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**RIGHTS OF THE CHILD**

**Written statement\* submitted by Human Rights Advocates,  
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.

[10 February 2005]

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

## PROHIBITIONS AGAINST CERTAIN CRIMINAL PENALTIES FOR JUVENILE OFFENDERS

### Juvenile Death Penalty

1. Human Rights Advocates (HRA) commends the Commission's leadership role in accomplishing the near universal abolishment of the execution of juvenile offenders, i.e., offenders who were under 18 at the time of the crime.
2. International law prohibits the execution of juvenile offenders. In 2002 and 2003, the Inter-American Commission on Human Rights (IACHR) issued decisions which stated that the ban on the juvenile death penalty has emerged both as a norm of customary international law and a jus cogens norm.<sup>1</sup> The almost complete cessation of the practice worldwide and the existence of numerous treaties that prohibit juvenile execution were critical factors leading the IACHR to reach its conclusions.
3. Customary international law binds all states except those who have persistently objected to the practice prior to it becoming law.<sup>2</sup> In contrast, jus cogens norms are more rigorous. Their non-derogable status derives from fundamental values held by the international community; their violation shocks the moral conscience.<sup>3</sup>
4. Although the vast majority of the world complies with the prohibition on the execution of juvenile offenders, some states continue, including the United States, to violate it. Although still legal in the United States, the execution of juvenile offenders is on the wane, pointing to an increasing recognition that the practice is outdated. In the past three years, a total of four juveniles were executed and seven were sentenced to death.<sup>4</sup>
5. In the fall of 2004, the United States Supreme Court reconsidered the constitutionality of the issue in Roper v. Simmons and is expected to issue a decision in April. HRC's resolutions condemning the practice were included in arguments presented to the court. While the case is pending, the Court has stayed the execution of three juvenile offenders.<sup>5</sup>
6. It is critical to note that the execution of juvenile offenders is not widespread in the United States. While the practice is legal in 19 states, only 7 have executed juvenile offenders since 1973.<sup>6</sup> Three states account for all of the juvenile executions in the past 10 years and over 80% of the total number of juvenile executions in the past 30 years.<sup>7</sup>

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<sup>1</sup> Report No. 62/02, Case No. 12.285, Domingues v. United States ¶ 84-84 (2002); Report No. 53/03, Case No. 12.412 Beazley v. United States, ¶47-50 (2003).

<sup>2</sup> Report No. 62/02, Case No. 12.285, Domingues v. United States ¶ 48 (2002).

<sup>3</sup> Id. at ¶ 49.

<sup>4</sup> Victor Streib, "The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – April 30, 2004," p.4 & 8. Notably, no juvenile offenders were executed in 2004.

<sup>5</sup> American Bar Association: *Recent Developments* available at

[www.abanet.org/crimjust/juvjus/juvdp.html](http://www.abanet.org/crimjust/juvjus/juvdp.html).

<sup>6</sup> Id. at 3.

<sup>7</sup> Id. at 5.

7. Public sentiment in the United States also suggests mass disapproval of the practice. Recent polls found that only 26% of Americans supported the juvenile death penalty.<sup>8</sup>

8. Iran appears to be the only country that executed juvenile offenders in both 2004 and 2005.<sup>9</sup> The Iranian government also seems to have sentenced several juvenile offenders to death during 2004 and 2005, and reportedly 30 juvenile offenders are on death row.<sup>10</sup> Some government officials deny the allegations, and a bill was recently introduced in parliament outlawing the execution and flogging of anyone under 18 years old.<sup>11</sup>

9. The final troubled area with respect to the juvenile death penalty is the Punjab province of Pakistan. In December 2004, the Lahore Supreme Court restored the juvenile death penalty. The Court's ruling contravenes President Pervez Musharaff's prohibition of the juvenile death penalty, imposed in 2000, as part of a program called the Juvenile Justice System Ordinance (JJSO).<sup>12</sup> HRA commends the Pakistani government for the implementation of JJSO, particularly its extension into parts of the country previously outside of its ambit.<sup>13</sup> JJSO, however, still does not reach some areas of the country.<sup>14</sup>

### **Juvenile Life Without Parole (Juvenile LWOP)**

10. Life without the possibility of release for juvenile offenders also violates international law. Article 37 of the Convention on the Rights of the Child (CRC) prohibits juvenile life without parole, and Article 40 of CRC emphasizes the importance of integrating juvenile offenders back into society. CRC is the most widely and rapidly ratified human rights treaty in history.

11. HRA urges the Commission to recognize that the ban on juvenile LWOP has emerged as a norm of customary international law. For a norm to be considered customary international law, the following elements must be met: a) the norm must be a concordant practice by a number of states, b) it must be a continuation or repetition of practice over a considerable period of time, c) there must be a conception that the practice is required by or consistent with prevailing international law, and d) there must exist general acquiescence in the practice by other states.<sup>15</sup> These elements are, indeed, satisfied. First, very few countries sentence juveniles to LWOP. Second, there is little evidence that this practice has ever been implemented in the past anywhere. In fact, the country where thousands of juvenile offenders are serving indeterminate

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<sup>8</sup> ABC News Poll: Malvo and the Death Penalty, 12/14/03. Available at [abcnews.go.com/images/pdf/883a38MalvoDeathPenalty.pdf](http://abcnews.go.com/images/pdf/883a38MalvoDeathPenalty.pdf) and Gallup Organization, May 14, 2002, Question ID: USAGALLUP.02MY06, R45D.

<sup>9</sup> Two juvenile offenders were executed in 2004. Available from the International Justice Project at <http://www.internationaljusticeproject.org/juvWorld.cfm>. On January 26, 2005, Iran Focus reported that a juvenile offender was hanged in Evin prison in Tehran. Available at <http://www.iranfocus.com/modules/news/>. Iran Focus has also reported that more than two juveniles offenders were executed in 2004. Their website is <http://www.iranfocus.com/modules/news/>.

<sup>10</sup> Iran Focus at <http://www.internationaljusticeproject.org/juvWorld.cfm>.

<sup>11</sup> Report from Radio Farda/AFP/Turkish Press.com, October 26, 2004.

<sup>12</sup> "Pakistan: Death Penalty for Juveniles Reintroduced," Amnesty International Press Release, December 9, 2004. Amnesty International website is <http://amnesty.org>.

<sup>13</sup> Id. JJSO was extended to Provincially Administered Tribal Areas (PATA) last year.

<sup>14</sup> Id. The Federally Administered Tribal Areas (FATA) are not affected by JJSO.

<sup>15</sup> Report No. 62/02, Case No. 12.285, Domingues v. United States ¶ 46 (2002).

sentences only began the practice on a massive scale in the 1990's.<sup>16</sup> Third, numerous treaties and guidelines prohibit the imposition of juvenile LWOP.<sup>17</sup> These documents reflect prevailing international law. Finally, based on the fact that very few countries implement juvenile LWOP, it seems there exists a general acquiescence in the ban of the practice by other states. The prohibition on juvenile LWOP is so universally practiced it could be likened to a *jus cogens* norm.

12. The United States is among the countries that sentences juveniles to LWOP. Forty-one states allow the possibility of life without parole for juvenile offenders. It is estimated that between 2,000 and 5,000 juveniles are currently serving LWOP sentences.<sup>18</sup> No exact figures of the number of juveniles serving LWOP sentences are available since juveniles are not tracked separately once in the adult system. Although a federal appellate court upheld the constitutionality of juvenile LWOP sentences in 1996, the United States Supreme Court has not ruled on the constitutionality of the practice.<sup>19</sup>

13. Since the 1990's, juvenile LWOP sentences have increased at an alarming rate in the United States, primarily as a result of legislation allowing minors to be tried in adult courts or to receive adult sentences. Such legislation strips the judiciary of its discretion to consider an individual juvenile defendant's competency, culpability, or capacity for the offense, raising serious due process problems.

14. Although the practice of juvenile LWOP is fairly widespread in the United States, two courts in recent years, recognizing the constitutional problems that trying minors in adult courts presents, overturned the long prison sentences.<sup>20</sup>

15. South Africa also imposes juvenile LWOP sentences, setting the minimum age for incarceration at fourteen. Currently, four people are serving LWOP for crimes they committed before they were 18 years.<sup>21</sup> South Africa has no juvenile justice system at this time, but has introduced the Child Rights Bill, which will establish a juvenile justice system, including the prohibition of life imprisonment for *some* children under 18 years. The bill, however, seems to allow life sentences for juveniles fourteen years or older convicted of serious and violent crimes.<sup>22</sup>

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<sup>16</sup> Deborah LaBelle et.al., "Second Chances Juvenile Serving Life Without Parole in Michigan Prisons," (2004) p. 2.

<sup>17</sup> Some treaties and guidelines include Convention on the Rights of the Child, International Covenant on Civil and Political Rights, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyahd Guidelines).

<sup>18</sup> Human Rights Advocates, "Administration of Justice Agenda Item 13: Life Imprisonment Without the Possibility of Release for Youth Offenders Who Were under 18 at the Time of Committing the Offense." Report to the 60<sup>th</sup> Session of the UN Committee on Human Rights, citing Victor Streib, Execution and Life in Prison without Parole for Kids Who Kill (December, 2002).

<sup>19</sup> Harris v. Wright, 93 F.3d 581 (9<sup>th</sup> Cir. 1996).

<sup>20</sup> Tate v. State 864 So.2d 44 (Fla.App. 4<sup>th</sup> District., 2003); People v. Miller 202 Ill.2d 328 (Ill. Sup. Ct, 2002).

<sup>21</sup> Elizabeth Walker, "International Standards on the Sentencing and Placement of Juvenile Offenders," (2005) p. 23.

<sup>22</sup> Patricia Goliath, "Juveniles and Life Imprisonment," (May 2003) p. 3.

16. Certain areas of Australia also impose LWOP sentences on juveniles for murder and trafficking of large quantities of drugs. Federal law allows young persons to be sentenced to life imprisonment for the commission of certain offenses.<sup>23</sup> Verifiable reports on the number of juveniles serving LWOP sentences were unavailable at the time of this report.

17. In England, the justice system appears to be moving away from traditional LWOP sentences. In 2000, the European Court of Human Rights (ECHR) held that indefinite life sentences imposed by an English court on two juvenile offenders violated the European Convention on Human Rights.<sup>24</sup> Life sentences, nevertheless, appear to be legal under English law.<sup>25</sup> These sentences are in compliance with ECHR's decision because the judiciary reviews the lawfulness of continued detentions, recommending, when appropriate, release dates.<sup>26</sup> It is unclear if any juvenile offenders are currently serving LWOP sentences in England.<sup>27</sup>

Regarding the juvenile death penalty, HRA recommends:

18. That the Commission:

- a) Urge states to prohibit execution of juvenile offenders.
- b) Ask states to submit annual reports to the Special Rapporteur on Extrajudicial Killings detailing the number of juveniles executed, the number sentenced to death, and the number imprisoned on death row.
- c) Commend Iran and Pakistan for implementing measures to abolish the practice, request that they report to the above Special Rapporteur on their progress, and request clarification of the current status of the practice.

Regarding juvenile LWOP, HRA recommends

19. That the Commission:

- a) Recognize that juvenile LWOP violates a norm of customary international law.
- b) Urge all states to abolish juvenile LWOP.
- c) Urge all states to clarify their laws and report the number of juvenile offenders serving LWOP sentences to the Secretary-General.

Regarding those states believed to practice juvenile LWOP,

20. HRA commends:

- a) South Africa and England for moving towards restorative juvenile justice systems and encourages them to continue these efforts.

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<sup>23</sup> Elizabeth Walker, *supra* note 21, pp. 7-8.

<sup>24</sup> Patricia Goliath, "Juveniles and Life Imprisonment," (May 2003) p. 6.

<sup>25</sup> Criminal Justice Act 2003 Chapter 44 Part 12 Chapter 5 Section 226; Powers of Criminal Courts (Sentencing) Act 2000 Chapter 6 Part V Chapter II Section 91 (amended May 1, 2004).

<sup>26</sup> Patricia Goliath, "Juveniles and Life Imprisonment," (May 2003) pp. 5-6.

<sup>27</sup> Besides England, it seems the possibility of life without parole for juvenile offenders also exists in the Netherlands. See Elizabeth Walker, *supra* note 21, pp. 19-20. It is also unknown if any juvenile offenders are currently serving LWOP sentences.

- b) Australia for abolishing juvenile LWOP in Queensland and encourages remaining regions to follow suit.

21. HRA urges:

- a) The United States to establish a mechanism by which to accurately report the numbers of juveniles serving life sentences and to work toward abolishing the practice entirely.

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