

COMBATING DEATH PENALTY

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Voices of the South on Globalization is a monthly newsletter intended to inspire a meaningful North-South Dialogue by raising awareness for global interdependences and by offering a forum for voices from the South in the globalization debate. Each edition will present short analyses or commentaries from a Southern perspective on one particular issue of the globalization process.

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WILL THEY STOP THE KILLING?

The UN General Assembly elected the first 47 members of the newly-created Human Rights Council on May 9 marking what its President Jan Eliasson of Sweden called a new beginning for the promotion and protection of human rights. After three rounds of secret voting, the following members were elected: Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, Canada, China, Cuba, Czech Republic, Djibouti, Ecuador, Finland, France, Gabon, Germany, Ghana, Guatemala, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Switzerland, Tunisia, Ukraine, United Kingdom, Uruguay and Zambia.

The new Human Rights Council (HRC), created by General Assembly resolution 60/251 of March 15 to replace the Geneva-based Commission on Human Rights, will seek to address violations of human rights, including gross and systematic violations, and promote effective coordination and the mainstreaming of human rights within the United Nations system. In electing the Council's first members, the 191-member Assembly followed a procedure that significantly differed from that of the often criticized Human Rights Commission, which will be abolished on 16 June. Three days later an inaugural meeting of the new body will take place in Geneva.

A few days after the HRC's first members were elected, the European Parliament expressed concern that "countries with a poor human rights record have been elected as members of the UN Human Rights Council". But it praised the British EU Presidency's efforts to combat the death penalty and promote freedom of expression, and the Austrian Presidency's promise to "continue the practice of demarches in respect of all of the EU's international partners regarding the ratification of international conventions banning the use of torture."

Death penalty is the ultimate cruel and unusual punishment. Yet, according to Amnesty International, there were 2,148 known executions in 2005 -- 94 percent of them took place in China, Iran, Saudi Arabia and the United States. Governments practising death penalty disproportionately kill minorities and the poor. Alarming, they continue to execute the mentally ill and minors. Some 122 countries around the world have either abolished or placed a moratorium on this inhumane practice. Last year, 81 member states co-sponsored a UN High Commissioner on Human Rights resolution calling on countries which have not yet done so to either abolish capital punishment or place it on hold. While international agreements have restricted and even banned the death penalty, its application still is not a violation of international law. This issue gives a glimpse of the human and socio-political dimensions of death penalty with reports from four countries -- China, Malaysia, Pakistan and Cuba -- that have been elected to the HRC, and Congo. -- **Ramesh Jaura**

TOO MANY HANGING JUDGES IN CHINA'S PROVINCES

Beijing - Stunned by the large number of executions carried out each year, Chinese legal experts and lawyers have joined human rights advocates in attacking the middle kingdom's system of capital punishment as arbitrary and calling for swift changes to judicial process.

Authorities have responded with cautious strides towards reforming the notorious system of capital punishment. They are doing that in part by announcing changes in court procedures that are expected to reduce the number of executions by 20 to 30 percent, human rights advocates said.

During the March annual legislative session of parliament, the government ruled out the abolition of the death penalty, according to people who attended. Xiao Yang, president of the Supreme People's Court, told legislators that grave economic crimes would still be punished by death. He announced, however, that a series of new measures would be implemented to avoid wrongful executions. As a first step, the apex court is taking back the final review of all death penalty cases from the provincial courts. Moreover, when hearing death sentence trials for a second time, Chinese courts will begin open court sessions, allowing prosecutors, judges and defence attorneys to meet face to face.

"As of July 1, 2006, all second-instance trials of death sentence cases shall be heard in open court," Xiao, who is also the country's chief judge, said at a press conference. But to regain control of the final decision in death sentences, the central government should first outlaw the use of evidence gained through torture, legal experts warn, or it would face difficulty in rightfully handling the reviews.

China, which keeps the number of people it executes under wraps, is believed to have carried out about 8,000 executions in 2005, said Liu Renwen, a scholar at the Law Institute of the Chinese Academy of Social Sciences. Amnesty International (AI) documented at least 3,400 executions in 2004 -- 90 percent of the total of capital punishments recorded around the world -- but workers for the rights lobby said they believe the actual number to be higher.

Meanwhile, a United Nations special investigator on torture, who was granted access to Chinese detention centres, after nearly a decade of negotiations, has criticised the heavy reliance on confessions, saying it encouraged the use of torture. The most common methods, Manfred Nowak reported, were beatings with fists, sticks and electric batons. Prisoners also said they had been burned with cigarettes, beaten by fellow inmates under guard instructions and submersed in water or sewage. Many detainees were held for long periods in extreme positions and death row inmates were kept constantly shackled or handcuffed.

Such systematic abuse was designed to break the will of detainees until they confessed, he concluded. "The criminal justice system is focused on admission of culpability, and the role of obtaining confessions continues to be central to successful prosecutions," Nowak wrote in his report. As special rapporteur and expert mandated by the UN High Commission on Human Rights, Nowak concluded that "torture, though on the decline -- particularly in urban areas -- remains widespread in China".

Forced confessions have long been denounced by legal rights advocates who say they lead to arbitrary rulings by provincial judges and the high number of death sentences. Liu, the legal scholar, said provincial courts often resort to arbitrary sentencing because they face political pressure to control crime rates within their legal domains. "Local governments think it (the death penalty) is a good tool to control public security. They would be loath to see such power being taken away from them," he told foreign correspondents at a meeting in Beijing.

Political pressure intensifies particularly during the periodic Yan Da (Strike Hard) campaigns against crime. Initiated in 1983, by China's late paramount leader Deng Xiaoping, to counter the downsides of the country's opening to the outside world, Yan Da campaigns were revived in 1996 by former President Jiang Zemin. During these crackdowns, the country's legal institutions are required to speed up normal legal procedures in order to meet quotas for solved crimes.

Since the first strike hard campaign in 1983, the number of crimes punished by death sentence has doubled from 32 to 68, including economic offences such as smuggling, tax evasion and embezzlement. Since China signed the UN International Covenant on Civil and Political Rights in 1998, the lobby against the death penalty has grown larger, attracting legal scholars, lawyers and rights advocates.

Recent public outcry over several miscarriages of justice, involving the death penalty and the use of torture in prisons and detention centres, has strengthened the hand of reformers. In one sensational case, a man accused of killing his wife was released from prison after 11 years, following the discovery that his wife was living with another man. The case sparked calls from legal experts to outlaw confessions gained through torture. Under the appeal to "kill fewer, kill carefully", lawyers and scholars campaigned for a central review of all death penalties and reform of court procedures. - **Antoaneta Bezlova**

DEATH TO MALAYSIAN WATER CONTAMINATORS?

Penang - While there is a global trend toward abolishing the death penalty, the Malaysian government is set to add more entries to its list of capital offences -- like contamination of water and rape.

A new Water Services Industry Bill is one of two water-related bills was due for a second reading in parliament. The bill seeks to revamp the way water is managed in the country, transferring control of state water authorities and privatised firms to a single federal regulatory body. But it also provides for capital punishment for serious cases of water contamination that result in loss of life.

Anyone who contaminates the water supply with the intention of endangering lives or causing death could face the death penalty. The death penalty could also apply to those who contaminate the water supply with any substance that would likely endanger lives.

Opponents of the law believe the proposed rules are draconian and unworkable. Moreover, they do not address the real causes of water pollution. "Most of the time, the real offenders are likely to be companies and you can't hang the companies," said Charles Hector, a human rights lawyer who was one of the coordinators of the campaign network Malaysians Against Death Penalty and Torture (MADPET). "So who would face the death penalty then -- the chairman of the board? All the directors? The general manager? The administrative officer? It's absurd."

Hector said there was no need to add to the death penalty laws as there are already provisions in the penal code that cover the intention to kill someone. "Besides," he added, "we are against the death penalty as it doesn't address the real issues."

More than half the rivers in Malaysia are polluted by raw or partially treated sewage as well as industrial effluents, agricultural run-offs, waste from animal husbandry and land development, and municipal rubbish. These can pollute sources of drinking water. After a flood in February, residents around Kuala Lumpur complained of smelly water coming from their taps. A common complaint at other times is of murky water in parts of the country.

"I think the death penalty was included because they had terrorists in mind" who might deliberately contaminate water sources, opposition Parliamentarian Teresa Kok said, adding, however, that she was opposed to the death penalty.

Others have a different view. "It seems that the intention of the bill is merely to randomly prosecute harshly some nobodies to give an impression something is being done," was one comment in response to a blog entry on the issue at the popular website, Malaysia Today.

By including the death penalty in the bill before parliament, Malaysia is bucking a global trend against capital punishment. It is one of 74 countries where the death penalty is still allowed, while 123 countries have abolished capital punishment. In Malaysia, however, the death penalty remains mandatory for drug trafficking (including possession), murder, certain firearms offences and offences against the king.

The majority of the death sentences meted out are for drug trafficking. Out of 52 people sentenced to death from 2004 until July 2005, 36 were convicted for drug offences. Last December, Deputy Internal Security Minister Chia Kwang Chye said that from 1960 through last October, 434 convicts were hanged while 172 cases were pending appeal. But despite the country's tough stance, the drug menace remains serious.

For MADPET, that proves that capital punishment is not the solution. It has never been proven that the death penalty effectively deters crime, the group says.

Parliamentarian Kok, however, is under no illusions that it will be easy to abolish capital punishment. She was a member of a Parliamentary select committee, made up predominantly of ruling coalition members, which travelled the country in 2004 seeking public views on proposed amendments to the penal code and criminal procedure code. During the hearings, she said she got the impression that public sentiment was in favour of the death penalty. "The problem is that many among the public still want the death penalty in cases where the victim loses his or her life."

Kok said in an interview with IPS that among proposed amendments to the codes is the provision for the death penalty for any act of terrorism involving the "release of poisonous substances into the environment". The death penalty would also be handed out to those found guilty of rape resulting in the death of the victim. She said when the cabinet minister responsible for the law, Nazri Aziz, spoke out against the death penalty in March, he did not receive much support from his ruling coalition colleagues.

"For me, a life is a life. No one has the right to take someone else's life, even if that person has taken another life," he said. Public opinion may be changing though. Nazri's comments were in response to an unprecedented resolution opposing the death penalty by the Malaysian Bar Council, the governing body for the country's 12,000 lawyers, at its annual general meeting on March 18. - **Anil Netto**

DEATH FOR REPORTING 'HONOUR KILLINGS' IN PAKISTAN

Peshawar - In a remote valley that rises high in the Hindu Kush mountains, a jirga (grand council of village elders) has decided that anybody reporting so-called 'honour killings' or filing a police complaint must also be put to death.

The jirga, held in Nehag Dara in the Upper Dir district last month not only endorsed the centuries-old custom of putting to death a woman that the family considers dishonourable, but also declared that those responsible were not liable for punishment.

Political parties and non-governmental organisations (NGOs) have slammed the controversial decree. At a meeting on April 30, organised by Aurat Foundation, an NGO working with women, they approved a resolution demanding that the federal, provincial and district governments take strict action against jirga members. "We strongly condemn the jirga's decision and ask the chief justice of Pakistan to take suo motu action against the members of the so-called jirga," the joint resolution stated. A second jirga in Nehag Dara on April 28 had again declared honour killings permissible.

Crimes of honour are a pre-Islamic practice deeply rooted in the tribal societies of the North West Frontier Province (NWFP) where Upper Dir is located, Balochistan province, as well as those of Sindh and Punjab where they are called "karo kari" (literally black man and black woman). In these rigidly patriarchal communities, wives, daughters, sisters and mothers are killed for the least sexual indiscretion and upon the slightest suspicion of adultery.

Last year, relatives in Dir killed Zubaida Bibi, a councillor, and her daughter because she allegedly brought a bad name upon the family. The police arrested the main accused in the first information report (FIR), but he was soon released.

"The menace is so deep-rooted in society that campaigns, such as holding seminars and workshops, have made no difference at all," lamented Yasmin Begum of Shirkat Gah. The federal government has asked the NWFP government to order an inquiry into the jirga verdict.

According to the independent Human Rights Commission of Pakistan (HRCP), 1,339 cases of honour killings were registered between 1998 and 2002. Of these, 659 killed were married women and the remaining were single. These were only the reported cases; most go unreported.

The perpetrators included brothers, husbands, fathers, sons, in-laws, the HRCP said. Of these, only 202 were arrested. The rest went scot-free. Murders in the name of honour fall under the purview of the customary 'qisas and diyat' law. Riddled with flaws, it makes prosecution extremely difficult.

Activists have been urging the government to reform the law but a bill seeking to bolster secular law against honour killings, presented in parliament last year, was defeated as un-Islamic. "Drastic changes are needed," Rakshanda Naz, resident director of Aurat Foundation told IPS. The social mind-set, specially the attitude of the courts, needs to change. Often the courts adopt a lenient view towards an accused on the grounds of "grave and sudden provocation" which is nowhere in the law," she added.

Sections of the qisas and diyat law work to the advantage of the accused in the trial and appellate stages. Under section 309 of the law, an adult wali (legal heir) of a deceased could use his right of qisas (to forgive the accused). Similarly, under section 310, the offence of murder is made a compoundable offence and any heir of a deceased could forgive an accused by compounding his right of qisas after receiving compensation.

Since in most honour-related murders, either a husband or parents are the heirs of the slain woman and as the murder takes place in connivance with almost all the family members, they prefer to waive their right of qisas and pardon the accused.

Each time, the judicial response has appeared to violate the basic principles of justice, activists say. Uzma Mehboob, a women's rights activist, said no FIR was registered in a recent case in a remote hamlet in NWFP's Mardan district where a powerful landowner sprayed his daughter and driver, who had eloped together, with bullets. A month ago, the Peshawar High Court set aside the death penalty awarded to Gul Zaman for the murder of his wife and three daughters for venturing out of their house without his permission. A local judge had convicted Zaman on Jan 31, 2005. But the high court set him free after his three sons and a daughter, who were also the legal heirs of the deceased, forgave their father.

Naeema Kishwar, member of the NWFP Assembly from the Jamiat Ulemai Islam (a religious party), is blunt in her criticism. "It's un-Islamic to kill a woman or man in the name of honour. We will fight the dirty tradition," she said.

Zahira Khattak, vice president of the Awami National Party, has warned her partymen that they would be expelled if found to be involved in honour crimes. But the ultimate responsibility lies with the government, she warned. "The government has so far utterly failed to apply brakes on it (the custom)," she observed.

- **Ashfaq Yusufzai**

CAPITAL PUNISHMENT STAYS PUT IN CUBA

Havana - A new de facto moratorium on the death penalty in Cuba, since the last three executions took place in 2003, does not seem to indicate that capital punishment will disappear any time soon in this socialist Caribbean island nation.

April 11 marked the third anniversary of the application of the death penalty in the case of three Cubans who hijacked a ferry carrying dozens of passengers, including four foreign tourists, in an attempt to reach the United States in April 2003.

The hijackers, who had threatened to kill their hostages, were executed after a summary trial in which they were found guilty under a 2001 law on terrorism. The executions drew widespread condemnation, even from international figures who have been staunch supporters of the government of Fidel Castro, as well as in Cuba, where capital punishment tends to be accepted in the case of serious crimes like murder or the rape of minors.

A few days after the executions, Castro himself acknowledged the political costs of the drastic measure that was aimed at curbing a wave of hijackings of boats and aircraft by people keen on making it to the U.S. Even before the executions Castro said: "It pained us to hurt many of our friends and a large number of people around the world, whose sensitivity towards the death penalty, arising from religious, humanistic and philosophical motives, we are familiar with, and in many aspects share."

Among the personalities who lashed out against the executions were Uruguayan writer Eduardo Galeano and Portuguese novelist and Nobel Literature Prize-winner José Saramago, who as a result qualified his support for the Cuban revolution.

The executions broke the de facto moratorium on capital punishment in effect in Cuba since 2000, in line with a call issued to that effect by the UN High Commission on Human Rights on the suggestion of UN Secretary-General Kofi Annan. In mid-November 2001, Castro publicly stated that a group of legal experts was studying alternatives to the death penalty. "We have other ideas that will enable us one day, by our own decision, to abolish capital punishment," the president said on that occasion.

In Cuba's criminal code, 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 20 or to women who were pregnant at the time the crime was committed or when the sentence is handed down.

Cuban law also stipulates that those convicted of a crime have the right to appeal to the Supreme Court. If the sentence is upheld, it must then be ratified by the Council of State (the highest government body), which has the last word.

In practice, the death sentence has never been applied against a woman since a law was passed in 1959 to re-establish the use of capital punishment, which was later incorporated into the 1976 Socialist Constitution.

At present, the Cuban government stresses that the death sentence is only handed down in "exceptional" circumstances. "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 told the UN High Commissioner for Human Rights in 2004.

With regard to crimes against life and physical integrity, the Cuban Criminal Code establishes the death penalty for cases of homicide, rape, sexual abuse of minors involving violence, robbery involving violence and intimidation, and crimes in which corruption serves as an aggravating factor. Article 2 of the Criminal Code stipulates the application of the death penalty for crimes against the country's external security, including acts aimed at undermining its independence or territorial integrity, the promotion of armed actions against Cuba, aiding the enemy, and espionage.

"Right now there are around 50 people either sentenced to, or eligible for, the death sentence," opposition leader Elizardo Sánchez told IPS. Sánchez is the president of the Cuban Commission for Human Rights and National Reconciliation, an opposition group that has no legal status but is tolerated by the Cuban government. His list includes Salvadorans Raúl Ernesto Cruz León and Otto René Rodríguez Llerena, who were sentenced to death for terrorism in 1998.

Cruz León and Rodríguez Llerena -- whose sentences are currently pending a Supreme Court appeal -- took part in a number of bombings of tourist facilities in Cuba. One of these explosions resulted in the death of Fabio Di Celmo, an Italian residing in Havana. The death sentence has also yet to be applied against Humberto Eladio Real Suárez, who was arrested on Oct. 15, 1994 after illegally landing in Cuba and murdering a man in order to steal his car. He was sentenced for crimes against the security of the state, homicide and the illegal use of firearms.

The Cuban government does not publish statistics on the country's prison population, individuals sentenced to death, or executions. Nevertheless, Sánchez asserts that between 5,000 and 6,000 people were executed in Cuba between 1959 and 2003. - **Patricia Grogg**

CONGOLESE MINORS SIT ON DEATH ROW

Mbandaka - In a dank dormitory lit only by shafts of sunlight from holes in the roof, a hundred Congolese prisoners lie silently on straw mats and soiled blankets, some of them waiting to die.

The prison in Mbandaka, a western provincial capital, is typical of the Democratic Republic of Congo (DRC). Half its prisoners were gravely ill when an IPS reporter visited in March, but there were no doctors or medicines. Forty prisoners said they suffered from diarrhoea. The inmates defecated into an open metal bucket sitting in the corner. The stench permeated their crowded space.

Among the inmates languishing in prisons throughout Congo are at least ten children, some as young as 15 years old, condemned to death and waiting to be executed. One prisoner documented by the United Nations is 15-year-old Mbeko Banza. A child soldier working with government troops, he was one of 33,000 children recruited and armed during Congo's 1998-2002 war. In May 2005, a military court sentenced Banza to be executed for homicide.

Minors like Banza sit on death row in DRC often because they cannot prove their age. They lack the funds to pay for adequate legal counsel. Court-appointed lawyers are too over-worked and under-paid to provide more than superficial service and Congolese judges preside over trials that may not ensure a high level of justice.

"The trials are usually expeditious without respect for fair trial guarantees for the rights of the accused or victims. Some children condemned did not even have lawyers," Daniela Baro, a UN lawyer investigating juvenile criminals on death row said in an interview with IPS. "Last year, someone was condemned to death in just one day."

Congo's new constitution, approved during the country's first democratic vote in 40 years, in December 2005, enshrines human life as sacred, but it makes no mention of the death penalty. Still, while Congo's penal code allows for it under certain circumstances, it is illegal to condemn a person to death for crimes committed when they were younger than 18.

But Congo's crippled judiciary lacks qualified magistrates, funds and the infrastructure to carry out proper trials and protect witnesses in sensitive cases, such as those dealing with minors, UN officials said. A corrupt 32-year dictatorship under Joseph Mobutu and Congo's five-year war left the country's infrastructure, including its judiciary, in shambles. Judges are now paid as little as 10 dollars a month and said to live largely off underhand payments in lucrative cases such as property disputes. Few magistrates bother to properly deal with cases involving impoverished minors because they are unlikely to be paid a tip for their services.

Still, it has been at least five years since anyone was executed in Congo, partly because of a moratorium on the death penalty imposed in 2003 and subsequently lifted in 2004. For minors sentenced to death, this means endless waits in Congo's decrepit prisons -- a de facto life imprisonment.

Though executions have not been carried out, people continue to be sentenced to death, mostly at Congo's military tribunals. Judges at military courts, where most of Congo's death penalties are handed out, rarely follow the penal code's guidelines, independent observers say. "Military justice is often unacceptably expeditious, even in condemning people to death," Luc Henkinbrandt, a senior UN human rights official in Kinshasa said.

Moreover, military courts are not even supposed to try minors because the law does not allow children to fight in the army. Still, in most cases magistrates rule that the defendants, especially those who are now adults do not have adequate proof of age to show they were minors at the time they allegedly committed their offences.

Congolese, including children, rarely possess identity cards or proofs of age. For most citizens, a voter registration campaign in 2005 allowed them to obtain official identification for the first time in their lives. "Some lawyers are not able to prove the child's age by lack of resources to obtain alternative proofs of age and the judge then considers them as adults. This means they can impose the death penalty legally," Baro, the UN official, said. Children who served with armed groups during the war often have been separated from their families for years. Lawyers could travel to the native villages of the children to find evidence of their age, but that would often mean journeying hundreds of kilometres from court proceedings -- something few are prepared to do.

The main problem abolitionists of the death penalty face in Congo, explains Henkinbrandt, is that war-weary Congolese public are eager to see their country's criminals face justice. They believe the perpetrators of Congo's gruesome massacres deserve poor trials, and that by and large they should die for it. "Even if the death penalty is not carried out, the population is for expeditious justice and the death penalty sometimes. Abolition of the death penalty is not very popular among people," Henkinbrandt said. "Though abolitionist politicians have managed to stop executions, they don't have the courage to go against clear public opinion and eliminate the death penalty," he added.

- Anjan Sundaram