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RIGHTS OF THE CHILD

**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.

[30 January 2004]

* 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 and Child Labor

Juvenile Death Penalty

1. Human Rights Advocates (HRA) appreciates the Commission's leadership in objecting to the execution of offenders who were under 18 at the time of the crime.
2. International law clearly prohibits executions of individuals who were under the age of 18 at the time the crime was committed ("juvenile death penalty"). In 2000, the Sub-Commission on the Promotion and Protection of Human Rights affirmed that the prohibition of the juvenile death penalty is customary international law. This customary international law has risen to the level of *jus cogens*, as evidenced by the recent decisions by the Inter-American Court of Human Rights (IACHR) concluding that the prohibition of the execution of juvenile offenders constitutes a *jus cogens* norm.¹
3. In October 2002, IACHR issued a decision, concluding that execution of offenders under the age of 18 at the time of the crime constitutes a norm of international customary law and a *jus cogens* norm.² Additionally, in October 2003 IACHR issued another decision, reaffirming that the United States' execution of juvenile offenders violated the *jus cogens* norm.³
4. Under Article 53 of the Vienna Convention on the Law of Treaties, a norm attains *jus cogens* status when it is: general international law; accepted by a large majority of states as a whole; immune from derogation; and modifiable only by a new norm of the same status. The prohibition of the juvenile death penalty satisfies these elements. First, the prohibition of the juvenile death penalty is general international law because of the numerous treaties that prohibit it.⁴ Also, Resolutions by the Sub-Commission on Human Rights, the Commission on Human Rights, the Economic and Social Council and the General Assembly oppose the juvenile death penalty. Second, nations have exhibited near unanimous acceptance of the prohibition of the juvenile death penalty. Third, the prohibition of the juvenile death penalty is non-derogable. Article 4 of the ICCPR states there shall be "no derogation" from Article 6, which prohibits the juvenile death penalty. Fourth, there is no emerging norm of the same status that contradicts the current norm. Accordingly, under the Vienna Convention, the prohibition of the juvenile death penalty is a *jus cogens* norm from which no country is allowed to deviate.⁵
5. The international community has demonstrated widespread and near universal compliance with the prohibition of the juvenile death penalty. Excluding the United States (U.S.), in the past 10 years the following nations have executed a total of 8 juveniles: China (1 in 2003) Democratic Republic of Congo (1 in 2000), Iran (3: 1 in 1999, 1 in 2000, 1 in 2001), Nigeria (1 in 1997), Pakistan (2: 1 in 1997, 1 in 2001). These countries have since either abolished the practice of executing juveniles, adopted laws prohibiting the execution of juveniles, acknowledged that such practices are against their laws, or denied that such practices have taken place. The recent execution in China took place because of problems with verifying the age of the offender. The U.S. has executed 9 juvenile offenders since 2000. Three more executions have been set for 2004.

6. HRA commends Iran for passing legislation in December 2003 which prohibits the juvenile death penalty and awaits its finalization. HRA also commends Pakistan on the passage of the Juvenile Justice System Ordinance in 2000, the commutations in 2002 by President Musharraf of 74 juvenile offenders, and the subsequent legislation passed supporting the commutations. However, HRA is concerned by recent reports of 6 juvenile prisoners who have been sentenced to death in the Singh province of Pakistan. HRA calls upon the Pakistani government to take action to commute those death sentences in accordance with international law. HRA is further concerned with seven juvenile death sentences in the Philippines. HRA calls upon President Arroyo to commute or pardon the offenders in compliance with international law. Finally, HRA is concerned with recent reports of juvenile death sentences in Sudan and calls upon Sudan to clarify its practice.

7. There have also been positive developments in the U.S. HRA commends Governor Patton of Kentucky for commuting the death sentence of Kevin Stanford. HRA commends the Missouri Supreme Court's decision overturning Christopher Simmons death sentence. The Missouri Court noted the international community's opposition to the practice and cited the U.N. Convention on the Rights of the Child (CRC).⁶ The progress in the international community and the work of this Commission have been instrumental in assisting change in the U.S. The U.S. Supreme Court has agreed to review the Simmons case, and HRA urges the U.S. government to support the decision that complies with international law.

8. In the U.S., support for the juvenile death penalty has remained low for the past 40 years. Recent polls conducted in May 2002 and December 2003 found that only 26% of Americans supported the juvenile death penalty.⁷ The support for the juvenile death penalty is low even in Texas, where the most executions have taken place.

9. The U.S. maintains it is bound by federalism concerns when addressing the individual states' policies on the juvenile death penalty. There are steps the federal government can take to create change in state policy, including: highlighting the importance of international law when state courts and legislatures determine the legality of the juvenile death penalty, investing in research for the causes of juvenile crime rather than focusing on punishment, or using fiscal policy to pressure the states to change their laws. Other Nation States with regional subdivisions within their governments have been able to successfully prohibit the juvenile death penalty.

Life without Parole

10. Life without the possibility of release for individuals under the age of 18 also violates international law. Article 37 of the CRC clearly prohibits States from imposing life sentences without the possibility of release on minors under the age of 18. The CRC is the most widely and rapidly ratified human rights treaty in history.

11. U.S. courts have consistently upheld the constitutionality of mandatory life sentences without the possibility of release for minors.⁸ Currently over 20 states have mandatory life sentences without the possibility of release for juvenile offenders who are 15 years old and above.⁹ This practice runs counter to the object and purpose of the CRC, to which the U.S. is a signatory.

Child Labor

12. The problem of child labor is truly astounding, in terms of the number of children involved as well as what is needed to completely abolish this practice. The speed with which ILO's convention 182 concerning the elimination of the worst forms of child labor (WFCL) has been ratified, speaks to the urgency felt by the world community.

13. This is as much an issue of children's rights as one of social and economic development. As important as the removal and rehabilitation of the child worker is, that is only a short term solution to a problem that demands a solution within the development agenda. ILO-IPEC acknowledges that this cannot be done without access to quality education and income creation for the families and rightly states that "the existence of child labor should be regarded as a failure of development."¹⁰

14. HRA recommends:

Regarding criminal penalties:

- a) That the Commission request that the Economic and Social Council seek an International Court of Justice advisory opinion on whether the juvenile death penalty violates customary international law and is a *jus cogens* norm. An ICJ opinion on the juvenile death penalty will further assist the Commission on Human Rights to prohibit the juvenile death penalty.
- b) That the Commission recognize that life without the possibility of release violates international law.
- c) That states still maintaining the juvenile death penalty submit annual reports to the Special Rapporteur of extrajudicial killings outlining efforts towards prevention of juvenile offender executions and abolition of the practice of altogether.
- d) That States implement measures to enforce existing laws which prohibit the juvenile death penalty, including effective procedures for determining the age of offenders.
- e) That States that make use of life sentence without the possibility of release in their laws to report on impediments to abolishing the practice altogether, such as reporting decisions made within federal and local jurisdictions, reporting its progress, and addressing any impediments.

Regarding child labor:

- f) That states which have not ratified the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour do so expeditiously and that Member States establish a schedule and monitoring mechanisms to ensure the abolition of this practice, with regular reports to the Commission on their progress;
- g) That states with programs for removing children from hazardous work conditions to establish performance criteria for monitoring the success of rehabilitation programs,

including adoption of Food for Education programs—such as those that have successfully reduced child labor incidence—and increased school enrollments;

- h) That states adopt curricula in rural schools regarding child labor, including designing practical courses regarding safe farming practices;
- i) That states establish widespread national education and awareness raising campaigns to speed progress in abolishing the practice of abusive child labor.

¹ Report No. 62/02, Case No. 12.285, *Domingues v. United States*, ¶ 84-85 (2002), Report No. 53/03, Case No. 12.412, *Beazley v. United States*, ¶ 47-50 (2003).

² Report No. 62/02, Case No. 12.285, *Domingues v. United States*, ¶ 84-85.

³ Report No. 53/03, Case No. 12.412, *Beazley v. United States*, ¶ 47-50

⁴ See International Covenant on Civil and Political Rights (ICCPR); Convention on the Rights of the Child (CRC); Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and American Convention on Human Rights.

⁵ See Connie de la Vega, *Amici Curiae Urge the U. S. Supreme Court to Consider International Human Rights Law in Juvenile Death Penalty Case*, 42 SANTA CLARA L. REV. 1041, 1043-50 (2002).

⁶ *Simmons v. Roper*, 112 S.W.3d 397, 411 (Mo. 2003)

⁷ See ABC News Poll: Malvo and the Death Penalty, 12/14/03 available at abcnews.go.com/images/pdf/883a38MalvoDeathPenalty.pdf and Gallup Organization, May 14, 2002, Question ID: USGALLUP.02MY06, R45D.

⁸ See, e.g., *Harris v. Wright*, 93 F3d 581 (9th Cir. 1996).

⁹ Patricia Goliath, “Juveniles and Life Imprisonment,” p. 6 (May 2003), available at http://www.communitylawcentre.org.za/children/publications/goliath_may.pdf

¹⁰ “IPEC Action Against Child Labour: Highlights 2002” (January 2003, Geneva)