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**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.

[13 February 2010]

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

Juvenile Sentencing and Alternatives to Incarceration of Juvenile Offenders

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

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.

3. A *jus cogens* norm is a norm accepted and recognized by the international community of States as such from which no derogation is permitted.² The U.N. Convention on the Rights of the Child explicitly prohibits the death penalty and a life sentence without the possibility of parole.³ Every country in the world except the United States and Somalia has ratified it; the prohibition of the juvenile death penalty is so widely practiced and accepted, it has reached the level of a *jus cogens* norm.

4. Despite many improvements in banning the practice, some countries continue to execute juvenile offenders. Since 2005 when the U.S. banned the practice⁴, five states are reported to have executed juvenile offenders. The five countries are Iran, Saudi Arabia, Sudan, Pakistan and Yemen.⁵ In total, there have been at least thirty-four known executions of juvenile offenders since 2006⁶. Iran has emerged as the worst violator of the prohibition with at least twenty-eight executions.⁷ Iran has also executed at least seven juvenile offenders in 2008 and at least three in 2009.⁸ And in May 2009, two men convicted of offenses when they were 17 were beheaded in Saudi Arabia.⁹ There are also reports of two

¹ Committee on the Rights of the Child, Children's rights in Juvenile Justice, General Comment No. 10, art. 75, U.N. Doc. CRC/C/GC/10 (2007)

² Vienna Convention on the Law of Treaties, art. 53, 1155 U.N.T.S. 331, (May 23, 1969).

³ U.N. Convention on the Rights of the Child, art. 37(a), 1577 UNTS 3 (November 20, 1989)

⁴ *Roper v. Simmons*, 543 U.S. 551 (2005)

⁵ Human Rights Watch, Publications, "The Last Holdouts," September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

⁶ Amnesty International, "Execution of Juveniles since 1990." Available at: <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990> (Accessed February 1, 2010)

⁷ Amnesty International, "Execution of Juveniles since 1990." Available at: <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990> (Accessed February 1, 2010)

⁸ Human Rights Watch, News, "Iran: Revoke Death Sentences For Juvenile Offenders," November 4, 2009. Available at: <http://www.hrw.org/en/news/2009/11/03/iran-revoke-death-sentences-juvenile-offenders>.

⁹ Amnesty International, News and Reports, "Two Juvenile Executions Are "Deplorable Additions to Grim Tally" in Saudi Arabia, Says Amnesty International." May 11, 2009. Available at: <http://www.amnestyusa.org/document.php?id=ENGUSA20090511001>

executions in Sudan, one in Pakistan, and one in Yemen.¹⁰ This is surprising considering that in 2000, Pakistan had issued a juvenile justice ordinance banning the death penalty for persons under 18 at the time of the offense.¹¹

5. 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 135 juvenile offenders are on death row in Iran¹² while there are at least 6 in Sudan, 2 in Pakistan and 18 in Yemen.¹³ In addition, there are at least 8 cases involving juvenile offenders on death row in Saudi Arabia.¹⁴

6. There have also been reports that Islamic militia executed an individual who had initially been reported as an adult offender but later confirmed as a juvenile in Somalia.¹⁵ HRA urges states to keep an accurate record of the ages of those in the juvenile justice system as both a matter of accountability and a mechanism for the appropriate administration of justice. However, HRA does recognize the efforts that Somali Transitional Federal Government is making to become a to ratify the CRC.¹⁶ Their intention to comply with the high standards in the treaty is commendable and we urge them to do so as soon as possible.

Life Imprisonment without Possibility of Parole or Release for Child Offenders

7. 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.¹⁷ There are ten remaining countries besides the United States that have laws that could permit the sentencing of child offenders to life without parole: Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka.¹⁸ HRA urges those countries that still retain laws allowing juvenile life without parole to consider legislation to explicitly abolish the practice. The prohibition, arguably, has now reached the

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

¹¹ Human Rights Watch, Publications, “*The Last Holdouts*,” September 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>.

¹² Amnesty International, News, “*Delara Darabi Commemorated at Actions Against the Death Penalty in Iran*,” May 8, 2009. Available at: <http://www.amnesty.org/en/news-and-updates/news/delara-darabi-commemorated-actions-against-death-penalty-iran-20090508>.

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 Amnesty International, News and Reports, “Two Juvenile Executions Are “Deplorable Additions to Grim Tally” in Saudi Arabia, Says Amnesty International,” May 11, 2009. Available at: <http://www.amnestyusa.org/document.php?id=ENGUSA20090511001>

¹⁵ Amnesty International, Press Releases, “*Somalia: Girl Stoned was a Child of 13*,” October 31, 2008. Available at: <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031>

¹⁶ United Nations Children’s Fund, Press Releases, “*UNICEF welcomes decision by the Somali Transitional Federal Government to ratify the Convention on the Rights of the Child*,” November 20, 2009. Available at: http://www.unicef.org/infobycountry/media_51841.html.

¹⁷ Convention on the Rights of the Child, art. 37(a), 1577 UNTS 3 (November 20, 1989)

¹⁸ Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, _ U.S. _ (2010) (Nos. 08-7412, 08-7621) pg. 17

level of a *jus cogens* norm. As such, it is binding on all states, including those that have not formally ratified the CRC themselves.

8. Juvenile life sentences have not been consistently and historically applied in the United States. 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 There is no evidence of any country, besides the United States, with child offenders sentenced to life without the possibility of release.²⁰

9. In the United States, there are an estimated 2,574²¹ juveniles serving life sentences without parole. However, recent efforts in the United States that have moved towards eliminating the practice of juvenile life without parole should be recognized. Most notably, in November 2009, the U.S. Supreme Court heard two cases that were appealed from Florida regarding juvenile life without parole sentences given to two juveniles for non-homicide related crimes.²² California is also considering passing a bill that will allow juveniles to apply for re-sentencing after serving ten years.²³ California has the second highest number of juveniles serving life without parole sentences in the U.S..²⁴ If they succeed on passing such legislation, it could affect the lives of more than 250 juveniles. These efforts are commendable but HRA urges the United States to implement national legislation to eliminate the practice of juvenile life without parole sentencing.

Alternatives to Juvenile Incarceration and Restorative Justice

10. 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.” There have been alternatives to juvenile imprisonment based on the principle of restorative justice that have been implemented successfully to focus on rehabilitation and recidivism reduction.

11. Both Australia and New Zealand have successfully implemented a restorative justice model that focuses on the having the offender understand the impact of their offense on the victim, themselves and the community rather than simply applying retribution. The two countries focus on diverting youth offenders from the court system into Family Conferences where the youth are held accountable for their actions while appropriate consideration as to their rehabilitation is considered. These conferences are a viable alternative to incarceration. As a result, Australia has a high majority of their recommended

¹⁹ Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, _ U.S. _ (2010) (Nos. 08-7412, 08-7621) pg. 17

²⁰ Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, _ U.S. _ (2010) (Nos. 08-7412, 08-7621) pg. 17

²¹ Human Rights Watch, News, “State Distribution of Juvenile Offenders Serving Juvenile Life Without Parole (JLWOP),” October 2, 2009. Available at: <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>.

²² Supreme Court of the United States, Docket. *Graham v. State of Florida and Sullivan v. State of Florida*. Available at: <http://origin.www.supremecourtus.gov/docket/08-7412.htm> and <http://origin.www.supremecourtus.gov/docket/08-7621.htm>

²³ Fair Sentencing for Youth, Bills & Cases, “California: What is SB399?” Available at: <http://www.fairsentencingforyouth.org/legislation/what-is-sb399/>

²⁴ The Campaign for the Fair Sentencing of Youth, “Stats by State.” Available at: <http://www.endjlop.org/the-issue/stats-by-state/> (Accessed February 1, 2010).

family conferences complied with²⁵ and New Zealand has reported a greatly lowered rate of recidivism.²⁶

12. The U.N. Human Rights Council issued a resolution that urged UN agencies and programs to support the activities of states in strengthening juvenile justice capacities.²⁷ Brazil is an example of how such efforts can impact programs dedicated to alternatives to incarceration. In March 2005, the U.N. Development Programme gave a small grant to Brazil where they began restorative justice programs.²⁸ As a result, there has been a movement called Restorative Circles that focuses on bringing the offender, victim and community together in the aftermath of crime to discuss and negotiate a way for the juvenile to resolve conflict. It has drastically reduced the appearance of youth before a judge.²⁹

13. HRA urges more states to actively implement national restorative justice programs that are focused on diverting juveniles from adult court: rehabilitation and helping youth to reach their full potential to should be of highest priority. Successful programs have shown that involving the victim, parents and the community at large has been important in determining a suitable outcome to address the needs of all the parties to the offense.

Recommendations

14. Human Rights Advocates recommends to the Human Rights Council:
- a. Regarding the juvenile death penalty that it:
 - 1) Continue to condemn countries that have contravened international law and sustained the practice of juvenile execution. .
 - 2) Urge countries to keep accurate records of the age of juvenile offenders.
 - b. Regarding life without possibility of release sentences for child offenders that it:
 - 1) Urge all states to explicitly abolish all legislation providing for life without parole or possibility of release sentences for child offenders;
 - 2) Urge all states to recognize that the transfer of juveniles to adult court should only be for extremely serious offenses and should include the supervision of juvenile court or other accountability.
 - c. Regarding alternatives to juvenile incarceration and restorative justice that it:
 - 1) Urge all states to recognize that the basic goals of restorative justice are rehabilitation and restoration and to actively develop restorative justice

²⁵ Government of South Australia, Department of Justice, Office of Crime Statistics and Research, “*Crime and Justice in South Australia, 2006*,” published 2008 at pg. 6. Available at: http://www.oscar.sa.gov.au/docs/crime_justice/JJ_Text2006.pdf

²⁶ New Zealand Ministry of Justice, Youth Justice Process in New Zealand – Family Group Conferencing, <http://www.justice.govt.nz/youth/fgc.html> (last visited February 3, 2010).

²⁷ Human Rights in the Administration of Justice, in Particular Juvenile Justice, U.N. H.R.C., 10th Session, U.N. Doc. A/HRC/10/L.15 (March 20, 2009)

²⁸ United Nations Development Programme, Evaluation Resource Center, BRA/05/009 Promoting restorative pract. brazilian justice. Available at: <http://erc.undp.org/evaluationadmin/manageevaluation/viewevaluationdetail.html?evalid=1937>

²⁹ The Center for Nonviolent Communication, Dominic Barter, “Restorative Circles in Brazil,” February 27, 2009. Available at: <http://www.cnvc.org/node/6254>

programs that help support the child in assuming a constructive role in society;

2) Recognize that the important aspects of a solid restorative justice program involve removing juveniles from the adult system and actively involving the offenders' parents and the community in determining how they should make amends for their offense.

17. Human Rights Advocates urges Somalia and the United States to continue the efforts towards ratification of the Convention on the Rights of the Child.
