

## **CHILDREN'S RIGHTS IN INTERNATIONAL LAW**

**Prof. Philip Alston and Prof. John Tobin**

**FH 316 Mondays, 4.05 – 5.55 pm**

**SEMINAR MATERIALS, FALL 2006**

### **Course materials**

No course book is required. The materials will be distributed to students in the course of the semester and will include suggestions for further reading.

### **Attendance and participation**

All students are required to attend class regularly (there will be a sign-in sheet) and those who miss more than two sessions will not be able to satisfy the requirements. Students are expected to do the reading in advance of the session, and to participate actively. Two students will be asked to lead the discussion each week and this will require meeting with Profs Alston and Tobin in advance in order to review the issues to be highlighted. Supplementary materials might also be suggested by those leading the discussion. Seminar participation will be taken into account in the final grade.

### **Assessment**

Students are required to write a paper on a topic which must be approved by the instructors no later than the end of the fifth week of the semester. It may be either a 2 credit paper or a 3 credit paper.

## **Outline of sessions**

### **Part I: Children's rights in context**

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|-----------------|--|
| <b>Sept. 6</b>  | <b>1. Introduction to current issues concerning children's rights</b>        |
| <b>Sept. 11</b> | <b>2. Should children have rights?</b>                                       |
| <b>Sept. 18</b> | <b>3. The international legal framework for children's rights</b>            |
| <b>Sept. 25</b> | <b>4. Cultural Critiques and the Domestic Legal Status of the Convention</b> |

### **Part II: Balancing rights and responsibilities: state, family, and child**

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|----------------|---|
| <b>Oct. 2</b>  | <b>5. Reflecting the 'Evolving Capacities' of the Child</b>   |
| <b>Oct. 9</b>  | <b>6. The State as Regulator, Case study: Curfews and Courts: How to prevent and respond to juvenile crime?</b> |
| <b>Oct. 16</b> | <b>7. The State as Provider, Case study: Realising the rights of children with disabilities</b>                 |
| <b>Oct. 23</b> | <b>8. Corporal Punishment</b>   |
| <b>Oct. 30</b> | <b>9. The Rights of Parents, Case study: Freedom of religion</b>  |
| <b>Nov. 6</b>  | <b>10. Children's Rights and Adolescent Sexuality</b>   |

### **Part III: Actors**

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|----------------|--|
| <b>Nov. 13</b> | <b>11. Culture and the Community, Case study: Female genital cutting</b>                               |
| <b>Nov. 20</b> | <b>12. Economic and Social Rights for Children</b>   |
| <b>Nov. 27</b> | <b>13. International Actors, Case study: Children and Armed Conflict</b>                               |
| <b>Dec. 4</b>  | <b>14. The Role of International Actors: Multilateralism v. Unilateralism, The Case of Trafficking</b> |

## **Seminar 1: Introduction to current issues concerning children's rights**

- Human Rights Watch, Children's Rights (2005), <http://www.hrw.org/children/>
- Open Society Institute, Justice Initiative, Europe's Highest Court to Hear Landmark Segregation Case
- 'Portugal: Green Light to Mistreatment of Disabled Children Killer daughter case ignites US debate', *BBC News*, Washington May 3, 2006
- 'Schools out: Freedom is loose in the land, and the children know it', *The Economist*, Jun 1st 2006, p. 35
- 'Spare the Rod and Spoil the Country, a Kenyan Warns', *New York Times*, June 4, 2006
- Amnesty International, 'UGANDA: Child "Night Commuters"', Nov 18, 2005, <http://web.amnesty.org/library/Index/ENGAFR590132005?open&of=ENG-364>
- Human Rights Watch, 'Lessons in Terror: Attacks on Education in Afghanistan', July 2006, <http://www.hrw.org/reports/2006/afghanistan0706/>
- Human Rights Watch, 'Burundi: Former Child Soldiers Languish in Custody', June 16, 2006, at <http://hrw.org/english/docs/2006/06/15/burund13554.htm>
- Human Rights Watch, 'Saudi Arabia: Follow U.N. Call to End Juvenile Death Penalty', at <http://hrw.org/english/docs/2006/01/29/saudia12546.htm>
- 'United States: Thousands of Children Sentenced to Life without Parole', at <http://hrw.org/english/docs/2005/10/12/usdom11835.htm>
- Human Rights Watch, 'What Future? Street Children in the Democratic Republic of Congo', April 2006, at <http://hrw.org/reports/2006/drc0406/>
- 'Sri Lankan Army Warns Children can be Targets', CRIN 16 August 2006, at <http://www.crin.org/resources/infodetail.asp?id=9818>
- Center for Reproductive Rights, 'Implementing Adolescent Reproductive Rights Through the Convention on the Rights of the Child', at [http://www.reproductiverights.org/pdf/pub\\_bp\\_implementingadoles.pdf](http://www.reproductiverights.org/pdf/pub_bp_implementingadoles.pdf)
- Open Society Institute, Justice Initiative, 'Inter-American Court of Human Rights Affirms the Human Right to Nationality and Upholds the International Prohibition on Racial Discrimination in Access to Nationality'

## **Seminar 2: Should children have rights?**

- Guggenheim, M. 'Chapter 1: A Brief History of Children's Rights in the United States,' *What's Wrong with Children's Rights?* (2005).
- Eekelaar, J. 'The Emergence of Children's Rights,' 6 *Oxford Journal of Legal Studies* 1986, pp. 161-182.
- O'Neil, O. 'Children's Rights and Children's Lives,' *Ethics* vol 98, pp. 445-63.

Huntington, C. 'Rights Myopia in Child Welfare,' 53 *UCLA Law Review* 637 (2006).

### **Seminar 3: The international legal framework for children's rights**

Declaration on the Rights of the Child 1924

Declaration on the Rights of the Child 1959

Convention on the Rights of the Child 1989

Committee on the Rights of the Child, General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child (2003) UN doc. CRC/GC/2003/5

Schabas, W. 'Reservations to the Convention on the Rights of the Child', 18 *Human Rights Quarterly* (1996) 472-491.

Committee on the Rights of the Child Concluding Observations for Peru (March 2006)

### **Seminar 4: Cultural Critiques and the Domestic Legal Status of the Convention**

Harris-Short, S. 'Listening to 'the Other'? The Convention on the Rights of the Child', 2 *Melbourne Journal of International Law* (2001) 304-50.

Klicka, C., Home School Legal Defense Association, 'The UN Convention on the Rights of the Child: The Most Dangerous Attack on Parents Rights in the History of the United States'

Hafen, B and Hafen, B 'Abandoning Children to their Autonomy: The United Nations Convention on the Rights of the Child,' 37 *Harvard International Law Journal* 449 (1996)

Smolin, D 'A Tale of Two Treaties: Furthering Social Justice Through the Redemptive Myths of Childhood' 17 *Emory International Law Review* 967 (2003)

### **Seminar 5: Reflecting the 'Evolving Capacities' of the Child**

Excerpts from the Convention on the Rights of the Child

'Bloomberg Says He Has Qualms About Charging an 8-Year-Old', *New York Times*, May 25, 2006

The Difference between Youth and Adults, from Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* (Oct. 2005)

*Roper v. Simmons*, US Supreme Court, No. 03-633, March 1, 2005

'Age of criminal responsibility', in UNICEF, *Juvenile Justice*, Innocenti Digest No. 3 (Florence, 1998)

*T. v. The United Kingdom*, European Court of Human Rights, Application no. 24724/94, 16 December 1999

Life Without Parole: Human Rights Watch, *The Rest of Their Lives*, Case study and Summary of report

Lansdown, G. *The Evolving Capacities of the Child* (UNICEF, Innocenti Insight, 2005)

## **Seminar 6: The State as Regulator, Case study: Curfews and Courts: How to prevent and respond to juvenile crime?**

News of the World, 24 May 2005 Yard Legend's 10-point answer to job UK 'How I'd beat the hoodies' Lord Stevens, former Metropolitan Police Commissioner

Califano J and Colson C 'Criminal Neglect' *USA Today* January 2005, 34-35

Extract from *Ramos v Town of Vernon* 353 F.3d 171, 2003 US App. LEXIS 25851

Extract from Feld, B 'Abolish the Juvenile Court: Youthfulness, Criminal Responsibility and Sentencing Policy' 88 *Journal of Criminal Law and Criminology* 68 (1997)

Convention on the Rights of the Child, articles 3, 5, 12, 13, 15, 16, 18, 31 [curfews]; 3, 37 and 40 [courts]

International Covenant on Civil and Political Rights, articles 2, 12, 26 [curfews];

United Nations Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines') (1990) guidelines 1-9

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) ('The Beijing Rules'), rules 1-2, 5

## **Seminar 7: The State as Provider, Case study: Realising the rights of children with disabilities**

Article 23, Convention on the Rights of the Child

Selected articles from Draft Convention on the Rights of Persons with Disabilities

Article 1, Declaration on the Rights of Disabled Persons

Articles 17 and 18, Standard Rules on the Equalisation of Opportunities for Persons with Disabilities

Extract from WHO *Towards a Common Language For Functioning Disability and Health* (2002)

Excerpts from Singer, P *Practical Ethics* 2<sup>nd</sup> Ed (1993)

Excerpts from Singer, P *Ethics and Disability: A Response to Koch* 16 *Journal of Disability Studies* 130 (2005)

Excerpts from Charlesworth, M 'Disabled Newborn Infants and the Quality of Life' 9 *Journal of Contemporary Health Law and Policy* 129 (1993)

Extract *Re Eve* [1986] 2 SCR 388 (Canada)

Extract from *Re Marion* (1992) 175 CLR 218 (Australia)

Guidelines for determination of best interests in sterilisation cases issued by the Family Court of Australia – extract from *Re Marion (No2)* [1994] FLC 92-448

American Academy of Pediatrics 'Sterilisation of Minors with Developmental Disabilities' 104 *Pediatrics* 337 (1999)

## **Seminar 8: Corporal Punishment**

Human Rights Watch, *Spare The Child: Corporal Punishment in Kenyan Schools*, (1999), at 3

'Many in U.S. Back Singapore's Plan to Flog Youth', *New York Times*, April 5, 1994, p. A6

Note on ECHR

Children and corporal punishment: "The right not to be hit, also a children's right", Council of Europe, Commissioner for Human Rights, Issues Paper 2006/1

Ending Legalised Violence Against Children: Report for Caribbean Regional Consultation – the UN Secretary General's Study on Violence against Children Trinidad 2005

United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN doc A/60/316 (2005)

*Regina (Williamson and others) v Secretary of State for Education and Employment*, House of Lords, 24 Feb 2005

Imbrogno, A.. 'Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of The Child: A Case for Nonratification', 29 *J.L. & Educ.* 125 (2000)

## **Seminar 9: The Rights of Parents, Case study: Freedom of religion**

Universal Declaration of Human Rights 1948 Article 18

International Covenant on Civil and Political Rights 1966 article 18

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981, articles 1 and 5

European Convention on Human Rights, article 9

European Convention on Human Rights Protocol I article 2

Convention on the Rights of the Child 1989, articles 14 and 41

General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) 30/07/93.

*Wisconsin v Yoder* 406 US 205 (1972)

*Konrad v Germany* (2006) ECHR

*Case of Kjeldsen, Busk Madsen and Pedersen V Denmark* (1976) ECHR

*R (on the application of Begum)(by her litigation friend) v Denbigh High School* [2006] UKHL 15

*Multani and Multani v Commission Scolaire Marguerite-Bourgeoys and AG of Quebec* 2006 SCC 6

*Dahlab v Switzerland* (2002) ECHR

## **Seminar 10: Children's Rights and Adolescent Sexuality**

Case Scenario: Biased Sexuality Education Programs

Readings on US law relating to contraception, including *Casey v Population Services International* (1977)

International Standards on the Human Rights of Children and their Sexual and Reproductive Health

Center for Reproductive Rights, Briefing Paper: Adolescents Need Safe and Legal Abortion, Sept. 2005

*K.N.L.H. v. Peru*, Views of the UN Human Rights Committee, 24 Oct. 2005

## **Seminar 11: Culture and the Community Case study: Female genital cutting**

Convention on the Rights of the Child articles 3, 4, 5, 18, 19, 24, 29, 30, 37 (a)

Excerpt from Merry S., *Human Rights and Gender Violence: Translating International Law in Local Justice* (2006) 6-16.

Excerpt from Alston P., 'The best interest principle: Towards a reconciliation of Culture and Human Rights' in Alston, P. (ed) *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994) 2-3; 16-21.

'Traditional practice that threatens health – Female Circumcision', 40 *World Health Organisation Chronicle* 31 (1986)

Kalev, H. 'Cultural Rights or Human Rights: The Case of Female Genital Mutilation' *Sex Roles*, Vol. 51, Nos. 5/6, September 2004 (C-2004).

Boulware-Miller, K 'Female Circumcision: Challenges to the Practice as a Human Rights Violation' 8 *Harvard Women's Law Journal* 155 (1985) 165

Gunning, I. 'Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries,' 23 *Columbia Human Rights Law Review* 189 (1991-92) 238

AAWORD 'A Statement on Genital Mutilation; in Davies M (ed) *Third World-Second Sex: Women's Struggles and National Liberation* (1983) 217

Concluding Observations on the Rights of the Child for Uganda  
CRC/C/UGA/CO/2 paras 55-56

Hayter, K. 'Female Circumcision – Is there a legal solution?' *Journal of Social Welfare and Law* 323 (Nov 1984) at 355

Excerpt PLAN *Tradition and Rights: Female Genital Cutting in West Africa* (2006) 20

Ford, N. 'Communication for Abandonment of Female Genital Cutting: An Approach Based on Human Rights Principles' 13 *International Journal of Children's Rights* 183 (2005)

Crossette, B. 'A Uganda Tribe Fights Genital Cutting' *New York Times* July 16, 1998 A8

Shell-Duncan, B. 'The medicalisation of female "circumcision": harm reduction or promotion of a dangerous practice?' 52 *Social Science and Medicine* 1013 (2001)

CRIN list serve [news]: Female Genital Mutilation: Father jailed in United States [2 November]

Excerpt from European Parliament resolution on female genital mutilation (2001/2035 (INI)) paras 1-11

## **Seminar 12: Economic and Social Rights for Children**

Convention on the Rights of the Child, selected provisions.

Neier, A. 'Social and Economic Rights: A Critique', 13 No. 2 *Hum. Rts. Brief* (2006)

*Government of South Africa v. Grootboom*, Constitutional Court of South Africa, Case CCT 11/00, 4 Oct. 2000

Human Rights Watch, 'Failing our Children: Barriers to the Right to Education' (2005)

OSI Justice Initiative, 'European Court fails to find Czech Roma children victims of racial discrimination in education,' 2006

*Campaign for Fiscal Equity, Inc. v State of New York*, 2006

Alston & Bhuta, 'Human Rights and Public Goods: Education as a Fundamental Right in India'.

## **Seminar 13: International Actors, Case study: Children and Armed Conflict**

Hamilton, C. and Tabitha Abu El-Haj, 'Armed Conflict: The protection of children under international law,' 5 *The International Journal of Children's Rights* (1997)

*International instruments and initiatives with respect to the relationship between children and armed conflict: An annotated chronology*

Allen, T. *War and Justice in Northern Uganda: An assessment of the international criminal court's intervention* An Independent Report, February 2005 Draft

REDRESS *Victims, Perpetrators or Heroes? Child Soldiers before the International Criminal Court* September 2006

International Criminal Court Warrant of Arrest *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v Thomas Lubanga Dyilo* 10 February 2006

Excerpts from the *Rome Statute of the International Criminal Court*

Triffterer O (ed) *Commentary on the Rome Statute of the International Criminal Court*

See also: <http://www.child-soldiers.org>, the website for Coalition to Stop the Use of Child Soldiers which provides a good overview of the geographical involvement of children in armed conflicts.

#### **Seminar 14: The Role of International Actors: Multilateralism v. Unilateralism, The Case of Trafficking**

Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking', 27 *Mich. J. Int'l L.* 437 (2006)

Martha Minow, 'What Ever Happened to Children's Rights?', 80 *Minn. L. Rev.* 267 (1995)