

TABLE OF CONTENTS

1. Introduction.....	1
2. International human rights and humanitarian law standards	2
3. Action at the United Nations	3
4. National law and practice	4
5. Customary international law.....	5
6. Executions of child offenders since 1990	6
Democratic Republic of Congo	6
Iran.....	7
Nigeria	8
Pakistan.....	8
Saudi Arabia	8
USA	9
Yemen.....	15
7. Conclusions.....	15
Notes	16
Appendix 1. Executions of child offenders (1990 -).....	19
Appendix 2. Countries which provide for the death penalty but exclude its use against child offenders	21
Appendix 3: Resolution 2000/17, adopted on 17 August 2000 by the UN Sub-Commission on the Promotion and Protection of Human Rights.....	27
Appendix 4: Resolution 2002/77, adopted on 25 April 2002 by the UN Commission on Human Rights (extracts)	29

CHILDREN AND THE DEATH PENALTY

Executions worldwide since 1990

Abbreviations: ECOSOC -- (UN) Economic and Social Council
ICCPR -- International Covenant on Civil and Political Rights
UN -- United Nations
USA -- United States of America

"The Convention on the Rights of the Child clearly stipulates that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. All States, but the United States and Somalia have ratified the Convention. 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, United Nations High Commissioner for Human Rights, August 2002¹

1. Introduction

The use of the death penalty for crimes committed by people younger than 18 is prohibited under international human rights law, yet some countries still execute child offenders. Such executions are few compared to the total number of executions in the world. Their significance goes beyond their number and calls into question the commitment of the executing states to respect international law.

Since 1990 Amnesty International has documented executions of child offenders in seven countries: the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the USA and Yemen. At least two of these countries, Pakistan and Yemen, have since changed their laws to exclude the practice. The country which has carried out the greatest number of known executions is the USA.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment. As steps towards total abolition of the death penalty, it supports measures which limit the scope of capital punishment. These include laws which exclude the execution of child offenders -- people convicted of crimes committed under the age of 18.

2. International human rights and humanitarian law standards

The use of the death penalty against child offenders is prohibited under leading international instruments of worldwide or regional scope relating to human rights and the conduct of armed hostilities ("international humanitarian law").ⁱⁱ The relevant texts are as follows.

International Covenant on Civil and Political Rights (ICCPR): "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . ." (Article 6(5))

Convention on the Rights of the Child: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. . ." (Article 37(a))

African Charter on the Rights and Welfare of the Child: "The death sentence shall not be pronounced for crimes committed by children."ⁱⁱⁱ (Article 5(3))

American Convention on Human Rights: "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age. . ." (Article 4(5))

Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention): "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." (Article 68)^{iv}

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I): "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." (Article 77(5))

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): "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))

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (UN Economic and Social Council (ECOSOC) resolution 1984/50, adopted on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118 of 14

December 1984): "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death. . ."

The first seven instruments cited above are international treaties, binding on all states parties to them. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (ECOSOC Safeguards) are not legally binding but were endorsed by the UN General Assembly without a vote, a sign of a strong consensus among states that their provisions should be observed.^v

The nearly universal ratification of the Convention on the Rights of the Child is an especially strong sign of an international consensus that the death penalty must not be used against child offenders. As of July 2002, 191 states -- all states except Somalia and the USA -- were parties to the Convention on the Rights of the Child.^{vi} The Fourth Geneva Convention also is very widely ratified; 189 states were parties to it as of July 2002, indicating a consensus that the death penalty must not be used against civilian child offenders in occupied territories who are protected by that Convention.^{vii}

3. Action at the United Nations and regional intergovernmental organizations

As mentioned above, the ECOSOC Safeguards stating that people below 18 at the time of the crime must not be sentenced to death were endorsed by the UN General Assembly in 1984. Since then there have been many UN resolutions emphasizing the importance of the ECOSOC Safeguards and the prohibition of using the death penalty against child offenders.^{viii}

In 1997 the UN **Commission on Human Rights** adopted resolution 1997/12 on the question of the death penalty, expressing deep concern "that several countries impose the death penalty in disregard of the limitations provided for in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child". The Commission urged "all States that still maintain the death penalty to comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, notably not to impose the death penalty. . . for crimes committed by persons below eighteen years of age", and called upon all such states to observe the ECOSOC Safeguards.^{ix} The same demand was included in resolution 2002/77, adopted by the Commission on Human Rights in April 2002 (see Appendix 4 of this report for extracts from the resolution).^x

In August 2000 the UN **Sub-Commission on the Promotion and Protection of Human Rights** adopted resolution 2000/17 on "The death penalty in relation to juvenile

offenders”, condemning unequivocally the use of the death penalty against people under 18 at the time of the offence and affirming that such use “is contrary to customary international law”. It called on states that retain the death penalty for child offenders to change their laws as soon as possible and in the meantime “to remind their judges that the imposition of the death penalty against such offenders is in violation of international law”. (See Appendix 4 for text.)

Action regarding child offenders has also been taken by the **UN Special Rapporteur on extrajudicial, summary or arbitrary executions**^{xi} and by expert bodies set up to monitor the implementation of human rights treaties, notably the **UN Committee on the Rights of the Child** set up under the Convention on the Rights of the Child and the **UN Human Rights Committee** set up under the ICCPR.^{xii}

4. National law and practice

Of the 118 states whose laws still provide for the death penalty for at least some offences, 113 either have provisions in their laws which exclude the use of the death penalty against child offenders, or may be presumed to exclude such use by virtue of becoming parties to the ICCPR, the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child or the American Convention on Human Rights without entering a reservation to the relevant articles of these treaties (see Appendix 2).

One country, the USA, ratified the ICCPR in 1992 with a reservation reserving for itself the right to use the death penalty against child offenders. Eleven other states parties to the ICCPR formally objected to the US reservation.^{xiii} In its concluding observations on the initial report of the USA under the ICCPR, adopted in April 1995, the UN Human Rights Committee stated that it believed the US reservation to Article 6(5) to be “incompatible with the object and purpose of the Covenant” and recommended that the reservation be withdrawn.^{xiv}

In 1999 the UN Commission on Human Rights adopted resolution 1999/61 urging all states that still maintain the death penalty “[n]ot to enter any new reservations under article 6 of the International Covenant on Civil and Political Rights which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 of the Covenant enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area” (para. 3). The same request was included in resolution 2002/77 (para. 4), adopted by the Commission on Human Rights in April 2002.

Despite the international standards, a number of countries still have laws that permit the imposition of death sentences on child offenders in at least some circumstances. Most of these countries set age limits of 16 or 17, but a few set lower ages.^{xv}

Since the beginning of 1994 at least five countries have changed their laws to eliminate the use of the death penalty against child offenders: Barbados, Pakistan, Yemen, Zimbabwe and China.^{xvi}

In July 2002 the Supreme Court of the Philippines took action on information submitted to it indicating that 12 prisoners under sentence of death had been under 18 years old at the time of the crimes of which they were convicted. Noting that under Philippine law, “minority is a privileged mitigating circumstance which prevents the imposition of the death penalty”, and stating that the detention of a minor on death row “negates the very essence of the protection afforded by the State on the youth”, the Court authorized the transfer of the 12 prisoners to a medium security area of the prison pending the resolution of their cases.^{xvii}

Executions of child offenders are a tiny fraction of known executions worldwide. In 2001, for example, Amnesty International learned of 3,048 prisoners executed in 31 countries in the world. Only three of them, in three countries, were believed to be child offenders. In 2000, out of 1,457 known executions worldwide, only six were of child offenders.

“It has long been recognized that youthful offenders should be afforded special treatment in our judicial system considering their developmental age and desired reintegration into and assumption of a constructive role in society. Every effort should be exerted to promote the welfare and enhance the opportunities of a juvenile in conflict with law to uphold his human dignity and worth and instill in him respect for the fundamental rights and freedom of others. Detaining an accused, who is a minor, in the Death Row which can break even a hardened criminal, while he awaits his fate, negates the very essence of the protection afforded by the State on the youth.” -- Supreme Court of the Philippines, July 2002

5. Customary international law

In becoming a party to an international treaty, a state commits itself to respect its provisions. Under Article 2 of the ICCPR, for example, each state party “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized” therein, and “to adopt such laws or other measures as may be necessary to give effect to” those rights. The Convention on the Rights of the Child (Articles 2, 4) and the American Convention on Human Rights (Articles 1, 2) contain similar provisions. With the nearly universal ratification of one or another of these treaties, nearly all states have now made a formal commitment under international law that -- should they not yet have abolished the death penalty -- they will not use it against child offenders.

Amnesty International believes that the exclusion of child offenders from the death penalty is so widely accepted in law and practice that it has become a rule of **customary international law**. Customary international law comprises international rules derived from state practice

and regarded as law (*opinio juris*). Rules of customary international law are binding on every state, regardless of whether or not it is a party to international treaties containing the rule, unless that state has “persistently objected” to the rule in question.

Certain rules of general international law^{xviii} are of such importance that they are accepted as “peremptory norms” which all states must respect under all circumstances. A **peremptory norm of general international law**, also known as a norm of *jus cogens*, is defined in the Vienna Convention on the Law of Treaties (Article 53) 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 general international law having the same character”. There are strong arguments for holding that the prohibition of use of the death penalty against child offenders is such a norm.^{xix}

6. Executions of child offenders since 1990

As detailed below, seven countries are reported to have executed child offenders since 1990. Five of them have done so in violation of their obligations as parties to the ICCPR^{xx} and five of them in violation of their obligations as parties to the Convention on the Rights of the Child.^{xxi} However, two of these countries, Yemen and Pakistan, have since eliminated the use of the death penalty against child offenders. One other, Saudi Arabia, may also have decided to do so.

Country-by-country information on executions of child offenders since 1990 follows. Their cases are summarized in Appendix 1 of this report.

Democratic Republic of Congo

Despite a declaration in December 1999 by the Minister for Human Rights that the government was exercising a moratorium on executions, on 15 January 2000 a 14-year-old child soldier named Kasongo was executed within 30 minutes of his trial by the *Cour d'ordre militaire*, Military Order Court. He and four other soldiers had been found guilty of murdering a driver. Those convicted by the *Cour d'ordre militaire* can only appeal to the President for clemency but with execution taking place so soon after sentencing it is doubtful that the President had time to consider appeals.

In its concluding observations on the initial report of the Democratic Republic of Congo submitted under the Convention on the Rights of the Child, adopted in June 2001, the UN Committee on the Rights of the Child expressed deep concern “that children aged 16 and 17 are considered to be adults for the purposes of criminal responsibility” and that

“children aged 16 or above can, and have been, sentenced to the death penalty”. It 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”.^{xxii}

In May 2001 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to the government of the Democratic Republic of Congo regarding four former child soldiers, aged 16 and 17, who had reportedly been sentenced to death by the *Cour d'ordre militaire*. In her report to the 2002 session of the UN Commission on Human Rights the Special Rapporteur stated that she understood that the sentences were subsequently commuted. In August 2001 the Special Rapporteur sent another urgent appeal to the government concerning Babuyu Oleko, a 17-year-old child soldier, who was reportedly sentenced to death by the *Cour d'ordre militaire* on 10 January 2001.^{xxiii}

Iran

Since the creation of the Islamic Republic of Iran in 1979, thousands of prisoners have been executed, many after summary trials. Amnesty International has documented several executions of child offenders since 1990.

Kazem Shirafkan, aged 17, was executed for murder in 1990.

In his report to the 1993 session of the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that he had received information that three young men, one aged 17 and two aged 17, were executed on 29 September 1992.^{xxiv}

On 24 October 1999 Ebrahim Qorbanzadeh, aged 17, was hanged in Rasht for murder.

On 14 January 2000 Jasem Abrahimi, aged 17, was publicly hanged in Gonaveh after being convicted of the kidnapping, rape and murder of an 18-month-old child, according to the daily *Jumhuri-e Eslami* newspaper.

On 29 May 2001 Mehrdad Yousefi, aged 18, was hanged in a prison in western Iran, according to a report by the official Islamic Republic News Agency (IRNA) dated the same day and quoted by the Associated Press. He had been convicted of stabbing a man to death two years earlier, according to a provincial judicial official quoted by the IRNA.

In its concluding observations on the initial report of Iran submitted under the Convention on the Rights of the Child, adopted in June 2000, the UN Committee on the Rights of the Child stated that it was “seriously disturbed at the applicability of the death penalty for crimes committed by persons under 18” and emphasized that “such a penalty is incompatible with the Convention [on the Rights of the Child]”. The Committee strongly

recommended “that the State party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18”.^{xxv}

In June 2001 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal to the government of Iran regarding reports that Azizullah Shenwari, a 14-year-old Pakistani, had been sentenced to death after being convicted of drug offences. In her report to the 2002 session of the UN Commission on Human Rights, the Special Rapporteur noted that although the government had not replied to this communication, they had stated in a separate letter of 17 April 2001 “*that under the Islamic Penal Code, no person under the age of 18 is sentenced to death*”.^{xxvi}

Nigeria

Chidiebore Onuoha, aged 17, was executed on 31 July 1997. He was 15 years old at the time of the armed robbery for which he was executed.

The new penal codes inspired by *Sharia* (Islamic law) introduced in 12 states of northern Nigeria since January 2000, to be applied to Muslims, allow so-called *Sharia* courts to impose the death penalty. The age of adulthood is a flexible category in the legislation; it is defined as the age at which a person becomes responsible for his or her acts. Very often this is considered the age of puberty. If found guilty under the *Sharia* penal legislation, Nigerians under 18 could face the death penalty.

Pakistan

Pakistan ratified the Convention on the Rights of the Child in 1990. However, on 15 November 1992 11 prisoners were hanged in Punjab province, including a boy reportedly aged 17.

On 30 September 1997 Shamun Masih was hanged in Hyderabad for an armed robbery and triple murder committed in 1988 when he was reportedly 14 years old.

The Juvenile Justice System Ordinance 2000, which abolished the death penalty for people under 18 at the time of the offence, *entered into force on 1 July 2000. The Ordinance did not make reference to some 50 people then under sentence of death who were below the age of 18 at the time of the offence, nor did it provide for a review of such cases.*

On 3 November 2001 Sher Ali was hanged in Timergarah; he had been sentenced to death for a murder committed in 1993 when he was 13 years old. The Supreme Court had earlier rejected an appeal which argued that in 1993 the death penalty could not be imposed in the Provincially Administered Tribal Areas where he had lived.

During a meeting with Amnesty International's Secretary General in Islamabad in December 2001, President Perwez Musharraf announced that he would commute the death sentences of child offenders imposed before the death penalty for child offenders was abolished in July 2000. At the time of writing, Amnesty International was seeking information on whether the death sentences of all child offenders have now been commuted.

Saudi Arabia

In his report to the 1993 session of the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that he had received information that a Shi'a Muslim, Sadeq Mal-Allah, had been beheaded on 3 September 1992 in the eastern town of Al-Qatif. He was reportedly sentenced to death at the age of 17 on charges relating to blasphemy after a trial at which he was denied a lawyer.^{xxvii}

Saudi Arabia became a party to the Convention on the Rights of the Child in 1996. In its initial report to the UN Committee on the Rights of the Child on the measures taken to give effect to the rights recognized in the Convention, the Saudi Arabian government stated that "capital punishment cannot be imposed on children who have not attained the age of majority in accordance with Islamic law".^{xxviii} In its concluding observations on the initial report of Saudi Arabia, adopted in January 2001, the Committee stated that "[a]s the age of majority is not defined", it was "seriously concerned that there is a possibility that the death penalty may be imposed for offences committed by persons who were below 18 years at the time the crime was committed, contrary to articles 6 and 37(a) of the Convention [on the Rights of the Child]". The Committee strongly recommended "that the State party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18".^{xxix}

Amnesty International's concern about this ambiguity is heightened by reports it has received of death sentences imposed on children. These have included the case of a 14-year old child who was detained in 1997 in Dammam in connection with the murder of an Egyptian woman and her 13-year old daughter. According to press reports, police sources had disclosed that the boy had "confessed" to the crime, that this confession was video-recorded by police and that the boy was expected to face the death penalty. Amnesty International sought clarification from the government, but had not received any response at the time of writing.^{xxx}

USA

The country which has carried out more documented executions of child offenders than any other since 1990 is the USA.

In 1988 and 1989 the US Supreme Court ruled that the execution of people who were under 16 at the time of the crime was contrary to the US Constitution but that the execution of people aged 16 or 17 at the time of the crime was not.^{xxxi}

Fifteen US states were holding a total of 82 child offenders on death row as of August 2002. Eighteen executions of child offenders have been carried out in six states since 1990. One of those executed was 16 at the time of the offence; the others were all 17. Eleven of the executions were in Texas, the state which has carried out the largest total number of executions of prisoners since the resumption of executions in the USA in 1977 -- 281 up to 17 September 2002.

The background of most of the child offenders executed since 1990 was one of serious emotional or material deprivation. Many were regular users of drugs or alcohol with lower than average intelligence. Some had organic brain damage. Some had poor or inexperienced legal counsel. Highly relevant information was withheld at their trials due to incompetence or inexperience on the part of their lawyers.

Brief details of the 18 cases are given below. The prisoners' race or ethnic grouping and the state are indicated in square brackets.

Dalton Prejean [black, Louisiana], sentenced to death in 1978 and executed in 1990. He was 17 years old at the time of the murder of a police officer in 1977. Prejean was tried before an all-white jury and represented by a court-appointed lawyer. At his trial, evidence was presented of intellectual impairment. His IQ was measured at 71. He was abandoned by his mother at the age of two weeks and was raised by a relative who was reportedly violent. From the age of 13 he spent time in institutions and was diagnosed as suffering from various mental illnesses including schizophrenia. At age 14 he was committed to an institution for killing a taxi driver. Medical opinion recommended

long-term hospitalization under strict supervision. He was nevertheless released after three years, reportedly because of lack of funds to keep him institutionalised. Despite appeals for clemency in 1989 and 1990 he was electrocuted on 18 May 1990, 12 years after being sentenced to death.

Johnny Garrett [white, Texas], executed in 1992. He was convicted of the murder in 1981 of a 76-year-old white nun. He had a long history of mental illness and was severely sexually and physically abused as a child. This history was not revealed at the trial. Between 1986 and 1992, three medical experts reported that he was chronically psychotic and brain-damaged as a result of head injuries sustained as a child. Appeals for clemency from Pope John Paul II and from the Franciscan Sisters religious community to which the murdered nun belonged were to no avail and Johnny Garrett was executed by lethal injection on 11 February 1992.

Curtis Harris [black, Texas], executed in 1993. He was 17 years old at the time of the crime - the murder of a white man in 1978. He was one of nine children brought up in extreme poverty. He was regularly beaten as a child by an alcoholic father. At the trial, three black jurors were excluded; his jury was all white. He was sentenced to death in 1979. His conviction was overturned, he was retried and sentenced to death again in 1983. In 1986 he was examined by Dr Dorothy Otnow Lewis, Professor of Psychiatry at the New York University School of Medicine, who found that he had a low IQ (77) and had organic brain damage resulting from beatings suffered as a child. None of the information about his upbringing or mental capacity was raised by his lawyer at the original trial. His appeals against the sentence failed and he was executed on 1 July 1993.

Frederick Lashley [black, Missouri], executed in 1993. He was the first child offender to be executed in Missouri for 60 years when he was subjected to lethal injection on 28 July 1993. He was convicted and sentenced to death by an all-white jury in 1982 for the murder of his cousin in 1981. He was under the influence of drugs at the time of the killing. He had been abandoned at a young age by his mother and had been brought up by relatives. He began drinking alcohol heavily at the age of 10 and at the time of the crime was homeless. At his trial he was represented by a lawyer who had never previously acted in a capital case.

Christopher Burger [white, Georgia], executed in 1993. He was the first child offender to be executed in Georgia under its current death penalty law. He was 17 at the time of the murder, committed in 1977, for which he was convicted. He was sentenced to death in 1978. The sentence was vacated but a new sentencing hearing was held and in 1979 he was again sentenced to death. Fourteen years later he was executed by electrocution.

At his trial he was represented by a lawyer who had not previously acted in a capital case. Although US juries are required to consider mitigating factors in deciding whether to impose a death sentence, Christopher Burger's lawyer did not present mitigating evidence at the sentencing hearings in either 1978 or 1979. The jury was therefore not told that Christopher Burger had a low IQ, that he was mentally ill and brain damaged from physical abuse received as a child, or that he suffered from a highly disturbed, unstable upbringing and had attempted suicide at the age of 15.

In 1989, Dr Dorothy Otnow Lewis of the New York University School of Medicine examined Christopher Burger and found organic brain impairment and mental illness. He was scheduled to be executed on 18 December 1990 but received a last-minute stay of execution pending an appeal based on the issue of his mental competence at the time of the crime. The appeal failed and he was executed on 7 December 1993.

Ruben Cantu [Latino, Texas], sentenced to death in 1984 and executed in 1993. He was 17 at the time of the offence. He was represented by an inexperienced lawyer, had a troubled family upbringing and was of limited intellectual capacity.

Joseph John Cannon [white, Texas], executed in 1998 for the murder of Anne Walsh in 1977. He was sentenced to death in 1980. The conviction was overturned in 1981. He was retried and sentenced to death again in 1982. At the age of four, Joseph Cannon was hit by a truck and left hyperactive, with a head injury and a speech impediment. Unable to function in the classroom, he was expelled from school at the age of six or seven and received no other formal education. He turned to glue sniffing and other solvent abuse, and at age 10 he was diagnosed as suffering from organic brain damage. Suffering from severe depression, he attempted suicide at the age of 15. He was diagnosed as schizophrenic and borderline mentally retarded. From the age of seven up to the time of the murder for which he was sentenced to death, Joseph Cannon suffered repeated and severe sexual abuse from male relatives. So brutal and abusive was his upbringing that Joseph Cannon thrived better on death row, where he learned to read and write, than he ever had in his home environment. By the time he was killed, Joseph Cannon had spent more than half his life on death row.

Robert Anthony Carter [black, Texas], sentenced to death in 1982 for the murder of Sylvia Reyes in 1981 and executed in 1998. One of six children in one of the poorest families of an impoverished Houston neighbourhood, Robert Carter was abused throughout his childhood. His mother and stepfather would whip and beat the children with wooden switches, belts and electric cords. At the age of five he was hit on the head with a brick. At the age of 10 he was hit so hard on the head with a baseball bat that the bat broke. He received no medical attention for these injuries. In an incident shortly before the murder of Sylvia Reyes, Robert Carter was shot in the head by his brother, the bullet lodging near his temple. He afterwards suffered seizures and fainting spells.

At his trial, the prosecution took one day to present its entire case. At the sentencing, during which the prosecutor told the jury that life imprisonment would be like a "slap on the wrist", the jury was not invited to consider as mitigating evidence Robert Carter's age at the time of the crime; the fact that he was borderline mentally retarded, brain damaged and had suffered brutal physical abuse as a child; or that this was his first offence. The jurors took 10 minutes to decide that he should die.

Dwayne Allen Wright [black, Virginia], sentenced to death in 1991 for the murder of Saba Tekle in 1989 and executed in 1998. Dwayne Wright grew up in a poor family in a deprived neighbourhood of the US capital, Washington DC, rife with criminal drugs activity, where he witnessed habitual gun violence and murder. From the age of four, Dwayne Wright lost his father to incarceration in prison. His mother, who suffered from mental illness, was often unemployed for long periods. When he was 10, his 23-year-old half-brother, to whom he was very close, was murdered. After this Dwayne Wright developed serious emotional problems. He did poorly at school. Between the ages of 12 and 17, he spent periods in hospital and juvenile detention facilities. During this time he was treated for "major depression with psychotic episodes"; his mental capacity was evaluated as borderline retarded, his verbal ability as retarded; and doctors found signs of organic brain damage.

The American Bar Association was among the organizations which appealed for clemency for Dwayne Wright, stating that his proposed execution "demeans our system of justice" and that "a borderline mentally retarded child simply cannot be held to the same degree of culpability and accountability for the actions to which we would hold an adult."

Sean Sellers [white, Oklahoma], sentenced to death in 1981 for shooting his mother and stepfather and a shopkeeper and executed in 1999. He was the first person since 1959 to be executed in the USA for a crime committed at 16 years of age. Born to a 16-year-old mother and raised by various relatives, he was exposed to violence and physical abuse from an early age and became involved with drugs and Satanism. In post-conviction examinations, he was found to be chronically psychotic and to have symptoms of paranoid schizophrenia and other major mood disorders. He was diagnosed with multiple personality disorder in 1992. On death row he became very religious and engaged in writing and artwork with a view to helping others learn from his experience. One of his trial jurors appealed for clemency, recalling that the jury never believed that he would be executed but that they feared his early release if they sentenced him to life imprisonment. The trial judge had refused to allow expert testimony that a sentence of life imprisonment would have meant at least 15 years in prison before he would become eligible for parole.

Chris Thomas [white, Virginia], sentenced to death in 1991 and executed in 2000. After his adoptive parents died when he was 12, Chris Thomas became involved in petty offending and drug abuse. Psychological reports described him as an isolated, angry, depressed, alienated teenager. His intense relationship with 14-year-old Jessica Wiseman culminated in their plan to kill her parents. Without an adult present, while still under the effects of alcohol and drugs, and having slept for only two hours in the previous 40, Thomas confessed to both murders. He later said he had not fired the second fatal shot at the mother, whose killing resulted in Chris Thomas' death sentence (he received a life sentence for the murder of the father). The jury never heard evidence that Jessica Wiseman may have fired this shot. She was released in 1997 at the age of 21.

Steve Roach [white, Virginia], executed in 2000. He had been sentenced to death in 1995 for the 1993 shooting of Mary Ann Hughes, his only recorded act of violence. Born into a family with frequently absent parents, Roach dropped out of school at 14 because they wanted him to do chores. An expert testified at trial that Roach had poor impulse control and was particularly immature as a result of the lack of structure in his home life. Arguing that Roach was a future danger, the prosecution cited his parole violation in possessing a shotgun as a sign of his future dangerousness, despite the fact that no adult, including the police, had seen fit to remove it from him.

Glen McGinnis [black, Texas], sentenced to death in 1992 and executed in 2000. Glen McGinnis was born to a mother who was addicted to crack cocaine and who worked out of their one-bedroom flat as a prostitute. He suffered repeated physical abuse at her hands and those of his stepfather, who 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 engaged in shoplifting and car theft. 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.

Gary Graham [black, Texas], sentenced to death in 1981 and executed in 2000 amid massive national and international media attention. He was born to a mentally ill mother and an alcoholic father and was exposed to violence from an early age in the poor neighbourhood of Houston where he grew up. He became involved in drug and alcohol abuse and by the age of 15 had a juvenile record for thefts. In 1981, aged 17, he was under arrest for a string of armed robberies and aggravated assaults when he was charged with the murder of Bobby Lambert, white, the crime for which a jury of 11 whites and one black sentenced him to die. He was represented by lawyers too busy to defend a client they apparently assumed was guilty because of the other crimes to which he admitted. Their failure meant that Gary Graham was convicted on the testimony of a single eyewitness whose credibility they never scrutinized. Gary Graham's lawyers failed

to question suggestive police techniques used in obtaining her identification of Graham. They neglected to interview other, better-placed witnesses, none of whom identified him as the gunman and several of whom said he was not the gunman. No physical evidence linked Gary Graham to the shooting. The jury never heard forensic evidence that a gun found on him at the time of his arrest could not have fired the fatal bullet.

No hearing was ever held into whether Graham's 19-year claim of innocence was supported by such evidence. Two of the trial jurors signed affidavits that they would not have voted for death if they had been presented with such evidence.

Gerald Mitchell [black, Texas], sentenced to death in 1986 and executed in 2001. Gerald Mitchell was on death row for 15 years after being convicted by an all-white jury for the murder of a white man, committed when he was 17 years old. Evidence presented at trial indicated that Mitchell had been assessed as having an IQ of 75 and had a long history of substance abuse.

Napoleon Beazley [black, Texas], sentenced to death in 1985 and executed in 2002. He was sentenced to death in 1995 for the murder of a white man in Tyler, Texas, committed when he was 17 years old. He had no prior arrest record and the state produced no evidence of any other assaultive acts by him. He was tried by an all-white jury. One of the jurors was later shown to harbour severe prejudice against African Americans. There was evidence that another was a long-term employee of one of the victim's business partners, which was not revealed during jury selection. Two co-defendants later said that their testimony at the trial, central to the prosecution's bid for a death sentence, had been false and was made under pressure from a prosecutor needing to cast the defendant in as bad a light as possible in front of the jury. The prosecutor repeatedly referred to Beazley as a predatory "animal" in front of the jury. Many witnesses testified at his

trial about good aspects of his character and his potential for rehabilitation. He was a model prisoner.

T.J. Jones [black, Texas], sentenced to death in 1994 and executed in 2002 for the murder of a white man during a carjacking. Jones was assessed as having an IQ of 78, and to be particularly immature for his age at the time of the crime. According to an expert at the trial, his "grossly poor judgment" was compounded by alcohol and drug abuse which began at the age of 13.

Toronto Patterson [black, Texas], sentenced to death in 1995 and executed in 2002. Toronto Patterson was sentenced to death for the killing of three-year-old Ollie Brown, whose body was found in her home in Dallas in June 1995 along with that of her sister and their mother. All three, who were cousins of Toronto Patterson, had been shot. After his arrest, the 17-year-old Toronto Patterson gave police a statement without a lawyer present, in which he admitted to being present at the scene of the crime but not to having committed the murders themselves. After being held incommunicado for over four hours, and subjected to aggressive interrogation, Toronto Patterson confessed to the shootings. He claimed at his 1995 trial that the confession had been coerced, and in his final statement before being executed in 2002, maintained his innocence of the murders.

In its concluding observations on the initial report of the USA under the ICCPR, adopted in 1995, the UN Human Rights Committee deplored "provisions in the legislation of a number of [US] states which allow the death penalty to be pronounced for crimes committed by persons under 18 and the actual instances where such sentences have been pronounced and executed". It exhorted the authorities "to take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18".^{xxxiii}

Yemen

A 13-year-old boy, Nasser Munir Nasser al-Kirbi, was publicly hanged in the capital, Sana'a, on 21 July 1993, along with three men. They had been convicted of murder and highway robbery.

In 1994 the minimum age for the use of the death penalty was raised to 18 years at the time of the offence in the Penal Code (Article 31 of Law 12).

7. Conclusions

It is now very widely accepted that child offenders must not be subjected to the death penalty. Almost all states are now parties to international treaties which prohibit the sentencing to death of child offenders. A very few states continue to execute child offenders, but such executions are rare and are only a tiny fraction of the total number of known executions carried out worldwide.

Amnesty International believes that the exclusion of child offenders from the death penalty is so widely accepted in law and practice that it has become a rule of customary international law which is binding on every state, regardless of whether or not it is a party to international treaties containing the rule, unless that state has “persistently objected” to the rule in question. There are also strong arguments for holding that this exclusion is a peremptory norm of general international law which all states without exception must respect under all circumstances.

Amnesty International urges all governments to cease all executions and abolish the death penalty in law. Pending abolition of the death penalty, a minimum age of 18 should be provided for in legislation.

Notes

Appendix 1. Executions of child offenders (1990 -)

<i>Country</i>	<i>Name of prisoner</i>	<i>Age</i>	<i>Date of execution</i>
<i>Dem.Re p. of Congo</i>	<i>Kasongo</i>	<i>14 at time of execution</i>	<i>15 January 2000</i>
<i>Iran</i>	<i>Kazem Shirafkan</i> <i>Three young males</i> <i>Ebrahim Qorbanzadeh</i> <i>Jasem Abrahimi</i> <i>Mehrdad Yousefi</i>	<i>17 at time of execution</i> <i>One aged 16, two aged 17 at time of execution</i> <i>17 at time of execution</i> <i>17 at time of execution</i> <i>16 at time of offence</i>	<i>1990</i> <i>29 September 1992</i> <i>24 October 1999</i> <i>14 January 2000</i> <i>29 May 2001</i>
<i>Nigeria</i>	<i>Chiebore Onuoha</i>	<i>15 at time of</i>	<i>31 July 1997</i>

<i>Country</i>	<i>Name of prisoner</i>	<i>Age</i>	<i>Date of execution</i>
		<i>offence, 17 at time of execution</i>	
<i>Pakistan</i>	<i>One juvenile Shamun Masih Ali Sher</i>	<i>17 when executed 14 at time of offence 13 at time of offence</i>	<i>15 November 1992 30 September 1997 3 November 2001</i>
<i>Saudi Arabia</i>	<i>Sadeq Mal-Allah</i>	<i>17 when sentenced to death</i>	<i>3 September 1992</i>
<i>USA</i>	<i>Dalton Prejean Johnny Garrett Curtis Harris Frederick Lashley Christopher Burger Ruben Cantu Joseph John Cannon Robert Anthony Carter Dwayne Allen Wright</i>	<i>17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence 17 at time of offence</i>	<i>18 May 1990 11 February 1992 1 July 1993 28 July 1993 7 December 1993 24 August 1993 1993 22 April 1998 18 May 1998 14 October</i>

<i>Country</i>	<i>Name of prisoner</i>	<i>Age</i>	<i>Date of execution</i>
	Sean Sellers	17 at time of offence	1998
	Steve Roach		4 February
	Chris Thomas	17 at time of offence	1999
	Glen McGinnis		10 January
	Gary Graham	17 at time of offence	2000
	Gerald Mitchell		13 January
	Napolean Beazley	16 at time of offence	2000
	T.J. Jones		25 January
	Toronto Patterson	17 at time of offence	2000
			22 June 2000
		17 at time of offence	22 October
			2001
		17 at time of offence	28 May 2002
			8 August
		17 at time of offence	2002
			28 August
		17 at time of offence	2002
		17 at time of offence	
		17 at time of offence	
		17 at time of offence	

<i>Country</i>	<i>Name of prisoner</i>	<i>Age</i>	<i>Date of execution</i>
<i>Yemen</i>	<i>Nasser Munir Nasser al'Kirbi</i>	<i>13 at time of execution</i>	<i>21 July 1993</i>

Appendix 2. Countries which provide for the death penalty but exclude its use against child offenders

Key

The second column in the following table, "Status", indicates whether or not the country still uses the death penalty, as follows:

ADF = Abolitionist *de facto* (abolitionist in practice -- countries which retain the death penalty in law but do not use it)

AO = Abolitionist for ordinary crimes only (countries which retain the death penalty only for exceptional crimes such as wartime crimes)

R = Retentionist (countries which retain and use the death penalty)

The third, fourth and fifth columns indicate whether or not the country is a party to international treaties which forbid the use of the death penalty against child offenders:

✓ ICCPR = Country has ratified the ICCPR without specific reservation to Article 6(5)

✓ CRC = Country has ratified the Convention on the Rights of the Child without specific reservation to Article 37(a)

✓ ACRWC = Country has ratified the African Charter on the Rights and Welfare of the Child without specific reservation to Article 5(3)

✓ ACHR = Country has ratified the American Convention on Human Rights without specific reservation to Article 4(5)

The table does not include countries which have continued to execute child offenders in violation of their obligations under these treaties.

Country	Status	ICCPR	CRC	ACRWC	ACHR
AFGHANISTAN	R	✓	✓		
ALBANIA	AO	✓	✓		
ALGERIA	R	✓	✓		
ANTIGUA AND BARBUDA	R		✓		
ARGENTINA	AO	✓	✓		✓

Country	Status	ICCPR	CRC	ACRWC	ACHR
ARMENIA	R	✓	✓		
BAHAMAS	R		✓		
BAHRAIN	R		✓		
BANGLADESH	R	✓	✓		
BARBADOS	R	✓	✓		✓
BELARUS	R	✓	✓		
BELIZE	R	✓	✓		
BENIN	R	✓	✓	✓	
BHUTAN	ADF		✓		
BOLIVIA	AO	✓	✓		✓
BOSNIA-HERZEGOVINA	AO	✓	✓		
BOTSWANA	R	✓	✓	✓	
BRAZIL	AO	✓	✓		✓
BRUNEI DARUSSALAM	ADF		✓		
BURKINA FASO	ADF	✓	✓	✓	
BURUNDI	R	✓	✓		
CAMEROON	R	✓	✓	✓	
CENTRAL AFRICAN REPUBLIC	ADF	✓	✓		
CHAD	R	✓	✓	✓	
CHILE	AO	✓	✓		✓
CHINA	R		✓		
COMOROS	R		✓		

Country	Status	ICCPR	CRC	ACRWC	ACHR
CONGO (Republic)	ADF	✓	✓		
COOK ISLANDS	AO		✓		
CUBA	R		✓		
CYPRUS	AO	✓	✓		
DOMINICA	R	✓	✓		✓
EGYPT	R	✓	✓	✓	
EL SALVADOR	AO	✓	✓		✓
EQUATORIAL GUINEA	R	✓	✓		
ERITREA	R	✓	✓	✓	
ETHIOPIA	R	✓	✓		
FIJI	AO		✓		
GABON	R	✓	✓		
GAMBIA	ADF	✓	✓	✓	
GHANA	R	✓	✓		
GREECE	AO	✓	✓		
GRENADA	ADF	✓	✓		✓
GUATEMALA	R	✓	✓		✓
GUINEA	R	✓	✓	✓	
GUYANA	R	✓	✓		
INDIA	R	✓	✓		
INDONESIA	R		✓		
IRAQ	R	✓	✓		
ISRAEL	AO	✓	✓		

Country	Status	ICCPR	CRC	ACRWC	ACHR
JAMAICA	R	✓	✓		✓
JAPAN	R	✓	✓		
JORDAN	R	✓	✓		
KAZAKSTAN	R		✓		
KENYA	R	✓	✓	✓	
KOREA (NORTH)	R	✓	✓		
KOREA (SOUTH)	R	✓	✓		
KUWAIT	R	✓	✓		
KYRGYZSTAN	R	✓	✓		
LAOS	R		✓		
LATVIA	AO	✓	✓		
LEBANON	R	✓	✓		
LESOTHO	R	✓	✓	✓	
LIBERIA	R		✓		
LIBYA	R	✓	✓	✓	
MADAGASCAR	ADF	✓	✓		
MALAWI	R	✓	✓	✓	
MALAYSIA	R		✓		
MALDIVES	ADF		✓		
MALI	ADF	✓	✓	✓	
MAURITANIA	R		✓		
MEXICO	AO	✓	✓		✓
MONGOLIA	R	✓	✓		

Country	Status	ICCPR	CRC	ACRWC	ACHR
MOROCCO	R	✓	✓		
MYANMAR	R		✓		
NAURU	ADF		✓		
NIGER	ADF	✓	✓	✓	
OMAN	R		✓		
PAKISTAN	R		✓		
PAPUA NEW GUINEA	ADF		✓		
PERU	AO	✓	✓		✓
PHILIPPINES	R	✓	✓		
QATAR	R		✓		
RUSSIAN FEDERATION	ADF	✓	✓		
RWANDA	R	✓	✓	✓	
SAINT CHRISTOPHER & NEVIS	R		✓		
SAINT LUCIA	R		✓		
SAINT VINCENT & GRENADINES	R	✓	✓		
SAMOA	ADF		✓		
SENEGAL	ADF	✓	✓	✓	
SIERRA LEONE	R	✓	✓		
SINGAPORE	R		✓		
SOMALIA	R	✓			
SRI LANKA	ADF	✓	✓		
SUDAN	R	✓	✓		

Country	Status	ICCPR	CRC	ACRWC	ACHR
SURINAME	ADF	✓	✓		✓
SWAZILAND	R		✓		
SYRIA	R	✓	✓		
TAJKISTAN	R	✓	✓		
TANZANIA	R	✓	✓		
THAILAND	R	✓	✓		
TOGO	ADF	✓	✓	✓	
TONGA	ADF		✓		
TRINIDAD AND TOBAGO	R	✓	✓		
TUNISIA	R	✓	✓		
TURKEY	AO		✓		
UGANDA	R	✓	✓	✓	
UNITED ARAB EMIRATES	R		✓		
UZBEKISTAN	R	✓	✓		
VIET NAM	R	✓	✓		
YEMEN	R	✓	✓		
ZAMBIA	R	✓	✓		
ZIMBABWE	R	✓	✓	✓	

Appendix 3: Resolution 2000/17, adopted on 17 August 2000 by the UN Sub-Commission on the Promotion and Protection of Human Rights

The death penalty in relation to juvenile offenders

The Sub-Commission on the Promotion and Protection of Human Rights,

Reaffirming the development towards the abolition of the death penalty generally, as reflected in article 6, paragraph 2, of the International Covenant on Civil and Political Rights and in the Second Optional Protocol thereto, aiming at the abolition of the death penalty, Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 4, paragraphs 2 and 3, of the American Convention on Human Rights and the Protocol to the American Convention to Abolish the Death Penalty,

Recalling Commission on Human Rights resolutions 1998/8 of 3 April 1998, 1999/61 of 28 April 1999 and 2000/65 of 26 April 2000, in which the Commission expressed the conviction that abolition of the death penalty contributed to the enhancement of human dignity and to the progressive development of human rights,

Noting that the death penalty is often imposed after trials which do not conform to international standards of fairness and that members of racial, national or ethnic minorities appear to be disproportionately subject to the death penalty,

Welcoming the tendency in retentionist States to restrict the number of crimes carrying a possible death sentence,

Welcoming also the fact that many countries, whilst retaining the death penalty in their penal legislation, are applying a moratorium on executions,

Recalling the view of the Commission on Human Rights that the death penalty should not be imposed on or carried out against a person suffering from any form of mental disorder,

Reaffirming the prohibition of the imposition of the death penalty on those aged under 18 at the time of the commission of the offence, as enshrined in article 6, paragraph 5, of the International Covenant on Civil and Political Rights, article 37 (a) of the Convention on the Rights of the Child, article 5, paragraph 3, of the African Charter on the Rights and Welfare of the Child, article 77, paragraph 5, of Protocol I and article 6, paragraph 4, of Protocol II Additional to the Geneva Conventions of 12 August 1949,

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,

1. *Condemns unequivocally* the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence;
2. *Calls upon* also States that retain the death penalty for juvenile offenders 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 and, in the meantime, to remind their judges that the imposition of the death penalty against such offenders is in violation of international law;
3. *Calls upon* all States in which the death penalty has been imposed on a person aged under 18 at the time of the commission of the offence after the State ratified the Convention on the Rights of the Child and/or after the entry into force of domestic legislation abolishing the imposition of the death penalty on juvenile offenders to remind their judges that the imposition of the death penalty against such offenders is in violation of international and/or national law;
4. *Requests* the Commission on Human Rights to reaffirm its resolution 2000/65 at its fifty-seventh session;
5. *Decides* to continue consideration of this matter at its fifty-third session under the same agenda item;
6. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, recalling its resolutions 1998/8 of 3 April 1998, 1999/61 of 28 April 1999 and 2000/65 of 27 April 2000 on the question of the death penalty, recalling also Sub-Commission resolution 1999/4 of 24 August 1999 on the death penalty, particularly in relation to juvenile offenders, and taking note of Sub-Commission resolution 2000/17 of 17 August 2000 on the death penalty in relation to juvenile offenders, confirms that international law concerning the imposition of the death penalty in relation to juveniles clearly establishes that the imposition of the death penalty on persons aged under 18 years at the time of the offence is in contravention of customary international law."

Appendix 4: Resolution 2002/77, adopted on 25 April 2002 by the UN Commission on Human Rights (extracts)

The question of the death penalty

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37(a) of the Convention on the Rights of the Child, (...)

Recalling further Economic and Social Council resolutions 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996, (...) Deeply concerned that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child, Concerned that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty, (...)

2. Reaffirms resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence; (...)

4. Urges all States that still maintain the death penalty:(a) To comply fully with their obligations under the Covenant and the Convention on

the Rights of the Child, notably not to impose the death penalty. . . for crimes committed by persons below 18 years of age, (...)

d) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;(e) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, (...)

8. Requests the Secretary-General to continue to submit to the Commission, at its fifty-ninth session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence. . .

i. 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.

ii. International humanitarian law, also known as the laws of war, is the body of international law that regulates the behaviour of parties to armed conflicts. It includes the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

iii. Article 2 of the African Charter on the Rights and Welfare of the Child states: "For the purposes of this Charter, a child means every human being below the age of 18 years."

- iv. Persons protected by the Fourth Geneva Convention in international armed conflicts are civilians in occupied territories or elsewhere who “find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals” (Fourth Geneva Convention, Article 4).
- v. The adoption of international human rights standards without a vote is a sign of strong agreement, in that no member state represented at the body which adopted them wished to go on record as opposing them.
- vi. Somalia and the USA have signed the Convention on the Rights of the Child, indicating their intention to ratify it at a later date.
- vii. Other treaties of worldwide scope forbidding the use of the death penalty against child offenders are also widely ratified. As of July 2002, 148 states were parties to the ICCPR, 159 were parties to Additional Protocol I of 1977 to the Geneva Conventions of 12 August 1949 and 152 were parties to Additional Protocol II. Also, 26 members of the African Union were parties to the African Charter on the Rights and Welfare of the Child and 24 members of the Organization of American States were parties to the American Convention on Human Rights. For the texts of UN human rights treaties and lists of states parties, see the UN human rights website at www.unhchr.ch. The texts of the Geneva Conventions and Additional Protocols and lists of states parties can be found on the website of the International Committee of the Red Cross at www.icrc.org.
- viii. In 1989, for example, ECOSOC adopted resolution 1989/64 of 24 May 1989 expressing alarm at “the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty” and inviting UN member states “that have not yet done so to review the extent to which their legislation provides for” the ECOSOC Safeguards. In resolution 1996/15 of 23 July 1996 ECOSOC called upon member states “in which the death penalty has not been abolished to effectively apply” the 1984 ECOSOC Safeguards. Earlier, the UN General Assembly had urged member states concerned “[t]o respect as a minimum standard the content of the provisions of articles 6, 14 and 15 of the International Covenant on Civil and Political Rights and, where necessary, to review their legal rules and practices so as to guarantee the most careful legal procedures and the greatest possible safeguards for the accused in capital cases” (resolution 35/172 of 15 December 1980, adopted without a vote).
- ix. Resolution 1997/12 of 3 April 1997, preambular para. 7 and operative paras. 2, 3.
- x. Similarly, in resolution 2002/36 of 22 April 2002 on extrajudicial, summary or arbitrary executions the Commission on Human Rights called upon “the Governments of all States in which the death penalty has not been abolished to comply with their obligations as assumed under relevant provisions of international human rights instruments, including in particular articles 6 and 14 of the International Covenant on Civil and Political Rights and article 37 of the Convention on the Rights of the Child, which prohibits the imposition of capital punishment for offences committed by persons below 18 years of age” (para. 7). The texts of these and other UN resolutions and documents can be obtained on the UN human rights website at www.unhchr.ch.
- xi. The Special Rapporteur on extrajudicial, summary or arbitrary executions reports annually to the UN Commission on Human Rights. The Special Rapporteur is mandated among other things to monitor “the implementation of existing international standards on safeguards and restrictions relating to the imposition

of capital punishment” (Commission on Human Rights resolution 2002/36 of 22 April 2002, para. 16).

xii. Under the Convention on the Rights of the Child and the ICCPR, states parties are required to submit periodic reports on the measures they have taken to implement the provisions of these treaties. The Committee on the Rights on the Child and the Human Rights Committee respectively examine these reports and adopt observations on them.

xiii. The 11 states which objected to the US reservation were Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain and Sweden.

xiv. UN document A/50/40, paras. 279, 292, originally issued as UN document CCPR/C/79/Add.50.

xv. The UN Secretary-General’s quinquennial report on capital punishment, issued in 2000 and revised in 2001, stated that two countries which replied to the Secretary-General’s questionnaire -- Chile and Togo -- set a minimum age of 16, while in Indonesia there was no minimum age (*Capital Punishment and Implementation of the Safeguards guaranteeing Protection of the Rights of those Facing the Death Penalty: Report of the Secretary-General*, UN document E/CN.15/2001/10, 29 March 2001, para. 98).

xvi. The countries are listed in the UN Secretary-General’s quinquennial report on capital punishment, cited above (E/CN.15/2001/10, para. 99). 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 continue 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 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”.

xvii. Resolution of the Court *en banc*, O.C. No. 01-20, 30 July 2002. The information on the 12 prisoners had been submitted by an officer of the Philippine Jesuit Prison Service, an organization which provides welfare services to prisoners on death row.

xviii. The term *general international law* refers to the law which may be derived from the non-treaty sources specified in Article 38 of the Statute of the International Court of Justice. Rules of general international law apply to all states, whether or not they are parties to a treaty expressly containing the rule. Customary international law is the principal source of general international law.

xix. See Amnesty International, *United States of America: Indecent and internationally illegal - the death penalty against child offenders*, AI Index: AMR 51/143/2002, September 2002, pp. 82-88, “An overwhelming consensus: the international picture”.

xx. The five countries are the Democratic Republic of Congo, Iran, Nigeria, USA and Yemen. The USA

ratified the ICCPR in June 1992 but entered a reservation stating that it did not accept the prohibition of sentencing juvenile offenders to death under Article 6(5). As noted above, the UN Human Rights Committee has stated that it believes the US reservation to Article 6(5) to be incompatible with the object and purpose of the ICCPR.

xxi. The five countries are the Democratic Republic of Congo, Iran, Nigeria, Pakistan and Yemen. Saudi Arabia has also executed child offenders but has since ratified the Convention on the Rights of the Child. In addition, the USA has signed the Convention on the Rights of the Child. Under the Vienna Convention on the Law of Treaties (Article 18), a state which has signed an international treaty “is obliged to refrain from acts which would defeat the object and purpose” of that treaty. The object and purpose of Article 37(a) of the Convention on the Rights of the Child is to prevent child offenders being executed. Any execution of a child offender by the USA would defeat the object and purpose of that provision of the Convention.

xxii. UN document CRC/C/15/Add.153, 9 July 2001, paras. 74, 75.

xxiii. UN document E/CN.4/2002/74, 9 January 2002, para. 108.

xxiv. UN document E/CN.4/1993/46, 23 December 1992, para. 363.

xxv. UN document CRC/C/15/Add.123, 28 June 2000, paras. 29, 30.

xxvi. UN document E/CN.4/2002/74, para. 106.

xxvii. UN document E/CN.4/1993/46, para. 510.

xxviii. UN document CRC/C/61/Add.2, 29 March 2000, para. 253.

xxix. UN document CRC/C/15/Add.148, 22 February 2001, paras. 27, 28.

xxx. On the death penalty in Saudi Arabia generally, see Amnesty International, *Saudi Arabia: A secret state of suffering*, AI Index: MDE 23/001/2000, 28 March 2000, part 4, “The death penalty”, pp. 12-15; *Defying World Trends --Saudi Arabia’s extensive use of capital punishment*, AI Index: MDE 23/015/2001, November 2001.

xxxi. In 1988 the Supreme Court handed down a decision which, in effect, ruled that the execution of people who were under 16 years old at the time of the crime was contrary to the prohibition of “cruel and unusual punishment” under the Eighth Amendment to the US Constitution; *Thompson v Oklahoma*, 487 U.S. 815 (1988). In 1989 the Court found that the execution of prisoners for crimes committed when they were 16 or 17 years old was acceptable under the Eighth Amendment; *Stanford v Kentucky*, 492 U.S. 361 (1989).

xxxii. UN document A/50/40, paras. 281, 296.