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UNITED STATES OF AMERICA

A killing that no respectable government can condone

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In its National Strategy for Combating Terrorism, the US Government writes: “We must use the full influence of the United States to delegitimize terrorism and make clear that all acts of terrorism will be viewed in the same light as slavery, piracy, or genocide: behaviour that no respectable government can condone or support and all must oppose.”¹

The prohibitions on slavery and genocide are widely considered to be peremptory norms of international law, also known as rules of *jus cogens*. These are principles from which there can be no derogation under any circumstances whatsoever. The Inter-American Commission on Human Rights, for example, recently stated that norms of *jus cogens* “derive their status from fundamental values held by the international community, as violations of such peremptory norms are considered to shock the conscience of humankind and therefore bind the international community as a whole, irrespective of protest, recognition or acquiescence.” The Commission noted that commonly cited examples of rules of customary law that have attained the status of *jus cogens* norms include the prohibitions on genocide and slavery.²

The Commission went on to find that the USA was itself in violation of a *jus cogens* principle, adding: “The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards... As a *jus cogens* norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from...”.

The norm in question is the prohibition on the imposition of the death penalty on child offenders, people who were under 18 at the time of the crime. The Fourth Geneva Convention, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child – the latter ratified by 191 countries – the American Convention on Human Rights, the African Charter on the Rights and Welfare of the Child, and the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, all have provisions exempting child offenders from execution.

It has been clear in recent years that the United States is now almost the only country in the world prepared to contravene this prohibition. It accounts for 12 of the 17 known executions

¹ National Strategy for Combating Terrorism. February 2003.

² Report No. 62/02. Case 12.285. Michael Domingues, United States. 22 October 2002. Michael Domingues is on death row in Nevada for a crime committed when he was 16 years old. The Commission notes that The Restatement of Foreign Relations Law of the United States identifies, among other things, genocide and slavery as examples of *jus cogens* principles.

of child offenders worldwide since January 1998. The others were carried out in the Democratic Republic of Congo [DRC] (1), Iran (3), and Pakistan (1). Pakistan has now abolished this use of the death penalty in law, and in 2001 five child offenders had their death sentences commuted in the DRC.³ The only three executions of child offenders known in the world in 2002 were carried out in the United States.

Now the USA is about to do it again. Scott Allen Hain, one of about 80 child offenders on death row in the USA, is scheduled to be killed in Oklahoma's lethal injection chamber on 3 April 2003 for a crime committed when he was 17 years old.

Offenders who were 16 or 17 years old at the time of their crimes can still be subject to the death penalty in the USA under a 1989 Supreme Court decision, *Stanford v Kentucky*. On 21 October 2002, the day before the Inter-American Commission found the USA to be violating a principle of *jus cogens* in its pursuit of the death penalty against child offenders, the US Supreme Court refused to revisit its 1989 *Stanford* decision. Four of the nine Supreme Court Justices dissented from this refusal, stating that the execution of people for crimes committed when they were under 18 years old is "a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice."⁴

The crime for which Scott Hain was sentenced to death – the murders of Michael William Houghton and Laura Lee Sanders on 6 October 1987 – shocks the human conscience.⁵ But so too, as the Inter-American Commission on Human Rights suggests, does the punishment imposed upon him by his government. It is time for all other governments to oppose this execution, as the European Union already has done.⁶

President George Bush has repeatedly stated that the United States of America "will always stand firm for the non-negotiable demands of human dignity", including "the rule of law".⁷ Will the case of Scott Hain show once again that, at least in relation to the death penalty and child offenders, it is a matter of one law for the USA and one for the rest of the world?

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## Action for clemency

Please appeal to the following addressees to uphold the rule of law and to promote the international image of Oklahoma and the USA by preventing the execution of Scott Hain.

**Pardon and Parole Board**, 4040 N. Lincoln Blvd., Oklahoma City, OK 73105, USA. Fax: +1 405 427 6648. E-mail: [terry.jenks@ppb.state.ok.us](mailto:terry.jenks@ppb.state.ok.us) Salutation: Dear Board members

**Governor Brad Henry**, Office of the Governor, State Capitol Building, 2300 N. Lincoln Blvd., Room 212, Oklahoma City, OK 73105, USA. Fax: +1 405 521 3353. Email: [governor@gov.state.ok.us](mailto:governor@gov.state.ok.us) Salutation: Dear Governor

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**

<sup>3</sup> USA: *Indecent and internationally illegal: The death penalty against child offenders* (AI Index: AMR 51/143/2002, September 2002).

<sup>4</sup> In re Kevin Nigel Stanford. 537 U.S. \_\_\_\_ (2002). Justice Stevens dissenting.

<sup>5</sup> The two victims had been kidnapped in Sanders' car, robbed, and forced into the vehicle's boot. The car was then set on fire. Scott Hain and the older Robert Lambert were sentenced to death. Lambert has a claim of mental retardation and may be protected by the 2002 US Supreme Court decision (*Atkins v Virginia*) finding the execution of people with mental retardation to be unconstitutional.

<sup>6</sup> <http://www.eurunion.org/legislat/Deathpenalty/HainOklaGovLett.htm>

<sup>7</sup> For example, see State of the Union Address, 29 January 2002.