The International Framework of Children’s Rights Fosters Discrimination against Young People

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“The right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible.”

— Hannah Arendt

INTRODUCTION

This Article explores in a comparative manner how discrimination is built into the international framework of children’s rights and examines the consequences of these problems for children in vulnerable situations, people whom human rights are supposed to protect.

I. INHERENT DISCRIMINATION IN THE INTERNATIONAL FRAMEWORK OF CHILDREN’S RIGHTS

From its inception, the international framework of children’s rights was understood as inclusive, a framework through which young people are supposed to be able to call on their governments to implement rights. Nevertheless, a closer look reveals that age discrimination is built into the framework. After reviewing the international framework, this Article investigates problems young people face when engaging the framework, then presents a potential mechanism that vulnerable children can employ to exercise their rights.

The international framework of children’s rights consists of the U.N. Convention on the Rights of the Child (“CRC”) and its Optional Proto-

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2. See generally Jonathan Todres & Shani M. King, Introduction to THE OXFORD HANDBOOK OF CHILDREN’S RIGHTS LAW (Jonathan Todres & Shani M. King eds., 2020).
cols, the U.N. Committee on the Rights of the Child (“CRC Committee”),
the policies and procedures the CRC Committee uses to enforce the Con-
vention, including its individual communications procedure, and other
U.N. instruments, bodies, and procedures. National governments are part
of this framework through CRC ratification, which commits those govern-
ments to implement the CRC domestically and adhere to U.N. Committee
procedures. Ratification requires national governments to make known the
CRC and its principles to everyone living in their respective countries.

Famously, the CRC is the most widely-ratified of the U.N. human rights
treaties, with 196 states parties and all but one U.N. member state (the
United States) having ratified the Convention. Accompanying the CRC are
three Optional Protocols: The Optional Protocol on the sale of children,
child prostitution, and child pornography, the Optional Protocol on the
involvement of children in armed conflict, and the Optional Protocol on a
communications procedure. These Optional Protocols are distinct treaties
that the CRC urges member parties to ratify. As of January 27, 2023, 173
states have ratified the Optional Protocol on armed conflict, 178 member
parties have ratified the Optional Protocol on child trafficking, and 50
member parties have ratified the Optional Protocol on the communications
procedure. Because the U.S. Government has ratified the Optional Proto-
col on armed conflict and child trafficking, it can ratify the Optional Pro-
tocol on the communications procedure. Ratifying the third protocol
indicates that a member party is willing to be subject to an individual
complaint about the member party’s implementation of the Convention and
Optional Protocols on armed conflict and child trafficking. The individual

14. Id. Art. 5.
communications procedure limits the ability to bring collective complaints. For example, Greta Thunberg and sixteen young people, ages eight to seventeen, used the individual communications procedure to complain that national governments that have ratified the CRC have failed to protect young people’s rights and interests around climate change. On September 23, 2019, Thunberg scolded world leaders for their inaction and false promises on tackling climate change. Speaking during the 2019 Climate Action Summit in exasperation, Thunberg asked world leaders, “How dare you?” and exclaimed, “This is all wrong!” She complained that world leaders were stealing young people’s futures as ecosystems collapse. Shortly after her speech, Thunberg and her colleagues filed their complaint through the CRC individual communications procedure. The joint complaint Thunberg and colleagues filed is considered a “landmark” use of the CRC individual communications procedure and has received widespread media attention. Nearly two years later, the CRC Committee sidestepped the group’s concerns and concluded that individual members of the group should take their complaints to national courts—effectively taking away the international agency that was promised to children in the original act.

The CRC Committee’s decision shifts the young people’s complaint from an institution intentionally organized to hear and respond to children’s rights concerns to national courts where young people must rely on adults to advance their rights and interests. The Committee’s insistence on turning to national courts ignores the fact that Thunberg and colleagues will likely age out of being able to use the CRC individual communications procedure. The U.N. Committee’s response to Thunberg and colleagues is


ironic; it undermines the Convention’s objective of providing legal protections to young people.20

The International Bill of Human Rights (“IBHR”) articulates rights available to every person, including young people. The IBHR consists of the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).21 The UDHR, ICCPR, and ICESCR are distinct instruments. When a U.N. member state voted for the UDHR, they indicated their agreement with the Declaration’s principles. When a U.N. member state ratifies the ICCPR and the ICESCR, they indicate their promises to implement the Covenants’ contents domestically.22 As of January 27, 2023, 173 U.N. member states have ratified the ICCPR and 171 U.N. member states have ratified the ICESCR.23 As their names indicate, the ICCPR articulates civil and political rights, and the ICESCR articulates economic, social, and cultural rights. The IBHR articulates rights belonging to every person—regardless of age.

Despite the application of the IBHR to every human, including children, the U.N. adopted the CRC in 1989 and then initiated the steps needed to establish the CRC Committee and its procedures to further bolster the protection offered to young people.24 This near universal ratification does seem to demonstrate widespread commitment to the rights and interests of children.25 Nevertheless, why establish a separate international framework of children’s rights, given that the IBHR applies to young people? If the IBHR was adopted, why is the CRC needed? The CRC acknowledges that “particular care” should be extended to young people and that young people need “special safeguards.”26 Yet the ICCPR and ICESCR also acknowledge and incorporate these concerns. ICCPR Article 24 states: “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”27 ICESCR Article 10 states: “Special mea-

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20. See CRC, supra note 4, Preamble.
23. See Status of Ratification Interactive Dashboard, supra note 12.
24. See CRC, supra note 4, Art. 43.
26. CRC, supra note 4, Preamble.
sures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Rather than insist that children, like every person, are able to exercise their rights through the ICCPR and the ICESCR, the U.N. and its member states established an international framework for children’s rights. This framework not only may be unnecessary, but may be used to discriminate against young people. Although the IBHR declares that human rights should prevent discrimination, establishing the international framework of children’s rights indicates that children and their rights are different from other people and their rights.

While the framework aspires to assure dignity and rights for every young person and reduce discrimination among young people, it allows adults to discriminate against young people and their interests, including the exercise of their rights. This Article demonstrates that the international framework of children’s rights is built on discrimination and that it fails young people when they most need their rights. Current practices treat young people as neither full members of the societies in which they live nor entitled to exercise rights as societal members. Adults are expected to serve as young people’s representatives to their societies and build and maintain institutional mechanisms that ensure young people can exercise rights. Given that the international framework of children’s rights does not extend all human rights to young people, young people face barriers to changing this framework.


31. See CRC, supra note 4, Preamble, Arts. 2, 23, 28, 37, 39, 40.


34. See Martha Minow, Rights for the Next Generation: A Feminist Approach to Children’s Rights, 9 HARV. WOMEN’S L.J. 1, 18 (1986).

35. See Brian Gran, THE SOCIOLOGY OF CHILDREN’S RIGHTS 95, 170 (2021) (discussing the right to vote and the right to science, neither of which are explicitly extended to children).

36. See generally id.
II. RELIANCE ON ADULTS

Discrimination against young people arises from a dilemma built into the children’s rights framework: young people rely on adults to implement their rights.37 Young people’s reliance on adults is a feature of Aristotle’s notion of the state.38 In *Politics*, Aristotle describes the state, its components, and how it works. The state consists of communities, and communities consist of households. The household revolves around male citizens: husbands and their wives, fathers and their children, and owners and slaves. Fathers, according to Aristotle, are expected to protect their children as royal rulers protect their subjects. If the male citizen fails to protect his children, the state, composed of male citizens, will intercede on behalf of young people, so they can live as they should under their father’s royal rule.39 Of course, while Aristotle’s notion of the state continues to shape contemporary approaches to governance, we recognize that the state often does not intervene to assure that young people can exercise their rights.40 Aristotle’s conception has led to state structures organized around false expectations of the utility of rights for some social groups, such as children.41

Rather than establish a community in which young people, like adults, are endowed with human rights, the international framework of children’s rights places young people outside this community. The international children’s rights framework encourages adults to view children and their rights as distinct from adults and their human rights, thereby preventing treatment of young people as equal members of this community who are endowed with human rights. Placing young people outside the human rights community, of course, fosters difference between adults, as humans, and children. This denial of equal membership, which prompts young people to rely on adults to exercise their rights, is built into the international framework. This reliance can range from (1) a parent or caretaker who ensures their child can exercise their rights, (2) to adults who establish institutional mechanisms necessary to a young person exercising their rights, (3) to adults responsible for maintaining and managing institutional mechanisms central to the international framework of children’s rights, (4) to adults taking all measures necessary to implement the rights articulated in the CRC.42 This reliance is problematic when adults fail to protect or hinder the implementation of children’s rights. It reveals structural discrimination

39. See id. at 49.
41. See Daniela Gobetti, Humankind as a system: private and public agency at the origins of modern liberalism, in PUBLIC AND PRIVATE THOUGHT AND PRACTICE 103, 104 (Jeff Weintzuba & Krishan Kumar eds., 1997).
42. See CRC, supra note 4, Art. 5.
shaping the exercise of young people’s rights, which can place children in harm’s way. This reliance dilemma exposes young people to failures of parents and caretakers, national governments, and community and society.

We witness this reliance dilemma and its consequences every day; it affects nearly all rights to which children are entitled. Problems resulting from this circumstance are revealed when a young person’s interests seem in opposition to adults’ interests, when young people face danger and great hardship, when institutional mechanisms purportedly designed to enable young people to exercise their rights instead fail to facilitate those rights, and situations when young people and their rights are ignored. Currently, these problems are part and parcel of everyday life in two camps and a center in North East Syria where young people live: Al-Hol, Al-Roj, and the Hour Center. An examination of these camps and center reveals how discrimination inherent to the children’s rights framework leads to problems for young people, as well as potential solutions.

III. DISCRIMINATION AGAINST VULNERABLE CHILDREN

The Al-Hol and Al-Roj camps are located in the Al-Hasakeh protectorate in Syria. The Hour Center is based in Tal Marouf, Syria. People living in these camps and center are neither prisoners nor internally displaced. Their statuses are undetermined and unclear. Camp residents come from over sixty countries. For example, boys living at the Hour Center are from Algeria, France, Germany, Morocco, Trinidad, and Russia, among other nations.

Living in the camps and center presents two problems afflicting young people and their rights, as well as a potential challenge. Simply put, the first problem for children’s rights is living in the camps and the center where, every day, children face desperate circumstances and concerns for

43. See MINOW, supra note 40, at 288.
their futures. The second problem for children’s rights is trying to exit the camps and the center. An anticipated challenge facing young people and their rights is what will happen if and when they return to their home societies.

Living in the camps and center exposes a problem for children’s rights and the obstacles embedded in the children’s rights framework. The reason these children live in the camps and the center is not due to what they have done or failed to do. The young people have been displaced in the camps and the Houri Center because of their relationship to an Islamic State (“IS”) member. The young people cannot depart the camps and the Houri Center because their governments refuse reintegration into their home communities. Living in the camps and the Houri Center, young people encounter the nonexistence or failure of institutional rights mechanisms that are meant to assure their rights. While the country of citizenship of every young person living in the camp has ratified the CRC, the CRC framework has limited utility to young people living in Al-Hol, Al-Roj, and the Houri Center. In contrast, the non-signatory United States has attempted to repatriate U.S. residents. Young people struggle to turn to organizations through which they can exercise their rights to health (CRC Article 24), education (Article 28), nutrition (Article 24), and living conditions necessary to their development (Article 27). While all camp residents experience poor healthcare and malnutrition, these problems are especially detrimental to young people’s growth and development. Young people experience violations of freedoms from economic exploitation (Article 32) when they are forced to participate in underground economies rather than attend school. Some boys are separated from their parents and siblings and sent to the Houri Center, violating Article 9. Dangers due to fires and flooding are common. Violence (Article 19), including shootings, is frequent. From 2019 to 2021, at least 1014 people were reported to have been killed or died from malnutrition, hypothermia, and other causes. In November, two girls who lived in the Al-Hol camp were raped, stabbed, and murdered. This horrible menagerie of rights violations, dangers, and unhealthy environments far away from families and friends produces social isolation.

The failure of the international framework of children’s rights is evident in assuming that all adults serve as young people’s representatives and have their best interests in mind. Boys living in the Houri Center are separated

49. See Status of Ratification Interactive Dashboard, supra note 12.
50. Gorevan & Achilles, supra note 48, at 22.
from their parents, caretakers, and families living in the Al-Hol camp and sent to the center to undergo programs to prevent their radicalization, violating their rights to be with parents and family.52 Several young people who live in Al-Hol and Al-Roj do not have parents in the camps. While leaders of a handful of national governments have welcomed orphans to their home societies, some national governments have not. In their home societies, leaders of governments who are responsible for maintaining and managing institutional mechanisms central to the international framework of children’s rights fail to do their jobs and ignore promises they have made to ensure that young people can exercise their rights.

Young people struggle to exercise their rights for purposes of exiting the camps and the Houri Center. The CRC Committee has called on the national governments of France and Finland to repatriate their children, and, for the children they do not repatriate, “to take additional measures . . . to mitigate the risks to the lives, survival and development of the child victims while they remain in the north-eastern Syrian Arab Republic.”53 These cases arose from adult relatives living in France and Finland who brought complaints for repatriation of their grandchildren and nieces through the CRC individual communications procedure.54 Of the countries to which boys belong in the Houri Center, only Finland, France, and Germany have ratified the optional protocol. Afghanistan, Algeria, Morocco, Pakistan, Russia, and Trinidad and Tobago have not ratified.55 The individual communications procedure is not available to children whose national governments are not on this list. The CRC individual communications procedure is out of reach for children residing in the Al-Hol and Al-Roj camps, as well as in the Houri Center. To use the individual communications procedure, they must prepare their complaint using English, French, Russian, or Spanish, then file their complaint via email or print the document, then mail it to the OHCHR in Geneva, Switzerland—a mechanism that is nearly impossible for a child stranded with little resources living in the camps or center.

The actions of such governments present the ultimate pretense of commitment to human rights of their children, with essentially no follow through in practice. Governments allow their young people to live in desperate situations, despite making commitments to repatriate, rehabilitate,
and reintegrate their children via the IBHR and CRC. Through CRC ratification, governments have promised to make detention a last resort and, if detention happens, for the shortest time. The governments of young people living in Al-Hol, Al-Roj, and the Houri Center are failing to implement these treaties and to ensure young people can exercise their rights—creating a clear violation of both their international and moral obligations.

Hannah Arendt criticized human rights for their dependence on national citizenship. The international framework of children’s rights is based on the notion that young people can call on their national governments to enforce their rights. Many governments, however, ignore their children who reside in the Al-Hol and Al-Roj camps and the Houri Center.

**CONCLUSION**

Across many countries, national governments have established independent children’s rights institutions ("ICRIs"), often called children’s ombudspersons and children’s commissioners. These ICRIs typically are independent of their governments yet endowed with legal powers to monitor government actions and omissions and advocate for children’s rights. ICRIs are typically empowered to raise the profile of the CRC, investigate concerns, publish reports, and speak to media about children’s rights. Their focus is on their national governments and their efforts to advance children’s rights through the CRC framework. Different ICRIs based in European countries have called for repatriation of children from the Al-Hol camp. Efforts of these ICRIs have called attention to the plight of young people in the camps and the Houri Center, but many governments have not responded.

A global ICRI established to monitor the international framework of children’s rights would concentrate on all young people and the exercise of their rights. A global ICRI would be independent not only of national gov-

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57. See CRC, supra note 4, Preamble, Art. 37; Gerald L. Neuman, *Detention as a Last Resort: The Implications of the Human Rights Committee’s General Comment No. 35, in Protecting Migrant Children* 381, 381 (Mary Crock & Lenni Benson eds., 2018).
60. See THE ROLES OF INDEPENDENT CHILDREN’S RIGHTS INSTITUTIONS IN ADVANCING HUMAN RIGHTS OF CHILDREN 5 (Agnes Lux & Brian Gran eds., 2022).
ernments, but also the CRC Committee. If endowed with appropriate powers, this global ICRI could use its independence and powers to monitor national governments, the CRC Committee, and components of the international framework of children’s rights, including the individual communications procedure. Young people could call on the global ICRI to advocate, protect, promote, and enforce their rights wherever they live. Like national ICRI, the global ICRI could monitor implementation of the CRC wherever children live. A global ICRI could advocate for the human rights of all young people and seek their equal membership in the global community. A global ICRI, of course, is not the complete answer. The idea of an ombudsman is to represent and speak on behalf of people whose governments ignore their rights, or worse. A global ICRI would strive to change perceptions of young people and their rights. This proposal is not far-fetched: the European Union has established an ombudsman office for EU members to enforce EU law.62

Societal leaders, especially political leaders, must think long term. If current arrangements encourage short-term thinking, then those arrangements must be corrected. Societal leaders must conceptualize children’s rights as human rights and keep in mind why an international framework of human rights was established for all people. Assuring that young people can exercise their rights as humans can foster commitments to non-discrimination, dignity, and participation in communities as citizens, workers, leaders, and parents.63 Young people can then grow up to make powerful contributions and hold responsibilities as societal leaders who advance “peace, dignity, tolerance, freedom, equality and solidarity . . . .”64


64. CRC, supra note 4, Preamble. See Axel Gosseries, Ageing, Unequal Longevities and Intergenerational Justice, in THE CAMBRIDGE HANDBOOK OF THE ETHICS OF AGEING 212, 212 (2022).