



## **Human Rights Advocates**

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### **EXTREME CRIMINAL SENTENCING FOR JUVENILES: VIOLATIONS OF INTERNATIONAL STANDARDS**

February 2014

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## **I. Juvenile Justice Theory**

Juveniles require different treatment in the justice system. General Comment No. 10, adopted by the Committee on the Convention on Rights of the Child, states “[j]uveniles have diminished culpability because of their age; because juveniles differ from adults, the rehabilitative goal of punishment is best served through separate juvenile justice systems and penal codes.”<sup>1</sup> Scientific studies have shown that juveniles are different from adults because they have an underdeveloped sense of responsibility that leads to recklessness, impulsivity, and heedless risk taking; they lack maturity; they are more vulnerable to outside influences; they have not fully formed their character, thus their traits are “less fixed” and actions less likely to be “evidence of irretrievable depravity;” and they have limited control over their own environment.<sup>2</sup> For these reasons, juveniles require different treatment in the justice system.

There are several sources of international law and norms that govern juvenile justice. The Convention on Rights of the Child (CRC)<sup>3</sup> and International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> are the two main sources of international law. There are also the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>5</sup> the UN Rules for the Protection of Juveniles Deprived of their Liberty

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<sup>1</sup> Committee on Rights of the Child, General Comment No. 10: Children’s Rights in Juvenile Justice, para. 10, UN Doc. CRC/C/GC/10 (April 25, 2007).

<sup>2</sup> *Miller v. Alabama* (2012) 132 S.Ct. 2455, 2464-2465.

<sup>3</sup> U.N. Convention on Rights of the Child, GA Res 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc A/44/49 (Nov. 20, 1989).

<sup>4</sup> International Covenant on Civil and Political Rights, Jan. 3, 1976, 993 U.N.T.S. 3.

<sup>5</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice, A/RES/40/33, (Nov. 29, 1985).

(the Havana Rules)<sup>6</sup> and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Rules).<sup>7</sup> These treaties, rules and norms set the human rights standards that the world must abide by in their juvenile justice systems.

Despite international law protecting juveniles, countries continue to violate individual juveniles' rights when they enter the justice system. The pattern of trying juveniles at a young age, treating them as adults in the justice system, and sentencing juveniles to extreme punishments that lack a rehabilitative purpose violates the human rights of individual juveniles.

This paper will discuss the areas in the juvenile justice system where juveniles' human rights are violated and suggest ways of addressing those violations. The second section addresses the juvenile death penalty. The third section addresses long sentencing practices, such as juvenile life without parole and *de facto* juvenile life without parole. The fourth section addresses transferring juveniles to adult court, and the fifth section addresses setting a minimum age of criminal responsibility for juvenile offenders. The final section discusses access to justice for juveniles who have had their individual rights violated.

## **II. Juvenile Death Penalty**

Sentencing and carrying out the juvenile death penalty violates international law. Article 6(5) of the ICCPR states that the "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age," and article 37(a) of the CRC

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<sup>6</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, GA/RES/45/113 (Dec. 14, 1990).

<sup>7</sup> UN Guidelines for the Prevention of Juvenile Delinquency, A/RES/45/112 (Dec. 14 1990).

repeats this language. In 1994, the Human Rights Commission deemed the categorical ban on the juvenile death penalty to be customary international law.<sup>8</sup>

Iran<sup>9</sup> and Saudi Arabia<sup>10</sup> are the only countries that currently carry out juvenile death penalty sentences. Examples of crimes in Iran that merit the death penalty include an illicit sexual relationship, sodomy and homosexual behavior between girls.<sup>11</sup>

Maldives is set to resume executions after a sixty-year moratorium.<sup>12</sup> There are currently two juveniles offenders with death penalty sentences in the Maldives.<sup>13</sup> If these sentences are carried out, it will violate international law and *jus cogens* norm.

Tonga's laws are ambiguous about whether courts can sentence a juvenile to the death penalty.<sup>14</sup> But Tonga is abolitionist in practice and has not sentenced or carried out any juvenile executions. An affirmative change in law that forbids executions of juvenile offenders would put Tonga in full compliance with international law.

Discrepancies in determining an offender's age at the time of the offense could lead to juvenile executions. General Comment No. 10, adopted by the Committee on the

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<sup>8</sup> Human Rights Committee, General Comment 24 (1994), U.N. Doc. CCPR/C/21/Rev.1/Add/6 (1994), para. 8.

<sup>9</sup> Mohammad H. Nayyeri, Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code, Iran Human Rights Documentation Center (2012) <http://www.iranhrdc.org/english/publications/legal-commentary/1000000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.UwrMbeAraQY>.

<sup>10</sup> Amnesty International, Five Reasons why Saudi Arabia Must Urgently Abolish the Death Penalty (2013).

<sup>11</sup> Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code, *supra* note 9.

<sup>12</sup> Amnesty International, Maldives: Halt "retrograde" move to resume executions (January 2014).

<sup>13</sup> Amnesty International, Maldives Must Commute Death Sentences for Two Juvenile Offenders Convicted of Murder (May 2013).

<sup>14</sup> Tonga Criminal Offenses, art. 91, Ch. 18, as amended by Act No. 46 of 1988 (Providing an exception for those under the age of 15 at the time of an offense).

CRC states, “if there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflicting or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.”<sup>15</sup> Yemen signed international treaties and passed legislation banning the juvenile death penalty, but continues to sentence and carry out death penalty sentences despite conflicting evidence that the offender was under 18 at the time of the crime.<sup>16</sup> This has also been an issue in Sudan<sup>17</sup> and Iran.<sup>18</sup>

The United States retains its reservation to article 6(5) of the ICCPR, which bans the juvenile death penalty, stating that it reserves the right to impose capital punishment on any person “including such punishment for crimes committed by persons below eighteen years of age.”<sup>19</sup> Since passing this resolution, the United States Supreme Court banned the juvenile death penalty in *Roper v. Simmons*.<sup>20</sup> This reservation should be removed because it longer applies to United States law.

### **III. Long Juvenile Sentencing**

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that the guiding factor in deciding a juvenile’s case is their well being.<sup>21</sup> Institutionalization is a last resort, and should only be for the

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<sup>15</sup> CRC General Comment No. 10, *supra* note 1 at para. 39.

<sup>16</sup> Human Rights Watch, *Look at us with a Merciful Eye: Juvenile Offenders Awaiting Execution in Yemen* (March 2013).

<sup>17</sup> *Death Penalty Worldwide, Sudan* (2012).

<sup>18</sup> Amnesty International, *Iran Executes Alleged Juvenile Offender* (Jan., 18, 2013).

<sup>19</sup> U.S. reservations, declarations, and understandings, *International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992).

<sup>20</sup> 543 U.S. 551 (2005).

<sup>21</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, *supra* note 5 at 17.1(d).

minimum necessary period.<sup>22</sup> The CRC reflects this language in articles 37(a), which expressly forbids sentencing juveniles to life without parole; 37(b), which states, “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;” and article 40, which governs the administration of juvenile justice.<sup>23</sup> ICCPR section 10(3) requires the sentencer to take a juvenile’s status as a minor into consideration.<sup>24</sup> Customary international law prohibits extreme sentences for juveniles and requires the shortest sentence possible.<sup>25</sup>

Of 164 countries surveyed, 127 have determinate, or maximum, sentences for juveniles when they are tried as juveniles.<sup>26</sup> Of those countries, 92 set the maximum sentence at 25 years or less.<sup>27</sup> The trend is to give juveniles a shorter prison term in favor of sentencing with a more rehabilitative focus. The next two sections discuss juvenile life without parole and de facto juvenile life without parole sentences, which are a big issue for the United States.

### **A. Juvenile Life Without Parole**

Juvenile life without parole (JLWOP) sentences violates the CRC, art. 37(a), which states “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;” and the Convention Against Torture (CAT), art. 16, which explicitly bans cruel,

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<sup>22</sup> *Id.* at 19.1.

<sup>23</sup> U.N. Convention on Rights of the Child, *supra* note 5.

<sup>24</sup> International Covenant on Civil and Political Rights, *supra* note 4 at art. 10(3).

<sup>25</sup> Connie de la Vega, Amanda Solter, Soo-Ryun Kwon & Dana Marie Isaac, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, 54 (2012).

<sup>26</sup> *Id.* at p. 58.

<sup>27</sup> *Ibid.*

inhumane or degrading treatment or punishment that does not amount to torture. In evaluating the United States, the Committee on CAT stated that JLWOP “could constitute cruel, inhuman or degrading treatment or punishment.”<sup>28</sup> The categorical ban on JLWOP is a *jus cogens* norm.<sup>29</sup> A *jus cogens* norm is a peremptory norm of general international law, which no derogation is permitted.<sup>30</sup> Further, international law greatly discourages the use of life without parole sentences in general. For example, the International Criminal Court mandates that life sentences are reviewable after twenty-five years.<sup>31</sup>

Eight countries still have laws that would allow for JLWOP, but there are no known cases of the sentence being imposed.<sup>32</sup> Zambia, Sierra Leone, Fiji and Tonga have ambiguous laws, but there is no evidence of JLWOP sentences being imposed.<sup>33</sup> The United States is the only country in the world that currently sentences JLWOP.<sup>34</sup>

Recent case law in the United States suggests a decline in the use of JLWOP sentences. In *Graham v. Florida*, the Supreme Court held that there could be no JLWOP for non-homicide offenses.<sup>35</sup> The Court reasoned that there was a national consensus against JLWOP, no goals or penal sanctions were served by JLWOP, and it improperly

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<sup>28</sup> Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, para. 34, UN Doc. CAT/C/USA/CO/2/Add. 1 (6 Nov. 2007).

<sup>29</sup> Cruel and Unusual, *supra* note 25 at p. 60.

<sup>30</sup> Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, art. 53.

<sup>31</sup> Rome Statute of the International Court, art. 110(3), 17 July 1998, A/CONF. 183/9.

<sup>32</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, 990 (2008)(Those countries are Antigua and Barbuda, Argentina, Australia, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> 560 U.S. 48 (2010).

denied a juvenile offender the opportunity to demonstrate growth, maturity and rehabilitation.<sup>36</sup> In *Miller v. Alabama*, the Supreme Court overturned statutes that mandate LWOP for juveniles that commit homicide and held that the sentencer must take into consideration the age and circumstances of the juvenile offender.<sup>37</sup> While this exhibits forward progress, more protection of juvenile rights is needed.

Individual states in the United States, such as Massachusetts, have banned JLWOP sentences.<sup>38</sup> In *Diatchenko*, the Massachusetts Supreme Judicial Court reasoned,

[B]ecause the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this *most severe punishment* is warranted.<sup>39</sup>

The trend is clearly in the right direction, but until all states follow Massachusetts' lead or the federal government bans JLWOP, the United States will continue to violate international law.

### **B. *De Facto* Juvenile Life Without Parole**

*De facto* JLWOP occurs when a juvenile is sentenced to a period of time that is so long that it amounts to life without parole.<sup>40</sup> For example, a fourteen year old was tried as an adult in the United States for a non-homicide crime.<sup>41</sup> He had attempted to rob a

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<sup>36</sup> Ibid.

<sup>37</sup> *Miller*, *supra* note 2.

<sup>38</sup> *Diatchenko v. District Attorney for Dist.* (2013) 466 Mass. 655.

<sup>39</sup> *Id.* at p. 670 (emphasis added).

<sup>40</sup> Cruel and Unusual, *supra* note 25 at p. 60.

<sup>41</sup> Erik Eckholm, Juveniles Facing Lifelong Terms Despite Rulings, *The New York Times*, January 19, 2014. <http://mobile.nytimes.com/2014/01/20/us/juveniles-facing-lifelong-terms-despite->

man, and fired a shotgun in the process. The victim was not seriously injured, but the juvenile was still sentenced to 70 years without parole.<sup>42</sup> He will likely die in jail. As countries move away from sentencing JLWOP, they should be monitored for *de facto* JLWOP sentences to avoid situations like the one above.

To avoid *de facto* sentences, countries can place statutory limits on the number of years that a juvenile offender can serve. Of 164 countries surveyed, 127 (78%) have determinate sentences for juveniles and 92 (56%) have determinate sentences that are 25 years or less for juveniles.<sup>43</sup> If a sentence is capped at 25 years or less, the likelihood that the juvenile will spend their life in prison is greatly diminished.

In the United States, where JLWOP is limited to homicide crimes, courts have issued decisions that recognize and limit the use of *de facto* JLWOP for non-homicide crimes. California Supreme Court decision, *People v. Caballero*, held that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.<sup>44</sup> While a juvenile offender can still be deemed unfit to reenter society and effectively serve a life sentence, this decision is a step in the right direction because there is parole review. As laws in the United States continue to limit the use of JLWOP sentences, courts must ensure that sentencing practices honor those limits.

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<sup>42</sup> Ibid.

<sup>43</sup> Cruel and Unusual, *supra* note 25 at p. 58.

<sup>44</sup> 55 Cal. 4th 262 (2012).

#### IV. Transfer of Juveniles to Adult Court

Juveniles must be treated differently than adults. The CRC General Comment states, “the rehabilitative goal of punishment is best served through separate juvenile justice systems and penal codes.”<sup>45</sup> The ICCPR requires the procedure for juveniles to “take account of their age and the desirability of promoting their rehabilitation.”<sup>46</sup> The ICCPR further requires that “an individual’s status as a minor must be taken into account during sentencing and juveniles shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”<sup>47</sup> The international consensus indicates that the practice of transferring juveniles to adult court contravenes customary international law.<sup>48</sup>

By transferring juveniles to adult court, two violations occur. First, the juvenile’s age and status is not considered at trial or sentencing, as required by international law.<sup>49</sup> Second, the juvenile is subject to adult punishments in adult facilities at sentencing.<sup>50</sup>

The United States put a reservation on the ICCPR stating “[t]he United States reserves the right, *in exceptional circumstances*, to treat juveniles as adults.”<sup>51</sup> There are an estimated 250,000 juveniles that are tried, sentenced or incarcerated as adults per year

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<sup>45</sup> General Comment No. 10; *supra* note 1 at para. 10.

<sup>46</sup> International Covenant on Civil and Political Rights, *supra* note 4 at art. 14(4).

<sup>47</sup> *Id.* at art. 10(3).

<sup>48</sup> For a complete list of countries that allow for the transfer of juveniles to adult court, see *Cruel and Unusual* at p. 55-56.

<sup>49</sup> *Cruel and Unusual*, *supra* note 25 at p. 53.

<sup>50</sup> *Ibid.*

<sup>51</sup> U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, *supra* note 17 (emphasis added).

in the United States.<sup>52</sup> This indicates an institutionalized practice of transferring juveniles to adult court in the United States, not just exceptional circumstances cases.

Each state in the United States has a separate set of laws to handle juveniles in conflict with the law, but there are three main ways for juveniles to get transferred to adult court. First is judicial waiver, which is the traditional way to transfer to adult court. It requires a fitness hearing, where the judge determines whether a juvenile is fit for juvenile court and whether the juvenile court resources can best serve that juvenile. If a juvenile is deemed unfit for juvenile court, then they will not be allowed to return for sentencing and must stay in adult court until the conclusion of their case.

Second is prosecutorial waiver. There are a series of offenses and offenders where the law gives the prosecutor the discretion up front whether to file in adult or juvenile court. In this instance, if the juvenile is convicted in adult court of a lessor crime, they may be returned to juvenile court for sentencing. Third is statutory waiver. The legislature set out a specified list of crimes where the prosecutor must file in adult court. The pushback is that the prosecutor gets to decide what to charge, and therefore can decide whether to charge one of the enumerated offenses or not. In both of these methods of transfer, the prosecutor has all of the discretion to determine where to file the case.

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<sup>52</sup> Campaign for Youth Justice; “Key Facts: Youth in the Justice System;” April 2012; <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>

The international trend is to keep juveniles in juvenile court. For example, Iraq,<sup>53</sup> Chile,<sup>54</sup> Angola,<sup>55</sup> Mexico<sup>56</sup> and the Czech Republic<sup>57</sup> do not allow juveniles to be transferred. Bolivia only allows juveniles over the age of seventeen to be transferred to adult court.<sup>58</sup> These laws keep juveniles and adults separate in accordance with countries' treaty obligations.

While it is ideal to create a separate system entirely for juveniles, some countries have created separate penal codes that are applied to juveniles even when they are in adult court.<sup>59</sup> Of the countries surveyed, 84% of the countries that allowed juveniles to be transferred to adult court still had protections for juveniles.<sup>60</sup> For example, Croatia<sup>61</sup> and Japan<sup>62</sup> allow juveniles to be tried in adult court, but the juvenile code still applies. Georgia<sup>63</sup> and Iceland<sup>64</sup> do not have juvenile courts, but additional protections apply to juveniles.

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<sup>53</sup> Law on Criminal Proceedings, para. 235.

<sup>54</sup> Ley No. 20.084, arts. 1-3.

<sup>55</sup> Penal Code, art. 17(6-8); Cruel and Unusual at p. 74.

<sup>56</sup> Ley de Justicia para Adolescentes Para El Distrito Federal, art. 4.

<http://statecasefiles.justia.com/estatales/distrito-federal/ley-de-justicia-para-adolescentes-para-el-distrito-federal.pdf>.

<sup>57</sup> Council of Europe, Czech Republic: Criminal Justice System, [www.coe.int/t/dghl/cooperation/ccpe/opinions/travaus/OP\\_5\\_Question\\_Rep\\_tcheque/pdf](http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaus/OP_5_Question_Rep_tcheque/pdf); Cruel and Unusual at p. 77.

<sup>58</sup> Código de Niño, Niña y Adolescente, art. 225, <http://bolivia.infoleyes.com/shownorm.php?id=638>.

<sup>59</sup> Cruel and Unusual, *supra* note 25 at p. 56.

<sup>60</sup> Cruel and Unusual, *supra* note 25 at p. 55.

<sup>61</sup> Juvenile Courts Act, art. 60,

[http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation\\_Juvenile-Courts-Act.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Juvenile-Courts-Act.pdf).

<sup>62</sup> Juvenile Act, Act No. 168 of 1948, art. 20.

<sup>63</sup> Code of Criminal Procedure, arts. 640, 641, 654; Criminal Code, art. 89; Cruel and Unusual at p. 79.

<sup>64</sup> U.N. ESCPR, 30th Sess., 16th mtg., U.N. Doc. E/C. 12/2003/SR. 16, May 26, 2003; Cruel and Unusual at p. 79.

## V. Minimum Age of Criminal Responsibility (MACR)

Article 40(3)(a) of the Convention on the Rights of the Child (CRC) states that countries must establish a MACR below which juveniles are presumed not to have the capacity to commit a crime.<sup>65</sup> The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that the MACR “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”<sup>66</sup> The Committee repeats this language in its General Comment No. 10, and sets the age of twelve years as the absolute minimum age for states to adopt, with the goal of increasing to fourteen or sixteen.<sup>67</sup> There are no exceptions for setting the MACR below twelve.<sup>68</sup> It is common practice for countries to limit the activities and responsibilities of juveniles through the law; for example, there are mandatory minimum ages for drinking, gambling, contracting and marriage.<sup>69</sup>

Many countries continue to hold juveniles below the age of twelve criminally responsible.<sup>70</sup> Of the countries surveyed, 36% have a MACR set at eleven or below.<sup>71</sup> Iran’s penal code was updated in 2012 to address concerns about gender equality and MACR. Article 147 of the updated code stipulates the MACR as nine years for girls and fifteen years for boys as required by Islamic *Shari’a*.<sup>72</sup> Not only does the MACR for

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<sup>65</sup> U.N. Convention on Rights of the Child, *supra* note 5 at art. 40(3)(a).

<sup>66</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, *supra* note 5.

<sup>67</sup> General Comment No. 10, *supra* note 1, at para. 32 and 33.

<sup>68</sup> *Id.* at para. 34.

<sup>69</sup> Cruel and Unusual, *supra* note 25 at p. 54.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id.* at p. 52.

<sup>72</sup> Iran Human Rights Documentation Center, Gender Inequality and Discrimination: The Case of Iranian Women (2013) <http://iranhrdc.org/english/publications/legal->

girls violate Article 40 of the CRC, but it discriminates based on gender in violation of CRC Article 2. Iran must increase the MACR for girls to match that for boys to comply with its CRC obligations.

There are three categories of crimes in Iran – *hudud*, *qisas*, and *ta'zirat* – with differing sentencing results under the new penal code. A positive change is that both girls and boys under the age of eighteen will not be given adult sentences for *ta'zir* crimes.<sup>73</sup> The *Shari'a* age of maturity applies for *hudud* and *qisas* crimes, and girls and boys are sentenced differently.<sup>74</sup> The revisions to the penal code are a step in the right direction, but to comply with its CRC obligations, Iran must make further changes and increase the MACR for girls to match that for boys.

## **VI. Access to Justice for Juveniles in the Justice System**

The object for this year's annual full day meeting on the CRC is to ensure access to justice for juveniles whose individual human rights have been violated. Access to justice means “the ability to obtain, through formal or informal justice processes, a just and timely remedy for violations of rights as put forth in national and international norms and standards including the Convention on the Rights of the Child.”<sup>75</sup> If rights are to

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[commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#2](#).

<sup>73</sup> Ibid.

<sup>74</sup> Mohammad H. Nayyeri, Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code (2012) <http://www.iranhrdc.org/english/publications/legal-commentary/1000000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.UuXKcOCTvoh>.

<sup>75</sup> Human Rights Council, Concept Note: Access to Justice for Children (2014); quoting UNDP, Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights Based Approach to Access to Justice (2005).

have any meaning, then redress must be available.<sup>76</sup> Ways to address violations discussed in this paper includes procedures at the state level, training for advocates, access to information for juveniles, and international venues for redress.

The UN Secretary-General recommends that issues pertaining to justice for children, including children's access to justice, be fully integrated into rule of law interventions from the outset.<sup>77</sup> Countries should recognize the barriers to access that juveniles face in reporting violations, and work to create forums for redress. Article 2 of the ICCPR and article 4 of the CRC require states to provide a domestic legal framework for access to justice.<sup>78</sup> These procedures should be child-sensitive, in that they take into account the special needs of children and the barriers that exist to their access to justice.<sup>79</sup>

Even with domestic measures in place, significant barriers exist access to justice for juveniles. The justice system is complex and intimidating for juveniles, and they have to rely on adults to support them through the system.<sup>80</sup> Ways to improve the system for the protection of juveniles is to make reliable information more accessible, and to provide training for advocates on how to include juveniles and explain all of the steps in the process.

Finally, international venues for redress exist. For example, the Third Optional Protocol to the CRC establishes a communications procedure where juveniles who have

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<sup>76</sup> UN Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5 (2003).

<sup>77</sup> UN common approach to justice for children (March 2008).

<sup>78</sup> Report of the United Nations High Commissioner for Human Rights, Access to Justice for Children, 5 (Dec. 16 2013).

<sup>79</sup> *Id.* at p. 8.

<sup>80</sup> *Id.* at p. 7.

had their rights violated can submit a complaint to the Committee on the CRC.<sup>81</sup> Having international mechanisms complements state level action and ensures that juveniles have access to justice, and states ought to agree to procedures to give then effect.

**Human Rights Advocates recommends that the Council urge state parties:**

1. To enforce the international laws protecting juveniles;
2. To recognize the special legal status of juveniles;
3. To stop sentencing and carrying out the death penalty for juvenile offenders;
4. To stop the practice of extreme sentencing for juveniles, including juvenile life without parole and *de facto* juvenile life without parole;
5. To stop the practice of transferring juveniles to adult court to be tried, sentenced, and imprisoned without additional protections that account for their status as juveniles;
6. To require a minimum age of criminal responsibility of twelve or greater;
7. To provide adequate domestic mechanisms for redress for juveniles who have had their individual rights violated; and
8. To ratify the Third Optional Protocol to the Convention on Rights of the Child.

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<sup>81</sup> Id. at p. 11.

