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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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.

[19 February 2007]

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

Juvenile Sentencing

1. Human Rights Advocates submits this statement to address issues of juvenile sentencing, in particular the death penalty, life imprisonment without possibility of release, and juvenile justice models generally. In December of 2006, the General Assembly passed Resolution 61/146 which urges states to abolish the death penalty and life imprisonment without the possibility of release for offenders under the age of 18.¹

Death Sentences for Child Offenders

2. Human Rights Advocates (HRA) recognizes the Commission on Human Rights' leadership role in abolishing the execution of child offenders. Article 37(a) of the Convention on the Rights of the Child (CRC) and Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) both prohibit the sentencing and execution of persons under age 18. As a result of almost universal adherence with this norm, the prohibition has reached the level of a jus cogens norm which binds all states.

3. Since 2005, which marked the United States' decision to abolish the juvenile death penalty and Iran's notable decrease in juvenile executions, the prohibition against juvenile execution has moved closer to realization. Iran's decisions to re-try one child offender sentenced to death in January 2006, and its decision to commute the sentence of another child who no longer faces execution mark important steps toward legal reform. However, in December 2006, Iran did execute one offender; 22-year-old Naser Batmani was hanged for a murder committed when he was under 18.² Twenty-one additional juvenile executions have been recorded³ in Iran since 1990, including eight child offenders in 2005.⁴ As of January 2007, at least 23 other child offenders remain on death row.⁵ It appears that the authorities are keeping child offenders sentenced to death in prison until they pass their 18th birthday before executing them, a clear violation of ICCPR Art. 6(5).⁶

4. Although Saudi Arabia has not reportedly executed a child offender since 1992, Human Rights Advocates is concerned that Saudi Arabia continues to sentence child offenders to death. It is reported that there are presently 126 child offenders sentenced to death in Saudi Arabia.⁷ While Saudi law does not permit sentencing of death to children, Saudi judges have the discretion to decide defendant has reached the "age of majority"

¹ General Assembly Resolution 61/146, "Promotion and protection of the rights of children," UN Doc. No. A/Res/61/146. 30 Nov. 2006

² Amnesty International, Public Statement on Iran: "Quashing of child offender's death sentence highlights the need for urgent legal reform," available at <http://web.amnesty.org/library/Index/ENGMDE130022007?open&of=ENG-392>

³ *Id.*

⁴ Amnesty International Report, "Juvenile Executions Since 1990," available at <http://web.amnesty.org/pages/deathpenalty-children-stats-eng>.

⁵ Amnesty, *supra* note 2

⁶ *Id.*

⁷ Human Rights Watch Report, "Saudi Arabia: Follow U.N. Call to End Juvenile Death Penalty," 29 Jan. 2006 *citing* Alarabiya report in November 2005. Available at <http://hrw.org/english/docs/2006/01/29/saudia12546.htm>.

which is signified by the onset of puberty, rather than natural age.⁸ Most recently, in 2005, 14-year old Ahmad al-D, an Egyptian national was sentenced to death.⁹

5. Human Rights Advocates commends the Government of Pakistan in adopting a national law which abolishes the juvenile death penalty. However we urge the government to comment on reports that juveniles offenders continue to be executed in certain parts of the country.¹⁰

Life Imprisonment Without Possibility of Release for Child Offenders

6. The Convention on the Rights of the Child, ratified by every country in the world except the United States and Somalia, forbids the sentencing of child offenders to life without parole. This was recently reaffirmed by GA Resolution 61/146. In addition, the Committee on the Rights of the Child recently recognized that all juvenile life imprisonment sentences violate the CRC,¹¹ and the Committee Against Torture commented that life imprisonment of children “could constitute cruel, inhuman or degrading treatment or punishment.”¹² At least 132 countries have rejected the sentence altogether.¹³

7. There are currently fourteen countries known to permit the sentencing of child offenders to life without possibility of release: Antigua and Barbuda, Australia, Brunei, Burkina Faso, Cuba, Dominica, Israel, Kenya, Saint Vincent and the Grenadines, the Solomon Islands, South Africa, Sri Lanka, Tanzania and the United States.¹⁴ Outside of the U.S., there are believed to be no more than twelve child offenders serving the sentence.¹⁵

8. The United States disproportionately sentences child offenders to life without parole. With an estimated 2,225 child offenders serving the sentence, and forty-two of the fifty states plus the federal government permitting the sentence,¹⁶ the U.S. is home to over 99% of youth serving the sentence in the world. Ten states set no minimum age, and twelve states set a minimum of 10 to 13 years of age.¹⁷ Of great concern are the tremendous racial disparities among the populations receiving the sentence. In California alone, black youth are 22.5 time more likely to receive the sentence than white youth,¹⁸ and 158 of the 180

⁸ Human Rights Watch Report, “Saudi Arabia: Follow U.N. Call to End Juvenile Death Penalty,” 29 January 2006. Available at <http://hrw.org/english/docs/2006/01/29/saudia12546.htm>.

⁹ *Id.*

¹⁰ Amnesty, *supra* note 2. Also see Human Rights Watch, “Iran, Juvenile Offenders Face the Hangman’s Noose” 23 Sept. 2006. Available at <http://hrw.org/english/docs/2006/09/22/iran14247.htm>.

¹¹ Committee on the Rights of the Child, 45th Session, “General Comment No. 10: Children’s Rights in Juvenile Justice,” UN Doc. No. CRC/C/GC/10, 2 February 2007.

¹² Committee Against Torture, 36th Session, “Conclusions and Recommendations of the Committee Against Torture: United States of America,” at para. 35, UN Doc. No. CAT/C/USA/CO/2, 25 July 2006.

¹³ Human Rights Watch and Amnesty International, “The Rest of Their Lives: Life Without Parole for Child Offenders in the United States,” 2005 at p. 5. Available at <http://www.hrw.org/reports/2005us1005/TheRestofTheirLives.pdf>.

¹⁴ *Id.* at 107.

¹⁵ *Id.* at 106.

¹⁶ Human Rights Watch, “World Report 2007,” at 510. Available at <http://hrw.org/wr2k6/wr2006.pdf>.

¹⁷ National Center for Juvenile Justice, State Juvenile Justice Profiles, available online at: <http://www.ncjj.org/stateprofiles>. From Human Rights Watch, *supra* note 11, at 18.

¹⁸ Data provided by thirty-eight state correctional departments and additional other sources for the states of Alabama and Virginia. Population data were obtained from the U.S. Census Bureau, State Population Data Sets, Calculations are based on Census 2000 data. All from Human Rights Watch, *supra* note 11, at 41.

youths serving the sentence are of color.¹⁹ In July 2006, the Human Rights Committee expressed concern in its Concluding Observations that the treatment of children as adults is not exclusively applied in “exceptional circumstances,”²⁰ as provided in the ICCPR. The Committee noted that the U.S. is violating its treaty obligations because “sentencing children to life without parole is of itself not in compliance with article 24(1) of the Covenant.”²¹ Several states have begun legislative efforts to abolish the sentence. In 2006, Colorado diminished its mandatory life without parole sentence for certain crimes to forty years for crimes committed by youth.²²

9. It is reported that South Africa has five child offenders serving the sentence.²³ A pending Child Justice Bill²⁴ would outlaw life imprisonment for child offenders, and the South Africa Supreme Court of Appeals in 2004 handed down a critical decision, *Brandt v. S.*, which gave judges sentencing discretion with regard to juveniles. The decision placed emphasis on the importance of children’s rights and reaffirmed CRC 37(b) principles which required juvenile imprisonment to be a last resort and for the shortest time possible.²⁵

10. Israel reportedly has seven child offenders with life without possibility of release sentences and Tanzania has one.²⁶

11. The other countries with the possibility of life without parole for child offenders reportedly do not have any offenders serving the sentence.

Juvenile Justice Models and Rehabilitation

12. The ICCPR, the CRC and the Beijing Rules provide that deprivation of liberty for child offenders be a “measure of last resort” and that juvenile justice includes rehabilitation as a core component.²⁷

13. Although few countries sentence child offenders to death or life without possibility of release, Human Rights Advocates urges all countries to revisit their commitment to the CRC and to reserve deprivation of liberty for children as a last resort.

14. Human Rights Advocates commends the German model of juvenile rehabilitation. In the 1970’s, Germany withdrew traditional sentencing for juveniles. The conventional

¹⁹ Human Rights Watch, *supra* note 11, at 43.

²⁰ Human Rights Committee, 87th Session, “Consideration of Reports Submitted by State Parties: Concluding Observations of the Human Rights Committee on the United State of America” UN Doc No. CCPR/C/USA/CO/3, at para. 34. 16 Sept. 2006.

²¹ *Id.*

²² Colo. H 06-1315, 65th Reg. Sess. (May 25, 2006)

²³ South Africa State Party Report to the CRC, CRC/C/51/Add.2, May 22, 1999 at 514 (reporting four child offenders serving the sentence)

²⁴ See Draft Child Justice Bill, Republic of South Africa para. 72 “(1)No sentence of life imprisonment may be imposed on a child.” Available at <http://www.pmg.org.za/bills/020808childjusticebill.htm>.

²⁵ “Do minimum sentences apply to juveniles?” Article 40, vol. 7, no. 1 5/2005, available at http://www.communitylawcentre.org.za/Projects/Childrens-Rights/Article-40/article-40-archives/article_40_2005_05_vol7_1.pdf

²⁶ Israel State Party Report to the CRC, CRC/c/8/Add.44, February 27, 2002 at para. 1372. Tanzania figure from Human Rights Watch, *supra* note 10, at 106.

²⁷ International Covenant on Civil and Political Rights, 16 December 1976, article 6(5). Available at <http://www.ohchr.org/english/law/ccpr.htm>; Convention on the Rights of the Child, 20 November 1989, article 37(a). Available at <http://www.ohchr.org/english/law/crc.htm>; Beijing Rules, G.A. Resolution 40/33, U.N. Doc. A/40/53, 1985, at para. 17.1(b).

model gave way to alternative measures in the 1970's: suspensions, probation, community service, and a system of day-fines. Between 1982 and 1990, incarceration of juveniles in Germany decreased more than 50 percent.²⁸

15. Human Rights Advocates also commends the Georgia Justice Project (GJP) for its innovative approach to breaking the cycle of crime and poverty with children in Atlanta, Georgia. The GJP accomplishes minimized rates of recidivism amongst juveniles through incorporating counseling, employment and education programs with its legal services.²⁹

16. Human Rights Advocates urges other countries to expand their juvenile justice models to focus more extensively on rehabilitation programs, including education, counseling and social service programs to effectuate rehabilitation rather than recidivism.

Recommendations:

17. Human Rights Advocates encourages the Human Rights Council to include on its agenda an item on the Rights of the Child in order to comply with GA resolution 61/146 so that it can continue the leadership of the Commission on the topic of the sentencing of juveniles.

18. Human Rights Advocates recommends that all state parties who continue to sentence juveniles to death continue to report on the status of the law and of all sentenced offenders to the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. We urge Iran to commute the sentences of all child offenders, and to cease the practice of sentencing children to death. Additionally, we recommend that the Commission call on Saudi Arabia to report the status of the law and the 126 child offenders sentenced to death to the Special Rapporteur on Saudi Arabia for the Committee of the Rights of the Child. We also urge the Kingdom of Saudi Arabia to commute the death sentence of Egyptian national, Ahmad al-D. HRA encourages the South African government to pass the Child Justice Bill, and to consider releasing juvenile offenders as part of its recent attempt to curb prison over-crowding.³⁰

19. Human Rights Advocates recommends that South Africa, Israel, Tanzania and the U.S. assure that juveniles sentenced as adults are tracked separately and to report the number of children serving the sentence to the Commission's independent expert on violence against children.³¹ We urge these states to comply with their obligations under the CRC and ICCPR and cease sentencing juveniles to life without parole. Finally, we encourage all states to remove the possibility of the sentence from their books.

²⁸ Based on the presentation of Dr. Christian Pfeiffer to the National Institute of Justice, "Alternative Sanctions in Germany: An Overview of Germany's Sentencing Practices." Published February 1996. Available at <http://www.ncjrs.gov/txtfiles/germany.txt>

²⁹ See www.gjp.org

³⁰ Sapa, "IFP slams release of former death-row inmates," Mail and Guardian Online, 4 Jan. 2007

³¹ See, Commission on Human Rights, 60th Session, Agenda item 11(d), "Civil and Political Rights: Independence of the Judiciary, Administration of Justice, Impunity." E/CN.4/2004/RES/43.