



General Assembly

Distr.
GENERAL

A/HRC/10/NGO/9
23 February 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement* submitted by Human Rights Advocates, Inc. (HRA),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2009]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Juvenile Sentencing

1. Human Rights Advocates submits this statement to address issues of juvenile sentencing, particularly the death penalty, and life imprisonment without possibility of release.

Juvenile Death Penalty

2. International law prohibits the execution of juvenile offenders. With regard to the juvenile death penalty, juveniles are defined as persons under the age of 18.¹ The prohibition depends upon the age of the offender at the time of the crime and does not cease once a juvenile offender turns 18. This prohibition has been affirmed in numerous treaties, resolutions, and other international instruments. The prohibition of the juvenile death penalty is so universally practiced and accepted, it has reached the level of a *jus cogens* norm.²

3. A *jus cogens* norm is derived from fundamental values held by the international community. The prohibition of the juvenile death penalty satisfies these elements. The U.N. Convention on the Rights of the Child, which explicitly prohibits the death penalty and a life sentence without the possibility of parole, has been ratified by every country in the world except the United States and Somalia.

4. HRA commends the many countries that have changed their laws regarding the juvenile death penalty since the Commission on Human Rights, and subsequently the Human Rights Council (“HRC”), began examining this issue, including China, the United States and Pakistan. However, there is still a question as to Pakistan’s implementation of the prohibition. Legislation passed in 2000 remains un-implemented throughout the majority of the country.³ In addition, the Supreme Court has rejected death penalty appeals where the age of the offender was not recorded at the time of the offense.⁴ In October of 2008, the Iranian authorities instructed all courts to stop issuing death sentences against juvenile offenders.⁵ However, the Assistant Attorney General for Judicial Affairs subsequently clarified that the judicial directive will not apply to *qesas*, or retribution because it “is not up to the government, rather it is up to the private plaintiff.”⁶

¹ See Comm. On Rights of the Child, *Children’s Rights in Juvenile Justice, General Comment No. 10*, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007), §77

² The Inter-American Commission on Human Rights, for example, wrote that the ban on executing juveniles has become a *jus cogens* norm. See Report No. 62/02, Case No. 12.285 Michael Domingues and the United States, October 22, 2002 and Report No. 101/03, Case No. 12.412 Napoleon Beazley and the United States, December 29, 2003.

³ Human Rights Watch, Publications, “*The Last Holdouts*,” September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

⁴ Human Rights Watch, Publications, “*The Last Holdouts*,” September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

⁵ Amnesty International, News & Updates, “Iran to End Child Executions,” October 17, 2008. Available at: <http://www.amnesty.org/en/news-and-updates/news/iran-to-end-child-executions-20081017>.

⁶ Amnesty International, News & Updates, “Juveniles Still Face The Noose In Iran.” October 20, 2008, Available at <http://www.amnesty.org/en/news-and-updates/news/juveniles-still-face-noose-iran-20081020>

5. HRA encourages those countries that retain the death penalty for violations of religious codes to ban the imposition of capital punishment on persons who were under 18 at the time of the crime, without exceptions. For example, as of 2008, Iran, Saudi Arabia, Sudan, and Pakistan continued to make a distinction between *qesas* and other crimes. In 2004, Sudan passed a Child Law setting reduced sentences for children age 15 to 18 who commit capital offenses. But the 2005 Interim Constitution specially allows for the death penalty against persons under age 18 in *qesas* cases.⁷

6. Despite improvements in banning the practice, some countries continue to execute juvenile offenders. Since the United States Supreme Court banned the practice, Iran has emerged as the worst violator of the prohibition.⁸ Only Iran, Saudi Arabia, Yemen and Pakistan are known to have executed juvenile offenders since 2006.⁹ In 2006, Pakistan executed one juvenile offender and Iran four.¹⁰ Saudi Arabia carried out two juvenile executions in 2007, while Iran executed eight juvenile offenders and Yemen executed one.¹¹ Iran executed eight juvenile offenders in 2008.¹²

7. HRA urges those states that have yet to prohibit the juvenile death penalty for all crimes to immediately implement a moratorium on all executions of juveniles, and to pass legislation banning juvenile executions without exception. Reportedly, at least 130 juvenile offenders are on death row in Iran while there are at least 6 in Sudan, 2 in Pakistan and 18 in Yemen.¹³ In addition, there are at least 12 cases involving juvenile offenders on death row in Saudi Arabia.¹⁴

Life Imprisonment Without Possibility of Parole or Release for Child Offenders

8. The Convention on the Rights of the Child (“CRC”), ratified by every country in the world except the United States and Somalia, codifies an international customary norm of human rights that recommends against life sentences and forbids the sentencing of child offenders to life in prison without possibility of release. There are now 135 countries that have rejected the sentence through domestic legal commitments and 185 countries that have voted for the resolution in the General Assembly.¹⁵ The prohibition, arguably, has now reached the level of a *jus cogens* norm. As such, it is binding on all states, including those that have not formally ratified it themselves.

⁷ Human Rights Watch, Publications, “*The Last Holdouts*,” September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

⁸ Reuters, “UN Urges Iran to Halt Execution of Young Offenders,” January 28, 2005.

⁹ Amnesty International, News & Updates, “Executions of Child Offenders Since 1990.” Available at <http://www.amnesty.org/en/news-and-updates/news/iran-to-end-child-executions-20081017>.

¹⁰ Amnesty International Report 2007, Pakistan. Available at <http://www.amnesty.org/en/region/asia-and-pacific/south-asia/pakistan>.

¹¹ Human Rights Watch, Human Rights News, “Follow U.N. Call to End Juvenile Death Penalty,” January 29, 2006. Available at: <http://hrw.org/english/docs/2006/01/29/saudia12546.htm>.

¹² Stop Child Execution Campaign, “8th Child Execution by Iran in 2008. Available at <http://iranian.com/main/blog/sce-campaign/8th-child-execution-iran-2008>

¹³ Human Rights Watch, Publications, “*The Last Holdouts*,” September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

¹⁴ Human Rights Watch, Publications, “Adults Before Their Time,” March 24, 2008. Available at <http://www.hrw.org/en/node/62308/section/1>.

¹⁵ Connie de la Vega and Michelle Leighton, “Sentencing Our Children to Die in Prison: Global Law and Practice.” 42 U.S.F. L. Rev. 983 at 989.

9. Eleven countries have laws with the potential to permit the sentencing of child offenders to life without possibility of release: Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba (legislation pending), Dominica, Saint Vincent and the Grenadines, the Solomon Islands, Sri Lanka (legislation pending), and the United States. Currently, there is no evidence of any country, besides the United States, with child offenders sentenced to life without the possibility of release.¹⁶

10. Customary international law is part of domestic law in the United States and, therefore, juvenile life sentences without the possibility of parole should be prohibited.¹⁷ Juvenile life sentences have not been consistently and historically applied.¹⁸ The sentence was not used on a large scale until the 1990s when at least 40 states passed laws increasing the options for sending juveniles to adult courts.¹⁹

11. In the United States, there are an estimated 2,484 juveniles serving life sentences without parole.²⁰ Nationally, 59% of children were sentenced to life without the possibility of release for their first ever criminal conviction. Of these children, 16% were between the ages of 13 and 15 when they committed their crimes, and 26% were sentenced under a felony murder charge, where they did not pull the trigger or carry the weapon.²¹ In addition, African American youth are disproportionately represented through every stage of the juvenile justice process, including among those children serving life sentences without the possibility of release.²²

12. HRA encourages those countries that have not yet adopted domestic legislation prohibiting juvenile life sentences without the possibility of release to take action in order to comply with international norms. For countries which allow for the possibility of release, implementation of the release process should be strengthened. HRA commends Tanzania for passing legislation in 2007 which clarified the authority for court review and release in

¹⁶ In regard to Burkina Faso and Cuba, it is technically possible under the law to sentence a child 16 years of age to life without parole but they do not know of any cases where this has been imposed. It is unclear what the law provides for in South Africa, as a Child Justice Bill, which would outlaw the sentence for youths, has been pending for over five years. *Id.* at 989.

¹⁷ *The Paquete Habana*, 175 U.S. 677, 699 (1900).

¹⁸ From 1962 until 1981, an average of 2 youth offenders in the US entered prison each year with life without parole sentences. See Amnesty International and Human Rights Watch, "The Rest of Their Lives: Life Without Parole for Child Offenders in the United States," 2005 at 31. Available at <http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf>.

¹⁹ Note that crime levels reached their peak in 1994 and have been declining since. See Jeffrey Fraser, *Facts v. Perceptions: "Superpredator" theory belies crime data*, 32 Children, Youth & Family Background (Newsletter to University of Pittsburgh Office of Child Development) (June 2000), available at <http://www.education.pitt.edu/ocd/publications/backgrounds/32.pdf>

²⁰ Connie de la Vega and Michelle Leighton, "Sentencing Our Children to Die in Prison: Global Law and Practice." 42 U.S.F. L. Rev. 983 at 985.

²¹ African American youth make up 16% of the total U.S. child population, yet constitute 58% of the prison population. The Center for Law and Global Justice, The Frank C. Newman International Human Rights Clinic, University of San Francisco School of Law, in association with Human Rights Advocates, "Sentencing Our Children To Die in Prison" November 2007 Report. Available at http://www.law.usfca.edu/home/CenterforLawandGlobalJustice/LWOP_Final_Nov_30_Web.pdf

²² *Id.* at 993.

juvenile cases.²³ Under this law, several children sentenced to life terms were granted parole in 2007.

13. Israel has given assurances that, while no absolute prohibition on life sentences exists, juveniles are eligible to apply for parole.²⁴ While commendable, concern remains that release proceedings are difficult to initiate and parole is rarely granted. In addition, parole hearings for children convicted of violating security regulations in Israel and the Occupied Territories are not conducted by the independent judiciary but by the Israeli Defense Forces Chief of Staff, who has sole discretion. Officials have indicated that this determination can be subject to review by the Israeli High Court of Justice.²⁵

Alternatives To Juvenile Incarceration

14. The International Covenant on Civil and Political Rights (“ICCPR”) and the CRC provide that deprivation of liberty for child offenders should be a “measure of last resort.” In appropriate instances alternatives to juvenile imprisonment have been implemented that successfully focus on rehabilitation and recidivism reduction. Germany withdrew traditional sentencing for juveniles in the 1970s, replacing the conventional model with a system focused on educational programs, rehabilitation, reparation, and victim-offender reconciliation.²⁶ The maximum length of youth imprisonment in Germany is ten years and they experience a low level of juvenile recidivism.²⁷ Additionally, there are a number of successful programs (both private and government funded) in the United States focused on alternatives to juvenile incarceration.²⁸

15. New Zealand has successfully implemented an alternative to juvenile incarceration with a restorative justice model that focuses on the needs of the community, the victim and the offender, rather than simple retribution. Since 1989, New Zealand has diverted many youth offenders from the court system into Family Group Conferences. These conferences provide a viable alternative to the traditional criminal system by integrating rehabilitation, restitution, and a focus on collective responsibility instead of incarceration. The result is that New Zealand has greatly lowered their rates of recidivism.²⁹

²³ *Id.* See also, E-mail from the Tanzanian Mission to Michelle Leighton, Dir. of Human Rights Programs, Ctr. For Law & Global Justice, Univ. of San Francisco School of Law (Nov., Dec. 2007) (On file with the Center for Law and Global Justice).

²⁴ Connie de la Vega and Michelle Leighton, “Sentencing Our Children to Die in Prison: Global Law and Practice.” 42 U.S.F. L. Rev. 983 at 1002.

²⁵ E-mail from the Legal Advisor to the Permanent Mission of Israel to Michelle Leighton, Dir. of Human Rights Programs, Ctr. For Law & Global Justice, Univ. of San Francisco School of Law (February 1, 2008, 2:20 p.m. PST) (On file with the Center for Law and Global Justice). See Israel Defense Forces Military Order 378, Article 44, Judea and Samaria, 1978. Conditional Release from Prison Law, Article 29, 2001. 1945 Defense (Emergency) Regulations, Article 55.

²⁶ Dr. Christian Pfeiffer, *Alternative Sanctions in Germany: An Overview of Germany’s Sentencing Practices*, Presentation for the Nat’l Inst. of Justice Research in Progress Seminar Series, Washington, D.C., (Feb. 1996), available at <http://www.ncjrs.gov/pdffiles/germany.pdf>

²⁷ Frieder Dunkel, *Juvenile Justice in Germany: Between Welfare and Justice* § 1 (Mar. 8, 2004), available at <http://www.esc-eurocrim.org/workgroups.shtml>

²⁸ Connie de la Vega and Michelle Leighton, “Sentencing Our Children to Die in Prison: Global Law and Practice.” 42 U.S.F. L. Rev. 983 at 1022-1024

²⁹ New Zealand Ministry of Justice, *Youth Justice Process in New Zealand – Family Group Conferencing*, <http://www.justice.govt.nz/youth/fgc.html> (last visited Jan. 28, 2009)

Recommendations

Human Rights Advocates recommends to the Human Rights Council:

16. Regarding the juvenile death penalty that it:
 - a. Urge all countries sentencing persons who committed crimes while under the age of 18 to death to overturn all such sentences regardless of regional or religious differences throughout the state. Legislation reflecting this change should be immediately adopted;
 - b. Recommend the development of a mechanism for reporting executions and implementations of the death penalty, including a means to determine the age of possible juveniles.

17. Regarding life without possibility of release sentences for child offenders that it:
 - a. Urge all states to explicitly abolish all legislation providing for life without parole or possibility of release sentences for child offenders;
 - b. Urge the U.S. to make parole available to juvenile offenders;
 - c. Require that the process of obtaining parole be realistic and transparent in all countries;

Appoint a Special Rapporteur to address violations of children's rights and include in the mandate updates on progress regarding this sentence and development of alternatives to juvenile incarceration.
