

# JUVENILES AND THE DEATH PENALTY

## Executions Worldwide since 1990

### 1. Introduction

The use of the death penalty for crimes committed under the age of 18 is prohibited under international human rights standards, yet some countries still permit or practice the execution of juvenile offenders. Such executions are few compared to the worldwide total number of executions. However, their significance goes beyond their numbers and calls into question the commitment of the executing states to respect international standards.

The fact that nearly all states whose laws still provide for the death penalty have ratified international instruments precluding its use against juvenile offenders confirms the consensus that such use violates international law.

Since 1990 Amnesty International has documented executions of juvenile offenders in six countries: Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America (USA) and Yemen. 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 application of capital punishment. These include laws which exclude the execution of juvenile offenders - people sentenced to death for crimes committed under the age of 18.

### 2. International Standards

The use of the death penalty against juvenile offenders is prohibited under leading international instruments relating to human rights and to the conduct of armed hostilities. 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))

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- ! **Convention on the Rights of the Child (CRC):** "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))
  - ! **American Convention on Human Rights (ACHR):** "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)
  - ! **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 resolution 1984/50, adopted on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 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 six instruments cited above are international treaties, binding on all states parties to them.<sup>1</sup> The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty are not legally binding but were endorsed by the UN General Assembly without a vote, a sign of a strong consensus among nations that their provisions should be observed.

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 should not be used against juvenile offenders. As of November 1998, 191 states had become parties to the Convention on the Rights of the Child.

### **3. National law and practice**

One hundred and twenty-three states whose laws still provide for the death penalty for at least some offences either have provisions in their laws which exclude the use of the death penalty against juvenile offenders, or may be presumed to exclude such use by virtue of becoming parties to the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, or the American Convention on Human Rights without entering a reservation to the relevant article.<sup>2</sup> But despite the international standards, a number of countries still have laws which permit the imposition of death sentences on juvenile offenders in at least some circumstances. Most of these countries set age limits of 16 or 17, but a few set lower ages<sup>3</sup>.

Progress was made in eliminating the use of the death penalty against juvenile offenders in October 1997 when 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". In 1983 the Supreme People's Court explicitly reinforced this possibility by stating unequivocally that for those "who were given a suspended death sentence because they were under 18 when they committed a crime, once they have reached 18, and resist reform in an odious manner, and the facts are verified, the death sentence can be carried out as stipulated by the law."

As indicated in this paper, six countries are known to have executed juvenile offenders since 1990. Four of them have done so in violation of their obligations as parties to the ICCPR<sup>4</sup>, and three of them in violation of their obligations as parties to the Convention on the Rights of the Child.<sup>5</sup>

### **4. Executions of Juvenile Offenders since 1990**

Country-by-country information on executions of juvenile offenders since 1990 follows. Their cases are summarized in Table 1, appended to this report.

#### **Iran**

Since the creation of the Islamic Republic of Iran in 1979, thousands of prisoners have been executed, many after summary trials. Amnesty International understands that juveniles under

18 have been among those executed but the organization has for the most part been unable to document individual cases.

In one rare documented case, Kazem Shirafkan, aged 17, was executed for murder in 1990<sup>6</sup>.

In his report to the 1993 session of the United Nations (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, two aged 17 and one aged 16, were executed on 29 September 1992<sup>7</sup>.

## **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.

## **Pakistan**

On 15 November 1992, 11 prisoners were hanged in Punjab province, including a 17-year-old.

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

## **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 in the eastern town of Al-Qarif. 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.<sup>8</sup>

## **United States of America**

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

Sixteen US states were holding 73 juvenile offenders on death row as of October 1998. Nine executions of juvenile offenders have been carried out in five states since 1990; all of those executed were 17 at the time of the offence. Of all US states, Texas has carried out the largest number of executions since 1990 - 127 up to 5 November 1998 - and has put to death five juvenile offenders in that time.

The background of the majority of the juvenile 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 cases of the nine executed juvenile offenders are given below. (The prisoner's race or ethnic grouping and the state are indicated in square brackets.)<sup>9</sup>

**Dalton Prejean [black, Louisiana]**, executed in 1989. 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 of a 76-year-old white nun at the age of 17. 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. Several years after his conviction and death sentence 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 aged 17 at the time of the offence and was the first juvenile 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 1991. 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 juvenile 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 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]**, 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. He was convicted of murder in 1984 and was executed on 24 August 1993.

**Joseph John Cannon [white, Texas]**, executed in 1998 for the murder of Anne Walsh in 1977. 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]**, executed in 1998 for the murder of Sylvia Reyes in 1981. 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]**, executed in 1998 for the murder of Saba Tekle in 1989. Dwayne Wright grew up in a poor family in a deprived neighbourhood of 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 those 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."

## **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. Amnesty International does not have details of the judicial process in this particular case but has serious concerns about the fairness of trials in death penalty cases in Yemen<sup>10</sup>.

## **5. Conclusions**

There is an emerging international consensus that juvenile 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 juvenile offenders. A small number of states continue to execute juvenile offenders, but such executions are rare and are only a tiny fraction of the total number of executions carried out worldwide each year. The exclusion of juvenile offenders from the death penalty is so widely accepted in law and practice that it is approaching the status of a norm of customary international law.

Amnesty International urges all states to cease 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, in conformity with international standards.



## Notes

1. The Fourth Geneva Convention refers particularly to civilians in occupied territories in times of international armed conflict. Additional Protocol I to the Geneva Conventions refers to international armed conflicts. Additional Protocol II refers to non-international armed conflicts.

2. As of November 1998, 123 states which still provided for the death penalty for some crimes were parties to one or another of the three treaties without reservation to the relevant article and were not known to have executed any juvenile offenders since 1990. See Table 2, appended to this report.

3. In the USA in 1988 the Supreme Court ruled in the case of *Thompson v. Oklahoma* that the execution of offenders under the age of 16 at the time of the offence is unconstitutional.

4. The four countries are 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). After considering the USA's initial report under the ICCPR, the Human Rights Committee set up under the ICCPR issued a comment on 7 April 1995 stating that it believed the US reservation to Article 6(5) to be "incompatible with the object and purpose of the Covenant". It recommended that the USA withdraw the reservation. (UN document No. CCPR/C/79/Add.50, 7 April 1995, paragraphs 14, 27) As yet the USA has not done so.

5. The three countries are Nigeria, Pakistan and Yemen. Iran and Saudi Arabia have also executed juvenile offenders but have since ratified the Convention on the Rights of the Child.

6. *Amnesty International Report 1991*, p. 122.

**TABLE 1. EXECUTIONS OF JUVENILE OFFENDERS  
(JANUARY 1990 - OCTOBER 1998)**

<b>Country</b>	<b>Name of prisoner</b>	<b>Age</b>	<b>Date of execution</b>
Iran	Kazem Shirafkan	17 at time of execution	1990
	Three young males	One aged 16, two aged 17 at time of execution	29 September 1992
Nigeria	Chiebore Onuoha	15 at time of offence, 17 when executed	31 July 1997
Pakistan	One juvenile	17 when executed	15 November 1992
	Shamun Masih	14 at time of offence, 23 when executed	30 September 1997
Saudi Arabia	Sadeq Mal-Allah	17 when sentenced to death	3 September 1992

USA	Dalton Prejean	17 at time of offence	18 May 1990
	Johnny Garrett	17 at time of offence	11 February 1992
	Curtis Harris	17 at time of offence	1 July 1993
	Frederick Lashley	17 at time of offence	28 July 1993
	Christopher Burger	17 at time of offence	7 December 1993
	Ruben Cantu	17 at time of offence	24 August 1993
	Joseph John Cannon	17 at time of offence	22 April 1998
	Robert Anthony Carter	17 at time of offence	18 May 1998
	Dwayne Allen Wright	17 at time of offence	14 October 1998
Yemen	Nasser Munir Nasser al'Kirbi	13 at time of execution	21 July 1993

**TABLE 2. COUNTRIES WHICH PROVIDE FOR THE DEATH PENALTY BUT EXCLUDE ITS USE AGAINST JUVENILE OFFENDERS**

Country	Status	ACHR	CRC	ICCPR
AFGHANISTAN	R		T	T
ALBANIA	ADF		T	T
ALGERIA	R		T	T
ANTIGUA AND BARBUDA	R		T	
ARGENTINA	AO	T	T	T
ARMENIA	R		T	T
BAHAMAS	R		T	
BAHRAIN	R		T	
BANGLADESH	R		T	
BARBADOS	R	T	T	T
BELARUS	R		T	T
BELIZE	R		T	T
BENIN	R		T	T
BHUTAN	ADF		T	
BOLIVIA	AO	T	T	T
BOSNIA-HERZEGOVINA	AO		T	T
BOTSWANA	R		T	
BRAZIL	AO	T	T	T
BRUNEI DARUSSALAM	ADF		T	
BULGARIA	R		T	T
BURKINA FASO	R		T	
BURUNDI	R		T	T

CAMEROON	R		T	T
CANADA	AO		T	T
CENTRAL AFRICAN REPUBLIC	ADF		T	T
CHAD	R		T	T
CHILE	R	T	T	T
CHINA	R		T	
COMOROS	R		T	
CONGO (REPUBLIC)	ADF		T	T
CONGO (DEMOCRATIC REPUBLIC)	R		T	T
COOK ISLANDS	AO		T	
COTE D'IVOIRE	ADF		T	T
CUBA	R		T	
CYPRUS	AO		T	T
DJIBOUTI	ADF		T	
DOMINICA	R	T	T	T
EGYPT	R		T	T
EL SALVADOR	AO	T	T	T
EQUATORIAL GUINEA	R		T	T
ERITREA	R		T	
ETHIOPIA	R		T	T
FIJI	AO		T	
GABON	R		T	T
GAMBIA	ADF		T	T
GHANA	R		T	
GRENADA	ADF	T	T	T
GUATEMALA	R	T	T	T

GUINEA	R		T	T
GUYANA	R		T	T
INDIA	R		T	T
INDONESIA	R		T	
IRAQ	R		T	T
ISRAEL	AO		T	T
JAMAICA	R	T	T	T
JAPAN	R		T	T
JORDAN	R		T	T
KAZAKSTAN	R		T	
KENYA	R		T	T
KUWAIT	R		T	T
KYRGYZSTAN	R		T	T
LAOS	R		T	
LATVIA	R		T	T
LEBANON	R		T	T
LESOTHO	R		T	T
LIBERIA	R		T	
LIBYA	R		T	T
LITHUANIA	R		T	T
MADAGASCAR	ADF		T	T
MALAWI	R		T	T
MALAYSIA	R		T	
MALDIVES	ADF		T	
MALI	ADF		T	T
MALTA	AO		T	T

MAURITANIA	R		T	
MEXICO	AO	T	T	T
MONGOLIA	R		T	T
MOROCCO	R		T	T
MYANMAR	R		T	
NAURU	ADF		T	
NIGER	ADF		T	T
NORTH KOREA	R		T	T
OMAN	R		T	
PAPUA NEW GUINEA	ADF		T	
PERU	AO	T	T	T
PHILIPPINES	ADF		T	T
QATAR	R		T	
RUSSIAN FEDERATION	R		T	T
RWANDA	ADF		T	T
SAINT CHRISTOPHER & NEVIS	R		T	
SAINT VINCENT & GRENADINES	R		T	T
SAINT LUCIA	R		T	
SENEGAL	ADF		T	T
SEYCHELLES	AO		T	T
SIERRA LEONE	R		T	T
SINGAPORE	R		T	
SOMALIA	R			T
SOUTH AFRICA	AO		T	
SOUTH KOREA	R		T	T
SRI LANKA	ADF		T	T

SUDAN	R		T	T
SURINAME	ADF	T	T	T
SWAZILAND	R		T	
SYRIA	R		T	T
TAJIKISTAN	R		T	
TANZANIA	R		T	T
THAILAND	R		T	T
TOGO	ADF		T	T
TONGA	ADF		T	
TRINIDAD AND TOBAGO	R	T	T	T
TUNISIA	R		T	T
TURKEY	ADF		T	
TURKMENISTAN	R		T	T
UGANDA	R		T	T
UKRAINE	R		T	T
UNITED KINGDOM	AO		T	T
UNITED ARAB EMIRATES	R		T	
UZBEKISTAN	R		T	T
VIET NAM	R		T	T
WESTERN SAMOA	ADF		T	
YUGOSLAVIA (FEDERAL REPUBLIC)	R		T	T
ZAMBIA	R		T	T
ZIMBABWE	R		T	T

Key: R = Retentionist  
ADF = Abolitionist *de facto*  
AO = Abolitionist for ordinary crimes only  
T ACHR = Country has ratified ACHR without specific reservation to Article 4(5)



T CRC = Country has ratified CRC without specific reservation to Article 37(a)

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

7. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1993/46, 23 December 1992, p. 89, paragraph 363.

8. *Ibid.*, p. 123, paragraph 510.

9. For further information see "On the Wrong Side of History: Children and the Death Penalty in the USA", October 1998, AI Index: AMR 51/58/98.

10. Amnesty International, "Yemen: Human Rights Concerns Following Recent Armed Conflict", AI Index: MDE 31/06/94, 1 September 1994.