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15 DEATH PENALTY CASES: FURTHER DEVELOPMENTS

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There have been new developments in the cases of some of the political prisoners facing possible death sentences. The life sentence imposed on Carlos García by the Military Appeals Court has been confirmed by the Supreme Court, and a sentence of life imprisonment passed against him and three prisoners in another of the trials in which the prosecution had recommended the death sentence.

In January 1988, the Supreme Court rejected a complaint submitted by the authorities against a Military Appeals Court judge, Alberto Chaigneau, who in November had voted against confirming the death sentence against Carlos García and who thereby prevented him from facing execution. The Military Appeals Court (Corte Marcial) had commuted the death sentence against Carlos García to life imprisonment after it failed to reach a unanimous verdict. Under article 73 of the Código Orgánico de Tribunales (Organic Code governing the Courts), a death sentence can only be imposed if the verdict of the appeals court is unanimous. Judge Chaigneau was the only judge who opposed the death penalty. (See AMR 22/57/87: Commutation of Death Sentence against Carlos García.)

Following the court's ruling, however, on 29 November, the Ministerio Público Militar (the General Military Prosecutor's Office) submitted a complaint (recurso de queja) against Judge Chaigneau to the Supreme Court. In it, the prosecution argued that the judge had committed a fault in opposing the death penalty. It pointed out that the judge, despite admitting that the accused is an individual who has dedicated his life to terrorism, "considers that a judge cannot take away human life... and, based in principle on considerations outside the realm of the law, he takes a subjective position concerning the death penalty, in which he manifests his opposition to it. As a result of this attitude, he has caused an unfair sentence to be passed in a criminal case.' [a] fundamentalar que un juez no puede quitar la vida de un hombre, adopta consideraciones subjetivas y

ajenas al derecho que impidieron aplicar una sanción "ejemplizadora".] Commenting on the petition to the press, the General Military Prosecutor said: "I honestly believe that when a person is in principle against the death penalty, he should resign from being a judge." [Honestamente creo que cuando una persona tiene como principio la no aplicación de la pena de muerte debería inhabilitarse como juez.]

According to articles 68 and 75 of the Chilean Penal Code judges are not obliged to apply the death penalty. Carlos García's defence lawyer, Alfonso Insunza, described the complaint as "an attempt to impose a death sentence through disciplinary channels." ["pretender conseguir que por la vía disciplinaria la Corte Suprema aplique la pena de muerte."]

Also in January, in another trial, the Santiago Military Judge sentenced Carlos García, Fermin Montes García, Fernando Reveco Soto and Pedro Burgos to life imprisonment instead of following the recommendations of the military prosecutor to sentence them to death for their alleged participation in the death of a policeman during an attack on the Flame of Liberty monument in 1980. Defence lawyers immediately appealed against the sentence on the grounds that the participation of their clients in the alleged offences was not fully proven. This is the only trial, to Amnesty International's knowledge, in which Pedro Burgos, Fernando Reveco and Fermin Montes risked being sentenced to death. Carlos García is a defendant in two further trials where the death penalty has been recommended.

Calls for the abolition of the death penalty in Chile have continued. In the V Region of the country a campaign began in January 1988 to collect signatures on behalf of Abraham Muñoz Bustos, one of the political prisoners facing possible death sentence. The organizers of the petition, the Committee for the Defence of People's Rights (CODEPU - Comité de Defensa de los Derechos del Pueblo), said that the signatures will be submitted to the Supreme Court and that the Bishop of San Felipe, where Abraham is in prison, had expressed his "constant and special concern" for him.

A human rights lawyer, Humberto Lagos Schufeneger, also contributed to the campaign against the death penalty when he presented to the military junta a petition for the derogation of the death penalty in Chilean Law, explaining in the five page document that his request was inspired by "the demands of my conscience inspired by christian values." Setting out the reasons why the death penalty should be abolished, including the lack of evidence that it was an effective deterrent, he described the sentence as "legal assassination" and said that "eliminating the guilty person as a means of protection against society is a falacious argument because killing the person is not the same as getting rid of the "evil". [asesinato legal..eliminar al "culpable" como medio de protección de la sociedad es un argumento falaz, porque matarlo no es equivalente al exterminio del "mal".]

Amnesty International remains concerned about twelve political

prisoners who still face possible death sentences. It is particularly concerned about the cases of Jorge Palma Donoso, Carlos Araneda and Hugo Marchant Moya. Their appeal against the death sentence imposed on them by a military judge is due to be heard after the inauguration of the new judicial year in March.



Poster showing some of the children whose parents risk possible death sentences.

This document updates information contained in AMR 22/30/87: Fifteen Death Penalty Cases, and AMR 22/57/87: Commutation of Death Sentence against Carlos Garcia

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CHILE ACTION NETWORK

CHAN 06/87:UPDATE 2

FIFTEEN DEATH PENALTY CASES: FURTHER DEVELOPMENTS

February 1988

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. In addition please undertake as many of the following recommended actions as possible.

1. Sections, CHAN/Chile coordinators, death penalty coordinators and CHAN groups should distribute the external part of this document to all those who received the original documents on this issue so that they are kept informed of developments.

2. The next death penalty case likely to come up before the courts is that of Jorge Palma Donoso, Hugo Marchant Moya and Carlos Araneda Miranda whose appeal is due to be heard by the Military Appeals Court. It is possible this may happen in March, after the judicial vacation. CHAN groups should try if possible to send some appeals with copies to the Military Appeals Court at the beginning of March or as soon as possible after that. Your letters should welcome the recent court decisions where prison rather than death sentences have been imposed and express the hope that the death penalties against Hugo Marchant, Jorge Palma and Carlos Araneda will also be revoked when their appeals are heard.

3. Many governments have already expressed their concern to the Chilean authorities regarding the death penalty cases. Sections and CHAN coordinators should, when sending their government the attached new information, inform them about the situation of Jorge Palma, Carlos Araneda and Hugo Marchant and urge that they reiterate their concerns regarding these three cases.

DISTRIBUTION BY THE IS

This circular has been sent direct by the IS to: Chile/CHAN coordinators, death penalty coordinators.

