

Children and the death penalty

Amnesty International's written statement for the UN Human Rights Council's annual full-day meeting on the rights of the child ("Children and the administration of justice")

19th session of the Human Rights Council (27 February – 23 March 2012)

This statement focuses on issues related to children and the death penalty including children of parents under the death sentence and children and the practice of *diyah*. For the Human Rights Council's full-day meeting on "Children and the administration of justice", Amnesty International has also submitted a separate written statement on "Lengthy terms of imprisonment and detention of children".

The death penalty for children

The prohibition against imposing capital punishment on persons aged under 18 years at the time of the alleged offence (juvenile offenders) is a universally acknowledged legal principle. The prohibition is recognized, among others, in four international human rights treaties of worldwide or regional scope: the International Covenant on Civil and Political Rights (Article 6(5)); Convention on the Rights of the Child (CRC) (Article 37(a)); the African Charter on the Rights and Welfare of the Child (Article 5(3)) and the American Convention on Human Rights (Article 4(5)). All UN member states are signatories or parties to one or more of these four human rights treaties.

Despite the clarity of the universal legal prohibition, Amnesty International continues to record situations where juvenile offenders receive death sentences or are executed. In 2011, executions took place in Iran while death sentences were reported in Iran, Mauritania and Sudan. In 2010, one juvenile offender was executed in Iran while Iran, Pakistan, Saudi Arabia, Sudan, the United Arab Emirates and Yemen imposed death sentences on juvenile offenders. In Egypt, the Supreme Council of the Armed Forces announced in April 2011 that the death penalty for convicted rapists, if the victim was under 18, would also apply to juvenile offenders.

Amnesty International recorded at least three executions of juvenile offenders in Iran in 2011¹, despite officials stating to the Human Rights Committee in October 2011 that according to the prevailing practice of children's courts over recent years persons under the age of 18 are not sentenced to death.² Amnesty International also received credible reports of a further four such executions in Iran in 2011. In Sudan, two juvenile offenders were among a group of persons who had their death sentences confirmed in relation to an alleged carjacking in North Darfur in 2010. In Mauritania, three young men received death sentences for murders committed when they were under 18 years of age. Their sentences were commuted in December 2011.

Juvenile offenders also remain on death row in Nigeria in violation of international and national law. In 2010, the Committee on the Rights of the Child had expressed serious concern at reports of an estimated 40 juvenile offenders on death row in Nigeria.³ At least 20 remained, as of October 2011.⁴

¹ According to official reports, two juvenile offenders, only known as A.N. and H.B., were executed in Bandar Abbas in April 2011; on 21 September 2011, 17-year old Ali-Reza Molla-Soltani was publicly hanged in Karaj.

² Addicted to death: Executions for drugs offences in Iran, MDE 13/090/2011, December 2011, p. 28.

³ Concluding observations: Nigeria, Committee on the Rights of the Child, 54th session, UN Doc. CRC/C/NGA/CO/3-4 of 11 June 2010, para. 32.

⁴ Nigeria – Human Rights Agenda 2011-2015, Amnesty International 2011, AFR 44/014/2011, October 2011, p.

In January 2011 the Attorney General in Yemen rejected final appeals against the death sentences for Muhammed Taher Thabet Samoum and Fuad Ahmed Ali Abdulla, who possibly were under 18 years old when they allegedly committed their crimes in 1999 and 2004, respectively. In January 2012 Fuad Ahmed Ali Abdulla was executed. Muhammed Taher Thabet Samoum and at least two other possible juvenile offenders are at imminent risk of execution.

This situation highlights a particular problem in death penalty cases involving possible juvenile offenders - often no clear evidence of age, such as a certificate of registration at birth, exists. Authorities in some states assess adulthood on the mere basis of evidence of puberty and do not take into account additional essential factors of physical, psychological and social development, essential in order to assess age. Such an approach is inconsistent 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) the CRC.

Children of parents under the death sentence

Amnesty International is concerned at the secrecy surrounding detention on death row and execution in some states. Amnesty International has documented that in some states, including Belarus, Botswana, Egypt and Japan, neither death row inmates nor their families or lawyers are informed of forthcoming executions. This is very distressing for the families of persons on death row. It not only violates international standards on transparency in the use of the death penalty, but also the right to information of children of incarcerated parents under Article 9(4) of the CRC. The Special Rapporteur on extrajudicial, summary or arbitrary executions⁵ and the Human Rights Committee⁶ have stated that refusing to give convicted persons and family members notice of the execution is a human rights violation. The Committee against Torture has expressed fears that the secrecy and arbitrariness surrounding executions may cause family members added uncertainty and suffering.⁷ In Belarus, Botswana and Viet Nam, the bodies of the executed prisoners are also not returned to their families for burial.⁸

Prisoners sentenced to death are often detained under special conditions, which commonly limit contact with family members. In some cases 'contact visits', that is visits involving any form of physical contact, are banned completely. This can be particularly upsetting for children, especially if the child knows their parent only has a limited time before being executed. Finally, children of parents under sentences of death face the risk of stigmatization, isolation, discrimination and feeling of shame. The anxiety and pain of losing a parent applies to the children of executed prisoners as it does to those of murder victims.

Children and the practice of *diyah*

In some jurisdictions that apply versions of Islamic law, the families of murder victims are given the ability to pardon the offender and accept financial compensation (*diyah/ diyeh*) for the crime. Making the application of the death penalty subject to the decision of the victim's family leads to arbitrary and discriminatory application, particularly given that those without financial resources, including juvenile offenders, are more likely to be executed. The Special Rapporteur on extrajudicial, summary or arbitrary

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⁵ E/CN.4/2006/53/Add.3, 24 March 2006, para. 32.

⁶ Concluding observations: Japan, CCPR/CO/79/Add.102, 19 November 1998, para. 21. See also Communication No. 1470/2006, *Toktakunov v. Kyrgyzstan*, Views adopted on 28 March 2011, in which the Committee stated that a right to access of information on the use of the death penalty exists under Article 19 of the International Covenant on Civil and Political Rights.

⁷ Concluding observations: Belarus, 7 December 2011, CAT/C/BLR/CO/4, para. 27.

⁸ Amnesty International, *Death Sentences and Executions 2010*, ACT 50/001/2011, March 2011, p. 6.

executions has identified *diyah* as giving rise to serious human rights concerns, and has made recommendations to address them.⁹

In addition to these general concerns, Amnesty International is particularly concerned at the role of children in the practice of *diyah*. Children of the victim may be responsible for making a life and death decision at a very young age, or immediately upon reaching adulthood in cases where the decision on granting *diyah* is kept pending to allow for the children to reach adulthood. Negative consequences can also occur for children of the person under sentence of death, particularly in families where children may have to carry the double burden of providing for the family and finding resources to pay compensation in the hope of saving the life of their parent.

Recommendations

Amnesty International urges the Human Rights Council to call on states to:

- Completely end the application of the death penalty to juvenile offenders in law and in fact.
- Immediately commute all death sentences imposed on juvenile offenders, ensure that they are informed of the commutation of their sentence and the alternative penalty imposed, and that they are moved to institutions of detention appropriate for their age and the offence committed.
- Where age is in dispute, to apply a full range of appropriate criteria including drawing on knowledge of physical, psychological and social development, and applying each of the criteria in a way that gives the benefit of doubt in disputed cases so that the individual is treated as a juvenile offender.
- Provide children of death row inmates, the inmates themselves, their families and their legal representatives with adequate and age-appropriate information on pending executions as such and their dates, to allow a last visit or communication with the prisoner; and to return the body to the family for burial or to indicate where the body is located.
- Act on the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to *diyah* and in doing so give particular consideration to the best interest of the child.

⁹ In some jurisdictions the law has also been interpreted to authorize the victim's family to carry out the death sentence; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, A/61/311, 5 September 2006, para. 55-64.