

The City University of New York

CUNY SCHOOL OF LAW

**New York City Council
Committee on Juvenile Justice & Committee on Fire and Criminal
Justice Services**

Joint Oversight Hearing, October 8, 2014: Examining the Treatment of
Adolescents in New York City Jails and Reviewing the United States
Department of Justice' Report on Violence at Rikers Island

**Written Testimony by: The Juvenile Justice Project of
the International Women's Human Rights Law Clinic,
City University of New York School of Law**

Thank you for the opportunity to submit public testimony to the New York City Council's Committees on Juvenile Justice and on Fire and Criminal Justice Services for their joint oversight hearing regarding adolescents in New York City jails and the recent United States Department of Justice (DOJ) report on Rikers Island. Widely recognized for its expertise and contributions to gender jurisprudence and human rights practice, the International Women's Human Rights Law Clinic at the City University of New York School of Law (IWHR) advocates before international and regional human rights bodies and national and local courts and legal institutions, to expand human rights protections internationally and domestically. Its juvenile justice project collaborates with legal, academic, and community-based organizations throughout the United States, encouraging compliance with human rights law and standards for youth, including by ensuring that youth in conflict with the law are treated as youth.

Along with the many New York City community organizations working for rights and dignity for youth, IWHR believes that minimizing or phasing out the use of imprisonment and jails and increasing available educational and developmental services will best serve youth and will comply with international standards. It also believes that if youth are to be detained, this must occur in conditions that serve their unique developmental needs and that grant them respect and recognition of their inherent dignity as human beings. This testimony outlines key international human rights standards regarding detention of juveniles and administration of juvenile justice, which call for diminishing the use of detention, increasing services, and creating conditions of detention that help youth flourish. These standards are widely accepted internationally, and represent the culmination of findings on best practices by human rights experts in international human rights treaty bodies, the United Nations (UN) General Assembly and the UN Human Rights Council. Our hope is that the New York City Council will strive to meet and exceed these standards in creating policies that impact the city's treatment of youth.

I. Youth Should Only Be Detained as a Measure of Last Resort

Under international human rights standards, youth¹ should only be deprived of their liberty as a measure of last resort, and for the minimum period possible.² Rehabilitation and restorative justice, instead of repression and retribution, should remain central in the administration of juvenile justice;³ as should the best interest of the youth in question.⁴ Further, international human rights law recognizes the right of youth to receive

¹ While international human rights standards make clear that youth under eighteen years of age must be treated as youth in criminal processing and in detention, international human rights bodies also call for governments to apply juvenile justice rules and regulations to people aged 18 up to at least 21. *See infra*, § II.

² Convention on the Rights of the Child art. 37(b), Nov. 20, 1989, 1577 U.N.T.S. 3.; *See also* Inter-American Commission on Human Rights, Report No.41/99, Case 11.491 (Honduras), *Minors in Detention*, March 10, 1999, para. 117. "Generally speaking, international human rights law favors reserving those penalties that most severely restrict a minor's fundamental rights for only the severest of crimes. Hence, even in the case of criminalized offenses, laws protecting the child must advocate some form of punishment other than imprisonment or deprivation of liberty"; Standard Minimum Rules for the Administration of Juvenile Justice, Article 19; Rules for Protection of Juveniles, Article 2.

³ Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 10.

⁴ *Id.*

treatment that promotes reintegration and assumption of a constructive role in society,⁵ and that is consistent with their sense of dignity and worth.⁶ The wellbeing of youth, as well as case disposition in a manner that remains proportionate to their age, circumstances and the offence must remain the chief considerations.⁷ These standards are based on a recognition that the particular developmental, emotional and educational needs of youth call for distinct treatment and a supportive approach.⁸

Thus, to meet international standards, before trial and post-sentencing, alternatives to imprisonment or detention must be available for all youth.⁹ It should be a well-established practice that child offenders be removed from the criminal or juvenile justice system and referred to alternative, namely, social services; instead of undergoing judicial proceedings.¹⁰ Models of such alternative measures include “care, guidance and supervision orders; counselling; probation; foster care; [and] education and vocational training programmes.”¹¹

II. Youth Should Be Treated as Youth, Not as Adults

Both in the administration of justice and in detention, international human rights law makes clear that youth should be treated as youth, and not as adults. Prosecuting youth as adults and jailing or imprisoning youth with adults violate U.S. obligations under multiple human rights treaties,¹² as well as under the international *corpus juris* on children’s rights.¹³ Jailing youth in adult facilities also gives rise to other serious violations of the Convention Against Torture because children in adult prisons and jails tend to face higher rates of physical¹⁴ and sexual assault,¹⁵ placement in solitary

⁵ *Id.*, para. 23; Convention on the Rights of the Child art. 40(1).

⁶ Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 13.

⁷ *Id.*, para. 23.

⁸ *Id.*, para. para. 10

⁹ *Id.*, para. para. 80.

¹⁰ *Id.*, para. para. 24.

¹¹ Convention on the Rights of the Child, art. 40(4). *See also* Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 27 (offering “community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims” as among the array of alternatives to incarceration that governments have implemented.)

¹² *For example*, International Covenant on Civil and Political Rights (ICCPR), art. 10(2)(b), U.N. Doc. A/6316 (1966).

¹³ The international *corpus juris* on children’s rights includes the Convention on the Rights of the Child and its General Comment No. 10, the UN Standard Minimum rules for the Treatment of Prisoners, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Standard Minimum Rules for the Non-custodial Measures, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency, and Principle XIX of the Inter-American Commission on Human Rights Principles and Best Practices on People Deprived of Liberty in the Americas.

¹⁴ Martin Forst, Jeffrey Fagan and T. Scott Vivona, Youth in Prisons and Training Schools, *Perceptions and Consequences of the Treatment-Custody Dichotomy*, JUVENILE AND FAMILY COURT JOURNAL, 40 (1) (1989).

¹⁵ *See, e.g.*, U.S. Department of Justice, Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, Survey 2011-12 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

confinement,¹⁶ and suicides¹⁷ than children in youth facilities. Just this year, both the UN Human Rights Committee¹⁸ and the UN Committee on the Elimination of Racial Discrimination¹⁹ called on the U.S. to ensure that juveniles are not transferred to adult courts and are separated from adults during pre-trial detention and after sentencing. In 2006, the UN Committee Against Torture criticized the practice in some parts of the U.S. of incarcerating youth in adult jails and prisons.²⁰

International and regional human rights experts additionally encourage governments to apply juvenile justice rules and regulations to persons aged 18 up to at least 21.²¹ This includes youth who attain the age of majority while serving a custodial sentence.²² The Inter-American Commission on Human Rights (IACHR) also recommends that children who are aged 18 to 21 should not necessarily be confined with adults and that an appropriate standard in deciding where a youth in custody who turns 18 will serve any remaining period of confinement is to consider the best interest of the youth.²³ The IACHR recommends that states undertake a hearing to determine whether youth who attain the age of majority while serving a custodial sentence “should remain incarcerated or be released, or whether the remaining portion of the custodial sentence can be commuted and replaced with a non-custodial measure.”²⁴ New York City has several alternatives to incarceration programs funded by New York State, New York City, and local foundations.²⁵ Expanding these would allow for youth to avoid custodial sentencing while receiving appropriate services and treatment.

III. Youth Detention Should Occur in Conditions that Respect Their Inherent Dignity as Human Beings and Meet Their Unique Developmental and Emotional Needs

Programming, Education and Recreation

¹⁶ HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, (2012), *available at* <http://www.aclu.org/criminal-law-reform/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united>; New York Civil Liberties Union, Boxed In: The True Cost of Extreme Isolation in New York’s Prisons (2012), http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf

¹⁷ ARYA NEELUM, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA (2007).

http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

¹⁸ Human Rights Committee, *Concluding Observations: United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014), ¶¶ 6, 7, 20, 23.

¹⁹ Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (2014)

²⁰ Committee Against Torture, *Concluding Observations: United States of America*, U.N. Doc. CAT/C/USA/CO/2 (2006), ¶ 34.

²¹ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 38.

²² *Id.*, at para. 86.

²³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, JUVENILE JUSTICE AND HUMAN RIGHTS IN THE AMERICAS, OEA/SER.L/V/II. DOC 78 (12 JULY 2011), 132 para. 427. (*hereinafter* “IACHR”)

²⁴ IACHR, *supra* note 23, at para. 433.

²⁵ See Vera Institute of Justice, How New York City Reduced Mass Incarceration: A Model for Change? 25 (January 2013), *accessed at* <http://www.vera.org/sites/default/files/resources/downloads/how-nyc-reduced-mass-incarceration.pdf>; *see also*, http://www.criminaljustice.ny.gov/opca/ati_description.htm.

The “treatment model” advocated by Cardozo Law in its recent report²⁶ to the New York Board of Corrections on alternative treatment for youth at Rikers is in line with international human rights standards regarding programming for detained youth. Youth are to be provided access to formal education, job and vocational training, and recreational activities.²⁷ Recreation should be designed to ensure contact between youth and their families and communities, and should include activities outside secure facilities.²⁸ Education and job training must take cultural diversity into account and be applicable to and recognized outside the institutional setting.²⁹ Human rights bodies and experts emphasize these standards because the deprivation of adequate education “limits [youths’] chances of actually rejoining society and carrying forward their life plans.”³⁰

Conditions of Confinement

Conditions under which youth are detained should ensure respect for the human rights and inherent dignity of youth deprived of their liberty.³¹ International human rights standards call for the physical space of juvenile facilities to be one of the State’s primary obligations.³² To ensure a child’s right to physical integrity, particular attention should be paid to floor space, natural and artificial lighting, heating, and ventilation.³³ They should have regular access to and sufficient space and equipment for meaningful recreational activities and programs.³⁴

Accommodations provided for youth must ensure their dignity and meet their health and development requirements.³⁵ Under international human rights standards, youth should have access to the facilities and resources to maintain proper hygiene for general health and cleanliness, including being allowed a regular bath or shower.³⁶ Food prepared for youth should be of nutritious quality and quantity to satisfy their dietary requirements, which are distinct from those of adults.³⁷ Human rights experts recognize that youths’ right to food that is “adequate for health and sufficient for strength” is

²⁶ CARDOZO LAW, RETHINKING RIKERS (2014), *available at* https://cardozo.yu.edu/sites/default/files/YJCFeb2_1.pdf.

²⁷ IACHR, *supra* note 23, at para. 492.

²⁸ *Id.*, at 511.

²⁹ *Id.*, at 493.

³⁰ *Id.*, at 495.

³¹ UNITED NATIONS, RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, (14 DECEMBER 1990), 2 at paras. 12-13, *available at* <http://www.un.org/documents/ga/res/45/a45r113.htm>

³² IACHR, *supra* note 23, at para. 520.

³³ UNITED NATIONS, STANDARD MINIMUM RULES FOR TREATMENT OF PRISONERS, 2 (13 MAY 1977), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>; *see also* IACHR, *supra* note 23, at para. 522.

³⁴ UNITED NATIONS, RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, (14 DECEMBER 1990), 2 at para. 12-13, *available at* <http://www.un.org/documents/ga/res/45/a45r113.htm>, [*hereinafter* “UNRPJDL”]; *see also* COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 10, CHILDREN’S RIGHTS IN JUVENILE JUSTICE, CRC/C/GC/10, 25 APRIL 2007, PARA. 89.

³⁵ IACHR, *supra* note 23, at para. 520; *see also* UNRPJDL *supra* note 34, at paras. 12-13, 87(f).

³⁶ IACHR, *supra* note 23, at para. 522; EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES, paras. 65.2 and 65.3.

³⁷ UNRPJDL *supra* note 34, at para. 37

essential because they are still growing.³⁸ Youth should receive at least three meals a day and at reasonable intervals,³⁹ and the reduction of diet should be prohibited for any purpose, including as a disciplinary measure.⁴⁰

Under international human rights standards, youth should be permitted to communicate with and receive frequent visits from family and friends.⁴¹ To accommodate such rights, detention facilities must be both geographically accessible and have visiting facilities that allow for privacy.⁴² The restriction or denial of contact with family members should be prohibited.⁴³

Health and Mental Health Care and Treatment

International human rights standards require that juveniles in custody have the right and access to health services, including mental health care, tailored to their particular needs according to their age.⁴⁴ The International Convention on Civil and Political Rights (ICCPR) requires that all prisoners receive treatment to socially rehabilitate them and that juvenile offenders should receive treatment that is appropriate to their age and legal status.⁴⁵ The Human Rights Committee, which oversees compliance with the ICCPR, has explicitly charged states to guarantee the rights of juvenile detainees to be treated humanely and with respect for their dignity, particularly their right to live in hygienic facilities and to have access to health care.⁴⁶ Article 24 of the CRC requires states to ensure that no child, including those deprived of liberty, is deprived of his or her right of access to healthcare services, including mental healthcare.⁴⁷ The recent U.S. Department of Justice investigation into Rikers revealed serious concerns about the quality of mental health services offered and found that troubled youth often do not received the mental health services they need.⁴⁸ It is imperative for the wellbeing of these youth that New York adhere to international standards by supplying consistent, adequate mental health treatment for youth in conflict with the law.

Solitary Confinement, and Cruel, Inhuman or Degrading Treatment

³⁸ IACHR, *supra* note 23, at para. 469.

³⁹ IACHR, *supra* note 23, at para. 473; see also EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES, PARAS. 68.1 AND 68.2

⁴⁰ UNRPJDL *supra* note 34, at para. 67.

⁴¹ UNRPJDL *supra* note 34, at para. 59-60.

⁴² IACHR, *supra* note 23, at para. 393; see also UNRPJDL *supra* note 34, at paras. 30, 60.

⁴³ UNRPJDL *supra* note 34, at para. 67.

⁴⁴ Standard Minimum Rules for the Treatment of Prisoner's, at paras 22(1), 25(1), 62, 66(2).;The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Part II, at para 13.5; United Nations Rules for the Protection of Juveniles Deprived of Liberty ("The Havana Rules") paras 28 and 49.

⁴⁵ International Covenant on Civil and Political Rights, Art. 10 at para 3.

⁴⁶ UN Human Rights Committee, *Concluding Observations, Benin*, U.N. Doc. A/60/40 vol. I (2004) at para. 83(17).

⁴⁷ Convention on the Rights of the Child, Art. 24 at para 1; Committee on the Rights of the Child, *Concluding Observations, Albania*, U.N. Doc. CRC/C/ALB/CO/2-4 (2012) at para. 84(b) and (e); Committee on the Rights of the Child, *Concluding Observations, Cameroon*, U.N. Doc. CRC/C/15/Add.164 (2001) at para 44 and 45.

⁴⁸ Preet Bahara, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, US Department of Justice, US Attorney, Southern District of NY, p. 2, footnote 2 and pg. 47 (2014).

The UN Committee on the Rights of the Child has found that placing people under eighteen in solitary confinement violates prohibitions against torture and cruel, inhuman or degrading treatment.⁴⁹ The UN Special Rapporteur on Torture also condemns the use of solitary on people under eighteen due to its harmful physical and psychological effects and the particular vulnerability of youth.⁵⁰ The UN Human Rights Committee recently called on the U.S. to abolish the use of solitary confinement for those under the age of 18 and for people with mental illness.⁵¹ International law calls for every youth deprived of liberty to be treated with humanity, and in a manner that takes into account the distinct needs of a person of his or her age.⁵² Isolation has a range of harmful effects, including moral suffering and emotional trauma, and it has a particularly devastating impact on youth.⁵³ Not only is solitary confinement considered cruel, inhuman or degrading treatment in violation of international law, but it also goes against the objectives of institutional care.⁵⁴

In addition to solitary, youth face other violence in New York City jails. Under international human rights standards, detained youth should never be subjected to violence or other cruel, inhuman or degrading treatment; and governments should facilitate access to justice for all people who suffer human rights abuses,⁵⁵ including abuses that occur while the victim is detained.

IV. Recommendations

* Expand access to diversion from judicial proceedings and to other non-incarceration alternatives for youth in conflict with the law, both pre-trial and post-conviction, with the aim of relying on detention only as a last resort.

⁴⁹ U.N. Committee on the Rights of the Child, 44th Sess., General Comment No. 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

⁵⁰ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) *available at* <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁵¹ UN HUMAN RIGHTS COMMITTEE (HRC), INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CONCLUDING OBSERVATIONS : UNITED STATES OF AMERICA, CCPR/C/USA/CO/4 ¶ 20 (23 APRIL 2014).

⁵² UN GENERAL ASSEMBLY, *CONVENTION ON THE RIGHTS OF THE CHILD*, ARTICLE 37 (20 NOVEMBER 1989), 10

⁵³ IACHR, *supra* note 23, at para. 262.

⁵⁴ COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 10, CHILDREN'S RIGHTS IN JUVENILE JUSTICE, CRC/C/GC/10, 25 APRIL 2007, PARA. 89

⁵⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR. Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005). *See also* AMERICAN CIVIL LIBERTIES UNION, SLAMMING THE COURTHOUSE DOOR 6, 12-13 (2010).

- * End solitary confinement. While ending the practice for 16-17 year-olds will represent a positive step, the next immediate step should be to account for young age in decisions about disciplinary measures for 18-21 year-olds, and ultimately to abolish solitary for that population.
- * Ensure that all staff assigned to work with youth in detention—including security staff, programming staff, health and mental health professionals, and counselors—are properly trained and qualified to work with and meet the special needs of adolescents in conflict with the law.
- * End the practice of trying youth under eighteen as adults and of detaining youth in adult facilities.
- * Expand access for 18-21 year-olds to juvenile justice administration, facilities and programming
- * Ensure all youth, no matter where held, have access to uninterrupted, high-quality, age-appropriate education, including education tailored to special-needs youth, and including vocational training and higher education where appropriate.
- * Provide and increase age-specific programming for all detained youth, including community-oriented recreation and educational programs that allow youth to participate as members of the population outside of the jail, without being identified as detained youth.
- * Incorporate a therapeutic model in facilities where youth are detained, and ensure youth have access to adequate health care, including mental health treatment.
- * Facilitate youths' access to justice for abuses committed against them while detained, including by providing clear, accessible instructions and means for filing complaints; providing independent legal counsel and hearings; and ending impunity for officials who commit abuses against youth, including excessive use of force.