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AGENDA ITEM 13:

THE DEATH PENALTY AND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF RELEASE FOR YOUTH OFFENDERS WHO WERE UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE.

Commission on Human Rights
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This report focuses on the imposition of the death penalty and life without parole sentences on juvenile offenders., i.e., offenders who were under 18 years old at the time they committed their offense. Part I of the paper discusses the juvenile death penalty. The first section of Part I examines the juvenile death penalty within the context of international law. The second section of Part I discusses the practice as it is implemented in those few remaining countries that still allow it and any positive developments in the effort to abolish it.

Part II of this paper looks at the imposition of life without parole sentences on juvenile offenders. The first section puts the practice in the context of international standards, concluding that the ban on juvenile life without parole has reached the level of customary international law. The second section looks at the countries that actually sentence juvenile offenders to life imprisonment. The third section examines those countries where such sentences are theoretically possible, and Part III sets forth recommendations to abolish the both the juvenile death penalty and life without parole sentences for juvenile offenders.

Part I: International Law and the Juvenile Death Penalty

International law prohibits the execution of juvenile offenders. This prohibition has been affirmed in numerous treaties, resolutions, and other international instruments. The prohibition of the juvenile death penalty is so universally practiced and accepted, it has reached the level of a *jus cogens* norm.¹

A. The Prohibition on the Juvenile Death Penalty is a *Jus Cogens* Norm

A *jus cogens* norm is one that derives its status from fundamental values held by the international community. According to 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

¹ The Inter-American Commission on Human Rights, for example, wrote that the ban on executing juveniles has become a *jus cogens* norm. See Report No. 62/02, Case No. 12.285 Michael Domingues and the United States, October 22, 2002 and Report No. 101/03, Case No. 12.412 Napoleon Beazley and the United States, December 29, 2003.

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 juvenile death penalty is prohibited by numerous treaties, including the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR).² Notably, the CRC is the most widely and rapidly ratified treaty in history, and all but two states, the United States and Somalia, are parties to it. In addition, the Commission on Human Rights and the General Assembly have adopted resolutions calling for the prohibition of the practice,³ and the United Nations Economic and Social Council has also passed a resolution opposing the juvenile death penalty.⁴ These numerous international instruments demonstrate that the prohibition is general international law.

Second, the ban on the juvenile death penalty has been accepted by a large majority of states as a whole, evidenced by the near universal ratification of the CRC and the fact that *only three* nations execute or allow the execution of juvenile offenders. Significantly, two of these states deny that they execute juvenile offenders, suggesting their acceptance that the practice runs contrary to international law as well as their desire to comply with this law.

Third, the prohibition of the juvenile death penalty is non-derogable. The universal acceptance and abolishment of the practice indicates its non-derogable status. Additionally, Article 4 of the ICCPR states that there shall be “no derogation” from Article 6 of the

² Convention on the Rights of the Child, November 20, 1989, article 37(a); International Covenant on Civil and Political Rights, December 16, 1966, article 6(5).

³ United Nations Commission on Human Rights Resolution, “Rights of the Child,” E/CN.4/Res/2004/48; Commission on Human Rights Resolution, “Human rights in the administration of justice, in particular juvenile justice,” E/CN.4/Res/2004/43; United Nations General Assembly Resolution, “Human Rights in the Administration of Justice,” A/Res/56/161, February 22, 2002; General Assembly Resolution, “United Nations Standard Minimum Rules for the Administration of Juvenile Justice” (the Beijing Rules) G.A. Res. 40/33, U.N. Doc. A/40/53, 1985.

⁴ United Nations Economic and Social Council Resolution, “Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty,” E.S.C. Res. 1984/50, U.N. Doc. E/1984/84, 1984.

convention, which prohibits the execution of persons under 18. According to the United Nations, 154 countries are party to the convention and 67 are signatories.⁵

Of the three countries that have recently violated the norm, one has signed the ICCPR and one has ratified it.⁶ Neither has made any reservation to Article 6. The third state in violation of the prohibition, Pakistan, has taken no action on the treaty. It is, nonetheless, still bound by the prohibition. One country's refusal to abide by a *jus cogens* norm does not alter its status as such.

Finally, no emerging norm of the same status exists to contradict the current norm. Accordingly, under the Vienna Convention on the Law of Treaties, the prohibition of executing juvenile offenders is a *jus cogens* norm from which no country is allowed to deviate.

B. Victories in the Effort to End the Practice and the Few Remaining Violators

Marking a significant victory for proponents of human rights, the United States Supreme Court declared the juvenile death penalty unconstitutional in March, relying in part on international law to reach its conclusion.⁷ Prior to this decision, the United States had been the most egregious violator of the practice. Taiwan, as well, changed its laws regarding the juvenile death penalty even though it had not been used for many years. The legislature there recently passed an amendment banning the punishment for those under 18 and those over 80.⁸

Despite these critical victories, a few countries continue to allow the execution of juvenile offenders, including Iran, China, and Pakistan. Since the United States' decision to ban the practice, Iran has taken over as the worst violator of the prohibition. It was the only country

⁵ See United Nations Office of Human Rights webpage at <http://www.ohchr.org/english/countries/ratification/4.htm>.

⁶ China is a signatory to the ICCPR, and Iran has ratified it.

⁷ *Roper v. Simmons*, 125 S.Ct. 1183 (2005).

⁸ Taipei Times, "Death Penalty Changes Lauded---GRADUAL PHASE-OUT," January 8, 2005.

to execute a youth offender in 2005; Imam Farrokhi was hanged last January.⁹ Reportedly, at least 30 juvenile offenders are on death row in Iran.¹⁰

Several juvenile offenders were executed during 2004. A 14 year-year-old schoolboy was flogged to death for eating in public during the holy month of Ramadan,¹¹ and two other young men were also executed.¹² In August 2004, a sixteen year old girl was hanged, despite worldwide protests.¹³ The European Parliament condemned the execution in a resolution adopted by 105 votes, with six abstentions.¹⁴

The execution of the young girl highlights the arbitrary nature of the death penalty in Iran. The girl, allegedly mentally ill, was sentenced to death for “acts incompatible with chastity” after a trial where she was not represented by counsel and during which the judge criticized her dress. Her male co-defendant, in contrast, was sentenced to 100 lashes and then set free.¹⁵ In addition, several youth offenders were recently sentenced to death, and reportedly some await imminent execution at the time of this report.¹⁶

Under increasing international pressure, Iran delays executing most juvenile offenders until they turn 18.¹⁷ Although authorities there deny the continuance of the practice,¹⁸ a bill was

⁹ Reuters, “UN Urges Iran to Halt Execution of Young Offenders,” January 28, 2005.

¹⁰ Iran Focus, “30 Juveniles on Death Row in Prisons in Iran Capital,” February, 16, 2005.

¹¹ Amnesty International, “Urgent Action Appeal Fear of Imminent Execution/Fear of Flogging,” December 12, 2004; Iran Focus, November 30, 2004.

¹² Id.

¹³ Amnesty International Report, “Stop Child Executions! Ending the Death Penalty for Juvenile Offenders,” available at <http://web.amnesty.org/library/Index/ENGACT500152004>.

¹⁴ Radio Farda, “European Parliament Condemns Execution of Children and Persecution of Journalists,” October 29, 2004.

¹⁵ Amnesty International Report, “Stop Child Executions! Ending the Death Penalty for Juvenile Offenders,” available at <http://web.amnesty.org/library/Index/ENGACT500152004>.

¹⁶ Iran Focus, “Minor Sentenced to Death in Iran,” January 26, 2005; International Justice Project, “Urgent Action Appeal: Imminent Execution,” November 22, 2004.

¹⁷ Iran Focus, “18-year-old Facing Imminent Execution for Crime Committed as Minor,” December 30, 2004; International Justice Project, “Urgent Action Appeal: Imminent Execution,” November 22, 2004.

¹⁸ BBC MMV, “Iran Denies Execution by Stoning,” January 11, 2005.

introduced in parliament last year outlawing the death penalty and lashings for offenders under 18.¹⁹ The status of the bill is unknown at the time of this report.²⁰

China also executed a juvenile offender both last year and in 2003, despite an existing law that forbids the execution of those under 18 years. The officials presiding over the execution of the minor in 2003 were allegedly unaware of the law prohibiting it.²¹ In 2004, the government disputed the age of the juvenile offender, and reportedly produced spurious evidence to bolster its claim that he was 18 at the time of the crime.²² According to press reports, this jurisdiction has used questionable evidentiary methods to verify the age of defendants in past court proceedings.²³

Finally, in December 2004, although the federal government in Pakistan outlawed the practice in 2000 as part of the Juvenile Justice System Ordinance (JJSO), the Lahore Supreme Court restored the juvenile death penalty in the Punjab province, the most populous province in the country.²⁴ No youth offenders have been executed since this ruling.

The court reinstated the practice for a number of reasons. It stated that adults incited juveniles to carry out capital crimes on their behalf, knowing they would be treated leniently under the juvenile system. Further, the court said the juvenile system bred corruption by encouraging families to forge birth certificates, medical records, etc. on behalf of accused family members and did not serve to deter juveniles from committing crimes.²⁵ The high court also used this judgment to disagree with the notion that 18 marked the onset of adulthood.²⁶

¹⁹ AFP/Turkish Press, "Iranian Bill Aims to Scrap Death Penalty for Minors," October 26, 2004.

²⁰ A similar bill was introduced in Iran in 2003 but apparently did not garner sufficient support to become enacted. State Party Report, CRC/C/104/Add.3, December 1, 2003 at para. 201-202.

²¹ Amnesty International Report, "Stop Child Executions! Ending the Death Penalty for Juvenile Offenders," available at <http://web.amnesty.org/library/Index/ENGACTION500152004>.

²² Id.

²³ Id.

²⁴ State Party Report, CRC/C/65/Add.21, November 4, 2003 at para. 392-393.

²⁵ Amnesty International Press Release, "Pakistan: Death Penalty for Juveniles Reintroduced," December 2004.

²⁶ Id.

Although the Lahore Court's judgment is a serious blow to the juvenile justice system, federal law overrides all provincial laws in the country, suggesting the prohibition of executing juvenile offenders is still law.²⁷ Additionally, the JJSO, since its inception, has never been uniformly implemented throughout Pakistan,²⁸ and even those regions where the JJSO was nominally enacted have not always abided by the new system.²⁹

Part II: Juvenile Life Without Parole

The prohibition of sentencing juveniles to life in prison without parole has reached the level of a customary international law, and few countries violate this norm.

A. Juvenile Life without Parole Violates Customary International Law

For a norm to be considered customary international law, the following elements must be satisfied: a) the norm must be concordantly adhered to by a number of states, b) it must be continuous over a considerable period of time, c) a conception must exist that the norm is required by international law, and d) there must exist general acquiescence in the norm by other states.

The prohibition of juvenile life without parole fulfills these requisites. First, as this paper will discuss, three or less countries actually sentence juvenile offenders to life in prison without the possibility of release. Further, of those countries that do, only one, the United States, does so on a massive scale.

²⁷ State Party Report, CRC/C/65/Add.21, April 11, 2003 at para. 363.

²⁸ The law, for example, was never applicable to the Federally Administered Tribal Areas (FATA), northern areas, Pakistani administered Kashmir, and the Provincially Administered Tribal Areas (PATA) in the North West Frontier Province (NWFP). It was, however, extended to the PATA last fall. IRIN News, "Activists Welcome Extension of Juvenile Justice Law," November 1, 2004.

²⁹ For example, in 2003, in the province of Baluchistan, two Afghan refugees, both under 18 at the time of their crimes, were sentenced to death. Amnesty International Press Release, "Pakistan: Death Penalty for Juveniles Reintroduced," December 2004.

Second, there is little evidence that this practice has been implemented in the past anywhere. In fact, in the United States, where more juvenile offenders are serving life sentences than anywhere else, the practice only began on a large scale in the 1990's.³⁰

Third, the CRC prohibits life without parole sentences for juveniles.³¹ As almost all nations are party to the CRC, it is clear that countries are acting out of a sense of obligation to the treaty. In addition, numerous other international instruments prohibit sentencing juveniles to prison forever and/or espouse the principle that incarceration for juveniles should be a measure of last resort and for the shortest period possible.

In 2004, the Commission on Human Rights prohibited the practice in the resolution, "Human rights in the administration of justice, in particular juvenile justice."³² Other international instruments set standards for the treatment of juvenile offenders. The Beijing Rules reiterate the same principle as the abovementioned documents, i.e., the primary aim of juvenile justice is to ensure the well-being of the juvenile. Rule 17.1(b) declares that confinement shall be imposed only after careful consideration and for the shortest period possible.³³ The Commentary to this rule indicates that punitive approaches are not appropriate for juveniles and that the well-being and the future of the offender *always* outweigh retributive sanctions.³⁴ The Riyadh Guidelines also consider long term incarceration of juvenile offenders antithetical to the meaning of juvenile justice.³⁵ The General Assembly has adopted both guidelines as resolutions.

³⁰ Deborah LaBelle, et al., "Second Chances Juveniles Serving Life Without Parole in Michigan Prisons," at 2-3.

³¹ Article 37 (a) of the Convention on the Rights of the Child reads, "Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age." Article 37 (b) emphasizes that no child shall be deprived of his liberty arbitrarily and that imprisonment shall be a measure of last resort and for the shortest period possible.

³² United Nations Commission on Human Rights Resolution 2004/43, "Human rights in the administration of justice, in particular juvenile justice," E/CN.4/2004/43 at para. 11.

³³ Beijing Rules, G.A. Resolution 40/33, U.N. Doc. A/40/53, 1985, at para. 17.1(b).

³⁴ Beijing Rules Commentary to Rule 17.1(b).

³⁵ "The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance." Riyadh Guidelines, G.A. Resolution 45/112, 1990, at para. 46.

Every year for the past decade, the Commission on Human Rights has emphasized the need for states to comply with the principle that depriving juveniles of their liberty should only be a measure of last resort and for the shortest appropriate period of time.³⁶ These numerous treaties, guidelines, rules, and resolutions reflect prevailing international law, suggesting that the ban on juvenile life without parole is such a norm.

Fourth, based on the fact that very few countries incarcerate juveniles for life, it seems worldwide acquiescence in the ban exists. Thus, the prohibition of sentencing juveniles to life without parole has emerged as customary international law.³⁷

B. Few Countries Use This Practice

Only a few countries actually sentence juveniles to life in prison, including the United States, South Africa, and Israel.

1. The United States

The United States is by far the most egregious violator of the prohibition on juvenile life without parole sentences. It is estimated that at least 2,000 juveniles are serving life sentences.³⁸

³⁶ “Human rights in the administration of justice, in particular of children and juveniles in detention,” Commission on Human Rights Resolution 1996/32, 52nd Session, E/CN.4/RES/1996/32; “Human rights in the administration of justice, in particular of children and juveniles in detention,” Commission on Human Rights Resolution 1998/39, 54th Session, E/CN.4/RES/1998/39;

“Rights of the Child,” Commission on Human Rights Resolution 1999/80, 55th Session, E/CN.4/RES/1999/80; “Rights of the Child,” Commission on Human Rights Resolution 2000/85, 56th Session, E/CN.4/RES/2000/85; “Rights of the Child,” Commission on Human Rights Resolution 2001/75, 57th Session, E/CN.4/RES/2001/75; “Rights of the Child,” Commission on Human Rights Resolution 2002/92, 58th Session, E/CN.4/RES/2002/92; “Rights of the Child,” Commission on Human Rights Resolution 2003/86, 59th Session, E/CN.4/RES/2003/86; “Rights of the Child,” Commission on Human Rights Resolution 2004/48, 60th Session, E/CN.4/RES/2004/48.

³⁷ The prohibition of life sentences without parole for youth offenders comes close to satisfying the requisites of a *jus cogens* norm. According to the Vienna Convention on the Law of Treaties Article 53, a *jus cogens* norm must be 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 numerous international instruments admonishing states to avoid long sentences for juveniles suggests the prohibition is general international law. Although the practice may have existed for many years, it seems very few countries have implemented it either in the past or presently. Second, the prohibition is evidently accepted by a vast majority of states. Third, although none of the international instruments mentioned explicitly state that life without parole sentences for youth offenders are non-derogable, they do propound the notion that prison sentences should be a measure of last resort and for the shortest period possible. These instruments do not contemplate long sentences, much less life without parole sentences, as a component of juvenile justice. Non-derogation is inherent in the definition of juvenile justice. Finally, no new norm of the same status has emerged.

³⁸ Human Rights Advocates, “Administration of Justice Agenda Item 13: Life Imprisonment Without Possibility of Release for Youth Offenders Who Were under the Age of 18 at the Time of Committing the Offense,” Report to the

Forty-one states allow life sentences without the possibility of parole to be imposed on juveniles. First time offenders are often eligible for such sentences, as are juveniles who commit offenses other than homicide.³⁹

The number of juveniles serving life without parole sentences began to increase sharply in the 1990's, although no exact figures are available because juveniles are not tracked separately once they enter the adult system. The spike in numbers can be attributed to a legislative trend creating procedures whereby juveniles can be tried as adults. Between 1992 and 1995, forty states and the District of Columbia passed laws creating provisions for juveniles to be tried in adult courts.⁴⁰ The number of juveniles sent to prison in 1999 was double that in 1985, although crime rates were similar.⁴¹ Moreover, racial minorities are disproportionately represented among juvenile offenders serving life without parole sentences. For example, in Colorado, where African-American children make up 4.4% of all children, they make up 26% of those serving life without parole sentences.⁴² In Michigan, the vast majority of juvenile lifers are African-American, comprising 211 of the 307 juvenile offenders serving life without parole sentences. They comprise 69% of the juvenile lifer population, although African-Americans make up 15% of the general population generally.⁴³

The case of Efren Paredes, Jr. exemplifies the unfairness of trying juveniles as adults. He was fifteen when he was accused of robbing a grocery store and killing the manager; he was sentenced to life without parole despite having no prior criminal history. When Efren was tried,

60th Session of the UN Commission on Human Rights citing to Victor Streib, "Execution and Life without Parole for Kids Who Kill," December, 2002 at 11. Streib writes, "A reasonable estimate would be that the total number of juvenile offenders currently serving LWOP sentences is several thousand people."

³⁹ Deborah LaBelle, et al., "Second Chances Juveniles Serving Life Without Parole in Michigan Prisons," 2004 at 3.

⁴⁰ Id. at 2 citing to Patrick Griffin, Patricia Torbet, and Linda Szymanski, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions and OJJDP Report: U.S. Department of Justice, December 1998, NCJ 172836. Additionally, no consensus exists among the states as to what age a child may be tried as an adult; the minimum age ranges from 0 (no age limit) to 16.

⁴¹ Id. at 2.

⁴² Human Rights Watch, "Thrown Away Children Sentenced to Life Without Parole in Colorado," February 2005 at 16.

⁴³ Deborah LaBelle, et al., "Second Chances Juveniles Serving Life Without Parole in Michigan Prisons," 2004 at 6.

the judge exercised his option to sentence him as an adult. The judge's decision was based on the seriousness of the crime, Efren's apparent lack of remorse,⁴⁴ and his denial of involvement. He remains in prison after 16 years, despite being a model prisoner, while his codefendants have all since been released.⁴⁵

Trying children in adult courts squarely contradicts the most basic premise behind the establishment of juvenile justice systems: ensuring the well-being of youth offenders. The harsh sentences dispensed in adult courts do not take into account the lessened culpability of juvenile offenders, their ineptness at navigating the criminal justice system, or their potential for rehabilitation and reintegration into society.

The United States Supreme Court has not ruled on the constitutionality of juvenile life without parole. However, the Ninth Circuit in Harris v. Wright upheld a *mandatory* life sentence without parole for a fifteen year old, first time offender involved in a felony-murder (but who did not do the killing). In some instances, on the other hand, life without parole sentences for juvenile offenders have been overturned.

In the highly publicized Tate v. State case, the appellate court found that the young boy's due process rights were violated when the trial court did not perform a competency hearing on him.⁴⁶ In another case, Illinois v. Miller, the court overturned the life sentence of a first time fifteen year old offender, finding the sentence to be disproportionate to the defendant's role as a passive lookout man in the murder of two people. The court implied that the defendant's culpability was lessened to some extent because of his age.⁴⁷ Two other state supreme court

⁴⁴ The immaturity of youth offenders often negatively affects their trials if judge and jury perceive them as lacking remorse. *Id.* at 16; New York Times, "Supreme Court to Rule on Executing Young Killers," January 4, 2004.

⁴⁵ Deborah LaBelle, et al., "Second Chances Juveniles Serving Life Without Parole in Michigan Prisons," 2004 at 16; Michigan Department of Corrections webpage at <http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=205897> and <http://www.state.mi.us/mdoc/asp/otis2profile.asp?mdocNumber=204047>.

⁴⁶ Tate v. State, 864 So.2d 44, Fla.App. 4 Dist., (2003). Tate was 12 years old when he killed his 6 year old playmate and fourteen at the time of trial.

⁴⁷ Illinois v. Miller, 202 Ill. 2d 328, 781 N.E. 2d 300 (Ill. 2002).

decisions have overturned life without parole sentences imposed on juveniles. One of these states declared that life without parole sentences for juveniles were a *per se* violation of the Eighth Amendment's prohibition of cruel and unusual punishment.⁴⁸

2. South Africa

South Africa also imposes life sentences on juvenile offenders. Four youth offenders were serving such sentences as of 1999.⁴⁹ It is unclear whether these sentences allow the possibility of parole or whether the youth are still serving these sentences.

At present, South Africa has no separate justice system specifically for juveniles.⁵⁰ A bill was introduced in Parliament in 2002,⁵¹ which would implement special procedures in the judicial system to ensure the fair treatment of juvenile offenders and abolish life sentences for juvenile offenders.⁵² As of the writing of this report, no action has been taken on the bill.

3. Israel

Israel also imposes life sentences on juvenile offenders. No absolute prohibition on life sentences for juveniles exists in Israel.⁵³ The Supreme Court has the discretion to review each case on the merits, and if necessary, may impose a life sentence on a juvenile offender.

Although rarely imposed, as of 2002, four youth offenders had been sentenced to life in prison.⁵⁴ It is unclear if the sentences imposed on these youth allow for the possibility of release.

C. The Theoretical Possibility of Life in Prison

In several countries, the possibility of life without parole for juvenile offenders exists, although apparently it is rarely imposed. Dominica allows life without parole sentences to be

⁴⁸ Naovarath v. Nevada, 105 Nev. 525, 779 P.2d 944 (1989); Workman v. Kentucky, 429 S.W.2d 374 (1968). In Workman, the court held that sentencing the two teenage boys to life without parole for rape "under all circumstances shocks the general conscience of society today and is intolerable to fundamental fairness." At 378.

⁴⁹ State Party Report, CRC/C/51/Add.2, May, 22, 1999 at para. 514.

⁵⁰ South Africa Procedural Law 51, Section 290.

⁵¹ See Child Justice Alliance website at www.childjustice.org.za.

⁵² Child Rights Bill, Section 72 (1).

⁵³ State Party Report, CRC/C/8/Add.44, February 27, 2002 at para. 1372.

⁵⁴ Id. at para. 1372.

imposed on offenders under the age of 18 years.⁵⁵ In the Solomon Islands, a child over 9 years old who is convicted of murder is subject to mandatory and unconditional life imprisonment without the possibility of parole. Neither the High Court nor the Court of Appeal has the authority to recommend parole.⁵⁶

Tanzania, in its most recent state report to the Committee on the Rights of the Child, wrote, “No relevant provisions can be found in the law relating to art. 37 of the convention [sic], that children under 18 should not be sentenced to death or life imprisonment without release.”⁵⁷ Additionally, it is reported that Kenya and Sri Lanka also allow life sentences without the possibility of release to be imposed on juvenile offenders.⁵⁸ No juvenile offenders are reported to be serving such sentences in any of the abovementioned countries.

In Antigua and Barbuda and Burkina Faso, the possibility of life in prison for youth offenders exists, although it is unclear if these sentences allow for the possibility of release.⁵⁹ No juvenile offenders were reported to be serving such sentences at the time of these countries’ most recent state reports to the Committee on the Rights of the Child.

Several countries allow youth offenders to be sentenced to life, providing for the possibility of release through some exercise of pardon, judicial discretion, or judicial re-determination of sentencing. In many of these countries, however, the commutation or shortening of life sentences is not an automatic procedure. Since the possibility of release is not built into them, they are considered life without parole sentences. In Saint Vincent and the Grenadines as well as in some of the states and territories of Australia, it is possible, although

⁵⁵ State Party Report, CRC/C/8/Add.48, October 15, 2003 at para. 161.

⁵⁶ State Party Report, CRC/C/51/Add.6, July 2002 at para. 420.

⁵⁷ State Party Report, CRC/C/8/Add.14/Rev.1, September 25, 2000 at para. 110.

⁵⁸ Human Rights Watch, “Thrown Away Children Sentenced to Life Without Parole in Colorado,” February 2005 at 31-32.

⁵⁹ In Antigua and Barbuda, a child under the age of 18 can be sent to life in prison for murder and for treason. State Party Report, CRC/C/28/Add.2, December 9, 2003 at para. 88-89; Burkina Faso allows for life imprisonment for children over 16 years if the child has “acted with due discernment.” State Party Report, CRC/C/65/Add.18, February 13, 2002 at para. 406 and 445.

apparently not guaranteed, that the government or judiciary will review life sentences for the purpose of shortening them.

In Saint Vincent and the Grenadines, a person under the age of 16 years can be detained at her Majesty's pleasure under such conditions as the Governor General may direct.⁶⁰

In Australia in New South Wales, life imprisonment for juveniles is possible, although the Royal Prerogative of Mercy allows the possibility of release.⁶¹ In addition, a 1990 law provides that any sentence of life imprisonment is to be for the offender's life,⁶² while the Sentencing Act of 1990 allows for the re-determination of life sentences.⁶³ In South Australia, a child sentenced in adult court may be sentenced to life imprisonment. When a child is sentenced to a juvenile prison, he may be released through application to a Training Center Review Board but the process is not automatic.⁶⁴

In the Northern Territory in Australia, life imprisonment is mandatory for murder. Depending on a variety of factors, the sentence may last for the natural life of the offender without possibility of release.⁶⁵ However, if the offender is a juvenile, the Supreme Court has

⁶⁰ State Party Report, CRC/C/28/Add.18, October 10, 2001 at para. 373. England also sentences juvenile offenders to detention at Her Majesty's Pleasure (HMP). However, a fixed minimum period is set by the judiciary for HMP sentences, the expiry of which the offender is considered for release. (Criminal Justice and Court Services Act 2000 Chapter 43 Section 60.) Current fixed terms generally begin at 12 years with a proposed point of reduction for each year the person was under 18 at the time of the offense. Before 2000, the Secretary of State set the fixed term for youth offenders, without obligation to impose the sentence recommended by the judiciary, and routinely reviewed the sentences. It is unclear how long sentences for youth offenders were under this system. The European Court of Human Rights subsequently ruled that the sentencing scheme violated Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which calls for a fair hearing by an independent and impartial tribunal. V & T v UK (2000) 30 EHRR 121. The 250 HMP detainees sentenced before the ruling were thereafter instructed to apply to the Lord Chief Justice to reset their minimum terms. Further, once a lifer is released from prison, he is subject to a life license for the rest of his life, providing for supervision for as long as considered necessary and a liability to be sent back to prison for the remainder of his life. (Crime Sentences Act 1997 Chapter 43 Section 31 and 32.) In Brunei, also, for certain offences, offenders under the age of 18 can be detained "on the pleasure of His Majesty." However, it is unclear if these sentences have a maximum limit. State Party Report, CRC/C/28/Add.2, December 9, 2003 at para. 293-295.

⁶¹ State Party Report, CRC/C/8/Add.31, February 1, 1996 at para. 1658.

⁶² Id. at 1660.

⁶³ The court may re-determine the sentence into a minimum and additional term, it may refuse to do so, or it may order an additional term to be the term of the person's life. Id. at para. 1661.

⁶⁴ Id. at 1671.

⁶⁵ Sentencing (Crime of Murder) and Parole Reform Act of 2003, 53A (5).

the discretion to sentence the juvenile to a shorter period of imprisonment.⁶⁶ It is unclear if life sentences in the Northern Territory include the possibility of parole through the Royal Prerogative of Mercy. In the Australian Capital Territory, life sentences for youth offenders are legal, although release is possible through the Royal Prerogative of Mercy.⁶⁷

In contrast, life sentences for youth offenders are routinely reviewed or shortened under federal law in Australia and in the Netherlands.⁶⁸

Under federal law in Australia, life without parole sentences are possible for certain crimes. In practice, the court always fixes a non-parole period, which effectively limits the sentence to a particular period.⁶⁹ In Queensland, notably, life imprisonment without the possibility of parole was abolished in 1992.⁷⁰

In the Netherlands, sentencing juveniles to life in prison is theoretically possible if a minor stands trial under adult criminal law. In practice, this does not occur. Generally, if a minor commits an offense serious enough to warrant life in prison, the court will issue a hospital order, including care. This order may be imposed in addition to a long but finite prison term. Any minor who received a life sentence would be pardoned after 20 years.⁷¹

⁶⁶ Id. at 1667.

⁶⁷ Id. at para 1656.

⁶⁸ In addition, in Bangladesh, the law allows life sentences to be imposed on juvenile offenders in exceptional circumstances only. Four youth offenders were serving life sentences in 2000. However, under Penal Code 1860 “imprisonment for life” means rigorous imprisonment for 30 years. In every case where life imprisonment is imposed, the Government has discretion to commute the sentence to a term not exceeding 20 years. State Party Report, CRC/C/65/Add.22, March 14, 2003 at para. 322 and 338. Life sentences for youth offenders, although offering the possibility of release, seem potentially arbitrary, unless there is a standardized process and guidelines by which the government reviews sentences.

⁶⁹ State Party Report, CRC/C/8/Add.31, February 1, 1996 at para 1653 and 1655.

⁷⁰ Id. at para. 1668.

⁷¹ State Party Report, CRC/C/117/Add.1, June 5, 2003 at para 242; Dutch Penal Code, 1997, Article 10 indicates a life sentence lasts for life. It reads; “Imprisonment shall be for life or a determinate period of imprisonment.” Article 77b allows a judge in certain instances to sentence a person between 16 and 18 years to sentences generally reserved for adults.

Part III: Recommendations

With respect to the juvenile death penalty, HRA recommends that the Commission

- Urge all states to prohibit the execution of juvenile offenders;
- Ask states that have the juvenile death penalty to submit reports to the Special Rapporteur on Arbitrary Executions detailing the number of juveniles executed, the number sentenced to death, and the number on death row;
- Commend Iran and Pakistan for implementing measures to abolish the practice, request that they report to the abovementioned Special Rapporteur on their progress, and request clarification of the current status of the practice;
- Urge China to develop mechanisms that will enable it to abide by its domestic law prohibiting the practice;
- Commend the United States and Taiwan for abolishing the juvenile death penalty and encourage other nations to follow suit.

With respect to juvenile life without parole, HRA recommends:

- That the commission recognize that juvenile life without parole violates customary international law;
- That the Commission urge all states to abolish juvenile life without parole sentences;
- That the Commission urge all states to clarify their laws and report the number of juvenile offenders serving life without parole sentences to the Office of the High Commissioner for Human Rights.

Regarding those states believed to practice juvenile life without parole, HRA commends

- South Africa and England for moving towards a more restorative juvenile justice system and encourages other countries to do the same;
- Australia for abolishing juvenile life without parole in Queensland and encourages remaining regions to follow suit.

HRA urges:

- 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.