

# STOP CHILD EXECUTIONS!

## Ending the death penalty for child offenders

*“Napoleon doesn’t deserve to die. I know there’s got to be punishment, but death for a 17-year-old? People change. . . To take a child’s [life] – you can’t hold a 17-year-old by the same standards as you do you or me. . . life is a teacher. And I know even today Napoleon is much better now than he was then.”*

*- Rena Beazley, during an interview with Amnesty International in May 2001 - one year before the execution of her son, Napoleon Beazley*



Ireland and Rena Beazley hold a photo of their son, Napoleon. © AI

Napoleon Beazley was executed in Texas on 28 May 2002 for a crime committed eight years earlier -- when he was just 17 years old.

Napoleon Beazley had no criminal record and no record of violent behaviour. But at his trial, the white prosecutor described him as an “animal” in front of the all-white jury. Witnesses at the trial cited his potential for rehabilitation. He was a model prisoner.<sup>1</sup>

Napoleon Beazley’s trial took place in 1995, the year that the UN Human Rights Committee, the body that monitors countries’ compliance with the International Covenant on Civil and Political Rights (ICCPR), “deplored” the USA’s continued use of the death penalty against people under 18 at the time of the crime. In addition, that year the USA signed the Convention on the Rights of the Child,

signifying its intention to ratify that Convention at a later date. Like the ICCPR, the Convention on the Rights of the Child, now ratified by all states except Somalia and the USA, prohibits the use of the death penalty against child offenders – people convicted of crimes committed when they were under 18 years old.

Child executions violate international law. The international consensus against putting child offenders to death for their crimes reflects the widespread recognition of the capacity of young people for growth and change. The life of a child offender should never be written off, whatever he or she has done. The guiding principle must be to maximize the child offender’s potential for eventual successful reintegration into society. Execution is the ultimate denial of this principle.

## Why this campaign?

International law prohibits the use of the death penalty for crimes committed by people younger than 18, yet some countries continue to execute child offenders or sentence them to death. As a step towards the total abolition of the death penalty around the world, Amnesty International has launched an international **STOP CHILD EXECUTIONS!** campaign, calling for an end to one of the most heinous manifestations of the death penalty – its use against child offenders. Although executions of child offenders are few compared to the total number of executions in the world,<sup>2</sup> they represent a disregard by the executing states of their commitments under international law, and an affront to all notions of morality and decency when it comes to the protection of children – one of the most vulnerable groups in society.

## Is the practice diminishing?

National governments have increasingly demonstrated their respect for the prohibition of the execution of child offenders by ratifying relevant international treaties (see pp. 5-6) and changing their domestic laws to adhere to this principle.

Of the steadily diminishing number of countries that still retain the death penalty in law, almost all have pledged not to use it against children, reflecting the conviction that the lives of child offenders - due to a young person's immaturity, impulsiveness, vulnerability and capacity for rehabilitation - should never be simply written off.

Since 1989 at least five countries have changed their laws to eliminate the execution of child offenders (see box). A similar move is reportedly under way in Iran. There is also a trend at US state level towards raising the minimum age to 18: most recently, South Dakota and Wyoming did so in early 2004. No US state has lowered the minimum age since executions resumed in the country in 1977.<sup>3</sup>

### ***Banning child executions in national law***

**1989 – Barbados** amended its Juvenile Offenders Act, raising the minimum age for imposition of the death penalty to 18 years at the time of the offence.

**1994 – Yemen** raised the minimum age to 18 years at the time of the offence under the Penal Code.

**1994 – Zimbabwe** raised the minimum age to 18 under the Criminal Procedure and Evidence Act.

**1997 - China** amended its Criminal Law to abolish the death penalty for defendants who were under 18 at the time of the offence.

**2000 - Pakistan** adopted the Juvenile Justice System Ordinance 2000, abolishing the death penalty for people under 18 at the time of the offence in most parts of the country.



*“The overwhelming international consensus that the death penalty should not apply to juvenile offenders stems from the recognition that young persons, because of their immaturity, may not fully comprehend the consequences of their actions and should therefore benefit from less severe sanctions than adults. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults.”*

-- Mary Robinson, former United Nations High Commissioner for Human Rights<sup>4</sup>

## Where have child offenders been executed?

Although the vast majority of countries that still practice the death penalty have turned away from executing child offenders, children are still not totally safe from this outdated practice. Since 1990 Amnesty International has recorded 38 executions of child offenders – 19 of them in the USA. Since 2000 there have been 18 – nine of them in the USA. But even in the USA, such executions are not widespread: 19 of the 38 US states whose laws retain the death penalty exclude its use against child offenders, as does the federal government, and only three states – Oklahoma, Texas and Virginia - have executed child offenders since 2000.

### *Recorded executions of child offenders, 1990 – 2004<sup>5</sup>*

	China	Democratic Republic of Congo	Iran	Nigeria	Pakistan	Saudi Arabia	USA	Yemen
1990			•				•	
1991								
1992			•••		•	•	•	
1993							••••	•
1994								
1995								
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1997				•	•			
1998							•••	
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2001			•		•		•	
2002							•••	
2003	•						•	
2004	•		•••					

## How does it violate international law?

A country that sentences a child offender to death or executes them is violating international law in three ways: (i) it is violating its treaty obligations; (ii) it is violating customary international law; and (iii) it is violating a peremptory norm of international law (*jus cogens*).

In becoming a party to an **international treaty**, a state enters into a commitment to respect its provisions. Nearly all states have ratified one or more treaties that explicitly prohibit the use of the death penalty against child offenders (see pp. 5-6). Therefore, nearly all states have made a formal commitment under international law not to use the death penalty against child offenders.

Furthermore, Amnesty International believes that the exclusion of child offenders from the death penalty is now so widely accepted in law and practice that it has become a rule of **customary international law** – international rules derived from state practice and regarded as law (*opinio juris*) - and therefore binding on every state, except on those that have “persistently objected” to the rule in question.<sup>6</sup>

Finally, certain rules of international law are of such importance that they are considered to be “peremptory norms”, otherwise known as *jus cogens*, which all states must abide by under any circumstance. The Vienna Convention on the Law of Treaties defines a norm of *jus cogens* as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of international law having the same character”. Amnesty International believes that the prohibition of use of the death penalty against child offenders should be recognized as such a norm.

### *The Domingues judgment: finding a jus cogens norm*

Michael Domingues was sentenced to death in the US state of Nevada in 1994. The crimes for which he was convicted had been committed in 1993 when he was 16 years old. After his appeal was rejected by the Nevada Supreme Court and after the US Supreme Court refused to consider the case, Michael Domingues brought his case to the Inter-American Commission on Human Rights (the Commission), an organ of the Organization of American States, of which the USA is a member. Article I of the American Declaration on the Rights and Duties of Man, adopted by the OAS in 1948, provides for the right to life. Michael Domingues alleged that the death sentence imposed on him violated this right.

The Commission considered the case and concluded that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime” and that “this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*”. After hearing counter-arguments presented by the US government, the Commission held in October 2002 that the USA “has acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration [on the Rights and Duties of Man] by sentencing Michael Domingues to the death penalty for crimes that he committed when he was 16 years of age” and that “should the State [the USA] execute Mr. Domingues pursuant to this sentence, it will be responsible for a grave and irreparable violation of Mr. Domingues’ right to life under Article I of the American Declaration”. (*Michael Domingues v. United States*, Case 12.285, Merits, Report No. 62/02, 22 October 2002, paras. 84-85, 112)

***An “indelible rule” violating international law***

*“The Commission is satisfied, based upon the information before it, that this rule [the prohibition of executing offenders under 18] has been recognized as being of a sufficiently indelible nature to now constitute a norm of jus cogens. . . The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards. . . As a jus cogens norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise.”*

--Inter-American Commission on Human Rights, *Michael Domingues v. United States*, para. 85

## Which international treaties forbid child executions?

International opposition to the execution of child offenders has been made explicit through the adoption of human rights treaties and humanitarian law treaties, in statements by intergovernmental bodies, and in comments by international treaty monitoring bodies (see pp. 6-7).

The international community has adopted four **human rights treaties** that explicitly exclude child offenders from the death penalty. Nearly all states in the world are now parties to one or more of these treaties and are therefore legally obliged to respect the prohibition.

Two of the human rights treaties are of worldwide scope – any state may join them:

- The **International Covenant on Civil and Political Rights (ICCPR)**, one of the primary human rights treaties, states in Article 6: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . .” The ICCPR had been ratified by 152 states at mid-August 2004.
- The **Convention on the Rights of the Child** states in Article 37: “Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age”. The Convention on the Rights of the Child has been ratified by 192 states – all countries except Somalia and the USA. Both Somalia and the USA have signed the Convention, indicating their intention to ratify it at a later date.

Two of the human rights treaties are regional – they may be ratified by countries in those regions (Africa and the Americas respectively):

- 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. The African Charter on the Rights and Welfare of the Child has been ratified by 33 African countries.

- The **American Convention on Human Rights** states in Article 4(5): “Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age. . .” Twenty-four states in the Americas have ratified the American Convention on Human Rights.

**International humanitarian law treaties**, also known as the laws of war, also exclude child offenders from the death penalty:

- The **Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949** (the Fourth Geneva Convention) states in Article 68: “In any case, the death penalty may not be pronounced against 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))

Alongside these treaties, **intergovernmental bodies** – organizations composed of states – have adopted many statements endorsing the prohibition.

- In 1984 the **UN Economic and Social Council** (ECOSOC) adopted the **Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty** (“ECOSOC Safeguards”). Safeguard 3 of this instrument states: “Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death. . .” The ECOSOC Safeguards were endorsed by the **UN General Assembly** in resolution 39/118 of 14 December 1984. This resolution was adopted without a vote, a sign of strong consensus in that no state wished to go on record as opposing it. More recently, in 2004 the **UN Commission on Human Rights** called upon states in which the death penalty has not been abolished “to abolish by law as soon as possible the death penalty for those aged under 18 at the time of the commission of the offence”.<sup>7</sup>
- The **European Union** has endorsed the prohibition of use of the death penalty against child offenders and has agreed to make diplomatic approaches to countries in cases where the prohibition is violated.<sup>8</sup>

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## Which countries still use the death penalty against child offenders? □

Five countries – China, the Democratic Republic of the Congo, Iran, Pakistan and the USA – are known to have executed child offenders since 2000. Child offenders are currently under sentence of death in at least two other countries - the Philippines and Sudan.

The profiles below give information on each country's use of the death penalty against child offenders; on the relevant international treaties to which the country is a party; and on what the monitoring bodies set up under those treaties have said about the country's use of the death penalty against child offenders.

All states except the USA have become parties to one or both of the international treaties of worldwide scope prohibiting the use of the death penalty against child offenders without making an explicit reservation to that prohibition. As stated above (pp. 5-6), these treaties are the ICCPR, whose Article 6(5) contains the prohibition, and the Convention on the Rights of the Child (CRC), where the prohibition appears in Article 37(a).

States parties to these treaties are required to submit periodic reports on the measures they have taken to give effect to the treaties' provisions. The reports are examined by the expert bodies set up to monitor implementation of the treaties – the *UN Human Rights Committee* and the *UN Committee on the Rights of the Child* respectively.

When representatives of governments that have executed child offenders have appeared before these committees during the examination of their countries' reports, they have generally avoided mentioning the matter or have given confusing replies. These evasive responses indicate that the responsible officials are aware that their country is obliged to respect the prohibition. Only the USA has openly acknowledged executing child offenders and claimed for itself the right to do so. As shown in the chart below, the USA has executed more child offenders than any other country.

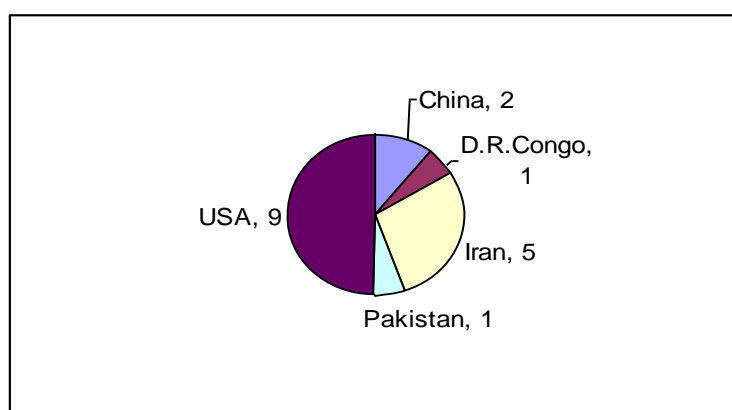


Chart: Recorded executions of child offenders since 2000

## **China**

*China is a party to the ICCPR and the CRC.*

In May 1996 the UN Committee on the Rights of the Child expressed concern “that national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution” in China. It recommended that Chinese legislative measures be reviewed to ensure their conformity with Article 37 of the CRC.<sup>9</sup>

In October 1997 a revision of the Chinese Criminal Law came into effect eliminating the practice of imposing suspended death sentences on prisoners convicted of crimes committed when they were 16 or 17 years old. Previously, Article 44 of China’s Criminal Law had allowed for offenders aged 16 or 17 to be sentenced to death with a two-year suspension of execution “if the crime committed is particularly grave”.

However, reports since 1997 suggest that people under 18 at the time of the offence have continued to be executed because the courts do not take sufficient care to determine their age. Some lower courts appear to have disregarded the Supreme People’s Court “Explanation concerning specific questions on the implementation of the law in handling juvenile criminal cases” of 2 May 1995, which states: “In trying juvenile criminal cases, the age of the defendant at the time of the crime should be treated as an important fact and investigated fully. . . if it is not established clearly and it impacts on whether or not to pursue criminal charges and the type of criminal punishment in a public prosecution, it should be returned to the Procuratorate for supplementary investigation”.

Two child offenders were executed in 2003 and 2004. In March 2003 the Hebei Legal Daily reported that Zhao Lin, aged 18 years and three months, had been executed in January for a murder committed in May 2000, when he was 16 years old. The murder had taken place in Funing County, Jiangsu Province. Press reports on the case indicate that the court and the police were fully aware that he was not 18 at the time of the crime, but because officials appear from these reports to have been unaware of legal stipulations outlawing the execution of child offenders, he was executed nonetheless.

In a second case, Gao Pan, a farmer from Ligu Village, Gaoyang County, Hebei Province, was executed on 8 March 2004 for a crime committed on 9 August 2001, before he was 18 years old.

Gao Pan was originally sentenced to death on 28 May 2002 by Baoding City Intermediate People’s Court, having allegedly murdered a neighbour during an attempted robbery on 9 August 2001. Gao appealed against the sentence, saying that as he was not 18 years old at the time of the crime, he should be given a lighter sentence.

The evidence used by the state prosecution in an attempt to prove that Gao was 18 years old at the time of the crime included a household registration document signed by the head of Gao’s family, his grandfather, Gao Baixue. However, an examination of the document – which did not even record the day in August 1983 when Gao was supposedly born – by competent bodies in Beijing and Tianjin suggested that the signature was false. According to press reports, the same jurisdiction which issued the household registration documents has issued



numerous other documents bearing incorrectly recorded dates, including dates of birth on official identity cards.

Documentation produced by police departments at the time of Gao's arrest state that he was 17 years old at the time of the crime, with his date of birth shown as 11 August 1983 – using the traditional lunar calendar – which is 6 September 1983 using the western calendar. It should be noted that apart from doubts over his age due to conflicting information on official documents, there was added confusion because different calendrical systems were used. Furthermore, Gao, his family and neighbours all said he was born in the year of the Rat in Chinese astrology, which would have been 1984. On other forms of official documentation, such as Gao's elementary school certification and records held by provincial administrations, his recorded date of birth is 11 August 1984, a full lunar year after other dates suggested by the courts to be his true date of birth.

Gao, his family, and his lawyer asked for further investigations to be carried out to verify Gao's true age, and offered to pay for a test to verify his age by examining a sample of his bone tissue. All of these requests were refused by Hebei Province High People's Court. The court stated that the household registration document was "more reliable than a confession" as evidence, and that it was therefore "no longer necessary" to conduct tests on Gao's bone tissue.

According to one report, at the appeal hearing on 24 April 2003 Gao's defence lawyer produced 32 items of evidence supporting the claim that Gao was not yet 18 years old at the time of the crime. However, the appeal was rejected and the sentence was upheld.

Gao and his lawyer reportedly told the court of their intention to petition the Supreme People's Court and the National People's Congress for further checks on Gao's age to be carried out, including analysis of a sample of Gao's bone tissue. However, while the lawyer was in Beijing, he heard on 12 March that Gao had been executed on 8 March 2004.

Several prominent Chinese legal scholars and lawyers have commented on this case. For example, Professor He Jiahong from the Academy of Law at China People's University has said: "Because this case involved the death penalty, I feel that the requirements for evidence should have been higher than in an ordinary criminal case. [...] If a person is to be deprived of their life, the ascertainment of key facts in the case should be in accordance with our country's laws and regulations. Evidence has to be ample, fully comprehensible and there should be high standards. There should be no areas of doubt before it can be said that this standard has been achieved. With regard to this case, I personally do not feel as though these standards were achieved."

## **Democratic Republic of the Congo (DRC)**

*The DRC is a party to the ICCPR and the CRC.*

Kasongo, a 14-year-old child soldier, was executed in January 2000 within half an hour of his trial by a special military court. The special military courts were abolished in April 2003.

DRC representatives told the UN Committee on the Rights of the Child in May 2001 that other child soldiers sentenced to death had been pardoned; they did not mention the execution of Kasongo. The Committee urged the country “to ensure respect for article 37(a) of the Convention [on the Rights of the Child] and that no person under 18 is sentenced to the death penalty”.<sup>10</sup>

## Iran

*Iran is a party to the ICCPR and the CRC.*

Amnesty International has recorded 10 executions of child offenders in Iran since 1990. Most of these reports have been based on reports in the Iranian news media.

One execution was reported in 1990, three in 1992, one in 1999 and one in 2000.<sup>11</sup>

On 29 May 2001 the official news agency IRNA reported from the city of Ilam that Mehrdad Yousefi, aged 18, had been hanged for a crime committed two years earlier.

Two further executions were carried out in early 2004. Mohammad Zadeh and Salman were reportedly executed on 25 January and 12 May 2004 respectively. Both had been 17 at the time of the crimes.

On 15 August 2004 a 16-year-old girl, Ateqeh Rajabi, was reportedly executed in Neka in the northern Iranian province of Mazandaran for “acts incompatible with chastity” (*amal-e manafe-ye ‘ofat*). Ateqeh Rajabi was reportedly publicly hanged on a street in the city centre of Neka.

According to reports, Ateqeh Rajabi had been sentenced to death approximately three months earlier. During her trial, at which she was reportedly not represented by a lawyer, the judge allegedly severely criticized her dress, harshly reprimanding her. It is alleged that Ateqeh Rajabi was mentally ill both at the time of her crime and during her trial proceedings.

The case reportedly attracted the attention of the Head of the Judiciary for the Mazandaran province, who ensured that the case be heard promptly by the Supreme Court. In Iran, all death sentences have to be upheld by the Supreme Court before they can be implemented.

The death sentence was upheld by the Supreme Court, and Ateqeh Rajabi was publicly executed on 15 August. According to *Peyk-e Iran* newspaper, the lower court judge who issued the original sentence was the person who put the noose around her head as she went to the gallows.

It was further reported that although Ateqeh Rajabi’s national identity card stated that she was 16 years old, the Mazandaran Judiciary announced at her execution that her age was 22.

The co-defendant of Ateqeh Rajabi, an unnamed man, was reportedly sentenced to 100 lashes. He was released after this sentence was carried out.

Some death sentences have been commuted. In November 1999 Azizullah Shenwari, then around 11 years old, was abducted near his home in Landi Kotal, Khyber Agency, Pakistan,

and was reportedly used by drug traffickers to carry narcotics. A year later his family received a letter from a jail in Yazd, Iran, informing them that he had been sentenced to death for drug trafficking. With the help of the Pakistan Human Rights Commission, his family raised the case with the Iranian consulate, and in June 2001 Amnesty International members sent urgent appeals urging the Iranian authorities to commute the death sentence.

In July 2001 a judicial official denied that Azizullah Shenwari had been sentenced to death, while a letter from the Iranian authorities to Amnesty International stated that the sentence had been commuted. In September 2001, possibly as a result of the international attention to the case, Azizullah Shenwari's uncle was able to meet Azizullah Shenwari.

In August 2004 Amnesty International learned that an appeal court in 2003 had commuted the death sentence to 10 years' imprisonment.

Iranian representatives told the UN Committee on the Rights of the Child in May 2000 that death sentences imposed on child offenders had not been carried out and that the death penalty was not "imposed on children under 18". The Committee strongly recommended that Iran "take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18".<sup>12</sup>

A bill to raise the minimum age to 18 is reportedly under consideration in Iran. Amnesty International is seeking details of the legislative status of the bill.

## **Pakistan**

*Pakistan became a party to the CRC in 1990.*

Amnesty International recorded two executions of child offenders in Pakistan in the 1990s – one in 1992 and one in 1997.

The Juvenile Justice System Ordinance 2000, abolishing the death penalty for people under 18 at the time of the offence in most parts of the country, entered into force on 1 July 2000. However, the Ordinance was not extended to the Provincially and Federally Administered Tribal Areas in the north and west. One young man, Sher Ali, was executed in the Provincially Administered Tribal Area in November 2001 for a murder committed in 1993 when he was 13 years old.

Although most of the outstanding death sentences imposed on child offenders before July 2000 have now been commuted, an unknown number of sentences are still outstanding while the courts determine the age of the convicted prisoners. Child offenders continue to be sentenced to death, mainly because their age has not been determined. The issue of age is generally not raised by the family's legal counsel until a child has been sentenced to death. Often judges do not raise the issue of age unless the child looks like a minor.<sup>13</sup>



Alleged child offenders awaiting trial in Pakistan. © AI

In October 2003 the UN Committee on the Rights of the Child stated that it was “deeply concerned about the reports of juvenile offenders sentenced to death and executed” in Pakistan. It recommended that Pakistan take immediate steps to ensure that the prohibition of the death penalty against offenders under 18 is guaranteed, and that death sentences imposed before the promulgation of the 2000 Ordinance are not carried out.<sup>14</sup>

As part of an Amnesty International campaign to end the use of the death penalty against child offenders throughout the world, many appeals were sent to President Pervez Musharraf in early 2004 urging him to commute the death sentences of all child offenders in Pakistan and to ensure that no further child offenders were sentenced to death, in accordance with Pakistan's obligations under international law. President Musharraf did not reply to the appeals.

## The Philippines

*The Philippines is a party to the ICCPR and the CRC.*



Larina Perpnan holds her son in prison. © AI

Philippine law precludes the use of the death penalty against people under 18 at the time of the crime, yet at least 19 child offenders are currently under sentence of death.<sup>15</sup> Amnesty International is calling on the Philippine authorities to remove their death sentences.

Larina Perpnan was 17 years old when she was arrested with 10 others for the kidnap and ransom of an elderly woman, who was later released unharmed. Upon her arrest, Larina Perpnan lied about her age and name to “avoid trouble at home.” She received poor legal counsel during her trial and was sentenced to death in October 1998. Although she later produced a birth certificate proving her

age to be 17 at the time of arrest, the judge has reportedly refused to reverse the death sentence. Her case is currently pending before the Supreme Court, which had previously returned it to the lower courts in order to establish her age at the time of the alleged offence.

## **Sudan**

*Sudan is a party to the ICCPR and the CRC.*

Child offenders have been among several groups of people sentenced to death by a special court in the western province of Dafur since 2002. The special court's procedures fall far short of international norms for a fair trial.<sup>16</sup>

In October 2002 the UN Committee on the Rights of the Child recommended that Sudan "guarantee that sentences of capital punishment are not given for acts committed when the perpetrator was a child under 18".<sup>17</sup>

## **USA**

*The USA is a party to the ICCPR.*

Of the 38 US states whose laws provide for the death penalty, 19 allow its use against child offenders. Two states, South Dakota and Wyoming, raised the minimum age in state law to 18 in March 2004, bringing to 19 the number of retentionist states in the USA which have a minimum age of 18 in law.<sup>18</sup> US federal law and US military law also set a minimum age of 18 at the time of the offence for application of the death penalty.

In its decision in the case of *Stanford v. Kentucky*, the US Supreme Court ruled in 1989 that the use of the death penalty against offenders aged 16 or 17 was not contrary to the US Constitution.<sup>19</sup> One of the grounds for the decision was that there was insufficient evidence in the form of state legislation to indicate a "national consensus" against the use of the death penalty for offenders under 18.

This decision is now to be reconsidered. In January 2004 the US Supreme Court announced that it would consider an appeal in the case of *Roper v. Simmons*, in which the state Supreme Court of Missouri had ruled that the execution of a person who was under 18 at the time of the offence was unconstitutional. Oral arguments in the case will be heard in October 2004, and the decision is likely to be announced in the first half of 2005.

In a recent ruling on another issue, the Supreme Court held in 2002 in the case of *Atkins v. Virginia* that the execution of prisoners with mentally retardation was unconstitutional. Here the majority of the court found that a "national consensus" had developed against such executions. They cited among other things the "large number" of states which had adopted legislation prohibiting executions of offenders with mentally retardation and "the consistency of the direction of change", namely "the complete absence of States passing legislation reinstating the power to conduct such executions". Amnesty International believes that the same reasoning should now lead the Supreme Court to declare the use of the death penalty against child offenders to be unconstitutional.<sup>20</sup>

In July 2004 Amnesty International and 16 other recipients of the Nobel Peace Prize submitted an *amicus curiae* (friend of the court) brief to the US Supreme Court urging that it find the death penalty for those under 18 at the time of the crime to be unconstitutional. Citing the evolution of international law and practice, the brief recommended that the Court "should consider the opinion of the international community, which has rejected the death penalty for child offenders worldwide".<sup>21</sup>

Twenty-two child offenders have been executed in seven US states since 1977. Over 70 child offenders are currently under sentence of death in the country.

In April 2003 the US authorities revealed that children as young as 13 were among the foreign nationals being held at the US Naval Base in Guantánamo Bay in Cuba. One detainee, Omar Khadr, a Canadian national, may be suspected of involvement in the shooting death of a US soldier in Afghanistan when he was 15 years old. Amnesty International has urged the Canadian authorities to seek assurances from the USA that it will not seek the death penalty against Omar Khadr should he be brought to trial before a military commission set up by the US authorities. Amnesty International opposes the military commissions.<sup>22</sup>

When the USA ratified the ICCPR in 1992, it made a reservation stating that it reserved the right "to impose capital punishment. . . for crimes committed by persons below eighteen years of age". Eleven other states parties to the ICCPR formally objected to the reservation. The UN Human Rights Committee stated in 1995 that it believed the reservation to be "incompatible with the object and purpose" of the ICCPR and recommended that the reservation be withdrawn. The Committee also deplored provisions in a number of US state laws allowing for child offenders to be sentenced to death as well as "the actual instances where such sentences have been pronounced and executed" and exhorted the authorities "to

### ***A background of abuse and deprivation***

The use of the death penalty against child offenders rejects any notion that wider adult society should accept even minimal responsibility in the crime of a child. The profiles of the condemned teenagers are often those of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. The backgrounds of child offenders executed in the USA since 1990 suggests that society had failed them well before it decided to kill them.

Glen McGinnis, born to a mother who was addicted to crack cocaine and worked out of their one-bedroom apartment as a prostitute, was sentenced to death in Texas in 1992. He had suffered repeated physical abuse at her hands and those of his stepfather, who beat him with an electric cord and raped him when he was nine or 10. He ran away from home at the age of 11 and lived on the streets of Houston where he began shoplifting and stealing cars. Black, he was sentenced to death by an all-white jury for the shooting of Leta Ann Wilkerson, white, during a robbery in 1990. Various juvenile correctional officials testified that he was non-aggressive even in the face of taunts about his homosexuality from other inmates and that he had the capacity to flourish in the structured environment of prison. He was executed in January 2000.

take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18".<sup>23</sup>

In October 2002 the Inter-American Commission on Human Rights held in the case of *Michael Domingues v. United States* that the USA had "acted contrary to an international norm of *jus cogens*" in sentencing to death a person who was 16 years old at the time of the crime (see page 4).

Two other prisoners were executed despite requests from the Inter-American Commission on Human Rights that the executions be stayed while it considered the prisoners' petitions. Douglas Christopher Thomas was executed in Virginia in January 2000, and Napoleon Beazley was executed in Texas in May 2002 (see page 1); both had been 17 years old at the time of the crimes. In December 2003 the Inter-American Commission on Human Rights concluded in both cases that the USA had "acted contrary to an international norm of *jus cogens*" in executing a person for a crime committed at the age of 17 and that it had "failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States" by permitting the execution to proceed "notwithstanding the Commission's request" that the USA stay the execution "pending the outcome of the proceedings before the Commission". It recommended in both cases that the USA provide the prisoner's next of kin with "an effective remedy, which includes compensation".<sup>24</sup>

## **What is Amnesty International's campaign to stop child executions?**

There is an overwhelming international legal and moral consensus against executing child offenders. The sentencing to death and execution of a person for a crime committed while he or she was a child denies the possibility of rehabilitation and is contrary to contemporary standards of justice and humane treatment.

Amnesty International activists from around the world are joining with other organizations in an international **STOP CHILD EXECUTIONS!** campaign aimed at ending the use of the death penalty against child offenders worldwide by December 2005.

Amnesty International believes that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. As a step towards total abolition of the death penalty, we are calling for:

- An immediate end to all executions of child offenders
- All existing death sentences against child offenders to be commuted
- All countries that retain the death penalty to ensure that its use against child offenders is precluded by law
- Such countries to take measures to ensure that their courts do not sentence child offenders to death, including, where necessary, the examination of birth certificates. Where systems of issuing birth certificates do not exist, such systems should be introduced, as required under Article 7 of the Convention on the Rights of the Child.

## How can I get involved?

Go to Amnesty International's website, [www.amnesty.org/deathpenalty](http://www.amnesty.org/deathpenalty) to learn about actions you can take to stop child executions. To take part in the campaign, or for further information, contact your local Amnesty International section.

Field Code Ch

### *Nobel Peace Prize winners condemn child executions*

*"The death penalty is a particularly cruel and unusual punishment that should be abolished. It is especially unconscionable when imposed on children."*

- Final statement of the Fourth World Summit of Nobel Peace Laureates, Rome, 30 November 2003

## Where can I get further information?

For further reading on issues raised in this paper, please see the following Amnesty International reports:

- *Children and the death penalty: executions worldwide since 1990*, September 2002, AI Index: ACT 50/007/2002
- *The exclusion of child offenders from the death penalty under general international law*, July 2003, AI Index: ACT 50/004/2003
- *Pakistan: Denial of basic rights for child prisoners*, October 2003, AI Index: ASA 33/011/2003.
- *Philippines: Something hanging over me – child offenders under sentence of death*, October 2003, AI Index: ASA 35/014/2003.
- *Sudan: Empty promises? Human rights violations in government-controlled areas*, July 2003, AI Index: AFR 54/036/2003.
- *United States of America: Indecent and internationally illegal - the death penalty against child offenders*, September 2002, AI Index: AMR 51/143/2002.
- *United States of America: Dead wrong - the case of Nanon Williams, child offender facing execution on flawed evidence*, January 2004, AI Index: AMR 51/002/2004.

For an up-to-date list of executions of child offenders worldwide, consult Amnesty International's website, [www.amnesty.org/deathpenalty](http://www.amnesty.org/deathpenalty).

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For further information on the use of the death penalty against child offenders in the USA, consult the website of the Death Penalty Information Center at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).



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**ENDNOTES**

<sup>1</sup> For information on Napoleon Beazley's case, see Amnesty International, *United States of America: Too young to vote, old enough to be executed – Texas set to kill another child offender*, July 2001, AI Index: AMR 51/105/2001. In 2004 the Inter-American Commission on Human Rights found that the execution was in violation of the USA's international human rights obligations, and recommended that the USA provide compensation to Napoleon Beazley's family (see p. 15).

<sup>2</sup> In 2003, the latest year for which global figures are available, there were two known executions of child offenders out of a total of 1,146 executions recorded by Amnesty International worldwide. In the 10 years between 1994 and 2003 Amnesty International recorded 21 executions of child offenders in six countries, a tiny fraction of the worldwide total of 23,734 executions recorded in some 70 countries during the same period.

<sup>3</sup> On the trend in US states towards setting a minimum age of 18, see *United States of America: Indecent and internationally illegal – the death penalty against child offenders*, September 2002, AI Index: AMR 51/143/2002, pp. 15-25, 103.

<sup>4</sup> Statement by Mary Robinson urging clemency for US child offenders T.J. Jones and Toronto Patterson, Office of the UN High Commissioner for Human Rights, press release, 1 August 2002.

<sup>5</sup> For profiles of cases between 1990 and 2002, see *Children and the death penalty: executions worldwide since 1990*, September 2002, AI Index: ACT 50/007/2002.

<sup>6</sup> In 2000 the UN Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution affirming that “the imposition of the death penalty on those aged under 18 at the time of the commission of the offence is contrary to customary international law” and inviting the UN Commission on Human Rights to confirm the affirmation (resolution 2000/17 of 17 August 2000). In 2004 the Commission on Human Rights “reaffirmed” the Sub-Commission’s resolution 2000/17 “on [in the Commission’s words] international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence” (resolution 2004/67 of 21 April 2004, para. 2).

<sup>7</sup> Resolution 2004/48 on rights of the child, para. 35(a), adopted on 20 April 2004 by a vote of 52 to 1.

<sup>8</sup> *European Union Guidelines on the Death Penalty*, adopted by the Council of the European Union on 3 June 1998.

<sup>9</sup> UN document CRC/C/15/Add.56, paras. 21, 42. The Committee stated further that “the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment”.

<sup>10</sup> UN documents CRC/C/SR.705, para. 48; CRC/C/SR.706, para. 13; CRC/C/15/Add.153, para. 75.

<sup>11</sup> For information on these cases, see Amnesty International, *Children and the death penalty: executions worldwide since 1990*, cited above.

<sup>12</sup> UN documents CRC/C/SR.618, para. 22, 43; CRC/C/15/Add.123, para. 30.

<sup>13</sup> See *Pakistan: Denial of basic rights for child prisoners*, October 2003, AI Index: ASA 33/011/2003.

<sup>14</sup> UN document CRC/C/15/Add.217.

<sup>15</sup> Seven of the cases are described in *Philippines: Something hanging over me – child offenders under sentence of death*, October 2003, AI Index: ASA 35/014/2003.

<sup>16</sup> See *Sudan: Empty promises? Human rights violations in government-controlled areas*, July 2003, AI Index: AFR 54/036/2003.

<sup>17</sup> UN document CRC/C/15/Add.190, para. 70.

<sup>18</sup> The figure of 19 states includes Missouri, where the state Supreme Court has recently held that the state’s use of the death penalty against child offenders is unconstitutional (see below).

<sup>19</sup> A year earlier, in the case of *Thompson v. Oklahoma*, the Supreme Court had ruled in effect that the use of the death penalty against offenders under 16 years old was unconstitutional.

<sup>20</sup> For further information, see *United States of America: Indecent and internationally illegal - the death penalty against child offenders*, cited above.

<sup>21</sup> *Roper v. Simmons*, No. 03-633, *Brief of amici curiae President James Earl Carter, Jr. and others (Nobel Peace Prize Laureates) in Support of Respondent*, p. 3. This and other *amicus curiae* briefs can be found on the Internet at <http://www.abanet.org/crimjust/juvjus/simmons/simmonsamicus.html>

<sup>22</sup> See *United States of America: The threat of a bad example – undermining international standards as “war on terror” detentions continue*, August 2003, AI Index: AMR 51/114/2003, pp. 21-22.

<sup>23</sup> UN document CCPR/C/79/Add.50, paras. 14, 16, 27, 31.

<sup>24</sup> *Douglas Christopher Thomas v. United States*, Case 12.240, Report No. 100/03, 29 December 2003, paras. 46, 52, 53(1); *Napoleon Beazley v. United States*, Case 12.412, Report No. 101/03, 29 December 2003, paras. 53, 59, 60(1). For information on the case of Douglas Christopher Thomas, see Amnesty International, *United States of America: Shame in the 21st century – three child offenders scheduled for execution in January 2000*, December 1999, AI Index: AMR 51/189/1999.