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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.

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

Extreme criminal sentences: Violations of international standards

Introduction

Extreme sentencing practices, including facial and de facto life without parole, contravene the International Covenant on Civil and Political Rights (ICCPR) by imposing sentencing schemes that are retributory rather than reformatory.¹ The Working Group (WG) on Arbitrary Detention states that arbitrariness may include detention authorized by domestic law, including sentences that are disproportionately long or harsh.² Such practices include both life without parole (LWOP) and de facto LWOP, wherein offenders are not sentenced to life without the possibility of parole but the sentence effectively operates as such.

The dangers of extreme sentencing are especially apparent when applied to juveniles. Juveniles have been recognized to be less culpable than adult offenders and more receptive to rehabilitation.³ Moreover, young people sentenced to LWOP spend a disproportionate amount of their life behind bars, as compared to average adult offenders.⁴ The problems inherent in extreme sentencing are further compounded by a rise in prison privatization, which incentivizes sentencing offenders to lengthy terms to derive the greatest profit.

Recent case law suggests that international attention and pressure may have a positive effect on domestic law. In *Roper v. Simmons*, which outlawed the death penalty for juveniles in the United States, the Supreme Court stated that while not controlling, international opposition to the death penalty provided “respected and significant confirmation” for the Court’s decision.⁵ Later, in *Graham v. Florida*, the Supreme Court noted that the international consensus against juvenile life without parole for non-homicide crimes was relevant to determining that such practices were unconstitutional.⁶ Both practices have been addressed by Council resolution.

Given that this focus has previously had an effect on domestic laws, Human Rights Advocates encourages the Council to focus on all extreme sentencing practices, to help encourage states to develop more humane laws.⁷

Extreme sentencing practices⁸

A. Life without parole

Life without the possibility of parole sentences are distinct from life sentences in that the former ensures, at the time of sentencing, that the convicted person will unconditionally spend their life behind bars, while the latter allows for the possibility of rehabilitation and

¹ ICCPR, Art.10(3).

² Working Group on Arbitrary Detention, Report to the General Assembly, 61-62, A/HRC/22/44 (2012).

³ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

⁴ Connie de la Vega, Amanda Solter, Soo-Ryun Kwon, Dana Isaac, *Cruel and Unusual: U. S. Sentencing Practices in a Global Context*, 49, USF School of Law Center for Law and Global Justice, (2012) [hereinafter *Cruel and Unusual*].

⁵ *Roper*, supra note 3 at 578.

⁶ *Graham v. Florida*, 130 S.Ct. 2011, 2034 (2010).

⁷ This report uses the United States as an example of extreme sentencing practices, but the US is certainly not alone in its sentencing schemes.

⁸ The information and statistics in this report are based on statutes and not necessarily the laws in practice. Actual practices within the States may constitute violations.

relief to be determined at some later time.⁹ LWOP thus functions very similarly to the death penalty, by removing from the outset any chance for rehabilitation or reform.¹⁰

This report focuses on extreme sentencing in the United States where LWOP is legal and where 27 states require mandatory LWOP for at least one specified offense.¹¹ In addition to the United States, only 37 countries have known LWOP statutes; this represents only 20% of the countries in the world.¹² Of those countries that do allow LWOP, the number of prisoners actually serving LWOP sentences is very low.¹³ Finally, the constitutions of 10 countries prohibit life-long.¹⁴

B. De facto life without parole sentences

In addition to LWOP sentences, numerous prisoners face the equivalent of life without parole without ever actually being sentenced to LWOP. By virtue of consecutive sentences or recidivist and habitual offender statutes, individuals throughout the world are serving de facto LWOP sentences.

When an offender is charged with numerous offenses, some countries issue consecutive sentences, wherein each sentence is served separately and successively.¹⁵ Alternatively, some countries cap the maximum time that can be served for these consecutive sentences while others issue concurrent sentences, whereby the lesser charges merge with the greatest underlying offense.¹⁶ Consecutive sentencing is an extremely problematic practice for a number of reasons; not least of all is that the date for possible parole often exceeds the offender's expected lifetime. In these instances, offenders may serve de facto life without parole sentences for what amounts to a single transaction or non-violent crime.

Seventy-nine countries in the world do not have consecutive sentences or mandate that the lesser offenses must merge with the most serious offense when both are a part of the same act.¹⁷ Forty-four other countries cap the length of time allowed for consecutive sentences; while some countries, like North Korea, have a general cap on all consecutive sentences, and others, like Finland, have a cap for some offenses, but no cap for grave offenses or violent crimes.¹⁸ Eleven others, among them Sweden, Iceland and Hungary, issue only one sentence by enhancing the greatest underlying offense by a mandatory but capped certain number of years or percentage.¹⁹ The United States is among only 36 countries (21%) that continue to allow concurrent sentencing without any cap.²⁰

Another problematic sentencing scheme is habitual offender or recidivist statutes that give higher penalties to individuals with prior convictions. Such statutes vary greatly, but they are problematic especially when they remove judicial discretion and mandate that after a

⁹ Marc Mauer, Ryan S. King, & Malcolm C. Young, *The Sentencing Project, The Meaning of Life*, 4 (2004).

¹⁰ Robert Johnson, *Life Without Parole, America's Other Death Penalty*, *The Prison Journal*, Vol. 88, No. 2 (June 2008) which documents the effects of LWOP on prisoner's mental health due to isolation, loneliness, hopelessness and lack of control.

¹¹ Ashley Nellis & Ryan S. King, *The Sentencing Project, No Exit*, 27 (2009).

¹² *Cruel and Unusual*, *supra* note 4 at 25.

¹³ *Id.* at 25.

¹⁴ *Id.* There are constitutional bans in Angola, Brazil, Cape Verde, Colombia, Costa Rica, El Salvador, Portugal, Sao Tome & Principe, Timor Leste and Venezuela.

¹⁵ *Id.* at 36.

¹⁶ *Id.* at 41.

¹⁷ *Id.* at 41.

¹⁸ *Id.*

¹⁹ *Id.* at 42.

²⁰ *Id.*

certain number of convictions extreme sentences are applied.²¹ Accordingly, individuals may be sentenced to de facto life without parole for minor theft or drug charges.²² A number of countries have recognized that while prior convictions are important to consider at sentencing, they should not be dealt with mechanically; thus, 74% of countries have developed statutory schemes that give the judge discretion when weighing previous convictions.²³ Australia and Italy should be commended for adopting statutes that give the judge the discretion to weigh prior convictions and records on a case-by-case basis.²⁴ Additionally, the efforts of Nicaragua and Germany should be praised for passing legislation that provides that while previous convictions are a factor to be considered in sentencing, they should not be applied mechanically.²⁵

Extreme sentencing in the juvenile context

The problems present in extreme sentencing are further magnified when applied to juveniles. The United States should be commended for their efforts to address these problems, at least in the context of juvenile life without parole (JLWOP). In *Graham v. Florida*, the Supreme Court held that the imposition of JLWOP for non-homicide offenses was unconstitutional cruel and unusual punishment.²⁶ In the Court's reasoning they described a juvenile's reduced culpability given their vulnerability and relative inability to control their behavior.²⁷ Two years later, in *Miller v. Alabama* they held that mandatory JLWOP was also unconstitutional and acknowledged that juveniles are more receptive to rehabilitation, reform and reeducation.²⁸ Further, a juvenile sentenced to LWOP faces a more austere sentence than an adult, simply because their life expectancy is greater than that of the average adult offender.

While the United States should be commended for their recent efforts, the decisions in *Graham* and *Miller* leave several issues undecided. The decisions stop short of actually banning JLWOP as non-mandatory JLWOP sentencing for homicides are still permitted. Thus, LWOP is still an available (although not mandatory) punishment for juveniles convicted of murder and juveniles are still subjected to excessively long sentences amounting to de facto LWOP. Finally, part of what contributes to extreme sentencing of juveniles is the regular practice of transferring juveniles to adult Court. This practice is in direct conflict with the ICCPR under Article 10(3).

Conclusion and recommendations

Human Rights Advocates urges the Council to address:

- The practice and effects of de facto juvenile life without parole sentences and other extreme juvenile sentences in the context of the requirement that sentencing of youthful offenders focus on rehabilitation the limits of transfer of juveniles to adult court.
- LWOP sentences for all offenders and request that the WG on Arbitrary Detention examine whether the sentence violates international standards.

²¹ Id. at 31.

²² See for example *Ewing v. California*, 538 U.S. 11, 17 (2003) wherein the defendant was sentenced to 25 years to life for stealing golf clubs based on his prior non-violent felony convictions.

²³ Cruel and Unusual, *Supra* note 4 at 35.

²⁴ Id.

²⁵ Id.

²⁶ *Graham*, *Supra* note 6.

²⁷ Id. at 2026.

²⁸ *Miller v. Alabama*, 132 S.Ct. 2455, 2474 (2012).