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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 the 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.

[8 February 2012]

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

Juvenile sentencing schemes**

Human Rights Advocates¹ submits this statement to address the imposition of the death penalty, life imprisonment without possibility of release, and corporal punishment on child offenders, as well as a problem of age determination.

Death penalty

Sentencing juvenile offenders to death is prohibited by international law. Article 37(a) of the Convention on the Rights of the Child (CRC) and Article 6, §5 of the International Convention on Civil and Political Rights (ICCPR) prohibit the imposition of capital punishment on offenders who were under 18 at the time of the crime. The ban against this practice became universally accepted by the international community, and is now considered a *jus cogens* norm, from which no country can derogate.

Only one country reportedly executed juvenile offenders in 2010 and 2011, down from three countries in 2009. Eight juvenile offenders were executed worldwide in 2009 (in Iran, Saudi Arabia, and Sudan), and one in 2010 (In Iran).² It is reported that Iran executed at least four juvenile offenders in 2011,³ although authorities only acknowledge one.⁴

Although universally condemned and prohibited by international law, some States' laws still allow capital punishment for crimes committed by juvenile offenders. These countries include Iran, Pakistan, Saudi Arabia, Sudan, the United Arab Emirates and Yemen. In addition, many child offenders remain on death row in Nigeria, although this country is not known to have executed a juvenile offender since 1997.⁵ HRA urges all States to abolish the practice of sentencing child offenders to capital punishment and to remove from death row all remaining persons who were sentenced to death for crimes committed before they were eighteen.

Life imprisonment without possibility of release

Life sentences without the possibility of release for offences committed by juveniles are proscribed by international law. Article 37(a) of the CRC expressly prohibits it and Article 14, §4 of the ICCPR requires that an individual's status as a minor be taken into account in sentencing. The prohibition against juvenile life imprisonment without the possibility of release is so widely practiced that it reached the level of a *jus cogens* norm.

Only one country imposes this sentence in practice. In the United States of America, approximately 2,570 youth offenders are currently serving life without parole sentences for

** Child Rights Information Network, and Global Initiative to End All Corporal Punishment, NGOs without consultative status, also share the views expressed in this statement.

¹ And Child Rights Information Network and Global Initiative to End All Corporal Punishment of Children.

² HUMAN RIGHTS WATCH, *Iran, Saudi Arabia, Sudan: End Juvenile Death Penalty*, October 8, 2010, available at <http://www.hrw.org/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>.

³ INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, *Execution of juvenile raises total to 4 in 2011*, September 22, 2011, available at <http://www.fidh.org/Execution-of-juvenile-raises-total>.

⁴ AMNESTY INTERNATIONAL, *Annual Report 2011: Iran*, available at <http://www.amnesty.org/en/region/iran/report-2011#section-64-13>.

⁵ *Supra*, note 2.

crimes committed when they were under the age of eighteen.⁶ HRA urges the United States to abolish this practice at the federal level and to educate states to ensure that all child offenders are afforded the chance to come before a parole board.

Twelve countries have laws allowing life imprisonment without the possibility of release for juveniles or have ambiguous statutory language which suggest that such sentences could be imposed, though none has anyone serving the sentence. These countries are Antigua and Barbuda, Argentina, Australia, Cuba, Dominica, Fiji, Saint Vincent and the Grenadines, the Solomon Islands, Sierra Leone, Sri Lanka, Tonga and Zambia.

In Antigua and Barbuda, for instance, a person who committed a crime under the age of eighteen may be detained “during Her Majesty's pleasure.”⁷ Although there is no known child offender serving this indeterminate sentence, the law appears to allow life sentences without the possibility of release. HRA urges those countries to amend their laws even though they are not applied in practice, in order to rid of ambiguity and to comply with their international obligations under the CRC.

Corporal punishment

The human rights imperative to prohibit all corporal and other degrading forms of punishment of children is premised on the right of every person to respect for his or her dignity and physical integrity, originally formulated in the Universal Declaration of Human Rights⁸ and affirmed in the CRC, other treaties, and human rights judgments.

Article 37(a) of the CRC requires states to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Article 19, §1 requires states to protect children “from all forms of physical or mental violence.” The Committee on the Rights of the Child has repeatedly emphasized that this includes the prohibition of corporal punishment in all settings, including in judicial justice systems.⁹

Human rights standards do not support the assertion that a certain degree of “reasonable” corporal punishment is in the best interest of the child. The Committee stated that “interpretation of a child’s best interests ... cannot be used to justify practices, including corporal punishment or other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity.”¹⁰ International law also requires that manifestation of religious beliefs be limited in order to protect the fundamental rights and freedoms of others.¹¹

Other international instruments include provisions that have been interpreted as requiring the legal prohibition of corporal punishment.¹² This was affirmed by the Human Rights

⁶ Human Rights Watch, *Against All Odds, Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States* 1 (2012).

⁷ *Offences Against the Person Act*, Part I, para. 3(1).

⁸ Article 5.

⁹ Committee on the Rights of the Child, General Comment No. 8 (2006); General Comment No. 10 (2007); General Comment No. 13 (2011).

¹⁰ General Comment No. 8, *supra* note 9, para. 26.

¹¹ *Id.*, para. 29.

¹² ICCPR (articles 7, 10, 24(1)); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (Dec. 10, 1984).

Committee, other monitoring bodies, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹³

Case law also supports the ban on corporal punishments in juvenile justice sentencing schemes. In 1978, the European Court of Human Rights ruled that judicial birching of a juvenile in the United Kingdom breached Article 3 of the European Convention, which bars inhuman or degrading treatment or punishment.¹⁴

Corporal punishment as a court sentence for children convicted of offences is prohibited in 155 States. Yet, 42 States still allow this practice.¹⁵ For instance, Malaysia and Nigeria allow the whipping of male children found guilty of an offence.¹⁶ In certain countries, children may be sentenced to punishments of extreme violence, including flogging, stoning, and amputation. The Committee on the Rights of the Child has expressed concern about such sentencing of children to states including Brunei Darussalam, Iran, Nigeria, Saudi Arabia, Yemen, and has recommended that these countries amend existing laws to make these practices unlawful.¹⁷ HRA urges all States to abolish the practice of judicially imposing corporal punishments on juveniles.

Age determination problem

Under international law, juvenile offenders are persons under the age of eighteen at the time of the crime. They should not be sentenced under laws applicable to adults.¹⁸

In many states, the lack of birth registration sometimes makes a child's age undeterminable, and puts juvenile offenders at risk of being treated as adults at the time of the crime.¹⁹ HRA recommends that in cases where the age of a minor is in doubt, the minor shall be presumed to be under the age of majority until such an assumption is rebutted by the prosecution. If this burden is not met, the accused should be tried as a juvenile.

Recommendations

HRA asks the Human Rights Council to urge all states to:

- Abolish the practice of sentencing child offenders to the death penalty and to remove from death row all remaining persons who were sentenced to death for crimes committed before they were eighteen.
- Abolish the practice of sentencing juveniles to life imprisonment without the possibility of release, and to ensure that all child offenders come before a parole board.

¹³ Human Rights Committee, General Comment No. 20 (1992); Concluding Observations of the Committee Against Torture; Report of the Special Rapporteur on the question of torture, E/CN.4/2003/68, para. 26 (2002).

¹⁴ *Tyrer v. United Kingdom*, 26 Eur. Ct. H. R. 5 (ser. A) (1978).

¹⁵ Global Initiative to End All Corporal Punishment of Children, Ending legalised violence against children, Global Report 2011 7 (2011).

¹⁶ Malaysian Child Act 2001, para. 91(1)(g); Nigerian Criminal Code Act, para. 18.

¹⁷ See Concluding Observations: Brunei Darussalam, CRC/C/15/Add. 219 (2003); Iran, CRC/C/15/Add. 254 (2005); Nigeria, CRC/C/NGA/CO/3-4 (2010); Saudi Arabia, CRC/C/SAU/CO/2 (2006); Yemen, CRC/C/15/Add. 267 (2005).

¹⁸ General Comment No. 10, *supra* note 9.

¹⁹ UNICEF, Factsheet: Birth Registration, available at <http://www.unicef.org/newsline/2003/03fsbirthregistration.htm>.

- Amend ambiguous laws to ensure no child offender is sentenced to life imprisonment without the possibility of release
 - Abolish the practice of sentencing juveniles to receive corporal punishment, and to protect all children's dignity and physical integrity.
 - Adopt laws requiring that in doubtful cases as to the age of an accused, the prosecution bear the burden of proving that the accused is over eighteen.
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