

Children of Lesser Rights

*The United States Failure to Ratify
the Convention on the Rights of the Child*



JENNIFER TURNER
AND ALICE FARMER

As we celebrate the 60th anniversary of the Universal Declaration of Human Rights (UDHR), we must formally recognize the protection the declaration gives to children—and push for further realization of those rights by ratifying the Convention on the Rights of the Child (CRC or “the Convention”).

The United States has long been a firm supporter of human rights in general and the UDHR in particular—but has yet to embrace the CRC. As Sen. Hillary Rodham Clinton stated, “...in spite of our progress on human rights over the last half-century, it is unconscionable that we still have not seen the circle of human dignity expanded to include all the children of our world.”

The UDHR offers strong protection for children’s rights, declaring “all human beings are born free and equal in dignity and rights.” It does not limit those rights exclusively to adults. The declaration provides a foundation for the protection offered to children in human rights law today.

Children are especially vulnerable members of society, and documents drafted since the UDHR reflect this reality. The General Assembly of the United Nations adopted the Declaration of the Rights of the Child in 1959. This declaration restates several provisions of the Universal Declaration of Human Rights as applicable to children. Notably, “the child shall enjoy special pro-

tection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”

The CRC, adopted in 1989, is the most comprehensive treaty that exists on children’s rights. It has been ratified

and that children in U.S. possess fundamental human rights. The CRC would fill current gaps in U.S. laws, providing vulnerable children in America with the same robust protections that children in 193 countries enjoy. The Convention would offer much needed protection to vulnerable groups such as those sentenced to life imprisonment without parole for crimes committed as a minor,

juvenile offenders or to have children serving life without parole. Life without parole is theoretically available for juvenile offenders under 18 in only ten other countries, but all of these countries do not apply the sentence to minors and no one in these countries who committed a crime when under the age of 18 is serving life without parole.

The CRC requires in Article 37(b) that the arrest, detention or imprisonment of children should be measures of last resort and applied for the shortest appropriate period of time. However, the U.S. government continues to detain disproportionate numbers of children of color in juvenile detention and to rely on incarceration as a means of addressing children’s social, mental and behavioral issues. In 2005, UNICEF estimated that one million children and adolescents are in confinement worldwide. In 2003, the number of juveniles incarcerated in the United States alone reached nearly 100,000. According to the U.S. Bureau of Justice Statistics, in June 2004, an estimated 7,083 children under the age of 18 were held in adult jails, accounting for 1% of the total jail population.

Once in custody, children are victimized by sexual abuse, denied adequate education, denied adequate physical or mental healthcare, subjected to physical and emotional violence, improperly housed with adult populations, and provided insufficient contact with their parents and families.¹ Article 37(c) of the CRC guarantees children’s right to be treated with dignity and in conditions of confinement that take into account the special needs of children.

The CRC prohibits the use of corporal punishment in schools. The Committee on the Rights of the Child, the body charged with authoritative interpretation and overseeing the CRC,

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by every country in the world except the United States and Somalia. The CRC reflects the nearly universal recognition of children’s unique human rights protection needs. Building on the fundamental notions of human dignity in the UDHR, the CRC recognizes that the rights of all children cannot be fulfilled without governments promoting those rights.

The CRC embraces children’s rights that are central to U.S. values. It aims to ensure children’s survival, well-being and development, while taking into account the ways their education, housing, health care, mental, nutritional, and social developmental needs are distinct from adults. The treaty contains a holistic approach to the rights of children and adolescents. It guarantees their civil and political rights —such as the right to be free from sexual exploitation and to proper treatment while in detention—as well as their economic, social and cultural rights, such as the right to education and health care. The Convention encompasses all youth up to the age of 18.

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children detained in juvenile detention facilities, and children subjected to corporal punishment in school.

The CRC explicitly prohibits sentencing children to incarceration for life without parole. Article 37(a) of the CRC states, “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” Although the juvenile death penalty was eliminated in 2005 by the U.S. Supreme Court in *Roper v. Simmons*, 41 states continue to sentence children to life without parole for crimes committed before they are 18 years old. In many states, juveniles can be transferred to adult courts and sentenced to life without any chance of parole regardless of their age, and without considering the circumstances of the offense. At least 2,381 people in the United States are currently incarcerated for life without the possibility of parole for crimes they committed as children.

The United States is the only country in the world known to either issue the sentence of life without parole for

states in General Comment 8 that corporal punishment “directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity.” Yet according to official reports every year in the United States, at least 220,000 children in public schools are subjected to corporal punishment, damaging the school environment and teaching students that violence is legitimate.

Permitted in 21 states, corporal punishment typically takes the form of “paddling:” an administrator or teacher hits a child repeatedly on the buttocks with a long wooden board, causing pain, humiliation, and in some cases, deep bruising or other serious injuries. African American students and students with physical or mental disabilities receive corporal punishment at disproportionate rates, creating a hostile environment that makes it even more difficult for these students to succeed.²

Much like the UDHR, the CRC has been widely embraced. Of 195 countries in the world, 193 countries are parties to the treaty; the United States and Somalia (which does not have an internationally recognized and functioning government) are the only countries in the world not to have ratified or acceded to the treaty. Despite the fact that the United States was a major and active participant throughout the ten-year drafting process for the treaty, the CRC is not binding on the United States. The United States has taken the first step, by signing the treaty. As a signatory, the United States must not take actions that would defeat the CRC’s object and purpose. Yet this leaves children with insufficient protection. Full U.S. ratification of the CRC is long overdue.

The U.S. government has proclaimed its commitment to the CRC’s principles on several occasions. In

Roper v. Simmons, the Supreme Court explicitly acknowledged the CRC’s authority as an expression of the “overwhelming weight of international

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opinion” in interpreting domestic legal standards, observing 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.”

The Supreme Court is not alone in its support for the CRC. When Ambassador Madeleine Albright signed the CRC on behalf of the United States she declared, “The Convention is a comprehensive statement of international concern about the importance of improving the lives of the most vulnerable among us, our children[.]”

Members of Congress have repeatedly pushed for ratification of the CRC. In 1992, Senator Patrick Leahy urged the Senate to sponsor a resolution calling for ratification of the CRC. He attributed ongoing resistance to a misperception by opponents of the CRC that it is anti-family or would infringe upon states’ rights. Rather, he pointed out, it provides internationally agreed upon minimum standards that protect children from poverty, abuse, hunger, and abusive labor practices; and creates a foundation by which countries can work together to ensure optimal development for their children in a secure and healthy environment.

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UDHR, it is time for the United States to stand behind its oft-stated ideals of individual liberty and human dignity by ratifying the CRC. When juvenile of-

fenders are sentenced to life without parole, when minors are confined under substandard conditions, and when students are subjected to corporal punishment in school—the human rights of children and adolescents are denied.

Despite the fact that the U.S. played a crucial role in drafting the UDHR, it continues to allow ongoing and repeated abuse against its own children. Minority children are disproportionately impacted by these rights violations and urgently need the protective guarantees that ratification of the CRC would provide. The United States should uphold all children’s right to conditions that provide them with freedom and dignity—and should substantiate its historic commitment to human rights—by ratifying the Convention.

Jennifer Turner, *Human Rights Researcher*, ACLU Human Rights Program and **Alice Farmer**, *Aryeh Neier Fellow*, ACLU Human Rights Program

¹ See, e.g. Human Rights Watch & ACLU, *Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls* (2006); Coalition for Juvenile Justice, *Ain’t No Place Anybody Would Want to Be: Conditions of Confinement for Youth* (1999).

² Human Rights Watch & ACLU, *A Violent Education: Corporal Punishment of Children in U.S. Public Schools* (2008).