

## **Lengthy terms of imprisonment and detention of children**

### ***Amnesty International's written statement for the UN Human Rights Council's annual full-day meeting on the rights of the child ("Children and the administration of justice")***

***19<sup>th</sup> session of the Human Rights Council (27 February – 23 March 2012)***

Amnesty International welcomes the focus of the Human Rights Council's annual full-day meeting on the rights of the child on the issue of "Children in the Administration of Justice". This statement focuses on some key aspects in relation to lengthy terms of imprisonment and detention of children; Amnesty International has also submitted a separate written statement on "Children and death the penalty".

The International Covenant on Civil and Political Rights (ICCPR) states that reformation and social rehabilitation is the general aim of the penitentiary system (Art. 10(3)). This is even more relevant in the case of children, as the Convention on the Rights of the Child (CRC) requires that children in conflict with the law be treated, "in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society." (Art. 40(1))

#### **Children and life sentences without possibility of release/parole**

Article 37(a), CRC prohibits the imposition of life imprisonment without possibility of release/ parole for offences committed by persons below eighteen years of age. In general comment no. 10 on 'Children's rights in Juvenile Justice', the Committee on the Rights of the Child has stated that the possibility of release should be realistic and regularly considered (Para 77). Despite near global consensus,<sup>1</sup> juvenile offenders are sentenced to life imprisonment without possibility of parole in the United States of America. In 2006 the Human Rights Committee found that the US practice of imposing such sentences was not in compliance with article 24(1) of the ICCPR.<sup>2</sup> The Committee against Torture has also stated that the US practice "could constitute cruel, inhuman or degrading treatment or punishment."<sup>3</sup> In the Universal Periodic Review in 2010, a number of states recommended the end of life imprisonment without possibility of parole for children in the USA.<sup>4</sup> The recommendation was rejected by the USA.

#### **Children and very long sentences**

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<sup>1</sup> See 'Rights of the Child', UN General Assembly Res. 65/197, UN Doc. A/RES/65/197, 21 December 2010; 'Human rights in the administration of justice', UN General Assembly Res. 65/213, UN Doc. A/RES/65/213, 21 December 2010. The Human Rights Council has also previously called for prohibition of the death penalty and life imprisonment without possibility of release for children, see 'Rights of the Child', HRC Res. 29, UN Doc. A/HRC/7/RES/29, 28 March 2008 and 'Human rights in the administration of justice, in particular of children and juvenile justice', HRC Res. 2, UN Doc. A/HRC/10/29, 25 March 2009.

<sup>2</sup> Human Rights Committee, Concluding observations of the Human Rights Committee: United States of America, U.N. Doc. CCPR/C/USA/CO/3 2395, 15 September 2006.

<sup>3</sup> Conclusions and recommendations of the Committee against Torture: United States of America, UN Committee against Torture, UN Doc. CAT/C/USA/CO/2, 25 July 2006.

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review: United States of America*, 4 January 2011, UN Doc A/HRC/16/11, para 92.180 (recommendations by Switzerland, Belgium, Austria and Slovakia)

Indeterminate and very long sentences, including life imprisonment, for offences committed by persons under the age of 18, are imposed in a number of states including China, the United Kingdom and the USA.

Article 37(b), CRC requires that detention or imprisonment of a child should “be used only as a measure of last resort and for the shortest appropriate period of time”. The UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) adopted by the General Assembly in November 1985, require institutionalization for the “minimum necessary period” (rule 19.1). Indeterminate and very long sentences are invariably inconsistent with such requirements for minimum or shortest appropriate periods and further defeat the aims of juvenile justice and the broader aims of imprisonment – reformation and social rehabilitation – laid down in article 10(3), ICCPR.

The Committee on the Rights of the Child has pointed out that where children are sentenced to life imprisonment with the possibility of release, such sanction should strive towards the aims of juvenile justice – reintegration and resumption of a child’s constructive role in society – as enshrined in article 40 (1) (General Comment no. 10, Para 77). Regular review of the child’s development and progress should therefore take place towards decision on a possible release. The Committee concluded that life imprisonment would make it “very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release”. The Committee also expressed concern at indeterminate sentences and strongly recommended that States parties “abolish all forms of life imprisonment for offences committed by persons under the age of 18.” (General Comment no. 10, Para 77)

### **Children tried as adults**

Amnesty International is concerned that persons under the age of 18 are tried in adult or regular proceedings in a large number of states.

Article 14(4), ICCPR requires trial procedures for children under the age of 18 to “take account of their age and the desirability of promoting their rehabilitation.” Article 40(2)(b)(vii), CRC specifically requires that a child’s privacy be fully respected at all stages of the proceedings. Further, the Beijing Rules state that proceedings involving accused children should be conducive to the best interests of the child and conducted in an atmosphere of understanding that would allow the child to be able to participate and express themselves freely (rule 14.2). Trial of children in adult or regular proceedings is inconsistent with such requirements as well as the aims and object of juvenile justice.

Article 40(3), CRC requires states to aim to establish “laws, procedures, authorities and institutions specifically applicable to children” accused of infringing penal laws.

### **Co-detention of children and adults**

The ICCPR requires that children in detention should be separated from adults “and be accorded treatment appropriate to their age and legal status” (article 10(2b) and (3)). Similarly article 37(c), CRC stipulates that a detained child should be separated from adults unless it would not be in the child’s best interest. This requirement is commonly flouted in a number of states, often where no separate detention facilities for children exist. The Beijing Rules clarify that where a separate institution is not available, children should be detained in a separate part or wing of a regular adult institution. (Rules 13.4, 26.3)

The UN Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment has called the requirement of segregation “an indispensable safeguard” to prevent abuse of children and noted that the implementation of the principle was generally piecemeal and particularly

lacking in police custody and pre-trial detention.<sup>5</sup> He also called for 24-hour separation, observing that in many states separation was enforced only during the night.<sup>6</sup>

## **Recommendations**

Amnesty International urges the Human Rights Council to:

- reaffirm that indeterminate and life sentences are inconsistent with the aims of juvenile justice and call for the abolition of all forms of life imprisonment for juvenile offenders;
- reiterate the importance of special provisions for the trial of children;
- call on states to implement faithfully the provisions of the ICCPR, CRC and the recommendations of the Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment with regard to co-detention of children and adults.

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<sup>5</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/64/215, 3 August 2009, para 76, 86

<sup>6</sup> *Ibid*, para 75-76.