



# **Human Rights Advocates**

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## **Enforcing the Rights of Children in the Juvenile Justice System**

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This report addresses several areas of concern regarding juvenile justice including: juvenile life without parole sentences, juvenile death sentences, and transfers of juveniles to adult detention centers. Following the 28<sup>th</sup> session of the Human Rights Council, the HRC passed Resolution 19 addressing the Rights of the child with the goal of a better investment in the rights of the child.

Children face the prospect of violence in juvenile justice systems, particularly those that do not provide treatment based on the juvenile's level of maturity. Violence against children is a violation of human rights, and has far reaching consequences for the development of juveniles. Juvenile justice systems vary around the world, and there is not one perfect system. Although there are many different systems, this paper focuses on disconcerting trends in several countries and offers recommendations to provide a more just and equitable investment in the rights of the child.

States design juvenile justice systems on the premise that adolescents have needs and capacities different from adults because of their ongoing brain development. It is axiomatic that juveniles are still developing: mentally, physically, emotionally, as well as developing their selfhood. Because of their ongoing development, juveniles have the capacity for change. U.S. Supreme Court Justice Anthony Kennedy in *Roper v. Simmons*, 543 U.S. 551, 570 (2005) noted, "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." Criminalizing children not only causes harm to the child, but to society as a whole; it stunts the development of both and encourages violent recidivism as the children spiral downwards.<sup>1</sup>

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<sup>1</sup> Peter Newell, "It Is Not Child-friendly to make Children Criminals," 137 *Child-Friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, (Said Mahmoudi, Pernilla Leviner, Anna Kaldal, Katrin Lainpelto, 2015) (Brill, Nijhoff).

Article 14(4) of the International Covenant on Civil and Political Rights (ICCPR) provides that “in the case of juvenile persons, the procedure shall be such as will take account of their age and desirability of promoting their rehabilitation.”<sup>2</sup> Article 10(3) further states, “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”<sup>3</sup> As a result, juveniles who break the law, under international law, are to be treated differently than adults who do.<sup>4</sup> This report will focus on why States must refrain from using the harshest punishments, reserved for adults, on juveniles, life without parole, death sentences, and transfers to prisons.

## **I. Extreme Sentences for Juveniles**

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

There is a need by States to reaffirm and implement the universal prohibition of Juvenile Life Without Parole sentences under the ICCPR, Covenant on the Rights of the Child (CRC), and international law. Additionally, it is accepted that customary international law prohibits extreme sentencing for juveniles and there is no emerging trend contrary to the jus cogens prohibition of life without parole sentences.<sup>5</sup> The Convention on the Rights of the Child requires States to use detention or imprisonment of children as a measure of last resort, in exceptional circumstances, for the shortest possible period of time, and only if it is in the best interests of the child.<sup>6</sup>

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<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, (Dec. 16, 1966), United Nations, Treaty Series, vol. 999, p. 171.

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

<sup>4</sup> Bernard, T. J. (1991). *The cycle of juvenile justice*. New York, NY: Oxford University Press.

<sup>5</sup> Professor Connie de la Vega, Amanda Solter, Soo-Ryun Kwon, Dana Marie Isaac, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, University of San Francisco School of Law Center for Law and Global Justice, 54, 60 (May 2012).

<sup>6</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68 (March 5, 2015); *citing* UN General Assembly, *Convention on the Rights of the Child*, 20 November

Juan Méndez, the United Nations Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, concluded that “in reality, detention is often used as the first response to perceived problems.”<sup>7</sup> In his March 5, 2015 report, he also determined that juvenile life without parole sentences constitute, “cruel and inhuman treatment of juveniles.”<sup>8</sup> The Human Rights Committee, in its General Comment 21, determined that juveniles should never be subject to a sentence of juvenile life without parole.<sup>9</sup> And, the Human Rights Council, in resolution 24/12, urged States to ensure that no one is sentenced to life imprisonment for a crime they committed when they are under 18 years of age.<sup>10</sup> A sentence of life without parole is essentially a death sentence for a juvenile. Thus, juveniles must be afforded greater protection against the severest criminal punishment handed out by the State.

***The United States of America:***

The United States has made progress in juvenile justice: abolishing death penalty for minors, *Roper v. Simmons*, 543 U.S. 551 (2005), banning juvenile life without parole for non-homicide offenses, *Graham v. Florida*, 560 U.S. \_\_\_\_ (2010), and most recently finding the ban on mandatory transfer of juveniles to adult prisons for certain offenses to be retroactive, *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_ (2016). The U.S., however, continues to sentence adolescents to life without parole for homicide offenses. These sentences for homicide offenses are still constitutional according to the Supreme Court. Juvenile offenders who commit homicide can be and are sentenced to life without parole. As of 2012, 2,594 juveniles are serving life

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1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>7</sup> *Id.* at para. 3.

<sup>8</sup> *Id.* at para. 74.

<sup>9</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, (10 April 1992).

<sup>10</sup> *Id.*

without parole sentences.<sup>11</sup> The United States is the only country to continue to practice the sentence.<sup>12</sup>

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

While many juvenile offenders are not sentenced to life without parole, many receive de facto life without parole punishments. Following the decision in *Graham v. Florida*, juvenile life without parole for non-homicide crimes is no longer allowed in the United States. However, de facto without parole has become a problem as individuals are receiving 70 year long sentences.<sup>13</sup> In the United States, life expectancy for juveniles in adult prisons is 50.6 years.<sup>14</sup> Extremely long sentences can amount to life without parole due to a juvenile's diminished life expectancy. These long sentences can still guarantee that the individual will die in prison.<sup>15</sup> Juveniles in prison face longer years in detention centers than their adult counter parts with the same sentence.<sup>16</sup> De facto life without parole sentences for non-homicide crimes necessarily violate the prohibition on such sentences in practice because of the shortened life expectancy of a juvenile in prison.

### ***Australia:***

Even though Australia ratified the CRC and ICCPR, adolescent offenders face the prospect of life without parole sentences. The continued operation of these laws frustrates the CRC's goals of "equitable public investment in children... [and]... realizing the rights of the child" Recently, a 17-year-old was arrested when the police allegedly found three homemade

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<sup>11</sup> The New York Times, "Sentencing Juveniles," (Apr. 20 2011), available at <http://www.nytimes.com/interactive/2011/04/20/us/juveniles.html>. However, a 2009 Human Rights Watch 57 Report states that 2, 570 youth offenders are serving a JLWOP sentence. Human Rights Watch, World Report 2009: Events of 2008 538 (2009).

<sup>12</sup> "Report of the Special Rapporteur," *supra* note 6 at para. 37.

<sup>13</sup> *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, *supra* note 5 at 60.

<sup>14</sup> Fair Sentencing for Youth, *Michigan Life Expectancy Data Youth Serving Life*. (Feb. 2010), available at <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, *supra* note 5 at 60.

bombs. The boy is being charged with planning a terrorist act and with possessing items connected with a terrorist act, and faces a potential sentence of life in prison if convicted.<sup>17</sup>

## II. Juvenile Death Sentences

Sentencing juveniles to death is universally prohibited under international law ICCPR, CRC, customary international law, and U.N. Declaration of Human Rights. Article 6(5) of the ICCPR states “sentences of death shall not be imposed for crimes committed by persons below eighteen years of age.”<sup>18</sup> Article 37(a) of the CRC expressly prohibits capital punishment and life without parole for offenders under the age of 18 at the time of the offense.<sup>19</sup> And, Article 3 of U.N. Declaration of Human Rights declares, “everyone has the right to life, liberty and security of person,” a death sentence is a denial of the right to liberty.<sup>20</sup> The United Nations Economic and Social Council approved the U.N. Safeguards Guaranteeing Protection of the Rights of Those Facing Death Penalty, which avows that “Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death.”<sup>21</sup>

With all but three states States arguably prohibiting juvenile death sentences, it has become a jus cogens norm, and must be upheld. Jus cogens, refers to fundamental and overriding principles of international law; no derogation is ever permitted.<sup>22</sup> According to Article 53 of the Vienna Convention on the Law of Treaties, an international norm reaches jus cogens status when it is part of general international law principles, accepted by a large majority of states, immune

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<sup>17</sup>Al Arabiya, “17-year-old terrorist suspect appears in Australian court,” (May 11, 2015), available at <http://english.alarabiya.net/en/News/world/2015/05/11/17-year-old-terrorist-suspect-appears-in-Australian-court.html>.

<sup>18</sup> ICCPR, *supra* note 2 at art. 6(5).

<sup>19</sup> “Report of the Special Rapporteur,” *supra* note 6 at art. 37(a), ,

<sup>20</sup> UN General Assembly, *Universal Declaration of Human Rights*, at art. 3, (Dec. 10, 1948).

<sup>21</sup> 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.

<sup>22</sup> James Crawford, *Brownlie’s Principles of Public International Law* (Oxford University Press, 8th ed. 2013).

from derogation, and modifiable only by a new norm of the same status.<sup>23</sup> The prohibition of the juvenile death penalty is accepted by the overwhelming majority of states, outlined in numerous treaties, and is considered foundational to international human rights law. The following countries continue to execute juveniles.

***Iran:***

In Iran, despite the international prohibition against the juvenile death penalty, child offenders are still subject to death sentences. Boumedouha, Deputy Director of Amnesty International's Middle East and North Africa Programme, found that "Iran is one of the few countries that continues to execute juvenile offenders in blatant violation of the absolute legal prohibition on the use of the death penalty against people under the age of 18 years at the time of the crime."<sup>24</sup> In 2014, The former U.N. High Commissioner for Human Rights, Navi Pillay, voiced concerns about Iran's continued use of the juvenile death penalty, "Judgments imposing the death penalty on people under the age of 18 and the implementation of such judgments are manifestly incompatible with Iran's international obligations under the International Covenant on Civil and Political rights and the Convention on the Rights of the Child."<sup>25</sup>

As recently as February 2016, Iran has been sentencing juveniles to death. According to the report of Human Rights Activists News Agency in Iran (HRANA), on February 20, 2016, The Supreme Court of Iran confirmed the death sentence of Himan Ouraminejad who was charged with murder as a juvenile. The Court is waiting for the permission of head of judiciary,

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<sup>23</sup> United Nations, *Vienna Convention on the Law of Treaties*, art. 53, (May 23, 1969), United Nations, Treaty Series, vol. 1155, p. 331.

<sup>24</sup> Growing up on death row: The death penalty and juvenile offenders in Iran; Amnesty International, "Iran's hypocrisy exposed as scores of juvenile offenders condemned to gallows. (Jan. 26, 2016) MDE 13/3112/2016, available at <https://www.amnesty.org/en/latest/news/2016/01/irans-hypocrisy-exposed-as-scores-of-juvenile-of-fenders-condemned-to-gallows/>.

<sup>25</sup> Iran: Execution of juvenile offenders breaches international law- Pillay, (Jun. 26, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14780&LangID=E>.

to execute the sentence. HRANA claims that Ouraminejad was born in 1994, and committed the crime in 2010, when he was 16.

Reports of children being sentenced to death continue to surface, “Saman Naseem, 21, was sentenced to death in April 2013 after a deeply flawed trial that relied on self-incriminating evidence extracted under torture. The day before he was due to be executed, he was transferred to an unknown location.”<sup>26</sup>

In of 2015, the Iranian Supreme Court passed Order 737, that provides for a possibility of retrial and exempting in special conditions, children below the age of 18 years from hudud and qisas punishments involving death sentence, “if they do not realize the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age” and applying correctional measures instead.<sup>27</sup> As a result, The Supreme Court of Iran has also granted Saman Naseem’s application for judicial review, meaning that his conviction and death sentence are stayed and he has a possibility of a retrial.<sup>28</sup>

### ***Pakistan:***

Pakistan recently outlawed juvenile capital punishment, but it appears executions are occurring in practice.<sup>29</sup> From 2008 to 2014 Pakistan had a moratorium on executions, including executing juveniles. However, following the massacre at the Army Public School and Degree College in Peshawar, the moratorium was lifted. Reports of juveniles being executed since the

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<sup>26</sup> Amnesty International, “Iran: Whereabouts of juvenile offender on death row emerge five months after scheduled execution,” (July 13, 2015), available at, <https://www.amnesty.org/en/latest/news/2015/07/iran-whereabouts-of-juvenile-offender-on-death-row-emerge-five-months-after-scheduled-execution/>.

<sup>27</sup> Weekly report on Human Rights Violation in Iran. (Feb. 7, 2016), Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran.

<sup>28</sup> Human Rights Watch, Weekly report on Human Rights Violation in Iran, *Iran: No Accountability for Abuses, Freedoms Restricted; Executions Soar*, (Jan. 31, 2016).

<sup>29</sup> Human Rights Watch, “Pakistan: Halt Execution of Alleged Child Offender,” (Dec. 23, 2014), available at <https://www.hrw.org/news/2014/12/23/pakistan-halt-execution-alleged-child>.



lifting of the moratorium continue to surface and research by the Justice Project Pakistan and Reprieve, puts the number of juveniles on death row at around 800.<sup>30</sup>

In June of 2015, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, expressed regret towards Pakistan's recent executions of juvenile offenders, including Aftab Bahadur, who was 15 when he was convicted of murder.<sup>31</sup> “[The] execution of Aftab Bahadur who was only 15 when he was convicted of murder 23 years ago . . . suggests a very troubling approach to the use of the death penalty in the country.”<sup>32</sup> On August 4, 2015, a man was hanged after his execution was repeatedly postponed after international pressure, due to claims that he was a child at the time he committed murder.<sup>33</sup> Pakistan has ratified the CRC and ICCPR, and the continued practice of adolescent execution directly conflicts with both treaties.

#### ***Saudi Arabia:***

Saudi Arabia has made substantial progress in its criminal justice system. In 2007, then King Abdullah bin Abdul Aziz Al Saud, codified the penal code, created a Supreme Court with appellate review, and created Ministerial oversight of the Judiciary with the Minister of Justice.<sup>34</sup> However, in Saudi Arabia, there is still progress to made in regards to the juvenile justice system, namely juvenile death sentences. Saudi Arabia is still executing juveniles in spite of the prohibition and its treaty obligations under the CRC and customary international law.<sup>35</sup> When the

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<sup>30</sup> *Juveniles on Pakistan's Death Row*, A report by the Justice Project Pakistan and Reprieve, (March 2015).

<sup>31</sup> “Pakistan: Mass executions, particularly of juvenile offenders, serve neither deterrence nor justice – Zeid,” available at [http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16068&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16068&LangID=E#sthash.1DG5T5jx.dpuf).

<sup>32</sup> *Id.*

<sup>33</sup> Child Rights International Network, “Inhuman Sentencing: Pakistan hangs Shafquat Hussain despite claim he was a Child at time of alleged crime,” (Aug. 4, 2015), available at <https://www.crin.org/en/library/news-archive/inhuman-sentencing-pakistan-hangs-shafquat-hussain-despite-claim-he-was-child>.

<sup>34</sup> Amnesty International, “Killing in the Name of Justice: the Death Penalty in Saudi Arabia,” 38, (Aug. 24, 2015) MDE 23/2092/2015.

<sup>35</sup> *Id.*

age of the juvenile offender is in question, Saudi Arabia has executed the juvenile.<sup>36</sup> This is a violation of the CRC, where if there is a dispute as to the age of the juvenile, the State must presume the individual to be under eighteen years of age unless the prosecution can prove otherwise.<sup>37</sup> It is reported that two Saudi Arabian Shi'a activists, who were 16 years old at the time of their arrest, are up for execution, pending King Salman's approval, after being moved to solitary confinement on October 5th, 2015.<sup>38</sup>

To adhere to their international treaty obligations for the prohibition of child execution, government agencies must take measures to implement laws and practices to eliminate these types of executions.

### **III. Juveniles in Adult Detention Centers**

Children in adult detention centers face the severe conditions, with higher risks of rape, assault, and suicide.<sup>39</sup> In 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child, recognizing that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>40</sup> The CRC and ICCPR built upon the Declaration on the Rights of the Child, considering youth under age 18 to be children. Under the ICCPR, children must be separated from adults when incarcerated. Section 10(3) of the ICCPR states that “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”<sup>41</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> Human Rights Council resolution 19/37, A/HRC/RES/19/37, para. 55 (Apr. 19, 2012).

<sup>38</sup> Saudi Arabia: Saudi Arabia: Quash the Conviction of Abdullah Hasan al-Zaher and Dawood Hussein al-Marhoon (UA 229/15).

<sup>39</sup> Flaherty, M. G. (1983). The national incidence of juvenile suicide in adult jails and juvenile detention centers. *Suicide and Life-Threatening Behavior*, 13(2), 85-94.

<sup>40</sup> General Assembly resolution 1386 (XIV), November 20, 1959. Similarly, the American Convention on Human Rights, Series no. 36, p. 1, Organization of American States, Official Record, OEA/Ser.L/V/II.23, signed by the OAS on November 22, 1969, entered into force July 18, 1978.

<sup>41</sup> ICCPR, *supra* note 2 at para.10(3).

Children should receive treatment appropriate to their age, with the focus of their punishment on rehabilitation.<sup>42</sup> The Committee on the Rights of the Child has affirmed the psychological differences between juveniles and adults in outlining the treaty obligations for States.<sup>43</sup> Thus, the Committee urged States, because of their differences psychologically and physically, that rehabilitation should be the goal of punishment.<sup>44</sup> And, rehabilitation is best promoted through distinct juvenile justice systems and penal codes.<sup>45</sup> Special Rapporteur Méndez noted that, “[d]etaining children and adults together will inevitably result in negative consequences for the children, who are five times as likely to be subjected to a substantiated incident of sexual violence, and are also much more likely to witness or experience other forms of violence, including physical harm by facility staff members.”<sup>46</sup>

Children are also more likely to commit suicide in adult facilities, and are more likely reoffend if they are released.<sup>47</sup> Being in adult prisons, juveniles are treated as adults, and are subjected to adult punishments, including physical and manual restraints, humiliating searches, and the indiscriminate use of force with mace, pepper spray and other harmful chemicals.<sup>48</sup> Special Rapporteur Méndez observed the use of psychotropic drugs for children in detention in order to maintain security in juvenile detention facilities.<sup>49</sup>

***Brazil:***

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<sup>42</sup> The National Collaboration for Youth and National Juvenile Justice Network, *Human Rights as a Catalyst for Juvenile Justice Reform*, Policy Brief No. 3, (Dec. 2006), available at <http://www.nassembly.org/uploads/publications/documents/humanrightsbrief.pdf>.

<sup>43</sup> Committee on the Rights of the Child, 45<sup>th</sup> Session, “General Comment No. 10: Children’s Rights in Juvenile Justice,” at para. 10, UN Doc. No. CRC/C/GC/10, (Feb. 2, 2007).

<sup>44</sup> *Id.*

<sup>45</sup> *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, *supra* note 5 at p. 48.

<sup>46</sup> Anna Volz, “Stop the Violence! The Overuse of Pre-trial Detention, or the Need to Reform Juvenile Justice systems,” Defense for Children International, Geneva, p. 16 (July 2010).

<sup>47</sup> Information received from the American Civil Liberties Union during the expert consultation held in Washington, D.C. on 10 and 11 November 2014.

<sup>48</sup> *Id.*

<sup>49</sup> “Report of the Special Rapporteur,” *supra* note 6 at para. 46 Re.

It is regretful that Brazil's congress is currently hearing arguments to reduce the age a child could be prosecuted as an adult from 18 to 16 years old. If passed, the legislation would mean some children would be tried as adults and face the same criminal penalties while being sent to adult prison.<sup>50</sup> Brazil's has the fourth highest prison population in the world and one of its most violent.<sup>51</sup>

Lowering the age of adult criminal responsibility from 18 years to 16 years old would subject children to the violence of Brazil's adult prisons and violate its treaty obligations. Brazil is a party to the CRC, the ICCPR, which consider juvenile's to be younger than 18. The UN Standard Minimum Rules for the Administration of Juvenile Justice also outline the standard for administration of juvenile justice.<sup>52</sup> Under the UN Standard Minimum Rules for the Administration of Juvenile Justice section 17.1, the sentencing of a juvenile convicted of a crime must take into account the youth of the offender, and the well-being of the juvenile is the guiding factor in determining the sentence.<sup>53</sup> If the age of adult criminal responsibility is lowered to 16, Brazil would not considering the youth of the juvenile in sentencing or their well-being as a guiding factor, and would violate their international obligations under section 17.1.

### ***United States of America:***

The United States allows children, charged with certain felonies, to be transferred to adult court from juvenile court, without considering age of the juvenile for mitigation purposes.<sup>54</sup> This

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<sup>50</sup>Amnesty International, "Brazil: Lowering age of adult criminal responsibility will consign children to "medieval" prison system," (May 18, 2015), available at <http://www.amnestyusa.org/news/press-releases/brazil-lowering-age-of-adult-criminal-responsibility-will-consign-children-to-medieval-prison-system>.

<sup>51</sup> *Id.*

<sup>52</sup> ICCPR, *supra* note 2 at art. 6, Dec. 16, 1996; CRC, *supra* note at art. 37(a), (Sep. 2, 1990), United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Adopted by General Assembly resolution 40/33 of 29 November 1985.

<sup>53</sup> *Id.* at The Beijing Rules," General Assembly resolution 40/33 of 29.

<sup>54</sup> Ellen Marrus & Irene Merker Rosenberg, *After Roper v. Simmons: Keeping Kids out of Adult Criminal Court*, 42 San Diego L. Rev. 1151 (2005); *Miller v. Alabama*, 567 U.S. \_\_ (2012).

includes transferring adolescents from the care of juvenile detention centers into adult prisons. If found guilty, juveniles face disproportionately long sentences compared to adults.<sup>55</sup> These transfer laws, treating juveniles as adults, conflict with the presence of a separate juvenile justice system, with its own penal code, courts, punishments, and separate detention facilities.<sup>56</sup> The separate justice systems represent a recognition that, “juveniles are fundamentally different from adults that their criminal proceedings should accommodate their difference.”<sup>57</sup> Treating juveniles as adults clashes with the premise that juveniles are different than adults and need their own system.

Juveniles transferred to adult prisons in the U.S. face severe and hostile conditions. A study done by Michael G. Flaherty, a researcher with the Community Research Forum at the University of Illinois found that the suicide rate for juveniles in adult facilities is 7.7 higher than that of juvenile facilities.<sup>58</sup> For example, a 15 year old boy in Kentucky, 30 minutes after he was put in a jail cell following an argument with his mother, the boy hung himself.<sup>59</sup> These suicides often happen after other violations take place such as sexual assault and rape.

Juveniles also have suffered many violations such as sexual assault, as evidenced by a 15-year-old girl was sexually assaulted by a deputy jailer after she was placed in an adult jail.<sup>60</sup> In Texas, Rodney Hulin, a 17-year-old boy, was incarcerated after setting a trash bin on fire.

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<sup>55</sup> de la Vega, Constance and Leighton, Michelle T., *Sentencing Our Children to Die in Prison: Global Law and Practice* (October 2, 2008). University of San Francisco Law Review, Vol. 42, No. 4, 2008; Univ. of San Francisco Law Research Paper No. 2008-01; David O. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (Not) To Punish Minors for Major Crimes*, 82 T.

<sup>56</sup> *U.S. Sentencing Practices in a Global Context*, *supra* note 5 at p. 54.

<sup>57</sup> *Id.* at 53.

<sup>58</sup> Flaherty, M. G. (1983), *supra* note 39 at 30.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

After being raped repeatedly, he hung himself.<sup>61</sup> These are just three examples of the severe problems and horrors children face in adult prisons.

#### **IV. Conclusion**

Children are different. States have an obligation to uphold international law and to increase their efforts to end any violations of the rights of the child. Governments should recognize the ongoing development of children and their possibility of change, and encourage and implement separate justice systems and detention centers for juveniles and adults. The focus of the juvenile's punishment should be on rehabilitation.

#### **V. Recommendations**

Human Rights Advocates urges:

1. The Human Rights Council:

- a. To affirm the UN Special Rapporteur's findings that juvenile life without parole constitutes torture.
- b. To reaffirm the best interests of the child, including acknowledgement of their development, and the need for a separate judicial system, and provide the framework for all actions concerning children.

2. State Parties:

- a. To abandon policies of transferring children to adult prisons.
- b. To create a separate judicial system and detention center for children.
- c. To ratify the Convention on the Rights of the Child.

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<sup>61</sup> The New York Times, "When to Punish a Young Offender, and When to Rehabilitate," (June 5, 2012), available at <http://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/in-prison-teenagers-become-prey>.