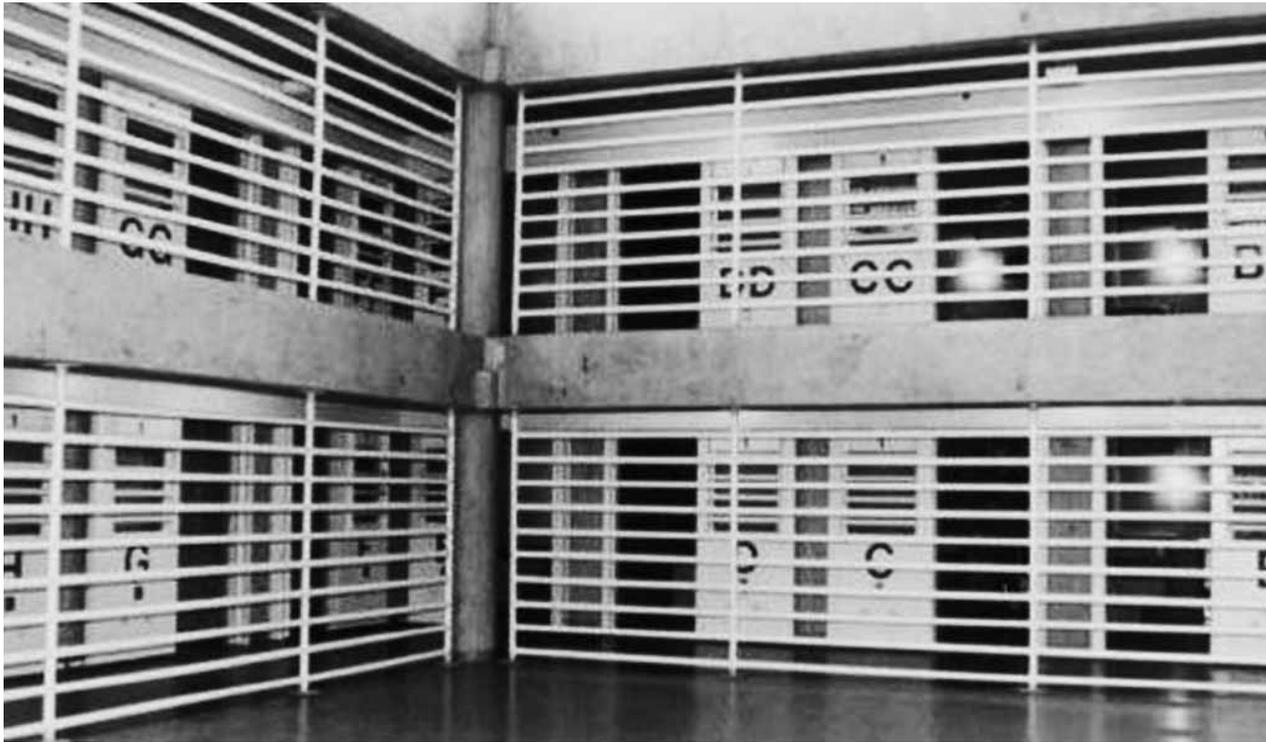


Photo: Amnesty International France

sing. Publicity campaigns and "more people being aware of the benefits of forgiveness in Islam" were responsible.

"This is a deeply conservative society that abhors crime. So it only takes gentle reminding of the good aspects of forgiveness for people to embrace the idea. They trust the promise of Allah that those who forgive will be rewarded in this life and in the afterlife," he told IPS. But even if the 'blood-owners' forgive, the state still has retains rights under the system. A judge may still sentence a murderer to a prison term - although this is usually no more than three years. The "Pardon Committee" has other jobs. When families ask for dya money and the murderer cannot afford it, it steps in and approaches wealthy locals and businessmen to pay it. "The system is based first and foremost on the public recognition of the enormity of the loss and the pain for the family of the deceased," Soliman of Al-Madinah newspaper said.

"Instead of giving the relatives of the deceased just one right, the right of revenge, they are in fact given an additional one - that of forgiveness and pardon. This is more justice not

less. The Qur'an enjoins people in these situations to forgive and seek the rewards from Allah," he said. "The principle of forgiveness however is based here on the principle of 'qesas,'. This simply means an 'eye-for-an-eye' and making someone pay for their mistakes. Yet the Qur'an also beseeches believers to think that forgiveness is far more rewarding," Soliman explained.

Many locals share his views. They say that some of the outwardly harsh penalties under the qesas system have given them low crime rates and an enviously high level of security in this country. They point to the opposite in neighbouring nations which do not apply the system, such as the United Arab Emirates, also a Muslim nation. Ghulam Abdelhakim, a Pakistani hotel worker, who has been working in Saudi Arabia for six years, says this is the best system he has experienced in the region.

"Nobody dares bring in drugs here," he said. "But in other Gulf countries, drugs are all over the place. People respect the law and the spirit of the law. I feel safer." Badr al-Hassan, a Sudanese shop-owner, says the principles of qesas and

forgiveness are good for Saudi society. "It's good to be able to deter by the qesas while be forgiving to those who deserve it at the same time." But the pardon system may sometimes be long-delayed in coming into effect. Under the rule here, when a murderer has killed someone with young children, they must remain in prison until the children are mature enough to choose dya and forgiveness - or death by the sword.

Soliman remembers a case five years ago when the father of a murdered man refused to accept a huge amount of dya, compensation money. He was offered five million riyals (3 million US dollars). He also rejected the intervention of powerful public figures and members of the Saudi royal family. "The father was very poor. In fact, he used to live on charity and donations and yet when his son was killed and the murderer was identified beyond doubt, he turned down the pardon process and insisted on revenge for his son," said Soliman. "Eventually the murderer was executed in qesas punishment. Despite all of the public efforts, the father did not choose the pardon option. It just didn't convince him." (Reported in January 2007) ■

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Stephen de Tarczyński

Political Parties Display Double Standards

Melbourne - The high-profile cases of three Indonesian Islamist militants and six Australian drug mules facing execution in Bali have thrown the spotlight on this country's "inconsistent" position on capital punishment. "We cannot declare the execution of Australians to be barbaric and the execution of Indonesians to be acceptable. That now seems to be bipartisan policy," said former chief justice of the Australian high court, Sir Gerard Brennan, in a speech at the 2007 Justice Awards in Sydney on Oct 31.

Both the government and the opposition Labour Party say they oppose capital punishment and that they would appeal for clemency for Australians facing the death penalty overseas. Foreign minister Alexander Downer has previously appealed to Indonesia to spare the lives of the six members of the so-called 'Bali nine' facing execution - the three others have been sentenced to lengthy jail terms - for heroin smuggling.

Downer is expected to formally seek clemency for the group - who were arrested by Indonesian authorities acting on information provided by the Australian police - once all appeal possibilities have been exhausted. Labour, for its part, has largely supported the government's efforts. In 2006, the then-opposition foreign affairs spokesman, Kevin Rudd - who now leads the

opposition - commended prime minister John Howard for his successful efforts in winning a reprieve for two Australians sentenced to death in Vietnam.

Rudd has also backed the government in its opposition to the death sentences given to members of the 'Bali nine' and paid tribute in 2005 to Howard and Downer for appealing to Singapore for clemency - albeit unsuccessfully - for the life of Australian Van Nguyen. But what may appear to be a principled stand against capital punishment does not extend to intervention on behalf of condemned terrorists.

Howard says that he will not oppose the execution of the three 'Bali bombers'. The men are awaiting the firing squad for their roles in the 2002 bombings on the Indonesian island which killed 202 people, including 88 Australians. Downer echoed Howard's sentiments in a doorstep interview in October. "The Australian government will not lift a finger to support these three people who killed 88 Australians in Bali," he said.

While the government seems to be selective in its opposition to the death penalty, it has been Labour's stance which has provoked controversy in recent weeks. Kevin Rudd - hoping to become Australia's next prime minister after the general electi-

Photo: www.handsoffcain.com

on on November 24, with recent polls indicating that Labour remains a slight favourite to win - appeared to contradict his own party's platform in October when he said that no government he led would apply diplomatic pressure *"in defence of an individual terrorist's life"*. This was in response to comments made several days earlier by Labour's foreign affairs spokesman, Robert McClelland, who denounced the death sentences handed down to the Bali bombers. Rudd - who opposed the execution of former Iraqi leader Saddam Hussein - quickly reprimanded McClelland.

But McClelland's comments appeared to conform to the Labour Party's platform. This is seemingly unequivocal on this issue, stating that Labour opposes the death penalty *"no matter what the crime"*. The platform says: *"Labour in government will strongly and clearly state its opposition to the death penalty, whenever and wherever it arises and will use its position internationally and in the region to advocate for the universal abolition of the death penalty."*

"I think, unfortunately, that the leader of the opposition and the prime minister are both playing politics on the issue and they're both essentially playing to the electorate," says the presi-

dent of the Australian Lawyers' Alliance (ALA), Ian Brown. With this month's elections possibly being Labour's best chance yet to end Howard's 11-year reign in office, Rudd's apparent contradiction of his party's platform seems to have occurred with one eye on the election. Resentment towards the Bali bombers runs deep in Australia. Brown says that the positions taken by Rudd and Howard towards the death penalty are *"simply an exercise in attempting to drum up votes"*. *"It waxes and wanes and is flexible according to whether or not there's an election campaign on,"* Brown argues.

A Labour campaign spokesperson responded to questions from IPS by saying that the party's stance remains clear. *"We are universally opposed to executions carried out in any jurisdiction,"* the spokesperson said. The spokesperson added that a Labour government would pursue a campaign for the elimination of capital punishment, but that this would take place through the U.N. But while Labour remains convinced of the clarity of its stance on the death penalty, civil society groups are not so sure.

"Having a position where you vocally oppose the death penalty for some people and not others, is certainly contradictory and disappointing," says Michael Walton, a member of the gene-

ral committee of the New South Wales Council of Civil Liberties (NSWCCL). Walton says that it is the *"inconsistencies"* on both sides of Australian politics with regards to capital punishment is of concern to the NSWCCL. These inconsistencies tend *"to suggest that perhaps the policy is more a policy of rights for Australians rather than rights for human beings,"* Walton told IPS. He argues that the positions of the two major parties undermine efforts for clemency for Australians on death row in other countries.

Politicians *"need to be consistent in their opposition to the death penalty, otherwise it does put Australia in a difficult position when it comes to seeking clemency for Australians held overseas,"* says Walton.

Brown of ASA agrees. Australia's position on the death penalty was *"hypocritical in the extreme,"* he told IPS. *"It seems, for example, the Indonesians will perceive that there is a strident opposition (in Australia) to the death penalty when there are a number of convicted drug mules awaiting a death sentence (the 'Bali nine'), but not when the Bali bombers are similarly awaiting a death sentence,"* Brown said. *"It means that Australia, from an international perspective, lacks any credibility on this issue,"* he added. (Reported in October 2007) ■



Stephen de Tarczynski

Cop In Rare Trial For Custodial Death Of Aborigine

Melbourne - For the first time in decades an Australian policeman is facing trial on charges of manslaughter and assault in relation to the death of an aboriginal man while in custody. On Nov. 19, 2004, 36-year-old, Cameron Doomadgee lay dying on the floor of the jailhouse on Palm Island, a remote, mostly aboriginal, community of 3,500 people, located off the Queensland coast, 70 km north-east of Townsville. Doomadgee, known by his tribal name of Mulrunji, had sustained horrific internal injuries. His liver - the two halves of which were left connected by a few blood vessels - and portal vein had been ruptured, leading to intra-abdominal bleeding which caused his death.

Acting state coroner, Christine Clements, conducted an inquest into the death of Mulrunji, releasing her findings in September, 2006. She accepted the conclusions of two autopsies, finding that "severe compressive force applied to the upper abdomen, or possibly the lower chest, or both together, was required to have caused this injury". Clements found that "Senior Sergeant Hurley hit Mulrunji while he was on the floor a number of times in a direct response to himself having been hit in the jaw (by Mulrunji) and then falling to the floor". She

concluded that these actions of Hurley caused Mulrunji's fatal injuries.

In Townsville's Supreme Court last week, Hurley pleaded not guilty to charges of manslaughter and assault in relation to the death of Mulrunji. "From my point of view it's a very significant moment because it's the first time that a police officer has been charged with criminal offences over an aboriginal death in custody," says Sam Watson, Deputy Director of the Aboriginal and Torres Strait Islander Studies Unit at the University of Queensland. Hurley had arrested Mulrunji at about 10:20 am on the day that he died. Mulrunji, who was walking past when another man on Palm Island was being arrested, got involved in a verbal altercation with the arresting officers. He was subsequently arrested by Hurley. The custody register at the Palm Island police station, completed at 10:26 am, shows that Mulrunji was charged with the offence of public nuisance. An hour later he would be dead.

Mulrunji's death sparked a series of events which have culminated in Hurley's current trial. A week after the death, following the release of the autopsy report, a riot broke out on Palm Island. Despite the findings of the coronial inquiry, Queensland's



Australian police | Photo: www.pixelio.de

Director of Public Prosecutions (DPP), Leanne Clare, decided not to press charges against Hurley. Clare found that Mulrunji's injuries were sustained when he and Hurley both fell to the ground at the police station. But a review of the DPP's decision by former New South Wales chief justice Sir Laurence Street in January found that there was enough evidence to charge Hurley.

Queensland Police Union (QPU) president Gary Wilkinson described the process as a "witch-hunt". The QPU has threatened to march on parliament in protest at the government's handling of the case. Requests by IPS for an interview were turned down by the QPU this week. That the case has actually made it to court is perhaps indicative of progress being made regarding aborigines' rights while in police custody, says Palm Island Aboriginal Shire Council chief, Barry Moyle. "It was the first time that they'd (aboriginal community) ever had a (coroner's) report like that and the first time something like this has gone to court. So, in terms of have they progressed any further, maybe they have. But when you start looking at the deaths in custody statistics that were done many years ago, whether we've progressed a heck of a lot or not is debatable," Moyle told IPS.

Due to the large numbers of aborigines dying while in police custody, the government established the Royal Commission into Aboriginal Deaths in Custody in 1987. The commission found that the high number of aboriginal deaths in custody was commensurate with the number of aborigines imprisoned, rather than different treatment towards aborigines. In 2003, indigenous Australians, who make up roughly 2.4 percent of the country's population, represented 20 percent of the prison population. They represented 26 percent of deaths in custody (10 out of 39) in that year.

Sam Watson argues that while Hurley is the first policeman to face charges like these, he is not the first officer to be involved in the death or injury of an aboriginal person. "It's just the first occasion in which a police officer has been charged. The system has betrayed generations of Aboriginal people. We are very keenly watching this trial," he says. Watson views the trial as a way of putting police on notice. "Police officers across Queensland must be held criminally accountable for their actions in relation to any deaths, in relation to any injuries sustained by prisoners. Just because police officers are wearing

blue uniforms doesn't mean that they're exempted from any form of criminal accountability." On Palm Island itself, Barry Moyle says that the relationship between the community and the 17 police officers based there are already much better than they were. "They get on pretty well," he says. "(But) you can always have some tension in communities with police because the police have to implement the laws that the state government applies."

But the effects of Mulrunji's death continue to be felt by the Palm Island community. "There is still a great deal of hurt and pain within the people on Palm Island and across the aboriginal community," says Watson. Some sense of closure, says Watson, might result from a guilty verdict. "But certainly, it's not going to bring our brother back to life. Or his mother or his son," says Watson. Mulrunji's mother, Doris Doomadgee, died of cancer less than a month after Mulrunji's death. His son, Eric, hanged himself on Palm Island, aged 18, in July 2006. Eric's suicide occurred three days before the resumption of the inquest into his father's death. The jury has retired to consider its verdict. (Reported in June 2007) ■



Antoaneta Bezlova

China Considers Cash For Clemency

Beijing, - Under pressure to reduce its huge number of annual executions as it prepares to host the 2008 Olympic games, China has been experimenting with commuting death penalties to life sentences in exchange for compensation. But the practice is proving contentious. A string of cases in the southern province of Guangdong where convicted murderers were given amnesty in exchange for cash paid to the victims' families created a storm of controversy earlier this year. Similar practices have also been reported in the coastal provinces of Shandong and Zhejiang. The disclosures have sparked an intense debate on Internet forums about the price of human life in a country which is routinely criticised for executing more people annually than the rest of the world combined.

While impetus for reform of China's capital punishment system has been growing in recent years, surveys indicate many Chinese continue to view the death penalty as an important crime deterrent. *"The fate of criminals now seems to be determined by the depth of their pockets,"* lamented Le Lan, a teacher at the Southwest University for Nationalities, one of those who joined the public debate. *"The seriousness of law*

has been destroyed, further undermining the public's understanding of justice."

Xu Shu, a factory worker from Shenzhen, agreed: *"This is an insult to the law. Can money now buy a life? What can't it buy?"* But some legal experts have defended the amnesty cases as a sign of nascent reform. *"The practices conform to the latest call from the Supreme People's Court to 'hand out fewer death penalties and do so prudently',"* Jiang Qinghan, a lawyer with the Shanghai Guangmao Law Firm wrote recently on the Internet forum of the China Daily newspaper. *"If there is repentance and the criminal's behaviour does not merit execution, why is it necessary to take a life?"*

The dilemma faced by legal authorities is exemplified by the case of an elderly woman Deng Rongfen from Dongguan in Guangdong province, reported in the local newspaper Southern Weekend in March. Deng's only son and the sole breadwinner in a family of five was stabbed to death in May 2006. He had surprised three migrant workers robbing his family house. The perpetrators were all given death sentences. But even as justice was achieved on paper, Deng's family situation remai-



Photo: Scott Langley

ned insolvent. Deng had no money or means to send her grandchildren to kindergarten or help her daughter-in-law raise them. The desperation of Deng's circumstances eventually led to court-sanctioned negotiations between her and the accused and the arrangement of a civil compensation package in exchange for reduction in their sentences.

The judicial officials in Dongguan have defended the cash-for-amnesty move, saying the commuting of the death penalty is done only with the consent of the victim's family and it is not tantamount to "redeeming crime with money". They argue that with the lack of unified compensation system, the recompense received by the victims' families can help relieve social strain, prevent numerous appeals and even curtail unrest. *"Some 90 percent of our criminal cases involve migrant workers and both offenders and victims are quite poor."* Wang Chuanghui, a judicial officer with the Dongguan Intermediate People's Court told the Southern Weekly. Ironically, the publicising of the practice appears to have achieved an effect opposite to the one desired. It has ignited debates about social inequality at a time of deep divisions in Chinese society caused by mounting income disparity.

While the country's headlong economic modernisation over the last 30 years has benefited many urbanities, people in the villages have remained on the fringes of China's development, earning less than their city counterparts and lacking adequate education and health care. *"The poor crime victims have no option but to accept the money,"* an online writer calling himself "Rule of Law" wrote recently on www.sina.com, one of China's most popular news portals. *"They are, to some extent, 'coerced' into compromise."* And as the country takes tentative steps towards reducing the number of executions, legal experts foresee more conflicts.

"Chinese people are traditionally used to punitive justice and believe in the death sentence as due punishment for serious crimes," Zhou Guangquan, law professor at Beijing Qinghua University said at a round table on China's compensation system organised by the Xinjingbao newspaper in Beijing. *"Should the number of death sentences decline, we need an adequate system of relief for the victims' families or we risk seeing people taking justice into their own hands."* China reported fewer executions in the first five months of 2007 after the country's Supreme People's Court regained its power to ratify or rescind death sentences on Jan. 1. The

number of death sentences imposed by Beijing courts has dropped 10 percent, which is reflected by a similar trend across the country, Ni Shouming, the Court's spokesperson told the English-language China Daily on June 8. *"The lower courts have to be more prudent now,"* he was quoted as saying. *"If a case is sent back for a retrial by the highest court, it not only means the final judgement is wrong, but also it is a matter of shame for the lower court."*

Centralising the right of final review by the Supreme People's Court ends a 25-year-long practice of allowing lower courts to order executions. The practice has long been denounced by legal rights advocates for leading to arbitrary rulings by provincial judges and an excessively high number of death sentences. What is more, a string of wrongful convictions concealed by investigators have come to light in recent years causing public outcry and adding pressure to revise the system. Chinese authorities classify the number of court-ordered executions as a state secret. But Chinese legal experts believe the number of executions could be as high as 10,000 a year. More than 60 offences - including non-violent offences like corruption and tax evasion - are punishable by death. (Reported in June 2007) ■



Antoaneta Bezlova

Letters From Death Row

Beijing - Their numbers are taboo. Their stories condemned to oblivion. The world of China's death row prisoners is too forbidding, the execution grounds too sordid to yield a compelling book that would escape the scrutiny of the communist state censors. But by virtue of its modesty, the recently-published 'Letters From The Death Row' succeeds where other more ambitious works would have perhaps failed. It tells the stories of 22 Chinese death row prisoners - men and women. It relates them straight from their prison cells. The account is gripping because it exudes the rare honesty of condemned people in the last hours before their death.

The book does not aspire to become what Truman Capote's fictionalised account of sensational murder "In Cold Blood" became in the United States of the 1960s. Huan Jingting, the author, professes his intention was not to debate the value of the death penalty. Neither was his work intended as a commentary on social divisions.

"This book was written as a tribute to human life," he says. "In my view, there is nothing more humbling than human life." What draws parallels with Capote's work though, are Huan's sympathetic observations of the criminal mind. His pages are populated with petty criminals - robbers and drug smugglers, whose struggles through life somehow inexplicably

and cruelly end up in the execution chamber. Such is the story of Wen Shou, the naive 19-year-old from Chongqing, central China, who is used by unscrupulous drug dealers as a go-between in the trade chain while being slowly converted into an addict. When first given an expensive "foreign" cigarette offered with a patronising pat on the shoulder, Wen is not aware that this is the beginning of his downward spiral, which would lead him to the death row.

"He was inhaling the pungent smell, thinking: what a difference between this foreign stuff and the cheap Chinese cigarettes sold on the street stalls." Or the country boy Liu Yuan, who by the age of 20 had been detained and re-educated in labour camps so many times for petty theft, that he fails to land any job in his home village. He leaves the countryside for the booming southern city of Shenzhen where millions of migrants work in manufacturing sweatshops. His rough edginess of a country thug appeals to the suave boss of a Shenzhen modelling agency and instead of working on a conveyer, Liu becomes a "gangster role model". To keep the "cool" of his new image, though, Liu is eventually forced to become a real gangster.

Huan Jingting was not allowed to record the last words of high-ranking officials, sentenced to death for corruption, as



Photo: European Parliament

those, he says, were imprisoned in a special jail. His book remains a study of death in the lives of the underprivileged. Even the murderers he profiles are all cast in a compassionate light - the majority being inadvertent perpetrators of the crime.

"Mum, my dear Mum, I hope you will not grieve for long and you will quickly forget this ignorant son of yours," reads the farewell letter of Ai Qiang, a barely 20-year-old boy awaiting death for robbing and murdering a stranger in the street. "Because of ignorance I ruined my life. Because of igno-

rance I'm going to leave this world. I hope to be a better son in my afterlife. Farewell. Your un-filial son."

"I dare say this is the first book in China that portrays the human side of people we are accustomed to seeing as innately bad," Huan told IPS in an interview. "There are piles of crime reportage but the writers' angle has always been that criminals were born as such". In China more than 60 types of crime - including non-violent offences like corruption and tax evasion, are punishable by death. Human rights activists have complained that death sentences are handed out far too freely and lead to terrible miscarriages of justice.

Chinese authorities do not disclose the number of court-ordered executions. In 2005, Amnesty International recorded 1,770 executions in China, or more than 80 percent of all death sentences carried out worldwide. But Chinese legal experts believe the actual number of executions is as high as 10,000 a year. While recent years have seen an intensifying public debate about the need to curtail the broad application of the death penalty, experts believe the public overwhelmingly supports capital punishment as the only way to ensure that major criminals get what they deserve.

A book project about such a sensitive topic as the death penalty was not something that Huan Jingting planned to

embark on at his own free will. But sentenced for fraud in the late 1990s, he became a prisoner himself, serving a year and a half in jail in Chongqing. Because he could read and write, Huan was asked to write the last wills of prisoners sentenced to death toward the end of his term. He also took down the stories of the death row prisoners. "It was an experience that changed my life irrevocably," Huan recalls. "It made me more tolerant." He learned to bring a packet of cigarettes with him when entering the cells of death row prisoners in the evening hours before their executions. There is a superstitious belief among death row inmates that if given cigarettes in their last hours, death is painless and rebirth in a good family assured.

Huan wrote down only the basic facts and spent more time listening to their stories. In true Capote fashion, his accounts successfully blend journalistic reportage of fact with the writing-style of fiction. He changed the names of all the prisoners while meticulously recording the topography and real names of places. The first dozen stories were published in 2001 but the complete collection came out only in the autumn of last year. While he disclaims any attempts at social criticism, Huan's volume stands as a powerful depiction of China's underclass whose members bear the brunt of the economic reforms. (Reported in March 2007) ■



Sujoy Dhar

Sikhs Worldwide Campaign For Death Penalty Abolition

Brussels - On March 23, 1931, an Indian Sikh named Bhagat Singh attained martyrdom when he was hanged by the British for his role in the militant freedom struggle against the colonial rulers. About 75 years later, Professor Jagmohan Singh, a nephew of the liberation hero, preaches peace and mercy as he joins a worldwide campaign, especially in Europe, by his Sikh community against death penalty.

The life and work of Indian freedom fighter Bhagat Singh and his death by hanging in Lahore (now Pakistan) at the hands of British imperialism has been a great saga of patriotism for generations of Indians. But while Bhagat Singh trod a path of violence to achieve freedom, his Sikh community, though known as a courageous warrior race, today believes more in the non-violence preaching of Mahatma Gandhi, the man who brought India independence from British rule by peaceful non-cooperation. Gandhi was vocal against death penalty, saying: *"An eye for an eye makes the whole world blind."*

"We wish to argue that our country can honour Mahatma Gandhi, the apostle of peace and non-violence and (the) martyr Bhagat Singh by doing away with the death penalty altogether," says Professor Singh, a Sikh politician, and in the forefront of the current campaign. *"A civil society should not*

descend to the status of murderers by preferring revenge over far better forms of justice. All investigations, however meticulous, are subject to human error. Such errors become irreversible in a case where the death penalty is imposed. All over the world, there have been cases of executed people being proved innocent after their death."

Since early 2006, Sikhs in France have joined the campaign, organising protests and lodging petitions with the Indian embassy in Paris expressing their opposition to the death penalty. They are also calling for release of all Sikhs they claim have been jailed *"unjustly"* for political reasons in India. In August 2007, a Europe-wide protest by Sikhs calling for an end to the death penalty in India commenced in Brussels outside the European Commission headquarters and the European Parliament building. The Sikhs then urged European Parliament president Hans-Gert Poettering and the EC Commissioner for External Relations Benita Ferrero-Waldner to link future trade with India with abolition of the death penalty and respect for the rights of minorities, such as the Sikhs.

The EU is India's largest trading partner, responsible for about 25 percent of its exports. Although India's highest courts have ruled that the death penalty can only be applied in the



Shaheed Bhagat Singh handcuffed after his first arrest (secret British police photo 1927) | Photo: www.indiatribune.com

"rarest of rare" cases, there are believed to be as many as 700 people on the death row in India awaiting execution. Last July, death sentences were handed down to six convicted of involvement in the 1993 serial blasts in Mumbai, India's financial capital. The EU did lobby strongly, but unsuccessfully, before the execution of Dhanonjoy Chaterjee on Aug. 14, 2004. This was India's last execution, and ended a nine-year-long moratorium on executions in India. Bhai Amrik Singh, chair of the Sikh Federation (UK) comments: *"The ending of the moratorium was a backward and retrograde step by the Indian regime, and a show of defiance to the EU."*

The current campaigning in Europe is highlighting the case of Professor Davinderpal Singh Bhullar where Germany, a prominent EU member, is directly involved. The Bhullar affair is one of the most controversial and high profile death penalty cases in recent Indian history. Almost 12 years ago, Bhullar, a Sikh political activist, was deported from Germany to India on the basis that he had nothing to fear on his return. But Bhullar was arrested immediately he landed in Delhi. In prison he was allegedly tortured to obtain a false confession, and in 2001 he was sentenced to death by hanging for a crime he allegedly did not commit. Sikhs say Germany's deportation of Bhullar to a

country still retaining the death penalty was a violation of the European Convention on Human Rights.

The latest death sentences to be handed down by Indian courts were on Jul. 30. Jagtar Singh and Balwant Singh, both Sikhs, were convicted of the August 1995 assassination of then Punjab chief minister Beant Singh and 17 others. The sentences triggered worldwide Sikh protest, including leading figures in the community in the Punjab province of India. The European Commission, European Parliament and Council of the European Union are now being urged to press for the death sentences to be lifted. According to Professor Jagmohan Singh, in a country like India, where there is a huge gap between the privileged and the dispossessed, the death penalty becomes the final method for implementing class injustice.

"A cursory glance at the list of all those executed in our country will reveal that almost all of them were poor. The rich are rarely found guilty, and even if they are, they are rarely executed. There is no international evidence to suggest that the death penalty is a deterrent to violent and heinous crime. Countries like Britain that did away with the death penalty did not see a rise in such crimes, while countries like the U.S., which continue to impose the penalty, show no decline," Jagmohan Singh says.

To underline that the current anti-death penalty campaign is not only about Sikhs on the death row, Singh also calls for the sparing of another high-profile death row inmate in India, the alleged terrorist Mohammed Afzal, also known as Afzal Guru, a Muslim from India's trouble-torn state of Jammu and Kashmir. Afzal was convicted of conspiracy in the December 2001 attack on the Indian Parliament. In 2004, he was sentenced to death by the Supreme Court of India, but his sentence was stayed after his family filed a mercy petition to the President of India.

"If Afzal is a terrorist today, he was surely not born one. And he need not die one. Circumstances made him what he is. And circumstances may change him. The death penalty will change no one. Far from being a deterrent, martyrdom, as some will surely perceive his death, can only achieve the opposite effect," says Singh. He adds: *"I believe that the Sikh ethical approach of compassion, forgiveness and scope for reformation of one's life is a prerequisite for a progressive civil society. It is significant to mention that Maharaja Ranjit Singh, the famous Indian Sikh ruler, in his 40-year-reign (1799-1839) did not use the death penalty, even in cases where he was the subject of attack. It is high time we end this inhuman practice."* (Reported in October 2007) ■



Sujoy Dhar

A Hangman Speaks

Kolkata, India - In a tiny hovel on a narrow south Kolkata alley, 87-year-old Nata Mullick recalls with pride and placidity his chilling career as a hangman and his last job which catapulted him to international fame two years ago.

The global media spotlight then turned on Mullick as the "hangman extraordinaire" chosen to perform the execution of the convicted murderer and rapist, Dhanonjay Chatterjee. The resulting passionate debate over capital punishment elevated Mullick to fame and launched him on a new career as a much-in-demand stage performer in this eastern India state.

Today Mullick is happily still touring with 'Jatra', the travelling outdoor stage play, popular in rural Bengal for its melodrama. Though ailing slightly, Mullick still acts for good money and recognition. Executions are few and far between these days. His only bitter complaint is for the ungrateful administration, which he says has done so little for his family. *"The job of hanging people runs in my blood. My father, Shiblal Mullick, was a hangman in the British (colonial) days when they used to hang our freedom fighters,"* he says, describing how the entire business of state-sanctioned killing is carried out. *"It's an art: Your skills need to be honed,"* Mullick

says with aplomb mixed with dispassion. *"I joined the profession when I was around 15 or 16. My father had two helpers who would ridicule me saying I would never be able to do the job. I was hot-blooded and so one day I joined the job. A man was going to the gallows and I tied his hands at the back and proved that I am not chicken-hearted. That was the beginning,"* Mullick recalls.

"My father was amazed by my feat. I then started assisting him in every hanging. Those days hanging used to take place all over India and I travelled with him everywhere. We used to be paid 16 rupees an execution. That was big money then," Mullick says.

"Just like I claim that I am the best hangman in India now, my father was the best in his time. He showed me all the techniques and in his entire career he never did a bad job. Neither did I ever falter in any of the 25 hangings carried out by me." Detailing the modus operandi of a precise hanging, Mullick says: "A lot depends on the weight of the person to be hanged. A sack is filled with sand with the same weight as the man and then we perform a mock hanging three to four times. *"There is a particular way of preparing the rope, too. There are*



Capital punishment as a family business: hangman Nata Mullick | Photo: www.hinduonnet.com

certain ingredients which need to be applied to the rope, soap and ghee (clarified butter). When the rope is fixed to the gallows, we apply a smashed banana on it," says Mullick. "After the convict is brought in, two of my helpers tie the legs and hands and hold them upright. We hold the person because he might faint in the face of death. Then within a minute I cover his face, put the noose round his neck and put my hand on the handle. The jail superintendent signals and I pull the lever."

There are other essentials for a "perfect" hanging. "Five knots in the noose. The preparation of the knot is important. The person being hanged would feel less pain if the knots are right. If the man is heavy, you need fewer knots. If he is light weighted, you need more knots. If the pull is too hard, the head can be even severed and he can bleed from mouth and nose. So the pull has to be of a force that kills the person and yet causes no pain to the dying," Mullick explains calmly.

Mullick's spiritual preparation for a hanging is no less thorough. He worships the Hindu god Narayan and seeks godly pardon for himself and the person to be hanged. "The jail officer also seeks the person's forgiveness. The government lawyer seeks pardon. I seek his pardon. We say to the

person that we are duty bound. I ask god to give him a new birth as a good person," Mullick says.

"During work I don't suffer from any sense of guilt. I worship god, put flowers in the gallows. I seek pardon again and again. I also give alms to people to purify my soul," he says. Was his last hanging, with hundreds of human rights protesters on vigil all night calling for a presidential clemency and the battery of newsmen and TV crews from across the world, difficult to handle? "No, he was calm. I sought his forgiveness too," says Mullick. But he recalls how he had to be rescued from the media by jail officials. "In the days preceding the hanging, I was hounded by media from every part of the world. It was too much to take." Mullick still holds firmly to his belief in capital punishment. "Should a person like Chatterjee who raped and brutally murdered a 14-year-old be kept alive? Should a terrorist like Mohammad Afzal Guru (recently sentenced to death for his role in a plot to blow up Indian Parliament) be kept alive? I don't think so," he says, lying down in his bed against the grimy pink walls - a collage of yellowing media clippings of a famous hangman's life and works and the Hindu pantheon. (Reported in January 2007) ■



Kimia Sanati

Two Kurdish Journalists On Iran's Death Row

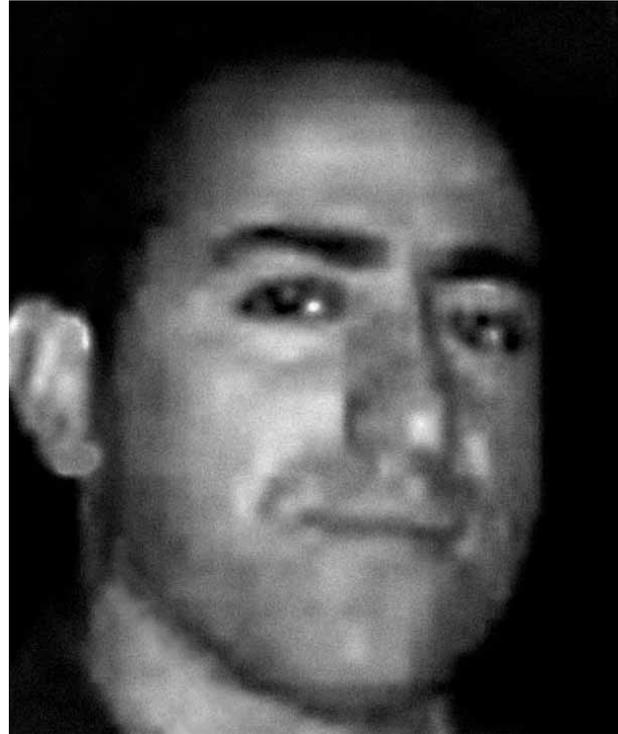
Tehran - Kurdish human rights and political groups have launched an Internet campaign to save the lives of Adnan Hasanpoor and Abdolvahed (Hiva) Bootimar, two Iranian Kurdish journalists who were sentenced to death on Jul. 16 by a revolutionary tribunal in the Iranian Kurdish city of Marivan. Hasanpoor was found guilty of 'moharebe' (taking up arms against the Islamic state) and espionage. The charge of espionage rested on telephone interviews he gave to the foreign media, including the Voice of America, his lawyer was quoted as saying by the Iranian Labour News Agency.

Bootimar was also tried on the charge of moharebe, fellow Kurdish journalist Khosrow Kurdpoor told IPS. Kurdpoor, who runs the Mukrian News website, was quoting the lawyer who represented the two journalists. 'Reporters Without Borders' (RSF - Reporters sans frontières), the international press freedom watchdog, has voiced deep concern over the sentences of the two journalists and appealed to the international community to ask Iran to reverse its decision and refrain from executing the two men "who only exercised their right to inform their fellow citizens". Iran is on its way to becoming one of the world's biggest prisons for journalists, RSF said. "We know nothing about the

trial procedures but we know they held Hiva (Bootimar) and Adnan (Hasanpoor) in jail for several months before their trials. Hiva, who is an environmentalist and one of the founders of the Marivan's Sabzchiya environment protection society, has apparently been tried on the 'charge of affiliation to a political group that has armed struggle in its charter';" a Kurdish human rights activist, who requested anonymity, told IPS. "He is not known to have had any such connections himself, but there are rumours that he is being held as hostage to make his brother, who has fled the country, return," said the activist.

Asu, the Kurdish language weekly to which Hasanpoor and Bootimar contributed, was banned on Aug. 4, 2005, forcing it to halt its reporting of the riots that broke out in Mahabad, western Iran, and which spread to other Kurdish-populated towns and villages of western Iran. The unrest that lasted for over a month in the Kurdish areas was provoked by the death of Shwane Qaderi, a 25-year-old who was shot by the police on the streets of Mahabad. His body was then tied to a military vehicle and dragged through the streets of the city.

Pictures of Qaderi's tortured body could be seen on the Internet and angry crowds in Kurdish towns and villages attacked government



Adnan Hasanpoor (left) and Abdolvahed (Hiva) Bootimar - Two Kurdish journalists sentenced to death in July 2007 | Photo: Al

offices and banks. The riots and demonstrations left scores of people dead and injured. Hundreds were arrested. On Jul. 13, Abdolsamad Nasiri, 17, was beaten to death by security agents in Mahabad, Kurdistan Media, the Democratic Party of Iranian Kurdistan's publication centre, reported. *"The circumstances of the youth's death are not clear but the atmosphere in the city that day had been very tense and many shops had closed to commemorate the anniversary of the assassination of Abdolrahman Qasemlou, leader of the Democratic Party of Iranian Kurdistan, in 1989 in Vienna,"* the Kurdish activist told IPS. The Iranian government, accused of orchestrating the assassination by Kurdish parties and groups, has always denied any connection with the killing of the expatriate Kurdish leader. The Democratic Party of Iranian Kurdistan is the oldest Kurdish political party. Last month, on the anniversary of the assassination of its leader, the party called on the people in Kurdish cities to turn off their lights for three minutes in protest.

On the same day, spontaneous rallies in a number of Kurdish cities were reported by Kurdish news websites. Shops were also reported closed as a sign of protest for what the Kurds say is huge discrimi-

nation against them in the Islamic Republic of Iran. Iranian Kurds, who had largely been submissive before the Islamic Revolution of 1978, rose up against the new regime along with some other ethnic minorities, demanding the right to self-determination. After several years of armed struggle, various Kurdish groups, most of them with leftist leanings, were brought under control.

Since the fall of Saddam Hussein in Iraq and the establishment of the Kurdish Authority in northern Iraq, Iranian Kurds have once again been pursuing their demands with greater vigour. But armed struggle is no longer on the agenda of many of the groups who fought the central government two decades ago. Many say they are now seeking federalism. Only the PJAK (Partiya Jiyana Azad Kurdistanê or Party for Free Life of Kurdistan), a small guerrilla group, still carries out armed operations against the government forces. It is said to be affiliated to the Kurdistan Workers Party (PKK). The PJAK has bases in Turkey and northern Iraq and the Iranian government occasionally launches cross-border raids against its bases. The guerrillas downed an Iranian Revolutionary Guards helicopter in western Iran in March this year, killing two top brass revolution-

nary guards and seven other military staff. *"In recent years the people in Kurdish populated areas have increasingly chosen civil and peaceful methods over violence in their struggle. For example, in protest against the death sentence passed on Adnan Hasanpoor, the market and shops were closed in Marivan,"* Kurdpoor told IPS.

Three other Kurdish journalists and human rights activists, Aku Kordnasab, Ejlal Qavami and Mohammad Sadiq Kaboudvand, arrested during the past month, and Kaveh Javanmard, arrested in May and sentenced to two years in prison, are presently held in prison, Kurdpoor said. In the absence of a free press, news from the Kurdish-populated areas and reports of the sentences passed on the two journalists have only been carried on Kurdish and opposition news sites. The Iranian press is very strictly censored. Many media organizations resort to self-censorship to avoid being banned by the government. The Iranian Labour News Agency, the only major news agency not under government control, which consistently reported on human rights related issues, was recently banned.

(All parties named in the article are illegal and banned in Iran. Reported in August 2007) ■



Thalif Deen

U.N. Slams Scheduled Public Stoning

United Nations - The United Nations Wednesday lashed out at the scheduled public stoning of a man and woman charged with adultery in Iran. The stoning, which was to have taken place Thursday in a public square in a town in the north central province of Ghazvin, has been postponed, perhaps due to a storm of protests worldwide, including a global campaign online. "International law clearly prohibits stoning as a cruel, inhuman and degrading punishment," U.N. spokesman Farhan Haq told IPS. This prohibition, he pointed out, is contained in the International Covenant on Civil and Political Rights, ratified by the Islamic Republic of Iran.

"Under international law, the death penalty can only be imposed for the most serious crimes, widely understood as limited to crime taking life alone," Haq said. Bearing a child out of wedlock does not, by any view, satisfy those strict standards, he added. *"As a matter of policy,"* he said, *"the United Nations encourages the worldwide trend towards the abolition of the death penalty."*

According to the New York-based Human Rights Watch (HRW), the Ghazvin Municipal Security Council in Iran publicly announced that Mokarrameh Ebrahimi, a 43-year-old woman, and

the father of her 11-year-old child were to be executed by public stoning. The two were sentenced to death by a criminal court about 11 years ago. The charge was bearing a child out of wedlock. *"The Iranian government is about to kill a mother and father in the most brutal manner,"* said Joe Stork, deputy director of the Middle East division of Human Rights Watch. The judiciary must take immediate action to save the lives of this couple and end barbaric punishments, such as death by stoning, he noted.

Human Rights Watch has said it opposes the death penalty in all circumstances *"because of its inherent cruelty."* Last year, Amnesty International issued an urgent appeal to the government of Iran to overturn the death penalty on nine women facing public stoning for adultery. *"The sentence of execution by stoning for adultery breaches Iran's commitment under article 6(2) of the International Covenant on Civil and Political Rights that death sentences will be imposed only for the most serious crimes,"* Amnesty International said. In a statement released Wednesday, HRW said that in December 2002, Ayatollah Mahmud Hashemi Shahrudi, the head of Iran's judiciary, ordered a ban on stoning.



Photo: Amnesty International

"Yet this form of punishment continues, and it is disproportionately applied to women," HRW added. As a follow-up to the ban, Iranian women's rights activists and human rights organisations have launched a "Stop Stoning Forever Campaign". *"These impending executions show that the government isn't enforcing its ban on stoning, nor is it acting in accordance with its international obligations,"* HRW's Stork said. He pointed out that Iran's judiciary can no longer credibly deny that stoning takes place in the country. *"The authorities should act without delay to ban this shameful practice once and for all,"* he said.

A petition that has been circulating online, and which has been sent to legislators in the Iranian parliament, says the very act of punishing people by stoning them to death in today's world is such *"an unacceptable and inhuman act of brutality that even the members of the government are ashamed of admitting to doing it, and have publicly denied that this merciless practice takes place in Iran."* Despite the government's denial, the petition said, this penalty is a sanctioned part of the Islamic Penal Code of Iran and it is being carried out without any legal obstacles. The petition, initiated as part of the "Stop Stoning

Forever Campaign", also says that in May 2006, in the city of Mashhad, a woman, Mahboubeh M., and a man, Abbas H., were both stoned to death. Prior to carrying out the stoning, prior to their death, these two people were treated as if they were dead. *"In accordance with the Islamic tradition, their bodies were washed as if they were lifeless corpses, and wrapped in the kafan or white shroud. Then their wrapped bodies were buried in the ground, Mahboubeh's body was buried up to her shoulders, and Abbas was buried up to his waist."*

The crowd, who had gathered to stone the two to death slowly as specified by law, then targeted them with their stones. All this took place without any mention of it in the public media of the country, the petition continued. Currently, at least 11 people, nine women and two men have been condemned to be stoned to death. *"Their situation is grave. It is also possible that there are other people who have been condemned to death by stoning and we are not aware of it,"* the petition said. Human Rights Watch also condemned the use of the death penalty against children Wednesday, noting that Iran is known to have executed at least 17 juvenile offenders since the beginning of 2004 - eight times more than any other country in the world. *(Reported in June 2007)* ■



Kimia Sanati

Execution Surge Bucks Worldwide Trend

Tehran - The near-doubling of the number of executions in Iran to 177 prisoners in 2006 has only steeled the resolve of human rights activists here to raise public awareness of the idea that capital punishment is not an effective deterrent to crime and should be abolished as inhuman. The Iran execution figures were published in the latest report on capital punishment worldwide by Amnesty International. China topped the list with 1,010 recorded executions in 2006 - although human rights activists say the true figure could be up to eight times higher. Iran's execution numbers were unofficial, gathered from press reports and activists. There are no government statistics on executions.

The Amnesty report showed a significant drop in executions worldwide - 26 percent less than in 2005. But the trend was the opposite in Iran. There are also no signs of the number being any less this year, activists say, noting that in just two weeks in May the press reported some 18 executions. *"The abolition of all the laws related to capital punishment in Iran now seems a very far-fetched dream,"* one human rights activist, requesting anonymity, told IPS. *"Capital punishment is widely considered as a vital factor in preventing crime in our society."*

One of their most important tasks now was to create awareness that more executions did not mean less crime. A campaign was also necessary to bring pressure on the authorities to reduce the number of executions, the activist said. An array of capital offences are

now in place in Iran. These include murder, drug-related offences, ideological and financial crimes and even sexual offences.

Execution is usually by hanging. Occasionally, in case of sex offenders, such as convicted child abusers and rapists, terrorists and drug traffickers, executions are carried out publicly. Sex offences may attract death by stoning. A high proportion of the executions this year have been for drug trafficking. It is a capital crime to be in possession of more than 30 grams of heroin and five kilos of opium. In February, Nasrollah Sanbezehi was convicted of terrorism after a hasty trial without access to a lawyer, according to activists here. On February 19, a day after his trial, he was publicly hanged in the city of Zahedan, south-eastern Iran. Shanbezehi was one of four alleged Baluchi separatists arrested after a car bomb exploded in front of a bus carrying Revolutionary Guards. Twelve guards were killed in the attack.

Before the trial, Shanbezehi confessed on television and pleaded for forgiveness. There have been other similar hastily-arranged trials where defendants have been denied access to defence lawyers, according to rights activists. Iran continues to execute minors, although this is a violation of international law, activists say. Four young men alleged to have committed crimes when under the age of 18, were among those executed last year, according to these sources. In 2004 a young girl was publicly executed for sex offences. It was later proved that she was 16 at the time of her execution.



Photo: Amnesty International

Nasrin Sotoudeh, a lawyer and child rights activists is currently defending a client, named Soghra, who was sentenced to death for an alleged killing when she was 13. The woman is now 30 years old and has been on death row for 17 years, Sotoudeh told IPS. The lawyer said she knew of 36 other cases of minors sentenced to death over the past three years. But there were "many more" in smaller towns. These have not been reported in the press nor do they appear in officials records, she said. "I believe the situation has worsened over the past two or three years," Sotoudeh said. This was because children were being tried as adults in provincial rather than juvenile

courts. Judges trying adultery cases are obliged to hand down death sentences by stoning -- although these are rarely carried out. Some "tens" of women and men sentenced to death in this way are now awaiting execution, according to human rights sources.

In May 2006 a man and a woman were stoned to death for adultery in Mashad, northeast Iran. Some months later, women's rights groups began campaigning against the stoning laws which are more frequently used against women than men. Volunteer lawyers took up the cases of several women and one man and saved them from execution, according to sources. Iran's legal system is based on related Islamic laws. All legislation passed by parliament also needs the approval of the all-powerful, hard-line six-member clerical council appointed by the Iranian supreme leader Ayatollah Khamenei. This examines the compatibility of all laws with religious laws.

The council can veto parliamentary legislation. Any change of law is a religious matter and the decision ultimately rests in the hands of the religious authorities. Opposition to the Islamic laws can lead to heresy charges which may result in the death penalty. Human rights activist Emadeddin Baghi is currently campaigning to convince law-makers and religious authorities to abolish capital punishment - or at least reduce its use to the minimum. A devoted Muslim and former student of a Qom religious seminary, Baghi finds justification for his belief in abolition and the "right to live" in the Koran and Islamic Shariah law. In 1999 Neshat, a highly popular reformist newspaper

published an article by Baghi arguing that Iran's religious laws calling for retribution for a killing did not apply to a large number of cases - some 25 percent - where death was cause unintentionally. This view was judged heretical by the authorities.

In a huge crackdown on reformist newspapers the publication was closed down. The editor, Mashallah Shamsolvaezin, was jailed for 19 months. Baghi was also put on trial for opposing the code of the Koran. He was sentenced to two years in prison for the article and other alleged offences. The ban was lifted five years later, although the newspaper never reappeared. Undeterred, Baghi has now founded Iran's first anti-capital punishment organisation, the Association for the Right to Live. "We haven't yet applied for a licence for our association because we are sure our application will be rejected. We have also seen what pressure is being currently exerted on those non-governmental organisations which are legally licensed. The government is so distrustful of them," Baghi told IPS. Baghi has now written a book on the death penalty and Islam. His central argument is that abolition would not be contrary to Islam.

Iranian authorities have blocked publication of the book. But Baghi is now planning to circumvent the ban by publishing it in Afghanistan. He hopes the book will play a role in reducing the religious taboo associated with any open debate on the abolition of the death penalty in the country. (Reported in May 2007) ■



Kimia Sanati

Anti-Stoning Women Activists Held Indefinitely

Tehran - The indefinite detentions of the prominent lawyer Shadi Sadr and Mahboubeh Abbasgholizadeh, a leading campaigner against the award of stoning sentences for adultery, are being seen here as part of increasing pressure on women's rights activists by the Islamic republic. Sadr and Abbasgholizadeh were among 33 people arrested on Mar. 4 for staging a peaceful protest rally in front of a 'revolutionary court' that was hearing the cases of five women arrested at a Jul. 12 demonstration demanding change in laws that discriminate against women.

While the others were released on bail over several days, Sadr and Abbasgholizadeh were charged with being a "threat to national security" on Mar. 11 and had their detentions extended. Sadr was present at the Mar. 4 rally not only as a women's rights activist but also as counsel for one of the women on trial. Ironically, Sadr is also representing Abbasgholizadeh in another case dating back to November 2005 which is still in process. A prominent lawyer, Sadr is known for successfully overturning the convictions of several women sentenced to death.

"Women's rights advocates and activists have been facing increasing pressure since a year ago. The women's movement demanding changes in laws has gained enough momentum

to frighten the religious and political establishment. Women's rights advocates and activists are viewed as a threat to Islam in spite of the fact that many of the laws that they oppose are not fundamental Islamic tenets and can be modified with no harm done to religious tenets," a women's rights activist asking not to be named told IPS.

"What frightens them most is that now more and more women are becoming aware of their rights. Men are also joining their voices with women and asking for change in laws that they consider as inhuman and derogatory to women and to themselves. As long as the movement was restricted to intellectual circles, they didn't mind that much but now that the ideas are getting out and hitting the public, they will try to put out the fire in any way they can before it spreads. I see the recent arrests as a means to terrorise activists and send them back to their closed circles again," she said.

At the Jul. 12 rally a total of 70 women and men, including a former reformist parliament member, Ali Akbar Mousavi Khoini, were assaulted and arrested by police and security forces even before they raised their placards. All were charged and released within days, but Khoini was held in jail on temporary detention for



Anti-stoning women activists in Iran | Photo: British Ahwazi Friendship Society

four months. Under Iran's criminal procedure laws, the investigator is authorised to issue a remand and extend the temporary detention until the date of the trial. If the prosecutor agrees with the detention - which is often the case - it is almost impossible for prisoners to appeal. The temporary detention order issued for Sadr and Abbasgholizade means their cases would be subject to further review and that more charges are likely to be brought against them as their interrogation proceeds. The two activists have already been charged on five counts including acting against national security, holding illegal assembly and confrontation with security forces.

"The rally was pre-planned and illegal but there will be lenience towards them," Alireza Jamshidi, judiciary spokesman, was quoted by Iranian Labour News Agency as saying at a press conference. *"It is illegal that a group support (defendants) not (to) attend court hearings. This is not acceptable anywhere in the world. Charges against individuals must be reviewed in relevant authorised courts with defendants' attorneys attending,"* he said. Women's rights advocates had issued a call to a peaceful protest in front of the courthouse three days ahead of the trial of the five women. The two detained activists have reportedly accepted the responsibility for the call to protest.

Article 27 of the Iranian Constitution allows the holding rallies and marches provided that they are not detrimental to the fundamental principles of Islam and the protestors do not carry arms. Since her arrest Sadr made two short telephone calls to her husband. But Abbasgholizadeh has been kept incommunicado. Both women are reportedly kept in solitary confinement and neither has been given access to their attorneys according to press releases by women's rights advocates cited in Meydaan (Women's Field), a website dedicated to women's rights. Both are being held in Tehran's notorious Evin prison where defendants charged with acting against national security are usually held and interrogated by the intelligence ministry.

The long silence of Abbasgholizadeh has greatly alarmed her family. *"She contacted us when she was arrested and jailed two years ago even though she was in solitary confinement for some twenty days,"* Abbasgholizadeh's daughter told 'Rooz', a foreign-based news portal. *"This long silence is very suspicious and disturbing,"* she said and added that memories of the tragic death of Zahra Kazemi, the Iranian-Canadian journalist who died in detention allegedly as a result of injuries inflicted by beatings, haunted her. (Reported in March 2007) ■



Catherine Makino

Dissenting Judge Breaks 40-Year Silence

Tokyo - Norimichi Kumamoto says he still feels "tremendous anger" and cannot maintain his silence any longer. In 1968, he was one of three judges who sentenced a boxer to death on charges of murdering a family of four, although at the time he was convinced the man was innocent. "My vote was overruled. It was a two to one," Kumamoto, his voice rasping with troubled emotion, told a press conference here on Nov 6. The other two judges had rejected his massive 360-page document arguing his reasons for believing the man to be innocent. A year later, Kumamoto, then a young judge with a promising future before him, quit the bench in protest.

For 39 years the convicted man, Iwao Hakamada, now 71, has remained on Japan's death row in a small, windowless cell, wondering when the guards will come to march him to the scaffold. Hakamada is slowly losing his mind, say his sister and campaigners. "Iwao's spirit is on the verge of its end," confirmed Catholic Cardinal Seiichi Sirayanagi of Tokyo in a booklet, entitled Save an Innocent Prisoner, which was circulated at the press conference. "I have thought about

his trial for many years," Kumamoto, 70, told the gathered journalists. "I have felt sadness and disappointment over this." Besides finally breaking his silence by talking to the press, this month Kumamoto filed a petition with Japan's Supreme Court demanding a retrial for Hakamada. The evidence presented by the state prosecutors against Hakamada was insufficient for a conviction, Kumamoto said. "I thought we could not find him guilty ... the five pieces of evidence that were provided did not make sense."

Prosecutors provided five items of bloodstained clothing as evidence. There was a pair of trousers which did not fit the one-time boxer, Kumamoto said. He added: "The guilty verdict was based solely on Hakamada confessing to the killings. But he confessed after being confined and tortured in a small room for 20 days."

The court rejected 44 out of the 45 records of interrogations - in which Hakamada admitted to killing a soybean company executive and his family of three, in Shizouka prefecture, in the Chubu region of Honshu island - questio-



Norimichi Kumamoto | Photo: www.japantimes.com

ning whether these had been given voluntarily. But it accepted one confession and based its conviction on this, said Kumamoto who now risks being charged for breaking a secrecy law barring judges from speaking after they reach joint decisions. "During his trial at the Shizuoka District Court in December 1966 he retracted his confession and claimed he was innocent," Amnesty has also reported,

adding that taken together all the statements "contained nothing of substance".

"I have to let the world know what happens in Japan," Kumamoto said. "The police use shocking, barbaric means to extract confessions and those who make them do so only out of despair." His view was supported by Hakamada's chief lawyer Hideo Ogawa, who also spoke at the press conference. "Japan has not changed its treatment of suspects since the 1600s, and they (the suspects) are not recognised as human beings," Ogawa said. The judicial system was based largely on obtaining written confessions given to police investigators in unrecorded interrogation sessions, he said. This was supported by official statistics provided by the Supreme Court to IPS after the press conference.

In more than 90 percent of all court convictions last year there was an accompanying confession. "If you are innocent but accused of a crime, there are few safeguards to protect you," Ogawa charged. "The police can detain citizens up to 24 days. They do not have any rules regarding what time

they can start the interrogation in the morning, or finish in the evening. And there is no lawyer in the room." He added: "The Japanese believe that if the prosecutor says someone is guilty then it must be true." Ogawa is convinced that some innocent people had been wrongly convicted and executed. He recalled the case of Sakae Menda who was accused of murdering and injuring a family of four in Hitoyoshi City in Kumamoto Prefecture in 1948. He had been coerced into a confession after days of interrogation. Evidence supporting his alibi was ignored. Menda's conviction was eventually overturned after he had spent more than 30 years in prison.

Japan is the only member of the Group of Seven industrialized nations, other than the United States, to maintain capital punishment. Currently there are 104 people awaiting execution in Japan, according to Norimichi Kumamoto. Between 1946 and 1993, Japanese courts sentenced 766 people to death and 608 were executed. Hakamada's request for a retrial was rejected in 1994. His appeal to the Supreme Court for retrial has been held up for the last three years. (Reported in November 2007) ■



Mithre J. Sandrasagra

"Confessions Are Not Always True"

Interview with Sakae Menda, exonerated death row inmate

United Nations - Japan is the only member of the Group of Seven industrialised nations other than the United States to retain capital punishment. And unlike capital punishment in the U.S., Japan's use of the death penalty is on the rise. According to Amnesty International, 102 people are waiting to be hanged in one of Japan's seven execution chambers, the largest number in over half a century. Thus far, four prisoners have been released from death row in Japan after being proven innocent.

Sakae Menda was the first. In 1948, at the age of 23, Menda was convicted of a double axe murder. The conviction was based on Menda's confession, extracted after he was held for three weeks in a police station with little sleep, water or food, and no access to a lawyer. In 1983, the court finally acknowledged that the police had concealed Menda's alibi and he was released. IPS Correspondent Mithre J. Sandrasagra spoke with Menda, now 81, at the U.N., ahead of a General Assembly vote on a death penalty moratorium expected in November.

IPS: *Confessions carry enormous weight in prosecutions in Japan, and a reported 99 percent of people charged with crimes in Japan are convicted. What do you think of this system?*

Sakae Menda: We must change the system. We value confessions too much in Japan. We must value evidence more because confessions in Japan are sometimes things that judicial authorities make up. Confessions are not always true.

IPS: *The police coerced your confession out of you. Could you speak about this?*

Sakae Menda: They ask leading questions over and over. I couldn't eat at all, they refused water. This led to the confession.

IPS: *Did they have any evidence against you?*

Sakae Menda: There was no evidence at all against me.

IPS: *Can you describe the process you had to navigate to get a retrial?*

Sakae Menda: There is no guarantee of a lawyer in Japan. I appealed for retrial on my own many times. I was rejected several times. The third time, I hired a lawyer. I had to pay so much. Even this failed.

IPS: *Japanese Justice Ministry officials claim that the system of secret executions is the most humane form of capital punishment. Japanese officials keep state executions out of public view and shrouded in secrecy. Not even the condemned prisoners*



Sakae Menda is a member at Japans Amnesty International since 20 years | Photo: Rajiv Fernando / Amnesty International

know the day they will die. Can you describe the mentality of the prisoners on Japan's death row?

Sakae Menda: My fellow inmates knew that their lives would end there, so they gave up. Many of them became religious. If they must execute, it would be much better for them to let prisoners know in advance so that they can prepare mentally.

IPS: Were you allowed access to psychiatric professionals?

Sakae Menda: Psychologists were not present. That is not something big in Japan.

IPS: The bodies of many executed prisoners go unclaimed in Japan because families disassociate themselves from the accused. What became of your relationship with your family?

Sakae Menda: I was disowned by my father. I didn't have much contact with any of my family while I was in prison. There is a big difference among death row prisoners, between those whose families come and take care of them and those that do not come at all. It makes a difference to how they get treated by the officers in the prison. The officers treat those that are abandoned by their families like they are abandoned by society.

IPS: The Japanese government awarded you compensation for your wrongful sentencing and incarceration. Has this helped you? Thus far, how have you found the process of reintegrating into society?

Sakae Menda: It is not a nationally recognised compensation. I just get money for the time I spent in prison. As for reintegration, it is the society that is very cold. Society refuses to accept me. They look at me as an axe murderer and ex-death row inmate. It is very difficult to reenter society.

IPS: Polls indicate that many people in Japan support the death penalty. Is there a strong grassroots campaign against the death penalty?

Sakae Menda: There are movements against the death penalty. They are not very public and not very big. Amnesty International's work in Japan is the probably the biggest movement. I have been part of this movement for over 20 years.

IPS: Are there any inklings of change from within the government to change the system?

Sakae Menda: Yes. But very, very little.

(Reported in October 2007) ■



Suwendrini Kakuchi

Lone Voices In A Land Of Hardening Views

Tokyo - For years after his brother was killed in January 1982, Masaharu Harada, 57, says he grappled not only with the trauma of personal loss but also with deep anger and hatred for the perpetrator. Then the opportunity came to express his feelings. *"I decided to visit the murderer in prison to yell at him, telling him how much I hated him. But when confronted with his anguished apologies, I felt my anger change to inexplicable sadness for him. Suddenly, at that moment, I was filled with a sense of relief,"* Harada told IPS.

That powerful, enduring change in his feelings is what Harada is now trying hard to convey to the Japanese public. Anti-death penalty activists welcome the move. They hope he will help soften what they see as hardening support for the death penalty in a country shocked by recent gruesome killings. Harada is now a firm abolitionist. Not only did that fateful prison visit in August 1993 change his mind about capital punishment, but his experience afterwards strengthened his conviction. The convicted killer, Toshihiko Hasegawa, 51, who became a Christian before he was hanged in 2001, wrote to him telling of the cruelty he endured on death row.

"I learned from Hasegawa how for months he waited out his hanging in isolation. His family was barred from visiting him. My requests for more meetings were turned down. Such treatment is inhuman and does not make me feel better," he said. Harada,

who lives alone in Aichi Prefecture in central Japan, launched this June the Japan chapter of Ocean, an organisation based in the U.S. that works to bring together crime victims and the perpetrators in the hope both can move *"beyond the feelings of hatred"*. *"The kind of work done by Ocean is badly needed in Japan where meetings between bereaved family members and the criminals are rare. We believe face-to-face meetings will bring transparency to Japan's secretive death penalty system,"* Misako Yagishita, heading Amnesty Japan's anti-death penalty campaign, said.

Activists who have spoken to family members of hanged prisoners have compiled a chilling picture of Japan's death row. Some of the inmates are left languishing for decades on death row before being hanged. Executions are carried out secretly. There is no prior warning of the day of execution. Inmates are told they will be executed only hours before. Embarrassed relatives rarely collect the bodies. Harada said he supported such a system until his own experience, believing in the traditional Japanese view that criminals should be ostracised from society.

Another voice calling for a change of attitudes towards convicted killers is Dr Masami Hirayama, a mental health specialist. He has long campaigned for better rights for the mentally ill, accusing the government of failing to provide psychological treatment for death row inmates. This is tantamount to denying them a fair trial. *"There is obviously a huge need out there for criminals*



Photo: Scott Langley

who have committed murder because of their mental health problems. Handing down death sentences on these people without giving them proper medical treatment is wrong," old IPS. But more emotional support was needed for both sides of crime - the relatives of the victims, as well as the convicted, he said. Hirayama runs a non-profit organisation, Grief Care Support, providing counselling and advice for such people. Lack of similar such schemes in Japan was an indication of the ignorance of the rights of people with mental problems, he said. Many other psychiatrists would agree.

As a clear example of a criminal with a mental disorder, they name Shoko Asahara, the cult leader sentenced to death by hanging in 2004 for masterminding the Tokyo underground attack. The deadly sarin nerve gas the cult released on subway in 1995 killed 12 commuters and injured thousands. Asahara's defence team have often raised the question of his mental health. They appealed his death sentence on the grounds that he was mentally ill. But in August last year, a court-appointed psychiatrist who examined Asahara found he could be feigning mental illness and was fit to stand trial.

Asahara's appeal against his death sentence was turned down by the Japanese Supreme Court in September 2006. Several other cult leaders have also been sentenced to death. Anti-death penalty activists believe the case is the biggest single barrier to the

abolition of the death penalty in Japan. A 2005 survey of public opinion showed that support for the death penalty has been rising steadily. For the first time it topped 80 percent -- a rise of 23 percent since 1975. Since then, abolition activists have noted growing public sympathy for Hiroshi Motomura, 31, a family victim of a capital crime, campaigning for the death sentence. Motomura's wife was raped and she and her daughter killed in 1999. In May, the Japanese Supreme Court ordered the life sentence for the convicted killer in the case to be reviewed by the Hiroshima High Court, instructing it to take into consideration the death penalty.

Activists are watching with concern the workings of a new law that will allow crime victims to testify in court against defendants. Many lawyers believe that that the emotional testimony could work against the defendants in capital cases and lead to more death sentences. The law was approved by the Japanese Diet in June. The appointment of Japan's new justice minister, Kunio Hatoyama is a reflection of the current pro-death penalty trend in Japan, some activists say. Hatoyama, a hawkish, open supporter of the death penalty, has promised a safer society and a crackdown on crime. There are currently 103 prisoners on death row, according to Amnesty Japan. In April there were three hangings, followed by three more this August. Japan and the U.S. are the only two major industrialised countries still retaining the death penalty. *(Reported in September 2007)* ■



Suvendrini Kakuchi

Deposing Survivors May Hit Abolition Campaign

Tokyo - A proposal under discussion in the Japanese Diet (parliament) to allow survivors of murder victims to address the courts is being watched with growing dread by death penalty opponents in this country. *"The new proposal is clearly aimed at appeasing victims rather than fostering legal justice. I fear such a move, if passed, will turn the spotlight on the emotional aspect of a murder trial and work against the accused through harsher sentencing,"* Kei Itoh, a human rights lawyer, told IPS. Itoh is currently fighting to overturn the death sentence handed down to Masaru Okunishi, an 81-year-old man who continues to claim innocence 37 years after his conviction for murder in five cases. Okunishi was originally found guilty of killing his wife, her lover and three others by serving them poisoned wine. There have been five previous appeals, including one which overturned his sentence because of lack of evidence. But today Okunishi is back again on death row. Itoh is seeking a complete retrial.

The main driving force behind the proposal to give crime victims the right to address the courts is lawyer Isao Okamura, 77, himself a crime victim. His wife was murdered in October 1999. Okamura today heads the Tokyo-based National Association of Crime Victims and Surviving Families, an organisation representing more than 3,000 families which argues that crime victims are getting a raw deal in Japan. Okamura was stirred into action when the man found guilty of murdering his wife was given a life sen-

tence rather than being sent to the gallows in 2001. *"The ruling was unacceptable to me - both as a husband and a lawyer,"* he said in a recent newspaper interview. Bereaved victims often remain bitter and resentful for years and desperately want a chance to speak out in court, Tsuneo Matsumura, spokesman for the association and a former prosecutor, told IPS. *"They cannot bear a system where they are forced to watch silently as the trial is conducted between prosecutors, defendants and the accused. We welcome the new proposal because crime victims will finally be allowed to speak out the truth publicly,"* he said. A judge would have powerful additional testimony based on their personal ties, something a prosecutor could never provide. He refuted claims by opponents that if the proposal became a law it would work against a fair trial. The crime victims would only be allowed to testify after receiving permission from prosecutors who would ensure objectivity, he said.

But legal experts point out that the new proposal would mark out Japan in legal practice among most other countries. Japan is already one of the few countries in the industrialised world which continues to implement the death penalty. Last Christmas Day it executed four men, ending a 15-month pause in hanging while a Buddhist justice minister had refused to sign death warrants because of his conscience. Shouzo Inou, an anti-capital punishment activist, is adamantly against permitting crime

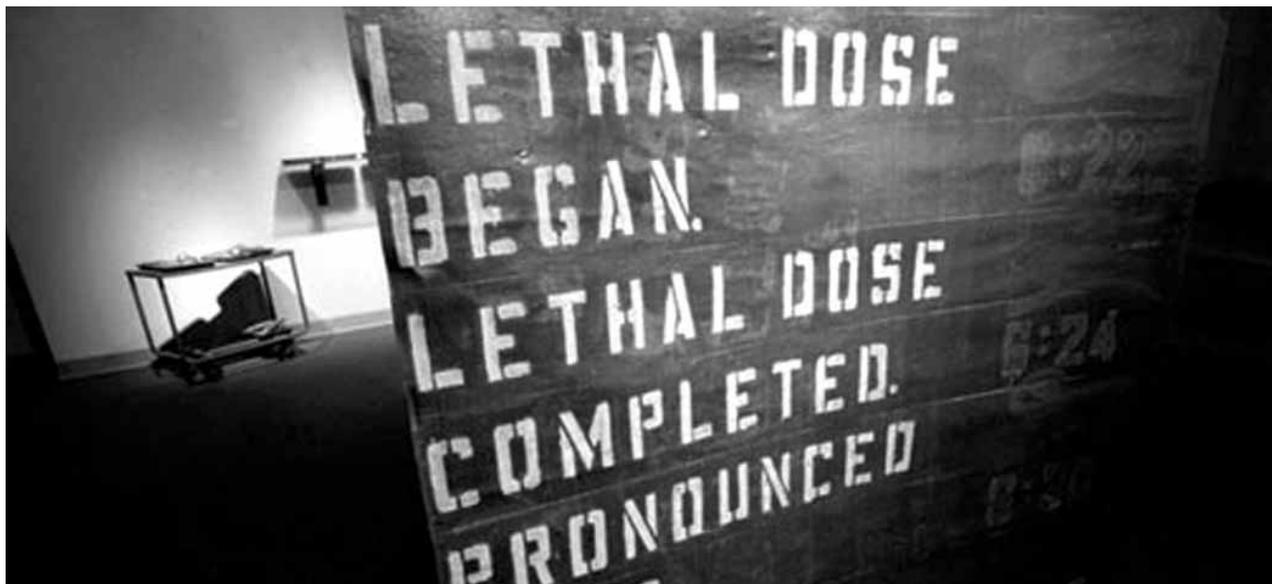


Photo: Scott Langley

victims standing up in trials. Inou is the only activist permitted to visit Okunishi, now frail after surgery for stomach cancer. Okunishi still remains eager to clear his name before he dies. Many ordinary citizens are sympathetic and send letters of encouragement. *"Okunishi has suffered tremendously and so have his family members,"* Inou said, highlighting the often ignored suffering of the innocent family members of the accused in highly publicised capital trials. Okunishi's siblings and parents found it so difficult to endure the notoriety of their family connection in the poor farming community of Nabari, west of Tokyo, that they moved to a place where they could live in anonymity.

Opponents of the death penalty are calling now for a widespread public debate on the capital punishment system before the proposal is adopted into the legal system. *"We have to educate the public on the pitfalls of supporting the death penalty in Japan. The highly questionable practice of relying on confessions made in police custody suggests that there may be innocent victims out there (on death row),"* Hiroyuki Ito, professor of political science at Ritsumeikan University, said, stressing this was one issue he would like addressed more openly.

In March, the Japanese media reported the concerns over one capital case voiced by Norimichi Kumamoto, a retired judge. Kumamoto and two colleagues presided over the trial of Iwao Hakamada, a professional boxer who was sentenced to death for

murder in November 1980. Kumamoto told newspapers that he thought the evidence at the trial was insufficient for a conviction.

"Generally speaking, ordinary people tend to find it difficult to accept the notion that suspects are innocent until proven guilty," said Ito, addressing concerns that the proposal might undermine this basic legal principle. *"It is important that lawyers keep this point in mind when defending suspects,"* he stressed. Opponents of the scheme also believe it could harden attitudes still further against abolishing the death penalty in Japan. In the last government poll on capital punishment in February 2005, 80 percent of Japanese expressed support for the death penalty. Recent highly publicised murders have made it even more difficult for the government to go against the majority of public opinion and ban capital punishment, even if it wanted to, Ito said.

One such case was the killing of a married woman and her young daughter by an 18-year-old man some eight years ago. The woman's husband, Hiroshi Motomura, is currently campaigning for the courts to set aside its life imprisonment sentence for the convicted killer, now 26, and send him to the gallows. The Hiroshima High Court has decided to review the sentence. The proposal to allow crime victims the right to address the courts has still not been formulated into a draft law. It will take two years at least for it to become law, according to Itoh. (Reported in June 2007) ■



Sabina Zaccaro

Executions Decline In Japan

Rome - Three people were hanged in Japan Friday, one was executed in the United States a day earlier. Not good news for those campaigning for abolition of the death penalty. *"The execution of the three people in Japan and one in Texas shows that even if significant steps have been taken towards abolition of capital punishment worldwide, the death penalty is still very much in the picture in 2007,"* Amnesty International secretary-general Irene Khan told IPS.

Yoshikatsu Oda, sentenced for a murder in 1990, Masahiro Tanaka, four times killer, and Kosaku Nada, who killed twice during a robbery, were hanged in Japan Friday, the day Amnesty launched its 2006 report in Rome. The hangings came as stark reminder of the reasons for a continuing campaign against the death penalty, even if the position improved last year compared to 2005. According to Amnesty, 1,591 executions were carried out in 2006, compared with 2,148 in 2005. A total of 3,861 people were condemned to death, down from 5,186 the previous year.

"A positive trend is set to continue this year," Khan said. Amnesty International chose Rome to release the report because the Italian government is spearheading a campaign at the United Nations for a worldwide moratorium on the death penalty, Khan said. But that is not the only reason. The Italian govern-

ment is expected to rally a global coalition against the death penalty. *"I have personally asked Italian Prime Minister Romano Prodi to invite in Rome those like-minded abolitionist states, and take the lead to build a global government coalition against capital punishment, similar to the one already existing among NGOs,"* Khan said.

Amnesty International, which is campaigning for a universal moratorium on executions, welcomed the European Parliament move for a resolution on a universal moratorium on capital punishment. *"But the resolution, important as it is, must not become another piece of paper,"* Khan said. *"It has to be a concrete instrument to reduce significantly the number of executions and helping those people who are waiting on the death row."* And the moratorium must not be a European initiative only, she said. *"Other countries must get involved, particularly those of Asia, Africa and Latin America. The condition to getting a majority vote is a wider diplomatic strategy, also at a regional level, something now missing."*

Khan said she is confident that *"like-minded countries"* will respond to the Italian government call. *"I think that there is sufficient cohesion of different views among these states that can bring them together, and I understand that the Italian government has been having bilateral discussion with some of*



Protest against death penalty in Japan, April 2007

them. It is important to have a multilateral discussion forum now to bring these people together, convene the governments, so that they can get more dynamic as a group to push these issues. I'm confident that nations which have abolished death penalty or are near to abolishing death sentences around the world will welcome this multi-party approach."

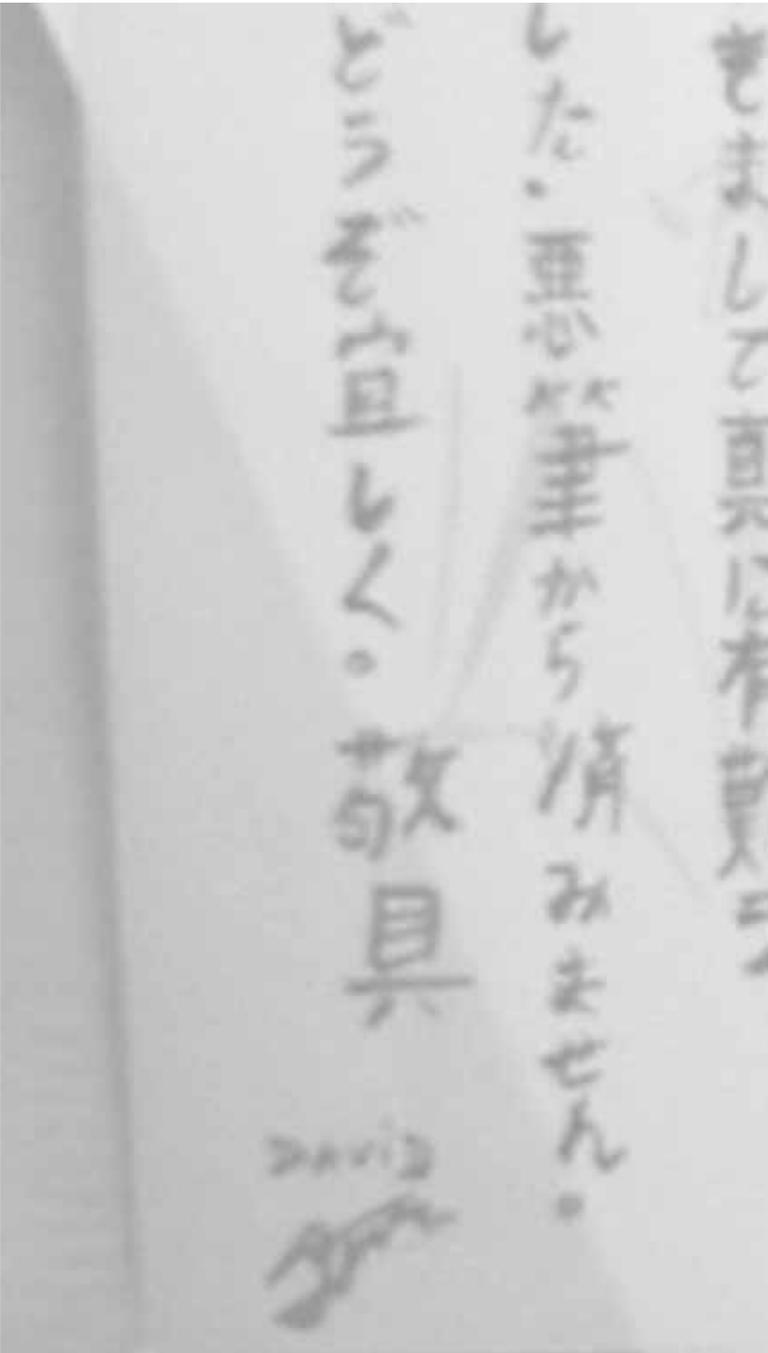
The Amnesty report says only six countries - Iran, Iraq, Sudan, Pakistan, the U.S. and China - were responsible for 91 percent of all executions carried out in 2006. Iraq became one of the world's top executioners after it reintroduced capital punishment in 2004, the Amnesty report says. No executions were reported in 2004 in Iraq, and only three the following year. But the figure rose to 65 in 2006. Iran's executions almost doubled in 2006 compared to the previous year with at least 177 people put to death, including four child offenders. Twenty-three minors are still on the death row in Iran. However, "in the first months of 2007 Iran has started a discussion over the possibility to exclude children from capital sentences," Khan said.

Pakistan joined the list of top executioners with at least 82 reported executions. Sudan executed at least 65 persons, but Amnesty said it has reason to believe that the number is higher. Fifty-three were executed in the United States, the only country

in the Americas to have carried out executions since 2003. But the U.S. had the lowest number of executions in three decades last year. The great majority of executions last year were as before carried out in China. The official numbers are a state secret in China. Amnesty says at least 1,010 people were executed last year, but that the real number could be between 7,000 and 8,000. "The good news is that even China has launched a review of the death penalty process, and we hope that the coming pressure for the Beijing 2008 Olympic Games will contribute to this process," Khan said.

In Africa, four countries carried out executions in 2006, while in Europe only Belarus still applies the death penalty, the Amnesty report notes. "Only Asia and the Middle East remain largely unmoved by the worldwide trend away from the use of the death penalty," Amnesty said.

"The most significant achievement over recent months has been abolition of the death penalty in the Philippines, which led to the biggest sentence conversion in the history, with 1,200 sentences to death converted into detention," Paolo Poggiati, president of Amnesty International Italy told IPS. "Executioners must recognise that the international trend towards abolition is an unstoppable one, and they are destined to international isolation." (Reported in April 2007) ■



Suwendrini Kakuchi

Killing Suspense

Tokyo - Last Christmas Day is etched into the memory of Kaoru Okashita, 60, a Japanese prisoner on death row. In the distance he heard the footfall of guards marching steadily towards his cell early in the morning - and then miraculously passing by without halting. "I thought the time had finally come for me to die," Okashita wrote to his friend and poetry teacher Keiko Mitsumoto. "When the guards passed my door, I heaved a sigh of relief."

Okashita and Mitsumoto have been exchanging letters through prison bars since 2004. Okashita had every reason to feel blessed. On Dec. 25 of last year, four of his fellow death row inmates were hanged, including Yoshie Fujinami, 72, a semi-invalid who could hardly stand, according to activists. Their executions took place after a lull of 15 months. The new justice minister Jinen Nagase was showing he had no qualms unlike his Buddhist predecessor about signing execution orders. Nagase is an open supporter of capital punishment. "It is important to consider the feelings of the victims and the public," he has said. "The social order has to be maintained."

Such strong views reflect the majority of Japanese public opinion. Two years ago, a cabinet office survey showed that more than 80 percent of the Japanese supported the death penalty. More than half the population believed it was an effective deterrent and just retribution for any killing, according to press reports at the

time. Only six percent expressed open opposition to the death penalty. But among these opponents are a growing number of individuals actively taking a stand. Mitsumoto, 61, is one. A teacher of tanka (poetry), Mitsumoto responded to a letter from Okashita requesting her to accept his verse. "I oppose the death penalty not as an issue of justice but simply on the basis that life is precious," Mitsumoto told IPS. "Through Okashita's poetry and letters, I know that he has learnt to value life again and that is why I want him to live."

The touching story of the friendship between a convicted for murdering two people in 1989, and his sympathetic poetry teacher became public here with the December publication of a tanka anthology, 'The Beginning of the End'. Edited by Mitsumoto, it includes poems sent to her by Okashita in letters he sends once or twice a month. Okashita's poems express deep remorse for his crimes and his fear of social rejection. Opponents of the death penalty agree that the Japanese public is rigid and unforgiving. This explains the near-total support for the death penalty, they say. "Japan's extremely conservative sense of social order reinforces the view that people who commit crimes deserve the severest of punishments," said Misaki Yagishita of Amnesty Japan. "This is why there is still lingering support for the death penalty. It's seen the best way of ridding society of criminals."

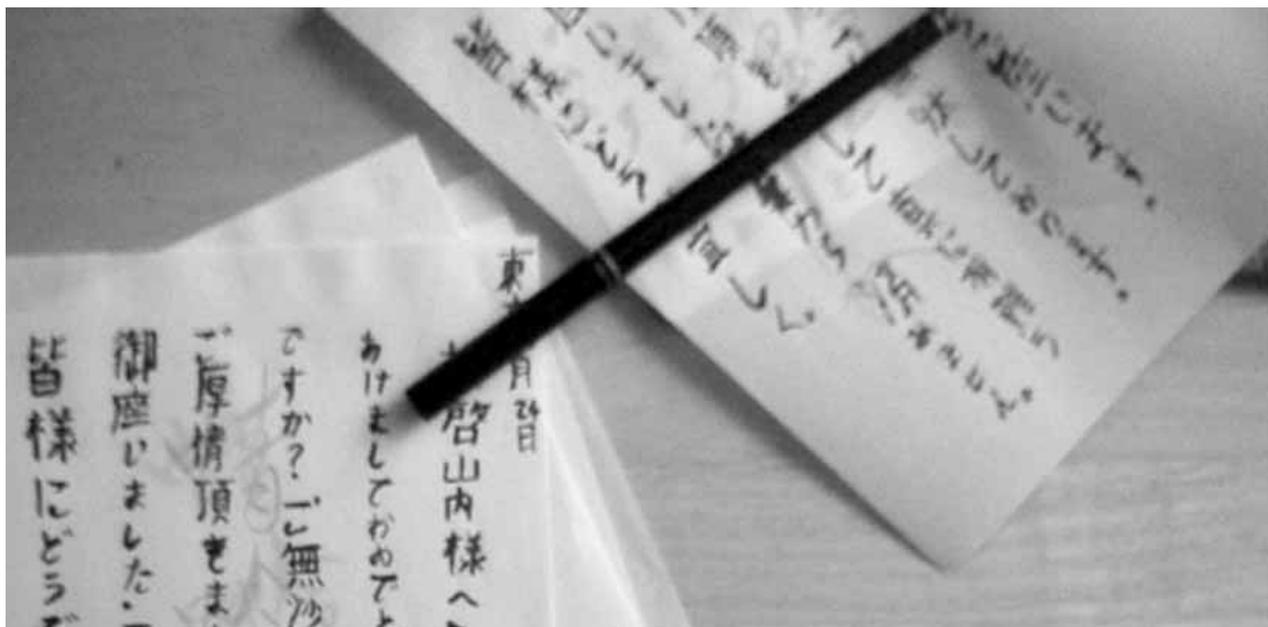


Photo: www.pixelio.de

Japan's anti-death penalty activists are focusing their campaign on the country's method of execution. They said that death by hanging is especially cruel. It can result in decapitation. They also accuse the authorities of a callous disregard for the rights of the person awaiting execution. Singled out is the 'unjustifiable' practice of keeping secret the date of the execution from the death row inmate and family. Testament to this practice is Okashita's post-Christmas letter to his poetry teacher.

Other death row inmates have also told of how they listen for the early morning footsteps of their guards - their only way of knowing of their approaching execution. Only after the hanging will their families be informed. Campaigning anti-death penalty activists are now taking their campaign into the courts. Recently, Shuichi Adachi, a lawyer based in Hiroshima, filed a legal challenge to the practice of barring death row prisoners access to their lawyers. The condemned are only allowed to meet with their immediate family and religious representatives once or twice a month.

"The conditions for prisoners serving life sentences are much more lenient," Adachi said. He supports replacing the death penalty with life imprisonment. "They can meet with their lawyers. But the crimes committed by the two groups can be

similar. This is unfair." Activists are bracing themselves for more executions after the last ones at Christmas. At the end of February the number of inmates awaiting execution in Japan reached 100. Last year saw a big increase in the number of death sentences - some 21 - as Japanese courts took a tougher stand on violent crimes. Activists are also concerned at the likely effect of a new move by the justice ministry to allow crime victims to speak in court. Lawyers have protested that this will fuel passions and could lead to yet more death sentences.

But campaigners are expecting more active support from religious groups in their effort to change public opinion. Oomoto-kyo, a Shinto-based religious group that is opposed to capital punishment, is planning more engagement, they say. "Executions can be tackled by counter-arguments and focusing on the value of life. This is an especially respected concept in Japanese religions," said Katsuya Kimura, a representative in its international division. "We are planning several conferences with other religious groups to reach a consensus on the strategy we should follow," he confirmed. Until now, Japanese religious organisations have been divided on the death penalty issue. Most Shinto groups, Japan's indigenous faith support the death penalty while Christian and Buddhist organisations have been firmly against it. (Reported in February 2007) ■



Baradan Kuppusamy

Sane Voices Amidst Hysteria

Kuala Lumpur - In a small dingy community meeting room in Taman Kosas, a depressed working class suburb north of the city of factory workers and petty traders, Rohana Bakar, a 36-year-old mother of two girls, is trying hard to keep her ground. Bakar tries to explain again but is greeted with cries of scorn and anger. About 30 women, some single mothers, and a dozen children, pack the room. "We can't save our kids by hanging the culprits. The death penalty is not the solution. The death penalty has been around for 50 years and but crime cases have soared," she persists in fluent Malay, clutching her six-year-old daughter. "We must protect our children and teach them to protect themselves, but killing culprits is not going to save out children," she adds in desperation, pleading for support.

The reason they have come together is apparent from a glance at the front pages of the newspapers strewn on the floor. A killer, who it is believed has so far abducted and sexually abused three girls, murdering one of them, is still at large and the mothers are angry and frightened. "This monster raped, abused and killed Nurin ... he must hang for the heinous crimes," one mother says, pointing to the newspapers on the floor. "We have to protect our kids from this monster... only death for him will do."

Just as in that fear-filled room, everywhere in the country the debate is raging over how to deal with the gruesome death of nine-year-old Nurin Jazlin abducted in August and held for nearly a month, sexually abused and eventually murdered. Her body was stuffed in a gym bag and left by a staircase in Petaling Jaya, a suburb south of the city, late September. Outrage over Nurin's death has been sharpened because a video camera mounted in the street caught a man on a motorcycle with a bag. He was filmed leaving the bag with Nurin's body beside a staircase. But the recording, although taken to the U.S. and enhanced by the FBI, is not clear enough to identify the culprit or his vehicle registration number.

Police have up to now drawn blanks, arresting several "suspects" and releasing them later. The public mood is for vengeance and a swift execution when the killer is eventually brought to justice. A few lone voices like Bakar are speaking up to argue that the death penalty is a cruel, state-sanctioned public killing that does not solve or remove gangsters and criminals from the streets. "We are outraged by the brutal murder. This is a disgusting and terrifying crime and a sad reflection of how



Photo: UNESCO

unsafe our country has become for girls and (the) young," said Shanon Shah Sidik, executive director of Amnesty International in Malaysia.

"Public outrage in this matter is understandable but calls for the death penalty to be applied are misplaced." Countless men and women have been executed worldwide for crimes of murder and sexual violence yet there is no convincing evidence that the death penalty is a deterrent. *"The nation mourns Nurin Jazlin. Let us never have to mourn another girl in these circumstances ever again,"* he argued. But such words only invite more expression of public outrage.

People are writing to newspapers and calling up television and radio stations to say that *"monsters"* who kill children should be swiftly led away to their execution. *"Criminals who committed sexual crimes and murder should be given the death penalty,"* writes S. K. Mathews, a member of the public, in a letter to Malaysiakini.com, an independent online news provider. *"These monsters do not deserve to be among us in society,"* he continues, reflecting widely held public views. *"The death penalty should remain."*

Rising violent crime is fuelling demands for tough measures against criminals and many see the death penalty as the cure for all ills. *"The public are angry and upset because nearly nine women are raped every day and many see the death penalty as a quick solution,"* says opposition leader Lim Guan Eng. *"We must not rush to condemn,"* he says, advocating studies to determine the root causes of rising crime. *"There is no one-solution-fits-all here,"* he says, adding that the experience of other countries showed that crime was a complex issue and needed to be treated professionally.

In the first seven months of this year, there were 1,814 cases of rape compared to 1,362 during the corresponding period last year - an increase of 33 percent, according to official statistics. But there were five times as many unreported rape cases, making Malaysia the *"crime capital"* of Southeast Asia, Lim says. Malaysia imposes the death penalty for a raft of crimes from murder to drug trafficking (of more than 200 grams), terrorism and even poisoning of the water supply. Between 1960 and October 2004, there were 434 executions, according to the last available statistics.

"Malaysia should not execute, should not carry out state killing no matter what the crime," said human rights lawyer Charles Hector. *"There is simply no justification for the state to kill."* The Malaysian Bar, which represents 13,000 lawyers, passed a resolution in 2006, urging Malaysia to emulate the Philippines, a fellow member of the ASEAN regional grouping, to abolish the death penalty. *"At the very least it can declare a moratorium with a view to abolishing the death penalty,"* Hector told IPS.

Human rights lawyer and executive director of Malaysians Against Death Penalty, MADPET, Surendran Nagarajan said the organisation recognized the *"seriousness of violent crime and the extreme suffering it causes to victims and their families,"* but it was totally against the death penalty. *"It is a cruel, inhumane and degrading punishment,"* he told IPS. *"There is possibility of judicial errors and the innocent would be killed."* He blamed politicians for the current hysteria among the public for the retention and use of the death penalty. *"This is the usual knee-jerk reaction fuelled by politicians who are exploiting public fear and revulsion at crimes against children,"* Nagarajan said. *"We should not fall for this manufactured hysteria."* (Reported in October 2007) ■



Baradan Kuppusamy

Nine Years On Death Row - Denied Appeal

Kuala Lumpur - "Hang me or release me but don't leave me to suffer a slow death," is the cry of anguish from Baha Jambol, 45, who has been suspended helplessly here on death-row for nine long years, unable to appeal a death sentence. Jambol's desperate predicament is not unique. It is caused by a serious flaw in Malaysian criminal justice system. Jambol was sentenced to death in April 1998 for being in possession of 50 kg of cannabis. He is unable to appeal because the trial judge has failed to put pen to paper and give the grounds sentencing him to 'death by hanging'. "Without a written judgement we can't appeal," Karpal Singh, Jambol's lawyer and prominent human rights campaigner, told IPS.

Jambol, a driver, was at the wheel of a car when cannabis was found inside. But the car owner, who was with him at the time, was acquitted. The scandal of the ink-shy judge, loath to put his judgements on paper, has shocked the nation and led to renewed demands for a swift end to the death penalty. *"This case is a severe travesty of justice,"* said Singh. *"Jambol has been languishing on death row for nine years... what can be crueller than this? I urge the government to immediately abolish the death penalty and end the misery of people on death row."*

Like Jambol, dozens of others wait in great misery in the country's overcrowded jails unable to appeal their death sentences because trial judges have skipped their duty of spelling out their judgements on paper. Aziz Sharif, 28, was sentenced to death in 2001 for murdering his girlfriend, a conviction that his lawyer Harbahjan Singh says is deeply flawed. Six years on, Singh is still blocked from filing an appeal because there is no written judgement.

Aziz is suffering severe mental torture while waiting to know his fate, his family, poor rice farmers from the southern state of Negri Sembilan, told the newspaper The New Straits Times earlier this month. They have appealed to the court numerous times to get the judge to write his judgment but without success. *"I wrote five letters to the court over the matter and sadly they did not have the decency to reply to any of the letters,"* Singh told the paper. The same predicament is currently being endured by Haszaidi Hasan, also sentenced to death for drug trafficking in 2001. Opposition politicians and rights activists are now pressing for action against Malaysia's indolent judges. *"Their lackadaisical attitude has hamstrung the administra-*



Photo: Scott Langley

tion of justice to people who need it the most," opposition lawmaker Kulasegaran Murugesan told IPS. "If the judges had done their basic duties the convicted persons could have speedily filed their appeals and probably been acquitted. A long delay is a mark of a poor criminal justice system," he said, urging the government to set free death-row inmates caught in such a tragic predicament. He added: "A more lasting and more humane solution is to abolish the death penalty."

The cases have also been taken up by the rights organisation Malaysians Against the Death Penalty. "Prisoners facing capital punishment are under severe pressure if their appeals are delayed," Charles Hector, the organisation's co-director and lawyer, told IPS. "Judges should understand the tremendous pressure the death penalty generates... delaying their right to appeal is an act of utmost cruelty. Family members are also left emotionally drained by the uncertainties and the long meaningless delays. It is an intolerable form of torture." Hector added: "This tragic delay is another reason to review the death penalty. We demand an immediate moratorium on all executions pending the abolition of the death penalty in Malaysia."

Amnesty International has also expressed shock at the long inordinate delays and the resulting mental torture death row inmates suffer. There should be an immediate moratorium on all further executions, the organisation agrees. The Malaysian Bar Association has taken up the scandal, calling on all the country's lawyers to report back cases where clients are enduring a "slow death" because of long-delayed or non-existent written judgments. The association plans to present Malaysia's Chief Justice Ahmad Fairuz Halim with a list of serious cases. The hope is the offending judges will be penalised, a sanction that might finally end the torment of many dozens like Jambol and Aziz left dangling on death-row.

Malaysia imposes the death penalty for a raft of offences, from drug trafficking (15 grams of heroin and 200 grams of cannabis) to poisoning the water supply. Mandatory death penalties are also given for murder, possession of firearms, treason. Over a thousand persons have been executed since independence in 1957 and some 300 are currently awaiting execution on death row, many of them Acehnese from Indonesia convicted of trafficking cannabis. (Reported in August 2007) ■



Baradan Kuppusamy

Hundreds Of Migrants Face Execution

Kuala Lumpur - Unskilled worker Henok Sibuea, 30, from Sumatra, Indonesia, gathered together his savings and, like thousands of his compatriots, paid for a boat trip across the Straits of Malacca and landed here hoping to escape poverty, get a job and send money home to his wife and four children. That was three years ago. Earlier in June, Sibuea stood shell-shocked in the dock of the High Court in Shah Alam, about 30 km east of the capital, charged with possession of 5,341 grams of cannabis, or marijuana. He was sentenced to 16 years in jail and to be whipped 10 times, a sentence that brought tears to his eyes. But compared to fellow Indonesians who languish in Malaysian jails and face the death penalty, Sibuea is a lucky person. He escaped the hangman's noose because he was charged with "possession" of cannabis and not "trafficking" which carries a mandatory death penalty. According to an Indonesian embassy spokesman, "several hundred" Indonesians, a large majority of them from Aceh province on Sumatra's north-west coast, are incarcerated in jails across the country facing trials mainly for drug crimes and some for murder - capital offences in Malaysia.

"We have written to the Malaysian foreign ministry to get full details of all Indonesians facing the death penalty," the spokesman told IPS. "We want to do our best to get them legal representation." Under Malaysia's tough Dangerous Drug Act, 1952, possession of 200 grams of cannabis is enough to put one away for a 20-year life

sentence. "If you are charged for trafficking and if found guilty it is death by hanging," said Ramu Annamalai Kandasamy, a lawyer who is currently handling about 30 death penalty cases, most of them Acehese charged with drug-related offences like trafficking. "Most of them are poor and come from poverty stricken villages and enter Malaysia to earn a living but end up on death row," Ramu told IPS.

He said rural poverty is the main driving force behind the local drug trade. "A kilo of cannabis in Aceh costs about five Malaysian ringgit (about 1.5 dollars) and once it arrives here it can fetch RM 1,600 (about 465 dollars)... that's the attraction," he said. "Their dream is to make it, take the money home, buy a taxi or start a small business. Their poverty drives them to take the high risks," Ramu said. "It is sad - they languish in jail, their life in the balance," said Ramu, who opposes the death penalty. "It is state killing; it's primitive. Should we be killing other humans?" According to judicial officers about 10 cases of Indonesians facing the death penalty, mostly for drug offences, are currently before the Federal Court, the country's highest. "Another 50 cases are before the Court of Appeal," one judicial officer said.

"There are a few hundreds in the lower courts, some charged and others under investigation. There is an upsurge of drug related cases," the officer said, declining to be named. This year is 'Visit Malaysia Year' and the government is targeting 30 million visitors and



Photo: Scott Langley

offering various incentives, including visa-free entry if travellers fly in on Malaysia Airlines. More drugs have been entering the country after the entry rules were relaxed for tourists. *"There are more seizures of drugs and more arrests of individuals going by daily newspaper reports,"* said Ramu. *"There is a surge and eventually it will lead to a surge in the death penalty cases as the arrested individuals are charged in court."*

According to Amnesty International, the upsurge in drug-related death penalty cases is seen not just in Malaysia but across the Asia-Pacific region. *"We are alarmed that more people are sentenced to death for drug offences than for any other crime in several Asia-Pacific countries,"* said Amnesty's Malaysia director Josef Roy Benedict. He said 16 Asia-Pacific countries continue to use the death penalty for drug crimes, even though there is no evidence to show that the death penalty deters offenders. In addition, he said several countries including Malaysia, Singapore and North Korea, make it mandatory to impose the death penalty, giving judges no leeway to use discretion. *"Death sentences are meted out like balloons at a children's party... It's a case of one size fits all,"* said Yap Swee Seng, executive director of SUARAM, a leading human rights group.

Malaysia imposes mandatory death sentences for other offences like terrorism, murder, firearms possession and, lately, for poisoning of the water supply causing death. According to recent reports

in the semi-official newspaper New Straits Times, some prisoners, including Malaysians, who have been convicted of murder, drug trafficking and firearms possession offences have been held in prison for periods between 10 and 22 years.

"In fact, two sentences have been meted out to them -- long-term imprisonment in solitary confinement and a death sentence," said lawyer Charles Hector, who heads the Malaysians Against Death Sentence, a non-governmental organisation campaigning against the death penalty. *"Administrative hitches and delays in handing down written judgements are keeping the convicted persons alive,"* Hector said. *"It is extremely cruel to have a death sentence hanging over a person,"* he told IPS.

The Malaysia Bar with 12,500 members also strongly opposes the death sentence. It passed a resolution in March 2006 calling for an end to capital punishment and for all death sentences to be commuted. *"The death penalty is a cruel and extreme form of punishment. Keeping a person on death row waiting indefinitely adds to the cruelty,"* said Yap. *"The uncertain and indefinite waiting and fearing for the final moment constitutes inhumane psychological torture, the nature of which those who have not suffered the experience will not even begin to comprehend,"* he told IPS. *"This issue needs urgent attention as long as capital punishment remains in our statute books,"* he said. The majority of Malaysians are also against the death penalty and the cruelty of

keeping persons on death row for years and in solitary confinement. A poll carried out by a local television network last year showed that 64 percent of the viewers who responded were against the death penalty. Most said it was a form of judicial killing and they supported abolition. However, the government and large sections of the criminal justice bureaucracy believe that the death penalty is necessary, largely because it deters serious crimes. *"We will not abolish the death penalty because it safeguards the public interest,"* the government told opposition politicians who raised the death penalty issue in parliament earlier this year. *"There are enough safeguards in the country's judicial system to ensure that death sentences are not meted out easily,"* M. Kayveas, deputy minister overseeing legal affairs, told the parliament.

However, opposition lawmakers retorted that such *"safeguards"* are minimal and abuse of the judicial process is rampant. Under current Malaysian law and practices arrested persons have no immediate access to lawyers, no immediate right to a phone call and no right to full pre-trial disclosure. The ugly truth is that when dispensing justice mistakes happen frequently, said lawyer Ramu, citing as an example the more than 100 death-row inmates in the U.S. who have been exonerated since 1976. *"The death penalty creates a senseless and vicious cycle of violence,"* he said. *"We must find the political will to end this senseless killing."* (Reported in June 2007) ■



Zofeen Ebrahim

The Trivial Difference Between Life And Death

Karachi - As Superintendent Nusrat Hussain Mangan of Central Prison in the southern port city of Karachi spends sleepless nights trying to figure out how to raise money to save the life of one inmate, just one of 107 on his death row, there are moments of near despair. "When it comes to the real brass tacks, the champions of human rights who oppose death penalty and writers who never tire of writing how barbaric capital punishment is and how it should be abolished, all but vanish into thin air. When it comes to walking the talk, they shy away. It's just lip-service they pay to the cause," he lets out angrily.

His desperation is understandable. The family of Mohammad Ishan, 34, condemned for murder, is trying vainly to meet the terms of a last-minute compromise which would halt the issuance of the 'black warrant' (the letter confirming a death sentence) and the final walk to the prison gallows. The terms have been just too steep for Ishan's older brother to meet. His father cannot help, surviving precariously on different jobs from day to day. It has been left to him, a garment factory worker, to collect the money. But he already has to care for seven sisters and three brothers. Of these, three sisters have recently been married off which has burdened him with new debts.

"The blood money - the Islamic 'diyat' where money is paid as compensation to the family of the victim - has been fixed at Rs 1,200,000 (about 20,000 dollars). The family has managed to collect Rs 700,000 (11,666 dollars) but the rest has still to be arranged, somehow," Mangan explains. He is trying to help raise the remainder before the week is out, although Ishan's family will request the court to grant more time.

But wherever the superintendent and his team turn to for money they meet with resistance, he says. The usual response is: 'Why do you want to save a murderer?' or 'When the court has sentenced him, who are you to interfere?' Mangan looks at the situation from a very different perspective. *"It's not a rotten part of the fruit that you just cut out and throw away, it's human life we are talking of. Even if he's a criminal, he's a human being first. So I tell them, he deserves another chance and we can help save his life by contributing that paltry amount collectively."* Not many are convinced though and thus the delay.

Mangan has been in prison service two decades and makes it clear that he adamantly opposes capital punishment, although Pakistan still routinely carries out executions by hanging. According to Amnesty International's 2007 report, *"nearly a third of the world's*



Hundreds waiting on death row | Photo: Al

24,000 death row prisoners are in Pakistan". "Nothing comes out of killing another person," Mangan says, adding, "There are other punishments that can serve the purpose."

His deputy, Raja Mumtaz Ahmed, has witnessed almost 20 executions. But never has he got used to them. "Life imprisonment is preferable. You get 25 years time, but actually end up spending 15 years inside due to various remissions. Then you are out. It's enough punishment," he says. Posted at various jails around the province of Sindh during his tenure, Mangan has not once witnessed an execution, nor does he intend to do so this time. "I am confident this time, though we have very little time, we will be able to save this fellow," he says.

He and his team did recently succeed in arranging the blood money for three other inmates, all of whom were sentenced to death for separate road accidents in which three people died. "Not one was a 'criminal' as is usually pointed out. They were poor so their families could not arrange for the money and their employers refused to bail them out. But the amount was manageable and we could find people to donate."

Mirza Tahir Hussain, a Briton who spent 18 years languishing in Pakistani jails, but whose sentence was commuted by a land-

mark decision of President General Musharraf last year, has also joined Mangan in his campaign to raise the diyat money. He has fired off emails around the world to charities, businesses, friends and family, appealing for donations. So far he has raised 1,495 dollars in addition to the 11,666 dollars collected by the family. His sympathy is acute. "Most of the convicts finally sent to the gallows are from poor families, unable to pay diyat," he says. "The more affluent and influential use methods of coercion to force the victims' family into a compromise and get off the hook." A senior prison office here, on condition of anonymity, confirms what Hussain says. "There are cases that get disposed off even before the crime is registered at the local police station. Huge sums are exchanged, in connivance with the police and lawyers," he says.

Mangan's anger directed at the human rights organizations reflects his sense of helplessness confronted by such a system. "I believe 90 percent of the executions can be commuted and don't even need to reach a stage where inmates are sent on death row," he says.

What this case shows is that Pakistan needs to establish well-funded institutions so that one would not always have to go out with the begging bowl. "What is needed is an independent body that can look into the legal rights of the prisoners. Most poor prisoners do not

have access to good public legal representation. Even if there are advocates representing them, they are either too disinterested or so mediocre that their case is already spoiled by the time it reaches the higher courts. The well reputed lawyers are far too busy making money and, in any case, too expensive for these poor people to engage."

Mangan would also like to see a body to take over the onerous task of reaching diyat compromises which all could live with without prison officers having to be involved. "Initiating a dialogue with the families, arranging for compromises and reconciliations is time-consuming, requiring patience, a certain amount of cool and tact. Most families, already under emotional and economical stress are not good at looking at circumstances rationally. But if there was a competent body handling all this, there would be less heartburn on both sides and our time would not be spent on doing this as it is now," he says. Tahir Hussain agrees. In a Muslim country like Pakistan it is essential to establish, what he calls, a "reconciliation committee", both for the accused and the victim's family. "This would also be in keeping with the true spirit of Islam," he says, adding that after Ishan's life is saved he would like to join with others and work towards establishing this. (Reported in July 2007) ■



Zofeen Ebrahim

Freed Briton Urges Pakistan To End Executions

Karachi - "Many think I escaped the noose because of my nationality. That may be so, but if you ask me, I got a new lease of life because God meant me to live." It is the same unfaltering faith in God that helped Mirza Tahir Hussain live through 18 gruelling years behind bars in Pakistani prisons.

A native of Leeds, England, the 36-year old Briton spent half his life with the death sentence balanced, like the sword of Damocles, over his head for the murder of a taxi driver. This, he says, was committed in self-defence. Though found innocent in a criminal court, Hussain was sentenced to death by the religious Federal Shariat Court in 1988. Mounting international pressure brought on by his brother's tireless campaign finally led to his release last year.

"It took nearly two decades to get my brother off death row in Pakistan - an incredibly draining time during which our family endured emotional agony," said Mirza Amjad Hussain, who left no stone unturned to gain his brother's freedom.

Six months after his release, sitting in his home in Leeds, Hussain looks back on the time he spent in prison. Mired in what he describes as a judicial system corrupt to the core, he still marvels at how death evaded him.

"It's a strange convoluted mix of laws - a dangerous hotchpotch of civil and Islamic law, neither of which is enforced in true spirit or form. It is the most dangerous tool used at

the convenience of the rich and the influential, not necessarily to provide justice. I should know, I was acquitted and then sentenced," he says in a long-distance interview conducted over the Internet. According to Hussain, instead of acting as a deterrent, the Pakistani justice system has fanned crimes. *"Murders, terrorism and sectarian killings have increased because it is very easy for actual criminals to buy their way out to freedom."*

He also feels very strongly that violence cannot be resolved by state violence. *"I believe that criminals should be prosecuted and held accountable, but do they have to be punished with death?"* The death penalty is cruel and unnecessary. In Pakistan, he says, each criminal case comes with its own price tag with money exchanging hands at all levels. *"If you can pay through your nose, justice will be on your side."*

Little wonder then that Pakistani prisons are filled with a vast population belonging to the very poorest in society, some of them falsely accused, he says. *"For criminals belonging to the affluent class and even those from the middle class, cases are not even registered. And if for some reason they have been, the victim's family is coerced and threatened till a compromise is reached."*

Hussain adds: *"In some cases, in connivance with the police, the case is made out to be weak. If that fails and the case somehow finds its way into the court room, huge sums*



Mirza Tahir Hussain after his death row stay (picture on page 134) Hussain before being jailed (left above) | Hussain in prison with his family visiting him (right above)| Photos: IPS

are exchanged to minimise punishment or to turn a death penalty to a life term." There were healthy people declared mentally ill by the prison administration so they could "escape the gallows". According to a newly-released report by Amnesty International, "nearly a third of the world's 24,000 death row prisoners are in Pakistan".

With inefficient government-appointed defence lawyers, "who are completely indifferent to their clients' plight" and appalling living conditions, living on death row in Pakistan "is like living in your grave", says Hussain. Death row cells are no bigger than 3.6 metres by 2.7 metres with "between 10 - 12 prisoners crammed together like animals," he says, adding, "we had to take turns even to sleep".

Because of serious flaws in the judicial system and evidence of miscarriages of justice, Hussain is deeply concerned over the convictions handed down in Pakistan. "Like me, many of Pakistan's death row inmates are innocent or had unfair trials, but unlike me they are likely to meet a cruel death with no one there to save them. How many innocent lives need to be taken before capital punishment can be abolished?" he asks.

Amnesty International in its recent report 'The death penalty worldwide: developments in 2006', singled out Pakistan for its "unfair trials", together with Iraq and Sudan. Some of Pakistan's 7,000 death row inmates facing immi-

nent execution are juvenile prisoners - despite a 2000 decree banning this, says Hussain. "I saw them on death row, even after the ban," says Hussain. "Their ages were conveniently increased by the authorities in connivance with the magistrate." He says he cannot forget the execution of a 16-year old boy from a village and who had worked as a labourer. "He was the sole breadwinner and had been falsely implicated. You cannot fathom the mental anguish we (other inmates) all went through at his death."

Amnesty International has confirmed that Pakistan executed one child offender last year. Pakistan had abolished the juvenile death penalty, "but there had been problems concerning the nationwide compliance with the law". Amnesty International places Pakistan third on the list of 25 countries known to have in total executed at least 1,591 last year. China executed 1,010, Iran 177 and then came Pakistan with 82, Iraq 65, Sudan 65 and the U.S. 53. These six countries, alone account for 91 percent of all executions carried out worldwide in 2006.

On the eve of the release of the Amnesty International report with these figures, its director in Britain Kate Allen said: "We urgently need to see 'death penalty governments' issuing bans on all imminent executions, especially President Musharraf in Pakistan." (Reported in May 2007) ■



Zofeen Ebrahim

A Jail Superintendent's Aversion

Karachi - Superintendent Nusrat Hussain Mangan of the central jail in the southern port city of Karachi considers himself fortunate that he has never had to witness a man being hanged. *"In the two decades I've been in office, posted at various jails around the province of Sindh, luckily for me, I've never had the misfortune of throwing my handkerchief (a silent sign to the hangman to pull the lever) to signal the execution."* He is also confident that he *"will never have to bear witness to an execution"* during his term in office, though Pakistan still carries out the death penalty. He is against this, terming it *"judicial killing."*

"You really don't get anything out of killing another person," he says. *"There are other punishments that can serve a purpose. The prisoner gets a chance to reform and become a useful citizen. By giving a death sentence you just end another man's life. Has it really proved to be a deterrent for heinous crimes? As far I know, only the poor go to the gallows, the rich and the influential, actually get away by coercing, threatening or even compromising with the victims' family."*

According to Mangan, in this time and age, *"we have to come up with a more progressive way of dispensing justice"*.

But his burly deputy (requesting anonymity) standing beside him has witnessed the execution of some 20 prisoners slapped with the sinister-sounding 'black warrant' (the letter confirming a death sentence). *"It's very disturbing and you never get used to this,"* he says. He favours hanging, he says, as this is the *"least painful"* form of execution. *"Other methods are far more painful -- like lethal injection or the electric chair. Death by hanging occurs within two or three minutes and does not mutilate any part or organ of the body. The only sign you can see is that the neck gets elongated by an inch or two and there is a small wound mark on the right-hand side of the neck where the knot of the noose rubs against the flesh."*

From the moment when the session court judge pronounces the death sentence to the time the black warrant is issued, usually a minimum of eight to ten years have passed in Pakistan. In that period, says Mangan, *"the prisoner has already died a hundred times."* His deputy nods, in agreement. *"They're barely alive. The only thing that keeps them alive, that too barely, is that flicker of hope that a compromise will be reached between families and they will be acquitted even while being taken to the gallows."* The last seven days after the black



Photo: M. Jerzy | www.pixelio.de

warrant is received by the prisoner signals the *"procedural preparations"* for the execution. The execution usually takes place on the last day of the 7-day period *"in hope that a last-minute compromise may be reached with the victim's family,"* says Mangan. At times this is just about reaching an understanding about the 'diyat' or blood money, he says.

He was once able to help reverse a death sentence by arranging the money personally. *"It was a paltry sum of Rs 80,000 (1,300 US dollars) but the prisoner's family couldn't buy his life even for that."* For the actual execution, the strength of the rope (made of jute and prepared in the prison factory) fits specifications necessary for varying weights of the prisoners set out in the jail manual. *"We rehearse and check a day in advance by hanging a sandbag on to the gallows to ensure the hook, the rope and the lever that part the planks are all in working order,"* the deputy says.

On the night before the execution, he continues, there is *"eerie silence"* about the jail as everyone knows what is going to happen at sunrise. The condemned prisoner is given *"a very light meal"*. He says his final goodbyes to those who share the cell (10ft by 7ft) with him in the 'phansi', (the gal-

lows) ward. Most spend the time praying to God. In the central jail, at the moment, there are 127 prisoners on death row sharing 30 cells although they are supposed to be in solitary confinement. *"In a way it's good as these are very depressed people and there is someone to talk to them and provide some form of solace,"* the deputy says.

Execution always takes place immediately after sunrise, after the morning prayers. *"The prisoner washes up, prays if he wants to and then walks to the gallows. There has been a case when the prisoner became so nervous that he just couldn't walk and had to be taken on a stretcher,"* the deputy says. At the threshold before the gallows, the prisoner's face is covered with a black mask. *"He is instructed that when the rope is around him, he should keep his eyes closed and his tongue inside his mouth."*

The central jail was built in the 1890s and the gallows seem just as old. A small gate leads to a compound. In the middle, after one has climbed up a small flight of mahogany stairs, one finds three rusty-looking, but menacingly strong, hooks. These are for simultaneous hangings. At the time of execution, the compound is filled with twenty or more senior

officers. Among others, these must include the superintendent or his deputy, a physician, and a magistrate who will verify the identity of the person to be executed.

After the throwing of the handkerchief and the pull of the lever, the body is left hanging for 30 minutes and then lowered to the ground. The physician examines it and certifies the death of the prisoner. The body is wrapped in a shroud and handed over to the family waiting outside. *"In our jail, there are quite a few people trained to pull the lever, which will tighten the noose around the man's neck and separate the planks he is standing on, making him hang in the air,"* says Mangan. *"The concept of a hired hangman who comes to specially carry out this job is really not applied here in this jail."*

At that point a senior warden, in his mid-40s, joins in. He explains that he has been trained for the job and so far has carried out the execution order for about eight people. *"I don't think it's an easy job and not everyone has the nerve,"* he says. Asked if he finds it difficult, he replies laconically: *"I just carry out the order and everything else is blanked out. Please don't mention my name, not many people know what I do."* (Reported in March 2007) ■



Zofeen Ebrahim

Too Many Dubious Convictions

Karachi - The independent Human Rights Commission of Pakistan (HRCP) and the Paris-based International Federation of Human Rights have called for an immediate moratorium on death penalties in Pakistan - or many innocent people may be executed. There are "very serious defects" in Pakistan's criminal, police and justice system, the rights organisations charge in their joint fact-finding report 'Slow March to Gallows', launched late January. There is also "chronic corruption" and bias against women and religious minorities.

All this has made the capital punishment system in Pakistan "discriminatory and unjust" and allowed for the "high probability" of miscarriage of justice. "Until we wait for the imperfect system to be corrected many people, including quite a few innocents, will have been hanged," I.A. Rehman, director of the Human Rights Commission of Pakistan (HRCP), told IPS. There should be an immediate freeze on executions of those already sentenced, he said. HRCP council member Zohra Yusuf added: "We are for abolition. A moratorium is proposed to give immediate relief in the interim period." A moratorium would spare those convicted under Pakistan's controversial Blasphemy

Law. Minority religious groups in Pakistan, especially Christians, have long charged that this law was being used to persecute them. The United States-based Human Rights Watch (HRW) has welcomed HRCP's call for a moratorium as a first step to abolition. "The use of the death penalty must end, period," said Ali Dayan Hasan, South Asia researcher for HRW, adding that HRCP was highlighting the "very serious plight of large numbers of prisoners on death row."

Currently there are more than 7,400 prisoners on death row, some of whom have been there for decades. Rights groups say executions have been increasing, with 1,029 carried out between 1975 and 2002 in the Punjab province alone. In the first half of 2006, the number of people executed was 54. In spite of the steady increase in the numbers sentenced to death and actual executions, the HRCP report states that there has been a spiral in the number of crimes carrying the ultimate penalty.

At the time of independence, in 1947, only murder and treason carried the death sentence. But today there are 27 capital crimes, including blasphemy, stripping a woman of her clothes in public and sabotage of the railway system. Many of these



Former death row cells in Baghdad | Photo: IPS

were introduced during the 1977-88 military dictatorship of Gen. Zia-ul-Haq. It was under Gen. Zia's rule that former prime minister Zulfikar Ali Bhutto was executed despite worldwide appeals for clemency. Bhutto was hanged on Apr. 4, 1979 on the charge of conspiring to murder a political opponent, after what was widely held to be an unfair and politicised trial. His appeal to the Supreme Court was rejected by four judges out of seven and one of the four stated afterwards that he regretted his decision.

HRCF has urged the government to put a restriction on the number of offences carrying death sentence and refrain from adding new ones, but Rehman said he did not expect an immediate government response to their call. *"The government is a thick-hide mule. We do not expect an early breakthrough. It has other priorities,"* he said. By calling for a moratorium rather than a complete abolition of capital punishment, HRCF hopes to start a debate and *"allow the government and the public to thrash out issues and reach a consensus,"* Rehman said. *"Laws made without public concurrence rarely succeed."* Rehman conceded that the abolitionists would have to work hard to convin-

ce the public about their cause. *"The public, at the moment, does not seem interested or supportive of abolition. People have been brutalised. They are also much too confounded by clerics claiming that killing is enjoined by faith. They would like to see more heads rolling than fewer,"* he said. Giving an example of how the abolitionists might press their case in Pakistan, Rehman said: *"One could argue, for instance, that murder apart, there is no sanction in Islam or in our legal tradition for awarding death in many of the cases that have been added to the capital offences list."* On the issue of deterrence, HRCF is arguing that the *"certainty of conviction not the harshness of punishment,"* was decisive in reducing crime. *"Capital punishment or any other punishment can be deterrent only in states where the legal order is not strong enough to prevent the wrongdoer escaping. We should be at the stage where even a minor punishment should act as a deterrent: Then there would be no need to hang anyone,"* explained Rehman.

There is also the question of reforms in Pakistan's judiciary, police, and executive which are considered essential issues. *"Wherever justice has moved from retribution to reformation and*

meeting people's economic needs, the crime rate has fallen," said Rehman. He stressed that Pakistan's religion-based Qisas and Diyat Ordinance, highly criticised by rights activists for miscarriage of justice, must be reformed. This law allows families of murder victims to accept compensation and pardon the offender. *"It gives the victim's family veto-power to decide whether a convict should live or die,"* Rehman said. *"It's a privatisation of justice because murder, which is a crime both against the victim and society, is reduced to a matter between the killer and the victim's family. Society is deprived of its say."* HRCF's Yusuf adds that the ordinance allows the rich to *"literally get away with murder by paying the 'blood money' while the poor are hanged. The law will have to go if death penalty is abolished."*

Besides calling for a moratorium, the HRCF report presses for several administrative measures to be introduced. These include greater accessibility for members of civil society to prisons and contact with condemned prisoners. It wants a strengthening of the police investigation system, an increase in spending on the police and justice system and a mechanism for protection of victims and witnesses taking part in criminal procedures. *(Reported in February 2007)* ■



Marwaan Macan-Markar

U.N. Lifeline Against Extra-Judicial Killings

Bangkok - By condemning the Philippines' military for having a hand in a brutal campaign to eliminate politicians and activists with left-leaning views, a United Nations envoy may have thrown a lifeline to many whose lives may be in danger. The armed forces of the Philippines (AFP) "remains in a state of almost total denial" about the political killings in the South-east Asian nation despite many of the murders having been "convincingly attributed to them," Philip Alston, U.N. special rapporteur on extrajudicial killings, said in a statement released Wednesday in Manila.

He also charged the country's national police force of falling short in its investigation into the murders, often failing to use proper "forensic" measures. Alston was particular critical of the ease with which a recently retired army officer, Maj. Gen. Jovito Palparan, who has been called *'The Butcher,'* by some, and *'The Executioner,'* by others, has eluded charges that linked him to a spate of extrajudicial killings in areas where he used to operate, such as Central Luzon, north of the archipelago. "When the Chief of the AFP contents himself with telephoning Maj. Gen. Palparan three times in order to satisfy himself that the persistent and extensive allegations against the general were entirely unfounded, rather than launching a thorough internal investigation, it is clear that

there is still a very long way to go," Alston was quoted as having said in a report on Global Media Arts Network, a Manila-based national television station. Palparan's views about the country's leftists were no secret. "We've got to hate the movement," he was once reported to have told the Philippines media last year. Prior to that he was quoted as having justified his drive against legitimate leftist activists with lines like, "they're legal but they are doing illegal activities".

The Australian-born Alston's comments came at the end of a 10-day investigation into the wave of political murders - which local human rights groups say have exceeded 830 deaths - since President Gloria Macapagal-Arroyo began her term in office in 2001. The victims have included over 360 left-wing activists in addition to journalists, lawyers, judges, priests, trade unionists, grassroots activists and human rights advocates. "His strong position has helped clarify the wrong statements and lies spread by the Arroyo government," Renato Reyes, secretary-general of Bayan, the largest left-wing alliance in the Philippines, told IPS from Manila. "This should add pressure on the government to do something, particularly to respond to the role of the army in perpetuating and tolerating the killings."

Photo: www.abolition.fr

The room for a government denial has been reduced dramatically and could diminish further when Alston releases his final report in three months, say other critics of the Arroyo administration. *"Alston's comments were objective and fair,"* Teddy Casinno, a congressman belonging to the leftist Bayan Muna party in the legislature, said in an IPS interview. *"The government cannot deny the charges about extrajudicial killings. It has to acknowledge the findings."* The lifeline thrown by the U.N. envoy to leftist activists in the Philippines is being warmly received. Alston said that Manila's counter-insurgency campaigns to win public support in areas where leftist sympathy is strong had seen drives that attempted to *"vilify left-leaning organisations and to intimidate leaders of such organisations,"* according to the AFP news agency. *"In some instances, such intimidation escalates into extrajudicial executions."*

Alston's comments add to other critical reports that go against an argument trotted out by the authorities to explain the high number of political murders. The Philippines military, for instance, has tried to pin the blame on the in-fighting in the New People's Army (NPA), the military wing of the outlawed Communist Party of the Philippines (CPP). The envoy's findings are also expected to add pressure on Manila to make public the find-

ings of a government-appointed commission, led by Jose Melo, a retired Supreme Court judge, to inquire into the political killings. The commission was set up in the wake of criticism last year by international human rights watchdogs like Amnesty International, which accused sections of the Philippines army for links with the bloody campaign.

The current campaign against the leftists is not unique, however. In the late 1980s, the Philippines was the scene of an officially sanctioned drive to go after leftists and sympathisers of the CPP. During that campaign, masked men riding motorcycles turned assassins and picked off over 580 victims, according to a human rights group.

And decades before that, in the 1940s and 1950s, leftist legislators and activists were targeted in violent campaigns backed by the state. Consequently, there are some parallels being drawn between the present and the past in Manila's attempt to silence those it disagrees with. *"Killing has become part of the government's attempt to quell dissent,"* Ruth Cervantes, spokeswoman for Karapatan, a local human rights group, told IPS from Manila. *"They are against left-wing activists participating in the political arena."* (Reported in August 2007) ■



Marwaan Macan-Markar

U.N. Probes Extra-Judicial Killings

Bangkok - A 10-day visit by a United Nations investigator to the Philippines, starting Monday, is being welcomed in some quarters as a chance to expose an alleged campaign to "exterminate left-wing activists" in that South-east Asian nation. Days ahead of the visit by Philip Alston, U.N. special rapporteur on extra-judicial killings, another victim was added to a grisly death toll of over 800 people since 2001 when President Gloria Macapagal-Arroyo began her term in office.

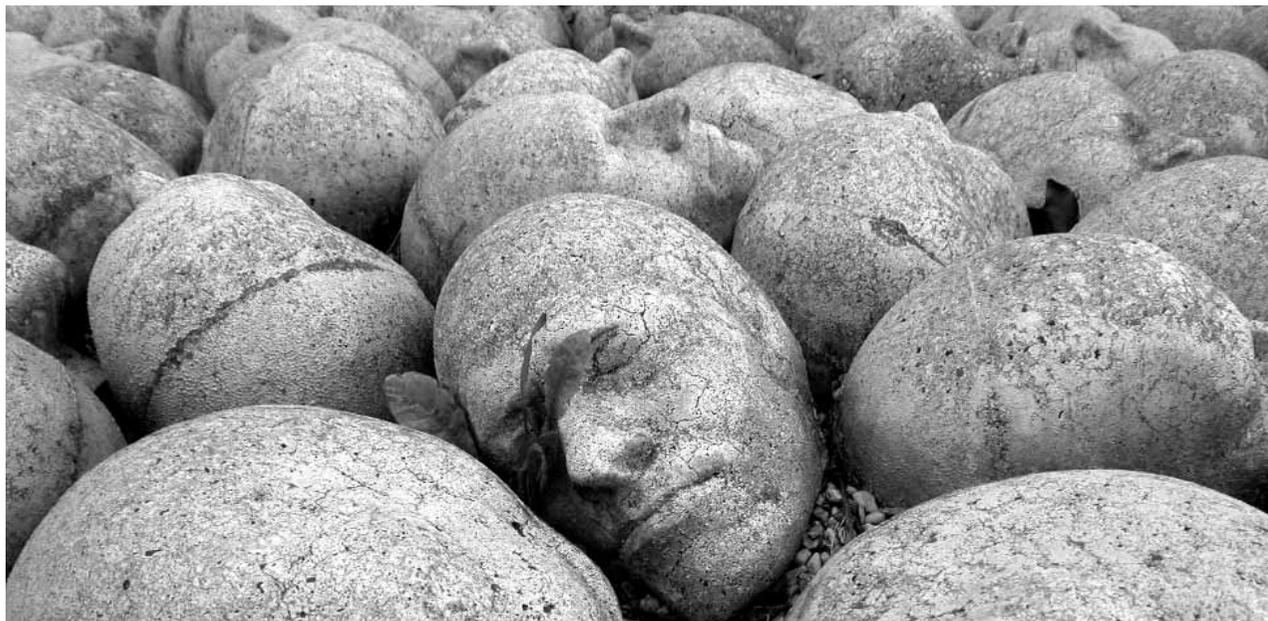
Dalmacio Gandinao, provincial chairman of a left-wing farmers' movement, was gunned down on Thursday night in Salay, a town 750 km southeast of Manila. He was having dinner at home with his wife and grandchildren when the assassins struck before getting away in a van. *"We want the U.N. official to look at the systematic pattern of killings,"* Harry Roque, professor of international and constitutional law at the University of Philippines, told IPS over telephone from Manila. *"The U.N. human rights mechanism must be put into full use here to shame the Philippines."*

The special rapporteur should also meet the countless people who have been threatened for their "anti-capitalist" views, added Roque, who has himself received six death threats for being part of the Philippines human rights community that is charging the Arroyo government with permitting a cli-

mate of impunity. Concern that such violence may intensify is also growing, as the country heads for general elections in May for the 250-member House of Representatives, half of the 24-member Senate and hundreds of officials to fill the posts of mayors and governors. In late January, a mayor of a town in central Philippines was killed by a gunman and in December a congressman was shot dead while standing at the entrance of a church in Manila. "The climate of impunity will not go away with the elections approaching," Red Constantino, managing director of the Foundation for Nationalist Studies, a Manila-based think tank, said in an IPS interview. "I wouldn't be surprised if these killings increase because of the climate of impunity."

Human rights groups are hoping, however, that the killing of politicians will not pre-occupy Alston's agenda, since such political murders, they say, are different from the violent campaign being directed at individuals challenging the agenda of the government or of some multi-national companies.

Victims over the past six years have included trade unionists, farmers' rights activists, people from indigenous communities, lawyers, journalists, human rights campaigners and men of religion. In October last year Bishop Alberto Ramento, Chairman of the Supreme Council of Bishops of the



"Steinerne Köpfe" (Heads in stone) from Ulrich Thimm, Schiffsgraben Hannover | Photo: A. Klicker | www.pixelio.de

Iglesia Filipina Independiente and a vocal critic of the Arroyo administration was murdered in his house in Tarlac. The findings of the Australia-born Alston are expected to add to the damaging conclusions arrived at in January by a special commission appointed by Arroyo to investigate into the murder of the left-wing activists. A small group of soldiers was behind the death of the activists, said Jose Melo, a retired Supreme Court judge, who headed the commission. The complete report, which is yet to be made public, does not fault the entire Philippines army for the violations, a charge that had dogged it as the murder of left-wing activists piled up. According to 'Karapatan', a human rights group with which Ramento was closely associated, over 360 of the more than 800 people killed were left-wing activists.

Arroyo's decision to appoint the commission came after Manila faced pressure from international groups to investigate the murders. The global rights lobby Amnesty International is among them, accusing sections of the Philippines army last year for being involved in this bloody campaign. In November, even multi-national companies in the Philippines joined ranks with those concerned about the escalation in extra-judicial killings. In January, the European Union urged Manila to take strong measures against the mur-

ders that are bad for the *"reputation of this country."* Manila has also been criticised by environmentalists who have produced reports recently revealing that a number of people from indigenous communities in the northern Cordillera mountain ranges were among those killed for protesting against plans to expand the mining industry in their midst. Alston is due to visit indigenous communities in some of the mountainous area during his mission.

"He should take time to listen to their testimonies, for they (indigenous people) have lost many through this violent campaign," Jo Villanueva, executive director of the Legal Rights and Natural Resources Centre, an environmental lobby in Manila, told IPS. *"The victims were those who had been leading community resistance against encroachment by the mining companies."*

The attacks on left-wing activists have lent an added dimension to the decades-long battle Manila's troops have been locked in with the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines. December marked 38 years since the NPA launched a guerrilla war against the Philippines government, a conflict that has resulted in over 40,000 deaths, including civilians, soldiers and rebels. *(Reported in February 2007)* ■

Marwaan Macan-Markar

Bloody 'War-on-Drugs'

Bangkok - While arrest warrants are being readied for self-exiled, former prime minister Thaksin Shinawatra on corruption charges, human rights advocates are keener to see him booked for a murderous campaign he led against drug peddlers four years ago. On Tuesday, Thailand's Supreme Court approved warrants issued by prosecution to arrest Shinawatra and his wife Pojaman on charges of corruption in controversial land deals in Bangkok. A millionaire in his own right, Thaksin who lives in Britain was in the news recently for his purchase of the prestigious Manchester City premier league football club.

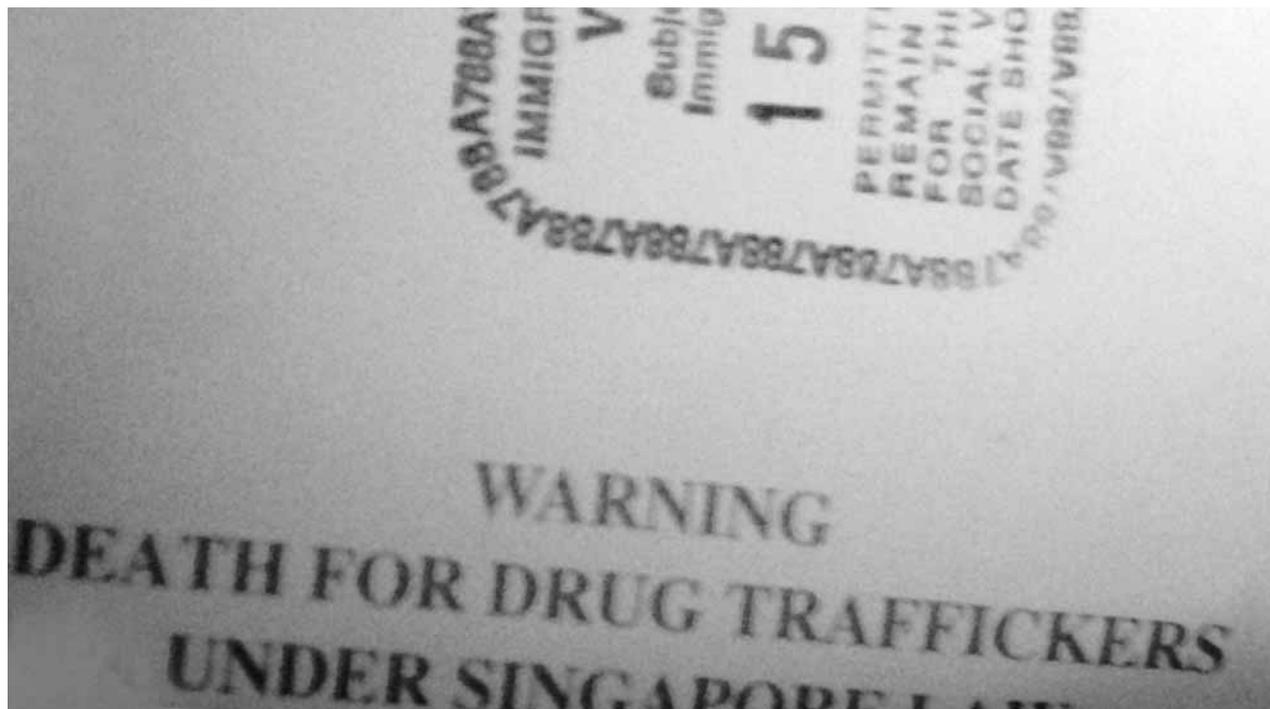
A statement issued by a spokesman for Thaksin attributed political motives on the part of the military government that ousted him from power last September, and suggested that moves to have him arrested or extradited have to do with the "referendum on the constitution taking place later this week".

As per the court order, Thaksin and Pojaman have until Sep. 25 to surrender to police, after which date proceedings could be initiated to have them extradited from Britain. On Thursday, Thaksin and his wife were placed on an immigration blacklist that makes them liable to immediate arrest on entry

into Thailand. Thaksin faces several corruption charges and, if convicted, he may no longer be "fit and proper" to own Manchester City and the English Premier League may well withdraw certification to that effect that it has granted him. Among those opposing the mandatory certification for new owners of first-division football clubs in Britain is the New York-based Human Rights Watch (HRW). In a recent letter written to Richard Scudamore, chief executive of the Premier League, HRW drew attention to Thaksin's brutal 'war on drugs'.

In 2003 Thaksin gave the green light to the police and other authorities to show no mercy in cracking down on the narcotics trade in the country, in particular the networks supplying methamphetamines. In its letter, HRW recalled lines Thaksin had delivered to justify the blood-bath. "Because drug traders are ruthless to our children, so being ruthless back to them is not a bad thing," Thaksin had said. "It may be necessary to have casualties... If there are deaths among traders, it's normal," he had added.

The consequences of those words became disturbingly clear early on in the anti-drug drive. During the first three



Warning in Singapore's immigration document | Photo: private

months of that 'war,' which began in February that year, over 2,275 people were killed. Other deaths followed as the campaign was extended till the end of 2003. Among those who lost a relative was Malai Khamjarsai. Her sister and brother-in-law were shot to death on the evening of May 19, 2003, at a security checkpoint near the city of Mae Sot, close to the Thai-Burma border. *"Both of them were innocent; they were clean; they only earned money through their transport business,"* the 40-year-old Malai told IPS. *"The police and the government did little to investigate at that time."* The deaths also resulted in Malai having to care for the two children orphaned due to the deaths of her sister Umpaipan Roonpongpraserd, who was 33 years at the time, and her husband, Pongtep who was 44. *"They are both boys, 12 and 16 years,"* she says. *"We are still wanting to know why their mother and father were killed."*

One person who may help is Kanit Na Nakorn, a respected former Thai attorney general, who has been appointed by the post-coup military government to head a committee tasked with uncovering the grisly details related to the 'war on drugs.' The delay in such an official inquiry over four years after the murder spree is due to

the cold response by the Thaksin administration to stall any investigations into the thousands of extra-judicial killings.

"These murders were committed by the police; the policemen were the killers. Yet the government of Thaksin did not bother to conduct any inquiries," Somchai Homlaor, a human rights lawyer, told IPS. *"Even complaints by the National Human Rights Commission were ignored. The commissioners submitted many reports on the 'war on drugs' to the Thaksin government and also to the United Nations."* What troubles Sunai Phasuk, the Thai researcher for HRW, is the line of argument Thaksin and his supporters are presently using to deflect the charges about his role during the bloody crackdown. *"Thaksin is asking for fair treatment and that he be considered innocent until proved guilty,"* says Sunai. *"But when he was in power, he never gave his victims a similar chance to prove themselves in court. He ordered them to be killed."*

The inquiry headed by the former Thai attorney general will help to shed light on another reality, too, Sunai explained during an interview. *"There is a need to change the perception in England about who the majority of those killed were. The majority was innocent people, not drug traffickers."* (Reported in August 2007) ■

LATIN AMERICA & THE CARIBBEAN

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Fabiana Frayssinet

Broad Support For U.N. Moratorium

Rio de Janeiro - Many Latin American governments have not yet adopted a position, or have not communicated one, but the majority trend in the region appears to be to support the resolution for a moratorium on the death penalty proposed by a number of countries to the United Nations General Assembly. The motion in favour of a global suspension of executions, which Amnesty International describes as only one step away from outright abolition of capital punishment, will be supported by Brazil, according to a Foreign Ministry statement received by IPS.

The communiqué says that Brazil's position at the U.N. General Assembly will be "*above all to abolish the death penalty*" as this country itself did in 1979. At present the maximum prison sentence in Brazil is 30 years. Complete abolition of capital punishment is among the human rights goals Brazil proposed to the U.N. Human Rights Council in Geneva, the Foreign Ministry said. But if this goal is not achieved, "*Brazil will support the moratorium,*" and if this is not agreed either, Brazil "*will keep a watching brief to ensure that application of the death penalty follows international standards, that is, international human rights law,*" said the statement from the centre-left government of Luiz Inácio Lula da Silva.

Perly Cipriano, deputy secretary for the defence of human rights at the Special Secretariat on Human Rights of the Presidency of Brazil, told IPS that this is indeed Brazil's strategy, and pointed out that the country has historically maintained this stance at international forums. However, Cipriano stressed that although the death penalty had been officially abolished in Brazil, "*hundreds of political prisoners were*

killed during the dictatorship (1964-1985) in military and police establishments, and those deaths were not officially recognised." He said that only recently had the Lula administration published the book "*Direito à Memória e à Verdade*" (The Right to Memory and Truth), in which for the first time the state accepts responsibility for those deaths.

Argentina, where capital punishment was abolished for common crimes in 1984, appears to be following Brazil's lead as regards the moratorium, proposed for consideration at the 62nd U.N. General Assembly, which opened on Sept. 18, with general debate beginning Tuesday. A source at the Argentine Foreign Ministry's office on human rights told IPS that the resolution for a moratorium, sponsored by a number of countries including leading EU countries, has not yet been sent to the Néstor Kirchner administration, but added that Argentina "*is totally prepared to support it.*" In Venezuela, where capital punishment was abolished by the constitution for all crimes in 1863, no official position for the U.N. General Assembly has yet been taken. However, sources consulted by IPS said the government is leaning towards voting in favour of the international moratorium on executions. Caracas is also likely to give its support to Mexico City, which formally abolished the last vestiges of the death penalty in the armed forces in 2005. In practice, though, no one has been executed in Mexico since 1961.

Sources at the Mexican Foreign Ministry told IPS that the question has not yet been defined, but said at the same time that the administration of Felipe Calderón "*is completely against the death penalty.*" The most likely outcome is that Mexico will support the proposal. At the second summit between Mexico and the EU, held in Guadalajara,



Poster of an abolitionist campaign in Latin America | Photo: AI

Mexico in May 2004, the parties signed an agreement, article 7 of which declared "a firm mutual commitment" to the universal abolition of capital punishment. Calderón belongs to the conservative National Action Party (PAN), which is against capital punishment. The Mexican Supreme Court will not extradite any person to a country where they might face the risk of being sentenced to death. However, in Peru, President Alan García has other ideas. He wants to bring back the death penalty and has introduced a draft law to that effect in Congress, where it has not yet been debated.

Activists therefore take the view that Peru will oppose the moratorium. "If the governing party lawmakers are in favour of the death penalty, Peru will vote against the moratorium at the U.N.," the president of the local chapter of Amnesty International, Ismael Vega

Díaz, told IPS. Cuba and Guatemala are the only countries in Latin America that retain the death penalty for ordinary crimes. It has been abolished even for the military courts by Colombia, Costa Rica, Ecuador, Honduras, Mexico, Nicaragua, Panama, Uruguay and Venezuela.- But this is not the case in Argentina, Bolivia, Brazil, Chile, El Salvador and Peru, where the death penalty is retained for exceptional circumstances, under the Military Code and for certain crimes in wartime. The generalised opposition to capital punishment by governments in the region does not, however, keep the issue from cropping up again during periods of increased public insecurity, when certain sectors begin to advocate reinstatement. This happened in Argentina in the 1990s, when amid a wave of violent robberies and kidnappings, then President Carlos Menem (1989-1999) suggested reinstating the death penalty for cases of kidnapping in which the hostages were subsequently murdered. However, human rights organisations mobilised against the initiative and it did not prosper.

In Brazil, too, the debate has been reactivated by the increasing sense of urban insecurity. Eloisa Machado and Daniela Ikawa, of the Sao Paulo-based Conectas Human Rights, told IPS that "the view that social problems will be solved by stiffer sentences is widespread." But that just appears to be "an easy way out, whereas it's completely inefficient as a solution for the problems that deeply afflict a large part of Brazilian society, such as poverty, unemployment, poor quality education, inadequate housing and the lack of human security," for which structural solutions are needed, the human rights lawyers said.

In Mexico, in spite of the government's stance against the death penalty, debate is stirring again, although without any changes in practi-

ce. According to a February opinion poll by AP-Ipsos in Mexico, 71 percent of respondents were in favour of the death penalty and 26 percent were against. However, when the question was put differently and interviewees were asked to select a penalty for a person found guilty of murder, only 46 percent chose capital punishment. Meanwhile, Peru may join Cuba and Guatemala if the García administration's draft law, reintroducing the death penalty for rapists of children under seven who kill their victims, is passed. The initiative will be debated again in the Constitutional Commission, the commission chairman Javier Velásquez Quesquén told IPS, because "conditions are now more favourable" for its approval. Velásquez Quesquén pointed out that this was an electoral promise of García's, as "the country wants tougher sentences for sex offenders." Amnesty's Vega Díaz said he was concerned by the announcement. "When the International Day Against the Death Penalty is coming up (on Oct. 10), it's very bad news that the governing party is insisting on its bill" to reinstate it, he said.

In Guatemala the death penalty is on the books, but there have been no executions since 2000 because of a legal vacuum which prevents condemned prisoners from asking for a presidential pardon, and exhausting all legal means of defence. During the administration of Alfonso Portillo (2000-2004), Congress repealed the 1892 Pardons Law. Since then the country has lacked procedures for convicts to exercise their right to apply for a pardon, an amnesty or a commuted sentence. In order to overcome the impasse that has been keeping 21 death row inmates in limbo, the rightwing Unionist Party (PU) submitted a draft law to Congress in 2006 that would restore the procedure for applying for a presidential pardon. (Reported in September 2007) ■

Gustavo Capdevila

Brazil Proposes Additional Millennium Goals

Geneva - Global abolition of the death penalty and other human rights aspirations could be achieved through mechanisms similar to the Millennium Development Goals adopted by the United Nations, according to a proposal by the government of Brazil. Brazil's special secretary for Human Rights, Paulo Vannuchi, presented a proposal to the U.N. Human Rights Council calling for the definition of concrete human rights goals, with varying deadlines, to eradicate some of the restrictions on people's freedoms and safeguards.

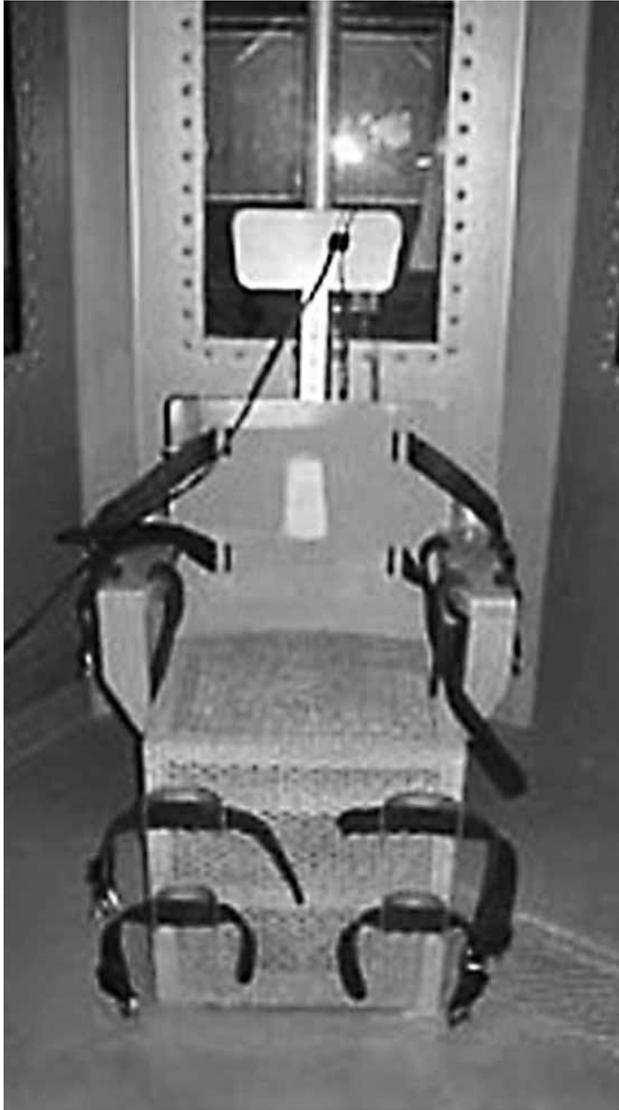
The Brazilian official pointed out that countries have widely different legislation on human rights issues. At a meeting convened in November by the Chinese Society for Human Rights Studies, Vannuchi discovered that modern China, founded in 1949 with the triumph of the revolution led by Mao Zedong, is founded on a theoretical base that envisages abolishing the death penalty in the future.

Thus China, which employs the death penalty, and Brazil, which does not, agree on its long term eradication although they differ in the possibility of its immediate abolition, Vannuchi said. Therefore, the Human Rights Council, as the highest U.N. human rights body, should open a debate on

capital punishment with a view to adopting a decision, in 10 or 20 years if necessary, to *"establish a world without the death penalty,"* Vannuchi told IPS.

But he acknowledged that abolishing capital punishment *"is not enough."* Brazil and some other countries that do not have the death penalty on their books *"face the very complex problem of extrajudicial killings,"* or summary executions perpetrated by police forces or death squads, he said. In addition to abolition of capital punishment, other goals could be included to make up a basket of human rights issues, he said. The first such measure might be the struggle against racism. Beginning with the U.N., it could spread to legislation in every country, following the example of Brazil and other countries which have already defined racism as a crime. People complaining, for example, *"I was the target of aggression because I am black,"* could then demand redress from the law, which would pass sentence accordingly, the official said.

The basket of human rights would include discrimination on the grounds of religion, gender or sexual orientation. Discrimination on the basis of sexual preference has been brought up at the U.N., but is still considered taboo, Vannuchi



Gas chamber in Chile | Photo: Amnesty International

said. *"There are fundamentalists everywhere,"* in many Islamic countries and also in Christian ones, who look on sexual diversity as a sin, he said. The Brazilian government's position is very clear, because the Human Rights Secretariat has a *"Brazil Free of Homophobia"* programme, he said. A support network has been set up in Brazil to uphold this principle, and gay pride marches involving up to a million people

are regularly held to defend it, Vannuchi said. He also proposed that the U.N. make a commitment that after a given lapse of time, the global body will no longer tolerate torture or forced disappearances.

In February, a convention against forced disappearance adopted by the U.N. General Assembly was signed in Paris, the expert said. The treaty, sponsored by France and Argentina, began to be mooted in 1981, when many Argentines were living in exile in France, he said. The treaty's aim is not just to address pending issues in Brazil, Chile, Argentina and other countries where thousands of people fell victim to forced disappearance under military dictatorships in the 1970s and 1980s, but to create a framework to prevent such human rights violations in the future, he said. Vannuchi proposed that the Human Rights Council, whose fourth session began this week, create a working group to prepare a plan with specific human rights targets, to be pursued in parallel to the Millennium Development Goals (MDGs).

The MDGs were adopted by the U.N. member countries in September 2000. The eight goals to be fulfilled by 2015 include drastically reducing poverty and hunger, achie-

ving universal primary education, and promoting gender equality. Setting specific human rights goals should promote a degree of international openness that would reinforce the effort to achieve the MDGs, in Vannuchi's view. He said the MDGs were important because, for the first time in history, countries had committed themselves to concrete development goals, even if they are not all able to achieve them, because of domestic events, conflict situations or developments in the global economy itself. The Brazilian proposal is for the new human rights goals to be launched next year, coinciding with the 60th anniversary of the Universal Declaration of Human Rights, adopted by the U.N. in 1948.

This initiative by the Brazilian delegation will attempt to rein in what they see as the Human Rights Council's tendency to indulge in rhetorical debates on issues more suited to the U.N. Security Council, and devote itself instead to concrete goals. Vannuchi described the case of Brazil, where efforts to reach the MDGs have resulted in a confluence of purpose between different sectors committed to their achievement, including trade unions, non-governmental organisations, the business community and universities. *(Reported in March 2007)* ■



Peter Ischyryon

Amid Increased Murders, Calls For Hanging

Port of Spain - Wendell Bowen was blunt: "I support hangings, something needs to be done with crime." She was speaking to the Trinidadian newspaper *Newsday*, which carried out a recent snap poll on what was worrying its readers most of all. Her bluntness may have been a result of the brutal slaying of a woman police officer and members of her family, as well as an elderly couple in two separate incidents in Trinidad during the first weeks of the year. Pastor Ethelbert Charles of the Pentecostal Church was even more forthright. At the funeral for the police officer, Elizabeth Sutherland, her husband and daughter, he told the grieving congregation, "Every murderer must be hanged."

"Death row must be emptied out," he said to loud applause. There are currently 84 prisoners on Trinidad's death row, including six#Many, including Caribbean governments, have blamed the London-based Privy Council for indirectly contributing to the murders. This body still remains the highest court for all but two regional states. The Privy Council is not just seen by many as a leftover from the colonial era, but a hindrance to executions in the region. Its recent rulings have made it difficult to carry out executions, in particular its decision that it was inhumane to hang anyone who has been on death row for more than five years.

The twin island state of Trinidad and Tobago is not the only Caribbean state where people are today loudly calling on the authorities to implement the death penalty as an answer to an upsurge in violent crime. In Jamaica, some religious leaders have been calling for speedy execution of convicted murderers. There are 40 people currently on Jamaica's death row. "I believe the justice system must ensure that all trials are just and fair, but when we have persons who continue to murder people, I believe we ought to take a second look at our reluctance in dealing with capital punishment," Pastor Glen Samuels, president of the West Jamaica Conference of Seventh Day Adventist Churches, said at an international conference on "Restorative Justice" last December. Repeat murderers must also be prepared to pay for their crimes with their own lives, he said.

Prominent Jamaican lawyer Clayton Morgan told the conference that as far as he was aware, politicians had provided the public with no convincing reason for the current halt in hangings. "Hanging is perfectly lawful. The death sentence is still legal. There is absolutely nothing in the world that is preventing hanging. There are several men on death row who could be hanged tomorrow because they have lost all their appeals," he said.



Antonio Pisanello (1395-1455): frescos in Sant Anastasia, Verona Italy| source: Wikipedia

Jamaica's opposition Labour Party has in the past weeks raised new alarm over the rise in violent crime. Public confidence in the security forces was eroding, it said in a February statement. The last six years have been among the bloodiest in Jamaica's history. There have been more than 7,000 killings. Last year, 1,674 Jamaicans were murdered, giving the island a ratio of 63 murders for every 100,000

people - one of the highest in the world. In the first six weeks of the year, 130 murders were registered.

Political analyst Kevin O'Brien Chang believes crime is now at the top of the political agenda and will be the dominating issue in Jamaica's coming election. Voters were so concerned at the failure of politicians to deal with the issue that they could bring down the current government. *"Every poll shows crime is the biggest problem the country is facing and with the explosion we have seen so far in January, it is more critical,"* he said.

Despite the ever-more strident calls for a resumption of hangings, there are still moderate voices arguing that this is not the answer to the region's crime problem. Roman Catholic priest, Father Reginald Hezekiah, officiating at the funeral of the two elderly people bludgeoned to death by intruders in Trinidad in the new year, said a return to the use of capital punishment would not bring back those killed. *"We have to have a culture of life and not of death,"* he told the mourners. *"We cannot say hang them. When we do that, we become like murderers ourselves and we think like them."*

The Trinidad and Tobago Humanist Association has also vocally denounced pressure to resume executions. Rather than solving the country's crime problem, it might worsen it, the association

said in a recent statement. *"It is understandable that the latest callous and bold murders would cause many citizens to call for hangings of convicted murderers,"* it said. But after the last hangings in 1999, there was a two percent increase in the murder rate the following year. It warned that the real danger in *"shouting for executions"* was that it allowed politicians to pretend they were tough on crime.

Human rights organisations are concerned that the current public mood on crime could lead to violations in human rights. The police could turn to *"aggressive extrajudicial justice"* to placate the *"frustrations, grief and outrage"* of the people, social scientist Selwyn Ryan warned on Feb. 11. *"This is a road we must not take,"* he said. Concern has increased following a Feb. 2 police shootout in Trinidad leaving four people dead. Immediately afterwards, police commissioner Trevor Paul responded to criticism by strenuously denying the existence of a *"death squad"* within his service.

Criminologist Ramesh Deosaran warns that Trinidad and Jamaica must deal more effectively with crime or public frustration will be expressed in ever-more vehement calls for extreme measures. *"The more things are not done to address crime, the more you will have people calling for drastic action and making statements like 'hang them high,'"* he said. *(Reported in March 2007)* ■



Constanza Vieira

The 'Other' Death Penalty

Bogota - "It was you yourselves who killed my daddy," snapped the 12-year-old campesino girl before walking away, leaving the soldier talking to himself. He had just entered the family's small farmhouse in southern Colombia while the rest of the troops waited outside, and asked after "the owner." The incident, which occurred in the last week of September, left the girl's mother full of fear. Martha Liliana González, 35, was out back tending to the livestock when the soldier showed up and talked to her daughter. "Since I told them I'm going to press charges, I'm scared that someone will kill me. I don't know if I should go back to the farm," González told IPS in Bogota, where she attended the presentation Wednesday of the preliminary report on extrajudicial executions and impunity in Colombia by an international mission of human rights observers. "You people are very impudent. You don't even care if you kill him," González had said to an officer by the name of Arévalo, who she believes was a lieutenant, when she still thought her husband was being held alive by the army after he was seized on Sept. 13. Because "that's what they do when they go to the rural villages. They kill a campesino (peasant farmer), put a grenade and a gun in his hand and say he was a guerrilla fighter, and that's it, he's passed off as a guerrilla, and that's how things remain, since we're too afraid to speak out...", she said.

Arévalo took photos of González and tape recorded her words when she demanded to see her husband Sixto Guzmán, 39, with whom she has three children, the oldest of whom is 16. "We don't have anyone here," she was told by the officer, who had come to the area where she lives, in the southern department (province) of Caquetá, on

Dec. 12, with the Cazadores and Las Diosas del Chairá battalions. Sept. 13 was the last day that Guzmán was seen alive. And the last to see him was a neighbour woman, who like González's husband was taken from her home by soldiers, to serve as their local guides. She was allowed to leave shortly, but "when she looked to see where they were taking him, they had him on his face on the ground, tied up," said González. After a three-day desperate and risky search in which the people of four rural hamlets in the Caquetá district of Puerto Rico took part, not without fear, Guzmán's body was finally found in the morgue in Florencia, the provincial capital. "He was listed as John Doe," and there were stamps on the papers indicating that he was from El Cóndor, a hamlet in the same district, said his widow.

A label attached to him said he had been found with two radio communication codes, which the Revolutionary Armed Forces of Colombia (FARC) guerrillas change every week. But "he didn't have anything like that. They planted that on him," said González. Not until the afternoon of Sept. 17 was his body turned over to his family, "with three or four bullet holes," she said. Unlike the cases of many campesinos who are the victims of extrajudicial executions in Colombia, no rifle was planted on him, and his body was handed over in civilian clothes, instead of being dressed up in guerrilla-style camouflage fatigues. González believes that was because she threatened to bring legal action against the military.

For at least 955 campesinos like Guzmán or indigenous people and community leaders, the increase in the number of army troops deployed around Colombia, from 150,000 in 2002 to



Photo: Amnesty International

230,000 today, has not meant greater security. That is the number of extrajudicial killings committed between July 2002 and June 2007, according to human rights groups. In that same period, 235 forced disappearances, committed by different groups, were also documented, as reported by the Coordinación Colombia Europa Estados Unidos (CCEEU), a coalition of 166 non-governmental organisations from Colombia, Europe and the United States, which invited the international mission to visit Colombia from Oct. 4-10.

In Colombia's decades-long armed conflict, in which the military, backed by ultra-right paramilitary groups closely linked to the drug trade, are fighting the FARC and the smaller National Liberation Army (ELN), none of the sides respect international humanitarian law, which clearly distinguishes civilians from combatants. But the term "*extrajudicial execution*" refers solely to the illegal application of the death penalty - which was abolished in Colombia - by the armed forces against civilians or unarmed combatants without trial. According to Gustavo Moncayo, whose son, an army corporal, has been held as a hostage by the FARC for 10 years, "*soldiers are paid one and a half million pesos (around 750 dollars) and are given 15 days of vacation for bringing in dead guerrillas.*" Moncayo, a teacher who has become a symbol of the call for a negotiated swap of hostages held by the rebels in exchange for imprisoned insurgents, complains that soldiers, many of whom join the military for economic reasons, are encouraged "*to become murderers.*"

A September 2002 government decree stated that civilians living in areas under rebel control are one of the "main supports" of the insurgent groups. The decree is based on the idea that the guerrillas

pose as innocent civilians and as part of the local population, who supposedly help conceal the rebels' telecommunications equipment, weapons and munitions while helping them obtain supplies and provisions. According to that logic, "*the supposed link between the civilian population and the guerrillas has to be severed,*" David Martínez, head of the CCEEU Observatory for Human Rights and Humanitarian Law, told IPS. After the decree was issued, "*arbitrary arrests and extrajudicial executions began to increase in number.*"

Perhaps that explains why the security forces behave like an occupying army in areas under guerrilla influence, as IPS has found on visits to different parts of the country. (The FARC controls an estimated 40 percent of the national territory, mainly in rural, sparsely populated areas.) The Defence Ministry reported that between August 2002, when rightwing President Álvaro Uribe took office, and September 2006, 8,104 "*presumed guerrillas*" were killed "*in combat*". And, 2,072 members of "*illegal armed groups*" - paramilitaries or insurgents - were reported as killed between July 2006 and June 2007.

The International Observation Mission on Extrajudicial Executions and Impunity in Colombia was comprised of 13 lawyers, journalists, forensic anthropologists and experts on human rights, political science and international relations from Britain, France, Germany, Spain and the United States. With the support of the U.N. High Commissioner for Human Rights office in Colombia, the mission visited 13 departments, heard testimony like that of González, and gathered information on the legal proceedings in 132 cases of alleged extrajudicial killings.

The experts also met with high-level government officials, regional authorities, and social organisations. The mission found that the killings followed certain patterns: the victims are seized from their homes or workplaces, their bodies turn up in morgues in distant towns, often wearing fatigues, and they are reported as insurgents killed in combat, who were supposedly carrying guns or other military equipment when they were shot down. The crime scene and evidence are not preserved, the autopsies are superficial, and there are unjustified delays in issuing death certificates, said the mission's report.

The bodies often show signs of torture, and the victims are buried as unidentified corpses, even if they have been identified by family members or others, the report added. The military justice system claims the authority to investigate such cases, in spite of numerous Constitutional Court rulings that have ordered that they be handled by the office of the public prosecutor. The international observation mission stated that prosecutors often fail to actively engage in the investigations, do not assert their jurisdiction over the cases, or show signs of a passive approach and undue delays.

González is unlikely to see justice done in the case of her husband because, as the mission pointed out, families face problems of access to legal redress and there is a "general environment of intimidation" against them and witnesses. The report also mentioned widespread impunity, and recommended that the international community condition military aid to Colombia on a halt to extrajudicial executions. (Reported in October 2007) ■



Patricia Grogg

Sentences Uphold De Facto Moratorium

Havana - Military tribunals that have tried serious cases of murder and kidnapping in the last few weeks in Cuba have opted for life sentences or 30-year prison terms instead of the death penalty, which has not been applied in this country in more than four years. The de facto moratorium has placed Cuba in a more flexible position with regard to the controversial issue, expected to be on the agenda of the United Nations General Assembly's 62nd session, which opened Tuesday.

The London-based global rights watchdog Amnesty International reported that the European Union Council of Ministers decided in June to present a resolution seeking an international moratorium on the death penalty, a step towards the abolition of capital punishment worldwide. "*The de facto moratorium is good news*," Elizardo Sánchez, an activist with the Cuban Commission for Human Rights and National Reconciliation (CCDHRN), told IPS.

The CCDHRN regularly reports on human rights in Cuba, particularly political prisoners and the death penalty, based largely on testimony and information provided by the family members of prisoners. A report by the dissident group noted Wednesday that the trial of young recruits who deserted from the

army last April and tried to hijack a plane to go to the United States led to two life sentences and three sentences of 30, 25 and 15 years. The CCDHRN reported that the sentences were handed down last week, although the trial took place Aug. 24-26. According to the report, the Western Military Tribunal in Havana gave life sentences to Sergeants Yoán Torres, 21, and Leandro Cerezo, 20, while sentencing 19-year-old Sergeant Karel de Miranda to 30 years, 25-year-old Corporal Alaín Forbes to 25 years, and civilian Ridel Lescaylle, 31, to 15 years.

In a statement distributed to foreign correspondents, Sánchez said the CCDHRN sees it as positive that Torres, the only one of the recruits who is 21 years old (the minimum age for the death penalty), was not sentenced to die by firing squad. The dissident group's report, which did not specify the charges of which the five defendants were found guilty, stated that they were "*convicted for the events that culminated in a bloody, frustrated attempt to hijack a commercial passenger plane at the Havana airport.*"

An Interior Ministry statement issued on May 3 indicated that three armed conscripts doing their two years' military service had deserted from their army unit on Apr. 29, killing another cons-



Photo: UNESCO

cript on guard duty, Yoendris Gutiérrez, and wounding an unnamed soldier in the process. The photos and full names of Torres, Forbus and Cerezo were later circulated by the police. One of the three deserters was arrested and "revealed that their aim was to leave the country illegally." The other two hijacked a public city bus, with several passengers on board, and sped to the domestic flights terminal of the José Martí International Airport, the Interior Ministry added. At the airport, "the murderers killed with four shots one of the hostages, Lieutenant Colonel Víctor Ibo Acuña Velázquez of the Revolutionary Armed Forces, who despite being unarmed, tried to prevent the terrorist action," said the communiqué, which did not mention the participation of a civilian.

In an earlier trial, held in June in Santiago de Cuba, 847 km east of Havana, another military tribunal handed down a life sentence to a recruit and an inmate, as well as 30-year sentences to two other recruits, said Sánchez, who explained that he was informed of the case by family members of the accused. The sentenced soldiers, who were working as prison guards, had staged a revolt on Dec. 20 at the El Manguito prison near Santiago, and two military officers were killed in the process. Official reports on the incident are unavailable, said Sánchez.

In his opinion, the recruits were "technically" eligible for the death penalty in both cases, and the sentences they received show that "the *de facto moratorium*" in place since early 2003 is still in effect. In April 2003, 11 armed individuals seized a ferry with dozens of passengers on board, with the aim of defecting to the United States. In a summary trial, three of the defendants, identified as the ringleaders, were sentenced to death, and were immediately executed by firing squad. The incident was part of a spate of hijackings of boats and planes by people attempting to defect to the United States. The Cuban government accused the U.S. of hatching a "sinister plan (to cause) provocation."

The government defends the death penalty as a judicial weapon that can be used to defend the country from external attack and potential internal activities aimed at destroying the state. It is also maintained to protect the population from the most heinous crimes. "The possible abolition of capital punishment in Cuba would be linked to a cease in the policy of hostility, terrorism and economic, commercial and financial warfare to which its people have been subjected for over 40 years by the United States," the Cuban Foreign Ministry said in a message to the U.N. High Commissioner for Human Rights in 2004.

The current General Assembly session will also vote for the 16th time on a Cuban resolution against the U.S. embargo of Cuba, which according to the Cuban government has caused 89 billion dollars in direct damages to the island since 1962. Cuban Foreign Minister Felipe Pérez Roque announced Tuesday that during the General Assembly session, he would hold "exploratory talks" with the European Union troika, representing the past, present and future EU presidencies. It is not known, however, whether the EU initiative against capital punishment will be included on the list of issues to be discussed. In Cuba, the death penalty is applicable to a number of crimes if aggravating factors are present, although it cannot be applied in the case of people under 21 or to women who were pregnant at the time the crime was committed or when the sentence is handed down. In practice, the death sentence has never been applied against a woman since the Jan. 1, 1959 triumph of the Cuban revolution led by Fidel Castro.

According to Amnesty International, the United States is the only country in the Americas to carry out the death penalty since 2003. And only six countries - Iran, Iraq, Sudan, Pakistan, the United States and China - were responsible for 91 percent of all executions carried out in 2006. (Reported in September 2007) ■



Patricia Grogg

Soldiers Accused Of Hijacking Could Face Death Penalty

Havana - Two Cuban soldiers who attempted to hijack an airplane to fly to the United States are both wounded and awaiting trial, Cuban President Fidel Castro announced Tuesday, while accusing the United States of fomenting illegal emigration. "A great deal of serenity and sangfroid are needed to face these issues," said the convalescent Castro, 80, in an article published on the front page of Granma, the newspaper of Cuba's governing Communist Party. It is the fifth he has written in the last two months.

According to the initial reports, three armed conscripts doing their two years' military service, which is obligatory for young men in Cuba, escaped from a military base on Apr. 29, killing another conscript on guard duty, Yoendris Gutiérrez, and wounding an unnamed soldier in the process. One of the three deserters was arrested and "revealed that their purpose was to leave the country illegally." The other two hijacked a public city bus, with several passengers on board, and sped to the domestic flights terminal of Havana's José Martí International Airport.

After boarding an airplane, "the murderers killed with four shots one of the hostages, Lieutenant Colonel Víctor Ibo Acuña Velázquez of the Revolutionary Armed Forces (FAR), who despite

being unarmed, heroically tried to prevent the terrorist action," a communiqué from the Cuban Interior Ministry said on May 3. A few days earlier, the police had circulated photographs of the three deserters, identified as Yoan Torres Martínez, 21, Alain Forbus Lameru, 19, and Leandro Cerezo Sirut, also 19.

Dissident leaders told IPS that relatives of the fugitives said Forbus Lameru was the first to be imprisoned, which would imply that Cerezo Sirut and Torres Martínez were the presumptive suspects of the alleged events at the airport. The Interior Ministry communiqué did not mention any of their names. Castro gave further details, hitherto unknown, about the case, which he links with the Apr. 19 release of Cuban anti-Castro terrorist Luis Posada Carriles from U.S. custody on bond.

The two soldiers involved in the hijacking attempt have not yet been tried because both were wounded during the incident, one of them by shots fired by the other inside the plane, Castro said. The wording of the disclosure seems to imply that the deserters may face a different kind of trial from that of the Cubans who hijacked a ferry, kidnapping the passengers, in April 2003. Three of them received the death penalty. Observers pointed out that Castro referred to the sol-



Photo: Scott Langley

diers as "two young people" who committed crimes as a result of "aspiring to enjoy U.S. consumerism." In contrast, the earlier Interior Ministry report called them "criminals" and "murderers." Now many people in foreign countries are waiting for the reaction from the courts and the Council of State, at a time when the Cuban people are "profoundly indignant about what has happened," Castro commented, perhaps foreseeing an international reaction similar to the one in 2003. In his view, "the impunity and the material benefits that have rewarded all violent action against Cuba for nearly half a century stimulate such acts." Nothing like this had happened in months, he wrote. The 80-year-old Castro has been convalescing since intestinal surgery in July 2006, showing signs of gradual recovery since early 2007.

In April 2003, 11 armed individuals seized a ferry with dozens of passengers on board, with the aim of defecting to the United States. The hijackers were given a summary trial and three of the defendants, identified as the "most active and brutal ringleaders," were sentenced to death. The sentence was carried out immediately. The incident was part of a spate of hijackings by people attempting to defect to the United States. The Cuban government accused the

U.S. of hatching a "sinister plan (to cause) provocation." With respect to the April 2003 passenger ferry hijacking, Castro said the death penalty had to be applied "without a moment's hesitation" in order to strike at the root of a situation that was threatening national security. The verdict drew adverse reactions even from staunch supporters of the Cuban revolution. In a lengthy interview that Castro gave to French journalist and editor Ignacio Ramonet in 2006, the Cuban leader said he believed Cuba was gradually moving towards a future in which the country would be in a position to abolish capital punishment.

The death penalty has not been applied in Cuba since April 2003. Under Cuban law, it cannot be imposed on people under 20 years of age, nor on women who were pregnant at the time of committing a crime or when they are sentenced. Elizardo Sánchez of the Cuban Commission for Human Rights and National Reconciliation, a dissident group, told IPS that "technically" the soldiers could be sentenced to death. He pointed to the two murders committed by the soldiers, according to the official communiqué, and the attempted hijacking of an airplane, to which the law against terrorism could apply. (Reported in May 2007) ■



Peter Ischyryon

Death Sentence Thrown Out For Bishop's Killers

St. George - Grenada celebrated its 33rd anniversary of political independence from Britain on Wednesday with the usual pomp and ceremony befitting such an occasion. But for 13 former political and military officials, Feb. 7 could also mark the turning point in their efforts to be released from prison more than 23 years after they were convicted of murdering the island's first left-wing Prime Minister Maurice Bishop and members of his government in a palace coup.

Ironically, their freedom could come through the intervention of an institution that Grenada and other Caribbean countries still regard as a remnant of the colonial era and are now seeking to replace with the region's own Caribbean Court of Justice (CCJ). The ruling by the London-based Privy Council that the death sentences imposed on the 13 men, including Bishop's own deputy, Bernard Coard, and the head of the then People's Revolutionary Army (PRG) Hudson Austin, are invalid and that they should be re-sentenced was greeted with much enthusiasm by the lead defence lawyer for the group, Trinidadian Keith Scotland. Scotland, who said he would be traveling to Grenada on Thursday to discuss the new developments with his clients, says

he will ask the Grenadian courts to set an immediate date for the re-sentencing. *"I am totally gratified and I feel that we have at least taken a step in the right direction and that justice has been done in this case,"* he said. *"The Privy Council has vindicated our position, which from the outset was that anything to do with the sentencing should have been done by a competent impartial court,"* Scotland told reporters.

On Aug. 15, 1991, Grenada's governor-general commuted the death sentences to life imprisonment on condition that each of the convicted men would be *"kept in custody to hard labour for the remainder of his natural life."* In their 12-page ruling, the five Law Lords agreed that the governor general was not legally empowered to amend the sentence. *"The validity of the life sentence substituted by the warrant of commutation is dependent upon the validity of the sentence of death. In the absence of such a sentence, the Governor-General has no power to order that the appellants be imprisoned for life and the appellants therefore remain held in detention without lawful authority,"* they ruled.

Coard and the 12 other appellants were among 17 people, including Coard's wife, Phyllis, who were convicted of



Maurice Bishop and Fidel Castro 2005 | Photos: www.latinamericanstudies.org

murdering Bishop and other members of his left-wing administration in October 1983. The killings brought to an end Grenada's flirtation with a popular but undemocratic government that had ousted the Sir Eric Gairy administration in the English-speaking Caribbean's first ever coup. Last December, three of the convicted men were released after spending 23 years in jail. Phyllis Coard has been out of prison for the past two years seeking medical treatment for cancer.

The men had also gone to the Privy Council contending that the imposition of the death sentence was unconstitutional, and in its ruling the Privy Council noted that the state did not contest that point.

The British Law Lords pointed to several cases involving other Caribbean states with similar constitutions to Grenada's, and noted that upon the true construction of the Grenadian constitution, such a sentence was unconstitutional at the time it was passed in 1986. *"The result is that section 230 of the Criminal Code must be interpreted to mean, and has meant since the Constitution came into force in 1974, that the death penalty for murder is discretionary: a person convicted of*

murder may be sentenced to death but may instead be given a lesser sentence. The judge did not exercise this discretion and the sentence was therefore unlawful. There appears to be no adequate mechanism in Grenada for providing the appellants, even now, with the judicial sentencing procedure to which they were entitled," the Law Lords wrote. *"The only prospect of a review of the sentences is by means of the exercise of the royal prerogative of mercy, which depends entirely upon executive discretion."*

In addition, the Privy Council noted that the prison rules require that the Board of Review review the life sentences of all prisoners after the first 12 months have been served and thereafter at four-year intervals, but this not appear to have been done in the appellants' case. In their 12-page judgment calling for re-sentencing, the Privy Council noted that *"perhaps most important is the highly unusual circumstance that, for obvious reasons, the question of the appellants' fate is so politically charged that it is hardly reasonable to expect any Government of Grenada, even 23 years after the tragic events of October 1983, to take an objective view of the matter."* (Reported in September 2007) ■



Inés Benítez

Guatemala Complies With Inter-American Court Ruling

Guatemala City - The Guatemalan justice system commuted a death sentence handed down in 1999 to 40 years in prison this week, in compliance with a 2005 ruling issued by the Inter-American Court of Human Rights. In May 1999, Ronald Ernesto Raxcacó was sentenced to death for the kidnapping of an eight-year-old boy under article 201 of the Guatemalan Penal Code that was modified in 1996 so that it automatically imposes the death penalty for anyone convicted of kidnapping regardless of whether the victim suffers any harm at all, and does not allow the judge to consider attenuating circumstances.

Raxcacó has been transferred to another prison, where he is now being held in better conditions, Ovidio Girón, who presented his case to the Inter-American Court in 2005, told IPS. The case was referred to the Inter-American Court in September 2004 by the Inter-American Commission on Human Rights (IACHR) after the Centre for Justice and International Law (CEJIL), the Institute for Public Criminal Defence in Guatemala and the Guatemalan Institute of Comparative Studies in Penal Sciences (ICCPG) filed a complaint in 2002.

"We appreciate that the Guatemalan state has complied with the Inter-American Court verdict in a reasonable timeframe. It is a step forward," CEJIL lawyer Marcela Martino told IPS after a

Guatemala court commuted Raxcacó's sentence on Wednesday. David Dávila, with the ICCPG, also described the compliance with the sentence as "*an advance, an achievement after many years of work,*" although he considered the 40-year sentence "*still very long.*"

Raxcacó was found guilty of the August 1997 kidnapping of eight-year-old Pedro Alberto de León, who was seized while waiting for the school bus near his home in the capital. The boy was rescued the following day by the police. This is the second time the Guatemalan state has implemented an Inter-American Court sentence. In June 2006, Fermín Ramírez, who was convicted of the rape and murder of a 10-year-old girl, also had his death penalty commuted to 40 years in prison. In the case of Raxcacó, the Court pointed out that article 201 of the Penal Code was modified to expand the scope of the death penalty after Guatemala ratified the American Convention on Human Rights, which prohibits expansion of the application of the death penalty. In addition, it ordered a sentence "*proportional to the nature and gravity of the crime.*"

The Court also urged the Guatemalan state to reinstate the presidential power to pardon or commute sentences and put an end to a legal vacuum that is blocking death row prisoners from exhausting all legal means of defence and seeking a pardon or the

Photo: www.revolt.es.org

commuting of their sentences. Up to Wednesday, Raxcacó was one of 21 inmates on death row who have spent between five and 11 years in isolated wings of various Guatemalan prisons. In 2000, Congress revoked 1892 legislation known as the "pardon law", under which the president can either pardon a death row convict or allow the execution to go ahead.

A de facto moratorium on executions has been in place since then, although capital punishment is still on the books. The American Convention on Human Rights, which was ratified by Guatemala in 1978, states that the death penalty cannot be applied as long as any appeal is pending. In August 2006, the right-wing Unionist Party (PU) submitted a draft law to reinstate the presidential pardon power, which has made it through the first few obstacles in Congress. The two candidates who will face off in the Nov. 4 presidential runoff elections, the centre-left Álvaro Colom and the rightwing Otto Pérez Molina, have both pledged to remove the de facto moratorium on capital punishment. In its sentence, the Court ordered the Guatemalan state to provide Raxcacó with adequate medical and psychological treatment and medicines as well as educational and labour activities aimed at making his reinsertion in society possible once he serves out his sentence.

Girón, at the Institute for Public Criminal Defence in Guatemala, criticised *"the injustice and lack of proportion between the crimes that are committed and the sentences that are handed down."* *"We still have flawed legal proceedings, people who have been wrongly sentenced to death,"* said Girón, who called for a reform of article 102 of the Penal Code, to live up to the observations of the Inter-American Court. In this impoverished, violence-wracked Central American country of 13 million, the death sentence is applicable to crimes like murder, kidnapping, rape of children under 10, and some drug trafficking-related offences. Sixty percent of those on death row in Guatemala have been sentenced for kidnapping (some of the cases involved the death of the victim), and 40 percent for homicide. *"We hope the reforms of the penal code and the draft law"* on the presidential pardon will be approved, said Girón.

In an open letter to Guatemalan legislators in May, the International Federation of Human Rights Leagues (FIDH) expressed concern over several aspects of the draft law, while calling for the abolition of capital punishment in Guatemala. The FIDH said the draft law runs counter to international human rights law by establishing a timeframe of just 30 days for the president to decide on death

penalty cases. It also criticised the fact that if the president fails to make a pronouncement on a case, the sentence automatically proceeds to execution, based on the tacit denial of a pardon.

Martino also said the latest version of the draft law *"does not fulfil the requisites"* outlined by the Inter-American Court, which said executions should not go ahead until the president reaches a decision on whether or not to grant a pardon. CEJIL said in May that the draft law creates a procedure for granting a pardon for death row inmates and establishes that the power to grant or reject it lies with the president, but does not specify which administrative body should process the request for a pardon - a gap that affects the convicted party's right to a defence.

Furthermore, the NGO stated, the draft law fails to specify the criteria on which the decision on whether or not to grant a pardon or commute a sentence is to be based. Opinion polls show that the death penalty is supported by a majority of the public in Guatemala, where 50 percent of the population officially lives below the poverty line - or as much as 80 percent according to unofficial figures - and which has one of the highest per capita murder rates in Latin America. A total of 2,857 homicides were recorded in the first half of 2007 alone. *(Reported in October 2007)* ■



Inés Benítez

Inmates In Limbo

Guatemala City - Twenty-one inmates have spent years on death row in Guatemala because of a legal vacuum that has brought a de facto halt to executions but has done away with the president's right to pardon prisoners or commute their sentences. *"I have never been a trouble-maker, nor a lover of violence,"* said Carlos García*, a former Guatemalan police officer who has spent 11 of his 41 years of life in high security prisons, sentenced to death on charges of planning a kidnapping.

In the Centro de Detención Preventiva in Guatemala City, the dark-skinned man with a thick moustache told IPS he is innocent, and complained about the discrimination suffered by death row inmates. *"The only thing they haven't done is shackle us to the wall,"* he said. No executions have been carried out in this impoverished Central American country since 2000, but the death sentence remains in place, applicable to crimes like kidnapping (even if the victim does not die), rape of children under 10, and some drug trafficking-related offences.

The death row inmates, 16 of whom were defended by court-appointed public defenders and five of whom have private attorneys, have spent between five and 11 years in prison, most of them in isolated wings of high security penitentiaries, and with no chance of exhausting the legal process available. During the government of Alfonso Portillo (2000-2004), Congress overturned an 1892 law on presidential pardons, leaving Guatemala without any procedure for prisoners to be pardoned or amnestied or to have their sentences commuted.

The de facto moratorium has been in place since the law was repealed, David Augusto Dávila, in charge of the death penalty and extrajudicial executions programme of the non-governmental Institute for Comparative Studies in Penal Science of Guatemala, explained to

IPS. That means Guatemala is in contravention of international conventions that it has ratified, like the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted in 1984 by the U.N. Economic and Social Council (ECOSOC).

Guatemala is one of only three countries in the Americas, along with Cuba and the United States, where the death penalty is still applicable to common crimes. A draft law to reinstate the presidential pardon power was introduced to Congress in August 2006 by the small Unionist Party. But according to Dávila, the draft law would actually be favourable to executing the death row inmates, because it would give the president only 30 days to decide on cases, and would allow the execution to go ahead if the president does not take a stance.

García, one of 78 prisoners who escaped in 2001 from *"Infierno"* (Hell) - as the Maximum Security Prison of Escuintla in the southeast of the country has been dubbed - and were recaptured, said he does not believe in the justice system. *"The laws are ok, but not those who apply them,"* he told IPS. His court-appointed lawyer alleges that the courts did not respect the constitutional principle of equality when his client's sentence was handed down, because in similar cases, the death penalty has been commuted to life in prison.

A father of five, whose partner left him, García said he does not think about death. *"You don't really accept that that moment will come, because that would be like accepting that I won't help take care of my grandchildren, just like I have missed out on raising my children. It's sad and fills you with a sense of desperation."*



Photo: Scott Langley

"The uncertainty, the not knowing if or when they will be executed, creates anguish, desperation and anxiety among the inmates, and wears down their health," said Dávila, who also pointed to the stigma borne by death row inmates and the poor overall conditions, like overcrowding and lack of basic services in prisons, where riots are frequent. For five years, García was hardly ever allowed out of his cell. *"They would open a tiny little slot in the door to give us our food, and they let us out only for showers."* A month ago he was transferred to a wing that holds 1,500 inmates. He said he is grateful to have more contact with other prisoners. His hope is not that his sentence will be commuted. *"The justice I am hoping for is my freedom,"* he said.

"Waiting to be executed is torture," the national coordinator of the unit in the office of the public defender that challenges sentences, Nidia de Corsantes, told IPS. She said that of the 67 death penalty cases assigned to the unit since 1994, the public defenders have gotten 51 of the sentences overturned because of procedural errors and other reasons, while 16 are still standing. Two verdicts handed down by the Inter-American Court of Human Rights against Guatemala in 2005 warned that justice is not always properly administered in this country and called for the reinstatement of the presidential power to pardon death row inmates, Diego de León, in charge of political affairs in the Myrna Mack Foundation, a local human rights group, told IPS.

Thanks to the Inter-American Court rulings, Fermín Ramírez, who was sentenced to death for the rape and murder of a 10-year-old girl, and Ronald Raxcacó, who was given the death penalty for kidnapping charges, had their sentences commuted. When two men were executed by firing squad in 1996, one of the executions - which were tele-

vised - was botched, requiring a coup de grace to complete the job. The howls of outrage from the international community prompted the government to switch methods.

The latest executions, one of which took place in 1998 and two in 2000, were carried out with lethal injection, and went ahead despite appeals for clemency lodged by the Inter-American Commission on Human Rights. At least 1,591 people were executed in 25 countries in 2006, according to the London-based Amnesty International. Sixty percent of those on death row in Guatemala have been sentenced for kidnapping (some of the cases involved the death of the victim), and 40 percent for homicide. *"It has been clearly demonstrated that capital punishment does not work as a dissuasive element,"* said de Corsantes.

The secretary of Guatemala's Catholic Bishops' Conference, Gonzalo de Villa, told IPS that the death penalty is *"undefensible"* and *"a morally illicit formula that does not achieve the objectives it pursues."* Dávila argued that an increase in social spending is the only way to bring crime levels down in a country where 56 percent of the population of 12.7 million is living in poverty (or closer to 80 percent, according to unofficial figures). Official statistics indicate that 5,000 people are murdered annually and dozens are kidnapped in Guatemala, where youth gangs known as *"maras"*, organised crime and extrajudicial killings are extremely pressing problems.

Opinion polls show that a majority of Guatemalans support the death penalty and even the *"social cleansing"* of suspected gang members carried out by members of the security forces. *"There is a great deal of hypocrisy in the justice system"* because *"on one hand, people are sentenced to death, and on the other you have extrajudicial killings."*

But it isn't by executing people, either judicially or extrajudicially, that the problems will be solved," said Edgar Celada, an adviser to the Human Rights Ombudsman's Office. The candidates in the campaign for the Sept. 9 general elections are promising *"total security"* and a tough approach towards crime.

"The people are tired of being victims and feeling vulnerable to appalling crimes," said Mario Polanco, director of the Mutual Support Group (GAM), a human rights organisation that forms part of a network of groups opposed to the death penalty. GAM reported that 927 murders were committed in the first quarter of the year, and that 116 of the victims were women, 11 were girls and six were boys. Given the spiral of violence, the organisations fighting for the abolition of the death penalty are *"swimming against the current"* and draw fire from people who accuse them of *"defending criminals,"* said Polanco. In 2002, then president Portillo submitted a draft law to abolish capital punishment, but it was almost immediately voted down in parliament. Against that backdrop, it would seem unlikely that President Oscar Berger, who has publicly come out against the death penalty, or whoever is elected in the upcoming elections will take the political risk of attempting to do away with capital punishment or deciding the fate of the 21 death row inmates, say observers.

It's visiting time at the Centro de Detención Preventiva, and dozens of women, many of them with small children, are lined up outside, waiting to see their loved ones. *"I'm afraid I might die,"* García admits, finally. *"I feel sorry for my daughters. I only regret not having been with them all of these years."* (Reported in May 2007) ■

Angel Páez

President's Bid Unlikely To Save Bill

Lima - In an attempt to overcome the congressional defeat suffered by his death penalty bill, Peruvian President Alan García said he would seek a referendum to allow citizens to vote on whether or not they want capital punishment for terrorists. Forty-nine members of Congress voted against García's bill late Wednesday and decided that it should be shelved. The initiative only won the support of 26 governing APRA party legislators and supporters of former president Alberto Fujimori, grouped in the Alliance for the Future. The session was attended by 75 of the 120 members of parliament. In response, García said he respected the legislators' decision, but that it was "out of sync with the public, 80 percent of whom (according to the polls) are in favour of the death penalty for terrorists." "When the political class fails to respond to what the people think, it seems anti-democratic not to consult them (by means of a referendum)," the president argued, after his first congressional defeat in his nearly six months in office. But the president is unlikely to enjoy success in his bid to call a referendum.

The chairman of the congressional constitution commission, APRA lawmaker Aurelio Pastor, who had lobbied for approval of García's bill, told the press that the constitution does not allow a referendum to be held on an initiative that suppresses a fundamental right like the right to life. One of the clauses of article 32 of the constitution states that the suppression of fundamental rights cannot be submitted to referendum. The leader of the APRA legislators, Javier Velásquez, also expressed his doubts on the viability of García's proposal to hold a referendum. "A constitutional reform would be necessary in order to submit the death penalty for terrorists initiative to referendum," Velásquez told IPS. "The APRA members of Congress have not met to analyse the pre-

sident's new proposal." "After the vote to shelve the bill, I believe it is improbable that Congress will approve a reform that would make it possible to call a referendum on the death penalty. For now, it is a closed issue for us, and we are working on other things." A Constitutional Court magistrate who spoke to IPS on condition of anonymity said it would not be appropriate to call a referendum for the public to express its views on whether or not those found guilty of terrorism charges should be executed. And if Congress did eventually approve García's proposal, the Constitutional Court would have the final say.

The "Democratic Constituent Congress" (Congreso Constituyente Democrático, CCD) created by former president Fujimori (1990-2000) after he dissolved the legislature in his Apr. 5, 1992 "self-coup", adopted the death penalty for terrorists. At the time, the country was still in the grip of a civil war between government forces and the Maoist Shining Path (Sendero Luminoso) guerrillas and the smaller Tupac Amaru Revolutionary Movement (MRTA), when insurgents and suspected collaborators were imprisoned on terrorism charges. However, Fujimori did not apply the death penalty, among other reasons because the Inter-American Court of Human Rights reminded the government that as a signatory to the American Convention on Human Rights, it could not introduce the death penalty.

What García's bill would have done is to incorporate the death penalty in the penal code, in order to make it effective. But the legislators of the Nationalist Party, the Union for Peru and the National Unity coalition voted it down. The failure of García's bill in Congress was also a defeat for the Fujimoristas who, in an undeclared parliamentary alliance with the APRA lawmakers, backed the death penalty initiative.



Photo: Amnesty International

Both García and Fujimori are facing cases in the Inter-American Court, for human rights violations allegedly committed by their past administrations. García was president of Peru from 1985 to 1990. Fujimori fled to Japan in 2000 to avoid prosecution when his government collapsed amidst a major corruption scandal. He is currently in Chile, facing extradition to Peru on corruption and human rights charges.

Juvenal Ordóñez, spokesman for the Nationalist Party - whose members voted against the death penalty bill - said that behind the initiative lurks a desire to challenge the American Convention on Human Rights, with the ultimate aim of refusing to comply with the imminent Inter-American Court rulings, which are expected to find García and Fujimori responsible for human rights abuses. *"We rejected García's bill because we discovered that it was concealing the government's aim of denouncing the American Convention on Human Rights and withdrawing from the jurisdiction of the Inter-American Court. Why? To try to save his ally Fujimori, and for García to save himself, because sentences for human rights violations committed by their governments will soon be handed down,"* Ordóñez told IPS.

Asked about García's proposal for a referendum, Ordóñez said *"That shows that the president has not read the constitution. A referendum is prohibited when the right to life is involved."* Legislator Luisa María Cuculiza, a representative of the Fujimorista lawmakers, confirmed that they would back García's proposal to call a referendum. *"We agree, because the people will have the possibility to decide whether or not they want the death penalty for terrorists. Consulting them is part of democracy. Didn't they want democracy? Well, there they have it,"* she told IPS. Constitutionalist lawyer Aníbal Quiroga León told IPS

that a referendum *"would violate the fundamental right to life,"* and that a referendum for abolishing the death penalty would be more viable. *"Applying the death penalty would imply, in juridical terms, restricting a fundamental right - the right to life. It would be unconstitutional and should not be proposed, and the election authorities should not accept the request for a referendum. The government should consider the case closed,"* Quiroga told IPS. García introduced the death penalty for terrorists bill to Congress in November, but the APRA legislators held a surprise debate on it after the Inter-American Court ruled that Fujimori and the Peruvian state were responsible for the May 1992 massacre of 41 prisoners facing terrorism charges in Canto Grande prison in Lima, a month after the former president's self-coup.

The Inter-American Court ruled that the victims did not die as the result of a shootout triggered by a riot mounted by prisoners belonging to Sendero Luminoso, as was officially reported by the Fujimori administration, but that they were singled out and killed by the security forces. The victims included some of the main leaders of Sendero. The Court ruling ordered the Peruvian state to pay reparations to the families of the victims of the massacre and to pay public homage to the victims. The second part of the sentence drew a loud protest from President García, who announced that he would consider whether or not to comply with the ruling.

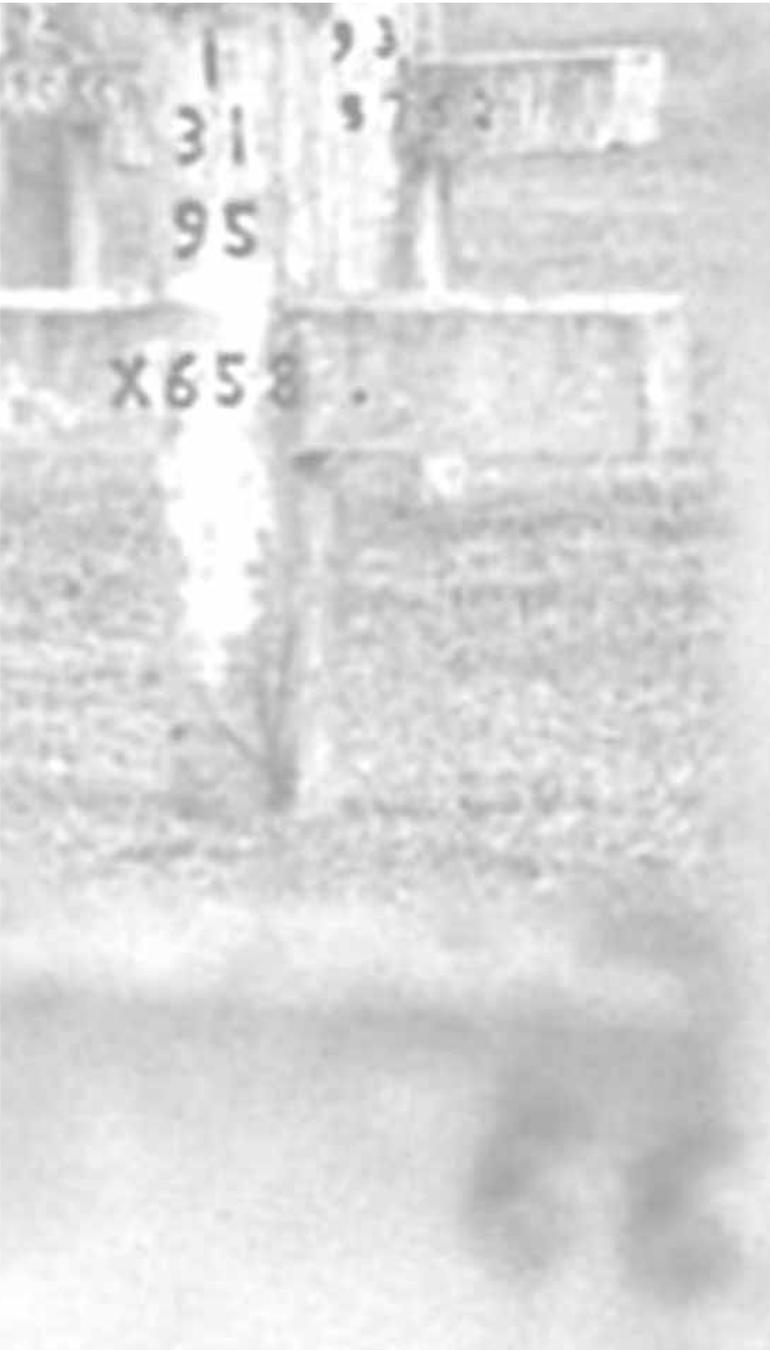
APRA leaders like Mauricio Mulder and Javier Velásquez even warned that Peru might withdraw from the jurisdiction of the Inter-American Court. Velásquez said he and his fellow APRA lawmakers did not feel that they had been defeated in Congress. *"We proposed what people in the streets are calling for: the death penalty for terrorists. If*

Congress decided not to listen to the voice from the streets, then we had better take a look at what is happening, why Congress is out of step." Ordóñez, however, said the real defeat was for García himself. *"Of course this is a political defeat for President García, since he was the driving force behind the introduction of the death penalty for terrorists,"* said the National Party congressman. *"Congress refused to commit itself to a question that would force us to allow people to be killed, in the name of the state and justice, which is something we do not want to be involved in. We do not want dead people on our conscience."*

The president of the non-governmental Human Rights Commission, Miguel Huerta, applauded the vote by Congress. *"President García's proposal implied a violation of the American Convention, because it was a clear violation of the right to life,"* he told IPS. *"Approving it would have put us in a controversial position on the international stage. And contrary to what APRA says, the vote against the bill is not a step backwards in the fight against terrorism, because we have very stiff laws. The Sendero leadership was recently sentenced to life in prison,"* he added. What most drew the attention of local human rights groups, said Huerta, was that the arguments set forth by García and his party coincided with those of the Fujimoristas. *"And who would benefit the most? Fujimori,"* he argued. García had also presented another death penalty bill, one that would provide for capital punishment for child rapists. Passage of that law, however, would require a constitutional amendment. Velásquez said that after this week's decision, approval of the child rapist death penalty bill is unlikely. *"I think that before submitting the bill to debate, we should seek a consensus, otherwise we'll lose again when it goes to vote,"* he said. (Reported in January 2007) ■

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Anuradha Kher

Moratorium Vote Leaves Deep Divisions

United Nations - It was a victorious day for the anti-death penalty movement on Nov. 15, as the Third Committee of the U.N. General Assembly passed a symbolic resolution calling for a worldwide moratorium on capital punishment. Ninety-nine countries voted in favour of the resolution, 52 voted against and there were 33 abstentions. Eight countries were altogether absent from the meeting - the Democratic Republic of Congo, Guinea-Bissau, Kiribati, Peru, Senegal, Seychelles, Somalia and Tunisia. The United States, Singapore and China joined many developing countries, notably from the Islamic world, in voting against the resolution, while abstainers included Bhutan, Cameroon, Central African Republic, Chad, Congo and Cuba.

Months of meetings, campaigns and conferences intended to push the moratorium at the U.N. General Assembly culminated in this week's vote, where conflicting views on the legality and effectiveness of capital punishment made for a tense atmosphere. *"The issue arouses a lot of strong feelings and that's what we saw among delegates at the meeting,"* Yvonne Terlingen, the Amnesty International's representative at the United Nations, told IPS. The draft resolution, which was co-sponsored by the European Union bloc and 60 other countries, still needs to be submitted to the 192-member General

Assembly for a vote. If approved, it would be non-binding, but would carry moral weight. Diplomats said that the GA was widely expected to endorse the decision, possibly next month.

"We are happy with the substantive majority of countries who voted for the resolution. It was more than what we had expected," Terlingen said. *"We believe this will encourage many more countries to abolish capital punishment or at least review their laws regarding it."* Eventually, that is what the anti-death penalty movement hopes for. One of the sponsors of the resolution and a major anti-death penalty advocate, the European Union, echoed this sentiment. *"This is a good day for human rights and the European goal of achieving the abolition of the death penalty all over the world. Based on this broad coalition, we will continue our efforts to reach this objective in the interest of humanity,"* said the EU commissioner for external relations, Benita Ferrero-Waldner.

In an emotional statement after the resolution was passed, Italy's Ambassador to the U.N., Marcello Spatafora said, *"I strongly hope that, in approving this resolution, we will be starting a process in which we will be all working together, we will be all walking together along the same path, with equal dignity,*



Prison cemetery Huntsville, USA. An "x" before the D.O.C. prisoner number indicates that the person was executed by the State, but no family member claimed the deceased's body
Photo: Scott Langley

with full mutual respect." But the vote tally that Terlingen and others on the anti-death penalty side view as a substantive majority and broad coalition, Singapore and others interpret as signaling no clear consensus on the matter.

"The vote on the resolution made clear that there is no international consensus on the death penalty. Almost half the membership of the U.N. did not vote in favour of the resolution. Many delegations were obviously uncomfortable with it. This is a criminal justice, not a

human rights issue," Vanu Gopala Menon, Singapore's ambassador to the United Nations, told IPS. He said that the main sponsors have only succeeded in exacerbating the divisions and polarising the membership by trying to impose their views on the rest of the world. "Singapore will not change its criminal justice system in response to this vote. It is our sovereign right to decide based on our own criminal justice system," he added.

Over the two days of debate, countries opposed to the resolution, including Barbados and Syria, argued that it smacked of moral righteousness on the part of proponents and that it touched on issues of national sovereignty. But Terlingen said that "the resolution was being backed not only by the EU but also by a large number of countries in Africa, South America and many others from the South." In an effort to make their point of view heard, countries such as Singapore, the U.S., Egypt and Barbados proposed 14 written and four oral amendments to the resolution - including the right to life of unborn children - were introduced. In the months leading to the vote, anti-death penalty activists feared that these amendments would jeopardise the resolution, but to their surprise, all of them were defeated in debates preceding the vote. For once, the United States and Iran were on the same side of an issue. "The U.S. recogni-

ses that the supporters of this resolution hold principled positions on the issue of the death penalty. Nonetheless, it is important to recognise that international law does not prohibit capital punishment," Robert S. Hagen, deputy representative to the U.N. Economic and Social Council, said in his statement at the meeting. He also said that the International Covenant on Civil and Political Rights specifically recognises the right of countries to impose the death penalty for the most serious crimes carried out with appropriate safeguards and observance of due process. In the United States, there is currently a de facto moratorium on capital punishment as the country's highest court reviews the legality of lethal injections as a method of execution.

According to Amnesty International, more than 90 percent of executions last year took place in China, Iran, Iraq, Pakistan, Sudan and the U.S. But it said that the number of recorded executions has decreased from 2,148 in 2005 to 1,591 the following year. A growing number of countries are abolishing the death penalty - 133 countries have done so in practice or in law. Two proposed death penalty moratoriums previously reached the floor of the general assembly: in 1994 and 1999. The former was defeated by eight votes and the latter withdrawn at the last minute. (Reported in November 2007) ■



Thalif Deen

Death Penalty Threatens To Split World Body

United Nations - A moratorium on death penalty is one of the most divisive political issues before the world body. The 27-member European Union (EU), backed by virtually every single major international human rights organisation, will introduce a draft resolution on the death penalty which is expected to split the General Assembly right down the middle.

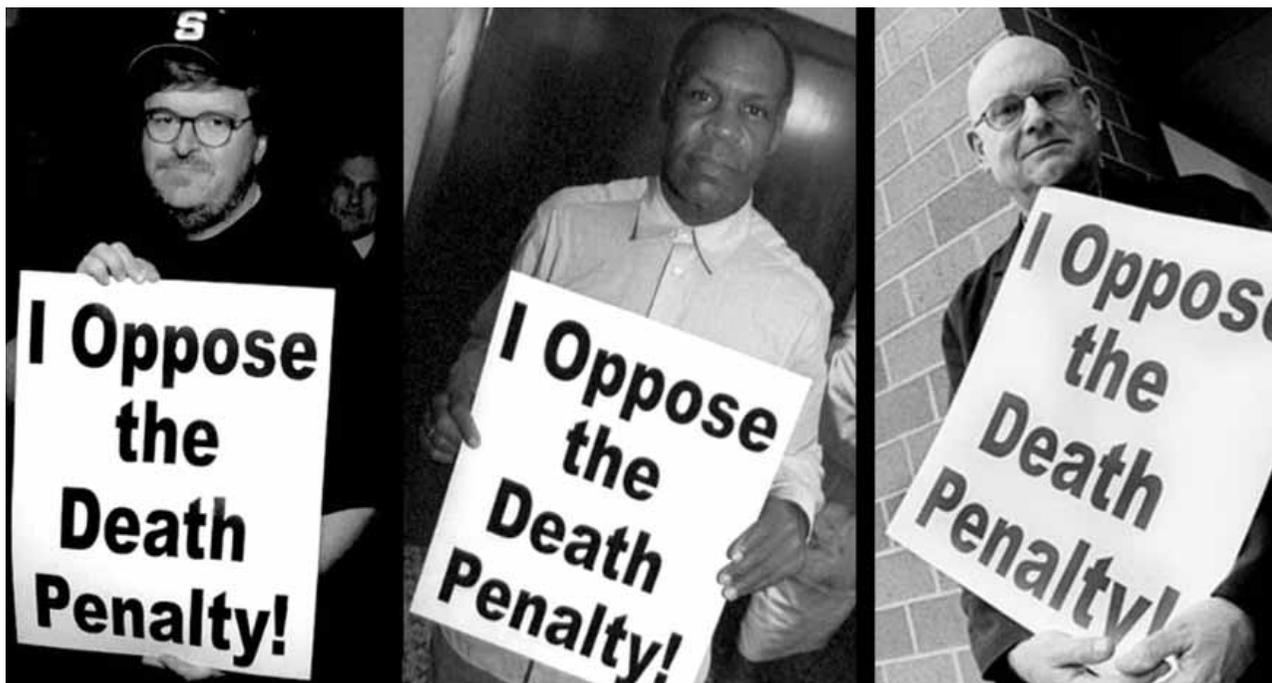
The EU is confident it will have a majority on its side of the aisle - perhaps helping adopt the resolution, which is not legally binding, by a narrow margin. But there is also strong opposition to the resolution by the Organisation of Islamic Countries (OIC), the League of Arab States, and also by China and some of the Caribbean and Asian countries, where capital punishment is still in statute books. Singapore, which has been a consistently vocal proponent of the death penalty, thinks the EU resolution will be *"divisive."*

Ambassador Vanu Gopala Menon of Singapore says that when the EU tables the draft resolution, it will be resisted by many countries which have the death penalty on their statutes and which are of the view that this is not a human rights issue but one dealing with law and order. *"Under these circum-*

stances, it is best for the EU not to try to push ahead with their draft," Menon told IPS. He argued such a resolution will only *"sour the atmosphere"* in the Third Committee (which will discuss and vote on the resolution before it goes to the General Assembly) and *"cause unnecessary divisiveness in the house."*

"It is not clear to me what the EU hopes to gain with this resolution. It may give them a sense of moral satisfaction but it is not going to change the positions of countries that maintain that the death penalty serves to deter serious crimes," he added. *"This attempt by the EU to impose its values will also be seen in a very poor light by many countries,"* Menon warned.

An EU official, speaking on condition of anonymity, told IPS that the draft is being *"co-authored"* by 36 member states, including the 27 EU members. But the number of countries *"co-sponsoring"* the draft resolution, he said, would be around 70. Asked if the EU is confident of obtaining a majority among the 192 member states, he said *"it is hard to predict"* because the draft is still being discussed and is yet to be finalised. An Arab diplomat, who is opposed to



Celebrities like Michael Noore, Danny Glover and Sam Shepard against death penalty | Photos: Scott Langley

the EU resolution, said he had heard that some of the non-EU states are *"not very comfortable"* with the existing draft and have asked for amendments, thereby delaying the tabling of the resolution.

But within the EU, there is a split as to whether it should accommodate some of the amendments proposed by non-EU sponsors. *"There are also rumours of arm-twisting and cheque-book diplomacy to win support for the resolution from developing nations,"* the Middle Eastern diplomat said. Since the draft is still being debated, the EU has not officially released it, leading to further speculation.

Addressing the conference on *"Europe Against the Death Penalty"* in Lisbon in early October, the European Commission President Jose Manuel Barroso laid down the official line: *"The European Union is unreservedly opposed to the use of capital punishment under all circumstances and has consistently called for the worldwide abolition of this punishment."* *"The death penalty is against human dignity. We want to give visibility to the efforts of the many non-governmental organisations and individuals who strive, day after day, towards the*

abolition of the death penalty," he added. According to the EU, a growing number of countries are abolishing the death penalty: 133 countries have done so in practice or in law. The European Commission also admits it has funded around 30 anti-death penalty projects worldwide since 1994, with an overall budget of about 15 million euros. In a pre-emptive strike - and before the draft resolution is to be introduced in the Third Committee - Ambassador Menon of Singapore set the ball rolling Tuesday when he raised the issue of death penalty during a discussion on *"promotion and protection of human rights."*

"My delegation is extremely disappointed, but hardly surprised, that the European Union has once again decided to introduce a resolution on the death penalty." He said delegations will recall that the last time the EU tried to foist such a resolution on the Committee was in 1999. *"Delegations may also recall how divisive this experience was. The sponsors of this draft resolution are certainly entitled to their views on the death penalty,"* Menon added. Singapore understands and respects the position of countries

which oppose the death penalty as a matter of principle, he added. *"That is their prerogative. It appears, however, that these countries are incapable of extending the same courtesy to countries that have chosen to retain the death penalty."* He said: *"My delegation would like to remind this committee that capital punishment is not prohibited under international law. Yet it is clear that the sponsors of this draft resolution have decided that there can only be one view on capital punishment, and that only one set of choices should be respected."*

For a large number of countries, including Singapore, the application of the death penalty is first and foremost a criminal justice issue, not a human rights issue, he argued. *"It is an important component of the administration of law and our justice system, and is imposed only for the most serious crimes and serves as a deterrent. We have proper legal safeguards in place to prevent any miscarriage of justice."* *"Every state has the sovereign right to choose its own political, economic, social and legal systems based on what is in their own best interests,"* he said. (Reported in October 2007) ■



Srabani Roy

Executions Across Country On Hold

Washington - A sudden halt to executions in Texas, the United States's most active death penalty state, may signal that there is now an unofficial national moratorium in place across the nation, pending a ruling by the Supreme Court on whether a specific lethal injection cocktail is legal. On Tuesday, the Texas Court of Criminal Appeals granted a temporary reprieve for a convicted killer, Heliberto Chi, giving the state 30 days to explain why his execution should go ahead.

This came five days after the U.S. Supreme Court stepped in to prevent the execution in Texas of Carlton Turner, Jr., only hours before he was due to die by lethal injection for killing his adoptive parents. At the same time, it also halted the execution of Thomas Arthur in Alabama. *"It is an unbelievable awakening to see Texas courts following the national norms,"* said Rick Halperin, president of the Texas Coalition to Abolish the Death Penalty, explaining that the Texas courts did not have a history of following precedent set by the U.S. Supreme Court.

The two Supreme Court execution stays were interpreted by legal experts as a signal to all U.S. states that they should now wait before carrying out any further executions until the Court ruled on the constitutionality of lethal injections as a method of executi-

on in two separate cases from Kentucky. The two, Ralph Baze and Thomas Clyde Bowling Jr., both convicted killers and now on Kentucky's death row, have appealed to the Supreme Court to halt their executions, arguing that the chemicals used in their state's lethal injections amounted to *"cruel and unusual punishment"*. This would make the current cocktail a violation of the eighth amendment of the U.S. constitution.

On Sep. 25, it was announced that the Supreme Court's ruling in the two cases would be handed down sometime during the court's current session, which formally opened on Oct. 1. The ruling could be announced by June 2008. Immediately following the Supreme Court's decision to review the two lethal injection cases, Texas executed Michael Richard, its 405th inmate since the Supreme Court re-instated the death penalty in 1976. Lawyers were not able to file his appeal in time to take advantage of the Court's decision and he was executed the same night. The Supreme Court's decision led 10 other states to halt executions.

The U.S. federal government and all but one of the 38 states still with the death penalty on their statute books, use lethal injections for their executions. Most states use the same cocktail of the three drugs administered in Kentucky, an anaesthetic, pancuronium bromi-



Preparations for the execution in Texas death row | Photo: Scott Langley

de which paralyzes muscles and potassium chloride which stops the heart. Nebraska is the only state which still uses the electric chair. The Supreme Court has not addressed the constitutionality of the method of execution for more than 100 years. There are currently more than 3,500 people on death row in the U.S. The two inmates in the Kentucky cases and many death penalty opponents argue that if the drugs in the cocktail are not administered correctly, the prisoner can suffer excruciating pain without being able to cry out before death.

The current flurry of legal activity around the lethal injection issue in the U.S. coincided with the 192-member U.N. General Assembly in New York. It is here that the EU will soon table a resolution for a worldwide moratorium on state executions. The moratorium will need a majority to pass. The U.S. is expected to strongly oppose this, but now with an unofficial moratorium apparently in place as its highest court prepares to review the legality of lethal injections, it may be more muted in the General Assembly and outside before the final casting of votes.

This might leave China, Iran, Iraq and Pakistan, responsible for most of the world's state killings, more isolated in the anti-moratorium camp. Anti-death penalty activists in the U.S. remain cautious over whether the Supreme Court will eventually rule that execution

by lethal injection is unconstitutional, fearing that the current unofficial moratorium may be short-lived.

"The U.S. Supreme Court has never determined execution to be unconstitutional, and it is not likely they will be any different with lethal injection," Halperin told IPS. "They may tinker with lethal injection but the U.S. Supreme Court is so pro-death penalty that they are unlikely to eliminate the death penalty. There may be a slight moratorium or delay in executions." But he agreed that given the high rate of executions in Texas - 26 so far this year - the Supreme Court's temporary stay on executions, followed by the state's own stay of Chi's execution, *"was very welcome". "Texas is the lynchpin, the battleground," Halperin said. "It's the worst place for judicial killings in the entire free world."*

The current reassessment of lethal injections, as well as the upcoming attempt to get the U.N. General Assembly to adopt a worldwide moratorium, could pressure the U.S. to follow suit. *"It's a snowball effect,"* Deborah Denno, professor at the Fordham University School of Law, told IPS, noting that recent developments were incremental steps that had happened quickly, and the momentum against the final abolition of the death penalty in the U.S. was building. *(Reported in October 2007)* ■



Thalif Deen

Governments Routinely Dodge U.N. Rights Investigators

United Nations - The United Nations is disappointed that an increasingly large number of member states are either refusing to respond to charges of extra-judicial killings or have turned down requests for visits by U.N. special envoys mandated to monitor arbitrary and summary executions in these countries. The 27 states that have so far failed to agree to visits range from Security Council members, such as China, Russia and the United States, to countries like El Salvador, Kenya, Thailand, Israel, Uzbekistan and Venezuela.

"The fact that 90 percent of countries identified as warranting a country visit have failed to cooperate with the system - and that the (Human Rights) Council has done nothing in response - is a major indictment of the system," said Philip Alston, the U.N. special rapporteur on extra-judicial, summary or arbitrary executions. *"No matter how grave the issue and how blatant or compromised the conduct of the relevant government,"* the Geneva-based Human Rights Council *"remains entirely unmoved,"* Alston said in a 21-page report to the 62nd session of the General Assembly, which opened last week and concludes in December. He also points out that he has *"long sought"* to draw attention to the violations of the right to life committed by the government of Iran *"as a result of its executions of juveniles and of persons accused of crimes which cannot be considered to be among the most serious."*

"Such executions," he noted, *"have recently gathered pace and the silence of the international community can only bring discredit."* Alston said that Iran had issued a *"standing invitation"* but has repeatedly failed to respond to requests for specific dates for a visit - *"despite several meetings and an extensive correspondence."*

The only countries that have facilitated visits during the past year are Guatemala, Lebanon and the Philippines. Brazil, the Central African Republic and Yemen have issued invitations but visits are still pending. An agreed visit to Guinea was aborted in March 2007 and the government subsequently failed to agree to a series of requests to re-schedule the mission. Meanwhile, six members of the Human Rights Council - Bangladesh, China, India, Indonesia, Pakistan and Saudi Arabia - have failed to issue requested invitations, according to the report. The remaining states with outstanding requests include Laos, Nepal, Singapore, Togo, Trinidad and Tobago, Uganda, and Vietnam.

Their responses *"have ranged from complete silence, through formal acknowledgement, acceptance in principle but without meaningful follow-up, to outright rejection."* On the practice of so-called *"targeted assassinations"*, Alston said he has addressed allegations of such killings to both Israel and the United States, as well as to countries on whose territories such killings have taken



Death row cells, Texas USA | Photo: www.handsoffcain.com

place. *"The largest challenge has been the lack of cooperation these countries have shown. Israel has not addressed the substance of allegations, and the United States has insisted that the whole issue falls outside the mandate"* of the special rapporteur, he added.

Tania Baldwin-Pask, adviser on International Organisations, International Law, and Organisations Programme at the London-based Amnesty International (AI), says this is a *"chronic problem"* for all U.N. human rights investigators. *"AI has consistently raised (this issue) because it is so fundamental to the functioning of the system that all member states cooperate with the special procedures. It goes to the heart of universality and non-selectivity, which so many states are keen to stress in other contexts,"* she told IPS. She also pointed out that the issue of non-cooperation, whether framed in terms of mission requests or in terms of responding to correspondence, regularly features in many of the reports of the U.N. special rapporteurs.

Alston, she pointed out, has been the most persistent in seeking to draw the attention of the Human Rights Council and the General Assembly to this issue. Regrettably, Baldwin-Pask said, the unwillingness of states to facilitate visit requests is quite common, although they have different ways in which they approach this. She said few take the approach of Singapore (and as highlighted in the

report) whereby they flatly refuse a mission request. Many take a considerable amount of time to *"discuss with their capitals"* and put in place the necessary arrangements for the visit to go ahead.

But because the Human Rights Council has no mechanism at this time to check - state by state - the status of mission requests, it is easy for states to simply ignore these requests. Consequently, she said, you have states such as Turkmenistan which has never received a visit by human rights monitors, despite 11 different mandate-holders over the course of the past few years seeking to go on mission there. And the Council, she complained, *"as yet not taking action in response"*.

It's not only the number of visit requests either - the special rapporteur on torture, for example, has been seeking a mission to India since 1993. So, it can also be a question of time. Citing another example, she said, it's not only the thematic mandate-holders who struggle to gain access, even country rapporteurs can find themselves unable to visit as well. The special rapporteur on North Korea has never been able to visit that country. Some member states like to use the opportunity of the Council or the General Assembly to announce that they have invited a particular U.N. rapporteur to visit, which on the face of it looks as if they are willing to cooperate with the special rapporteurs, or even the Council itself - only to postpone

the mission, she added. Of course, states rarely make a public announcement about the postponement.

Zimbabwe, which has never allowed visits by U.N. human rights envoys, announced at a Council meeting that it would be hosting a visit by the special rapporteur on violence against women. But then it has now postponed that visit and there is no indication of when it might take place. According to Amnesty International, Russia is one example of a state which had originally agreed to a visit by the special rapporteur on torture last October, but postponed it at the last minute apparently because visits to detention facilities would contravene national law, particularly with respect to carrying out unannounced visits and holding private interviews with detainees.

The United States has blocked a visit to its detention facility in Guantanamo Bay, Cuba, because it would not allow the rapporteurs to hold private interviews with detainees, Baldwin-Pask told IPS. *"The other point to note as well is that lack of cooperation in facilitating visits is one facet of a larger problem - states should also implement the recommendations arising from such visits. All too often you see that states are willing to host the visit but then take no action to follow up on the recommendations,"* said Baldwin-Pask. *(Reported in September 2007)* ■



Mark Weisenmiller

Florida Court Struggles Through IQ Labyrinth

Tampa - A Florida judge's decision to sentence a convicted killer to death, despite two extremely low IQ scores, has highlighted the possibility that some severely mentally retarded may be missing the lifeline thrown out to them by the U.S. Supreme Court five years ago, some activists say. On Aug. 24, John Couey, 49, was sentenced to death for the kidnapping, rape and murder of nine-year-old Jessica Lunsford in February 2005. Before the sentencing, Couey's lawyers argued that because Couey scored 64 on an IQ test he was mentally retarded. This meant he should be spared death by lethal injection and given a life sentence.

Under Florida law, the legal definition of mental retardation describes someone with an IQ score of less than 70. An average U.S. citizen has an IQ of 100. In 2002, the U.S. Supreme Court in the *Atkins v. Virginia* case ruled that the execution of mentally retarded people was illegal. In a 6 to 3 decision, the judges decided that a Virginian law that had allowed state-killing of the mentally retarded was illegal because it violated the constitution's eighth amendment. This prohibits cruel and unusual punishment. In the Couey case, Judge Ric Howard did not question this decision. But he rejected the defence's IQ test. He favoured another IQ test provided by the prosecution. This showed that Couey had an IQ of 89. Two weeks after making this choice, he sentenced Couey to death. Three days after the passing of the sentence, Couey was transferred to the state's death row in the city of Starke. He has an automatic right of appeal. The long

appeal process and the slow pace of executions means the average stay on Florida's death row is between 10 and 12 years.

Two other recent death penalty cases involving IQ tests have added to the controversy over the way courts in capital cases are dealing with the inmates of below average intelligence. On Apr. 11, James Lee Clark was executed by lethal injection in Texas, the leading state for executions in the U.S. Numerous anti-death penalty groups protested before the execution that Clark's IQ was below 70. Clark had been convicted of murdering a teenage woman in 1993.

But in Pennsylvania this August, concerns over the mental capacities of Jose DeJesus, convicted of two killings, saved him from the threat of execution. Numerous psychologists had testified that there was a question about his mental competence. A court ruled that the death sentence passed on him had been unconstitutional because, in part, he was "mildly mentally retarded". "*The U.S. is probably now executing mentally retarded people due to them slipping through the cracks in the criminal justice system,*" Jonathan Broun, a lawyer and expert on such borderline cases, told IPS in an interview. Cassandra Stubbs, spokeswoman of the American Civil Liberties Union, said that such problems arose because of the "*huge box of questions*" left behind in the Supreme Court ruling banning the execution of the mentally retarded in 2002. The court had not said what IQ score constituted mental retardation. It had also not ruled on whether an IQ test was absolutely necessary to decide the matter. "*In Florida you need*



The mother of Larry Robinson protests for her mentally retarded son, death row inmate in Texas | Photo: Scott Langley

an IQ score of 70 or below to be declared mentally retarded," she said. But every U.S. state - and there are 38 out of 50 which still have the death penalty on their statute books - were left to come up with their own standards. Stubbs predicted that the lawyers would eventually bring cases before the Supreme Court for clarification. Others questioned by IPS have pointed to other problem issues.

The Couey case in Florida illustrated that there was no single IQ test in use across the U.S. Two types of IQ test are used by most states, the Stanford-Binet test and the WAIS III (Wechsler Adult Intelligence Scale). There was also no uniformity about at what stage in a criminal case the question of mental retardation should be raised and decided, said Richard Dieter of the Washington-based

Death Penalty Information Centre. "There are a lot of variables out there among states on this matter. Some states have written (legislation) that an attorney should bring this up before the trial. Some states say it can be raised after the trial... Texas, for example, has no laws, no legislation on this issue," he said.

Ronald J. Tabak, a prominent civil rights and death penalty lawyer based in New York, told IPS that the issue of mental retardation was usually resolved before a case came to court. But the Supreme Court had not ruled whether in court it was the judge or the jury which decided the question. The unfolding controversy over IQ tests and mental retardation and the death penalty is bound to influence the ever-intensifying debate in the U.S. over its death penalty system. The majority of U.S. states are now drawing back from executing those sentenced to death or juries are preferring life sentences. But the state of Texas continues its "relentless pace of state-sponsored killing", the Dallas Morning News wrote in a strongly critical editorial this month. Both Texas and Florida are among the handful of states at the centre of another issue dominating the death penalty debate - the use of lethal injection as an execution method. Last year a Florida executioner missed a vein and it took 34 minutes for a visibly grimacing and writhing man to die. "Of the roughly 900 executions by lethal injections that have occurred since 1977, 40 have been botched," William Laner, and Keith H. Berge wrote in the most recent issue of the Mayo Clinic Proceedings. At the core of the problem was

the lack of training of the executioners. But the two doctors said that under no circumstances should doctors ever be of help in the "technology of killing". "Physicians and their drugs should be physically, philosophically, and symbolically removed from execution chambers," the two wrote. The American Medical Association prohibits doctors participating in state-authorised executions.

Absolute confidence in the U.S. justice system has been shaken by the more than 2,000 death row inmates who have had their sentence or convictions overturned since 1973. The arrival of the use of DNA and other advances in forensic sciences which have exonerated more than 100 people in other crimes has intensified questioning over the possibility of judicial mistakes and miscarriages of justice in death penalty cases.

The U.S. is also looking increasingly isolated in the world on the death penalty issue. Even some of the poorest of countries, such as the small central Asian state of Kyrgyzstan, have recently abolished capital punishment and are struggling to introduce a humane penal system which provides for eventual release of reformed prisoners back into the community. Sometime this year, the American Bar Association is expected to issue a report on the death penalty system in the U.S. This is expected to have a section on mental retardation and the death penalty. The exact date of the report publication is not yet known, Nancy Slonim, a member of the association's media staff, told IPS. (Reported in September 2007) ■



Adrienne Appel

Ohio Abolitionists See Light At End Of Tunnel

Boston - Support is slowly growing for the abolition of the death penalty in the U.S. Midwestern state of Ohio, considered by rights activists as a key state because of its historic, strong stand for the death penalty. "We are the state in the north that has killed the most people," Jeffrey Gamso, legal director of the American Civil Liberties Union of Ohio, told IPS. "But there are signs that even in a state like Ohio things are on the verge of starting to turn around." Gamso added: "Public support for the death penalty is down and death sentences are way down from a few years ago. Ohio is ripe for moving towards abolition." Juries were increasingly reluctant to agree to a prosecutor's call for a death sentence, reflecting the waning support for the ultimate sanction from the public at large.

As an indication of this, activists point to the swell of public opposition to the death penalty expressed last February. The new state governor, Tom Strickland, suspended three executions so he could review the cases. At the time, letters to the governor against the death penalty outnumbered those supporting it five-to-one, according to the Associated Press. Currently 38 out of the 50 U.S. states still employ the death penalty but support in many states appears to be waning. New Jersey, Maryland and Connecticut may abolish the death penalty wit-

hin a year or two, says David Elliot of the National Coalition to Abolish the Death Penalty. Ohio could follow some years later, Gamso and others in Ohio say. Ohio reinstated the death penalty in 1974 and since 1999 has executed 26 inmates, including two so far this year. It has 185 people waiting on death row, according to the Ohio Department of Rehabilitation and Correction. It has executed 369 people in its history. The southern state of Texas leads the country in executions. Since 1976, when the death sentence was reinstated by the U.S. Supreme Court, Texas has executed 400 inmates, according to the Washington-based Death Penalty Information Centre.

The waning support for the death penalty in Ohio is explained by growing concern that innocent people may have been put to death and new information that death by lethal injection may cause suffering, activists say. There has also been mounting evidence of racial bias in handing down death sentences. Since 1999, six people on Ohio's death row have been found to be innocent and been released from death row. This is a major reason for increased public doubt about the death penalty, Jim Tobin, an official with Ohioans to Stop Executions, told IPS. Criminal defence lawyers are also on the offensive challenging the state's lethal injection method of execution, fighting a case-by-case



Rights activists in a demonstration of Amnesty International in Washington 2001 | Photo: Scott Langley

struggle in the courts. They have succeeded in recently halting most executions in Ohio on these grounds, rights activists say. But up to now politicians have lacked the political will to follow the example of several other U.S. states and order a moratorium on executions because of these concerns, Ganso and others said. *"The governor could if he wanted to. He has absolute power to do these things. (But) he has repeatedly said he would not,"* Ganso said. Inertia has also been shown by other state institutions. *"The state legislature and the state's supreme court could act but have so far chosen not to do so,"* Tobin said. *"The make-up of the state courts is also not in our favour."*

Since taking up office last January, the state's attorney general Marc Dann has failed to live up to expectations that he might act against the death penalty. In the months prior to his election, he said that he had significant doubts about the fairness of Ohio's death penalty system and wanted the state to conduct an analysis of it. He has so far failed to call for this investigation. But three death penalty cases in the state continue to keep the issue in the news and are contributing to the continuing erosion of public confidence in the death sentence. They are also putting state officials under growing pressure to take a public stand. The most publicised is that of Kenny Richey, on

death row for 20 years. He was convicted of the arson murder of a two-year-old child. He was convicted on circumstantial evidence and he maintains he is innocent.

The U.S. Court of Appeals has twice ruled Richey's death sentence should be overturned because he received inadequate legal representation at his trial. In its devastatingly critical ruling on the conviction, the court said *"the prosecution's case depended on a cast of witnesses whose lives revolved around drinking and partying and some of whom might have had their own motives for implicating Richey"*. On Aug. 10, the court reaffirmed its first 2005 ruling and ordered the state court to retry or release him within 90 days.

A second case that has shaken public confidence in the death penalty is that of John Spirko, scheduled for execution in July but given a 120-day reprieve by Governor Strickland. This was Spirko's seventh reprieve because of doubts over his guilt. No physical evidence ties him to the crime, and charges against a co-defendant who linked him to the murder were dropped. *"Spirko's case is another clear sign that Ohio's system does not work,"* said Sister Alice Gerdeman in a statement. Gerdeman heads Ohioans to Stop Executions, which has gathered together

a coalition of 118 organisations and cities, including Cincinnati, Dayton and Oberlin, campaigning for a state moratorium on executions. The coalition also wants an investigation into the operation of the state's capital punishment system.

Public concern over the fairness of the death penalty system has also been voiced over the case of Jason Getsy, a convicted killer-for-hire, who was 19 years old when he committed the crime in 1995. He was given a death sentence, while the man who orchestrated the murder was not. A federal court recently denied Getsy's appeal. But six of the 14 judges dissented, saying Getsy's sentence was not fair. His case will be appealed to the U.S. Supreme Court, his lawyer, Michael Benza, told IPS. Judge Boyce Martin, delivering his dissenting judgement, said the case showed that the death penalty was *"arbitrary, biased, and so fundamentally flawed at its very core that it is beyond repair"*. Groups campaigning against the death penalty in the state believe they will receive wide public support when they hold a rally and lobby day at the state's legislature on Sep. 26. The public is tiring of the *"idea that we can kill our way out of our problems"*, Tobin, one of the rights activists who will be present on that day, said. *(Reported in August 2007)* ■



Matthew Cardinale

Inmate Gets Rare Last-Minute Reprieve

Savannah, Georgia - Troy Anthony Davis, a death row inmate in the U.S. state of Georgia whose guilt has been challenged by new evidence, won a 90-day stay of his sentence Monday, just hours before his scheduled execution. "I'm exhausted but elated," Martina Correia, Davis's sister, told IPS. "They [the Parole Board] were asking a lot of questions and were engaging. They were so respectful for the family. We had this perception, we've always been treated so badly because of what he's accused of. There was so much doubt in this case. They saw that today. Troy was calling my mother. She was sitting wrapped in a blanket. The lawyer called and said there was a 90-day stay. Troy said he was so thankful and he got on his knees to thank God," Correia said.

In the days preceding the scheduled execution, a wide array of advocates converged to save a man whose guilt seems uncertain, even unlikely, now that seven of nine witnesses have recanted in his case, and new witnesses have implicated another man. The International Action Centre of Atlanta and others staged a recent protest. Family members held a candlelight vigil. The Atlanta Journal-Constitution newspaper's editorial board criticised the pending execution. Even a former director of the Federal Bureau of Investigation under right-wing President Ronald Reagan, William Sessions, wrote a column in support of Davis. Davis was convicted

of murdering a Savannah, Georgia, police officer in 1989. No physical evidence or murder weapon was ever presented at his trial. "He's relieved he's not going to be killed, but he had made his peace with God. They moved him to 'Death Watch' today. He said we fought a good fight, let's remember the McPhail [victim's] family and pray for peace and understanding," Correia said. "We were just asking for them to be fair and objective. If any other court would've stepped up and examined any of this, we wouldn't have gotten this far. And they're actually doing what the court system should've done long ago," she added.

A press release issued by the state late Monday said the Georgia Board of Pardons and Paroles "will not allow an execution to proceed in this State unless and until its members are convinced there is no doubt as to the guilt of the accused..." "Whereas, those representing... Davis have asserted they can and will present live witnesses and other evidence to the members of the Board to support their contention that there remains some doubt as to his guilt... It is hereby ordered the execution... is suspended until midnight of October 14, 2007, or until this Board issues an order ..."

The meeting of Davis's lawyers and supporters with the Board lasted from 9 a.m. until 3:15 p.m., about six hours. After this, the Board met with state prosecutors. "My impression is there so



Protesters in Atlanta



Troy Anthony Davis | Photos: IPS

much material to go through today they didn't feel prepared. It does give them time to continue examining the facts," Laura Moyo, deputy director of Amnesty International USA Southern Regional Office, told IPS. "They still have a responsibility and a duty to consider clemency. One thing that could happen, there is an appeal to the Georgia Supreme Court, that could kick in before they make any kind of decision," she said. "We feel it means that hope is still alive that justice can still be done. But it doesn't mean that we have a victory. It just means there is more time," Moyo said. It also means additional time to increase public awareness about the case and issues at stake. "You're going to see continued interest, because some people are late coming to this story," Moyo said. "The legal team was not able to produce all the witnesses in person. Four witnesses came. But they do have the affidavits [for all witnesses]."

Georgia Congressman John Lewis was among those who spoke in support of Davis at the hearing Monday. Rep. Hank Johnson, also of Georgia, offered to speak in support of Davis, spokesperson Deb Speights told IPS. Attorneys for Davis have filed a motion for a new trial in state court, since the U.S. Supreme Court recently refused to hear Davis' case and he has exhausted his federal appeals. After a state judge declined to overturn the original ruling, his attorneys appealed to the Georgia Supreme Court. That

case is still pending. "Georgia law allows you to go back and say the world has changed so dramatically. It's like a safety valve, [but] it tends not to work very often. In most cases, you don't have dramatic new evidence," said Philip Horton, a pro bono attorney with the Arnold and Porter law firm. Davis is still hoping for clemency from either the court or the Board, his sister said. Experts say that the case, which has finally captured mass media attention in these final days, reflects a much more systemic problem in the United States, where procedural technicalities have become more important to many judges than innocence or guilt itself. "The federal courts are generally pretty hostile to these so-called post-conviction proceedings. They've set up a whole bunch of traps for the unwary. If you fail to do x, you waive your rights. Most of these things wouldn't occur to ordinary people. It's real easy to waive your rights," Horton said.

Davis did not have good public legal representation in his original trial due to lack of funding from the state of Georgia. Moreover, several witnesses recanted their testimony after the fact. "The first response of the courts is to say, be that as it may, it's too late for it now because you failed to raise it in time, or you failed to do something else," Horton said, describing what is called a procedural default. "The courts don't decide it on the merits. They decide

the claim can no longer be raised," he said. "When the prosecutors are asked about this in the press, they say they presented this evidence already to court after court after court. This is the way the game is played. The public doesn't have a clue." Several of the witnesses who recanted said they were pressured by police into implicating Davis, and that they were threatened with possibly being charged themselves if they didn't cooperate. "They said 'we've got Troy and maybe we'll come after you as an accomplice'," Horton said of the recantations. "Most of these witnesses were African American who were young and easily intimidated. Or one who had issues with the law, easily manipulated - she said at the time, 'I'm pregnant, I have four kids. I can't go back to jail'," Moyo said.

The restrictive laws that prevent courts from considering new evidence are contained in the 1996 Antiterrorism and Effective Death Penalty Act. The Act has dramatically undermined habeas corpus in the U.S. Two U.S. congressmen, Hank Johnson of Georgia and Artur Davis of Alabama, told The Hill newspaper in Washington, DC that the 1996 AEDPA should be revisited, but they know of no current efforts to do so. Thirty-four percent of all inmates executed since 1976 have been African American, while 79 percent of all victims in death penalty cases were white, according to statistics from the Death Penalty Information Centre. (Reported in July 2007) ■



Adrienne Appel

Voices For Abolition Grow Louder

Interview with Bill Pelke, anti-death penalty activist

Boston - In May 1985, Bill Pelke's beloved grandmother was brutally murdered in her Indiana home by four teenage girls. The court found Paula Cooper to be the leader and she was sentenced to die in the electric chair. Pelke was pleased with the verdict. But as the date of her execution drew near, Pelke realised that her death would not heal the pain he felt about losing his grandmother. In a complete transformation, Pelke decided to lobby against Paula Cooper's death. Pelke worked tirelessly. His campaign reached Europe, and soon more than two million Italians signed a petition against Paula's death. Pope John Paul II called for mercy on her behalf. Finally, in 1999 Paula was taken off death row and given 60 years in prison.

Pelke did not stop there. A retired steelworker, he has devoted himself full-time to ending the death penalty in the U.S. Today, he chairs the National Coalition to Abolish the Death Penalty, a leading abolitionist group in the U.S. He is also the founder of Journey of Hope, an association for families of murder victims, families of those who have been executed and families of those on death row. Each year, about 60 Journey of Hope members travel to one state and for two weeks they speak to churches, schools, lawmakers and others about what they have learned: that the death penalty causes more pain and suffering and does nothing to heal the pain of loss. Adrienne Appel, an

IPS correspondent who has reported extensively on the death penalty debate in the U.S., asks Pelke about his campaigning and why U.S. citizens are changing their minds about the death penalty.

IPS: In October, Journey of Hope will travel to Texas for two weeks. Why focus on Texas?

Bill Pelke: No state needs a Journey of Hope more than Texas. Texas is the state that has executed more people than any other state. [About half of people executed in the U.S. each year are killed in Texas, according to the Death Penalty Information Centre.] We will travel there and tell our stories, and get out to people and touch people's hearts. When you touch people's hearts you can get them to rethink their position on the death penalty.

What we do is we travel with two storytellers to an event. One is a family member of a murder victim and one is someone with a death penalty connection, either a person who was exonerated, or a family member of someone on death row, or a family member of someone who was executed. We'll talk about the healing that comes with feeling compassion after a loved one has been killed. We'll talk about how the death penalty creates more murder victim family members.



Bill Pelke (right) and George White, founders of "Journey of Hope", Indiana, 2000 | Photo: Scott Langley

IPS: What exactly turned you away from Paula Cooper's execution?

Bill Pelke: Paula cooper was 15 and was the youngest female on death row in the U.S. My grandmother would have been appalled that this girl was put on death row. She would have had compassion for this girl's family. Even though my Christian faith taught forgiveness, I had no compassion. Every time I thought of my grandmother I thought of her dead on the dining room floor. I begged God to please give me compassion for this girl and her family. My prayer was answered and that brought a tremendous feeling of relief, and I no longer thought of my grandmother as she died but of the beautiful life she had lived. Seeing someone else die is not going to heal you from the pain of having someone close to you murdered.

IPS: What is happening in the U.S. today with the move toward abolition?

Bill Pelke: There is a real good possibility that New Jersey will be the first state to abolish the death penalty and this may happen within a year. Other states have come close in recent votes, including Nebraska, New Mexico, Maryland and Montana. There is real movement in those states.

IPS: What is causing the public to turn away from the death penalty?

Bill Pelke: One thing that impacts people and juries is the possibility of life in prison and life without parole. The person is put away for the rest of their life and society can still be safe from violent people. There also have been highly publicised exonerations. The public is aware that we make mistakes and that if a person is in prison and you've made a mistake that person can be released.

And we spend a lot of money on the death penalty. It costs three to four times more than life in prison. In New York, the last state to bring in the death penalty, they spent 150 million dollars in putting the death penalty in place. And there have been no executions in New York. That money could have been better spent. If we end the death penalty, that money can be put into preventive crime programmes, like basketball after school, to keep young people occupied and busy.

IPS: The religious community in the U.S. is very politically powerful. How much has it been involved lately in the effort to end the death penalty?

Bill Pelke: Very. Unitarians, Methodists and the Catholic church have taken a real strong stance and are working hard toward

abolition. Quakers also. They are more vocal today and are protesting. In December 1998, Pope John Paul II called for abolition, and said the death penalty was cruel and unnecessary. His call for action has finally reached a majority of Catholic churches. Bishops have also been making statements against the death penalty.

IPS: Does international pressure against state killings make a difference or is it viewed as meddling in U.S. affairs?

Bill Pelke: In Europe it's considered a human rights abuse and human rights have no borders. They offer support for what the National Coalition to Abolish the Death Penalty is trying to do. We feel they have a total right to express their support and we really appreciate it. I feel the U.S. portrays itself as a great human rights leader in the world and yet we have this terrible human rights abuse within our borders.

IPS: Many people on death row are there for killing a police officer. Why is this considered such a serious crime in the U.S.?

Bill Pelke: It's a terrible thing and they are there for our safety, so people should be outraged when a police officer is killed. But we should be outraged when anyone is killed. All victims are of equal value. (Reported in July 2007) ■



Srabani Roy

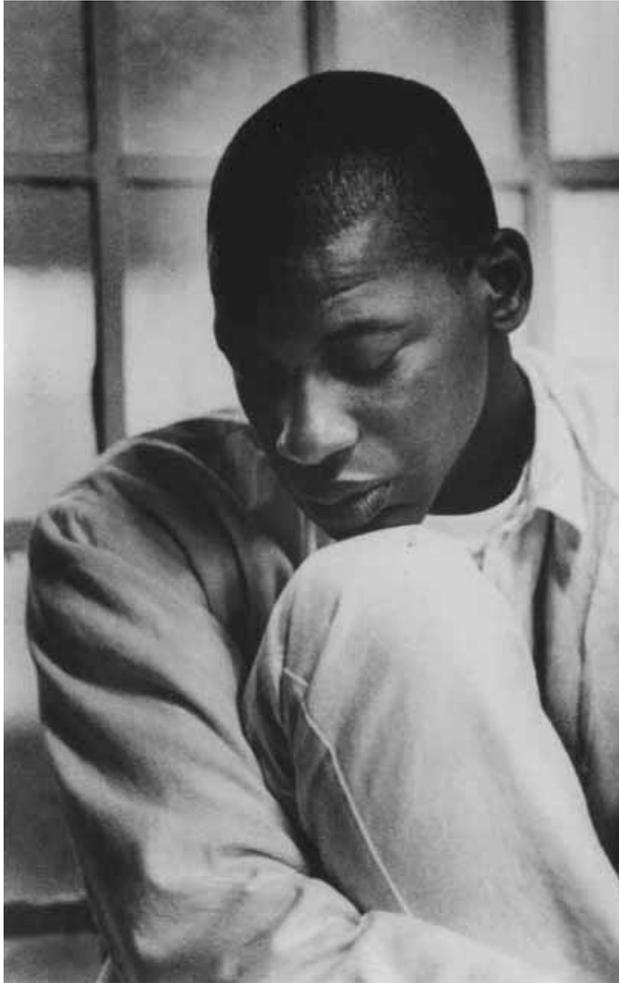
High Court Ruling Could Mean More Death Sentences

New York - A recent U.S. Supreme Court decision upholding the disqualification of a juror who expressed doubts about the death penalty, combined with an increasing number of U.S. citizens who say their moral convictions make them ineligible to serve as jurors in capital trials, could mean future juries will be less representative of the country's diversity and more likely to hand down convictions, death penalty opponents say. In June, the U.S. Supreme Court upheld the death sentence imposed by a trial court in Washington State in the case of Cal Brown, convicted of raping and killing a woman in a Seattle motel in 1991. The Court ruled the trial judge was correct in disqualifying a man from serving as juror because he had expressed doubts about the death penalty. The Court's 5-4 decision overturned an earlier one by a federal court of appeals.

In May, Juan A. Luna Jr., who was found guilty of killing seven people in a fast food restaurant in Illinois in 1993, was spared the ultimate punishment because one juror voted against sentencing him to death. In Illinois, as in most of the 38 states which have the death penalty, a death sentence must be unanimous. *"We are observing a decline in the use of the death penalty in the last six to ten years,"* said Richard Dieter, executive director of the Death Penalty Information Centre, a group opposing the death penalty. *"Much of this is due to a change in public opinion about the death penalty."*

Disqualified and dissenting jurors reflect this trend. Jurors are less willing to impose the death penalty, a fact illustrated by justice department statistics showing a steady decline in death sentences. In the 1990s, about 300 people were sentenced to death every year. In 2005, the number had dropped to 128. Last year, the number of death sentences reached the lowest level in 30 years, according to the Death Penalty Information Centre. A recent poll commissioned by the Centre, sampling 1,000 adults across the country, revealed that almost 40 percent of U.S. citizens felt that they would be disqualified from serving on capital juries. The numbers increase significantly for certain groups: 68 percent of African-Americans would exclude themselves, 48 percent of women, and 47 percent of Catholics. The margin of error for the survey was plus or minus 3 percent.

Dieter and other experts attributed the increasing lack of support for the death penalty to various factors, including reports of DNA exonerations, belief that the death penalty is not a deterrent for future crimes, and moral objections to taking a person's life. Among citizens in general, 87 percent said they believed that an innocent person had been executed in recent years, according to the Death Penalty Information Centre poll. Concern about the possibility of executing the innocent was also found to be a significant rea-



Glen McGillis, executed 25.01.2005 | Photo: Amnesty International

son for drawing back from imposing a death sentence. *"Among jurors, innocence continuously came up,"* Dieter told IPS.

The availability since the 1990s of a life sentence without the possibility of parole is another major factor in the drop in the number of death sentences. But citizens are almost evenly split between their support for the death penalty and life without parole as a punishment for premeditated murder, according to a Gallup poll last year. The *"single biggest"* reason for imposing the death penalty was to prevent the convicted person from killing again, Eric M. Freedman, a law professor at Hofstra University and an expert on the death penalty said, adding: *"The effect of life without parole is permanent incapacitation."*

But Robert Blecker, a professor at New York Law School and a supporter of the death penalty for the "worst of the worst" offenders, disagrees. *"Even in life without parole, a person can kill again,"* Blecker told IPS. *"He can kill fellow prisoners, officers, or medical personnel. Life without parole doesn't mean isolation. And life without parole sentences can be commuted by the executive."* Blecker also disagrees with poll findings. He argues that if people were asked about specific, concrete examples of the worst crimes, instead of only about the appropriate punishment for "murder", polls would show a much greater support for the death penalty. He believes the Supreme Court was right in its recent ruling, acknowledging that it could have long-term consequences on decisions in capital punishment cases.

In capital cases jury selection occurs under a process known as *"death qualification"*. Potential jurors are asked about their views and willingness to impose the death penalty. If their unequivocal opposition or endorsement of the death penalty is considered likely to impair their ability to follow the law, judges can exclude them from serving as jurors. *"Under pre-existing Supreme Court law, people who were opposed to the death penalty could be excluded. But if a juror simply expressed doubts, the juror had to be allowed to serve on the jury because they represented the majority of the country,"* said Freedman. *"With the recent Supreme Court deci-*

sion, we're more likely to get people on juries who are inclined to convict in the first place."

Brooke Butler, a legal psychologist at the University of South Florida who studies capital punishment juries, would agree. She has found that *"death qualified"* jurors tend to be *"male, Caucasian, moderately well-educated, politically conservative, Catholic or Protestant, and middle-class."* They also tended to have a high regard for authoritarian beliefs, were more prejudiced, pro-conviction and pro-death. Country-wide *"abolitionists far outweigh pro-death penalty people,"* Butler told IPS. The Supreme Court ruling was *"going to systematically exclude a vast number of people,"* she said.

Opponents of the death penalty also expressed concern that the resulting un-demographic make-up of future juries not reflecting the diversity of views of the American public, would result in more death sentences and convictions of innocent people. But they also say that the Supreme Court decision could have a *"boomerang"* effect over the long-run. *"The impact of this Supreme Court decision is self-defeating,"* said Freedman. *"If prosecutors were to press this case, they would convict more innocent people. And then if that were revealed, it would invalidate the death penalty."* (Reported in July 2007) ■



Brian D. Pellot

Vote On U.N. Moratorium Slated For Success

United Nations - Persistence, passion and an inspired last-minute political push from Italy's Transnational Radical Party and Hands Off Cain has put the human rights alliance one step closer to establishing its ultimate goal of a universal moratorium on the death penalty. On Jun. 18, the EU Council of Foreign Ministers meeting in Luxembourg formally agreed to table their draft resolution on a U.N. moratorium during the next U.N. General Assembly session beginning in September. *"Win or lose, I think this is a strong reflection of the high importance of death penalty abolition to the cause of human rights worldwide,"* Mark Warren, a legal researcher specialising in application of international law for the death penalty, told IPS. Death penalty abolition activists had hoped that the ministers would immediately put the long-postponed resolution to a U.N. General Assembly vote, but several European countries argued that more preparation time was needed to ensure the resolution's success.

Finally, French Foreign Minister Bernard Kouchner stepped forward to mediate a compromise that the Council unanimously approved. Kouchner insisted that in return for a delay in tabling the moratorium resolution, a firm date should be set - the opening of the 62nd U.N. General Assembly session in September. Representatives at Amnesty International, a human rights organisation that has campaigned to abolish the death penalty since 1977, favor this initial delay if the extra two months are spent improving the proposal. *"We support this resolution provided that it is a cross-regional initiative and provided that it is well*

prepared," Yvonne Terlingen, head of Amnesty International's office at the U.N., told IPS. *"We think that there is a very good chance that this resolution will be adopted and that it will constitute an important milestone in abolishing the death penalty."*

Determined to accelerate his organisation's 13-year-long push toward moratorium, Hands Off Cain president and prominent member of the European Parliament Marco Pannella initiated a high-profile hunger and thirst strike on Apr. 16 that he officially ended upon hearing the Council of Minister's decision regarding the resolution. *"We welcome the fact that the presentation of the moratorium resolution to the U.N. General Assembly will not be postponed forever,"* Pannella said in a statement after ending his fast. *"This is a great success and is the result of our non-violent initiative."* Pannella also attributes his party's success to an appeal calling for a swift tabling of the moratorium that was signed by dozens of international personalities, scores of European Parliamentarians and more than 50 Nobel laureates, including 1997 Peace Prize recipient Jody Williams. *"I think establishing a universal moratorium provides a benchmark, a tool to work with to continue pressing governments to eliminate the death penalty,"* Williams told IPS.

Transnational Radical Party vice president and member of the European Parliament Marco Cappato added his name to the appeal and is optimistic that a majority of the U.N. General Assembly will vote in favour of the moratorium resolution. *"Even the most pessimistic scena-*



Demonstration on occasion of "Sacco and Vanzetti 80th Anniversary" by the Sacco & Vanzetti Society Boston, August 2007
Photo: Scott Langley

rio is a winning scenario," Cappato told IPS, although he noted that two previous attempts to get a death penalty moratorium passed had failed. "We know that there are a lot of enemies. Sometimes, the worst enemy is bureaucratic behaviour," Cappato said. "Every step in politics can be contradicted by a different decision."

In 1994, a death penalty moratorium resolution was defeated in the U.N. by eight votes when 21 countries now part of the 27-member EU abstained. In 1999, the EU suddenly withdrew a resolution pro-

posed by Italy, a decision that Italian Ambassador to the U.N. Francesco Paolo Fulci described as nonsensical, citing a clear majority of countries who were then in favour of the moratorium. Elisabetta Zamparutti, Hands Off Cain treasurer and Transnational Radical Party member, said that she is optimistic that there will be no such unpleasant surprises this September. "We've been working on this since 1993. We know exactly which countries are in favour, which are against and which will abstain from voting," Zamparutti told IPS. "We are absolutely confident that the resolution will be approved with more than 100 votes in favour."

Hands Off Cain predicts that the U.S. will vote against the resolution. The U.S. was one of only 25 countries to carry out the death penalty in 2006, ranking among China, Iran, Iraq and Saudi Arabia as one of the world's leading executioners. "The people of the different states that allow the death penalty have chosen to not abolish it through the democratic process," Rick Grenell, spokesman for the U.S. mission at the U.N., told IPS. He added, however, that the U.S. is likely to support a U.N. initiative pertaining to due process of the law. "It is quite unlikely that a U.N.-approved moratorium will influence the U.S. on the death penalty," Williams told IPS. "[This] will take concerted public pressure and legal action at the state and national levels."

A recent RT Strategies poll has found that 58 percent of U.S. citizens believe that it is time for a moratorium on the death

penalty, but some have questioned the validity of this result because of the way in which the question on a moratorium was framed. Claire Ivers, an EU Advocacy Coordinator for Human Rights Watch, cautioned that obstacles may still lay ahead for the moratorium resolution before it reaches the voting stage in the General Assembly. "We need to be very careful. It's a matter of tactics and timing," she told IPS. "The worst case scenario for an unsuccessful resolution would be that it actually undermines norms on the death penalty. It's not a very straightforward issue," she said. "The resistance to a moratorium is still quite strong. It's going to be a question of whether the time is right," Warren told IPS. Don't be surprised if there is significant opposition."

Before making it to a vote in the U.N. General Assembly, the resolution will be reviewed by the EU Council of Foreign Ministers in September to determine if enough momentum exists behind it to survive the committee process. If the resolution does pass through the General Assembly, it remains unclear what concrete results, if any, will be produced. Rights activists note that a U.N. resolution is not legally binding on any member, "but it is a politically and morally powerful act," Zamparutti told IPS. "For democracies, abolition can be a complex process and has to face public opinion," Cappato stated, adding that a U.N. resolution could provide courage for countries still observing the death penalty to abolish it. (Reported in June 2007) ■



Mark Weisenmiller

Crash Course For Florida's Executioners

Tampa - Two newly-trained teams of executioners committed to the principle of "humane and dignified death" are ready to go into action as soon as Florida's new governor Charlie Crist starts signing death warrants for the state's 380 death row inmates - but no one knows yet who will be the first to be executed after the lifting of a four-month moratorium. This was confirmed to IPS by Gretl Plessinger, a public relations officer at the Florida Department of Corrections. On May 9, Florida officially ended its moratorium on executions declared in mid-December. On the same day, Crist approved an array of proposals to improve the way the state carries out its executions by lethal injection.

The moratorium was announced on Dec. 15, two days after a Florida executioner fumbled repeatedly as he tried to find the vein in the left arm of Angel Diaz, a convicted killer. The execution did eventually succeed, but took more than half an hour - at least twice as long as usual. Anti-death penalty activists all over the world protested amid suggestions that Diaz might have been conscious during some of the time and experienced excruciating pain. This would have been a violation of the U.S. constitution which bars cruel punishment.

The scale of the protest led outgoing governor John Ellis "Jeb" Bush, the man who had originally signed the Diaz death

warrant, to declare a temporary moratorium on executions while a hastily-called 11-member commission investigated how to prevent a repetition. Nine other U.S. states also introduced moratoriums on their executions by lethal injection. Florida is the first of these to lift its moratorium. Each of Florida's two new execution teams consisted of 10 people, Plessinger told IPS. They had been trained in "numerous" places, including Terre Haute in Indiana. Terre Haute is a high-security prison in the geographical centre of the U.S. Its death chamber, the only federal one in the country, was reopened after the Supreme Court reinstated the death penalty in 1976. It was there that Oklahoma City bomber Timothy McVeigh was executed by lethal injection in June 2001.

Governor Crist, widely-known for supporting capital punishment, has approved all the 37 recommendations proposed by the commission of investigation. The new rules require that a prison warden must be present to confirm that that a condemned inmate is unconscious before the death-producing drugs are injected, Plessinger said in a email response to questions submitted by IPS. This apparently addresses the concern that Diaz might have been aware that his executioner was struggling with his needles to complete the last part of his execution. More



Execution chamber in St. Quentin, USA | Photo: AI

lighting had been installed in the death chamber, Plessinger said. She side-stepped the question of whether Florida would be now increasing the dosages of the drugs in its lethal injections. But she confirmed that there would be no change in the make-up of the chemicals in the three-part lethal injection. The commission had been specifically asked to investigate whether the drugs used in Florida's executions should be replaced with something else. *"The department explored not only the drugs used in Florida, but other states and by the federal government,"* Plessinger said. *"The drugs utilised by the Florida department of corrections are consistent with the drugs used in other jurisdic-*

tions." But Plessinger left open the possibility that changes in the prescription could be made later. *"The department will continue to monitor developments in pharmacology,"* she said.

The three drugs used in the U.S. lethal injections include sodium pentothal, a general anaesthetic to make the inmate unconscious, pancuronium bromide to induce paralysis, and a final injection of potassium chloride to stop the heart. Plessinger said she could not give the name of the next death row inmate to be executed. *"The department of corrections does not determine who is executed. That decision is made by the governor's office,"* she said, adding: *"At this time governor Crist has not signed any death warrants."* But one death row inmate apparently threatened with imminent execution is Ian Deco Lightbourne. In an effort to head this off, his lawyers have asked the courts to order the four reporters who witnessed the Diaz execution to produce their notes. The move was aimed at supporting their case that execution by lethal injection was unconstitutional and Lightbourne should be removed from death row. The request for the notes has been rejected, IPS has learned. But Susan Bunch, a lawyer representing one of the journalists, told IPS in a telephone interview that she did not think this was the end of the battle for Lightbourne's lawyers. *"I didn't get the impression*

they were going to give up on this," she said. Predictably, the adoption of the Florida commission report on lethal injections and the lifting of the moratorium on executions was criticised by U.S. death penalty abolition groups. *"What they basically did was to take testimony, which was a step in the right direction,"* David Elliott, spokesman for the National Coalition to Abolish the Death Penalty, said. But he questioned how any study could be helpful when no state offered an example of good practice in the administration of lethal injections. He also questioned the thoroughness of the commission's work.

Howard Simon, the executive director of the American Civil Liberties Union of Florida, said the lifting of the moratorium was *"out of step with public opinion"*. The commission should have studied why Florida had "so many" botched executions, he said. It should have also looked at the alternatives to capital punishment. But the decision to lift the moratorium was welcomed by the Texas-based 'Justice for All', a pro-death penalty group with over 2,000 members in different states. Execution by lethal injection was the *"most humane"* means of execution, Diane Clements, its spokeswoman said. Besides the 37 U.S. states which rely mainly on lethal injections, China, Guatemala and Thailand also use this method of execution. *(Reported in June 2007)* ■



Adrienne Appel

Retrial Possible For Most Famous Black Inmate

Boston - The talents and skills of leading U.S. lawyers, pathologists, scientists and independent criminal investigators are likely to be marshalled to save the life of Mumia Abu-Jamal if he is granted a new trial - and also to highlight the role skin colour may play in U.S. death penalty convictions. After nearly two decades of appeals, on May 17 a U.S. federal court of appeals took its first step towards possibly ordering a new trial for Abu-Jamal, one of the best-known among the country's 3,500 death row inmates. The decision of the panel of judges is expected to take several months in what has become one of the most controversial death penalty cases of all times.

Robert Bryan, the lawyer leading the battle for Abu-Jamal's life over the past four years, believes his client's case is very strong and that the appeal judges may order a new trial. Now for the first time since Abu-Jamal's conviction in 1982, the U.S. justice system is seriously considering whether racial discrimination and political bias interfered with Abu-Jamal's right to a fair trial. *"My goal is for him to go home to his family. That is the best of outcomes,"* Bryan told IPS. Abu-Jamal, an

outspoken political activist as a young man and still today from prison, was convicted by a nearly all-white jury in Philadelphia of the murder of policeman Daniel Faulkner. Faulkner was killed after he stopped a car driven by Abu-Jamal's brother in December 1981. Abu-Jamal was said to have run from his taxi to the scene and was arrested.

The facts of the crime are disputed. Eyewitness accounts are contradictory. Evidence is incomplete and has gone missing. Abu-Jamal was wounded in the chest by a bullet. Abu-Jamal has always maintained his innocence. *"The thread that runs through this case from the day Mumia was arrested until today is racism. At the original trial, the jury only heard one side of the coin. It was a comedy of errors. This case has never been properly investigated,"* Bryan said.

At the appeals hearing, Bryan and others argued that Abu-Jamal's original trial was unfair because blacks were intentionally excluded from the jury, a violation of the U.S. Constitution. The final jury consisted of 10 whites and two blacks. The population of Philadelphia at the time was 40 percent African American. *"What mat-*



On death row since 1981: Mumia Abu-Jamal

ters is that African American citizens were denied their right to participate in this important civic right and duty on the basis of race," Christina Swarns, a lawyer with the National Association for the Advancement of Coloured People Legal Defence Fund, told IPS. "The questions of fairness have been there since the time the jury was chosen. Had the Pennsylvania courts followed the law, this hearing would have been held many, many years ago - and should have been."

There were other problems with the 1982 trial, Bryan said. The prosecutor misled the jury into believing that if they agreed to send Abu-Jamal to death row, the chance of him actually being executed was low. And the judge who presided over the trial, Albert Sabo, aimed a racial slur at the young journalist during a recess in the trial, Bryan said. Sabo also had a conflict of interest and should never have presided over the trial, Jill Soffiyah Elijah, a member of the National Lawyer's Guild, told IPS. He was an active member of the Fraternal Order of Police, a powerful group that represents the interests of police and lobbies for the death penalty in cases where police officers have been murdered. "They



Protesters in Paris | Photos: AI

have lobbied heavily for Mr. Abu-Jamal's execution," said Elijah, also a professor at Harvard University. "Judge Sabo's involvement indicated a conflict of interest and compromised his ability to be objective."

According to reports elsewhere, Sabo, who died in 2002, was nicknamed "the hanging judge". In a 14 year period, he presided over trials in which 31 defendants were sentenced to death, more than any other U.S. judge. Twenty-nine of these came from ethnic minorities. While Abu-Jamal's lawyers used the appeals court hearing to push for a new trial, prosecutors urged the judges to re-affirm his death row conviction. Pennsylvania Governor Ed Rendell has stated publicly that if the judges did this, he would order Abu-Jamal's execution. Rendell has a long-standing interest in Abu-Jamal's case. He was Philadelphia district chief prosecutor in 1982, and it was his office and his employees who prosecuted Abu-Jamal. In the past the district prosecutor's office had been involved in a pattern of discrimination in many cases, Bryan said. This included presenting false evidence and getting witnesses to lie. He was optimistic that the federal appeal

judges would acknowledge this and allow Abu-Jamal a new trial. "My goal is to win this case," Bryan said. "We have a lot of new evidence. If we can get a trial, it will be presented to the new jury. A lot of new pathology, DNA and ballistics will be done. I have faith that 12 men and women of the jury will let my client go home." But Bryan would want to move the case out of Philadelphia. "There is so much corruption and unfairness in the Philadelphia court system, it's hard to imagine getting a fair trial," Bryan said.

Abu-Jamal, now 53, has won thousands of supporters around the world. "When they put him on death row, they thought they would shut him down," Bryan said. "Instead, Mumia has become an international symbol against the death penalty." His supporters include Hollywood celebrities, politicians and university students. In St. Denis, France, a street is named after him. At the appeals hearing, about 200 people packed the courtroom. Outside about 500 people demonstrated on Abu-Jamal's behalf. Supporters came from France, Germany and elsewhere. (Reported in May 2007) ■



Eli Clifton

Three Newspapers Reverse 100-Year-Old Stand

Washington - Three established U.S. newspapers, two of them among the 10 largest in the country, in three different states have in the past weeks abandoned their century-old support of the death penalty and become passionate advocates of a ban on state-sponsored killing. The newspapers - the Chicago Tribune in Illinois, the smaller Sentinel in Pennsylvania and the Dallas Morning News in Texas - announced their change of heart in strongly-argued editorials following a series of investigative articles highlighting the flaws in the death penalty system in their states and country. "I think in a word it's the issue of innocence that has brought about these editorials," Richard Dieter, executive director of the Death Penalty Information Centre, told IPS. "The weight of evidence in death penalty cases as seen and confirmed in DNA testing has made the death penalty too risky."

The Chicago Tribune said its "groundbreaking" reporting suggested that innocent people had been convicted and executed. Two cases in Texas were cited. Also over the last 30 years more than 130 people had been released from death row in the U.S. after evidence was presented that undermined the cases against them. In that time, Illinois had executed 12 people and freed 18 from death row. "The evidence of mistakes, the evidence of arbitrary deci-

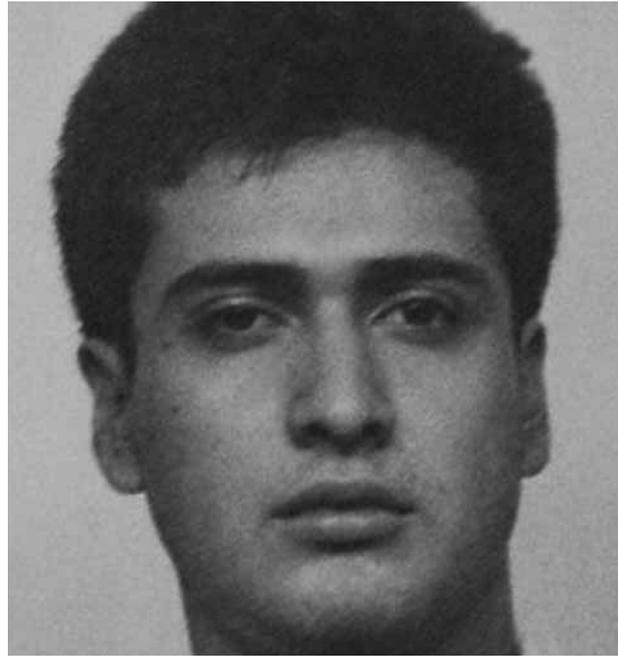
ons, the sobering knowledge that governments can't provide certainty that the innocent will not be put to death - all that prompts this call for an end to capital punishment. It is time to stop killing people in the people's name," the Chicago Tribune wrote, reversing its pro-capital punishment position held since 1869.

Pennsylvania's Sentinel newspaper, founded in 1861, also came out editorially against capital punishment after its reporters highlighted the "ineffectiveness" of the death penalty system in the state. "The death penalty is useless," the newspaper wrote in its Apr. 3 editorial. The state's lengthy appeals process created an almost indefinite stay of execution. This meant the numbers on Pennsylvania's death row were steadily increasing. There were now 221 on death row, the fourth largest number of any state in the country. This was a huge expense for the taxpayers, the newspaper wrote.

"We are left with a grueling process that in the end only guarantees more suffering for the victims' families and society at large as faith in the justice system erodes," the editorial said. The majority of public opinion in the U.S. now favoured prison without parole rather than capital punishment - either out of "frustration with the system or revulsion at the punishment". "The pendulum is



Released after 17 years on death row: Ernest Ray Willis | Photos: AP



Convicted without evidence: Carlos De Luna, executed 1989 in Texas

swinging away from Pennsylvania's position on a law it cannot even execute," the editorial concluded. The issue of race was also playing a major role in the fall in public support for the death penalty, particularly in Pennsylvania, Brian Evans of Amnesty USA told IPS. "There is a lot of doubt about the death penalty especially in Pennsylvania because of the disproportionate racial mix of those on death row," he said. In Texas, the Dallas Morning News reversed its century-old support for the death penalty in an editorial on Apr. 15, citing mounting evidence that the state had wrongly convicted a number of people in capital trials and probably executed at least one innocent man. Carlos De Luna was executed in 1989 for the murder of a petrol station attendant, although there was no forensic evidence linking him to the crime. Later, another man boasted to relatives that De Luna had been convicted for a murder he had committed.

In a second disturbing case cited by the newspaper for its change of mind over the death penalty, Ernest Ray Willis was convicted of the murder of two women in 1987. A federal judge later found prosecutors had administered anti-psychotic drugs to Willis during his trial to give him a "glazed over" appearance and show he was "cold-hearted". Prosecutors had also suppressed

evidence and provided no physical proof or eyewitnesses. Questions were also raised about the competence of the court-appointed defence lawyers. The sentence was overturned. Another death row inmate also confessed to the killings. Willis was released after 17 years on death row.

"This board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder," the Dallas Morning News wrote. "We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder. That is why we believe the state of Texas should abandon the death penalty - because we cannot reconcile the fact that it is both imperfect and irreversible."

The number of death sentences handed down in the U.S. has been steadily decreasing as public opinion in support of capital punishment has been falling. Some 315 death sentences were handed down in 1995, 128 in 2005 and 102 last year. In the last five years, the U.S. Supreme Court has ruled that it is unconstitutional to execute juveniles and the mentally retarded. Thirteen of the 50 U.S. states and the District of Columbia currently do not have the death penalty. (Reported in May 2007) ■



Adrienne Appel

Young U.S. Lawyers Halting Executions

Boston - Youthful idealism and perseverance are helping to win the day against the U.S. conservative establishment and its huge law enforcement resources in the life and death legal struggle to halt execution by lethal injection - and with that the final end to the death penalty in the country. "Young, low-paid attorneys are involved. They are very dedicated," Deborah Denno, professor of law at Fordham University and an expert on death penalty issues, told IPS. They were a "big force" for change. The lawyers - some fresh out of university - were helping to successfully convince one court after another that death by lethal injection might not actually be as painless as everyone supposed. That possibility raised the question whether a sentence to death by lethal injection was legal.

Lethal injections were first used for state killings in Texas in 1982. They were then quickly adopted by most other U.S. states as a more humane execution method than the electric chair or gas chamber. Thirty-eight of the 50 U.S. states still maintain the death penalty. All but one of these can legally use lethal injections. Nine hundred and one people have so far been executed in this way in the U.S., according to the Washington-based Death Penalty Information Centre. There were 53 execu-

tions in the U.S. last year, 52 of which were conducted by lethal injection. So far this year there have been 15 executions in the U.S. - all by lethal injection.

Recent legal challenges to lethal injections have succeeded in halting executions in 12 states. Evidence has often been presented to show that death by lethal injection could be in violation of article eight of the U.S. constitution. This bans "*cruel and unusual*" punishment. Many of these legal challenges have been initiated by the young lawyers who specialise in taking on court-appointed legal work. In the U.S. these lawyers are known as "*public defenders*". Nearly all the people on capital charges or waiting on death row need a court-appointed lawyer because they are too poor to pay their legal fees. Public defenders are generally the lowest-paid practicing lawyers in the country, Denno said.

Not all of these lawyers are good, some critics say. Some lack experience or motivation. But many are distinguished by their readiness to "*go the extra mile*", said Kelly Culshaw, a lawyer in an Ohio law firm specialising in taking on clients allocated to her by the courts. "*It's a huge responsibility*," David Barron, a public defender in the state of Kentucky, told IPS. "*I*



A newsstand in New York City, 5:30 am the day after the execution of Timothy McVeigh | Photo: Scott Langley

wanted to be a death penalty lawyer after leaving law school. I did have the opportunity to do other things. It's worthwhile to help others and do things for people who need it the most." In Kentucky, lawyers like Barron have established a nationwide reputation for challenging execution by lethal injection. In 2004 they succeeded in bringing a halt to all executions in their state as judges considered their arguments. This halt stands today.

"That group really did an excellent job," Denno said. Their experience was passed on to other lawyers representing inmates facing death by lethal injection in other states. The internet made possible a sharing of information on a national scale that could not have been possible a decade ago, Denno said. Last year, the controversy over lethal injections reached the U.S. Supreme Court. The court ruled that challenges to constitutionality of lethal injections could be made - essentially encouraging activists like Barron to intensify their campaigning work.

In the state of Alabama, official legal aid ends with a sentence to death row. But a group of engaged lawyers have formed a non-profit organisation called the Legal Justice Initiative to help with legal fees for inmates. "I've been fortunate to recruit talented lawyers who could be making five times what they make

here," Bryan Stevenson, professor of law at New York University and executive director of the organisation told IPS. He described his team as "mission driven". "They are burdened by the inequality, unfairness, discrimination and inaccuracy they see in the criminal justice system," Stevenson said.

He added: "We try to represent as many people as possible." But in a state with 200 people on death row awaiting execution, the small staff was overwhelmed by the volume of work. But they had still found time to go to the Supreme Court over the death penalty. They want the court to rule on whether Alabama is violating the constitution by denying death row inmates access to court-appointed lawyers to save them from execution. "(In Alabama) we say we can't afford to represent them. If you can't afford to make it fair, you can't have the death penalty," Stevenson said.

The court is expected to issue its ruling in the next weeks. As it deliberates, yet more disturbing evidence is emerging on the effectiveness of the U.S. lethal injection system. Medical researchers reviewing 41 lethal injection executions in California and North Carolina have concluded that inmates may have been sufficiently conscious to feel they were choking to

death or being strangled. They might have also had a burning sensation as their hearts were brought to a standstill by the cocktail of drugs. In three out of eight executions the researchers reviewed at the San Quentin prison, a second dosage of the cardiac arresting drug potassium chloride was required to complete the execution. "The conventional view of lethal injection as an invariably peaceful and painless death is questionable," the researchers say. The research is published in the current issue of the medical journal 'Public Library of Science Medicine'.

In an accompanying editorial, the magazine writes: "It is time for the U.S. to join the majority of countries worldwide in recognising that there is no humane way of forcibly killing someone. The new data in PLoS Medicine will further strengthen the constitutional case for the abandonment of execution in the U.S. As a moral society, the U.S. should take a leading role in the abandonment of executions worldwide."

There are 3,350 people on death row in the U.S, according to the Death Penalty Information Centre. Since 1976 when the death penalty was reinstated in the U.S, 1,072 people have been executed. So far, 123 people sentenced to death have later been exonerated. (Reported in May 2007) ■



Enrique Gili

DNA Perseverance Win Freedom For Innocent Inmates

San Diego - Behind the double security doors at the California Western School of Law campus is a small, unconventional legal practice embedded inside the academic institution. Decorating the walls of the Innocence Project are framed newspaper articles of headline-making cases of former clients. Those behind the project - lawyers and law students - have won freedom and exoneration for clients who have spent years behind bars convicted of murder. The ticket to freedom is often DNA evidence that proves the client did not commit the crime for which he or she was convicted.

DNA is genetic material unique to each individual, and is found in blood, hair and tissue. This "invisible" evidence can be left behind at a crime scene, often unbeknownst to perpetrator. Since 1989, 14 convicted murderers in the United States owe their freedom - and, in death penalty cases, their lives - to the role DNA played in overturning their sentences. Some of these cases were due to the successful work of the Innocence Project, founded by Barry Scheck and Peter Neufeld, pioneers in the use of DNA evidence in criminal cases. Nearly 200 U.S. convictions for other crimes have been overturned using DNA

evidence. The average amount of time the exonerated spent in prison was 12 years. They come from 31 of the 50 U.S. states.

"We're not fooling anyone when we say, for the most part, the criminal justice system gets it right," Jeff Chinn, assistant director of the California Innocence Project, told IPS, noting that the system is not infallible and mistakes occur on a regular basis. He cited faulty eyewitness accounts as one of the principle grounds for overturning prison sentences. The Innocence Project has identified false confessions and dishonest officials as other sources of unjust convictions.

Chinn, a practicing attorney, is responsible for selecting the local cases where miscarriages of justice appear to have taken place. They involve inmates who have exhausted all other avenues of defence in a criminal justice system that has left them financially drained. The Innocence Project at California Western School of Law has a staff of four full-time attorneys. Chinn divides the caseload between them and 12 students chosen by competition. Currently they are working on more than 50 cases. Some 25 other university law schools across the United States have similar legal offices belonging to the Innocence



1984 Kirk Bloodsworth was sentenced to death for rape-murder and stayed on death row for 9 years. He was the first inmate who was exonerated by DNA evidence. It took another 9 years to link somebody else to the crime | Photo: Scott Langley

Project network. Chinn estimates that between three and four percent of the U.S. prison population may actually be innocent of the crimes for which they were convicted. In California alone, the numbers of innocent inmates could be thousands, and nationally the figure could be tens of thousands. There are now 2.1 million men and women prison inmates in the United States, according to the Justice Department. California's prison population totals about 170,000.

Texas - the state responsible for 40 percent of U.S. executions over the last 10 years - has seen some of the most sensational cases of overturned convictions. Over the past five years, 13 inmates there have been exonerated, according to Chinn. In the U.S., 37 of the 50 states have capital punishment laws on the books. Also, the federal government can impose the death penalty for certain crimes. "Each wrongful conviction shows that the justice system is flawed," he said, noting that in such a system there is always the risk that wrongfully-convicted people might be executed. Elsewhere in the country, the meticulous work of the Innocence Project activists, especially their success in using DNA evidence to overturn convictions, has given a

boost to the campaign for the abolition of the death penalty.

So far Texas has turned a blind eye to the evidence. Twelve of the 13 executions in the United States this year have been carried out in that southern state. But there are signs of change. On Apr. 15, The Dallas Morning News, the state's highest-circulation newspaper, called for an end to the death penalty, reversing a 100-year-old stance. "This (editorial) board has lost confidence that the state of Texas can guarantee that every inmate it executes is truly guilty of murder. We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder," it wrote, citing the 13 cases of people exonerated in the state for crimes they did not commit. "Exonerations keep coming, and the doubts keep piling up," but the politicians do not react. The newspaper concluded: "The state cannot impose death - an irrevocable sentence - with absolute certainty in all cases. Therefore the state should not impose it at all."

On the following day, citing specifically the DNA exonerations, the newspaper called for the death penalty in Texas to

be replaced by life imprisonment without parole. "It is harsh. It is just. And it is final without being irreversible," it said.

Back on the California Western campus, second-year student Taren Kern is working on a case she has been assigned by the Innocence Project. Old-fashioned leg-work and latest advances in forensic science and DNA are at hand to help her overturn convictions. Each student working on the Innocence Project must be prepared to spend 20 hours a week re-investigating closed criminal cases. They are working on appellate cases that can drag on well beyond their day of graduation. Over the summer, Kern will switch camps and spend time gaining experience in a state prosecutor's office. "Even though I might want to be a prosecutor, this experience at the Innocence Project has opened my eyes," she told IPS. "I would honestly try as hard as possible to look at all the facts." It is this facing of facts -- the ever-growing number of convictions overturned by the painstaking, meticulous work of a non-profit law organization - that is playing a role in an awakening in the United States to the fact that mistakes can be made and innocent people may have been sent to the death chambers. (Reported in April 2007) ■



Adrienne Appel

Abolitionists See Victory In View

Boston - Campaigners against the death penalty in the U.S. believe the momentum for a country-wide ban on executions is now unstoppable and some are predicting all their death rows will be closed down within 15 years. "It's a gathering storm that's been in the making for a number of years now," David Elliot of the National Coalition to Abolish the Death Penalty told IPS. Of the 50 U.S. states, 38 have the death penalty, according to the Death Penalty Information Centre. Two states - Maryland and New Jersey - were on the brink of abolishing the death penalty. Four others - Connecticut, Illinois, New Mexico and North Carolina - were also likely to follow swiftly with their state bans, Elliot said.

Others, including Arkansas, Missouri and South Dakota, have placed a moratorium on executing people because of a recent U.S. Supreme Court ruling. In California, a federal judge has halted executions and ordered an investigation of the death penalty system in that state. Within 15 years the entire U.S. death penalty system could be completely gone, Elliot predicted. In October 2006, there were 3,334 total people on death row, according to the Death Penalty Information Centre. Usually it is the governor of the state who decides when a prisoner will be executed, and it is not untypical for a prisoner to be on death row for 10 years or even

longer. Since 1976, when the death penalty was reinstated, 1,064 people in the U.S. have been executed.

Campaigners pinpoint the beginning of the end of capital punishment in the United States to the refusal by Illinois Governor George Ryan to sign execution orders seven years ago. His bold stand was followed by an official state moratorium that is still in place today. "Could I send another man's son to death under the deeply flawed system of capital punishment we have in Illinois?" Ryan asked at the time. Other state governors and officials have recently publicly voiced their concerns about the fairness of their death penalty systems, especially following reports of painful, inhumane executions and a system that has certainly sent innocent people to their death.

Maryland's governor Martin O'Malley is one of the governors who have been taking an active part in the current national abolition debate. "Since 1978, we have executed five people and set one convicted man free when his innocence was discovered. Are any of us willing to sacrifice a member of our own family - wrongly convicted, sentenced and executed - in order to secure the execution of five rightly convicted murderers?" O'Malley argued in a recent article in *The Washington Post*.



Photo: Scott Langley

In Montana, Assistant Attorney-General John Connor, one of the state's leading public prosecutors, announced to the legislature there that he no longer wants to be associated with the death penalty. *"It seems to me to be the ultimate incongruity to say we respect life so much that we're going to dedicate all our money, all our resources, our legal expertise and our entire system to try and take your life... Frankly, I just don't think I can do it anymore,"* Connor told state legislators, according to Associated Press news agency.

Across the country some 123 death row inmates have been declared innocent over the past 30 years, Maryland lawyer Paul B. DeWolfe said in an interview with IPS. Many of these have spoken out about their treatment and many people did not like what they heard. *"It's because of these cases that the pendulum has started to swing away from the death penalty,"* DeWolfe said.

One of those exonerated and today actively campaigning against the death penalty is Juan Melendez. He was freed from a Florida prison in 2002, after being on death row for almost 18 years. He told IPS that he suffered most on death row when the guards took away for execution someone who had lived beside him in an adjoining cell and he had grown to love. *"They had the electric chair then and it used 2,010 volts. When the lights went on and off [in the pri-*

son] I knew they were burning the life out of him and I could not stop it," he said. The prison was infested with cockroaches and rats and there was no air conditioning, he said. Hundreds of citizen groups, religious organisations, lawyers and legislators have joined together with activists like Melendez to give the abolition movement the persistent momentum it has today. The campaigning focuses on many issues. Cost is one. *"Killing two old men every year for 50 million dollars? There are better ways to make the public safer,"* Mark Elliott, of Florida Alternatives to the Death Penalty, told IPS.

Racism is another. The U.S. death penalty system is seen as discriminating heavily against people of colour. *"It is particularly interesting that since 1769 there has never been a white person executed for killing a black person. That's the reality of the death penalty in Florida,"* Elliott said.

And intense scrutiny of lethal injection - the method of execution used in 37 states - has followed a U.S. Supreme Court ruling that provided the legal means to halt executions in many states. *"It was sold to us as a kinder more humane way to die. What we're learning is that there's no kind, humane, nice way to execute someone,"* said Elliot of the National Coalition to Abolish the Death Penalty. Last year, the Supreme Court ruled

that death row prisoners could argue before courts that lethal injection is a violation of the 8th Amendment of the U.S. constitution. This bars cruel and unusual punishment. Ten states swiftly halted all executions. The Supreme Court came to its decision while considering the Florida case of Clarence Hill, a man with the mental capacity of a 10-year-old who had been on death row for almost a quarter century.

Despite the historic court ruling, Hill's life was not spared. Three months later, the then governor, Jeb Bush ordered his execution warrant and Hill was killed by lethal injection. It was only a few months later that Florida executed another prisoner, Angel Nieves Diaz. His death took 34 minutes. *"It surely seemed to unleash a firestorm of activity,"* D. Todd Doss, a lawyer for both Hill and Diaz, told IPS. Polls now show that a slim majority of U.S. citizens would prefer life without parole to executions, Judi Caruso, of the New Mexico Coalition to Repeal the Death Penalty, told IPS. A 2006 Gallup Poll showed for the first time in 20 years that citizens are turning away from the death penalty with 48 percent preferring life imprisonment without parole. *"They're re-evaluating the system that is broken and broken beyond repair,"* Caruso said. (Reported in March 2007) ■



Mark Weisenmiller

One Fumbled Execution Sets U.S. Further Thinking

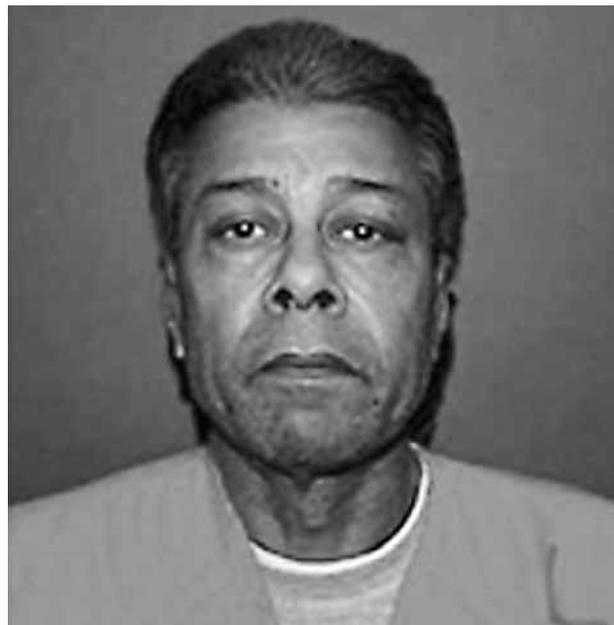
Tampa - Last December's botched execution by lethal injection in the U.S. state of Florida has raised to new levels the controversy surrounding capital punishment - and focused public attention here squarely on this particular way of carrying out a death sentence. Death row inmate Angel Nieves Diaz, 55, took 34 minutes to die on Dec. 13, 2006. A lethal mixture of chemicals injected into his left arm missed his vein. The chemicals spilled out onto his flesh. The bungled execution meant it took twice as long for Diaz to die than if no mistake had been made.

The debacle caused outgoing Florida Governor John Ellis "Jeb" Bush to announce a moratorium on all state executions while a specially-created commission investigated precisely what went wrong during the Diaz execution. The 11-member commission, including three doctors, presented its report to Florida's new Governor Charlie Crist on Mar. 1. It said it was unable to determine whether Diaz experienced pain during his execution. But it called on Florida to investigate whether the three-chemical lethal cocktail now being used should be replaced with something else.

A day after the report's publication, Governor Crist announced that he was directing the secretary of the Florida Department of Corrections, James McDonough, to study lethal

injection procedures in all 37 U.S. states where this was still being used for executions. He also ordered McDonough to decide which of the report's recommendations should be immediately implemented. But neither the report nor governor's quick response are likely to halt the slowly building anti-death penalty movement in the United States. This has been growing since the Diaz execution. A three-state survey by IPS showed that worldwide media attention generated by the Diaz execution was also reflected domestically by an increase in public interest in anti-death penalty organisations. "*Executions have been too long exempted from public view,*" said Mark Elliott of Floridians for Alternatives to the Death Penalty. He confirmed his organisation had been receiving more calls and e-mails than usual since the Diaz execution.

In Virginia, a typically conservative Republican state, there had been a "*gradual increase*" in public inquiries to the organisation Virginians for Alternatives to the Death Penalty. The organisation's head, Jack Dryden-Travers, said the Diaz execution was "*slowly turning people off the death penalty here in Virginia.*" On the west coast in California, a state traditionally liberal and democratic, interest in the death penalty issue was also on the increase after the Diaz execution. Lance Lindsey, executive director of Death Penalty Focus of California, said his organisation was getting



Death row inmate Angel Nieves Diaz, 55, took 34 minutes to die on Dec. 13, 2006. On the left: his mourning family | Photos: AI USA

many inquiries because of the Diaz execution. *"It has created more interest in the death penalty among Californians. General support for the death penalty continues to wane."* He added that his state was currently looking into *"lethal injection procedures and also the medical training of executioners"*.

The issue of the competence and training of state executioners surfaced dramatically during the Florida commission's questioning of Diaz's executioner. Out of sight and speaking into a telephone in a muffled voice, the executioner told the commission that he had *"no medical training and no qualifications"*. Carol Wehrer, president of Anesthesia Awareness, was also present in the room on the same day the executioner gave evidence. *"I heard him - I believe that it was a man - testify that he didn't know who mixed the chemicals, or if the person who mixed the chemicals had any medical training,"* she told IPS.

In 1998, Wehrer was operated on for the removal of an eye. She told the commission that for the operation she was given an anesthetic which contained a derivative of one of the three chemicals used in the deadly cocktail given to Diaz. The anaesthetic did not take full effect and she could literally feel her eye being removed, she told the commission. Richard Dieter, executive director of the Death Penalty Information Centre, confirmed to IPS that it was not uncommon

in other states for lethal injections to be administered by prison officers, not doctors. *"Doctors don't want to participate because it goes against their Hippocratic Oath,"* he said, adding that there were now *"11 states that have holds on lethal injections."*

The American Medical Association has a clear and unambiguous ruling *"strictly prohibiting"* doctors from participating in state executions. Last July, the association widely circulated its guidelines specifically covering lethal injections. No medical practitioner was allowed to prescribe drugs for an execution, administer drugs or participate in an execution in any way. Doctors were also barred from pronouncing an executed person dead. Doctors were under oath to protect lives and any form of participation in executions *"erodes public confidence in the medical profession,"* said William G. Plested III, president of the association.

The Florida commission has called for more training for its state executioners and clearer instructions on execution procedures. A number of other recommendations have been suggested. One considered especially significant was from State Senator Victor Crist, known as a vociferous supporter of the death penalty who played a major role in the framing of Florida's law on lethal injections. He told reporters that he was considering asking the lawmakers to now allow audio recordings of all future executions. *(Reported in March 2007)* ■



Mithre J. Sandrasagra

Executions Create Generations Of Victims

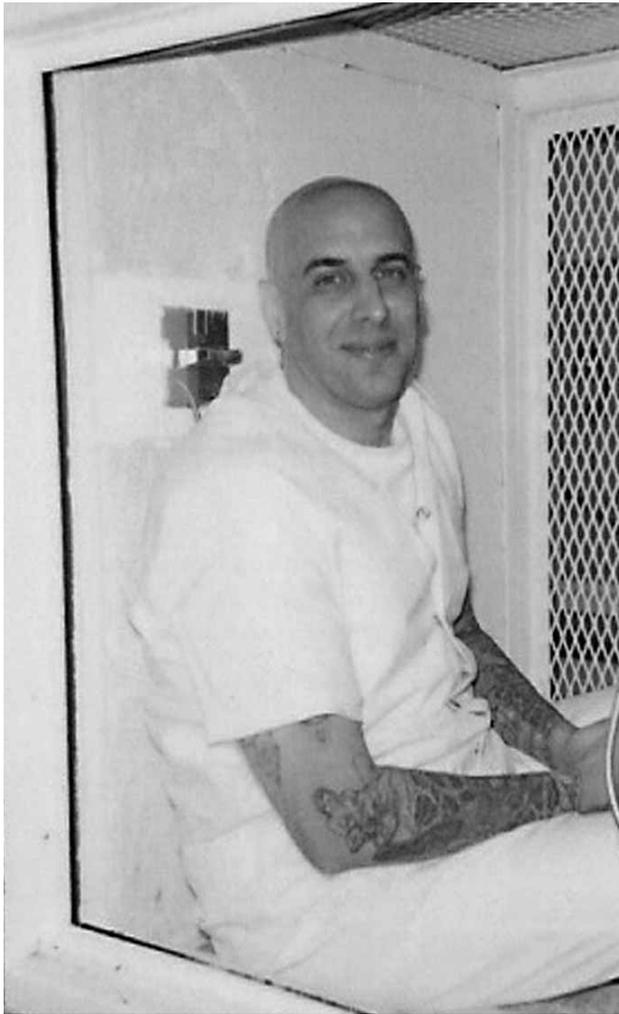
United Nations - "They're going to kill him because he killed somebody, so when they kill him, who do we get to kill?" asked the 10-year-old daughter of Christina Lawson at the time of her father's execution by the U.S. state of Texas in 2005. State executions leave such children confused and traumatised - and entire families, too. Some are so affected that they are driven to the brink of insanity, a groundbreaking report entitled *"Creating More Victims: How Executions Hurt the Families left Behind"* graphically illustrates. It has been published by Murder Victims' Families for Human Rights (MVFHR), a Massachusetts-based organisation representing the family members of the victims of murder and state executions. *"Families of the executed are victims too,"* the report stresses.

The pain of one group of survivors should not be redressed by causing pain to another group of survivors. Society needs to address the emotional and physical harm that is being done. *"We must stop creating more victims,"* Robert Cushing, executive director of MVFHR, told IPS. *"There are obviously similarities between the experiences of those left behind after an execution and those who have suffered other types of violent loss -- like dealing with grief and trauma,"* he said. But there were also major differences, he said, pointing to findings from the 36 families MVFHR surveyed for its

report. The families of the executed suffered from *"shame, increased isolation and feelings of personal failure"*.

They might also feel responsible for the crimes of their relatives or blame themselves for their inability to save them from execution. Janis Gay, whose grandfather Alex Kels was hanged at California's Folsom Prison in 1924, confirmed just this in an interview with IPS. *"People assume violence ends with the execution,"* she said. *"It doesn't. Just like with any murder, the family is shattered, with the added impact of being crushed by shame."* Her mother's promising writing career was halted by depression. Her brother died of alcoholism. All contact with the families of her grandfather's seven brothers and sisters was cut off forever. The trauma can be passed on from one generation to another.

Gay, a teacher who is also director of the U.S.-based organisation Murder Victims' Families for Reconciliation, entered therapy in 1991. She says she is one of the fortunate few who could afford to pay for a psychotherapist to help her cope. *"It's impossible to find support,"* she said. *"There's no one to talk to, no one who understands. Food is provided and therapists are on hand before and after an execution for the families of the victims of the executed. But there is nothing for the families of the executed."* The MVFHR report gives other examples of mental health problems within the families of the



Richard Cartwright, executed May 2005 in Texas | Photo: Wikipedia

executed. Misty McWee was 14 when she learned that her father had been charged with murder. She was 28 when her father was executed. McWee suffered severe depression in the year following the execution, culminating in a hospitalisation after a suicide attempt near the one-year anniversary. *"It felt like the two things were connected, my father's execution and my cutting my wrists,"* she recalled to MVFHR's researchers. *"I didn't care what happened to me. I felt like I should go be with him. Why couldn't we have had someone to help us through it?"* she asked. *"When we walked in the courtroom,*



Richard Cartwright with his daughter

people gave us dirty looks, just because we belonged to our father. You wonder, what did we as kids do to deserve this? There's so much you're trying to understand and it doesn't help to have people judging you. People look at it like the whole family must be bad."

Irene Cartwright, whose son Richard was executed in Texas in 2005, also required treatment for depression afterwards and is today taking anti-depressants. *"I wish people could understand that everyone who is executed had a mother and father, maybe brothers and sisters, aunts and uncles, friends, whatever, and that each one of those people have been hurt and impacted by the execution,"* he told researchers. MVFHR's report concludes that the needs of the families of the executed have not just been ignored, they have never been truly comprehended. *"The problem is that survivors are not recognised as victims,"* Cushing told IPS. *"There are no execution victim families' support groups, there are no counselling services available to children left behind. Nobody knows where they are, they lead anonymous lives."*

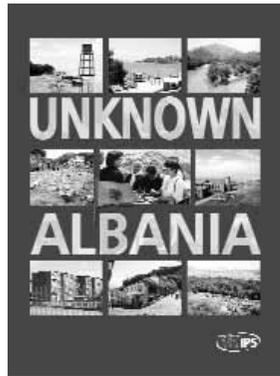
MVFHR is now calling for more studies of their problems. *"We challenge the mental health community to recognise that these victims exist, to recognise the uniqueness of their experiences and to devise appropriate treatment alternatives for them,"* Cushing added. MVFHR specifically recommends

that the short and long-term psychological effects of an execution in the family be included in literature and training directed at social workers, clinical psychologists, trauma specialists, and others who might come in contact with such families. It also calls on lawmakers to give equal legal recognition to families of the executed as the relatives of murder victims. They should all have access to assistance and support. This should include financial help to pay for medical care, mental health counselling and funerals, Cushing said.

MVFHR breaks new ground by calling for the suffering of the families left behind after an execution to be squarely placed within a human rights framework rather than a criminal justice one. The victims' families deserve protection accorded by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the U.N. General Assembly in 1985. The Declaration defines victims as those who have *"suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights"*.

These victims *"should be treated with compassion and respect for their dignity"* and *"receive the necessary material, medical, psychological and social assistance"*. *"Leadership must come from the U.N.,"* Cushing concludes. *"This is an international human rights problem."* (Reported in February 2007) ■

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The reports appeared between April and November 2007 and can also be accessed on internet at: www.ipsnews.net/new_focus/tourism/index.asp

UNKNOWN ALBANIA is published in December 2007



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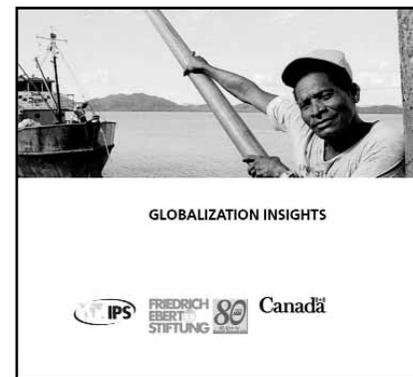
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