

# THE EXCLUSION OF CHILD OFFENDERS FROM THE DEATH PENALTY UNDER GENERAL INTERNATIONAL LAW

“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, then United Nations High Commissioner for Human Rights, August 2002<sup>1</sup>

In October 2002 the Inter-American Commission on Human Rights held that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime” and that “this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*”. This paper examines the evidence supporting the conclusion that the use of the death penalty against child offenders\* is prohibited under customary international law and as a peremptory norm of general international law (*jus cogens*).†

## 1. International treaties

The international community of states has adopted four human rights treaties of worldwide or regional scope which explicitly exclude child offenders from the death penalty.<sup>2</sup> Several international humanitarian law treaties also prohibit the use of the death penalty against child offenders. (The relevant provisions of the treaties are reproduced in Appendix 1 of this paper.)

Nearly all states are parties to one or more of these four human rights treaties. Only one state whose laws currently provide for the death penalty against child offenders, the USA, has made a specific reservation to the provisions of such treaties relating to the exclusion of child offenders from the death penalty (see below).

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\* The term *child offenders* is used in this paper to denote people convicted of crimes committed under the age of 18.

† A peremptory norm of general international law, also known as a norm of *jus cogens*, is a rule of international law which is binding on all states whether or not they are parties to international treaties which embody the rule.

- 192 states were parties to the *Convention on the Rights of the Child* at 1 June 2003. In addition, Somalia and the USA have signed the Convention, indicating their intention to become parties at a later date. No state party has entered a specific reservation to the provision in Article 37(a) of the Convention which excludes child offenders from the death penalty.<sup>3</sup>
- 149 states were parties to the *International Covenant on Civil and Political Rights* (ICCPR) at 1 June 2003. One state party, the USA, has entered a specific reservation to the provision of Article 6(5) of the ICCPR excluding child offenders from the death penalty.
- 30 states were parties to the *African Charter on the Rights and Welfare of the Child* at 1 May 2003. No state party is known to have entered a reservation to the relevant provision of that treaty.
- 24 states were parties to the *American Convention on Human Rights* at 1 June 2003. No state party whose laws currently provide for the death penalty against child offenders has entered a reservation to the relevant provision of that treaty.<sup>4</sup>

Nearly all states in the world – 194 in all -- are now parties to one or another of the above treaties.<sup>5</sup> Only one state whose laws currently provide for the death penalty against child offenders, the USA, has entered a specific reservation to the provisions of such treaties excluding child offenders from the death penalty, and 11 other states parties have objected to the US reservation (see below). In particular, out of the 117 states that retain the death penalty in law for at least some offences, all but one - the USA - have become parties to one or another of these treaties without entering a reservation to the relevant provisions (see Appendix 2 of this paper).<sup>6</sup> Thus only one state, the USA, by virtue of its reservation to Article 6(5) of the ICCPR, now claims for itself a right to execute child offenders within the framework of its international human rights obligations.

International humanitarian law treaties are also very widely ratified. 191 states were parties to the Fourth Geneva Convention of August 12, 1949 at 1 June 2003. 161 states were parties to Additional Protocol I to the Geneva Conventions of 1949 and 156 states were parties to Additional Protocol II. No state party has entered a reservation to the provisions of these treaties which exclude child offenders from the death penalty.<sup>7</sup>

## **2. Objections to the US reservation under the International Covenant on Civil and Political Rights**

In ratifying the ICCPR on 8 June 1992, the USA made a reservation stating “[t]hat the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age@

Eleven other states parties - Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain and Sweden - objected formally to the US reservation.

Germany stated that this provision is incompatible with the text as well as the object and purpose of article 6 [of the ICCPR], which, as made clear by paragraph 2 of article 4, lays down the minimum standard for the protection of the right to life. Belgium, the Netherlands and Portugal made similar statements. Several other states stated that the right to life, protected in Article 6 of the ICCPR, is one of the most fundamental human rights and noted that under Article 4(2) of the ICCPR, no derogation is permitted from Article 6.<sup>8</sup>

After considering the initial report of the USA submitted under Article 40 of the ICCPR, the Human Rights Committee – the body set up to monitor the implementation of that treaty – stated in April 1995 that it was particularly concerned at reservations to article 6, paragraph 5. . . of the Covenant, which it believes to be incompatible with the object and purpose of the Covenant. It recommended that the USA review its reservations, declarations and understandings with a view to withdrawing them, in particular reservations to article 6, paragraph 5. . . of the Covenant. The Committee also deplored the existence of legislation in some US states allowing the use of the death penalty against child offenders and the actual instances of death sentences and executions of child offenders in the USA (see Appendix 3 of this paper).

### **3. Action by intergovernmental bodies**

Intergovernmental bodies have repeatedly called for the exclusion of child offenders from the death penalty. They have also stated that the use of the death penalty against child offenders is contrary to customary international law. Several of the relevant resolutions have been adopted without a vote, a sign of a strong consensus among states that their provisions should be observed.

- In resolution 35/172 of 15 December 1980 on arbitrary or summary executions, the UN General Assembly 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” (para.1(a)). Resolution 35/172 was adopted without a vote.
- In 1984 the UN Economic and Social Council (ECOSOC) adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (“ECOSOC Safeguards”). Safeguard 3 of this instrument states: “Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death. . .” The ECOSOC Safeguards were endorsed by the UN General Assembly in resolution 39/118 of 14 December 1984, adopted without a vote.
- The UN Commission on Human Rights has repeatedly called for the exclusion of child offenders from the death penalty. Since 2002 it has done so in resolutions on no fewer than four subjects. Two of the resolutions were adopted without a vote.<sup>10</sup>
- In August 2000 the UN Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution 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<sup>11</sup> and inviting the UN Commission on Human Rights to confirm the affirmation. In April 2003 the Commission on Human Rights “reaffirmed” the Sub-Commission’s resolution 2000/17 “on [in the Commission’s words] international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence”.<sup>12</sup>

- The *European Union Guidelines on the Death Penalty*, adopted by the Council of the European Union (EU) on 3 June 1998, state that “Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met: . . . (iii) Capital punishment may not be imposed on . . . persons below 18 years of age at the time of the commission of their crime”. The Guidelines state that “where the European Union becomes aware of individual death penalty cases which violate minimum standards, the EU will consider making specific demarches.”<sup>13</sup>

#### **4. National laws**

Many countries which retain the death penalty in law have provisions in their laws which exclude child offenders from the death penalty.

An Amnesty International worldwide survey of national legislation on the death penalty indicated that as of mid-1988, at least 72 of the 145 countries and territories which then retained the death penalty in law for at least some offences - nearly half of such countries - had legal provisions which explicitly excluded its use against child offenders. A further 12 countries could be presumed to exclude the use of the death penalty against child offenders by virtue of their accession to the ICCPR or the American Convention on Human Rights without reservation to the relevant provisions of those treaties. Thus, 84 of the 145 countries and territories which then retained the death penalty – more than half – could be presumed to exclude its use against child offenders as a matter of law.<sup>14</sup>

In contrast, some 20 countries were known to have age limits lower than 18 or no age limit at all as of mid-1988.<sup>15</sup> Of these countries, all but the USA have since ratified the Convention on the Rights of the Child, and most are also parties to the ICCPR, the African Charter on the Rights and Welfare of the Child or the American Convention on Human Rights. Two of the 20 countries, Barbados and China, have since raised the minimum age to 18, as have Pakistan and Yemen; one country (Cyprus) has abolished the death penalty for all crimes, and five are classified by Amnesty International as abolitionist for ordinary crimes only (Chile, Israel) or abolitionist in practice (Congo Republic, Gambia, Tonga).<sup>16</sup>

In the USA since 1995, two states, Indiana and Montana, have raised the minimum age for the imposition of the death penalty to 18 at the time of the offence. Of the 38 US states whose laws currently provide for the death penalty, 16 exclude its use against child offenders, as does federal law.<sup>17</sup> No US state has lowered the minimum age since executions resumed in the country in 1977.<sup>18</sup>

## 5. National practice

Amnesty International monitors executions worldwide and publishes annual figures. Although they are necessarily incomplete - many executions are still carried out in secret, and some countries do not reveal their figures - the Amnesty International figures are the most comprehensive indication of the worldwide use of the death penalty that is publicly available.

As shown in the table below, Amnesty International's figures indicate that recorded executions of child offenders (0 to 6 per year since 1990) are very few, especially in comparison to the total annual number of recorded executions, which since 1990 has ranged from 1457 (in 2000) to 4272 (in 1996). The number of countries reported to have executed child offenders has also been small (0 to 4 per year) compared to the total number of countries known to have carried out executions (since 1990, this number has ranged from a low of 26 in 1990 to a high of 41 in 1995).<sup>19</sup>

**Table: Recorded executions of child offenders since 1990 (as of 1 June 2003)<sup>20</sup>**

Year	Recorded executions of child offenders	Total recorded executions worldwide	Countries carrying out executions of child offenders, with numbers of reported executions
1990	2	2029	Iran – 1, USA – 1
1991	0	2086	
1992	6	1708	Iran – 3, Pakistan – 1, Saudi Arabia – 1, USA – 1
1993	5	1831	USA – 4, Yemen – 1
1994	0	2331	
1995	0	3276	
1996	0	4272	
1997	2	2607	Nigeria – 1, Pakistan – 1
1998	3	2258	USA – 3
1999	2	1813	Iran – 1, USA – 1

2000	6	1457	Congo (Democratic Republic) – 1, Iran – 1, USA – 4
2001	3	3048	Iran – 1, Pakistan – 1, USA – 1
2002	3	1526	USA – 3
2003	1 to date		USA – 1 to date

In the nine years between 1994 and 2002 Amnesty International recorded 19 executions of child offenders in five countries, a tiny fraction of the worldwide total of 22,588 executions recorded in 70 countries during the same period. A further execution was carried out in April 2003, bringing to 20 the number of recorded executions of child offenders since 1994. Thirteen of the 20 executions were in the USA.<sup>21</sup>

Of the seven countries which have executed child offenders since 1990, two - Pakistan and Yemen - have since raised the minimum age to 18 in their laws. Saudi Arabia has since stated that it does not impose capital punishment on “children who have not attained the age of majority” (see below), and the authorities are not known to have executed any child offenders since 1992. There have been sporadic reports of such executions in Iran, but Iran has denied executing child offenders (see below). The two executions recorded in Nigeria and the Democratic Republic of Congo respectively were both of children convicted by special or military courts whose procedures did not conform to international norms for a fair trial,<sup>22</sup> neither country has admitted executing child offenders (see Appendix 3). The only country that openly continues to execute child offenders within the framework of its regular criminal justice system is the USA.

## **6. Examination by international treaty monitoring bodies**

Under the ICCPR and the Convention on the Rights of the Child, states parties are required to submit periodic reports on the measures they have taken to give effect to the rights recognized in these treaties. These reports are examined by the bodies set up to monitor implementation (treaty monitoring bodies) - the Human Rights Committee and the Committee on the Rights of the Child respectively - which question states’ representatives in open session and then issue public comments, observations and recommendations.

Appendix 3 contains information on the examination of the reports of the seven countries reported to have executed child offenders since 1990 - the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the USA and Yemen - and of Barbados, which executed a child offender in 1982 but later raised the minimum age to 18.

One state, Barbados (in its second periodic report under the ICCPR), acknowledged that its laws were incompatible with the provisions of the relevant treaty, and the representative of another, Pakistan, promised to draw the government’s attention to the committee’s concerns on the matter. Both countries later amended their laws, raising the minimum age to 18.

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On other occasions, states avoided acknowledging their failure to exclude child offenders from the death penalty in their national laws. In their reports to the committees, they failed to mention the incompatibility of their laws with the relevant provisions of the treaties (Barbados in its initial report, Iran, Yemen, Zaire), or stated incorrectly that there was a minimum age of 18 (Nigeria), or referred to the exclusion of the use of the death penalty against “children” without mentioning that the age limit could be lower than 18 (Nigeria, Saudi Arabia).<sup>23</sup> Their representatives failed to respond to committee members’ specific questions on these points (Barbados, Iran) and neglected to mention executions of children when describing other cases in which children had not been executed (Democratic Republic of Congo). Representatives of two states denied that their countries had executed child offenders (Iran) or children (Pakistan).

Again, the USA was the exception. Only the USA acknowledged that it had executed child offenders. Only the USA implied that it had a right to do so, its representatives asserting that existing US law was “consonant with” the ICCPR, taking into account the US reservations to that treaty,<sup>24</sup> and that the exclusion or non-exclusion of child offenders from the death penalty was “a question of democratic decision-making and not legal possibilities” (see Appendix 3).

The reticence of states in their communications with treaty monitoring bodies also applies to communications with the UN Special Rapporteur on extrajudicial, arbitrary or summary executions, whose mandate includes acting in situations where the death penalty is imposed on child offenders.<sup>25</sup> In 2001, for example, the Special Rapporteur sent urgent appeals to the authorities of the Democratic Republic of Congo, India, Iran and the USA regarding child offenders sentenced to death. Only the US authorities responded. In a separate communication to the Special Rapporteur, the Iranian government stated “that under the Islamic Penal Code, no person under the age of 18 is sentenced to death”.<sup>26</sup>

## **7. Decision of the Inter-American Commission on Human Rights in *Domingues v. USA***

In a case brought under the American Declaration on the Rights and Duties of Man, Article I of which provides for the right to life, the Inter-American Commission on Human Rights (the Commission) has held that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime” and that “this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*”.<sup>27</sup> The case had been brought by Michael Domingues, a prisoner who had been sentenced to death in the US state of Nevada in 1993 for crimes committed when he was 16 years old. Earlier, in 1987, in the case of *Roach and Pinkerton v. USA*, the Commission had held that among member states of the Organization of American States “there is recognized a norm of *jus cogens* which prohibits the State execution of children” but that “there does not now exist a norm of customary international law establishing 18 to be the minimum age for imposition of the death penalty”.

Relying on evidence similar to that cited in this paper, the Commission now considered among other things that “since 1987, and consistent with events prior to that date, there has been concordant and widespread development and ratification of treaties by which nearly all

of the world states have recognized, without reservation, a norm prohibiting the execution of individuals who were under 18 years of age at the time of committing their offense". Furthermore, "the United Nations bodies responsible for human rights and criminal justice have consistently supported" this norm, and "Domestic practice over the past 15 years. . . evidences a nearly unanimous and unqualified international trend toward prohibiting the execution of offenders under the age of 18 years."<sup>28</sup>

After the Commission had adopted its findings in October 2001 and transmitted them to the US government, the US government responded, stating among other things (as summarized by the Commission) that "neither the state practice identified by, nor the legal standards cited in the Commission's report, are sufficient to establish either a customary or *jus cogens* prohibition of the execution of juvenile offenders" and that "in focussing on the domestic practice of states, the Commission's report ignored *opinio juris* as a necessary element of customary international law", as it had failed "to establish that states have discontinued the process of executing juvenile offenders out of a sense of legal obligation rather than, for example, out of courtesy, fairness or morality".<sup>29</sup>

After considering these arguments, the Commission stated that "Where an instrument [such as a human rights treaty] is widely ratified or endorsed by members of the international community and speaks to the legality of certain actions, the provisions of that instrument might themselves properly be considered as evidence of *opinio juris*", and that "state measures in eradicating the juvenile death penalty may properly be considered to have been undertaken out of a sense of legal obligation to respect fundamental human rights". In its report on the case, adopted in October 2002, the Commission concluded that the USA "has acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration [on the Rights and Duties of Man] by sentencing Michael Domingues to the death penalty for crimes that he committed when he was 16 years of age" and that "should the State [the USA] execute Mr. Domingues pursuant to this sentence, it will be responsible for a grave and irreparable violation of Mr. Domingues' right to life under Article I of the American Declaration".<sup>30</sup>

## **8. The exclusion of child offenders from the death penalty under general international law**

Customary international law, one of the sources of general (non-treaty) international law, is described in Article 38 of the Statute of the International Court of Justice as "international custom, as evidence of a general practice accepted as law". It is generally held to consist of two elements: a widespread or general state practice, and a general recognition that this practice is a matter of law (*opinio juris*). One authority has written that "the best evidence for a customary rule of international law is to be found in what states say they think the rule is (*opinio juris*), and what they say they are doing (or not doing) in terms of that rule".<sup>31</sup> A rule of customary international law is binding on all states except those that have "persistently objected" to that rule.<sup>32</sup>

The information presented in this paper gives strong indications of state practice and *opinio juris* relating to the execution of child offenders:

- The prohibition of use of the death penalty against child offenders is now embodied in two international and two regional human rights treaties. Nearly all states have become parties to one or another of these treaties without making a reservation to that prohibition. The same norm is also incorporated in international humanitarian law treaties to which nearly all states are parties.
- Only one state has not become a party to one or another of these human rights treaties without making a reservation to the relevant provisions. On ratifying the ICCPR, the USA made a reservation reserving the right to use the death penalty against child offenders. Eleven other states objected to the reservation, and the Human Rights Committee, the body established to monitor the implementation of the ICCPR, has called for the reservation to be withdrawn.
- More generally, the Human Rights Committee has stated that under the ICCPR a state “may not reserve the right. . . to execute . . . children”.<sup>33</sup> It has also stated that “The proclamation of certain provisions of the Covenant as being of a non-derogable nature, in article 4, paragraph 2 [of the ICCPR], is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., articles 6 and 7)” and that “article 6 of the Covenant is non-derogable in its entirety”.<sup>34</sup>
- Many countries which retain the death penalty explicitly exclude its use against child offenders under national law. Several countries have revised their statutes to raise the minimum age to 18, as have a number of states within the USA.
- Executions of child offenders are extremely rare. Since 1994 Amnesty International has recorded 20 such executions in five countries, one of which (Pakistan) has now raised the minimum age to 18. These executions represent a tiny fraction of the total worldwide executions recorded during the same period. Thirteen of the 20 executions of child offenders were in the USA.<sup>35</sup>
- During the examination of their reports by bodies established to monitor the implementation of the ICCPR and the Convention on the Rights of the Child, states which have executed child offenders have generally denied doing so or have avoided mentioning the matter. Only one state, the USA, has acknowledged executing child offenders and claimed for itself a right to do so.
- A regional judicial body, the Inter-American Commission on Human Rights, has held that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime” and that this rule now constitutes a norm of *jus cogens*.

Taken together, the state practice and other information presented in this paper confirms that the use of the death penalty against child offenders is prohibited under customary international law. It also constitutes strong evidence that the prohibition should be recognized as a peremptory norm of general international law.

Amnesty International has long held that the use of the death penalty against child offenders is prohibited under customary international law.<sup>36</sup> Amnesty International now calls for the recognition of this prohibition, not only as a rule of customary international law, but as a peremptory norm of general international law (*jus cogens*).

## Endnotes

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<sup>1</sup> 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.

<sup>2</sup> In addition to the four treaties cited, the Arab Charter of Human Rights, adopted in 1994 but not yet in force, states: “The death penalty shall not be inflicted on a person under 18 years of age. . .” (Article 12).

<sup>3</sup> Malaysia and Singapore have made reservations to Article 37 in so far as it is incompatible with their countries’ laws and practices. Several other states parties to the Convention have objected to these reservations. Neither Malaysia nor Singapore uses the death penalty against child offenders. Also, several states have made general reservations to provisions of the Convention on the Rights of the Child which may be incompatible with *Shari’a* law or with the beliefs and principles of Islam. Other states parties have objected to these reservations.

<sup>4</sup> At the time of ratification of the American Convention on Human Rights in 1981, Barbados made a reservation to Article 4(5) of the Convention stating that “persons of 16 years and over. . . may be executed under Barbadian law”. Barbados has since raised the minimum age under national law to 18 at the time of the offence (see Appendix 3 of this paper). Barbados has not made a similar reservation to the relevant provisions of the ICCPR (to which it acceded in 1973) or the Convention on the Rights of the Child (ratified in 1990).

<sup>5</sup> The figure 194 includes the 192 states parties to the Convention on the Rights of the Child plus Somalia and the USA, which are parties to the ICCPR. It does not include Taiwan, which is not a party to international human rights treaties.

<sup>6</sup> In addition to the 117 states, Taiwan, which is not a party to international human rights treaties, has legal provisions allowing for the imposition of the death penalty against offenders under the age of 18, but in practice Taiwan does not execute child offenders. In October 2002 the Taiwanese cabinet

submitted to the Legislative Yuan (the Taiwanese legislature) draft legislation to raise the minimum age to 18.

<sup>7</sup> The USA, which is a party to the Fourth Geneva Convention, did not make a reservation to Article 68 of that Convention, which excludes child offenders from the death penalty.

<sup>8</sup> The texts of the US reservation and the objections to the reservation can be found on the UN human rights website at [www.unhchr.ch](http://www.unhchr.ch).

<sup>9</sup> UN document CCPR/C/79/Add.50, paras. 14, 27. According to the Committee's summary records, one Committee member stated that "The imposition of the death penalty in cases involving persons under 18 years of age was not in conformity with international standards, which could be considered part of international customary law." In reply, a US representative stated that "The United States disagreed that customary international law established a clear prohibition [of use of the death penalty] at the age of 18." (UN documents CCPR/C/SR.1402, para. 34; CCPR/C/SR.1405, para. 14)

<sup>10</sup> In 2002 the Commission on Human Rights urged states to ensure that under their legislation and practice neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below 18 years of age (resolution 2002/47 on human rights in the administration of justice, in particular juvenile justice, para.19, adopted without a vote).

In 2003 the Commission called upon 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 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the International Covenant on Civil and Political Rights. . . " and "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" (resolution 2003/86 on rights of the child, para. 35(a). The resolution was adopted without a vote. Prior to its adoption, the USA requested a vote on an amendment to delete paragraph 35(a). The amendment was defeated by 51 votes to one; only the USA voted in favour. Delegates speaking on behalf of the European Union and the Group of Latin American and Caribbean Countries said they regretted that the issue had been put to a vote. ("Commission on Human Rights Adopts Resolution on Situation in Iraq; Concludes Substantive Work", UN press release, 25 April 2003)

In 2003 the Commission also urged all states that still maintain the death penalty not to impose it "for crimes committed by persons below 18 years of age" (resolution 2003/67 on the question of the death penalty, para. 4(a)). It also called upon 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, 7 and 14 of the International Covenant on Civil and Political Rights and articles 37 and 40 of the Convention on the Rights of the Child" (resolution 2003/53 on extrajudicial, summary or arbitrary executions, para. 6).

<sup>11</sup> Resolution 2000/17 of 17 August 2000, reproduced in Amnesty International, *Children and the death penalty: Executions worldwide since 1990*, AI Index: ACT 50/007/2002, September 2002, Appendix 3.

<sup>12</sup> Resolution 2003/67 of 24 April 2003, para. 2.

<sup>13</sup> The Guidelines are reproduced in European Union, *Annual Report on Human Rights 2002*, Annex 13, pp. 245-248.

<sup>14</sup> The figure 145 includes countries which retained the death penalty for common crimes, those which retained it for extraordinary offences only, and countries classified by Amnesty International as abolitionist in practice. See Amnesty International, *When the State Kills. . . The Death Penalty v. Human Rights*, Amnesty International Publications, 1989, p. 38; Appendix 17, table 2, p. 264.

<sup>15</sup> The 20 countries were Barbados, Burma (now Myanmar), Chile, China, Congo (Republic), Cyprus, Equatorial Guinea, Gambia, India, Israel, Korea (South), Mauritania, Morocco, Nigeria, Thailand, Tonga, USA, Viet Nam, Zaire (now the Democratic Republic of Congo) and Zimbabwe. In March 2003 the Thailand Senate approved the first reading of a bill to abolish the death penalty for offenders under the age of 18.

<sup>16</sup> According to a recent study, the following states parties to the Convention on the Rights of the Child which retain the death penalty in law have not enacted legislation explicitly precluding its use against child offenders: Afghanistan, Argentina, Bangladesh, Burundi, Democratic Republic of Congo, Egypt, India, Indonesia, Iran, Iraq, Korea (North), Malaysia, Morocco, Myanmar, Nigeria, Saudi Arabia, United Arab Emirates (Roger Hood, *The Death Penalty: A Worldwide Perspective*, third edition, Oxford University Press, 2002, p. 115, note 5).

<sup>17</sup> The Inter-American Commission on Human Rights has stated that it “considers the federal government’s adoption of 18 as the minimum age for the application of the federal death penalty as a significant indication by the United States itself of the appropriate standard on this issue” (*Michael Domingues v. United States*, Case 12.285, Merits, Report No. 62/02, 22 October 2002, para. 79).

<sup>18</sup> On the trend in US states towards setting a minimum age of 18, 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. 15-25, 103.

<sup>19</sup> In 2000, for example, three countries executed a total of six child offenders out of the 1,457 executions recorded by Amnesty International in 28 countries worldwide. In 2001 there were three executions of child offenders in three countries out of 3,048 executions recorded in 31 countries. In 2002 there were three executions of child offenders in one country out of 1,526 executions recorded in 31 countries. Annual figures on executions worldwide are reproduced in Amnesty International, *The death penalty worldwide: Developments in 2002*, AI Index: ACT 50/002/2003, April 2003, Table 1.

<sup>20</sup> An updated version of this table is available on the death penalty page of the Amnesty International website at [www.amnesty.org](http://www.amnesty.org)

<sup>21</sup> Within the USA there is a similar concentration of executions. Although 22 states currently provide for the death penalty against child offenders, the 22 executions of child offenders since 1977 have been carried out in just seven states. Sixteen of the 22 executions – over two thirds – were in Texas and Virginia. (See *United States of America: Indecent and internationally illegal – the death penalty against child offenders*, pp. 38-40, 99.) The 22 states that allow the use of the death penalty against child offenders are Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky,

Louisiana, Mississippi, Missouri, New Hampshire, Nevada, Oklahoma, North Carolina, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia and Wyoming.

<sup>22</sup> For details of cases, see *Children and the death penalty: Executions worldwide since 1990*, pp. 6-15.

<sup>23</sup> In contrast, states whose laws preclude the use of the death penalty against child offenders have included this fact in their initial reports, although not all of these reports have specified that this minimum applied to the age at the time of the offence. See, for example, the initial reports under the Convention on the Rights of the Child of Iraq (UN document CRC/C/41/Add.3, para. 133), Kuwait (CRC/C/8/Add.35, para. 224) and the Russian Federation (CRC/C/3/Add/5, para. 162).

<sup>24</sup> UN document CCPR/C/SR.1401, para. 11.

<sup>25</sup> UN document E/CN.4/2003/3, paras. 8-9.

<sup>26</sup> UN document E/CN.4/2002/74, paras. 104-108. The Special Rapporteur stated that she understood that the death sentences of four child soldiers in the Democratic Republic of Congo on whose behalf she had appealed had subsequently been commuted. These cases were also the subject of an appeal by the Presidency of the European Union (see European Union, *Annual Report on Human Rights 2001*, p. 74).

<sup>27</sup> *Michael Domingues v. United States*, op. cit., paras. 84, 85.

<sup>28</sup> *Ibid.*, paras. 68, 71, 76.

<sup>29</sup> *Ibid.*, paras. 95, 99.

<sup>30</sup> *Ibid.*, paras. 107, 108, 112.

<sup>31</sup> Nigel S. Rodley, *The Treatment of Prisoners under International Law*, second edition, Clarendon Press, Oxford, UK, 1999, p. 67.

<sup>32</sup> A state that has persistently objected to a rule is not bound by it so long as the objection was made "consistently and uninterruptedly" (*UK v. Norway*, International Court of Justice (1951), *ICJ Reports* 116, p.138). In its response to the October 2001 findings of the Inter-American Commission of Human Rights (see above), the US government contended (in the Commission's words) "that it has consistently asserted its right to execute juvenile offenders, by making reservations to treaties, filing briefs before national and international tribunals, and making public statements, and correspondingly that even if a norm of customary international law establishing 18 to be the minimum age for the imposition of the death penalty had evolved since the Commission's decision in the Roach and Pinkerton Case, the United States is not bound to such a rule" (*Michael Domingues v. United States*, op. cit., para. 101). Its objection has not, however, been consistent and uninterrupted. For example, in 1955, the USA ratified the Fourth Geneva Convention without reservation to Article 68(4) of that Convention excluding from the death penalty child offenders who are "protected persons" under that Convention. In addition, the USA did not protest Article 6 of the ICCPR during drafting of the treaty, and its initial challenge to the prohibition in Article 4 of the American Convention on Human Rights during drafting

was withdrawn (William A. Schabas, *The Abolition of the Death Penalty in International Law*, third edition, Cambridge, UK, Cambridge University Press, 2002, p. 375). The USA did not block the adoption by consensus of the 1984 ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, providing for the exclusion of child offenders from the death penalty, nor did it block the endorsement of those Safeguards in UN General Assembly resolution 39/118 of 14 December 1984; both resolutions were adopted without a vote.

<sup>33</sup> “Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve *inter se* application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and *a fortiori* when they have the character of peremptory norms) may not be the subject of reservations. Accordingly, a State may not reserve the right . . . to execute . . . children” (General Comment 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, adopted on 4 November 1994, UN document No. A/50/40, Vol. I, Annex V).

<sup>34</sup> General Comment 29 on states of emergency, adopted on 24 July 2001, UN document CCPR/C/21/Rev.1/Add.11, paras. 11, 15.

<sup>35</sup> It is possible that there have been other cases in which child offenders have been sentenced to death or executed because their age at the time of the offence had not been determined correctly. For example, Amnesty International reported in April 2003 that at least eight young people aged under 18 at the time of their alleged offence were reportedly under sentence of death in the Philippines, even though the country’s laws precluded the use of the death penalty against child offenders. In most of these cases the death sentences had been imposed following an incorrect assumption on arrest that the alleged offenders were legally adults. (Amnesty International, *Philippines: A different childhood - the apprehension and detention of child suspects and offenders*, AI Index: ASA 35/009/2003, p. 18)

<sup>36</sup> See, for example, Amnesty International, *USA: The death penalty – developments in 1987*, AI Index: AMR 51/01/88, January 1988.

# **APPENDIX 1. Provisions of international treaties excluding child offenders from the death penalty**

## **International human rights treaties of worldwide scope**

### **International Covenant on Civil and Political Rights** (adopted in 1966)

"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** (adopted in 1989)

"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))

## **International human rights treaties of regional scope**

### **African Charter on the Rights and Welfare of the Child** (adopted in 1990)

¶The death sentence shall not be pronounced for crimes committed by children.®\* (Article 5(3))

### **American Convention on Human Rights** (adopted in 1969)

"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))

## **International humanitarian law**

### **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) (adopted in 1977)

"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) (adopted in 1977)

"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))

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\* 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.®

## **APPENDIX 2. Countries which retain the death penalty but have committed themselves to exclude its use against child offenders as parties to international human rights treaties which preclude such use**

### **Key**

The first column in the table lists countries whose laws still provide for the death penalty for at least some offences. The second column, **Status**, indicates the country's death penalty status, 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:

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

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

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

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

The table includes countries which have executed child offenders in violation of their obligations under these treaties (since 1999, the Democratic Republic of Congo, Iran and Pakistan).

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
AFGHANISTAN	R	T	T		
ALBANIA	AO	T	T		

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
ALGERIA	R	T	T		
ANTIGUA AND BARBUDA	R		T		
ARGENTINA	AO	T	T		T
ARMENIA	ADF	T	T		
BAHAMAS	R		T		
BAHRAIN	R		T		
BANGLADESH	R	T	T		
BARBADOS	R	T	T		T
BELARUS	R	T	T		
BELIZE	R	T	T		
BENIN	R	T	T	T	
BHUTAN	ADF		T		
BOLIVIA	AO	T	T		T
BOSNIA-HERZEGOVINA	AO	T	T		
BOTSWANA	R	T	T	T	
BRAZIL	AO	T	T		T
BRUNEI DARUSSALAM	ADF		T		
BURKINA FASO	ADF	T	T	T	
BURUNDI	R	T	T		
CAMEROON	R	T	T	T	
CENTRAL AFRICAN REPUBLIC	ADF	T	T		
CHAD	R	T	T	T	
CHILE	AO	T	T		T
CHINA	R		T		
COMOROS	R		T		
CONGO (Republic)	ADF	T	T		

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
COOK ISLANDS	AO		T		
CUBA	R		T		
DOMINICA	R	T	T		T
EGYPT	R	T	T	T	
EL SALVADOR	AO	T	T		T
EQUATORIAL GUINEA	R	T	T	T	
ERITREA	R	T	T	T	
ETHIOPIA	R	T	T	T	
FIJI	AO		T		
GABON	R	T	T		
GAMBIA	ADF	T	T	T	
GHANA	R	T	T		
GREECE	AO	T	T		
GRENADA	ADF	T	T		T
GUATEMALA	R	T	T		T
GUINEA	R	T	T	T	
GUYANA	R	T	T		
INDIA	R	T	T		
INDONESIA	R		T		
IRAN	R	T	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		

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
KENYA	R	T	T	T	
KOREA (NORTH)	R	T	T		
KOREA (SOUTH)	R	T	T		
KUWAIT	R	T	T		
KYRGYZSTAN	R	T	T		
LAOS	R		T		
LATVIA	AO	T	T		
LEBANON	R	T	T		
LESOTHO	R	T	T	T	
LIBERIA	R		T		
LIBYA	R	T	T	T	
MADAGASCAR	ADF	T	T		
MALAWI	R	T	T	T	
MALAYSIA	R		T		
MALDIVES	ADF		T		
MALI	ADF	T	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	T	
NIGERIA	R	T	T	T	
OMAN	R		T		
PAKISTAN	R		T		

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
PAPUA NEW GUINEA	ADF		T		
PERU	AO	T	T		T
PHILIPPINES	R	T	T		
QATAR	R		T		
RUSSIAN FEDERATION	ADF	T	T		
RWANDA	R	T	T	T	
SAINT CHRISTOPHER & NEVIS	R		T		
SAINT LUCIA	R		T		
SAINT VINCENT & GRENADINES	R	T	T		
SAMOA	ADF		T		
SAUDI ARABIA	R		T		
SENEGAL	ADF	T	T	T	
SIERRA LEONE	R	T	T	T	
SINGAPORE	R		T		
SOMALIA	R	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	T		
TANZANIA	R	T	T		
THAILAND	R	T	T		
TOGO	ADF	T	T	T	
TONGA	ADF		T		

<b>Country</b>	<b>Status</b>	<b>ICCPR</b>	<b>CRC</b>	<b>ACRWC</b>	<b>ACHR</b>
TRINIDAD AND TOBAGO	R	T	T		
TUNISIA	R	T	T		
TURKEY	AO		T		
UGANDA	R	T	T	T	
UNITED ARAB EMIRATES	R		T		
UZBEKISTAN	R	T	T		
VIET NAM	R	T	T		
YEMEN	R	T	T		
ZAMBIA	R	T	T		
ZIMBABWE	R	T	T	T	

## **APPENDIX 3. National laws and practice regarding the exclusion of child offenders from the death penalty: examination by international treaty monitoring bodies**

### **Barbados**

Barbados acceded to the *International Covenant on Civil and Political Rights (ICCPR)* in 1973. In its initial report under the ICCPR, submitted in 1978, the government of Barbados described its laws relating to the death penalty but did not mention that these laws allowed for the imposition of the death penalty on offenders aged 16 or above. During the examination of the report in March 1981, members of the Human Rights Committee asked whether the law expressly prohibited the imposition of the death penalty on persons below 18 years of age and, if not, whether the government intended to take steps to ensure that the provisions of Article 6 of the ICCPR were incorporated in the domestic law. The Barbados representative did not respond on these points.<sup>1</sup>

In 1982 Barbados executed a man for a murder committed when he was 17 years old. In May 1988, two other people were under sentence of death for murders committed when they were 17 years old.<sup>2</sup>

In its second periodic report under the ICCPR, submitted in June 1987, the government of Barbados acknowledged that “The laws of Barbados do not prohibit the imposition of the death sentence on a person under 18 years” and that “It is. . . possible in Barbados to impose the sentence of death on someone from the age of 16”. During the examination of the report by the Human Rights Committee in July 1988, the representative of Barbados stated (according to the Committee’s summary records) that the law allowing the imposition of the death penalty on offenders under the age of 18 was “clearly in conflict” with Article 6 of the ICCPR and “required revision, a matter that would be brought to the attention of the appropriate authorities”. Committee members drew attention to the incompatibility of the country’s laws with the ICCPR on this point.<sup>3</sup>

In November 1989 the Barbados Parliament amended the Juvenile Offenders Act, raising the minimum age for imposition of a death sentence to 18 years at the time of the offence. Shortly before this change in the law, the Governor General of Barbados commuted the death sentences of the two prisoners mentioned above who were under 18 years old at the time of the offence.

### **Democratic Republic of Congo (formerly Zaire)**

Zaire acceded to the *ICCPR* in 1976. In its initial report under the ICCPR, submitted in 1987, the government of Zaire stated that “the death penalty cannot be imposed on persons under 18 years of age”. No further information on this point was provided in Zaire’s second periodic report, submitted in 1989.<sup>4</sup>

In a worldwide survey of state laws and practice regarding the death penalty, published in 1989, Amnesty International reported that under Zairian law, children aged 15 or under could not be sentenced to death.<sup>5</sup>

On 15 January 2000 a 14-year-old child soldier named Kisongo was executed in the country, now known as the Democratic Republic of Congo, within half an hour of his trial by a military court.<sup>6</sup>

In May 2001 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the Presidency of the European Union made urgent appeals to the government of the Democratic Republic of Congo on behalf of four former child soldiers who had been sentenced to death by a military court. They were subsequently informed that the sentences were commuted.<sup>7</sup>

Zaire ratified the *Convention on the Rights of the Child* in 1990. In its initial report under the Convention on the Rights of the Child, submitted in 1998, the government of the Democratic Republic of Congo described obstacles relating to the implementation of the Convention but did not mention that the country's laws allowed for the imposition of the death penalty on offenders aged under 18.<sup>8</sup>

During the examination of the report on 28 May 2001, a member of the Committee on the Rights of the Child asked about reports "that four children had been sentenced to death under the military justice system". A representative of the government replied that in fact five children had been sentenced to death in the case and that "on 17 May 2001 all five had received presidential pardons". Replying to another question, another government representative stated that "Children guilty of offences punishable by the death sentence were admitted to rehabilitation centres situated on the outskirts of the capital."<sup>9</sup>

In its concluding observations on the report, adopted in June 2001, the 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".<sup>10</sup>

## **Iran**

Iran ratified the *ICCPR* in 1975. In its initial report under the *ICCPR*, submitted in 1977 and 1978, Iran stated: "Iran has prohibited the death sentence for persons under 18 years of age." During the examination of the report by the Human Rights Committee in 1978, the Iranian representative stated that "The maximum penalty for offenders under 18 years of age was confinement for eight years in a reformatory institution."<sup>11</sup>

Following the establishment of the Islamic Republic of Iran in 1979, the government submitted a new initial report under the *ICCPR* in 1982. The report did not state whether or not child offenders were excluded from the death penalty.<sup>12</sup> During the examination of the new report in July 1982, members of the Human Rights Committee asked "whether the death penalty was ever used in the case of persons under the age of 18". The Iranian representative did not respond on this point.<sup>13</sup>

In a worldwide survey of state laws and practice regarding the death penalty, published in 1989, Amnesty International noted that under the Islamic Penal Code of Iran, provisionally approved by the Islamic Consultative Assembly in 1982, people under 18 at the time of the offence were exempted from execution for murder as a *qisas* punishment. Nonetheless, children under 18 had been executed in the early 1980s, and occasional reports of executions of minors continued to reach Amnesty International, the survey stated.<sup>14</sup>

In its second periodic report under the ICCPR, submitted in 1992, Iran stated with respect to the exclusion of child offenders from the death penalty that according to Article 49 of the Islamic Punishment Law, “Children shall not bear penal responsibility for the offence they commit”, and noted that a child was defined in the same law as a person who has not reached religious maturity.<sup>15</sup>

Since 1990 Amnesty International has received reports of one execution of a child offender in 1990, three in 1992 and one each in 1999, 2000 and 2001 (see the table, above). Most of these reports have been based on reports in the Iranian news media.<sup>16</sup>

Iran ratified the *Convention on the Rights of the Child* in 1994. In its initial report under the Convention, submitted in 1997, the Iranian government did not mention any legal provisions permitting the use of the death penalty against child offenders.<sup>17</sup>

During the examination of the report in May 2000, a member of the Committee on the Rights of the Child asked whether children under 18 could be sentenced to death or had received the death penalty and whether Iran planned to bring its legislation into line with the prohibition of the death penalty for children under the Convention. A representative of the government of Iran replied that “in the past 20 years death sentences had been handed down for three people who had been under 18 at the time of their crimes; in all three cases the Supreme Court had ruled against execution”. He also said that while the ages of liability were nine (for girls) and 15 (for boys), the death penalty was not “imposed on children under 18, a provision which had been in force well prior to Iran’s accession to the Convention”.<sup>18</sup>

In its concluding observations on the report, adopted in June 2000, the Committee 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”.<sup>19</sup>

## Nigeria

In a worldwide survey of state laws and practice regarding the death penalty, published in 1989, Amnesty International reported that under the ordinary criminal law in Nigeria, the death penalty could not be imposed on children under 17.<sup>20</sup>

Nigeria ratified the *Convention on the Rights of the Child* in 1991 and acceded to the *ICCPR* in 1993. In its initial report under the Convention on the Rights of the Child, submitted in 1995, the government of Nigeria stated: “The child is not liable to capital punishment. . .”<sup>21</sup> In its initial report under the *ICCPR*, submitted in 1996, the government stated: “The Children

and Young Persons Act of Nigeria 1959, now part of the Laws of the Federation 1990, abolished the death penalty for persons under the age of 18".<sup>22</sup>

During the examination of Nigeria's report under the Convention on the Rights of the Child in September 1996, a member of the Committee on the Rights of the Child expressed concern that the minimum age for the imposition of capital punishment was set at 17, and asked how many children had been subjected to that punishment. In reply, a representative of the Nigerian government stated that the draft Children's Decree would raise the ceiling to 18 years and that "[o]nce the draft Decree had entered into force, no child in Nigeria would be subject to capital punishment".<sup>23</sup>

In its concluding observations on the report, adopted in October 1996, the Committee stated that national laws providing for the death penalty were incompatible with Article 37(a) of the Convention and recommended that national legislation be brought into conformity with that article. The Committee stated: "National legislation must comply with the principle that capital punishment cannot be applied to children under the age of 18."<sup>24</sup>

In July 1997 a 17-year-old child was executed publicly. He had been convicted by a Robbery and Firearms Tribunal, a special court directly appointed by the military authorities which allowed no right of appeal.<sup>25</sup>

At the 52<sup>nd</sup> Session of the UN Sub-Commission on the Promotion and Protection of Human Rights in 2000, a Nigerian representative denied that the prisoner executed in 1997 had been under 18 at the time of the offence. The representative stated that in cases where juveniles had been convicted of capital offences, the death sentences had been commuted to terms of imprisonment.

## **Pakistan**

Pakistan ratified the *Convention on the Rights of the Child* in 1990. Amnesty International subsequently received reports of the execution in November 1992 of a boy reportedly aged 17. He had been convicted by a Special Court for Speedy Trial, whose procedures fell short of international norms for a fair trial.<sup>26</sup>

In its initial report under the Convention on the Rights of the Child, submitted in 1993, the government of Pakistan acknowledged that the laws of various provinces established a minimum age of 15 for the death penalty and that a child under the age of 15 could be punished under the *hudood* laws.<sup>27</sup>

During the examination of the report in April 1994, members of the Committee on the Rights of the Child expressed concern that the age limit for criminal responsibility in Pakistan appeared to contradict the exclusion of child offenders from the death penalty under the Convention and asked whether a death sentence had ever been carried out on a person below age 18. In reply, a representative of the government of Pakistan stated that the Committee member's comments "would be transmitted to the Pakistan Government" and said that "[t]o his knowledge, no child had been subjected to capital punishment although that measure existed in Pakistan."<sup>28</sup>

In its concluding observations on the report, adopted in April 1994, the Committee noted the incompatibility of national legislation providing for the death penalty for offenders under the

age of 18 with the Convention and expressed its hope that Pakistan would take into account its recommendation to abolish the death penalty for children under the age of 18.<sup>29</sup>

In September 1997 a young man was executed in Hyderabad for crimes committed in 1988 when he was reportedly 14 years old.

The Juvenile Justice System Ordinance 2000, abolishing the death penalty for people under 18 at the time of the offence, entered into force on 1 July 2000. However, the Ordinance was not extended to the Provincially and Federally Administered Tribal Areas in the north, and it did not provide for the commutation of existing death sentences. One young man, Sher Ali, was executed in November 2001 for a murder committed when he was 13 years old.

In December 2001 President Pervez Musharraf announced that he would commute the death sentences of child offenders imposed before the Juvenile Justice System Ordinance 2000 entered into force. It was subsequently reported that President Musharraf had commuted the death sentences of 125 inmates convicted of crimes committed as children. However, an unknown number of child offenders remained under sentence of death as of December 2002.

Despite the entry into force of the Ordinance, children continue to be sentenced to death in Pakistan. The main reason is the determination of age. The issue of age is generally not raised by the family's legal counsel until a child has been sentenced to death. Often judges do not raise the issue of age unless the child looks like a minor.

## **Saudi Arabia**

Saudi Arabia acceded to the *Convention on the Rights of the Child* in 1996. Since then Amnesty International has received reports of child offenders being sentenced to death in Saudi Arabia but has not learned of any executions of child offenders.

In its initial report under the Convention on the Rights of the Child, submitted in 1998, 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".<sup>30</sup> In its concluding observations on the report, adopted in January 2001, the Committee on the Rights of the Child 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".<sup>31</sup>

## **United States of America**

The USA ratified the *ICCPR* in 1992. In its initial report under the *ICCPR*, submitted in 1994, the USA cited its reservation to Article 6(5) of the *ICCPR*\* and acknowledged: "In the United States the death penalty may be imposed on wrongdoers who were 16 or 17 years of age at the time of the offence."<sup>32</sup>

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\* See above, page 3.

During the examination of the report by the Human Rights Committee in March 1995, a US representative stated that “A large majority of [US] states permitted juveniles to be tried as adults in grave cases involving capital offences at the age of either 16 or 17” and that “While it was legally possible to impose a higher limit at the federal level, it was a question of democratic decision-making and not legal possibilities”. Another US representative acknowledged that two juvenile offenders had been executed in 1993.<sup>33</sup>

In its comments on the report, adopted in April 1995, the 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 and exhorted the authorities to take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18.<sup>34</sup> As mentioned earlier in this paper, the Committee also recommended that the USA withdraw its reservation to Article 6(5) of the ICCPR.

## Yemen

The People’s Democratic Republic of Yemen acceded to the *ICCPR* in 1987. Its initial report under the *ICCPR*, submitted in 1989, contained an analysis of the country’s laws in relation to Article 6 of the *ICCPR* but did not state whether or not there was a minimum age for imposition of the death penalty.<sup>35</sup> However, in a worldwide survey of state laws and practice regarding the death penalty, published in 1989, Amnesty International reported that people under 18 at the time of the crime could not be sentenced to death in the country.<sup>36</sup>

In 1990 the People’s Democratic Republic of Yemen and the Yemen Arab Republic merged into a single state, the Republic of Yemen, and in 1993 the country submitted its second periodic report under the *ICCPR*. In relation to Article 6 of the *ICCPR*, the report stated: “The death penalty is applied in Yemen within the strictest limits and in accordance with the provisions of the Islamic *Shari’a*.” Like the first report, it did not state whether or not there was a minimum age for imposition of the death penalty.<sup>37</sup>

In July 1993 a 13-year-old boy, Nasser Munir Nasser al-Kirbi, was publicly executed with three other people in the capital, Sana’a, following their conviction for murder and highway robbery.<sup>38</sup>

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).

In its comments on the second periodic report of Yemen under the *ICCPR*, adopted in April 1995, the Human Rights Committee deplored “that, according to information before it, executions of persons below the age of 18 have taken place that would be a clear violation of article 6, paragraph 5, of the Covenant”. The Committee recommended that Yemen “review its policy on the death penalty with a view to its eventual abolishment”.<sup>39</sup>

Yemen ratified the *Convention on the Rights of the Child* in 1991. However, in its initial report under the Convention, submitted in 1995, Yemen cited a provision of the 1992 Juvenile Welfare Act No. 24 which excluded offenders under 15 years of age from the death penalty, a lower minimum age than that provided under the Convention. This led several members of the Committee on the Rights of the Child to ask whether offenders under 18 could be

subjected to the death penalty during the consideration of the report by the Committee in 1996. In reply, a Yemeni representative clarified that the use of the death penalty against child offenders was excluded under Article 31 of the Penal Code.<sup>40</sup>

In its concluding observations on Yemen's second periodic report under the Convention on the Rights of the Child, adopted in January 1999, the Committee on the Rights of the Child recommended that Yemen ensure the immediate registration of the birth of all children and pointed to "the serious implications of the absence of a birth certificate, which can result in the sentencing of a child to the death penalty".<sup>41</sup>

In its third periodic report under the ICCPR, submitted in 2001, Yemen stated that offenders under the age of 18 could not be sentenced to death under Article 31 of the Penal Code.<sup>42</sup>

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<sup>1</sup> UN documents CCPR/C/1/Add.36; A/36/40, paras. 156, 173.

<sup>2</sup> Amnesty International, *When the state kills. . . The death penalty v. human rights*, Amnesty International Publications, 1989, p. 106.

<sup>3</sup> UN documents CCPR/C/42/Add. 3, paras. 26-27; A/43/40, paras. 551, 579.

<sup>4</sup> UN documents CCPR/C/4/Add.10, para. 92; CCPR/C/57/Add.1.

<sup>5</sup> Amnesty International, *When the State Kills... The Death Penalty v. Human Rights*, Amnesty International Publications, 1989, p. 236.

<sup>6</sup> Amnesty International, *Children and the death penalty: Executions worldwide since 1990*, AI Index: ACT 50/10/00, November 2000, p. 4.

<sup>7</sup> UN document E/CN.4/2002/74, para. 108; European Union, *Annual Report on Human Rights 2001*, p. 74.

<sup>8</sup> UN document CRC/C/3/Add.57.

<sup>9</sup> UN documents CRC/C/SR.705, paras. 27, 48, 58; CRC/C/SR.706, para. 13. Neither representative mentioned the case of the 14-year-old child soldier executed in 2000.

<sup>10</sup> UN document CRC/C/15/Add.153, paras. 74, 75.

<sup>11</sup> UN documents CCPR/C/1/Add.16, CCPR/C/1/Add.26; *Yearbook of the Human Rights Committee 1977-78*, Vol. I, p. 252, para. 8.

<sup>12</sup> UN document CCPR/C/1/Add.58.

<sup>13</sup> UN document A/37/40, paras. 308, 326.

<sup>14</sup> *When the State Kills... The Death Penalty v. Human Rights*, pp. 150-152.

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<sup>15</sup> UN document CCPR/C/28/Add.15, para. 74.

<sup>16</sup> In his report to the 1993 session of the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions also stated that he had received reports of executions of three child offenders in Iran in 1992 (UN document E/CN.4/1993/46, para. 363). In June 2001 the Special Rapporteur sent an urgent appeal to the government of Iran regarding reports that a 14-year-old Pakistani had been sentenced to death in Iran after being convicted of drug offences (UN document E/CN.4/2002/74, para. 106).

<sup>17</sup> UN document CRC/C/41/Add.5.

<sup>18</sup> UN documents CRC/C/SR.617, para. 46; CRC/C/SR.618, paras. 22, 40, 43.

<sup>19</sup> UN document CRC/C/15/Add.123, paras. 29, 30.

<sup>20</sup> *When the State Kills... The Death Penalty v. Human Rights*, p. 185.

<sup>21</sup> UN document CRC/C/8/Add.26, para. 50.

<sup>22</sup> UN document CCPR/C/92/Add.1, para. 37. The Human Rights Committee did not question the Nigerian government representatives on this point when it examined the report in April and July 1996.

<sup>23</sup> UN document CRC/C/SR.323, paras. 46, 73.

<sup>24</sup> UN document CRC/C/15/Add.61, paras. 20, 39.

<sup>25</sup> *Amnesty International Report 1998*, p. 265.

<sup>26</sup> *Amnesty International Report 1993*, p. 231; *Amnesty International Report 1998*, p. 269.

<sup>27</sup> UN document CRC/C/3/Add.13, para. 158.

<sup>28</sup> UN documents CRC/C/SR.133, paras. 10, 13; CRC/C/SR.134, paras. 8, 17.

<sup>29</sup> UN document CRC/C/15/Add.18, paras. 12, 23.

<sup>30</sup> UN document CRC/C/61/Add.2, para. 253.

<sup>31</sup> UN document CRC/C/15/Add.148, paras. 27, 28.

<sup>32</sup> UN document CCPR/C/81/Add.4, para. 147. The US report noted that the US Supreme Court had ruled that it was unconstitutional to impose the death penalty on an offender aged 15 (in the case of *Thompson v. Oklahoma*, 1988) but not on offenders aged 16 or 17 (in the case of *Stanford v. Kentucky*, 1989).

<sup>33</sup> UN document CCPR/C/SR.1405, paras. 13, 45.

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<sup>34</sup> UN document CCPR/C/79/Add.50, paras. 16, 31.

<sup>35</sup> UN document CCPR/C/50/Add.2, paras. 110-13.

<sup>36</sup> *When the State Kills... The Death Penalty v. Human Rights*, p. 234.

<sup>37</sup> UN document CCPR/C/82/Add.1, para. 14.

<sup>38</sup> *Amnesty International Report 1994*, p. 318.

<sup>39</sup> UN document A/50/40, paras. 256, 262.

<sup>40</sup> UN documents CRC/C/8/Add.20, para. 24; CRC/C/SR.262, paras. 4, 10, 13, 22, 35.

<sup>41</sup> UN document CRC/C/15/Add.102, para. 20. During the examination of the report, a member of the Committee raised the case of a prisoner under sentence of death whose age was in dispute (UN document CRC/C/SR.524, para. 30; see also Amnesty International, “Yemen: fear of imminent execution”, Urgent Action EXTRA 143/97, AI Index: MDE 31/13/97).

<sup>42</sup> UN document CCPR/C/YEM/2001/3, para. 37.