



Protecting prisoners in the juvenile justice system

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Issue: Protecting prisoners in the juvenile justice system

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Introduction

In the world, there are currently 261,200 minors in detention, a number that has only increased these past few years, and shows no sign of stopping. The juvenile justice system, implemented in most countries since the early twentieth century, is a branch of the legal system dedicated solely to crimes committed by minors. In theory, it should provide a less destructive, more rehabilitative approach to dealing with young offenders, however in practice, juvenile justice is often a flawed system that may only worsen things for the young people that go through it. This research report will present the dangers of this system around the world and the efforts made to remedy it.

Definition of Key Terms

Child (Minor, juvenile)

According to the Convention on the Rights of the Child, a child is any person under 18.

Young offender

A person who in the eyes of the law, is not yet an adult but no longer a child. The age limit of who is considered a young offender varies depending on the age of criminal responsibility.

Age of criminal responsibility

The age limit by which children who fall below may not be prosecuted for crime, deemed incapable of consciously offending

Juvenile justice system

Legal system of rules, policies, and guidelines designed to control how young offenders who break the law are processed and dealt with.

Detention

Act of legally arresting and imprisoning someone.

Torture

According to the Convention against Torture, it is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person to punish them.

Recidivism (re-offense)

Tendency of continuing crime even after having been punished

General Overview

The question of age

Up until a century ago, minors were often tried the same way as adults. Children arrested for petty delinquency could be grouped with violent adult criminals. Detention was usually law enforcement's primary course of action, leading to overpopulation and inhumane prison conditions. The United States was the first to put forward an alternative system for young offenders through the creation of the first Juvenile Court of Law in Chicago in 1899. Many more countries would follow suit. Nowadays, most nations have adopted a juvenile justice system, encouraged by UN institutions that have presented it as an effective way to ensure the respect of children's rights. Nevertheless, there is a particular aspect of the juvenile justice system that varies vastly from country to country; the age of criminal responsibility.

The age of criminal responsibility sets an age limit by which children who fall below may not be prosecuted for a crime, deemed incapable of consciously offending. Despite the Beijing Rules setting out guidelines for higher ages of responsibility (around 12 to 14), in many places, the age is still incredibly low, such as in certain American states, where the age can fall as low as six years old. This calls into question the capability of such a system to take in such young children as well as the line between children who commit crimes and who are victims. For many, offenders of that age are victims. They are victims of their circumstances (such as child sex workers), or of an abusive influence in their lives (such as children born into terrorist groups). The criminalization of children has also been used in the past for law enforcement to meet quotas and government targets. Indeed, this goes against the UN children's rights guidelines which recommend that custody be used as a last resort and only when a minor represents a serious risk to the community.

Furthermore, there is the matter of harsh sentences. More and more countries are abolishing life sentences for minors, but life imprisonment is still effective in 63 countries for child offenders. This is usually a sentence reserved for severe crimes and in cases where minors are tried as adults, but deeming a child unfit to rejoin society has garnered much criticism.

In Norway, the age of criminal responsibility is 15 years old and cases of offenders under that age are transferred to social workers. However, children over 15 are systematically processed as adults.

Trying minors as adults has also led to the detention of minors in jails and prisons intended for adult offenders. In the United States, there are 10,000 individuals under the age of 18 in that very situation. The negative effects of this will be touched upon in a later section.

The existence of status offenses is also highly contested. Status offenses concerns conduct that would not have been condemned had they been committed by adults. A Texas Public Policy Foundation study confirmed that in the US, 6,000 children were detained for acts such as curfew violations, underage drinking, etc. This means more children are led to the juvenile justice system and exposed to its many issues.

Mental health and substance abuse

Juvenile justice systems have regularly failed to ensure the protection of children when it comes to mental health disorders and substance abuse. This is one of the biggest failures of juvenile justice, as most young offenders are concerned by these issues. According to a US study, 50 to 70% have behavioral health disorders and 50% of them have substance abuse issues. There is indeed a correlation between these issues and delinquency, as the former may lead directly to the latter. Institutions, however, generally fail to provide adequate help. Around 60% percent of youth with a mood or anxiety problem did not receive mental health services and 11 to 56% percent of adolescents with substance use disorders did not receive drug and alcohol treatment services. This is generally not due to an outright refusal to provide medical care (there is a constitutional right to

medical care in most countries), but rather ineffective systems upheld by outdated institutions. There is a prevalent issue of its inability to identify and evaluate mental health needs, as well as a lack of professionals that are able to treat these.

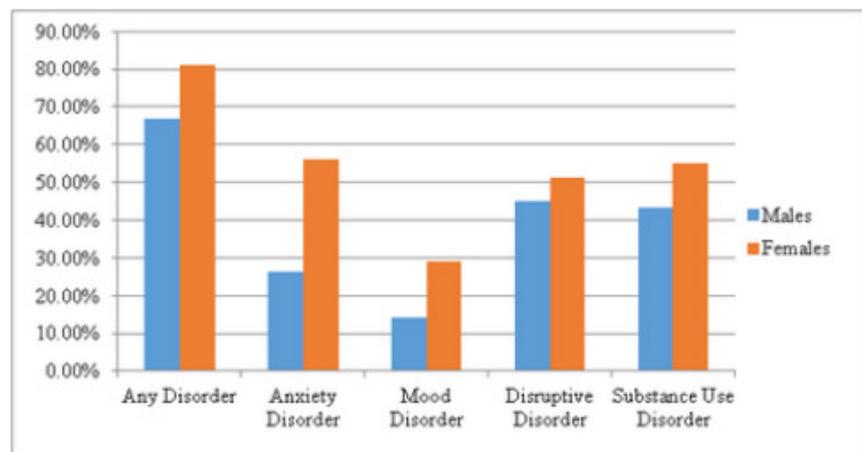


Figure 1: Prevalence of mental health disorders in the juvenile justice system (2006, Revolving Door USC)

There are also cases in which mental illness can be aggravated by detention. Law enforcement and other detention officials are often lacking proper training when it comes to mental health. Their

misunderstanding causes poor handling of these cases, such as when mentally ill minors are punished for acting out. They are sent to solitary confinement; an alienating experience that will only worsen their condition. Mishandled situations can pose a risk to the prisoner involved, other prisoners, and the officials, calling into question the safety of juvenile detention centers.

It has been proven that there is a link between substance abuse and recidivism risk. Therefore better substance abuse treatment could decrease this risk. Ensuring the mental well-being of young offenders will also allow for an easier reintegration into society, although ensuring lasting change would only be possible through continued treatment and consistent aftercare.

Substance abuse has been used in multiple countries as a way to unfairly take minors into custody. In Laos and Vietnam, drug detention centers are used to detain street children, and all those are considered undesirable by local authorities. In Cambodia, 1,000 individuals are held in only eight drug detention centers. Around 10% of the prisoners are children under the age of 18 and are held in these prisons, where they are subjected to cruel, inhuman and degrading treatment.

To contrast, the Belgian juvenile justice system has outlawed detention of minors if it is "in practice impossible to find an individual institution straight away." A minor suspected of having committed an offense can not be detained in police custody for more than 24 hours and furthermore, the country has banned detaining minors with behavioral problems in juvenile detention centers, sending them to specialized institutions or placing them under the care of appropriate social workers. The Belgian juvenile justice system has been deemed a model in restorative and welfare-oriented juvenile justice.

Physical and sexual violence

The Convention against Torture was signed by most nations in 1984, however, NGOs (Non-Governmental Organization) such as Human Rights Watch have come out with reports of violence still being used as a form of punishment in many parts of the world. The juvenile justice system can become a breeding ground for systematic abuse by officials who routinely violate human rights in the name of retributive punishment. This is generally the case in African, Latin American, and Middle Eastern countries. The latter notably, where religion plays a major role in civic life and where juvenile justice was introduced much later, have the most cases of children being punished in cruel ways. For example, under Sharia law, sentencing to amputation and flogging remains lawful.

Nevertheless, there has been a clear improvement in protecting children when it comes to systematic physical violence. 144 states have outlawed the use of physical punishment as a method of discipline in juvenile detention centers, and 169 states have outlawed judicial corporal punishment (whipping, flogging, caning). More and more countries are making progress in replacing these with probation and community measures, but this does not ensure their respect. Even in states where it is banned, there are still thousands of children subjected to physical violence in the world. This is in part explained by a lack of independent oversight and enforcement, and the resulting unreported abuse. This would also be the cause of unbridled sexual violence in prisons. Minors detained in adult detention facilities are the most at risk; they are five times more likely to be sexually assaulted in these detention facilities, furthermore calling into question the age of criminal responsibility. Girls are more at risk as there are generally fewer female detention facilities and they are therefore more likely to find themselves in the adult system. The distinct lack of privacy when it comes to hygiene in prisons notoriously increases the risk of sexual harassment or assault, the juvenile justice system is no exception. Additionally, many minors have already experienced sexual violence before entering the system and certain prison practices can retraumatize these children, such as strip searches, which are extremely dehumanizing and inflict important emotional harm.

The same can be said for solitary confinement, which punishes young people by cutting off all human contact for multiple days. It has been proven to be an inhumane practice because, to quote the US Pathways study, "[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." Solitary confinement has been classified as a form of torture and an increasing number of children's advocates have been calling for its abolishment. Additionally, it has become a more pressing concern during the COVID-19 pandemic. A high number of children have been placed in quarantine for "COVID-related" reasons, but it has simply been understood as a way for prisons to bypass solitary confinement criticism.

The pandemic has worsened conditions for some juvenile offenders. In England, there has been a record-high 70% increase in violent assaults on children, which could be due to the lockdown and therefore a diminishing amount of external supervision. The COVID-19-induced quarantine has also been used as a reason to allocate less essential educational and recreational time to young offenders. However, since the start of the pandemic, an estimated 45,000 children have been

released from detention centers to their families or an appropriate alternative; evidence that there are better alternatives to detention for young offenders.

Inequality

The UN has issued principles and guidelines on access to legal aid in criminal justice declaring that every child should have equitable access to legal assistance, but thousands of children still face unfair trials due to a lack of proper legal counseling. Poverty is usually responsible for this unequal access and therefore accounts for an overrepresentation of impoverished young offenders in detention centers (even if it is only one of a multitude of factors behind this).

Unequal sentencing of young offenders in certain countries can also be traced back to racism. According to the US Sentencing Project, black are more than four times as likely to be detained or committed in juvenile facilities than their white counterparts. It is partly because communities of color experience disproportionately high rates of low-level drug offenses, which frequently result in the accumulation of past convictions. There is also the matter of the “adultification” of these young offenders, meaning the process of treating these children as adults because of preconceived racial biases. Black youth were 14% of the youth population in the US, but 52.5% of the youth were transferred to adult court by juvenile court judges. In France, 70% of young offenders are of immigrant origins, which can be explained by numerous socio-economic factors, one of which would be racial discrimination when sentencing.

There do appear to be advancements made in the world when it comes to fighting discriminatory practices. For example, in Colombia, indigenous children, who could previously be judged according to the rules and procedures in their own communities can no longer be sentenced to corporal punishment. Nevertheless, all around the world, there is still much more progress to be made, against discrimination, but also every violation of children’s rights in the juvenile justice system.

Timeline of Key Events

Date	Event
July 1899	The creation of the first Juvenile Court of Law in the world takes place in Chicago, USA.
10 th of December 1948	The UN general assembly adopts the Universal Declaration of Human Rights.
30 th of August 1955	Publication of the UN Standard Minimum Rules for the Treatment of Prisoners: non-binding rules that establish principles and standards to ensure that prisoners are treated humanely.
5 th of February 1980	Adoption of the UN Code of Conduct for Law Enforcement Officials which ensures the respect of human rights and the humane treatment of prisoners by law enforcement.
22 nd of June 1987	Adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which prohibits torture and other cruel, inhuman, or degrading treatment or punishment in all circumstances, and requires states to take preventive measures and to prosecute allegations of torture.
24 th of May 1989	Adoption of the Beijing rules (UN Standard Minimum Rules for the Administration of Juvenile Justice) which sets out guidelines for the correct administration of juvenile justice and standards for the juvenile justice system.
1 st of July 1990	Adoption of the African Charter on the Rights and Welfare of the Child by the African Union which provides a nuanced focus on issues affecting African children and sets up the African Committee of Experts on the Rights and Welfare of the Child.

14 th of December 1990	Adoption of the Havana rules (UN Rules for the Protection of Juveniles Deprived of their Liberty) which encourages the respect of a set of standards and rules that concern every young offender in custody, and ensures their development and well-being by defining acceptable material conditions of detention and educational and recreational activities.
1 st of March 2005	The U.S. Supreme Court decides (<i>Roper v. Simmons</i>) to raise the minimum age for eligibility for the death penalty to 18 years.
22 nd of July 2005	Adoption of the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime which ensures the rights and protection of child victims.
5 th of November 2008	Adoption of the European Rules by the European Union for juvenile offenders subject to sanctions or measures which requires the safety and rights of all juvenile offenders through discussions on the legal framework and implementation of non-custodial sanctions or measures.
3 rd of October 2012	Adoption of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems which highlight the importance of children's access to legal aid in order to obtain a just trial.

Major Parties Involved

NGO: Penal Reform International (PRI)

PRI is an NGO that works with intergovernmental groups to create policy while advocating for the repeal of the death penalty. They have worked on many occasions with the UN, advocating for laws, launching programs and intervening in countries all around the world for the rights of prisoners.

NGO: Defense for Children International (DCI)

DCI advocates for children's rights by putting programs into action and making contributions to UN documents. They have worked on an international level to ensure the respect of the United

Nations Convention on the Rights of the Child (UNCRC), holding government officials and policymakers accountable.

NGO: Defense for Children International (DCI)

Human Rights Watch publishes in-depth reporting and launches fact-finding investigations on juvenile justice and other human rights issues around the world. They monitor all countries to ensure that they are respecting the UN declaration of universal rights and are known for exposing many governments for their unethical practices.

Supranational union: European Union (EU)

The EU has encouraged all nations to uphold and defend human rights in the juvenile justice system. They have reinforced legal institutions and implemented reforms in order to ensure the safety of young offenders. The EU has also encouraged other countries to adopt juvenile justice reforms and to promote children's access to justice through prospects for EU membership or closer cooperation.

UN agency: United Nations International Children's Emergency Fund (UNICEF)

UNICEF has worked in close cooperation with NGOs and state governments, providing necessary technical assistance through data collection and extensive research. UNICEF has been indispensable in training and forming qualified professionals in the juvenile justice system and combating discrimination by attempting to change social norms.

Quasi-judicial body: African Commission on Human and People's Rights (ACHPR)

The ACHPR was established by the African Charter and is tasked with investigating human rights violations in Africa, launching programs of action towards encouraging human rights and ensuring effective communication between the ACHPR and states to collect accurate and first-hand data.

Nation: The United States of America

As the nation with the highest incarceration rate, a high arrest rate for young offenders and more than 1,500 juvenile detention centers, the United States is under the most international scrutiny. Despite setting the precedent of juvenile justice through the creation of the first Juvenile Court of Law, the United States has been criticized by many NGOs for their lack of protection of children's rights. Human Rights Watch has notably given many American states a failing grade in that department.

Nation: The United Kingdom

With a complicated history of inhumane practices when it comes to children, the UK has been a leading nation in reforming the juvenile justice center. UK policymakers have taken several steps in following the UN guidelines and through their role in the European Union, seem to encourage other nations to do the same. Yet, HRW has called out the UK government’s explicit support of Bahrain’s blatant disrespect of children’s rights in detention. Additionally, the age of criminal responsibility is particularly low for a country of the developed world and is still a point of contention.

Nation: Belgium

As previously mentioned, the Belgian juvenile justice system has been lauded as a model of restorative justice. In 2006, they passed the Youth Justice Act, which prioritizes restorative measures over any other and in the case where they are not used, demands a formal explanation as to why. This level of enforced accountability, along with an exceptional emphasis placed on community and offender reconciliation, has allowed this justice system to be deemed one of the best in the world.

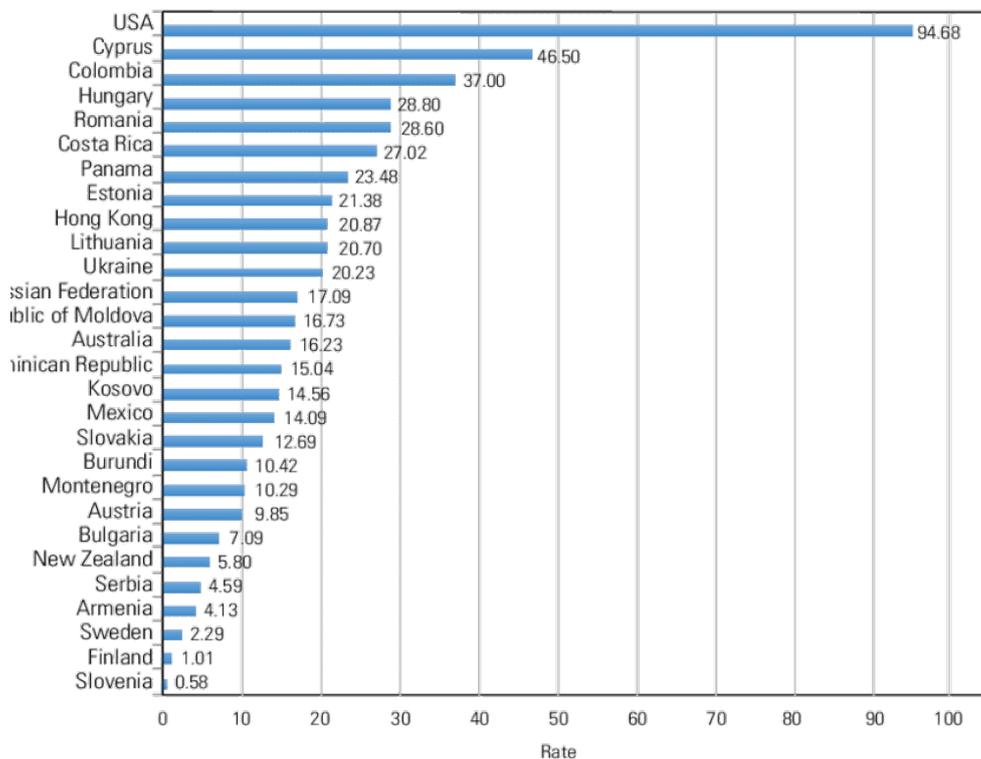


Figure 2: International youth incarceration rates (per 100,000 in 2010, Harvard data)

Possible Solutions

Increasing interagency cooperation

A possible solution could be reinforcing collaboration between all parties (such as social services, health, education and civil society partners) involved in order to ensure a varied and multi-disciplinary approach to protect and meet the basic needs of children. Close collaboration among specialists dealing with children should be encouraged in order to gain a comprehensive grasp of a child's needs. Inter-agency cooperation allows children to benefit from a large, varied and accessible range of resources.

Restorative justice

Punitive justice struggles to prevent re-offense due to its failure to make juvenile offenders take personal accountability and identify the underlying issues that led to the crime being committed in the first place. Restorative justice relies on principles of reparation and rehabilitation. The end goal is to encourage offenders to recognize the impact of what they have done and give them an opportunity to make amends. Restorative justice works hand in hand with the community through discussions between the victim(s) and the offender to reach a consensus regarding an appropriate sanction or consequence. This restorative process allows the offender to grow from their mistakes and eases them into reinsertion through reconciliation with the community. Restorative justice practices are likely to have a greater effect on a child who has committed an offense due to their ongoing psychological development as well as offer an important educational response.

Increased monitoring by human rights organizations and reinforcing data collection capability

The data published by NGOs could allow the international community to hold each other accountable and incite change. The UN has been actively condemning certain countries after the publishing of Human Rights Watch reports and will continue to do so. However, there is still a lot that is not known and numbers that have not been released to the public, especially in authoritarian states. It would be very beneficial to increase the role of independent oversight in every country, in order to stop the violations of human rights.

International cooperation

As mentioned, the international community could hold each other more accountable. World leaders could come together in order to make sure the UN guidelines are respected and carried out. International sanctions would be beneficial in condemning countries that have not respected them. As the European strategy has proven, excluding offending nations would encourage them to respect human rights as their need to maintain their place in the world economy would trump over their disregard for the protection of human rights.

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