

# What Game Are We Playing?

By Don Cipriani, PhD

## Warm-Ups: Amy, California Poet

Fifteen-year-old Amy first caught my attention hiding in the back of math class. She was writing up a storm in her notebook, in a secure classroom where I taught inside San Diego's main juvenile detention facility. She'd finished her math assignment, was working ahead on college prep coursework, and loved to write short stories and poetry. Amy had plenty of time to write – a long wait before her trial for attempted homicide. One day, I slipped a friend's poetry manuscript under her steel cell door for her to read. Not realizing the irony, she shouted through the double-pane, wire-reinforced glass that my friend's poetry was "good but really angry." I never asked Amy about the crime she was accused of. In turn, she drove the point home that my basic respect for her had an intrinsic and timeless value, regardless of what she did or didn't do.

## What Game Are We Playing?

Classic American optimism holds tight to the idea of the United States as the land of opportunity, as the best place in the world for children to grow up. Beyond these sentiments, what exactly does this mean for our children? Where do we spell out our nation's beliefs as to what children deserve? The Constitution does not mention "family," "parent," or "child" at all, and the Supreme Court has historically seen children as a form of parents' private property.<sup>1</sup> Other cherished institutions are silent on the subject of children, and there is no national children's policy or guiding vision. Yet our hopes certainly go beyond this void.

What and where are those hopes? If we look with clear eyes at how the 75 million children in the United States are doing, what can we deduce about our priorities for them and where our basic principles lie? The United States places 20th of 21 rich countries on overall child well-being and does not even make the top 10 of 30 rich countries on any single measure of children's well-being.<sup>2</sup> In the United States, 30 million children live in low-income families, and 83 percent of fourth-grade children from those families cannot read proficiently.<sup>3</sup> As a former fourth-grade teacher, grasping that one-quarter of my class was illiterate landed a visceral punch that aches to this day.

---

*Don Cipriani is the author of *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Ashgate, 2009) and is the interim point person for the United Nations Children's Fund (UNICEF) on justice issues. The opinions expressed are strictly his own. Special thanks go to Nigel Cantwell, Bernardine Dohrn, Anders Hopperstead, and Tiziana Lemma for their insights and suggestions for this essay.*

Many of our children fare extremely well, but true American values go beyond interest in just the gifted, lucky, or privileged. Behind philosopher John Rawls’s “veil of ignorance,” how many adults would take their chances at being reassigned the life opportunities of an average child in the United States, of a child from a low-income family, or of Adrián or Gloria from my fourth-grade class?

### What Everyone Else Is Playing: The Convention on the Rights of the Child (CRC)

If our nation could set aside how we’ve treated our children in practice, and define our deepest shared beliefs about how we *should* treat children, we’d arrive at something very close to the Convention on the Rights of the Child (CRC).

To consider why, some background is helpful on what the CRC is and does.<sup>4</sup> Governments worldwide – including the Ronald Reagan and George H.W. Bush administrations, which played a leading role – drafted this human rights treaty for children by consensus from 1979 to 1989.<sup>5</sup> The United Nations General Assembly unanimously adopted the final text, and enough governments had ratified the CRC by 1990 for the Convention to go into force for those countries. Today, the CRC is the “the most widely ratified treaty in history” – ratified by every nation in the world but Somalia and the United States, despite our country’s prominent role in creating the treaty.<sup>6</sup>

The CRC is built around four central principles – two that are common to the human rights of all persons (nondiscrimination and the inherent right to life), and two that are more specific to children (children’s best interests and respect for children’s views). It sets out the rights of children in all areas of their lives – including the right to name and nationality; freedoms of speech, conscience, religion, privacy, and peaceful assembly; protection from violence and exploitation; and issues relating to alternative care for children who cannot live with their families, disability, health, social security, education, and treatment in the justice system.

Human rights – and therefore children’s rights – come with limitations. For instance, everyone’s right to express opinions can be limited in order to respect the reputations of others. Freedom of association can be restricted to protect other people’s rights and freedoms.

Children also need practice to exercise all their rights for themselves – and to bear all the responsibilities that follow. They can’t do it alone. Parents hold rights and duties to give guidance as their children learn to take increasing responsibility for their own actions.

When they ratify the CRC, governments take on a commitment to ensure children’s rights. Most countries update their national laws to better reflect CRC principles. For example, one of the newest constitutions in the world – South Africa’s 1996 constitution – draws directly from the CRC in detailing a bill of rights for children. Even the process of writing the constitution reflected the CRC: children played an active role and their views were directly taken into account. Many countries have passed comprehensive children’s laws to consolidate

provisions that had been scattered with gaps across different laws. Last year, Tanzania passed the Law of the Child Act, which integrates the CRC into national law and uniformly updates all child-related laws to the same standard. There's nothing like this in the United States at any level.

Constitutions and laws are fundamental, but the CRC is also inspiring people in countries across the world to *think differently about children*. When I met with criminal justice system professionals in Pakistan to discuss the CRC, they debated how tribal elders' councils (*jirga*) could help keep children from getting into trouble with the law, and brainstormed ways to protect girls from discrimination and violence in Peshawar. With the CRC as the common basis, I've seen similar themes emerge – restorative justice, discrimination, and violence – in what might seem the most disparate of places: the national priorities for Ireland's first Ombudsman for Children, the commitment of ministers from 45 European and Central Asian nations to stop violence against children, and the urgent conviction of the former president of Palau to put an end to child abuse.

I wished that I could introduce Amy from San Diego to Djuradj, who is from the small Balkan country Montenegro, so they could compare their experiences. In April, I met 13-year-old Djuradj in a dreary correctional center. On a DVD the night before, without understanding any Montenegrin, I'd watched Djuradj play the role of an abusive police officer in a theatrical performance, and quickly understood why the performance had brought hundreds of spectators across the country to tears. Djuradj and his peers in the correctional center had developed the play based on their own life experiences. Meeting him in person – timid, diminutive, and soft-spoken – offered insights into the staff's amazement at what Djuradj and the others had achieved, and into the play's production being called “pure joy” for them.

The bureaucracy behind it is banal – an agreement on the CRC among the European Union, the United Nations, and the government of Montenegro – but the unleashing of children's potential touched a nation. Under the CRC, active participation is a cornerstone question of respect and dignity for all children – yes, even for children who have broken the law.

Countries report on their efforts every few years to the Committee on the Rights of the Child, which was created by the CRC and comprises experts both nominated and elected by the governments. The Committee meets in Geneva to consider such reports, to discuss them with government officials, and to offer recommendations for better progress on the Convention.<sup>7</sup> Although the Committee's recommendations are treated with great diplomatic and political weight, they are not legally binding.

National and international nongovernmental organizations have played a visible role since the drafting of the CRC. In many cases, they work closely with governments on the CRC and to help assess progress, but they also publish independent “shadow” reports to help keep governments accountable for their commitments.<sup>8</sup> For example, as the Committee on the Rights of the Child met with the Japanese delegation this May to discuss Japan's third report, it also took into consideration an alternative report by the Japan Federation of

Bar Associations. In a related watchdog role, many countries have established Ombudsmen who provide an independent viewpoint on government efforts, and who can receive and investigate children's own complaints.

### Joining in the Game: The United States and CRC Ratification

The Clinton administration took the initial step of signing the CRC in 1995, but treaty ratification only occurs with a two-thirds vote in the Senate. Among pending treaties, the Obama administration has made the Convention a high priority in pushing for Senate ratification. As most Senate supporters are Democrats, and the party now controls 59 votes, the November 2010 federal elections may be decisive in the short term.

Some U.S. political and religious conservative groups oppose CRC ratification because they believe the Convention interferes with national sovereignty and intrudes upon family life. In fact, these claims are based on myths, while the true substantive challenges are limited and can be addressed – as is customary with international treaties – in the Senate's formal ratification. In effect, 193 countries have already found a way to do so.

Voters who oppose CRC ratification are a minority. In a 2009 poll of registered voters, the majority of Democrats, Republicans, and independents all favored U.S. ratification.<sup>9</sup> Voters were more than five times as likely to strongly favor CRC ratification as to strongly oppose it. Organizations that have worked toward ratification suggest who favors it.<sup>10</sup> Among many others, these include the African Methodist Episcopal Church, the American Academy of Pediatrics, the American Baptist Churches, the American Bar Association, the American Psychological Association, the Christian Children's Fund, Kiwanis, the National Association of Social Workers, the National Education Association, the United Food and Commercial Workers Labor Union, and the United Methodist Church. Beyond the United States, the Vatican itself (the Holy See) ratified the CRC exactly five months after the final Convention text was approved.

Ironically, the best indication of what U.S. ratification would bring is U.S. experience to date with the CRC. Although the U.S. government has not ratified the CRC, it has ratified the two "Optional Protocols" to the CRC: one on the sale of children, child prostitution, and child pornography, and the other on the involvement of children in armed conflict (e.g., child soldiers). Governments around the globe sought to provide even greater protection to children in these circumstances, beyond their existing commitments under the CRC, and the United States formally agreed to hold itself to these specific standards.

It took the U.S. government just two and a half years to ratify the CRC's Optional Protocol on child soldiers. Before then, the U.S. military deployed 17-year-old service members directly into combat zones with their units. By the time of its first report in 2007 on the Optional Protocol, the United States had restricted such deployment to adults only (18 years and older). Government officials discussed these and other steps with the Committee on the Rights of the Child, which offered further recommendations. Since then, not only has the United States criminalized the recruitment and use of child soldiers under the age of 15, but it

has also prohibited foreign military sales and aid to governments that recruit and use child soldiers. No member of Congress voted against these laws. This bold step encapsulates the leadership role that Americans expect of their government, within the United States and worldwide: taking a principled stance for what is right, and following through with integrity.

In the past 20 years, the United States has ratified three of the other “core” international human rights treaties – on civil and political rights, racial discrimination, and torture – and has followed parallel cycles of treaty implementation and reporting to respective committees. There are no surprises coming our way in ratifying the CRC.

At the same time, the CRC is already proving its relevance in the United States. The Supreme Court made reference to the CRC in its most historic decisions on children in recent years – finding unconstitutional both the death penalty and life sentences without parole (in non-homicide cases) for juvenile offenders.<sup>11</sup> The CRC prohibits both practices, and the United States was in effect the last country in the world to support their use.

At the state and local level, governments have passed bills of rights that frame children’s policy around the CRC (e.g., Santa Clara County, California), and resolutions in support of the Convention (e.g., Chicago). Hundreds of municipalities around the world have taken these steps and more as “child-friendly cities.” In law and policy, at national and grassroots levels, the CRC opens new perspectives and debate on children and what they deserve. These new perspectives and approaches are available now, even in the United States.<sup>12</sup>

Most importantly, the CRC is relevant to our children, like my former students Amy, Adrián, and Gloria.

### **It’s Time to Play**

The CRC cannot solve all the problems that children face in the United States or in the world, but this misses the point. At its heart, the Convention on the Rights of the Child is based on moral arguments that are important, first of all, for their own sake. Almost all of its articles reflect, or are inspired by, rights that we recognize for all human beings. At the same time, the CRC takes account of the fact that children have needs and abilities that change both as they grow and according to their life circumstances, and that are often different from those of adults. It does not “put children on a pedestal”; it simply sets out how basic human rights principles apply to children individually and collectively, across different situations, as well as who bears responsibility to make sure that these principles are respected.

In the United States, don’t we think of fairness, dignity, and equality for all as traditional American values, born of struggle and serving as a model for the world? If these are our ideals, shouldn’t they apply to our children as well? The best of American values means treating all children with dignity and giving them a fair chance – not just your children or mine, not just our neighbors’ and friends’ children, but all children.

Even if we believe that the United States is the best place in the world for children to grow up, there's nothing that defines these priorities, hopes, and beliefs about our children. Until we breathe life into these beliefs, we won't work toward them or hold ourselves or our government accountable for them. Conventional wisdom about the United States and children means little in the end: no one knows what game we're even playing. The real challenge is to speak with a clear national voice, stand firmly by our beliefs, and follow through with integrity.

Where our national voice is silent, the CRC offers a compelling starting point. Its principles lie near our own, and these are geared to action and accountability. With the CRC, we can spark a rich national debate – and finally embrace the international debate – about what these principles mean for our children. Changing the game is really about agreeing on the game to play, and getting off the bench and into the game – giving voice to what matters most for all our children and setting out seriously to make it happen.

---

### Notes:

- <sup>1</sup> Barbara Bennett Woodhouse, “The Constitutionalization of Children’s Rights: Incorporating Emerging Human Rights into Constitutional Doctrine,” *University of Pennsylvania Journal of Constitutional Law* 2 (1999): 1.
- <sup>2</sup> Respectively, United Nations Children’s Fund (UNICEF), “Child Poverty in Perspective: An Overview of Child Well-Being in Rich Countries,” *Innocenti Report Card 7* (Florence, Italy: UNICEF Innocenti Research Centre, 2007), and Organization for Economic Cooperation and Development (OECD), *Doing Better for Children* (Paris: OECD, 2009).
- <sup>3</sup> Vanessa R. Wight and Michelle Chau, *Basic Facts about Low-Income Children: Children under Age 18* (New York: National Center for Children in Poverty, 2009); Annie E. Casey Foundation, *Early Warning! Why Reading by the End of Third Grade Matters* (Baltimore: Annie E. Casey Foundation, 2010).
- <sup>4</sup> For the full text of the CRC, see <http://www2.ohchr.org/english/law/crc.htm>.
- <sup>5</sup> Congressional Research Service, *The United Nations Convention on the Rights of the Child: Background and Policy Issues* (Washington, DC: Congressional Research Service, 2009).
- <sup>6</sup> Philip Alston and John Tobin, *Laying the Foundations for Children’s Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child* (Florence, Italy: UNICEF Innocenti Research Centre, 2005), ix.
- <sup>7</sup> All related reports and documents per country are available at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.
- <sup>8</sup> All such reports are available at <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>.
- <sup>9</sup> Lake Research Partners and First Focus, *Convention on the Rights of the Child: Findings from a Survey of 1,000 registered voters* (Washington, DC: Lake Research Partners and First Focus, 2009).

<sup>10</sup> See <http://childrightscampaign.org>.

<sup>11</sup> Respectively, *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. (2010).

<sup>12</sup> Bernardine Dohrn, “‘I’ll Try Anything Once’: Using the Conceptual Framework of Children’s Human Rights Norms in the United States,” *University of Michigan Journal of Law Reform* 41 (2007): 29–60.