



# Human Rights Advocates

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## Juvenile Sentencing and Alternatives to Incarceration of Juvenile Offenders

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## **Introduction**

Juvenile justice is an issue that affects all countries. The United Nations has consistently confirmed that incarceration of youth offenders should be of the last resort and for the shortest amount of time possible.<sup>1</sup> Yet, dozens of children have been executed in the last few years and hundreds more are in danger of the death penalty. Thousands of youth remain in prison for life without the possibility of release. Countries should immediately halt such sentences for youth offenders and implement alternatives to incarceration instead. The restorative justice principles of rehabilitation and restoration should be the primary guideline for such alternatives. In fact, countries that have implemented restorative justice programs have shown much success rehabilitating juvenile offenders.

## **Part I: International Law Prohibits the Juvenile Death Penalty**

The death penalty is widely acknowledged to be the harshest punishment that anyone can receive in the criminal justice system. The devastation greatly magnified when the one receiving the punishment is a child. Despite the continual efforts of many international human rights bodies, there are still countries that employ this inhumane sentence on children. These countries not only contravene a *jus cogens* norm, but also rob children of the basic human right to life. These countries need to immediately stop executing juveniles.

### **A. Prohibition of the Juvenile Death Penalty is a Jus Cogens Norm.**

A *jus cogens* norm is a norm accepted and recognized by the international community of States as such from which no derogation is permitted and modifiable only by a subsequent norm of the same character.<sup>2</sup>

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<sup>1</sup> U.N. Convention on the Rights of the Child, 1577 UNTS 3, art. 37(a), (Nov. 20, 1989) [hereinafter CRC]; U.N. Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113, Rule 2 (Dec. 14, 1990); United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”) G.A. Res. 45/112, U.N. Doc. A/RES/45/112, para. 46, (Dec. 14, 1990)

<sup>2</sup> Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, art. 53 (May 23, 1969).

The Convention on the Rights of the Child (“CRC”) explicitly prohibits the death penalty for juveniles. Every country in the world except the United States and Somalia has ratified the CRC. The International Convention on Civil and Political Rights (“ICCPR”) also prohibits the execution of persons under the age of 18.<sup>3</sup> In addition, the U.N. Human Rights Council regularly “urges States to ensure that, under their legislation and practice...capital punishment is not imposed for offences committed by person under 18 years of age.”<sup>4</sup>

The prohibition is found in international practice as well as in international law. As one of the most well known violators of the prohibition, the U.S. explicitly stopped the executions of juveniles in 2005.<sup>5</sup> Since then, only five nations are known to have continued the execution of juveniles. The prohibition of the juvenile death penalty is so widely practiced and accepted, it has undoubtedly reached the level of a *jus cogens* norm.

### **B. Practice of the Juvenile Death Penalty in Violation of International Law**

It is clear that international law prohibits the execution of juvenile offenders. With regard to the juvenile death penalty, juveniles are defined as persons under the age of 18.<sup>6</sup> The prohibition depends upon the age of the offender at the time of the crime and does not cease once a juvenile offender turns 18. Despite the continual efforts of many international human rights bodies, there are still countries that employ this inhumane sentence on children.

Since 2005, five states are reported to have executed juvenile offenders. All these countries are parties to the CRC and four have signed onto the ICCPR.<sup>7</sup> The five countries are

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<sup>3</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 6(5) (Dec. 16, 1966) [hereinafter ICCPR]

<sup>4</sup> Human Rights in the Administration of Justice, in Particular Juvenile Justice, U.N. H.R.C., 10th Session, U.N. Doc. A/HRC/RES/10/2, para. 11(Mar. 25, 2009)

<sup>5</sup> *Roper v. Simmons*, 543 U.S. 551 (2005)

<sup>6</sup> Committee on the Rights of the Child, *Children’s rights in Juvenile Justice, General Comment No. 10*, U.N. Doc. CRC/C/GC/10, art. 75 (2007)

<sup>7</sup> U.N. Treaty Collection, Status of Treaties. Available at: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (Last Visited Feb. 16, 2010).

Iran, Saudi Arabia, Sudan, Pakistan and Yemen.<sup>8</sup> In total, there have been at least thirty-four known executions of juvenile offenders from these five countries since 2006<sup>9</sup>.

Iran has emerged as the worst violator of the prohibition with at least twenty-eight executions since 2006.<sup>10</sup> Iran executed at least seven juvenile offenders in 2008 and at least three in 2009.<sup>11</sup> In October 2009, the U.N. High Commissioner for Human Rights, Navi Pillay condemned Iran's execution of Behnoud Shojaie. He had been convicted of the murder of another boy in a street fight when both were 17 years old. Ms. Pillay was quoted to have said: "This latest execution shows there are no guarantees of clemency for juveniles until Iran changes its law and practice to end execution of juvenile offenders once and for all."<sup>12</sup> Furthermore, Iran has sentenced three young men, who were under the age of 18 at the time of conviction, to death under Iran's *shari'a*-based criminal code for allegedly engaging in homosexual acts.<sup>13</sup> These sentences are particularly troublesome because the code allows judges to use their "knowledge" in determining guilt where no such evidence is available.<sup>14</sup> This is an extremely subjective measure and a very low threshold to meet in order to execute youth offenders. It is clear that international law expressly prohibits such executions.

Saudia Arabia also remains active in sentencing youth to death and executing juvenile offenders. In May 2009, two men convicted of non-lethal offenses when they were 17 were

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<sup>8</sup> Human Rights Watch, Publications, "*The Last Holdouts*," Sept. 10, 2008. Available at <http://www.hrw.org/en/reports/2008/09/10/last-holdouts>. (Last Visited Feb. 15, 2010)

<sup>9</sup> Amnesty International, "*Execution of Juveniles since 1990*." Available at: <http://www.amnesty.org/en/death-penalty/executions-of-child-offenders-since-1990> (Last Visited Feb. 1, 2010)

<sup>10</sup> Id.

<sup>11</sup> Human Rights Watch, News, "*Iran: Revoke Death Sentences For Juvenile Offenders*," Nov. 4, 2009. Available at: <http://www.hrw.org/en/news/2009/11/03/iran-revoke-death-sentences-juvenile-offenders>. (Last Visited Feb. 15, 2010)

<sup>12</sup> U.N. Press Release, "*UN human rights chief criticizes latest execution of juvenile offender in Iran*," Oct.13, 2009. Available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/0/CE602F5410665725C125764E003ACA2F?opendocument> (Last Visited Feb. 16, 2010)

<sup>13</sup> Human Rights Watch, News, "*Iran: Revoke Death Sentences For Juvenile Offenders*," supra note 11

<sup>14</sup> Id.

beheaded in that country.<sup>15</sup> There are indications that the two offenders had confessed to their crimes after being beaten and were convicted after grossly unfair trial proceedings.<sup>16</sup> These executions are in clear violation of Saudi Arabia's treaty obligations. However, during the country's Universal Periodic Review last year, the Saudi Arabia Human Rights Commission in Geneva "accepted the recommendation that only persons over 18 should be tried as adults and that there should be a moratorium on the death penalty for people who committed crimes under the age of 18."<sup>17</sup> This is an encouraging sign and Saudi Arabia should act immediately upon this promise to halt all further execution of youth offenders.

There are also reports of two executions in Sudan, one in Yemen and one in Pakistan.<sup>18</sup> The latter is surprising considering that in 2000, Pakistan had issued a juvenile justice ordinance banning the death penalty for persons under 18 at the time of the offense.<sup>19</sup> Questions remain as to the government's ability to implement such legislation throughout the country.<sup>20</sup> Pakistan needs to implement measures to ensure the uniform application of the ordinance throughout the country.

Those states that have yet to prohibit the juvenile death penalty for all crimes should immediately implement a moratorium on all executions of juveniles, and pass legislation banning juvenile executions without exception. This is important because reportedly, at least 135 juvenile offenders are on death row in Iran<sup>21</sup> while there are at least 6 in Sudan, 2 in Pakistan and 18 in

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<sup>15</sup> Amnesty International, News and Reports, "Two Juvenile Executions Are "Deplorable Additions to Grim Tally" in Saudi Arabia, Says Amnesty International," May 11, 2009. Available at: <http://www.amnestyusa.org/document.php?id=ENGUSA20090511001> (Last Visited Feb. 16, 2010).

<sup>16</sup> Id.

<sup>17</sup> Human Rights Watch, News, "UN Saudi Arabia Pledges End of Men's Control Over Women" June 12, 2009. Available at: <http://www.hrw.org/en/news/2009/06/12/un-saudi-arabia-pledges-end-men-s-control-over-women> (Last visited: Feb. 23, 2009)

<sup>18</sup> "The Last Holdouts," supra note 8

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Amnesty International, News, "Delara Darabi Commemorated at Actions Against the Death Penalty in Iran," May 8, 2009. Available at: <http://www.amnesty.org/en/news-and-updates/news/delara-darabi-commemorated-actions-against-death-penalty-iran-20090508>. (Last Visited Feb. 1, 2010).

Yemen.<sup>22</sup> In addition, there are at least 8 cases involving juvenile offenders on death row in Saudi Arabia.<sup>23</sup> An immediate moratorium would ensure that these countries will not continue to violate international law.

### **C. Accurate Record Keeping is Essential to Ensuring Juvenile Rights**

In Somalia, there have been reports that non-government militia executed an individual who had initially been reported as an adult offender but later confirmed as a juvenile.<sup>24</sup>

According to journalists who had reported the stoning, there were claims that Aisha Ibrahim Duhulow was determined to be 23 based upon on her physical appearance.<sup>25</sup> However, her father and others confirmed that she was actually just 13 and had been stoned because she attempted to report her rape to the al-Shabab militia in control.<sup>26</sup>

Nevertheless, efforts that Somali Transitional Federal Government is making to ratify the CRC<sup>27</sup> should be recognized.

Additionally, authorities in Somaliland and Puntland [regions in Somalia] have already declared their intention to incorporate the principles of the CRC in their respective legal systems and have addressed specific child rights in legal instruments, such as the 2008 Somaliland Juvenile Justice Act and Article 19 on Children's Rights in the Puntland Constitution.<sup>28</sup>

Somalia's efforts and intention to comply with the high standards set out in the CRC is commendable and would be an important step to ensure the safety of children throughout the country. Ratification by Somalia would also help solidify the jus cogens status of the prohibition

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<sup>22</sup> "The Last Holdouts," supra note 8

<sup>23</sup>, "Two Juvenile Executions Are "Deplorable Additions to Grim Tally" in Saudi Arabia, Says Amnesty International," supra note 15

<sup>24</sup> BBC News, Africa, "Stoning Victim 'Begged for Mercy'," Nov. 8, 2008. Available at: <http://news.bbc.co.uk/2/hi/africa/7708169.stm> (Last Visited Feb. 16, 2010).

<sup>25</sup> Amnesty International, Press Releases, "Somalia: Girl Stoned was a Child of 13," Oct. 31, 2008. Available at: <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031> (Last Visited Feb. 16, 2010).

<sup>26</sup> Id.

<sup>27</sup> United Nations Children's Fund, Press Releases, "UNICEF welcomes decision by the Somali Transitional Federal Government to ratify the Convention on the Rights of the Child," Nov. 20, 2009. Available at: [http://www.unicef.org/infobycountry/media\\_51841.html](http://www.unicef.org/infobycountry/media_51841.html). (Last Visited Feb.15, 2010)

<sup>28</sup> Id.

against the juvenile death penalty. The international community needs to encourage Somalia's efforts and assist them through the ratification process.

In addition to fair judicial proceedings, it is crucial that countries make substantial efforts to keep an accurate record of the ages of all youth offenders, especially those in official juvenile justice systems as a matter of accountability and a mechanism for the appropriate administration of justice. The international community should support every country's efforts to correctly issue administer justice and help to provide resources for such measures. Also, the juvenile death penalty is clearly universally prohibited. Nations that continue such practices should stop violating international law, uphold their obligations to expressly prohibit such cruel sentences and immediately stop executing such offenders. And for nations that have not yet fully recognized such obligations, they should make real effort to ensure their full participation in such measures.

## **Part II: International Law Also Prohibits Life Imprisonment Without Possibility of Parole or Release for Child Offenders**

Life sentences without the possibility of parole essentially condemn a child to die in prison. It allows no room for children to receive the opportunity for rehabilitation that is required by international standards and cuts short their enormous potential for growth and maturity. As such, they are prohibited by international law and further practice of these sentences should be immediately halted.

### **A. The Prohibition of Juvenile Life Without Parole Sentence has also Reached Jus Cogens Status.**

The CRC, ratified by every country in the world except the United States and Somalia, codifies an international customary norm of human rights that recommends against life sentences

and forbids the sentencing of child offenders to life in prison without possibility of release.<sup>29</sup> And it is clear that when the ICCPR recommends that court procedures involving juvenile persons shall take account of their age and the desirability of promoting their rehabilitation, a lifetime in prison is not a sentence that fulfills those treaty obligations. Even state practices show a consensus about not imposing life without parole sentences on juveniles as only 11 countries remain that allow or may allow such a punishment.<sup>30</sup> “The universal prohibition against such a sentence outside of the United States reflects not just customary international law, but a peremptory, non-derogable, *jus cogens* norm of international law.”<sup>31</sup> As such, the prohibition against juvenile life sentences without the possibility of release is binding on all states, including those that have not formally ratified the CRC themselves.

#### **B. States Practice of the Juvenile Life Without Parole Sentence**

The juvenile life without the possibility of release sentence not only condemns a child to life in prison but also subjects the child to many dangers such a physical abuse, emotional hardship and lack of a basic education.<sup>32</sup> The long term effects of such trauma are tenfold when the child is aware they will essentially die in prison. Such youth are given no chance at rehabilitation or an opportunity to live a constructive life. As such, juvenile life without the possibility of release should never be used for children and countries should ensure that the sentence is universally abolished.

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<sup>29</sup> CRC, *supra* note 1 at art. 37(a)

<sup>30</sup> Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. Rev. 983, 1004-1005 (Spring 2008); *see also* Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, \_ U.S. \_ (2010) (Nos. 08-7412, 08-7621) pg. 17

<sup>31</sup> *Id.* at pg. 3

<sup>32</sup> New York Times, “*New York Finds Extreme Crisis in Youth Prisons*,” Dec. 14, 2009. Available at: [http://www.nytimes.com/2009/12/14/nyregion/14juvenile.html?\\_r=1](http://www.nytimes.com/2009/12/14/nyregion/14juvenile.html?_r=1) (Last Visited Feb. 16, 2010).

## **1. Countries That Have the Juvenile Life Without Possibility of Release Sentence**

There are ten remaining countries besides the United States that have laws that could permit the sentencing of child offenders to life without parole: Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka.<sup>33</sup> Although there are no known cases where these countries have imposed life without possibility of release sentences<sup>34</sup>, those countries should be urged to pass legislation to explicitly abolish the practice. As long as there is a possibility of such sentences, there is a possibility for the violation of international law.

## **2. The United States Remains the Only Country to Actively Impose the Juvenile Life Without Parole Sentence.**

The history of juvenile life sentences has not been consistent in the United States. The sentence was not used on a large scale until the 1990s when at least 40 states passed laws increasing the options for sending juveniles to adult courts.<sup>35</sup> And currently, there is no evidence of any country, besides the United States, with child offenders sentenced to life without the possibility of release.<sup>36</sup> Because there is no national legislation prohibiting the sentence, there are estimated to be 2,574<sup>37</sup> juveniles currently serving life sentences without parole in the U.S.

However, recent efforts in the United States that have moved towards eliminating the practice of juvenile life without parole should be recognized. Most notably, in November 2009, the U.S. Supreme Court heard two cases that were appealed from Florida regarding juvenile life

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<sup>33</sup> Id. at pg. 17

<sup>34</sup> Connie de la Vega & Michelle Leighton, *supra* note 30 at 989

<sup>35</sup> Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, *supra* note 30 at pg. 17

<sup>36</sup> Connie de la Vega & Michelle Leighton, *supra* note 30 at 984; *see also* Brief for Amicus Curiae Supporting Petitioners, *Graham v. State of Florida and Sullivan v. State of Florida*, *supra* note 30 at pg. 17

<sup>37</sup> Human Rights Watch, News, “*State Distribution of Juvenile Offenders Serving Juvenile Life Without Parole (JLWOP)*,” Oct. 2, 2009. Available at: <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>. (Last Visited Feb. 1, 2010)

without parole sentences given to two juveniles for non-homicide related crimes.<sup>38</sup> Joe Sullivan was sentenced for allegedly committing rape at the age of 13 and Terrance Graham was given life without parole at 17 for violating the conditions of his probation for a previous crime.<sup>39</sup> The decision of the Supreme Court in this case will have enormous impact on the lives of more than 100 people<sup>40</sup> serving juvenile life without possibility of release sentences. More importantly, it could potentially create positive changes in U.S. law and eliminate the danger of such a sentence for many in the juvenile justice system.

Another positive effort has been taking place on a lower governmental level. The legislature in California is considering passing a bill that will allow juveniles to apply for re-sentencing after serving ten years.<sup>41</sup> Under the bill, the offender would ask for a rehearing after serving ten years in prison, the rehearing has to be granted, and judge has to decide that resentencing is appropriate. The offender has the possibility of release after twenty five years if parole is granted after resentencing.<sup>42</sup> Although this legislation is modest at best, commentators have said that “it demonstrates California’s faith that not every person whose life got off to a destructive start remains irredeemable.”<sup>43</sup> But more significantly, California has one of the highest number of juveniles serving life without parole sentences in the U.S.<sup>44</sup> If they succeed on

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<sup>38</sup> Supreme Court of the United States, Docket. *Graham v. State of Florida and Sullivan v. State of Florida*. Available at: <http://origin.www.supremecourtus.gov/docket/08-7412.htm> and

<http://origin.www.supremecourtus.gov/docket/08-7621.htm> (Last Visited Feb. 8, 2010)

<sup>39</sup> New York Times, Opinion, Editorial, “*Imprisoning a Child for Life*.” (Nov. 9, 2009) Available at: [http://www.nytimes.com/2009/11/09/opinion/09mon1.html?\\_r=1&scp=2&sq=graham%20sullivan%20florida&st=cs](http://www.nytimes.com/2009/11/09/opinion/09mon1.html?_r=1&scp=2&sq=graham%20sullivan%20florida&st=cs) (Last Visited Feb. 18, 2010)

<sup>40</sup> New York Times, U.S., “*Weighing Life in Prison for Youths Who Didn’t Kill*.” (Nov. 7, 2009) Available at: <http://www.nytimes.com/2009/11/08/us/08juveniles.html?hp> (Last Visited Feb. 18, 2010)

<sup>41</sup> Fair Sentencing for Youth, Bills & Cases, “California: What is SB399?” Available at: <http://www.fairsentencingforyouth.org/legislation/what-is-sb399/> (Last Visited Feb. 8, 2010)

<sup>42</sup> Los Angeles Times, Collections – Sentencing, Editorial, “*When ‘life’ is Cruel: California May End the Practice of Sentencing Some Juvenile Criminals to Life Without Parole*.” (Jan.14, 2010). Available at: <http://articles.latimes.com/2010/jan/14/opinion/la-ed-lwop14-2010jan14> (Last Visited Feb. 17, 2010).

<sup>43</sup> Id.

<sup>44</sup> California has 250 juveniles serving life without parole sentences. It ranks fifth behind Pennsylvania (444), Michigan (346), Louisiana (335), and Florida (266). “*State Distribution of Juvenile Offenders Serving Juvenile Life Without Parole (JLWOP)*,” supra note 37.

passing such legislation, it could affect the lives of more than 250 juveniles and set an example for the rest of the country to follow with their juvenile justice policies.

While these efforts at the Supreme Court and in state legislatures are commendable, the U.S. government can also make efforts to eliminate the juvenile life without parole sentence. It is reported that 37 youth offenders remain in federal prison serving this sentences.<sup>45</sup> Legislation to eliminate the sentence at the federal level would not only help move the U.S. towards compliance with international standards, but would set a strong example for all states to also eliminate juvenile life without parole.

### **Part III: Alternatives to Juvenile Incarceration and Restorative Justice Programs**

The International Covenant on Civil and Political Rights (“ICCPR”) and the CRC provide that deprivation of liberty for child offenders should be a “measure of last resort.” As an alternative to incarceration, the U.N. laid out the principles of restorative justice in ECOSOC Resolution 2002/12. It stated that “restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and community.”<sup>46</sup> The First World Congress on Restorative Juvenile Justice in November 2009 further elaborated on this point by stating that restorative juvenile justice programs should not be limited to youth who have committed minor offenses.<sup>47</sup> “Experience shows that restorative juvenile justice can also play an important role in addressing serious crimes.”<sup>48</sup> Restorative justice programs are a viable alternative to incarceration and countries should strive to incorporate such principles into their national

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<sup>45</sup> Human Rights Watch, News, “*Letter from Human Rights Organizations to CERD Regarding Juvenile Life Without Parole in the United States*” (June 4, 2009). Available at: <http://www.hrw.org/en/news/2009/06/04/letter-human-rights-organizations-cerd-regarding-juvenile-life-without-parole-us> (Last Visited Feb. 22, 2010)

<sup>46</sup> Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, U.N. Economic and Social Council, 37<sup>th</sup> Plenary Session, ECOSOC Res. 2002/12, Annex (July 24, 2002).

<sup>47</sup> First World Congress on Restorative Justice, “Lima Declaration on Restorative Juvenile Justice” (Nov. 2009) Available at: [http://www.juvenilejusticepanel.org/resource/items/L/i/LimaDeclarationRJJNov09\\_EN.pdf](http://www.juvenilejusticepanel.org/resource/items/L/i/LimaDeclarationRJJNov09_EN.pdf) (Last Visited Feb. 15, 2009)

<sup>48</sup> Id.

juvenile justice programs. They should also be considered for offenders who commit serious crimes that are currently subjected to juvenile death penalty and juvenile life without parole sentences.

### **A. Successful Alternatives to Juvenile Imprisonment**

There have been many alternatives to juvenile imprisonment based on principles of restorative justice that have been implemented successfully to focus on rehabilitation and recidivism reduction. Countries should consider these examples and adapt comparable programs for their own juvenile justice systems.

#### **1. Australia and New Zealand**

Both Australia and New Zealand have successfully implemented a restorative justice model that focuses on having offenders understand the impact of their offense on the victim, themselves and the community rather than simply applying retribution.

In Australia, family conferences are convened by youth justice coordinators and take place when a youth admits the commission of a ‘minor offence’.<sup>49</sup> Conferences are intended to divert matters away from the court system. At a conference the young offender, the offender's guardian/family/or other appropriate person, the victims of the crime, a police officer and a coordinator meet together.<sup>50</sup> These people discuss the offence and determine a suitable outcome that will attempt to address the needs of all parties.<sup>51</sup> As evidenced in Australia, a high majority of their recommended family conferences are complied with,<sup>52</sup> and thus these conferences are a viable alternative to incarceration.

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<sup>49</sup> Court Administration Authority, South Australia, Youth Court Family Conference Team. Available at: <http://www.courts.sa.gov.au/courts/youth/index.html> (Last Visited Feb. 18, 2010).

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Government of South Australia, Department of Justice, Office of Crime Statistics and Research, “*Crime and Justice in South Australia, 2006*,” published 2008 at pg. 6. Available at: [http://www.oscar.sa.gov.au/docs/crime\\_justice/JJ\\_Text2006.pdf](http://www.oscar.sa.gov.au/docs/crime_justice/JJ_Text2006.pdf) (Last Visited Feb. 18, 2010).

In New Zealand, Family Group Conferencing aims to involve the young offender, the victim and their families in the decision-making process with the objective of reaching a group-consensus on a 'just' outcome.<sup>53</sup> There are six situations where a Conference must be convened, including when an enforcement office believes the youth offender is in need of care and when the police wish to charge a young person alleged to have committed a crime.<sup>54</sup> The Conference process includes sharing information about the nature of the offense, an opportunity for both the offender and victim to share their perspective and lastly, the participants decide on an outcome or recommendation. Conferences are used 8000 a year and as a result, 84% of youth offenders are diverted from the criminal justice system.<sup>55</sup> Imprisonment and the use of youth justice residences have dropped significantly with their use.

## 2. Brazil

The U.N. Human Rights Council issued a resolution that urged UN agencies and programs to support the activities of states in strengthening juvenile justice capacities.<sup>56</sup> Brazil is an example of how such efforts can impact programs dedicated to alternatives to incarceration. In March 2005, the U.N. Development Programme gave a small grant to Brazil where they began restorative justice programs.<sup>57</sup> As a result, there has been a movement called Restorative Circles that focuses on bringing the offender, victim and community together in the aftermath of crime to discuss and negotiate a way for the juvenile to resolve conflict.<sup>58</sup> The Circles have been

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<sup>53</sup> Youth Court of New Zealand, About the Youth Court, Family Group Conferencing. Available at: <http://www2.justice.govt.nz/youth/about-youth/family-group-conference.asp> (Last visited Feb. 25, 2010).

<sup>54</sup> Id.

<sup>55</sup> Emily Watt, A History of Youth Justice in New Zealand, pg. 28 (May 2003) Available at: <http://www2.justice.govt.nz/youth/about-youth/History%20of%20the%20Youth%20Court%20Watt.pdf> (Last visited Feb. 18, 2010)

<sup>56</sup> Human Rights in the Administration of Justice, in Particular Juvenile Justice, *supra* note 4 at para. 14

<sup>57</sup> United Nations Development Programme, Evaluation Resource Center, BRA/05/009 Promoting restorative practice in Brazilian justice. Available at: <http://erc.undp.org/evaluationadmin/manageevaluation/viewevaluationdetail.html?evalid=1937> (Last Visited Feb. 9, 2009)

<sup>58</sup> Youth Justice Agency, Youth Conference Service, Articles “We are not Brazil.” (Aug. 2007) Available at: [http://www.youthjusticeagency.gov.uk/youth\\_conference\\_service/articles/we\\_are\\_not\\_brazil/](http://www.youthjusticeagency.gov.uk/youth_conference_service/articles/we_are_not_brazil/) (Last visited Feb. 18, 2010)

statistically shown to reduce the number of cases in which youth come before a judge up to 50%. And independent research has found over 90% of cases have been resolved to the satisfaction of those polled.<sup>59</sup>

### 3. United States

Although the U.S. remains the only country to actively sentence youth to life without the possibility of release, there have also been successful programs directed at having offenders avoid incarceration.

In California, San Francisco Peer Court is a city-funded Peer-to-Peer Restorative Justice program that provides leadership opportunities and restorative alternatives to suspension and arrest.<sup>60</sup> Youth offenders are referred to the program so that they can take responsibility for their actions in the community, rather than advancing through the justice system. Generally, a youth respondent comes to Peer Court voluntarily after admitting responsibility for their actions, as an alternative to suspension, arrest, juvenile court or other justice sanction.<sup>61</sup> Under either a Teen Court or Group Conferencing technique, efforts are made to identify and repair harm through the process.<sup>62</sup>

In Georgia, private donations from foundations, corporations, individuals and religious groups fund the efforts of the Georgia Justice Project (GJP).<sup>63</sup> GJP minimizes recidivism rates amongst juveniles by incorporating counseling, treatment and employment and education programs with its legal services. The program is about forming a relationship with juvenile clients that goes beyond legal representation. GJP staff pairs each child offender with a social worker who accompanies the juvenile through the process along with their attorney. GJP

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<sup>59</sup> The Center for Nonviolent Communication, Dominic Barter, “*Restorative Circles in Brazil*,” Feb. 27, 2009. Available at: <http://www.cnvc.org/node/6254> (Last visited Feb. 18, 2010)

<sup>60</sup> Restorative Justice Alternatives for Youth, San Francisco Peer Court, Frequently Asked Questions. Available at: <http://www.peercourt.org/FAQ.html> (Last Visited Feb. 18, 2010)

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Georgia Justice Project, About Georgia Justice Project, Available at: <http://www.gjp.org/about> (Last Visited Feb. 18, 2010)

maintains close contact with the juvenile both during and after incarceration and provides incentives and support as the child offender rebuilds his or her life. The program also provides support for the families of the offenders. The recidivism rate for GJP clients is 18% compared to a national average of more than 60%.<sup>64</sup>

#### **4. Other Programs With Potential**

In March 2008, Georgia launched a three-year project to reform the juvenile justice system as a partnership between the Ministry of Justice, the Ministry of Corrections and Legal Assistance, UNICEF and Penal Reform International, and with support from the Government of the Netherlands.<sup>65</sup> An important part of the project is ensuring that young people are not prosecuted for minor or less serious offences but if they are prosecuted, they are given a non-custodial sentence.<sup>66</sup> At the center in the city of Kutaisi, the youth plan their own rehabilitation using resources like English-language and computer lessons. Also, special effort is made to include parents in the rehabilitation program, holding meetings with them two to three times a month.<sup>67</sup>

More states should actively implement national restorative justice programs that are focused on diverting juveniles from adult court: rehabilitation and helping youth to reach their full potential to should be of highest priority. Successful programs have shown that involving the victim, parents and the community at large has been important in determining a suitable outcome to address the needs of all the parties to the offense. A further step in these programs is to pursue the goals of restorative justice for situations where the youth has committed more serious crimes.

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<sup>64</sup> Id.; see also Connie de la Vega & Michelle Leighton, *supra* note 30 at 1022-1023

<sup>65</sup> United Nations Children's Fund, Info by Country, Georgia "*Groundbreaking Project Transforms the Lives of Juvenile Offenders in Georgia*" Nov. 9, 2009. Available at: [http://www.unicef.org/infobycountry/georgia\\_51674.html](http://www.unicef.org/infobycountry/georgia_51674.html) (Last Visited: Feb. 25, 2010).

<sup>66</sup> Id.

<sup>67</sup> Id.

#### **Part IV: Recommendations**

Human Rights Advocates recommends to the Human Rights Council:

Regarding the juvenile death penalty that it:

- a. Continue to condemn countries that have contravened international law and sustained the practice of juvenile execution.
- b. Urge countries to keep accurate records of the age of juvenile offenders.

Regarding life without possibility of release sentences for child offenders that it:

- a. Urge all states to explicitly abolish all legislation providing for life without parole or possibility of release sentences for child offenders;
- b. Urge all states to recognize that the transfer of juveniles to adult court should only be for extremely serious offenses and should include the supervision of juvenile court or other accountability.

Regarding alternatives to juvenile incarceration and restorative justice that it:

- a. Urge all states to recognize that the basic goals of restorative justice are rehabilitation and restoration and to actively develop restorative justice programs that help support the child in assuming a constructive role in society;
- b. Recognize that the important aspects of a solid restorative justice program involve removing juveniles from the adult system and actively involving the offenders' parents and the community in determining how they should make amends for their offense.

Human Rights Advocates also urges Somalia and the United States to continue the efforts towards ratification of the Convention on the Rights of the Child.