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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., 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 2011]

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

Juvenile justice: Issues in juvenile sentencing and detention

1. Human Rights Advocates submits this statement to address issues of juvenile justice, specifically juvenile sentencing and juvenile detention.

Juvenile sentencing

Death penalty sentencing

2. Sentencing juvenile offenders to death has long been prohibited by international law. The United Nation Convention on the Rights of the Child (CRC) absolutely prohibits the death penalty; Article 6, paragraph 5 of the International Convention on Civil and Political Rights (ICCPR) prohibits the death penalty as applied to offenders under the age of 18. The ban against the death penalty as applied to juveniles is widely practiced across the globe; such norms that are universally recognized and accepted by the international community are considered *jus cogens* norms, from which no country can derogate.¹

3. Under international law, juvenile criminal offenders are persons under the age of 18, and should not be sentenced under adult laws.² There have been recent improvements to recognize 18 as the age of majority, notably Sudan which amended its laws in January of 2010 to establish the age of adulthood at 18 nationwide.³ Saudi Arabia also enacted a measure raising the age of adulthood from 15 to 18, although the measure has yet to be passed into law and therefore judges continue to base the determination of adulthood on physical signs of puberty at the time of the trial.⁴ In Iran, puberty is still determined by Sharia law; boys are considered adults and can be sentenced as such when they reach the age of 14 years; girls at age 8.⁵ Twelve states in Northern Nigeria follow Sharia law which sets adulthood at a younger age than 18.⁶

4. Three countries continue to sentence juveniles to the death penalty: Iran, Saudi Arabia and Sudan.⁷ In 2009 these three countries executed 8 juveniles; throughout the year 2010 only 1 juvenile was executed in Iran, a marked improvement.⁸

Life without parole sentencing

5. Juvenile life without possibility of parole is expressly prohibited by international law and treaties. Article 37(a) of the CRC expressly forbids sentencing children under the age of 18 to a life sentence without the possibility of parole. The ICCPR requires that an individual's status as a minor be taken into account in sentencing. The prohibition against juvenile life without parole is so widely practiced that it reached the level of a *jus cogens*

¹ Vienna Convention on the Law of Treaties, art. 53, 1155 U.N.T.S. 331, (May 23, 1969).

² 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).

³ Human Rights Watch, Publications, "Iran, Saudi Arabia, Sudan: End Juvenile Death Penalty," October 8, 2010. Available at: <http://www.hrw.org/en/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Human Rights Watch, Publication, "Iran: Events of 2009," Available at: <http://www.hrw.org/en/world-report-2010/iran>.

⁸ Id.

norm.⁹ Currently, 11 countries have laws that allow for juveniles to be sentenced to life without parole, although they do not sentence juveniles so harshly in practice.¹⁰

6. The United States has made progress in eliminating juvenile life without parole in the recent Supreme Court decision of *Graham v. Sullivan* ruling that juveniles cannot be sentence to life without parole for non-homicide offenses.¹¹ The United States, however, still allows life sentences for homicide crimes, affecting 2,466 juveniles.¹² The United States federal justice system has approximately 36 juveniles serving life without parole.¹³ Despite the *Graham* decision, the state of Florida still has no parole system in place for offenders sentenced after 1 October 1983.¹⁴ HRA urges the United States that measures are to be put in place to ensure that the 123 juveniles sentenced for non-homicide crimes (77 serving in Florida)¹⁵ have meaningful access to the parole system.

Sentencing that does not consider the age of the offender

7. Under the ICCPR, the Conventional Against Torture (CAT), and the Convention on the Elimination of Racial Discrimination (“CERD”) the age of the juvenile and his status as a minor must be considered at sentencing.

8. Several countries that did not consider the age of the offender have taken steps to ensure that the age be taken into consideration at the time of sentencing. Hungary passed legislation on 21 July 2010 lowering the sentences of juveniles and requiring that minors be tried in juvenile court.¹⁶ Despite this initial progress, problems remain with the sentencing of juveniles arrested in Hungary during protest participation.¹⁷ Similarly, HRA applauds India’s federal Juvenile Justice Care and Prevention Act mandating separate sentencing for juvenile offenders.¹⁸ Unfortunately, this law has not been implemented in practice.¹⁹

9. Currently in Indonesia children as young as 8 can be tried for adult crimes under the Juvenile Justice Act (JJA) passed in 1997.²⁰ In the United States individual state guidelines do not require that an offender’s age be considered during sentencing. For example both Florida and Pennsylvania follow a mandatory sentencing scheme for juvenile offenders;

⁹ Vienna Convention on the Law of Treaties, art. 53, 1155 U.N.T.S. 331, (May 23, 1969).

¹⁰ Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, 130 S. Ct. 2011 (2010) (Nos. 08-7412, 08-7621) pg. 17

¹¹ *Graham v. State of Florida*, 130 S. Ct. 2011 (2010).

¹² Human Rights Watch, News, “State Distribution of Juvenile Offenders Serving Juvenile Life Without Parole (JLWOP),” Oct. 2, 2009. Available at: <http://www.hrw.org/en/news/2009/10/02/state-distribution-jvenile-offenders-serving-jvenile-life-without-parole>. (Last Visited Feb. 5, 2011)

¹³ The number of federal offenders serving juvenile life without parole sentences is approximate since accurate federal data is not available. The Campaign for the Fair Sentencing of Youth: “Stats by State”. Available at: <http://www.endjlwop.org/the-issue/stats-by-state>.

¹⁴ Florida Parole Commission: “Parole and Post Release.” Available at: <https://fpc.state.fl.us/Parole.htm> (Accessed January 30th, 2011).

¹⁵ *Graham v. State of Florida*, 130 S. Ct. 2011, 2024 (2010).

¹⁶ Children Release from Prison Trying to Rebuild Their Lives, Today’s Zaman, August 14, 2010. Available at: <http://www.todayszaman.com/news-218989-101-children-released-from-prison-trying-to-rebuild-their-lives.html>.

¹⁷ Id.

¹⁸ Human Rights Watch, Publications: “India: Implement Juvenile Justice laws in Kashmir,” Available at: <http://www.hrw.org/en/news/2010/07/21/india-implement-jvenile-justice-laws-kashmir>.

¹⁹ Id.

²⁰ Heru Andriyanto, Indonesia’s Juvenile Law System Offers Little Justice for Children., Jakarta Globe, February 21, 2010. Available at: <http://www.thejakartaglobe.com/news/indonesias-jvenile-law-system-offers-little-justice-for-children/359974>

once a child is indicted they are “tried and handled in every respect as an adult” and once convicted they must be sentenced as an adult.²¹

Juvenile detention

10. Under article 37 of the CRC the deprivation of liberty for juveniles should be of last resort and for the shortest appropriate period of time. Under the Committee on the Rights of the Child state parties must take adequate legislative and other measures to reduce the use of pretrial detention.²² Under subsection (c) of article 37 of the CRC and under Article 10(2)(b) of the ICCPR every child deprived of liberty shall be separated from adults and shall not be placed in an adult prison or other facility.

11. In the Jammu and Kashmir provinces of India the High Court directed the local governments to set up juvenile courts and observation homes separating juveniles from adults under the Public Safety Act.²³ These regions, however, have not taken other steps to implement and fully comply with the Act.²⁴ Under the JJA in Indonesia, children as young as 8 can be detained in police cells. President Yudhoyono stated in February of 2010 that he hoped to review the laws and regulations governing juvenile offenders; HRA urges Indonesia to undertake the stated review of the juvenile laws. In Zimbabwe adults, juveniles and mothers with their children share the same prisons as they await trial for their crimes; a Zimbabwe prison currently houses a 4 year old child born there while her mother still awaits trial.²⁵ Conditions within juvenile systems remain unsafe. Despite having a separate juvenile detention system, Brazil’s juvenile detention centers are overcrowded, and juveniles experience abuse, filth and a lack of education, rehabilitation and vocation resources.²⁶ The conditions of the prisons in Brazil show a heightened use of pretrial detention in deplorable conditions.

Recommendations

12. Human Rights Advocates recommends that the Human Rights Council:

Organize an all day panel at the March 2012 meeting to address the issues of juvenile sentencing, including the death penalty, life without parole and consideration of the juvenile’s status as a minor, as well as juvenile detention.

13. Human Rights Advocates urges all states to:

(a) Abolish the practice of sentencing juveniles to the death penalty and to establish the national age of adulthood at 18 years.

(b) Abolish the practice of sentencing juveniles to life without the possibility of parole and ensure that all children are able to come before a parole board.

²¹ Fla. Stat. Ann. § 775.082; 18 Pa. Cons. Stat. Ann. §§ 1102, 9711.

²² CRC/C/GC/10 page 21.

²³ Human Rights Watch, Publications: “India: Implement Juvenile Justice laws in Kashmir,” Available at: <http://www.hrw.org/en/news/2010/07/21/india-implement-juvenile-justice-laws-kashmir>.

²⁴ Id.

²⁵ Zimbabwe: Children doing time with their mothers, Irin News, August 11, 2010. Available at: <http://www.irinnews.org/Report.aspx?ReportId=90137>

²⁶ Human Rights Watch, Publications: “Brazil: Youths Abused in Rio’s Detention Centers,” Available at: <http://www.hrw.org/en/news/2004/12/06/brazil-youths-abused-rio-s-detention-centers>

(c) Create and implement a separate sentencing system for juvenile offenders that take into account their age.

(d) Maintain detention facilities for juvenile offenders from those for adults. These facilities should be clean and safe.
