

TO THE HONORABLE MEMBERS OF THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES

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TORONTO MARKKEY PATTERSON  
a United States Citizen,  
*Petitioner/Victim*

V.

THE UNITED STATES OF AMERICA  
and THE STATE OF TEXAS  
Members of the Organization of American States,  
*Respondents*

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PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS  
OF TORONTO MARKKEY PATTERSON BY THE UNITED STATES OF AMERICA  
AND THE STATE OF TEXAS

**(TEXAS HAS SCHEDULED AN EXECUTION DATE OF AUGUST 28, 2002,  
AND PATTERSON THEREFORE REQUESTS THAT THE COMMISSION  
IMMEDIATELY ISSUE "PRECAUTIONARY MEASURES" UNDER ARTICLE 25  
OF ITS RULES OF PROCEDURE URGING THE UNITED STATES AND TEXAS  
TO TAKE ALL NECESSARY MEANS TO PREVENT HIS EXECUTION)**

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This petition is respectfully presented to this Honorable  
Commission pursuant to Article 23 of the Rules of Procedure of the  
Inter-American Commission on Human Rights, on behalf of  
Toronto Markkey Patterson, a United States Citizen, by:

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## **Introduction**

Petition is made by Toronto Markkey Patterson, a citizen of the United States of America, who was convicted of and sentenced to death for a crime that occurred when he was seventeen years old. He files this petition under the American Declaration of the Rights and Duties of Man<sup>1</sup> for violations of Articles I,<sup>2</sup> II,<sup>3</sup> VII,<sup>4</sup> and XXVI<sup>5</sup> by the United States and the State of Texas. The subject matter of this petition is not “pending settlement” pursuant to any other applicable procedure presented to an international governmental organization.

## **Facts**

Toronto Markkey Patterson, an African American youth, was sentenced to death in Dallas, Texas, for murder of a child under six years of age that occurred on June 6, 1995. The murder victims were his cousin, Kimberly Brewer, and Kimberly’s two young daughters, Jennifer Brewer and Ollie Brown. Mr. Patterson himself was only seventeen years old at the time of the offense. Mr. Patterson testified at his trial and denied committing the offense.

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<sup>1</sup> *Pinkerton and Roach v. United States*, Res. 3-87, Case 9647, Annual Report of the Inter-Am. C.H.R. 147, OEA/Ser.L/V/II.71 doc. 9 rev. 1 (1987), paras. 47, 48 (holding that the provisions of the American Declaration of the Rights and Duties of Man and the Statute and Regulations of the IACHR are binding upon the United States).

<sup>2</sup> Article I: “Every human being has the right to life, liberty and the security of his person.”

<sup>3</sup> Article II: “All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

<sup>4</sup> Article VII: “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”

<sup>5</sup> Article XXVI: “Every person accused of an offense has the right . . . not to receive cruel, infamous or unusual punishment.”

## **Exhaustion of Domestic Remedies**

Mr. Patterson was indicted for capital murder on June 13, 1995, in Cause Number F-9547764-LU in the 291<sup>st</sup> Judicial District Court of Dallas County, Texas. (Exhibit A) Mr. Patterson, who was indigent, was tried before Judge Meier in November of 1995, represented by court-appointed counsel. The jury found Mr. Patterson guilty of capital murder, and subsequently made findings requiring Judge Meier to impose the death penalty in a judgment entered November 21, 1995. (Exhibit B) The Texas Court of Criminal Appeals issued an unpublished opinion on direct appeal affirming the conviction and sentence. *Patterson v. State*, No. 72,282 (Tex. Crim. App. Jan. 13, 1999) (unpublished opinion). State habeas counsel was appointed on April 16, 1996, who filed Mr. Patterson's initial state application for writ of habeas corpus on September 8, 1997. In an unpublished order dated February 3, 1999, the Texas Court of Criminal Appeals denied Patterson relief on this first state petition for writ of habeas corpus. Judge Meier set Patterson's execution date for February 24, 2000, but on December 16, 1999, the federal district court for the Northern District of Texas stayed Mr. Patterson's execution date to allow him time to file a federal petition. Mr. Patterson then filed a subsequent state application for writ of habeas corpus, but the Texas Court of Criminal Appeals dismissed this application as an abuse of the writ on May 3, 2000.

Patterson timely filed a federal habeas petition in the district court on October 4, 2000. The federal district court issued a Memorandum Opinion and Final Judgment on August 20, 2001, denying relief. Mr. Patterson appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit denied relief in an unpublished opinion on February 26, 2002. On March 20, 2002, the state trial court issued an order setting an execution date for August 28, 2002. (Exhibit C) Mr. Patterson timely filed a petition for writ of certiorari at the United States Supreme Court on April 29, 2002. That petition is currently

pending.

The Texas state courts and the federal courts in the United States have steadfastly denied relief to offenders who were under eighteen years of age at the time of their crimes on the grounds that international law prohibits the execution of such offenders. In the case of Napoleon Beazley, another Texas death row inmate whose offense occurred when he was just seventeen years old, the domestic courts have persistently rejected the *jus cogens* argument. See *Beazley v. Johnson*, 242 F.3d 248 (5<sup>th</sup> Cir. 2001). The United States Supreme Court denied Beazley's petition for certiorari. *Beazley v. Cockrell*, 122 S.Ct. 329 (2001). On April 17, 2002, the Texas Court of Criminal Appeals subsequently denied Mr. Beazley leave to raise the *jus cogens* issue in a subsequent state application for writ of habeas corpus. Texas executed Mr. Beazley on May 28, 2002. Moreover, in October of 2001, Texas executed yet another juvenile offender, Gerald Mitchell, despite the fact that he also sought a commutation of his death sentence in conformity to the international norm. Mr. Patterson's domestic appeals have all but run their course. It is clear that had he raised the *jus cogens* issue during those appeals, he would be in no better a position than Mr. Beazley and Mr. Mitchell. In short, any proceedings raising the *jus cogens* issue in the domestic courts, past, present or future, would appear to have no reasonable chance of success. Under the Commission's precedents, it should excuse Mr. Patterson from any obligation to exhaust his *jus cogens* argument in the domestic courts.<sup>6</sup>

***This Commission should immediately issue "precautionary measures" to the United States and, in particular, to the State of Texas, urging Texas to "take all necessary means" not***

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<sup>6</sup> *Gary Graham, a/k/a Shaka Sankofa v. United States*, Rep. 51/00, Case 11.193, 25 June 2000, Annual Report of the Inter-Am. C.H.R. (2000), para. 60.

***to set an execution date against Mr. Patterson until this Commission rules on the jus cogens issue.*** See Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(1). This Commission simultaneously should inform the State of Texas that a ruling on the *jus cogens* issue is due to be produced soon (perhaps as soon as June 2002) in the case of Michael Domingues, which has been pending before this Commission for a couple of years and has exhausted domestic remedies.

Petitioner respectfully reserves the right to amend and/or supplement this petition in accordance with the Rules of Procedure of this Commission.

## **Argument**

### **I. The Prohibition Against Executing Juvenile Offenders is a *Jus Cogens* Norm**

Under Article 53 of the Vienna Convention (hereinafter Vienna Convention), a *jus cogens* peremptory norm is “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”<sup>7</sup> Treatises on international law in the United States agree with this standard. The Restatement (Third) of the Foreign Relations Law provides that a *jus cogens* norm is a “norm accepted and recognized by the international community of states as a whole from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character,” that the norm is established where there is acceptance and recognition by a “large majority” of states, even if over dissent by “a very small number of states.”<sup>8</sup> A norm must meet four requirements in order to attain

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<sup>7</sup> Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 352.

<sup>8</sup> Restatement (Third) of Foreign Relations Law § 102, and reporter’s note 6 (1986) (citing Report of the Proceedings of the Committee of the Whole, May 21, 1968, U.N.

the status of a peremptory norm: 1) it is general international law; 2) it is accepted by a large majority of states; 3) it is immune from derogation; and 4) it has not been modified by a new norm of the same status. The prohibition against the execution of offenders who were under 18 at the time of their offense clearly meets those requirements.

#### **A. The Prohibition is General International Law**

First, the prohibition against the execution of persons who were under 18 years old at the time of their offense (“juvenile offenders”) is general international law. This Commission found that there was a *jus cogens* norm in 1987 proscribing the execution of children among the OAS member states.<sup>9</sup> While at that time it could not decide on what the age limit would be for such a norm, it is clear now that in the OAS system (as well as the rest of the world) it is 18 years of age. The American Convention on Human Rights expressly prohibits the death penalty for persons under the age of 18 at “the time the crime was committed.”<sup>10</sup> The United States is the only member state of the OAS that has signed but not ratified the American Convention.<sup>11</sup> Of the twenty-five member states that have ratified the American Convention, only Barbados made a reservation to Article 4(5) providing that “age is a consideration of the Privy Council, under Barbadian law 16 was the minimum age for

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Doc. A/Conf. 39/11 at 471-72). The Restatements are a compilation of the standard laws for a particular legal area.

<sup>9</sup> *Pinkerton and Roach v. United States*, Res. 3-87, Case 9647, Annual Report of the Inter-Am C.H.R. 147, OEA/Ser.L/V/II.71 doc. 9 rev.1 (1987).

<sup>10</sup> American Convention, *supra* note 13.

<sup>11</sup> Organization of American States (visited on Feb. 12, 2002); <http://www.oas.org>.

execution.”<sup>12</sup> However, according to the report of the Secretary General for the United Nations, Barbados “brought themselves into line” with the norm in 1994 that 18 is the minimum age.<sup>13</sup>

Numerous treaties, declarations, and pronouncements by international bodies, as well as the laws of the vast majority of nations are evidence that the prohibition against the execution of offenders younger than 18 is general international law. Among the treaties that prohibit the death penalty for juvenile offenders are the International Covenant on Civil and Political Rights (hereinafter “International Covenant”),<sup>14</sup> the United Nations Convention on the Rights of the Child (hereinafter C.R.C.),<sup>15</sup> the Geneva Convention Relative to the Protection of Civilian Persons in the Time of War (hereinafter Fourth Geneva Convention),<sup>16</sup> the American Convention on Human Rights (hereinafter

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<sup>12</sup> *Id.*

<sup>13</sup> See Crime prevention and criminal justice: *Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, Report of the Secretary General, U.N. ESCOR, Economic and Social Council, Subst. Sess., U.N. Doc. E/2000/3 ¶ 90 (2000).

<sup>14</sup> Article 6(5) (the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171). “The U.S. is the only country to ratify this treaty with an outstanding reservation regarding the execution of juveniles.” Death Penalty Information Center, *Executions of Juvenile Offenders*, <http://www.deathpenaltyinfo.org/juvexec.html>.

<sup>15</sup> Article 37 (Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44<sup>th</sup> Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), reprinted in 28 I.L.M. 1448 (1989)). The C.R.C. forbids the execution of juvenile offenders, but the U.S. has failed to ratify this treaty. Yet, every other nation in the world with an organized government has ratified it. See Death Penalty Information Center, *Executions of Juvenile Offenders*, <http://www.deathpenaltyinfo.org/juvexec.html>.

<sup>16</sup> Art. 68 (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 286).

American Convention),<sup>17</sup> and the American Declaration of the Rights and Duties of Man.<sup>18</sup>

In addition to the above, a 1984 resolution by the United Nations Economic and Social Council opposes the imposition of the death penalty for juvenile offenders.<sup>19</sup> In 1985, the United Nations General Assembly adopted by consensus the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) which also oppose capital punishment for juveniles.<sup>20</sup> Since 1997, the United Nations Commission on Human Rights has passed a series of resolutions calling upon states to abolish the death penalty generally, but has specifically asked countries “not to impose it for crimes committed by persons below 18 years of age.”<sup>21</sup> While the Commission resolutions passed with a number of dissenting votes, that can be attributed to the fact that they also called for a moratorium on the death penalty generally, and that a number of countries

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<sup>17</sup> Ch. 2, Art. 4, Sec. 5 (American Convention on Human Rights, O.A.S. Official Records, OEA/Ser. K/XVI/1.1, doc. 65. rev. 1. corr. 2 (1969)).

<sup>18</sup> American Declaration of the Rights and Duties of Man, Ninth International Conference of American States, Bogota, Colombia 1948.

<sup>19</sup> See Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty, E.S.C. Res. 1984/50, annex. 1984 U.N. ESCOR Supp. (No.1) at 33. U.N. Doc. E/1984/84 (1984).

<sup>20</sup> G. A. res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53) at 207, U.N. Doc. A/40/53 (1985).

<sup>21</sup> See *The Question of the Death Penalty*, Comm. on Hum. Rts., 57<sup>th</sup> Sess. Res. 2001/68, adopted April 25, 2001. E/CN.4/2001/RES/68 (2001); *The Question of the Death Penalty*, Comm. on Hum. Rts., 56<sup>th</sup> Sess., Resolution 2000/65, adopted April 27, 2000, E/CN.4/2000/RES/65 (2000); *The Question of the Death Penalty*, Comm. on Hum. Rts., 55<sup>th</sup> Sess., Resolution 1999/61, adopted April 28, 1999, E/CN.4/RES/1999/61 (1999); *The Question of the Death Penalty*, Comm. on Hum. Rts., 54<sup>th</sup> Sess., Resolution 1998/8, adopted April 3, 1998, E/CN.4/1998/RES/8 (1998); *The Question of the Death Penalty*, Comm. on Hum. Rts., 53<sup>rd</sup> Sess., Resolution 1997/12, adopted April 3, 1997, E/CN.4/1997/RES/12 (1997).

still have the death penalty which is not prohibited by the International Covenant and the prohibition is not as widely accepted. That is supported by the fact that recent Commission resolutions that mention only the prohibition against the juvenile death penalty passed by consensus without a vote.<sup>22</sup> Those same resolutions also request governments to comply with the mandates of Article 27 of the C.R.C. and Article 6(5) of the International Covenant.

The United Nations Sub-Commission on the Promotion and Protection of Human Rights has passed similar resolutions. In the 1999 resolution, the United States is specifically mentioned as one of the six countries that had executed juvenile offenders since 1999 and that is accounted for 10 of the 19 executions during that time period.<sup>23</sup> One year later, the Sub-Commission affirmed “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>24</sup> Again, the latter resolution was adopted without a vote.

### **B. The Prohibition is Accepted by All States Except One**

The second requirement for a *jus cogens* norm is satisfied in that the norm is accepted “by

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<sup>22</sup> See *Rights of the Child*, Comm. on Hum. Rts., 58<sup>th</sup> Sess., Resolution 2002/92, adopted April 26, 2002, E/CN.4/RES/2002/92 Para. 31(a) (2002); *Human Rights in the Administration of Justice, In Particular Juvenile Justice*, Comm. on Hum. Rts., 58<sup>th</sup> Sess., Resolution 2002/47, adopted April 23, 2002, E/CN.4/RES/2002/47 Para. 19 (2002); *Rights of the Child*, Comm. on Hum. Rts., 57<sup>th</sup> Sess., Res. 2001/75, adopted April 25, 2001, E/CN.4/2001/RES/75 para.28(a) (2001).

<sup>23</sup> *The Death Penalty, Particularly in Relation to Juvenile Offenders*, United Nations Sub-Commission on the Promotion and Protection of Human Rights, 52<sup>nd</sup> Sess., Res. 1999/4, adopted August 24, 1999, U.N. Doc. E/CN.4/Sub.2/RES/1999/4 (1999).

<sup>24</sup> *The Death Penalty in Relation to Juvenile Offenders*, United Nations Sub-Commission on the Promotion and Protection of Human Rights, 53<sup>rd</sup> Sess., Res. 2000/17, adopted August 17, 2000, U.N. Doc. E/CN.4/Sub.2/RES/2000/17 (2000).

‘a very large majority of’ States, even if over dissent by ‘a very small number’ of states.”<sup>25</sup> The United States is the only state in the OAS that currently imposes the death penalty for persons under the age of 18 and the only country in the world that has not accepted the international norm against the execution of juvenile offenders. The only other countries known to have executed juvenile offenders in the last ten years have since abolished the practice, acknowledge that such executions were contrary to their laws, or deny that they have taken place. Not only is the United States one of the only nations still executing juveniles, but it does so at a higher rate than any other country. A news release by Amnesty International on August 18, 2000, in response to a previous execution date for Alexander Williams, a Georgia juvenile offender then sentenced to the death penalty, stated “if Williams is executed, the United States will have executed more juvenile offenders in just over seven months than the rest of the world combined has executed in the past seven years.”<sup>26</sup>

Almost every nation in the world has ratified the Convention on the Rights of the Child.<sup>27</sup> The only State other than the United States not to ratify is Somalia, which has no government.<sup>28</sup> Indeed, the C.R.C. has been the catalyst that has prompted many countries in the past ten years to change

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<sup>25</sup> Restatement (Third) of Foreign Relations Law § 102, reporter’s note 6 (interpreting the Vienna Convention, *supra* note 13, and citing to Report of the Proceedings of the Committee of the Whole, May 21, 1968, U.N. Doc. A/Conf. 39/11 at 471-72).

<sup>26</sup> Death Penalty Information Center, *Executions of Juvenile Offenders* (visited Sept. 4, 2001); <http://www.deathpenaltyinfo.org/juvexec.html>.

<sup>27</sup> *Status of the Convention on the Rights of the Child, Report of the Secretary General* U.N. ESCOR, Hum. Rts. Comm. 54<sup>th</sup> Sess., Agenda Item 20, ¶ 2, U.N. Doc. E/CN.4/1998/99 (1997).

<sup>28</sup> *See Rights of the Child: Status of the Convention on the Rights of the Child*, U.N. ESCOR, 57<sup>th</sup> Sess., Agenda Item 13, U.N. Doc. E/CN.4/2001/74, ¶ 5 & Annex 1 (2000).

their laws raising the eligibility for the death penalty to 18. The United Nations reported that along with Barbados, discussed above, Yemen and Zimbabwe changed their laws in 1994.<sup>29</sup> China changed its age to 18 in 1997.<sup>30</sup> Indeed, by the time of that report, only 14 of the countries that had ratified the C.R.C. had not yet changed their laws to adhere to the prohibition.<sup>31</sup> However, none of those countries made reservations to the C.R.C. requirements and furthermore only 6 executed juvenile offenders since 1991: Democratic Republic of the Congo (1 in 2000), Iran (6: 3 in 1992, 1 in 1999, 1 in 2000, 1 in 2001), Nigeria (1 in 1997), Pakistan (2: 1 in 1992, 1 in 1997), Saudi Arabia (1 in 1992), and Yemen (1 in 1993).<sup>32</sup>

Of the six countries besides the United States where juveniles have been executed since 1990, the laws have been changed or the governments have denied that the executions of juvenile offenders have taken place. The laws have changed in Yemen, as noted above, and Pakistan, where it was reported that the death penalty for people under 18 at the time of offense as abolished.<sup>33</sup> In December 2001, President Musharraf of Pakistan announced that he would commute the death sentences of all

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<sup>29</sup> Crime Prevention and Criminal Justice, *supra* note 43, at 21 ¶ 90, U.N. Doc. E/2000/3, March 31, 2000.

<sup>30</sup> *Id.*

<sup>31</sup> The countries were Afghanistan, Burundi, Bangladesh, the Democratic Republic of the Congo, India, Iran, Iraq, Malaysia, Morocco, Myanmar, Nigeria (excepting Federal Law), Pakistan, the Republic of Korea, Saudi Arabia, and the United Arab Emirates. *Id.* at 21 n.36.

<sup>32</sup> Amnesty International, *The United States of America: Too Young to Vote, Old Enough to be Executed*, AI Index: AMR 51/105/2001, July 2001; <http://www.amnesty.org>.

<sup>33</sup> Amnesty International Press Release (June 7, 2001) (referring to Ordinance to Provide for Protection of the Rights of Children Involved in Criminal Litigation, Ordinance No. XXII of 2000).

juvenile offenders on death row in his country.<sup>34</sup> Nigeria, as noted in the United Nations report above, has national legislation setting the age at 18. With respect to an execution that occurred in 1997, the Nigerian government insisted to the Sub-Commission on the Promotion and Protection of Human Rights in 2000 that the offender was well over 18 at the time of the offense and reiterated that any juveniles convicted of capital offenses would have their sentences commuted.<sup>35</sup> Saudi Arabia has adamantly insisted at the Commission on Human Rights that the allegations regarding the execution of a juvenile in 1992 are untrue.<sup>36</sup> While there has been documentation that the executions in Nigeria and Saudi Arabia did take place,<sup>37</sup> they do appear to be isolated incidents, and the denial by the governments is an indication that they in fact have accepted the norm. While executions of juvenile offenders seem to have taken place with more frequency in Iran, the government recently denied at the Commission on Human Rights that they actually do take place.<sup>38</sup>

The Democratic Republic of the Congo, which is in the midst of civil war, is also reported to

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<sup>34</sup> See Amnesty International (Irish Division) Press Release (Dec. 13, 2001) (welcoming the announcement of President Musharraf that he would commute the death sentences of about 100 juvenile offenders). <http://www.amnesty.ie/news/2001/pakistan4.shtml>

<sup>35</sup> See Summary Record of the 6<sup>th</sup> Meeting of the Sub-Commission on the Promotion and Protection of Human Rights, 52<sup>nd</sup> Sess., August 4, 2000, E/CN.4/Sub.2/2000/SR.6 ¶ 39 (2000).

<sup>36</sup> See Summary Record of the 53<sup>rd</sup> Meeting of the Commission on Human Rights, 56<sup>th</sup> Sess., April 17, 2000, E.CN.4/2000/SR.53. ¶¶ 88 and 92 (2000).

<sup>37</sup> Amnesty International, *Children and the Death Penalty: Executions Worldwide Since 1990*, ACT 50/10/2000.

<sup>38</sup> See U.N. Press Release, Commission on Human Rights Starts Debate on Specific Groups and Individuals, April 11, 2001 (Right of Reply by Republic of Iran).

have executed a juvenile offender in 2000 despite a moratorium on the death penalty in that country.<sup>39</sup> His name was Kasongo and he was 14 years old, both at the time of the crime and at the time of the execution.<sup>40</sup> That execution was carried out by the Military Order Court rather than through the judicial process.<sup>41</sup> In 2001, when five juvenile offenders were sentenced to death by the Military Order Court, the executions were stayed and the sentences commuted following appeals from the international community.<sup>42</sup> Thus, it appears that not only does the military intend to comply with the law even during wartime, but that the Congo recognizes the international norm and has begun to abide by it.

Finally, in Iran, Mehrdad Youssefi was reportedly executed on May 29, 2001.<sup>43</sup> He was 16 at the commission of the crime. When confronted during the Commission on Human Rights in 2001, about the continuing practice of executing juvenile offenders contrary to international law, the government of Iran denied that they take place at all.<sup>44</sup> This denial demonstrates Iran's knowledge that they are violating the law.

Hence, only the United States has not accepted the norm against the execution of juvenile offenders. Even if the reports were true and verifiable that executions of juveniles took place not only

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<sup>39</sup> See Amnesty International, Dem. Republic of Congo: *Killing Human Decency*, AI Index: AFR 62/11/00, May 31, 2000 at 12.

<sup>40</sup> See Amnesty International, *supra* note 32.

<sup>41</sup> See Amnesty International, *supra* note 32.

<sup>42</sup> See Amnesty International, *supra* note 32.

<sup>43</sup> See Amnesty International, *supra* note 32.

<sup>44</sup> See U.N. Press Release, *supra* note 38.

in the United States but in Iran and the democratic Republic of the Congo, the norms which have attained peremptory status are similar to those noted in the Restatement (Third).<sup>45</sup> Such norms include rules prohibiting genocide, slave trade and slavery, apartheid and other gross violations of human rights.<sup>46</sup> The United States courts have accepted other international norms (for example, the prohibition against torture).<sup>47</sup> Amnesty International has found, however, that 125 countries violated the *jus cogens* norm against torture last year.<sup>48</sup> In stark contrast, only three countries violated the norm prohibiting the execution of juvenile offenders in the past couple of years, indicating the widespread importance of this norm. Yet the United States refuses to abide by it. Furthermore, the United States has not taken any steps to educate, inform, or require the states of the United States to abide by the international norm.

### **C. The Prohibition is a Non-Derogable Norm**

The prohibition is non-derogable. The International Covenant expressly provides that there shall be no derogation from Article 6, which prohibits the imposition of the death penalty on juvenile offenders.<sup>49</sup> The express prohibition in the treaty coupled with the wide acceptance, evidenced by treaties, resolutions, national laws and practice, support the conclusion that the norm is non-

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<sup>45</sup> See *supra* text accompanying note 8.

<sup>46</sup> Restatement (Third) of Foreign Relations Law § 102, and reporter's note 6 (1986).

<sup>47</sup> See *e.g.*, *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9<sup>th</sup> Cir. 1992); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987).

<sup>48</sup> Amnesty International Report 2001, Annual Summaries 2001, AI Index: POL 10/006/2001.

<sup>49</sup> International Covenant on Civil and Political Rights, *supra*, at art. 4(2).

derogable.

**D. There is no Emerging Norm Modifying this Norm**

As to the fourth and final requirement, there is no emerging norm that contradicts the current norm. The prohibition of the juvenile death penalty has been universally accepted by all but one country. There is thus no question that the prohibition against the execution of persons who were under 18 at the time of their offense has attained the status of a universal (not merely regional) *jus cogens* norm and, thus, also constitutes a gross violation of the Article I right to life in the American Declaration of the Rights and Duties of Man. Similarly, the practice of applying the death penalty to juvenile offenders violates the equality provision of Article II,<sup>50</sup> the special protection of children

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<sup>50</sup> See *Pinkerton and Roach*, *supra*, at paras 61, 62, and Conclusion (b).

afforded in Article VII, and the “cruel, infamous or unusual punishment” prohibition of Article XVI.

### **Conclusion**

It is with the utmost urgency that the Inter-American Commission on Human Rights decide on the merits of Mr. Patterson’s case immediately. The life of a juvenile offender weighs in the balance. There is no clearer precept in international law than the prohibition of the death penalty for juvenile offenders and the facts prove that a *jus cogens* norm does exist. It is even more of an established norm than the prohibition of torture. All the treaties, declarations, and pronouncements mentioned above emphatically denounce the existence of the juvenile death penalty and every country, except one, has accepted, to some extent, the international norm. Therefore, the state of Texas and the United States are prohibited from executing Mr. Patterson and continue to violate his human rights each day he spends on death row.

### **Relief Sought**

This Commission should determine that the United States stands in violation of a *jus cogens* norm that prohibits application of the death penalty to persons who were *under 18 years of age* at the time of the offense. This Commission should further find that the United States’ violation of this norm also violates Articles I, II, VII, and XXVI of the American Declaration on the Rights and Duties of Man, to which the United States is bound as a member of the OAS Charter. This Commission should urge the United States to take responsibility for the actions of its constituent states and to be proactive, preventing states like Texas from violating the *jus cogens* norm. Finally, this Commission should directly address the Texas Executive (Governor and Board of Pardons and Paroles), Judicial, and Legislative branches’ responsibility to enact procedures that will guarantee respectful observance of international law and comply with the prohibition on the execution of

juvenile offenders.

*This Commission should immediately issue “precautionary measures” to the United States and, in particular, to the State of Texas, urging Texas to “take all necessary means” to prevent the execution of Mr. Patterson, currently scheduled for August 28, 2002, until this Commission rules on the jus cogens issue in Mr. Patterson’s case, or in the case of Michael Domingues.*

**Respectfully submitted,**

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