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On Access to Justice in the United States

Submitted to the U.S. Government
For the NGO Consultation preceding the Universal Periodic Review and the review of the International Convention on the Elimination of all forms of Racial Discrimination (CERD)

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Good afternoon. My name is Elizabeth Clarke, and I am the founder and president of the Juvenile Justice Initiative of Illinois, a non-governmental advocacy organization dedicated to the mission of ensuring compliance with international standards of human rights for children in conflict with the law. To this end, we focus on ending the trial of children under 18 in the adult court, decreasing reliance on incarceration while expanding community-based alternatives, and ensuring equity and due process for all children in conflict with the law.

Today, I wish to direct my comments to two critical violations of the human rights protections in CERD – the wholesale prosecution of children under 18 in the adult court, and the excessive and disproportionate use of incarceration. In both cases, I will limit my remarks to the evidence of violations within my state, but my state's experience is emblematic of overall U.S. policies.

This testimony is particularly timely. Last week, the U.N. Human Rights Committee urged the U.S. to end adult court prosecution of juveniles – specifically, end juvenile life without parole, separate all juveniles from adults, and end the practice of transferring juveniles to adult courts. The U.N. Human Rights Committee, charged with ensuring compliance to the International Covenant on Civil and Political Rights, released the concluding observations of its 110th session last week, which included these comments on the U.S. system:

> *"The State party [the United States of America] should* ***prohibit and abolish all juvenile life without parole sentences*** *irrespective of the crime committed, as well as all mandatory and non-homicide related sentences of life without parole.* ***It should also ensure that all juveniles are separated from adults during pretrial detention and after sentencing and that juveniles are not transferred to adult courts.*** *States that automatically exclude 16 and 17 year olds from juvenile court jurisdictions should be encouraged to change their laws."*

I. End the Prosecution and Sentencing of Children in Adult Court. Illinois has already taken substantial steps to end the trial and sentencing of children in adult court. As of January 1, 2014, Illinois set the age of juvenile court jurisdiction at 18 – thereby bringing Illinois into the majority (40 states now set 18 as the age of majority).

Illinois is taking further steps to ensure individualized and proportionate treatment of children under 18 in the justice system.

Last week, the Illinois House Judiciary Committee voted to move HB 4538 to the House Floor to continue the debate on reforming juvenile transfer provisions by shifting the decision to try juveniles in the adult court from "automatic" upon age and charge, to an individualized hearing in juvenile court. New research documents ongoing disparities in current "automatic" transfer policies.

This has been a long struggle to keep children in conflict with the law in juvenile court. In 1982, the Illinois legislature removed the need for juvenile court approval to try a child as an adult, resulting in the "automatic transfer" of some children to adult court for trial and sentencing. These transfer statutes eliminate any review of the circumstances of an individual case including the youth's background his or her degree of participation in the offense, mental and physical health, educational problems or learning disabilities, and availability of resources unique to juvenile court for rehabilitation. Instead, within hours or days of arrest, a child is placed on a trajectory to prosecution and sentencing in adult court. If convicted a child can receive a lengthy adult sentence or end up with a criminal record that can impact their ability to go to school, get a job and be a productive member of their community.

More than thirty years of studies have consistently demonstrated that categorical treatment of children as adults prevents youth rehabilitation and positive development, fails to protect public safety and yields profound racial, ethnic and geographic disparities.

The Juvenile Justice Initiative recently examined three years of data on 257 children under the age of 17, who were held in juvenile detention in Cook County but prosecuted and sentenced in adult court from 1/1/2010 – 12/31/2012. The findings continue to demonstrate that categorical prosecution of children in adult court prevents rehabilitation, fails to protect public safety, and yields profound racial disparities.

- The majority of children automatically transferred were ultimately convicted for lesser offenses, offenses that could not have triggered transfer – the 3-year study revealed **54% of all convictions were for lesser offenses than the original charge.** Another 4% were found not guilty or thrown out (nolle prossed).

- The vast majority of automatic transfer cases result from guilty pleas – the 3-year review revealed **90% of automatic transfer cases were pled guilty.** At no point is there any opportunity to take into consideration immaturity – the young age of the child, his/her potential for rehabilitation, or any aspects of his/her background.

- **Automatic transfer disproportionately affects children of color**. In 3 years of "automatic" adult court prosecution of 257 children, there was only one white child.

POOR OUTCOMES – National research solidly establishes that children prosecuted in the adult court are more likely to repeat offend than children similarly situated who are prosecuted in juvenile court. A 2007 survey of existing studies by the U.S. Centers for Disease Control and Prevention concluded that **youth who are prosecuted as adults are 34% more likely to commit crimes** than youth who were kept in the juvenile court system.

CONTRARY TO RESEARCH – Routinely prosecuting youth as adults runs contrary to youth development research: A strong and growing body of research on adolescent development indicates that youth are especially prone to impulsive and risky behavior, and hampered in their ability to foresee and weigh the consequences of their actions. On the other hand, youth are capable of tremendous positive change and most youth mature out of delinquent conduct. Automatic transfers of youth ignores these facts and, in treating teenagers the same as adults, wastes opportunities for rehabilitation and bolstering public safety through the services, supervision and support of the juvenile system.

Recommendation: **The United States should eliminate the prosecution of children under 18 in adult court.**

"[I]t doesn't make sense for us to transfer, indiscriminately, young people to adult court."
Then Senator Barack Obama, Jan. 29, 1998

II. EXCESSIVE AND DISPROPORTIONATE USE OF INCARCERATION.
Illinois incarcerates approximately five times the number of children, as does the United Kingdom. The incarceration rates in the U.S. are the highest in the world. The Justice Policy Institute reported in 2011 that with 5% of the world's population, the U.S. locks up 25% of the world's prisoners.

A disproportionate percentage of youth who are confined are minority youth who are locked up for property and drug violations. This is particularly troubling in light of the racial disparities in youth incarceration - over 90% of the youth in the juvenile detention center in Chicago are minority. Once in prison, the treatment of youth is deeply troubling. Programming is minimal, with little beyond basic education. Discipline is harsh, with heavy reliance on solitary confinement for days on end. Reentry frequently leads to recommitment. These inadequate conditions and lack of due process at reentry points have been documented in two class actions filed over the past two years – one by the ACLU against the Dept. of Juvenile Justice for inadequate education and treatment and excessive discipline, and the other by the MacArthur Justice Center against the Prisoner Review Board for failing to give youth any due process protections when they face recommitment on a parole violation.

These juvenile prisons are a failed policy. Half the youth released are back in a juvenile prison within 3 years. By contrast, youth treated in evidenced-based programming in the community are less likely to repeat offend and more likely to move on with their lives – at a fraction of the cost of incarceration.

One bright note is the movement in the U.S. to shift limited taxpayer dollars to community-based alternatives. Illinois has invested over the past five years in a financial incentive program (Redeploy Illinois), which has successfully reduced its juvenile – and adult - prison populations, enabling the state to close two adult and two juvenile prisons. Yet, we still incarcerate at higher rates than any other nation.

One more positive note is the recent call by several U.S. Senators to end the use of solitary confinement for juveniles, for pregnant women, and for those inmates with mental health issues. This clarion call for reform, followed two subject matter hearings chaired by IL Senator Richard Durbin on the U.S. policy of solitary confinement. It is heartening to see our Congressional leaders devote attention to this critical violation of fundamental human rights.

More must be done, as half or more of the youth currently in juvenile prison are there for low-level offenses that would be better treated in the community. Given the appallingly high disproportionate impact on minority youth – particularly African American males - this is today's civil and human rights struggle.

Recommendation: The U.S. must ensure that incarceration is used only as a last resort, in humane facilities, and for as short a time as possible.

III. The United States must ratify the Convention on the Rights of the Child.
While many of our states are modifying our laws and policies to comply with the CRC's human rights protections for children in conflict with the law, this piecemeal effort would be substantially expedited if the U.S. joined with the rest of the world's nations (except two other nations – Somalia and South Sudan) and ratified the Convention on the Rights of the Child.

In juvenile justice, ratification would mean support to

- set a minimum age of juvenile jurisdiction,
- ensure all our states set 18 as the upper age of jurisdiction,
- ensure all our children are tried in the juvenile court,
- ensure our children receive effective assistance of counsel,
- ensure that all our children receive proportionate sentencing,
- ensure incarceration is a last resort,
- ensure that those youth who are incarcerated are placed in humane facilities for as short a time as possible.

Ratification of the CRC, would end the use of trial in adult court, and would end the use of life without parole for children. Ratification is essential to bring the United States into the international dialogue on the provision of human rights for children in conflict with the law.

Despite the vigorous dialogue and implementation of CRC human rights protections in other nations, many officials in the federal and state juvenile justice systems remain woefully unaware of the CRC.

The U.S. federal officials, including the Office of Juvenile Justice and Delinquency Prevention, should promote awareness of and understanding of the critical human rights protections embodied in the CRC, particularly for children in conflict with the law.

The Administration should send the Convention on the Rights of the Child to the Senate for ratification.

Thank you for this opportunity to raise these critical issues of human rights for our children.

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