

PUBLIC

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Death penalty / Legal concern

USA (Pennsylvania)

Kathy MacClellan (f), aged 70

Prosecutors in Pennsylvania have announced their intention to seek the death penalty against Kathy MacClellan for a crime she is alleged to have committed last month. Kathy MacClellan is 70 years old: international law prohibits the imposition of the death penalty on anyone who was over 70 at the time of the crime.

Kathy MacClellan has been charged with the murder of her 84-year-old neighbour, Marguerite Eyer, who was found on 7 February in her home in the town of Easton, in Northampton County, eastern Pennsylvania. She died shortly afterwards in hospital. She had been bludgeoned about the head. The prosecution has alleged that she was robbed.

No date has yet been set for Kathy MacClellan's trial. On 12 March, the Northampton County District Attorney's Office filed notice of their intention to seek the death penalty against her. It is considered likely that questions surrounding her mental health will be an issue in the case.

The American Convention on Human Rights prohibits the use of the death penalty against anyone who was over 70 years old at the time of the crime. The USA has not ratified the Convention, but signed it in 1977. By becoming a signatory, the USA obliged itself under international law not to do anything to undermine the treaty pending its decision on whether to ratify it.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty unconditionally. The death penalty is a symptom of a culture of violence, not a solution to it. This is an outdated punishment, abolished in law or practice in 118 countries. A small number of countries, including the USA, account for the vast majority of executions. In China, which accounts for the most executions each year, there is no upper age limit for application of the death penalty. For example, Wei Youde was sentenced to death in Hunan Province in 2002 for a murder committed when he was 87 years old. On appeal in 2004, Wei Youde's sentence was commuted.

Since the United States resumed executions in 1977, 944 men and 10 women have been put to death in its execution chambers. The US capital justice system is marked by arbitrariness, discrimination and error, and US authorities have frequently violated international standards in their pursuit of judicial killing of prisoners including child offenders, the mentally impaired, the inadequately represented, people whose guilt remained in doubt, and foreign nationals denied their consular rights.

In 2002, in *Atkins v. Virginia*, the US Supreme Court outlawed the execution of offenders with mental retardation. Earlier this month, in *Roper v. Simmons*, the Court did the same thing in the case of offenders who were under 18 at the time of the crime. That ruling brought the USA finally into line with a global consensus prohibiting the death penalty for the crimes of children.

Article 4.5 of the American Convention on Human Rights states: "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age". The USA signed the American Convention on Human Rights on 1 June 1977. By becoming a signatory, the USA bound itself not to undermine the treaty's provisions. Under Article 18 of the Vienna Convention on the Law of Treaties (1979), a State is obliged to refrain from acts which would defeat the

object and purpose of a treaty when: (a) it has signed the treaty...until it shall have made its intention clear not to become a party to the treaty...e.

No one who was over 70 at the time of the crime has been executed in the USA since 1977. In 1991, Ray Copeland was sentenced to death in Missouri for a crime committed when he was 71 years old. He died two years later in prison. Amnesty International is not aware of any other person being sentenced to death in the USA since 1977 who was over 70 years old at the time of the crime. In January 2002, a Texas county prosecutor announced his intention to seek the death penalty against Melvin Hale, charged with a murder committed two years earlier when he was 72 years old (see UA 08/02, AMR 51/001/2002, <http://web.amnesty.org/library/index/engamr510012002>). In the event, a plea arrangement was reached under which Melvin Hale was sentenced to life imprisonment in return for a guilty plea.

The oldest person currently on death row in the USA is believed to be Viva Leroy Nash who is 89 years old. He was sentenced to death in Arizona in 1983 for a crime committed in 1982 when he was aged 67. The oldest person put to death in the USA since executions resumed in 1977 was James Hubbard, who was 74 years old when he was put to death in Alabama on 5 August 2004. He was under 60 at the time of the crime. Two women over 60 at the time of execution have been put to death in the USA since 1977 – Betty Lou Beets who was 62 when she was put to death in Texas in February 2000, and Lois Nadean Smith, 61 years old at the time of her execution in Oklahoma in December 2001.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Marguerite Eyer, explaining that you are not seeking to excuse the manner of her death or to minimize the suffering caused;
- explaining that you are not seeking to make any comment about the guilt or innocence of Kathy MacClellan, but simply to express concern about Northampton County's intention to seek the death penalty against her;
- pointing out that the pursuit of the death penalty against a defendant who was over 70 years old at the time of the crime violates international law;
- calling on the prosecution to drop its pursuit of the death penalty in this case.

APPEALS TO:

Paula A. Roscioli
First Deputy District Attorney
Office of the District Attorney of Northampton County
Government Center
669 Washington Street, Easton
PA 18042, USA
Fax: +1 610 559 3035
Salutation: Dear First Deputy District Attorney

COPIES TO: diplomatic representatives of USA accredited to your country.

You may also send a brief *personal* letter of concern (not more than 250 words) to:

Letters to the Editor, *The Express-Times*
30 N. 4th Street, P.O. Box 391, Easton, PA 18044-0391, USA
Email, via website: <http://penn.nj.com/expresstimes/submit.html>
Fax: +1 610 258 7130

PLEASE SEND APPEALS IMMEDIATELY.