

# Indonesia

## A briefing on the death penalty

### 1. Introduction

On 5 August 2004, Indonesia carried out its first execution in more than three years. Ayodhya Prasad Chaubey, an Indian national convicted of drug-trafficking in 1994, was executed by firing squad. Two Thai nationals, Saelow Prasert (m) and Namsong Sirilak (f), who had been sentenced to death in the same case, were executed on 1 October 2004. Eight other people, all of whom have been sentenced for drug-related offences, are at imminent risk of execution after their appeals for presidential clemency were rejected in June and July 2004. A total of at least 54 people are currently believed to be under sentence of death in Indonesia, 30 of them for drug-related offences.

Amnesty International is concerned that these recent developments reflect an increasing willingness by the authorities to use the death penalty to address crime, in particular drug-trafficking. The organization is alarmed at official statements that further executions will be carried out in the near future. This would constitute a setback for human rights in Indonesia, which has only rarely imposed this cruel and inhuman form of punishment.

The organization is also concerned about calls to expand the number of crimes for which the death penalty may be imposed. Currently, capital punishment may be imposed for crimes relating to murder; crimes against state security; assassination of the President or Vice-president and drug-related crimes. In addition, contrary to the international trend to abolish or reduce the number of crimes for which the death penalty may be imposed, two laws relating to crimes against humanity and terrorism adopted within the past four years include the death penalty for some crimes. In recent years there have also been calls to impose the death penalty for illegal logging and corruption.

Amnesty International considers the death penalty to be the ultimate cruel inhuman and degrading punishment and a violation of the right to life. The organization opposes executions in all cases – however serious the offence. Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. Moreover, in Indonesia, as in all criminal justice systems, the application of the death penalty carries the risk of a miscarriage of justice, yet it is irrevocable. Reports that the death penalty has, in some cases, been imposed after trials that may have fallen short of international standards has compounded such fears. The organization is calling on Indonesia to establish a moratorium on executions and to commute all existing death sentences.

### 2. The death penalty in Indonesia

Amnesty International believes that at least 54 people are currently under a sentence of death in Indonesia. This information is based on media reports and information from lawyers handling death penalty cases. A press statement issued by the Attorney General's office listed 55 people as being under sentence of death as of January 2003.<sup>1</sup>

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<sup>1</sup> "Data on Death Penalty Cases who have/have not yet had their sentences confirmed and who have/have not yet been executed since the Republic of Indonesia's independence", Press release, Central Legal Information Centre, Attorney General's Office, 28 October 2003. Some of those listed by the Attorney General's office have subsequently been pardoned, and there are some discrepancies between the list provided by the Attorney General's office and information received by Amnesty International.

According to Amnesty International's information, 30 of those sentenced to death have been convicted for drug-related offences, while 19 have been found guilty of murder. Five men are facing death after being convicted of bomb attacks in Bali and Jakarta. Twenty-two of those facing death are foreigners, 20 of whom have been sentenced to death for drug-related offences.

A person who has been sentenced to death in a lower court can appeal to the relevant high court and to the Supreme Court. A person may appeal for clemency only once, except in cases where more than two years have passed since a clemency decision was rejected, in which case a new appeal may be lodged.<sup>2</sup>

A prisoner must be notified of his or her execution at least 72 hours in advance of the execution. Execution is by firing squad. In the past decade, Indonesia has rarely carried out executions. The execution of Ayodhya Prasad Chaubey, on 5 August 2004, was the first to take place for over three years. Previous to that, in 2001, Gerson Pandie (m) and Fredik Soru (m) were executed in Kupang, Nusa Tenggara Timur Province for murder. Prior to that, no executions had been carried out since 1995, when three people were executed. They were Chan Ting Chong (Steven Chong) (m), Karta Tjahyadi (m) and Katjong Laranu (m). Chan Ting Chong, a Malaysian national, was the first person known to have been executed for drug-related offences in Indonesia. Karta Tjahyadi and Katjong Laranu had both been found guilty of murder.

### **3. Provisions for the death penalty in Indonesian law**

The death penalty is provided for in Indonesian law for murder with deliberate intent and premeditation; attempting to assassinate the President or Vice-president or render him unfit to govern; treason; premeditated murder of the head of state of a friendly state; piracy resulting in death; theft resulting in death; producing, processing, extracting, converting or making available narcotics; crimes against humanity; and "terrorism".<sup>3</sup>

In 1998, following the forced resignation of former President Suharto (1966-1998), Indonesia embarked on a program of political and human rights reform.<sup>4</sup> The following year, Amnesty International welcomed the repeal of the Anti-subversion Law, a law which punished peaceful dissent with a maximum sentence of death and which had been widely used to imprison prisoners of conscience and political prisoners, some of whom had been sentenced to death.

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<sup>2</sup> *Undang-undang Republik Indonesia Nomor 22 Tahun 2002 tentang Grasi* (Law No. 22/2002 concerning Clemency).

<sup>3</sup> Specifically, the death penalty is provided for in the following provisions of the Indonesian Criminal Code (*Kitab Undang-undang Hukum Pidana*, KUHP): Article 104 (The attempt with intent to deprive the President or Vice-president of his life or liberty or to render him unfit to govern); 111 (collusion with a foreign power resulting in war); 123 (entering military service in a country at war with Indonesia); 124 (assisting the enemy); 127 (fraud in delivery of military materials in time of war); 140 (premeditated murder of the head of a friendly state); 340 (murder with deliberate intent and premeditation); 365 (theft resulting in murder); and 444 (piracy resulting in the death of a person). The following laws also contain provisions which allow for a maximum sentence of death: Emergency Law no. 12/1951; The Military Criminal Code (*Kitab Undang-undang Hukum Pidana Militer*, KUHPM); Law no. 5/1997 on Psychotropic Drugs; Law no. 22/1997 on Narcotics; Law no. 26/2000 on Human Rights Courts; and Law no. 15/2003 on Combatting Criminal Acts of Terrorism.

<sup>4</sup> As the Indonesian government embarked on a transition towards democracy, human rights reform was among the key demands for change, although abolishing the death penalty was not included as part of the reform program.

The process of legal reform in Indonesia is ongoing. Indonesia has already ratified a number of international treaties on human rights and is committed to ratify others in the near future. Within this process of reform Indonesia must ensure that the law is brought in line with international standards relating to capital punishment that establish the greatest possible protection for individuals facing the death penalty.

The organization is also deeply concerned that two recently adopted laws, the Law on Human Rights Courts (Law 26/2000) and the Law on Combating Criminal Acts of Terrorism (Law 15/2003) both contain provisions for the death penalty. This is against the international trend towards abolishing or restricting the number of crimes for which the death penalty may be imposed. The UN Commission on Human Rights (UNCHR) has repeatedly called on countries to restrict the number of crimes for which the death penalty may be imposed. UN General Assembly resolution 32/61, established that “...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment...”<sup>5</sup>

Amnesty International therefore urges the Indonesian government to amend all relevant articles of the Indonesian Criminal Code (*Kitab Undang-undang Hukum Pidana*, KUHP), which is currently being revised, so that they do not provide for the death penalty.

#### ***Law 26/2000 on Human Rights Courts***

Law 26/2000 on Human Rights Courts (Law 26/2000) was introduced in November 2000 to try individuals suspected of committing genocide and crimes against humanity. Under the legislation, crimes which carry the maximum penalty of death are: genocide; killing; extermination; enforced eviction or movement of citizens; imprisonment or other severe deprivation of physical liberty and apartheid. Amnesty International is concerned that some procedures under the law do not guarantee independence and impartiality of the trial process. So far, no death sentences have been handed down under this legislation.

Amnesty International considers the provision for the death penalty in the law to be at odds with the purpose of the legislation, which is designed to strengthen the legal and judicial framework to *protect* human rights by bringing to justice individuals who perpetrate human rights violations. While the acts being tried under this legislation are among the most atrocious of crimes, the use of the death penalty as a punishment undermines the fundamental role of a Human Rights Court in upholding human rights.

Moreover, the provision for the death penalty in Law 26/2000 is inconsistent with international efforts to address crimes against humanity. The Rome Statute of the International Criminal Court, established to try crimes against humanity, does not allow for the death penalty. Likewise, International Criminal Courts for the former Yugoslavia and Rwanda excluded the death penalty from the penalties these courts were authorized to impose.

#### ***Law 15/2003 on Combating Criminal Acts of Terrorism***

The Law on Combating Criminal Acts of Terrorism (Law 15/2003) was adopted in April 2003, and replaced a Government Regulation on the Elimination of Terrorism (*Peraturan Pemerintah Pengganti Undang-undang*, Perpu No. 1/2002) which had been enacted in the aftermath of bombings in Bali in October 2002 in which 202 people were killed.

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<sup>5</sup> United Nations General Assembly resolution 32/61 of 8 December 1977.

Amnesty International has previously expressed concern that Indonesia's "anti-terrorism" legislation risks undermining human rights.<sup>6</sup> In addition to its provision for the death penalty, Amnesty International is also concerned about the undefined nature of "terror" or "acts of terrorism" that are criminalized under the law. It is a general principle of international law that criminal offences must be defined precisely by law so that people know what is actually prohibited. Rights to fair trial are also not fully guaranteed under the legislation.

A related law, the Law on Combating Criminal Acts of Terrorism related to the Explosion of Bombs in Bali (Law 16/2003) allows for those involved in the bombings in Bali to be tried retroactively contrary to international criminal law that prohibits the retroactive application of criminal law. Three men have been sentenced to death in connection with the Bali bombings and 30 others have been sentenced to terms of imprisonment. On 23 July 2004, Indonesia's Constitutional Court ruled that the law was unconstitutional because it had been enacted after the bombings took place. Lawyers of those sentenced under this legislation have reportedly stated that the ruling gives grounds for appeal.

#### ***Recent calls for the death penalty in other legislation***

In the past year, there have been calls to introduce capital punishment for economic crimes, including illegal logging and corruption. In July 2004, Indonesia's Minister for Environment Nabel Makarim reportedly stated that legislation was being drafted which would allow for a maximum sentence of death for illegal logging, saying that "[p]resent laws are not enough as the penalties are too small. The heavy penalty [of death] is to deter anyone thinking of clearing forests illegally or starting a fire".<sup>7</sup>

Meanwhile, presidential candidate Susilo Bambang Yudhoyono has called for the death penalty to be imposed for corruption, stating that, "[w]hoever commits a crime - whether they be corrupters or gross human rights violators - should face (capital punishment). But everyone must go through a credible court system".<sup>8</sup>

The UN Human Rights Committee (UN HRC), the expert committee established under the ICCPR to oversee the implementation of the convention, in its General Comment number 6(16), which authoritatively interprets the convention, states that the expression "most serious crimes" must be read restrictively because the death penalty is a "quite exceptional measure". The UN HRC considers that certain crimes, including economic crimes, do not meet the standard of serious crime and should therefore not be subject to the death penalty.

## **4. Drugs and the death penalty**

Under Article 59 of Law 5/1997 on Psychotropic Drugs and Articles 80 to 82 of Law 22/1997 on Narcotics, the death penalty is provided for as an optional punishment for certain offences related to the production, transit, import and possession of psychotropic drugs and narcotics.

At least 30 people are currently believed to be under sentence of death after having been convicted of drug-related offences. Among them are 20 foreign nationals. Six of those sentenced to death for drug-related offences are women. To date three men and one woman

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<sup>6</sup> See Amnesty International, Annual Reports 2003 and 2004.

<sup>7</sup> "Death penalty for illegal loggers: Minister", *Laksamana.Net*, 2 July 2004.

<sup>8</sup> "Candidates want death penalty", *National Nine News*, 2 July 2004.

have been executed for drug-trafficking. They are Ayodhya Prasad Chaubey, Namsong Sirilak and Saelow Prasert who were executed in 2004 and Chan Ting Chong (Steven Chong) who was executed in 1995. All four had been sentenced under the 1976 Narcotics Law (Law no. 9/1976) which was in place before new legislation was introduced in 1997.

President Megawati Sukarnoputri has taken a strong position on the use of the death penalty for drug-traffickers. In 2002 she stated that, “*For those who distribute drugs, life sentences and other prison sentences are no longer sufficient. No sentence is sufficient other than the death sentence*”.<sup>9</sup> She has also reportedly stated that she will not grant presidential clemency to those sentenced for drug-trafficking. In June 2004, when rejecting the appeals of five drug- traffickers she stated that, “*I have to stress here that it is my obligation to protect our children and youth from the threat of drug abuse and trafficking*”.<sup>10</sup> In September 2004 she said that, “*Due to the great dangers of drug abuse that has threatened our younger generation, I will uphold the capital punishment for all drug-related crimes*”.<sup>11</sup>

Likewise, the Chief of the Indonesian Police, General Da'i Bachtiar has said the death penalty would “*serve as a deterrent*” and “*show Indonesia's seriousness in fighting the war on drugs*”.<sup>12</sup>

The trade in and use of illicit drugs is a world-wide problem, and Amnesty International recognizes that the increased calls for the death penalty reflects a genuine need to protect the community from this threat. However, no convincing evidence has been produced that the death penalty deters would be drug-traffickers and suppliers more effectively than other punishments.

Although various UN bodies have made statements regarding the trade in illicit drugs, the UN has never endorsed the use of the death penalty to suppress drug-trafficking and abuse. Indeed, the reverse is true. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has urged that “*the death penalty should be eliminated for crimes such as economic crimes and drug-related offences*”.<sup>13</sup>

## 5. Lack of deterrent effect

Amnesty International recognizes the need for effective measures to combat crime, including drug-related and economic crimes. However, the organization considers that the death penalty is qualitatively different from other forms of punishment, such as imprisonment, in that it is irrevocable. It is the ultimate cruel, inhuman and degrading punishment and a violation of the fundamental right to life.

Proponents of the death penalty, including in Indonesia, have often argued that the imposition of the death penalty is necessary to dissuade other people from committing the same crime. However, studies in a diverse range of countries – including those struggling with violent crime – have failed to find convincing evidence that the death penalty acts as a more effective deterrent against crime than other forms of punishment. The most recent survey of research findings on the relation between the death penalty and homicide rates conducted for the United Nations in 1998 and updated in 2002 concluded that, “*...it is not*

<sup>9</sup> “Mega: It must be death for drug-traffickers”, *Agence France Press*, 27 June 2002.

<sup>10</sup> “More drug traffickers clemency pleas rejected”, *The Jakarta Post*, 9 July 2004.

<sup>11</sup> “President upholds death sentence for drug-dealers”, *The Jakarta Post*, 6 September 2004.

<sup>12</sup> “Drug trade thrives in Indonesia”, *The Straits Times*, 12 August 2004.

<sup>13</sup> Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur E/CN.4/1997/60, para 91, 24 December 1996.

*prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment*".<sup>14</sup>

## 6. Unfair trials

In Indonesia, as in all criminal justice systems, the application of the death penalty may lead to an irreversible miscarriage of justice. This concern is compounded by widely acknowledged problems within the Indonesian justice system. There is evidence that trials in death penalty cases have, in some cases, failed to uphold international standards for fairness. Among the violations reported to Amnesty International are:

- **Lack of access to lawyers:** Some individuals who have been sentenced to death have been denied access to lawyers at the pre-trial stage, denying them the right to prepare a defence, in contravention of both Indonesia's Code of Criminal Procedures (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) and international standards for fair trial. There is also concern that those who have had their final appeals for clemency rejected have, in some cases, been denied access to lawyers in the time leading up to their execution. In the case of foreign nationals, where access to family members is not possible, this has, in some cases, effectively cut off their access to the outside world.
- **Lack of access to interpreters:** In some cases, there are reports that foreign nationals have not been provided with adequate interpretation both during initial questioning and trial. This has denied them the right to fully understand the charges against them and to adequately prepare a defence. The UN Human Rights Committee has stated that the right to an interpreter is "*of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence*".<sup>15</sup> The International Covenant on Civil and Political Rights also guarantees the right of a suspect "*to have the free assistance of an interpreter if he cannot understand or speak the language used in court*".<sup>16</sup>
- **Torture:** Torture and ill-treatment is believed to be widely practised in Indonesia. Amnesty International has received information of cases of both political and criminal suspects being subjected to torture. These have included cases where charges have carried a possible death penalty. In one case, an individual sentenced to death claims to have been tortured to extract a confession.<sup>17</sup> This is in contravention of Indonesia's obligations as a state party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment, which it ratified in 1998.

The Special Rapporteur on extrajudicial, summary or arbitrary executions stated at the 2001 UN Commission on Human Rights that,

*The death penalty must under all circumstances be regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner possible. It is also indispensable that all restrictions*

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<sup>14</sup> Roger Hood, *The Death Penalty: A worldwide perspective*, Oxford University Press, 3<sup>rd</sup> edition, 2002, p. 230.

<sup>15</sup> Human Rights Committee, General Comment 13, Para. 13.

<sup>16</sup> Article 14(3) of the International Covenant on Civil and Political Rights.

<sup>17</sup> See below, "Saka bin Juma", p. 8.

*and fair trial standards pertaining to capital punishment contained in international human rights instruments are fully respected in proceedings relating to capital offences.*<sup>18</sup>

Moreover, in resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states strengthen further the rights of those facing the death penalty by “(a)ffording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases”.

The cases below illustrate that trials of those facing the death penalty in Indonesia have not always conformed to international standards for fair trial.

### ***Ayodhya Prasad Chaubey, Saelow Prasert and Namsong Sirilak***

Saelow Prasert (m) and Namsong Sirilak (f) were arrested in Polonia Airport, Medan, North Sumatra Province on 21 February 1994, after Indonesian customs officials discovered 12.19 kilograms of heroin in their luggage. The two Thai nationals said that the bags belonged to Ayodhya Prasad Chaubey, an Indian national. He was arrested three days later in a hotel in Medan.

The three were charged with drug-trafficking and brought to trial. Amnesty International has expressed concern that their trials may not have upheld international standards for fairness. According to their lawyers, the three did not have access to legal representation during the police investigation or prior to their trial. They were given legal representation only when the trial started, denying them the right to legal advice during questioning and to adequately prepare a defence.

In addition, the three, who at the time did not speak Indonesian, the language in which all trial proceedings were held, did not have an interpreter during the police investigation. Ayodhya Prasad Chaubey is reported to have asked to submit an official objection to the investigation report on grounds that he could not understand its content, but was told that he would have an opportunity to change the information at a later stage. However, the investigation report was later submitted without Ayodhya Prasad Chaubey's objection being noted. An interpreter was provided during the trial. However, according to media reports, the quality of interpretation in the court of first instance was poor, and Namsong Sirilak was unable to understand the interpreter.

These procedural irregularities in the trials of Ayodhya Prasad Chaubey, Saelow Prasert and Namsong Sirilak were reportedly raised during the appeals to the North Sumatra High Court and the Supreme Court. Despite the violation of procedures, their death sentences were upheld. President Megawati Sukarnoputri rejected Ayodhya Prasad Chaubey's appeal for clemency in February 2003. In June 2004, the Supreme Court rejected his request for a second review of his trial. On 8 July 2004, President Megawati also rejected clemency for Saelow Prasert and Namsong Sirilak.

Ayodhya Prasad Chaubey was executed on 5 August 2004. In the week prior to his execution his lawyers were denied access to him, but were told by a prison official that he was distressed. The lawyers submitted protest letters to the Sumatra High Court and the President.

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<sup>18</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Fifty-seventh Session of the Commission on Human Rights, VN.DOC.E/CN.4/2001/9, Para 76, 11 January 2001.

After several attempts to gain access, they were informed on 4 August 2004, by a letter from the Medan Public Prosecutor's office, that his execution was imminent. However, the letter did not specify an execution date. At around 2.30 am on 5 August 2004, Ayodhya Prasad Chaubey was taken to a field on the outskirts of Medan and executed by firing squad. His lawyers only learnt about the execution after it had taken place. Efforts by lawyers to contact his family in India prior to the execution were unsuccessful, and his wish to see them or speak to them prior to his execution was not granted. The denial of access to his lawyers prior to his execution was all the more significant as they were his only contact with the outside world.

Saelow Prasert and Namsong Sirilak were both executed by firing squad on 1 October 2004. Prior to her execution, Namsong Sirilak was reportedly allowed a telephone conversation with her 12-year-old child in Thailand. She reportedly requested that her photographs, two sets of clothing, necklace and diary be sent to her child. Among Saelow Praserts final wishes was that he would be the last person to be executed in Indonesia. He also reportedly requested that his clothing be given to his fellow inmates in Tanjung Gusta Prison.

Both Namsong Sirilak and Saelow Prasert denied any knowledge that they were carrying heroin. According to media reports, they believed that they were carrying clothing samples to be handed to a businessman in Medan. Namsong Sirilak, a seamstress since the age of 13, lived with her husband and two-year-old child in a poor neighbourhood of Bangkok. Saelow Prasert, a car-mechanic, lived in the same neighbourhood.

### ***Saka bin Juma***

Saka bin Juma, an illiterate farm-worker and father of six, was sentenced to death for the premeditated murder of a family of three in November 1994.

Following his arrest, he was taken to Reteh Police Sector (Polsek), Indragiri Hilir District, Riau, where he was allegedly tortured including by being beaten. On one occasion he was reportedly immersed in water for a period of around two hours. He described his treatment to an Indonesian newspaper,

*"[At the police station] they beat me with sticks and whips to make me confess. They also burned my feet with matches. I still have the scars. Eventually, after 10 days, I couldn't take any more and told them I did it. I was in so much pain and knew I shouldn't have confessed but there was no alternative. I would have died and as it turns out, I am to be executed anyway. I should have let the police finish me off. I didn't have a lawyer in the courts as I didn't have any money and I don't understand things like that anyway".<sup>19</sup>*

Saka bin Juma did not have access to legal representation during the police investigation or prior to his trial. He was given legal representation only when the trial started, denying him the right to legal advice during questioning and to adequately prepare a defence. He was sentenced to death in Tembilahan District Court, Riau, on 17 May 1995. It is believed that he did not appeal his sentence, and there is concern that he may not have understood his right to do so. Saka bin Juma has claimed that he is not guilty of the murders, and that his confession was elicited through torture.<sup>20</sup>

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<sup>19</sup> "A day with a death row prisoner", *The Jakarta Post*, 17 September 2000.

<sup>20</sup> FaktaHAM, No. 9/Yr 1/2000, *Komnas HAM*, 27 September 2000.

### *Past cases*

Prior to the execution of Ayodhya Prasad Chaubey, the only other person executed for drug-trafficking in Indonesia was Chan Ting Chong (Steven Chong), a Malaysian businessman who had been found guilty of smuggling 420 grams of heroin into Indonesia.

In June 1985, a Malaysian national, Maniam Manusami, was arrested carrying heroin. He admitted having smuggled it into the country, but said he had been paid by Chan Ting Chong, with whom he was sharing a hotel room. Chan Ting Chong denied involvement but was sentenced to death; Maniam Manusami was sentenced to life imprisonment. Chan Ting Chong's sentence was upheld by the High Court in April 1986. In August 1986 it was reported that Maniam Manusami had written to the Supreme Court saying that he had falsely implicated Chan Ting Chong, whom he had only met by chance on arrival at the airport a few days before their arrest and who knew nothing about the drugs. In spite of this new statement, Chan Ting Chong's death sentence was upheld by the Supreme Court in 1990, and his petition for clemency was rejected in 1991. He was executed on 13 January 1995.

Another case in which Amnesty International raised concern was that of Kamjai Khong Thavorn, a Thai seaman who was sentenced to death for drug-trafficking in 1988. He had been arrested in August 1987 in Samarinda, East Kalimantan, after Indonesian customs officials conducting a routine inspection discovered 17.76 kilograms of heroin in his cabin.

Evidence which emerged after his trial suggested strongly that Kamjai Khong Thavorn was either innocent or else a very minor actor in a large drug smuggling operation. According to defence lawyers, two men questioned by Thai police in June 1991 admitted that they had placed a bag containing 20 packages of heroin in Kamjai Khong Thavorn's cabin on instruction from a Japanese national.

Serious doubts have been raised about the fairness of his trial. The original trial, as well as all subsequent appeals and legal procedures, were conducted in Indonesian which Kamjai Khong Thavorn could not speak or understand. Some stages of the appeals process were apparently carried out without the agreement or knowledge of either the defendant or his lawyers. Kamjai Khong Thavorn's lawyers were not informed of his appeal to the Supreme Court or of his application for presidential clemency, both of which were rejected. The lawyers have argued that the clemency petition was legally invalid because it was submitted by prison officials without Kamjai Khong Thavorn's full agreement or understanding.

Kamjai Khong Thavorn was granted presidential clemency in 1998, after spending ten years under sentence of death.

## **7. International standards on the death penalty**

International human rights standards stipulate that the death penalty should only be imposed for the most serious of crimes, and favour moving towards complete abolition.

Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) states that, "*in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes*". The UN Human Rights Committee established to oversee the implementation of the ICCPR, provides the most authoritative interpretation of the ICCPR. It has stated that "*the expression 'most serious crime' must be read restrictively to mean that the death penalty should be a quite exceptional measure*".<sup>21</sup>

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<sup>21</sup> General Comments adopted by the Human Rights Committee, General Comment 6 (Article 6), UN Doc. HRI/GEN/1/Rev.3, 15 August 1997.

In its recently launched National Action Plan on Human Rights 2004-2009, Indonesia has committed to ratify the ICCPR in 2004.<sup>22</sup>

In addition, there have been a number of resolutions adopted by UN bodies which apply to all member states, including Indonesia. UN General Assembly resolution 32/61 adopted in 1977, established that “...*the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to desirability of abolishing this punishment...*”<sup>23</sup>

The UN Commission on Human Rights (UNCHR) has repeatedly passed resolutions calling upon states to stop executions. In its April 2004 resolution, the UNCHR recalled its previous resolutions in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.<sup>24</sup> The resolution was adopted by a roll-call vote of 29 in favour, 5 absentions and 19 opposed, among them Indonesia. Indonesia also signed a statement disassociating itself from the resolution.<sup>25</sup>

## 8. Recommendations

### **Amnesty International urges the Indonesian government to take the following steps:**

1. Take immediate steps towards abolition of the death penalty, in accordance with UN Commission on Human Rights resolutions, by declaring a moratorium on all executions; and commute all pending death sentences to terms of imprisonment.
2. Amend all relevant articles of Indonesia’s Criminal Code (*Kitab Undang-undang Hukum Pidana*, KUHP) so that they do not provide for the death penalty.
3. Ratify the International Covenant on Civil and Political Rights (ICCPR) in line with Indonesia’s commitments under its National Plan of Action on Human Rights.
4. Take concrete steps to ensure that all prosecutions, in particular those for crimes carrying the death penalty, meet the highest international standards for fair trial. This would include the right to adequate legal representation at every stage of proceedings, adequate access to interpretation and freedom from torture or ill-treatment.
5. Facilitate an informed public debate about capital punishment, including its lack of a proven unique deterrent effect, and about alternative methods of dealing with law and order in a way which is consistent with human rights standards.

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<sup>22</sup> National Plan of Action on Human Rights 2004 - 2009 (*Rencana Aksi Nasional Hak-Hak Asasi Manusia Indonesia 2004-2009*).

<sup>23</sup> United Nations General Assembly resolution 32/61 of 8 December 1977.

<sup>24</sup> The question of the death penalty, E/CN.4/2004/L.94, 21 April 2004.

<sup>25</sup> “Promotion and Protection of Human Rights. The Status of the International Covenants on Human Rights”, UN Doc. E/CN.4/2004/G/54, 22 April 2004.

## 6. Appendix I: People believed to be under sentence of death in Indonesia

The information below is based on information extracted from a variety of sources. Amnesty International continues to seek further information on the prisoners below, who have been reported to be under sentence of death.

Name	Nationality	Date of arrest	Date of sentence	Charges	Related cases
<b>Adam Wilson (m)</b>	Malawian and Benin	End of 2003	24 May 2004 by Tangerang District Court, Jakarta	Drug-trafficking (Article 82(1) of Law no. 22/1997 concerning Narcotics); KUHP Article 55; and Law no. 9/1992 on immigration.	Edith Yunita Sianturi
<b>Agung Widodo (m)</b>	Indonesian	17 November 2001	6 June 2002	Murder Article 1(1)Emergency Law 12/1951 Article 339 KUHP and Article 55(1) KUHP.	
<b>Ahyam (Aheng) (m)</b>	Indonesian	December 2002	12 June 2003 by Tanjungpinang District Court, Riau Province	Producing and distributing illicit drugs. Article 59 of Law 5/1997 on Psycotropic Drugs	Jon Haw and Deny
<b>Akhmad Suradji (m)</b>	Indonesian	28 April 1997	28 April 1998 by Lubuk Paman District Court, North Sumatra Province.  Is reportedly appealing for a review of his sentence by the Supreme Court.	Murder	

<b>Ali Ghufron (Mukhlas) (m)</b>	Indonesian	4 December 2002	2 October 2003 by Bali District Court. Upheld on 5 January 2004 by Bali High Court.	Terrorism Government Regulation (Perpu) 1/2002 on Combatting Criminal Acts of Terrorism in the Bali Bombing on 12 October 2002.	Amrozi bin Nurhasyim and Iman Samudra
<b>Amrozi bin Nurasyim (m)</b>	Indonesian	5 November 2002	7 August 2003 by Bali District Court	Terrorism Government Regulation (Perpu) 1/2002 on Combatting Criminal Acts of Terrorism in the Bali Bombing on 12 October 2002.	Ali Ghufon and Imam Samudra
<b>Ang Kim Soei (m)</b>	Dutch	April 2002	13 January 2003 by Tangerang District Court, Jakarta	Production of Drugs Article 59 of Law 5/1997 on Psychotropic Drugs and Article 55 KUHP	
<b>Astini Sumiasih (f)</b>	Indonesian		October 1996, East Java	Murder (Article 340 KUHP)	
<b>Bahar bin Matar (m)</b>	Indonesian		5 March 1970 by Tembilahan District Court Presidential clemency rejected on 13 July 1972.	Murder	
<b>Bunyong Khaosa Ard (f)</b>	Thai	6 April 2002	22 October 2002 by Tangerang District Court, Jakarta	Drug-trafficking Article 82(1) and 78 of Law no. 22/1997 concerning Narcotics.	Obina Nwajagu

<b>Dan Marinus Riwu (m)</b>	Indonesian	2000	5 April 2001 by Palu District Court Upheld by Central Sulawesi High Court on 17 May 2001 Upheld by Supreme Court on 19 November 2001	Murder Sentenced in connection with ethnic violence in Poso, Central Sulawesi in May 2000.	Dominggus da Silva and Fabianus Tibo
<b>Deni Setia Maharwan (m)</b>	Indonesian	12 January 2000	23 August 2000 by Tangerang District Court, Jakarta. Upheld by High Court and Supreme Court. Appeal for clemency rejected in June 2004.	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	Rani Andrianti and Meirika Pranola
<b>Deny (Kebo) (m)</b>	Indonesian	December 2002	12 June 2003 Tanjungpinang District Court, Riau Province	Producing and distributing illicit drugs. Article 59 of Law 5/1997 on Psychotropic Drugs.	Ahyam and Jon Haw
<b>Dominggus da Silva (Soares) (m)</b>	Indonesian	2000	5 April 2001 by Palu District Court Upheld by Central Sulawesi High Court on 17 May 2001 Upheld by Supreme Court on 19 November 2001.	Murder Sentenced in connection with ethnic violence in Poso, Central Sulawesi in May 2000	Dan Marinus Riwu and Fabianus Tibo

<b>Edi Setiono (m)</b>	Indonesian		13 May 2002 Central Jakarta District Court. <i>[verdict also reported as life imprisonment]</i>	Emergency Law 12/1951 Bombing of Atrium Mall in Jakarta (See also Taufik bin Abdullah)	Taufik bin Abdullah Halim
<b>Edith Yunita Sianturi (f)</b>	Indonesian	4 June 2001	27 December 2001 by Tangerang District Court	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics; subsidiary charges of Article 8(1) and 78(1)b.	Adam Wilson
<b>Fabianus Tibo (m)</b>	Indonesian	2000	5 April 2001 by Palu District Court Upheld by Central Sulawesi High Court on 17 May 2001 Upheld by Supreme Court on 19 November 2001.	Murder Sentenced in connection with ethnic violence in Poso, Central Sulawesi in May 2000 (See also Dan Marinus Riwu and Dominggos da Silva)	Dominggus Da Silva and Marinus Riwu
<b>Gunawan Santoso (m)</b>	Indonesian	12 September 2003	24 June 2004 by North Jakarta District Court	Murder KUHP Article 340	
<b>Hansen Anthony Nwaliosa (m)</b>	Nigerian	29 January 2001	13 August 2001 by Tangerang District Court. Upheld in High Court and Supreme Court	Drug-trafficking Law no. 22/1997 concerning Narcotics	
<b>Hillary K. Chimezia (m)</b>	Nigerian	18 August 2002	23 October 2003 by Tangerang District Court	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	Michael Titus Igweh

<b>Humprey Ijike (m)</b>	Nigerian	2 August 2003	6 April 2004 by Central Jakarta District Court.	Drug-trafficking	
<b>Imam Samudra (m)</b>	Indonesian	21 November 2002	10 September 2003 by Denpasar District Court, Bali. Verdict upheld in Bali High Court on 20 November 2003. Verdict upheld in Supreme Court on 18 June 2004.	Terrorism Government Regulation (Perpu) 1/2002 on Combatting Criminal Acts of Terrorism in the Bali Bombing on 12 October 2002.	Amrozi bin Nurhasyim and Ali Ghufon.
<b>Indra Bahadur Tamang (m)</b>	Nepali	21 January 2001	14 August 2001 Tangerang District Court Verdict upheld in High Court and Supreme Court.	Drug-trafficking Law no. 22/1997 concerning Narcotics	
<b>Jon Haw (m)</b>	Indonesia	December 2002	12 June 2003 Tanjungpinang District Court, Riau	Producing and distributing illicit drugs. Article 59 of Law 5/1997 on Psycotropic Drugs.	Deny and Ahyam
<b>Jurit bin Abdullah (m)</b>	Indonesian	1997	Sekayu District Court, 1997 Clemency appeal rejected February 2003	Murder	
<b>Kiagus Zainal Abidin (m)</b>	Indonesian		Sentenced to 18 years by District Court Changed to death sentence on appeal to South Sumatra High Court	Drug-trafficking	

<b>Koh Kim Chea (m)</b>	Malaysian	6 July 1991	March 1992 by Batam Island District Court	Murder	
<b>Marco Archer Cardoso Moreira (m)</b>	Brazil	31 July 2004	6 August 2004 by Tangerang District Court	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	
<b>Martin Anderson (Belo) (m)</b>	Ghana		2 June 2004 in South Jakarta District Court	Selling drugs	
<b>Meirika Pranola (f)</b>	Indonesian	12 January 2000	23 August 2000 by Tangerang District Court  Upheld by High Court and Supreme Court.  Appeal for clemency rejected in June 2004	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	Rani Andriani and Dani Setiawan
<b>Meri Utami (f)</b>	Indonesian	31 October 2001	21 May 2002 by Tangerang District Court  Upheld by High Court	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	
<b>Michael Titus Igweh (m)</b>	Nigerian	18 August 2002	23 October 2003 by Tangerang District Court.	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	Hillary K. Chimezia
<b>Mohammad Abdul Hafeez (m)</b>	Pakistan	28 June 2001	27 November 2001 by Tangerang District Court  Upheld by High Court and Supreme Court.	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	

<b>Namaona Denis (m)</b>	Nigeria	15 April 2001	Sentenced to life imprisonment on 4 September 2001 By Tangerang District Court Changed to death sentence on appeal to High Court.	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	
<b>Nonthanam M. Saichon (f)</b>	Thai	September 2001	13 March 2002 by Tangerang District Court, Jakarta. Upheld in High Court.	Drug-trafficking	Tangerang Women's Prison, Jakarta
<b>Nyonya Sumarsih (f)</b>	Indonesian	1988	19 February 1989 by Surabaya District Court Clemency appeal rejected February 2003	Murder	
<b>Obina Nwajagu (m)</b>	Nigerian	April 2002	23 October 2002 by Tangerang District Court.	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics; Subsidiary charges of Articles 81 and 78 of Law no. 22/1997	Bunyong Khaosa Ard
<b>Okonkwo Kingsley (m)</b>	South African	25 October 2003	19 May 2004 by Medan District Court, North Sumatra Province	Drug-trafficking	
<b>Okwudili Ayontaze (m)</b>	Nigerian	30 January 2001	13 August 2001 by Tangerang District Court. Sentence upheld in High Court and Supreme Court	Drug-trafficking Law no. 22/1997 concerning Narcotics	

<b>Ozias Sibanda (m)</b>	Zimbabwe	30 January 2001	13 August 2001 by Tangerang District Court Sentence upheld in High Court and Supreme Court.	Drug-trafficking Law no. 22/1997 concerning Narcotics	
<b>Rani Andriani (f)</b>	Indonesian	12 January 2000	23 April 2000 by Tangerang District Court Upheld in High Court and Supreme Court. Appeal for clemency rejected in June 2004	Drug-trafficking Article 82(1) of Law no. 22/1997 concerning Narcotics	Dani Setiawan and Meirika Pranola
<b>Rio Alex Bulu (m)</b>	Indonesian	2001	5 March 2002 by Purwokerto District Court, Central Java Upheld in High Court	Murder (Article 340 KUHP)	
<b>Saka bin Juma (m)</b>	Indonesian	1994	17 May 1995 by Tembilahan District Court, Riau Presidential clemency rejected in 2002	Murder (Article 340 KUHP)	
<b>Samuel Iwuchukwu Okoye (m)</b>	Nigerian	10 January 2001	5 July 2001 by Tangerang District Court, Jakarta.	Drug-trafficking Law no. 22/1997 concerning Narcotics	
<b>2<sup>nd</sup> Lt. Sanurip (m)</b>	Indonesian	April 1995	23 April 1997 by Jayapura District Military Court, Papua	Murder	
<b>Seck Osmane (m)</b>	Senegalese	October 2003	21 June 2004 by South Jakarta District Court	Selling drugs	

<b>Siswanto (Robot Gedek) (m)</b>	Indonesian	27 June 1996 1996	21 May 1997 by Central Jakarta District Court	Murder (Article 340 KUHP)	
<b>Sungeng (m)</b>	Indonesian	1988	February 1989 by Surabaya District Court.  Upheld by High Court and Supreme Court.  Clemency appeal rejected February 2003	Murder	Nyonya Sumarsih
<b>Sugianto (Sugik) (m)</b>	Indonesian	1996	12 December 1996	Murder	
<b>Suryadi bin Sukarno (m)</b>	Indonesian	April 1992	Palembang District Court, South Sumatra  Upheld by Supreme Court and High Court.  Clemency appeal rejected February 2003	Murder	
<b>Sylvester Obiekwe Nwolise (m)</b>	Nigeria	21 December 2003	2 September 2004 Tangerang District Court, Jakarta	Drug-trafficking  Article 82 of Law no. 22/1997 concerning Narcotics	
<b>Tasa Ibro (m)</b>	Indonesian	January 2001	2002 by Kayuang District Court, South Sumatra	Murder  Article 340 + 284 +55 KUHP	

<b>Taufik bin Abdullah Halim (Dani) (m)</b>	Malaysian		7 May 2002 by Central Jakarta District Court. <i>[verdict also reported as life imprisonment]</i>	Bombing of Atrium Mall in Jakarta Emergency Law 12/1951	Edi Setiono
<b>Tham Tuck Yen (m)</b>	Malaysian	11 May 1994	17 January 1995 by Central Jakarta District Court.	Drug-trafficking	