Imposition of the death penalty on persons younger than 18 years of age at the time of the offence and on persons with mental or intellectual disabilities

Amnesty International submission to the Office of the High Commissioner for Human Rights pursuant to Human Rights Council decision 18/117

In this submission, Amnesty International highlights cases and makes recommendations to States concerning the imposition of the death penalty on persons younger than 18 years of age at the time of the offence and people with mental or intellectual disabilities. Additional information on developments in the global use of the death penalty in 2017 can be found in the report “Death Sentences and Executions 2017” (ACT 50/7955/2018), https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF.

USE OF THE DEATH PENALTY AGAINST PERSONS YOUNGER THAN 18 YEARS AT THE TIME OF OFFENCE

Amnesty International has documented cases of the use of the death penalty against persons younger than 18 years at the time of the offence in violation of international human rights law. Amnesty International believes that juvenile offenders are on death row in Bangladesh, Iran, Maldives, Pakistan and Saudi Arabia. In 2017, the organisation recorded the execution of juvenile offenders in Iran and South Sudan.

Often the actual age of the prisoner is in dispute because no clear proof of age exists, such as a birth certificate. In cases like this, States should apply a full range of appropriate criteria. Good practice in assessing age includes drawing on knowledge of physical, psychological and social development. Each of these criteria should be applied in a way that gives the benefit of the doubt in disputed cases so that the individual is treated as a juvenile and, accordingly, the death penalty is not applied. Such an approach is consistent with the principle that the best interests of the child shall be a primary consideration in all actions concerning children, as required by Article 3(1) of the UN Convention on the Rights of the Child.

Iran

Amnesty International has identified more than 80 juvenile offenders on death row in Iran. The organization believes that the real number is much higher and that many of these individuals are at risk of being executed in anonymity.

Amnesty International has recorded the execution of juvenile offenders between 2005 and 2018. In 2017, at least four individuals were executed. One of them, Alireza Tajiki, was 21 years old at the time of his execution on 10 August 2017. He was arrested in May 2012 when aged 15 and sentenced to death nearly a year later in April 2013 when he was 16.1

Already this year three individuals, Ali Kazemi, Amirhossein Pourjafar and Mahboubeh Mofidi, have been executed. At least two more individuals, Abolfazl Chezani Sharahi and Hassan Rezaee, were scheduled for execution in January and March, respectively, but their executions were halted at the last minute due to international pressure.

Six more people are at serious risk of execution: Abolfazl Naderi, Omid Rostami, Mohammad Kalhori, Hassan Rezaei, Babak Pouladi and Hamid Ahmadi. The authorities have told most of their families that their executions are imminent unless they can obtain pardon from the family of the deceased.

Juvenile offenders in Iran generally spend years on death row. Amnesty International has documented many cases where the Iranian authorities have scheduled execution dates, transferred these individuals to solitary confinement and at the last minute postponed executions. Often, these last-minute stays have been the result of international pressure. An individual may have an execution date rescheduled on multiple occasions without knowing whether the execution will be stayed again or carried out.

**Pakistan**

Juvenile offenders who were sentenced to death before the Juvenile Justice System Ordinance Act came into force in 2000 have remained on death row in Pakistan.

For example, according to information received from his lawyer, Muhammad Iqbal was convicted and sentenced to death in 1999 after the trial court in Gujranwala had established through forensic examination his age at the time of the crime at 17. His conviction and death sentence were upheld by the Lahore High Court in March 2002 and the Supreme Court in September 2002. His case was not reviewed in line with Notification No. F.8/41/2001-Ptns, issued by the President to ensure that those juveniles sentenced to death before the Juvenile Justice System Ordinance Act was enacted had the chance to benefit from the new law. He filed a new clemency petition on 7 August 2017, which is currently pending before the President.

**Saudi Arabia**

In Saudi Arabia, Ali al-Nimr, Abdullah al-Zaheer, Dawood al-Marhoon and Abdulkareem al-Hawaj are currently on death row and at imminent risk of execution, following convictions by the Specialized Criminal Court of security-related offences in relation to their participation in anti-government protests when they were under the age of 18.

Abdulkareem al-Hawaj had no access to a lawyer during his pre-trial detention and interrogations, and claimed that he was held in solitary confinement for the first five months of his detention, during which time he was tortured to "confess".

**Recommendations**

Amnesty International urges States that are yet to abolish the death penalty to:

- Strictly prohibit the use of the death penalty on individuals under 18 at the time of the crime, in line with international human rights law and commute, without delay, death sentences already imposed on such individuals;
- Always presume an individual is a child, if there is doubt about whether an individual was under 18 at the time of the crime;
- Abolish the death penalty for all crimes.

**THE USE OF THE DEATH PENALTY AGAINST PEOPLE WITH MENTAL OR INTELLECTUAL DISABILITIES**

International law and standards on the use of the death penalty clearly state that the death penalty should not be imposed or carried out on people with mental or intellectual disabilities. This applies whether the disability was relevant at the time of the crime or developed after the person was sentenced to death.

Nevertheless, Amnesty International has documented the use of the death penalty against people with mental or intellectual disabilities in many countries, including Ghana, Japan and United States of America.

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Ghana
In March 2017, the Prison Service informed Amnesty International that six people on death row at Nsawam Prison were considered to have a mental or intellectual disability but had no access to specialized medical care.³

Japan
Matsumoto Kenji was sentenced to death on 17 September 1993 for two separate robberies and murders in the period between September 1990 and September 1991. He appealed against his conviction but his case was rejected by the Osaka High Court on 21 February 1996. A subsequent appeal to the Supreme Court was rejected, and his death sentence was confirmed on 4 April 2000.

Matsumoto Kenji has an intellectual disability, allegedly due to mercury poisoning (“Minamata disease”) which he has had since birth. He has a low IQ (between 60 to 70 according to the diagnosis by a psychiatrist), allegedly due to the mercury poisoning. Matsumoto Kenji suffers from a delusional disorder, which is thought to be as a result of his prolonged detention.

Since September 2004 several unsuccessful requests for pardon and for retrial have been filed. Kenji Matsumoto's seventh request for a retrial, submitted in June 2016, was denied in March 2017. The decision has been challenged by his lawyers. Following a visit in February 2017, his lawyer reported that there has been no visible change to Kenji Matsumoto's condition.

United States of America
In Arkansas, Jack Jones, aged 52, was executed on 24 April 2017 for a murder committed in 1995 after 20 years on death row, despite a history of serious mental disability.⁴ The jurors who sentenced him to death did not know that a few months before the crime was committed, he voluntarily committed himself to hospital where he was diagnosed with bipolar disorder (formerly known as “manic depressive illness”), a serious mental disability.³ Less than a month before the crime, he was diagnosed as “extremely Bipolar”. Four years earlier, he had been involuntarily committed to a psychiatric facility after a suicide attempt in Ohio. At that time, he was diagnosed as schizoaffective with depression.

Recommendations
Amnesty International urges States that are yet to abolish the death penalty to:

• In strict adherence with international human rights law and standards, not use the death penalty against people with mental or intellectual disabilities;

• Ensure that defendants in capital cases who are diagnosed with or suspected of having mental or intellectual disabilities have access to regular, independent and rigorous mental health assessments at intervals throughout the entire criminal justice process, including after sentence.