

Open letter from medical experts to governments sentencing to death or executing child offenders (those less than 18 at the time of the crime)

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Democratic Republic of Congo

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Lieutenant-General
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President's Palace
Khartoum, Sudan

United States of America

President George W. Bush
White House
Washington DC, USA



3 September 2004

Dear President, Dear Prime Minister, Dear Leader,

We are writing to you on the subject of the death penalty in our capacity as specialists working in adolescent mental and physical health and development. We are particularly concerned by the practice of sentencing to death and executing people whose crimes were committed when they were below the age of 18 ("child offenders").

We believe that your country is one of the handful which have sentenced to death or executed one or more child offenders in the last decade¹. We are deeply concerned by this fact.

The restriction on the application of adult penalties to juveniles is a widely accepted principle in law around the world. The reason for this was set out, for example, in an opinion of the US Supreme Court in the capital appeal case of *Johnson v Texas* in 1993, an appeal based, among other things, on the failure of a Texas court to adequately take into account Johnson's age at the time of the crime.

The court observed that: "A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill considered actions and decisions."²

Our work with adolescents makes clear to us that this period of life is marked by the kind of "underdeveloped sense of responsibility" cited by the US Supreme Court.

We would argue that although adolescents generally know the difference between right and wrong, they can suffer from diminished capacities to reason logically, to control their impulses, to think through the future consequences of their actions, and to resist the negative influences and persuasion of others. They should face punishment for criminal actions, but the sanctions which can be imposed on mentally competent adolescent offenders should not be the same as those faced by adults found guilty of the same offences.³

For these reasons, we believe that executing offenders aged less than 18 at the time of their offence is unacceptable.

¹ Amnesty International. *Stop Child Executions!* AI Index: ACT 50/000/3004, January 2004.

² *Johnson v. Texas* (92-5653), 509 U.S. 350 (1993): <http://supct.law.cornell.edu/supct/html/92-5653.ZO.html>. Johnson's age at the time of the crime was 19 and even this age caused the judges concern.

³ See, for example, Steinberg L, Scott ES. Less guilty by reason of adolescence: developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist* 2003 (December): 58:1009-18.

As you no doubt know, evolving international standards prohibit the execution of child offenders. These standards include the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Convention on Human Rights and the African Charter on the Rights and Welfare of the Child. We attach the text of the relevant provisions for your information. This prohibition is now so widely accepted as to constitute a principle of customary international law. The relevant standards are respected by the overwhelming majority of the 80 countries which still retain and use the death penalty.

We are aware that although almost all countries whose laws still provide for the death penalty have now established a minimum age of 18 in national law or have ratified international treaties binding them to respect the prohibition, some death sentences have still been imposed and some executions have been carried out.

We urge you to modify the current policy, practice or safeguards of your country so that no one who was under the age of 18 at the time of the crime for which they have been convicted is sentenced to death or executed.

In view of the interest attaching to this subject we will be making this letter available to the public.

Respectfully,

[List of signatories follows]

Signatories of open letter against executions of juvenile offenders⁴

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⁴ All those listed in this letter are signing in their personal capacity except where indicated by an asterisk [*] indicating that the individual is signing on behalf of their organization; otherwise affiliations are given for identification purposes only.

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Legal aspects of juvenile offenders and the death penalty

For a general overview of international law and the execution of juvenile offenders see:

Amnesty International. The exclusion of child offenders from the death penalty under general international law. AI Index: ACT 50/004/2003, 18 July 2003. (Available at:

<http://web.amnesty.org/library/Index/ENGACTION500042003>)

Specific standards include:

International human rights treaties and standards

- Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) states that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age..."
- Article 37(a) of the Convention on the Rights of the Child (CRC) states that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".
- Safeguard 3 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty states that "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death". (UN Economic and Social Council resolution 1984/50, adopted 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984)

International humanitarian law treaties

- Article 68 of the Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War states that "...the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence."
- The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I of 1977) states in Article 77(5): "The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed."
- The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II of 1977) states in Article 6(4): "The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence. . ." (Article 6(4))

Regional treaties

- American Convention on Human Rights. Article 4(5) states “Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.” (O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978)
- The African Charter on the Rights and Welfare of the Child states in Article 5(3): "The death sentence shall not be pronounced for crimes committed by children". Article 2 of this treaty specifies that the term "child" refers to anyone under the age of 18.