

Building Bridges to Benefit Youth

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NATIONAL
COLLABORATION
FOR YOUTH



National Juvenile
Justice Network

Human Rights as a Catalyst for Juvenile Justice Reform

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Introduction

“Where, after all, do universal human rights begin? In small places, close to home...”

--Eleanor Roosevelt

Recently, there has been increased attention paid to the role of international law and norms in U.S. domestic policy. These norms, treaties and conventions hold incredible promise for the improvement of children’s lives here in the U.S. In both the child welfare and juvenile justice fields, international law sets higher standards of care for our children than many of our domestic laws. Moreover, international law’s approach to the care and treatment of youth is grounded in the idea of basic human rights; responding to youth “in conflict with the law” can be elevated from a discussion of retribution vs. rehabilitation to one in which children are assumed to possess the basic human rights of liberty and treatment with dignity. As such, international law provides advocates with aspirational models for reform and convincing tools to wield in their efforts to improve the lives of young people in the U.S.

This brief will provide juvenile justice and youth advocates with a basic primer on international law as it relates to the treatment of youth in conflict with the law and give a few examples of how juvenile justice advocates have been and can continue to use international law for reform efforts in the U.S.

International Vehicles for Advocacy

By definition, all human rights treaties include the rights of children and two treaties, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, have specific provisions for the treatment of youth in conflict with the law. In addition to using these treaties to support particular reform efforts, juvenile justice advocates can begin to incorporate the language of human rights to emphasize the basic humanity and dignity that should be accorded to all our youth.

International Covenant on Civil and Political Rights (ICCPR)
<http://www.ohchr.org/english/law/ccpr.htm>

The International Covenant on Civil and Political Rights (ICCPR) calls for youth to be separated from adults when incarcerated and to receive age appropriate treatment with an emphasis on rehabilitation. The U.S. ratified the treaty in 1992 and must submit periodic reports to the United Nations (UN) on its implementation of the treaty's provisions. These reports provide an opportunity to advocate for improvements in the juvenile justice system, which happened recently around the issue of juvenile life without parole (see *Juvenile Life Without Parole*, page 3).

Convention on the Rights of the Child (CRC)
<http://www.ohchr.org/english/law/crc.htm>

The UN Convention on the Rights of the Child (CRC), which took effect in 1990 but has not been ratified by the U.S., includes several juvenile justice provisions, such as a prohibition on the death penalty and life without parole for juveniles, using confinement only as a last resort, and treating youth with humanity and respect.

Domestic Reform Efforts

Juvenile justice advocates have used and are continuing to use international norms and treaties to bring about substantial reforms to state-based juvenile justice systems.

Juvenile Death Penalty

The ICCPR and CRC both prohibit capital punishment for persons under 18 years of age.¹ In 1988, the U.S. Supreme Court abolished the death penalty for youth under 16 years of age, and in 2005, the Court specifically referred to both treaties when it extended the ban to all youth under 18.

Thompson v. Oklahoma: Evolving U.S. Standards Mirror Human Rights Principles

In 1988, the Supreme Court in *Thompson v. Oklahoma* ruled that the death penalty for youth under the age of 16 violated the Eighth Amendment's prohibition on cruel and unusual punishment.² The Court was guided by "evolving standards of decency that mark the progress of a maturing society" as evidenced by numerous state laws setting the minimum age of execution at 16 and the behavior of juries in almost never sentencing youth under 16 to death.³ The Court also referred to the "reduced culpability" of juveniles, who are "less able to evaluate the consequences" of their conduct.⁴ To support its decision, the Court noted that European countries, the [former] Soviet Union and three "major" human rights treaties, including the ICCPR, all prohibited the juvenile death penalty.^a

^a The other two treaties cited in *Thompson* are the American Convention on Human Rights and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Roper v. Simmons: International Principles Reinforce U.S. Reform Efforts

In abolishing the death penalty for youth under the age of 18, the Supreme Court in *Roper v. Simmons* found evidence of a national consensus in the rejection of the juvenile death penalty in the majority of states; the infrequency of its use even where it remained permissible; and the consistency in the trend toward abolition of the practice. The Court agreed with the “reduced culpability” of juveniles articulated in the *Thompson* case and applied it to all juvenile offenders under 18.⁵ As in *Thompson*, the Court also looked to other countries’ practices to support its decision and found that the U.S. was the only country in the world that still executed juveniles.⁶ Whereas the human rights treaties were relegated to a footnote in *Thompson*, the *Roper* opinion prominently referenced the CRC. The Supreme Court cited the CRC even though it has not been ratified by the U.S. and even lamented that fact. “Article 37 of the [CRC], which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18. Parallel prohibitions are contained in other significant international covenants.”⁷

“It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”
--*Roper v. Simmons*, 543 U.S. 551 (2005), pp. 24-25 (slip opinion)

Juvenile Life Without Parole (LWOP)

The CRC also prohibits life imprisonment without possibility of release for juveniles under 18. While at least 132 countries have already abolished life without parole (LWOP) for juveniles, the vast majority of U.S. states permit the sentence and ten states set no minimum age for LWOP. According to a recent report by Amnesty International and Human Rights Watch, at least 2,225 youth are serving LWOP in U.S. prisons for crimes committed before they were 18, compared to only 12 in the rest of the world.⁸ The weight of human rights treaties and international practices was integral to the Supreme Court decision to abolish the juvenile death penalty in the *Roper* decision. Human rights law has the potential to provide similar weight and persuade states and the Supreme Court to abolish juvenile LWOP.

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Michigan Advocates Frame Juvenile LWOP as a Human Rights Issue

A bill to abolish juvenile LWOP was introduced in the Michigan legislature’s 2005-2006 session.⁹ In their push for change in the state legislature, advocates are using human rights treaties and international forums to support their case for ending juvenile LWOP. For example, the ACLU of Michigan filed a petition in February 2006 urging the Inter-American Commission on Human Rights to rule that sentencing children to mandatory life without the possibility of parole violates universal human rights principles.¹⁰ The Commission is authorized to examine allegations of human rights violations by members of the Organization of American States, which includes the United States. The petition cites the CRC, ICCPR, and other human rights treaties and seeks the opportunity for the juveniles currently serving life sentences to apply for parole. The petition also seeks a declaration from the Commission that the U.S. generally and Michigan specifically are in violation of the petitioners’ rights.¹¹ According to the Commission’s procedures, it will prepare a report with its conclusions and recommendations to the U.S. This report will not be

made public and the U.S. will have a period of time to resolve the situation and to comply with the Commission's recommendations. If the U.S. does not respond, the Commission can either prepare a second report for publication or take the case to the Inter-American Court.¹²

Juvenile Justice and the United Nations

A report released by the United Nations Human Rights Committee (UNHRC) in July 2006 expressed concern over state laws that allow juvenile offenders to be incarcerated for life and has asked the U.S. to ensure that no juvenile is sentenced to life without parole. The report was filed in response to testimony delivered by the United States government to the UNHRC about its compliance with the International Covenant on Civil and Political Rights. The United States filed its written report in October 2005, more than seven years overdue. The ACLU, as well as a coalition of U.S. organizations, filed shadow reports raising issues of U.S. compliance with their commitments under the ICCPR on juvenile justice issues. These included life without parole and the treatment of juveniles as adults. The UNHRC report does not have an enforcement mechanism, but brings international attention to these issues and provides advocates with a tool to use in their work.¹³

These issues were also raised by advocates at the May 2006 hearings on the U.S. report to the UN Committee Against Torture (CAT), which is the monitoring body for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its report on U.S. adherence to the Convention Against Torture, the CAT expressed concerns both with life sentences for juveniles and the holding of juveniles within adult prisons.

Transferring Youth to the Adult Criminal Justice System

The Convention on the Rights of the Child considers all youth under age 18 to be children. According to the International Covenant on Civil and Political Rights, youth offenders should be separated from adults when incarcerated and receive treatment appropriate to their age, with a focus on rehabilitation. These provisions directly contradict the practice occurring in some U.S. jurisdictions of transferring youth from the juvenile justice system to the adult criminal system.^b Twenty-three states have no minimum age for transferring youth charged with particular offenses and all other states set the minimum age between 10 and 15 years old. Furthermore, three states consider 16-year olds as adults and automatically transfer them to the adult system, and ten other states consider 17-year olds as adults. Youth transferred to the adult criminal justice system are subject to harsher penalties and receive little or no rehabilitative programming, which is required in the juvenile system.¹⁴ Juvenile justice advocates in many states have launched campaigns to prevent the transfer of youth under 18. The UN Human Rights Committee raised its concerns with this practice in their recommendations to the U.S., as did the Committee Against Torture (see *Juvenile Justice and the United Nations*).

Human rights principles directly contradict the practice occurring in some U.S. jurisdictions of transferring youth from the juvenile justice system to the adult criminal system.

^b Even though the U.S. ratified the ICCPR, it reserved the right, in exceptional circumstances, to transfer youth to the adult system. In fact, on any given day, approximately one out of 10 incarcerated youth are confined in adult facilities. (Coalition for Juvenile Justice Position Statement on Transfer, <http://www.juvjustice.org/resources/fs008.html>)

Alternatives to Incarceration

Article 37 of the CRC states that youth should be incarcerated only as a measure of last resort and for the shortest appropriate period of time. Article 40 lists alternatives to institutional care, such as counseling, probation, and education and vocational training programs, to “ensure that [youth] are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.”¹⁵

The vast majority of youth in the juvenile justice system would be better served through alternatives to jail. Repeated research has shown that youth and community safety fare better when youth remain connected to their community and familial supports. Youth who remain in the community are more likely to stay in school, be connected to pro-social activities, benefit from community-based mentors, and receive the love and care they need from their families to chart a better path in life. In fact, detention itself can lead to increased recidivism, while alternatives to detention actually decrease recidivism.¹⁶

Moreover, detention has become a warehouse for youth with mental health disorders. Across the country youth are inappropriately incarcerated while waiting for community mental health services to become available. In 33 states, youth with mental illness are held in detention centers without any charges against them.¹⁷ Detention itself actually exacerbates existing mental health conditions and leads to the onset of others. For 30% of youth in detention diagnosed with depression, the onset occurred after the youth was placed in detention.¹⁸ In addition, youth in detention experience at least double the suicide rate of youth in the community.¹⁹ Thus, both public safety and the proper care of youth demand an increased use of community-based alternatives and a decreased use of detention and institutionalization.

There are also a number of UN Standards regarding the appropriate treatment of children in conflict with the law. Although these are not laws or treaties, they do represent generally accepted international standards and norms and have all been accepted by the UN General Assembly, of which the U.S. is a member. The UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the “Beijing Rules” and adopted in 1985) and the UN Rules for the Protection of Juveniles Deprived of their Liberty (adopted in 1990) reinforce the CRC in stating that detention should be used as a last resort and for the shortest possible time.²⁰ Both sets of rules also recommend that alternatives to detention should be used whenever possible and that youth in detention should be separated from adults.²¹ The UN Guidelines for the Prevention of Juvenile Delinquency (known as the “Riyadh Guidelines” and adopted in 1990) recommend policies that avoid criminalizing behavior that does not cause serious damage to the development of the child or harm to others.²² The guidelines also call for a wide range of community-based support measures for youth.²³

UN Standards state that:

- 1. Detention should be used as a last resort and for the shortest possible time;*
- 2. Alternatives to detention should be used whenever possible; and*
- 3. Youth in detention should be separated from adults.*

Overrepresentation of Minority Youth in the Juvenile Justice System

Disproportionate Minority Contact (DMC) exists when the rate of contact with the juvenile justice system among juveniles of a specific minority group is significantly different than the rate of contact for whites or for other minority groups.²⁴ On a typical day in the United States in 2003, 190 of every 100,000 white youth were in custody, while 502 of every 100,000 minority youth

were in custody. In 17 states in 2003, the rate for minorities was at least four times the rate for whites.²⁵

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) calls on countries “to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law...and the right to equal treatment before the tribunals and all other organs administering justice.”²⁶ The U.S. ratified this treaty in 1994 and is scheduled to submit a report to the UN in 2007 on its implementation of the treaty’s provisions. This is an opportunity for advocates to compile a shadow report highlighting how DMC violates the ICERD.

Recommendations

Increase public awareness of the Convention on the Rights of the Child to ensure U.S. ratification

Many opposed to U.S. ratification of the CRC claim that the treaty usurps national and state sovereignty and interferes in the parent-child relationship.²⁷ Supporters of the CRC can correct these misconceptions and educate the public about what the treaty actually contains. Participants in a recent summit on the CRC developed *A Call to Action: Next Steps Toward Ratification* that includes ideas such as:

- developing television and print media advertisements
- implementing the strategies of successful grassroots organizations
- writing local press releases
- lobbying government officials
- mobilizing religious communities and
- creating an educational curriculum, and finding a common language.²⁸

Use human rights principles to advocate for juvenile justice reform

Advocates can use human rights to further juvenile justice reform by incorporating the language of human rights in their advocacy efforts and by taking advantage of international forums to raise awareness of domestic concerns.

- Advocates can easily use the language of human rights in their efforts to abolish juvenile life without parole, stop the transfer of youth to the adult criminal system, and promote alternatives to incarceration for youth. Talking about human rights not only humanizes the youth involved with the juvenile justice system, but also helps to educate the public about human rights standards and laws. For instance, using the term “children in conflict with the law,” which is generally used in the human rights context, offers a different perspective from “juvenile delinquent.” The families of children in detention, and the children themselves, find the language of human rights empowering and dignifying as it emphasizes their humanity rather than their delinquency.
- Advocates can use international venues such as the UN Human Rights Commission and the Inter-American Commission on Human Rights to submit shadow reports and petitions that serve to monitor and publicize the state of human rights for youth in the United States. The Child Rights Information Network (CRIN) maintains a list of shadow reports submitted for the CRC²⁹ and the U.S. Human Rights Network has a web page for shadow reporting coordination.³⁰

Conclusion

This policy brief has given an overview of international treaties and norms that can bring about significant improvements to juvenile justice systems in the United States. The language of human rights reminds advocates, policy makers, and the general public that children touched by the justice system do not lose their humanity and have a right to be treated with dignity.

Resources

Amnesty International USA: Children's Rights

www.amnestyusa.org/children/index.do

Guided by the framework of the CRC, Amnesty International is seeking to develop its work on children around three key themes: juvenile justice; children in armed conflict; and children in the community and family. Although the CRC provides a comprehensive baseline for children's rights, Amnesty International will continue to remind nations of their obligations under other human rights treaties to protect the rights of the child.

Campaign for U.S. Ratification of the Convention on the Rights of the Child

www.childrightscampaign.org

The Campaign consists of more than 200 social service agencies, advocacy organizations, faith-based organizations, attorneys, grassroots organizers, and academic and professional institutions. The Campaign recently held a summit that developed *A Call to Action: Next Steps toward Ratification*.

Child Rights Information Network (CRIN)

www.crin.org

CRIN is a global network that disseminates information about the Convention on the Rights of the Child and child rights among non-governmental organizations (NGOs), United Nations agencies, inter-governmental organizations (IGOs), educational institutions, and other child rights experts.

Human Rights Watch: Children's Rights Division

hrw.org/children

The Children's Rights Division examines children's rights abuses in every part of the world; sends fact-finding missions to countries where abuses are alleged to be occurring; and presents reports to governments, international organizations, non-governmental organizations, policy makers, and the media.

National Juvenile Defender Center, *International Human Rights: Law & Resources for Juvenile Defenders & Advocates*

www.njdc.info/pdf/human_rights_factsheet.pdf

This paper introduces human rights treaties and documents that address the rights of court-involved children, considerations that affect their enforceability in U.S. courts, and key standards.

National Juvenile Justice Network (NJJN)

www.njjn.org/issues.html

NJJN's web site includes resources on a wide range of juvenile justice topics, including trying youth as adults, juvenile life without parole, general system reform, and institutional conditions and alternatives.

Office of the United Nations High Commissioner for Human Rights

www.ohchr.org/english/law/index.htm

This site includes links to the text of human rights treaties, including the International Covenant - on Civil and Political Rights and the Convention on the Rights of the Child.

U.S. Human Rights Network

<http://www.ushrnetwork.org>

This national network of more than 170 organizations and individuals from across the U.S. focuses on such fundamental human rights issues as criminal justice, discrimination, health care, immigration, housing, labor, and education.

Endnotes

¹ CRC Article 37, ICCPR Article 6.

² *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988). <http://supreme.justia.com/us/487/815/case.html>

³ *Ibid* at 829 and 831-832.

⁴ *Ibid* at 834-835.

⁵ *Roper v. Simmons*, 543 U.S. 551 (2005), p. 17 (slip opinion).
<http://www.supremecourtus.gov/opinions/04pdf/03-633.pdf>

⁶ *Ibid* at 21.

⁷ *Ibid* at 22, citing the ICCPR, American Convention on Human Rights, and African Charter on the Rights and Welfare of the Child.

⁸ Amnesty International and Human Rights Watch (2005). *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*. <http://hrw.org/reports/2005/us1005/index.htm>

⁹ House Bill 5512 (2005).
[http://www.legislature.mi.gov/\(diapiyrtqs14n55j43lsfzs\)/mileg.aspx?page=BillStatus&objectname=2005-HB-5512](http://www.legislature.mi.gov/(diapiyrtqs14n55j43lsfzs)/mileg.aspx?page=BillStatus&objectname=2005-HB-5512)

¹⁰ American Civil Liberties Union. *Petition Alleging Violations of the Human Rights of Juveniles Sentenced to Life Without Parole in the United States of America*.
http://www.aclu.org/images/asset_upload_file326_24232.pdf

¹¹ ACLU of Michigan. *Children Sentenced to Life Without Parole Bring Plea to Human Rights Body: ACLU Champions Children's Rights With Petition to Inter-American Commission on Human Rights*.
<http://www.aclumich.org/modules.php?name=News&file=article&sid=460>

¹² Inter-American Commission on Human Rights. *What is the IACHR?* <http://www.cidh.oas.org/what.htm>

¹³ ACLU of Michigan. *U.N. Committee Report Blasts U.S. & Michigan on Juvenile Life Without Parole Law*. <http://www.aclumich.org/modules.php?name=News&file=article&sid=494>

¹⁴ National Council on Crime and Delinquency (2006). *Fact Sheet: Youth Under Age 18 in the Adult Criminal Justice System*.

¹⁵ CRC Article 40, Section 3(b).

¹⁶ Barry Holman and Jason Ziedenberg (2006). *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Washington, DC: Justice Policy Institute. http://justicepolicy.org/reports_jl/11-28-06_dangers/dangers_of_detention_report.pdf

¹⁷ United States House of Representatives (2004). *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States*. Washington, DC: Committee On Government Reform. <http://www.nicic.org/Library/019780>

¹⁸ Holman and Ziedenberg, see note 16.

¹⁹ Ibid.

²⁰ Beijing Rules 13.1 and 19.1; UN Rules for the Protection of Juveniles Deprived of their Liberty 17. <http://www.ohchr.org/english/law/beijingrules.htm> and http://www.ohchr.org/english/law/res45_113.htm

²¹ Beijing Rule 13.2; UN Rules for the Protection of Juveniles Deprived of their Liberty 17 and 29.

²² Riyadh Guidelines 5.

²³ Riyadh Guidelines 33.

²⁴ Office of Juvenile Justice and Delinquency Prevention. January 9, 2006 DMC Preconference Workshop Powerpoint Presentation, slide 7. http://ojjdp.ncjrs.org/dmc/tools/dmcpresentations1_17_06.ppt

²⁵ Ibid at slides 50-52.

²⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(a). <http://www.ohchr.org/english/law/cerd.htm>

²⁷ Campaign for U.S. Ratification of the Convention on the Rights of the Child. CRC Facts and Research: Frequently Asked Questions. <http://www.childrightscampaign.org/crcfacts.htm>

²⁸ 2006 Summit for the Convention on the Rights of the Child: Mobilizing Communities for Ratification. *A Call to Action: Next Steps toward Ratification*. Washington, DC: Campaign for U.S. Ratification of the Convention on the Rights of the Child. http://www.childrightscampaign.org/files/crc_call_to_action.pdf

²⁷ <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>

²⁸ <http://www.ushrnetwork.org/page210.cfm>

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Building Bridges to Benefit Youth

The National Collaboration for Youth and National Juvenile Justice Network are partnering to strengthen connections between youth service providers and juvenile justice advocates. Vulnerable youth and families consistently transition between various publicly funded systems, from child welfare, community mental health, family support, special education and juvenile justice systems. Challenges abound, and youth frequently fail to receive the level of care and support they need. Moreover, a healthy youth development philosophy and approach should be applied to programming for all youth, regardless of the system in which they may find themselves. This initiative believes that the existing silos between programs, funding, and, in particular, advocacy, are counterproductive to the welfare of children and aims to break down those barriers. For more information, visit www.collab4youth.org/ncy/cjj.htm.

The National Collaboration for Youth (NCY), an affinity group of the National Human Services Assembly, includes 50 national, non-profit, youth development organizations. NCY's mission is to provide a united voice as advocates for youth to improve the conditions of young people in America, and to help young people reach their full potential. For more information, visit www.collab4youth.org.

The National Juvenile Justice Network (NJJN), which is hosted by the Coalition for Juvenile Justice, comprises 26 state organizations and coalitions that work for fair, equitable and developmentally appropriate adjudication and treatment for all children, youth and families involved in the juvenile justice system. For more information, visit www.njjn.org.