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Human Rights Developments At The State And Local Level In The United States: A Bird's-Eye View

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ABSTRACT

In 2012, the Pennsylvania Bar Association passed a resolution in support of the international treaty on women's rights, highlighting the inherent connection between the Association's long-standing commitment to fair treatment for all and universally applicable human rights standards.

The Association's support echoes the growing recognition that human rights have a place here at home in the United States. This article situates the Bar Association's resolution within the broader efforts of lawyers to "bring human rights home." Focusing on developments at the state and local level, including in Pennsylvania, it illustrates some of the ways that human rights are shaping the domestic legal and policy landscape in U.S. states and municipalities to address discrimination and foster equality for all, regardless of race, gender, national origin, economic status, or zip code. Using examples of litigation and advocacy regarding gender equality, criminal justice, and immigration, as a lens to view the impact of human rights, this article introduces foundational human rights concepts and their applicability to some of the challenging issues Pennsylvanians confront.

INTRODUCTION

In 2012, the Pennsylvania Bar Association joined voices across the country calling on the United States to ratify the Convention on the Elimination of All Forms of

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Discrimination Against Women (CEDAW).² In so doing, the PBA offered its “support of the goal to advance the rule of law in the world and . . . universal legal standards and structures to deal with human rights.”³ The PBA also recognized the inherent connection between the goals of CEDAW, core human principles, and the Association’s commitment to “the administration of justice, including the defense

Through increased fluency in international human rights principles, lawyers are shaping new strategies to approach the challenges that confront Pennsylvania and its municipalities.

of civil rights, fair treatment of all individuals, and the avoidance of discrimination and unfair bias.”⁴ In passing the resolution, the PBA recognized that, like all of the core human rights agreements, CEDAW is premised on the idea that all people should be able to enjoy human rights and fundamental freedoms on an equal basis.⁵

Four years after the PBA offered support for CEDAW, the United States has still not ratified the Convention, and has failed to ratify other significant international human rights treaties, such as the Convention on the Rights of the Child (CRC)⁶ and the Convention on the Rights of Persons with Disabilities.⁷ Nonetheless, the

United States continues to be a prominent champion of human rights both on the global stage and domestically, in rhetoric if not always in action. When our gaze shifts to states and localities, we see greater willingness to take up the mantle of human rights. CEDAW, for example, has been enshrined into law in several jurisdictions, and has garnered support from city officials, as well as the U.S. Conference of Mayors. More than a dozen cities and states have also expressed support for the Convention on the Rights of the Child, some urging the Senate to ratify the agreement, while others focus on the valuable role of CRC principles in local decision-making.⁸ As explored further below, lawyers have played a key role in these efforts.⁹

2. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 20378 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

3. PENNSYLVANIA BAR ASSOCIATION CIVIL & EQUAL RIGHTS COMMITTEE, Resolution in Support of U.S. Ratification of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (Mar. 8, 2012), [approved by the House of Delegates on May 11, 2012], available at <https://www.pabar.org/public/committees/CIV01/resolutions/Civil%20Equal%20Rights%20Cmte%20CEDAW%20Resolution-final.pdf>.

4. *Articles of Incorporation*, PENNSYLVANIA BAR ASSOCIATION, <http://www.pabar.org/public/bylaws/by-lawsarticles.asp> (last visited Mar. 5, 2016); *Civil & Equal Rights Committee – About*, PENNSYLVANIA BAR ASSOCIATION, <http://www.pabar.org/public/committees/civileql/about/mission.asp> (last visited Mar. 5, 2016).

5. Comm. on the Elimination of Discrimination Against Women, General recommendation on women’s access to justice, U.N. Doc. CEDAW/C/GC/33, art. 3 (July 23, 2015).

6. The U.S. participated in drafting the Convention under the Reagan and George H.W. Bush Administrations. THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF THE TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 13 (Jonathan Todres, Mark E. Wojcik & Cris R. Revaz, eds., Transnational Publishers 2006).

7. The U.S. has ratified three of the core human rights treaties under the leadership of both Republican and Democratic presidents. The Covenant on Civil and Political Rights (ICCPR) was ratified in 1992, under President George H.W. Bush. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention Against Torture (CAT) were ratified under President Bill Clinton, in 1994. U.S. ratification, however, is subject to a number of conditions that impact their reach and scope. See Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 346 (1995).

8. In 2009 and 2010, the City Councils in Chicago and Los Angeles, respectively, passed resolutions committing to “advance policies that are in line with the principles of the Convention on the Rights of the Child in all city agencies.” See CITY OF CHICAGO, Resolution Adopting the UN Convention on the Rights of the Child (Feb. 11, 2009); LOS ANGELES, Resolution on the Convention on the Rights of the Child, 10-0415 (Mar. 10, 2010). Prior to 2009, Austin, TX; Cambridge, MA; Cleveland, OH; Detroit, MI; Grand Rapids,

Long viewed as “laboratories of democracy,”¹⁰ U.S. states and localities are on the forefront of efforts to “bring human rights home.”¹¹ The growing patchwork of state and local laws and policies grounded in human rights makes sense, as human rights are experienced at the local level. As Eleanor Roosevelt, a key drafter of the Universal Declaration of Human Rights, the foundational international human rights agreement,¹² emphasized, human rights begin “[i]n small places, close to home . . . Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.”¹³

Human rights, as defined for the purposes of this article, are internationally accepted norms that are universal—they apply equally to all people, and encompass the full range of civil, political, social, economic, and cultural rights. The human framework is premised on the belief that all rights are interconnected, and that to achieve dignity, equality, and freedom from discrimination, governments should take steps to create conditions where basic needs can be met.¹⁴

EXAMPLES OF HUMAN RIGHTS IN LAW & POLICY

Increasingly, U.S. states and municipalities are acknowledging the human rights dimensions of their work, and core human rights principles are permeating conversations on a range of issues, including equality for women, juvenile justice, and immigrant and migrant’s rights, among others. State and city efforts to tackle these issues are establishing links between local law and policy and international human rights, including in Pennsylvania. In 2007, the Pennsylvania Human Rights Commission was among the state-based agencies that contributed to a review of the U.S. human rights record. The Commission provided disaggregated data on cases involving race, color, and national origin in employment, housing accommodation, and education for inclusion in the U.S. government’s report on U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁵ In 2011, the Pittsburgh City Council declared Pittsburgh a human rights city,

MI; Kansas City, MO; Minneapolis, MN; New York, NY; San Diego, CA; and Savannah, GA as well as the states of Rhode Island, Vermont, South Carolina, Hawaii, and New York also passed resolutions calling for ratification of the CRC. See Columbia Law School Human Rights Institute, *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy 10-11* (2012), available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf>.

9. See Risa Kaufman, *The Bringing Human Rights Home Lawyers’ Network: A Profile*, 41 ABA HUMAN RIGHTS MAGAZINE HOME 20 (2015) (noting “2015 marks the fifteenth anniversary of the Bringing Human Rights Home Lawyers’ Network, which connects more than 800 lawyers around the country who are integrating human rights to advance domestic advocacy.”).

10. Justice Brandeis famously articulated the idea that states are uniquely situated to innovate in law and policy-making. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). As recently as September 2015, U.S. federal government representatives have invoked this idea to emphasize the critical role of state, local, and tribal governments in human rights monitoring and implementation. See Keith Harper, *Remarks by Ambassador Keith Harper U.S. Permanent Representative to the Human Rights Council as delivered at the Universal Periodic Review (UPR) of the United States* (Sept. 24, 2015), <https://geneva.usmission.gov/2015/09/24/ambassador-harper-im-very-proud-to-be-before-you-today-for-the-adoption-of-the-second-upr-of-the-united-states/>.

11. The growing movement to bring human rights home is widely documented, including in practice-oriented publications. See, e.g., 41 AMERICAN BAR ASSOCIATION HUMAN RIGHTS MAGAZINE (2015) (dedicated to human rights in the United States); CLEARINGHOUSE REV. ON POVERTY L. & POL. (Fall 2011) (same).

12. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

13. Eleanor Roosevelt, *Remarks at the United Nations Commission on Human Rights* (March 27, 1958).

14. See *Bringing Human Rights Home*, *supra* note 8 at 10.

15. Columbia Law School Human Rights Institute & Int’l. Assoc. of Official Human Rts. Agencies, *Implementing Recommendations from the Universal Periodic Review, A Toolkit for State and Local Human Rights and Human Relations Commissions* (Aug. 2011).

emphasizing the intent to “join[] other human rights cities around the world in working to provide leadership and advocacy to secure, protect, and promote human rights for all people.”¹⁶ Also in Pittsburgh, a coalition of organizations are considering ways to make the rights enshrined in CEDAW a local reality.¹⁷

Most recently in 2015, Philadelphia City Councilwoman Quinones-Sanchez affirmed that human rights are a concern for local government. Announcing City Council approval of legislation to improve access to affordable water for members of Philadelphia’s low-income communities, Councilwoman Quinones-Sanchez quoted United Nations human rights experts’ finding that “[i]t is contrary to human rights to disconnect water from people who simply do not have the means to pay their bills.”¹⁸

These examples from Pennsylvania illustrate some of the ways that human rights are shaping local law, policy, and practice. To sketch out a fuller picture, we turn now to ways that human rights principles have been invoked to foster gender equity, frame new approaches to domestic violence, and tackle detention among the particularly vulnerable populations of youth and immigrants.

Women’s Rights

In 1998, San Francisco became the first city to enshrine human rights principles into local law when the City passed an ordinance based on CEDAW principles. The law, which calls for the city to “integrate gender equity and human rights into all its operations” and eradicate discriminatory policies, including those with a disparate impact on women,¹⁹ was initiated by a coalition of advocates and lawyers inspired by participation in the U.N. World Conference on Women. Proponents of the CEDAW framing were drawn to several core elements of a rights based approach to improving gender equity, specifically the proactive orientation of human rights standards, which calls for actions to identify and address inequities, and the broad prohibition against all forms of discrimination, regardless of intent.²⁰

The San Francisco ordinance, ultimately drafted in partnership with the city attorney, does not include a private right of action. Instead, as a key mechanism to measure progress and foster accountability, the ordinance mandates that city agencies undertake a gender analysis of budget, services, and employment practices to identify discrimination and barriers to equality for women, and to formulate corrective policies.²¹ The ordinance has led to improvements in data collection and service delivery; increased gender equity in employment; and the passage of paid parental leave legislation in the city.²² San Francisco’s experience has inspired other jurisdictions, including Los Angeles, California, and Miami-Dade County, Florida to incorporate CEDAW into local law.

16. CITY OF PITTSBURGH, Human Rights Proclamation 2011-1649 (Apr. 2011).

17. See, *Pittsburgh for CEDAW*, Women and Girls Foundation, <http://wgfpa.org/cedaw/> (last visited Feb. 25, 2016).

18. Quinones-Sanchez reflected on these impacts on the day the City Council passed Bill No. 1140607. See Press Release, Quinones-Sanchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council, <https://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/> (last visited Feb. 25, 2016).

19. S.F., Cal., SF CEDAW Ordinance, Ch. 12K (Board of Supervisors, 1998).

20. See, e.g., Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in 2 BRINGING HUMAN RIGHTS HOME (Cynthia Soohoo et. al., eds. 2008).

21. *Id.*; See also *Bringing Human Rights Home*, *supra* note 8 at 22.

22. Anu Menon, *Human Rights in Action: San Francisco’s Local Implementation of The United Nations’ Women’s Treaty (CEDAW)*, 5-7 (2010); WILD for Human Rights, *Respect, Protect, Fulfill: Raising the Bar on Women’s Rights in San Francisco* (2008).

To implement its CEDAW ordinance, Los Angeles undertook a 2014 study on the status of women and girls in the city,²³ which culminated in a report concluding that “women and girls [of Los Angeles] have been measurably disadvantaged.”²⁴ This finding was a springboard for executive action to create a city government Gender Equity Coalition to spearhead municipal initiatives to “achieve gender parity” and “close the gap in opportunities based on sex and gender, which include the creation of departmental equity action plans.”²⁵

Absent a CEDAW ordinance, other cities have begun to use the treaty as a blueprint for progress, including Louisville, Kentucky,²⁶ and Salt Lake City.²⁷ As this momentum grows, the D.C.-based Leadership Conference on Civil and Human Rights, and the Women’s Intercultural Network, along with the NGO Committee on the Status of Women in New York are leading a national “Cities for CEDAW” campaign,²⁸ endorsed by the U.S. Conference of Mayors.²⁹

Efforts to develop innovative rights-based local-level solutions to the pervasive problem of gender-based violence in the United States, while complementary to CEDAW initiatives, have followed a somewhat different trajectory, emanating directly from a landmark 2011 decision by the Inter-American Commission on Human Rights—the human rights monitoring body for the Americas, headquartered in Washington, D.C.³⁰ The Inter-American case was brought by Jessica Lenahan (then Gonzales) to seek redress for the death of her three children, which occurred when her estranged husband took her children from her home in violation of a restraining order and the Castle Rock, Colorado, police failed to respond to her multiple calls to enforce the order, and locate the children. (The three girls were found deceased in the back of the estranged husband’s car after a shoot-out with police that also left him dead).³¹ Before this case was filed with the Commission, it wound its way through U.S. courts, including the Supreme Court,³² which held in *Town of Castle Rock v. Gonzales* in 2005 that Gonzales had no federal constitutional right to police enforcement of her restraining order. However, key questions, including the exact cause, time, and place of the death of Ms. Lenahan’s daughters, remained unanswered.

Seeking answers to these questions, Ms. Lenahan and her legal team filed a petition with the Commission. The Commission found that that United States violated

23. Office of Los Angeles Mayor Eric Garcetti, *Report on the Status of Women and Girls – Los Angeles*, at <http://www.lamayor.org/statusofwomen> (last visited Mar. 5, 2016).

24. CITY OF LOS ANGELES, Executive Directive No. 11, Gender Equity in City Operations (Aug. 26, 2015).

25. *Id.*

26. See e.g., *You just made history!* “Louisville passes resolution supporting women, girls, LOUISVILLE KY. CITY NEWS (Nov. 14, 2014), <https://louisvilleky.gov/news/%E2%80%9Cyou-just-made-history%E2%80%9D-louisville-passes-resolution-supporting-women-girls>.

27. See The Salt Lake City Human Rights Commission and the Mayor’s Office of Diversity and Human Rights, *The Status of Women in Salt Lake City* (May 2013), http://www.slcdocs.com/ODHR/SLC_Women_Report.pdf.

28. See *About US*, Cities for CEDAW, <http://citiesforcedaw.org/about/> (last visited Mar. 5, 2016). See also Tarah Demant, *The Effort to Bring Human Rights Home*, 41 ABA Human Rights Magazine Home 17 (2015).

29. U.S. CONFERENCE OF MAYORS, Resolution in Support of Cities for CEDAW Initiative and Encouraging Cities to Implement the Principles of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (June 2014).

30. Caroline Bettinger-Lopez, *The Inter-American Human Rights Commission, A Primer*, 42 CLEARINGHOUSE REV. J. OF POVERTY L. & POL. 581 (2009).

31. For a full account of the facts see Caroline Bettinger-Lopez, Introduction: *Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies*, 21 J. OF GENDER, SOC. POL’Y & THE L. (2013); Final Observations Regarding the Merits of the Case, *Gonzales v. United States*, Petition No. 1490-05, Inter-Am. Comm’n H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 (2007).

32. *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

the human rights of Lenahan and her daughters by failing to take adequate steps to protect them from violence under the circumstances.³³ The decision set forth comprehensive recommendations for changes to U.S. law and policy pertaining to domestic violence, as well for individual remedies. The Commission's analysis and findings are significant as they are grounded in the internationally accepted due diligence standard, which in the context of gender-based violence, calls on governments to prevent violence from occurring and protect potential targets, as well as to ensure adequate responses and remedies when violence does occur.³⁴

Ms. Lenahan has had limited success in moving the federal government to comply with the full scope of the Commission's recommendations.³⁵ But, since 2011, states and localities have been leading in efforts to acknowledge the Commission's decision, the underlying human rights principles, such as due diligence, and their relevance to local policy. More than twenty municipalities have passed resolutions declaring freedom from domestic violence a human right.³⁶ While the language in these resolutions varies, most cite to core international human rights agreements and the *Lenahan* case. They further highlight the importance of joining international leaders to recognize domestic violence as a human rights concern, and indicate that governments have a responsibility to secure the right to be free from violence, and some include calls to action.

In Baltimore, Maryland, the Family Law Clinic at University of Baltimore spearheaded the local resolution effort, with support from the Women's Law Center of Maryland.³⁷ Advocates who supported the 2012 City Council resolution³⁸ envisioned it as a catalyst to raise public awareness of the prevalence of domestic violence,³⁹ and a potential tool for local organizations, including Baltimore's Maryland Legal Aid, to bolster their advocacy. In the same year, the Miami-Dade County Board of Commissioners adopted a similar resolution,⁴⁰ which has been used as a tool to strengthen legal protections. The resolution is cited in the 2015 amendment to the County's anti-discrimination ordinance, which adds victims of domestic violence,

33. *Lenahan (Gonzales) v. United States*, Case 12-626, Inter-Am. Comm'n H.R., Report No. 80/11 (2011).

34. The U.N. Rapporteur on Violence Against Women has articulated the core elements of the due diligence standard, which is drawn from a number of human rights treaties, including CEDAW. See, e.g., Special Rapporteur on Violence against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶17, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006); Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to the United States*, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011).

35. The Department of Justice recently released guidance for law enforcement on gender bias policing, one of the actions that counsel in the case called for in the wake of the *Lenahan* decision. See Letter to Dr. Santiago A. Canton, Executive Secretary Inter-American Commission on Human Rights, in re: *Re. Case 12-626—Jessica Lenahan (Gonzales) v. United States* 10 (Mar. 19, 2012), at https://www.aclu.org/files/assets/iachr_working_meeting_03_24_12_-_petitioners_letter_final.pdf. The guidance notes that it "is intended to reflect and further the department's partnership with the police leaders, line officers and detectives who work tirelessly to ensure that policing is free from bias and to uphold the civil and human rights of the communities they serve." U.S. Dep't. of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault* (2015).

36. See *Freedom from Domestic Violence as a Fundamental Human Right Resolutions, Presidential Proclamations, and Other Statements of Principle*, Cornell Law School, <http://www.lawschool.cornell.edu/womenandjustice/DV-Resolutions.cfm> (last visited Mar. 5, 2016).

37. This section, and the description of efforts in Baltimore in particular, draws from research and interviews conducted by Columbia Law School's Human Rights Institute and a subsequent Institute publication. See *Bringing Human Rights Home*, *supra* note 8 at 16-17.

38. CITY OF BALTIMORE, A Council Resolution Concerning The Freedom from Domestic Violence is a Fundamental Human Right, Council Bill 12-0034R (Mar. 19, 2012).

39. Joe Surkiewicz, *UB Family Law Clinic looks at the big picture*, THE DAILY RECORD, (May 28, 2012),

40. MIAMI-DADE COUNTY, Resolution Expressing the Board's Intent to Declare that Freedom from Domestic Violence is a Fundamental Human Right (July 17, 2012), <http://www.miamidade.gov/govaction/matter.asp?matter=121380&file=true&yearFolder=Y2012FL.pdf>.

dating violence, or stalking to the list of protected classes.⁴¹ Complementing these efforts, in 2014, the Colorado State Senate issued a tribute to Jessica Lenahan, recognizing her role in connecting international human rights standards to the domestic sphere.⁴²

Juvenile Life Imprisonment without Parole

The United States stands alone in the world as a country that sentences youth to life in prison with no opportunity for release for crimes committed before they reach the age of 18 (“JLWOP”).⁴³ In thirty-four U.S. states, a child can be sentenced to JLWOP, and approximately 2,500 individuals people are currently serving this sentence.

Life without parole sentences are clearly out of step with international human rights law. The sentences have been found to violate the three core human rights treaties the U.S. has ratified, and the CRC expressly prohibits JLWOP.⁴⁴ The U.N. General Assembly has repeatedly called for cessation of these sentences,⁴⁵ which have been condemned by regional human rights bodies as well.⁴⁶ Lawyers have used the fact that the U.S. is an outlier in domestic litigation, state-level campaigns, and engagement with international human rights monitoring bodies.

Pennsylvania holds approximately 450 people serving JLWOP—the largest number for any state in the country.⁴⁷ It is one of the four states that incarcerate half of the total JLWOP population, alongside Michigan, Louisiana, and California.⁴⁸

But the domestic legal landscape is shifting in response to a trifecta of recent Supreme Court decisions and related advocacy, which have placed limits on the circumstances where it is permissible to sentence a youth to life without the opportunity for the review of their sentence.

Human rights framing has informed national and state level campaigns. A broad-based state-wide coalition, comprised of national groups including Human Rights Watch and the Campaign for the Fair Sentencing of Youth, as well as faith-based groups, families of crime victims, law enforcement officials, and other local partners,⁴⁹

41. MIAMI-DADE COUNTY, Ordinance Amending the Code of Miami-Dade County to Prohibit Discrimination Based on Status as a Victim of Domestic Violence, Dating Violence, or Stalking (Feb. 12, 2015).

42. 69th G.A., 2nd Sess (Colo. 2014).

43. CONNIE DE LA VEGA ET AL., CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 61 (2012); Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 989 (2008). This section draws heavily from the comprehensive discussion of the role of human rights standards and strategies in the context of sentencing youth to sentences of life without the possibility of parole, see Columbia Law School Human Rights Institute, *Challenging Juvenile Life Without Parole: How Has Human Rights Made a Difference?* (June 2014), http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/jlwop_case_study_hri_0.pdf.

44. Article 37(a) prohibits “life imprisonment without possibility of release . . . for offences committed by persons below eighteen years of age.” General Comment No. 10 from the Committee on the Rights of the Child also prohibits JLWOP. Comm. on the Rights of the Child, General Comment No. 10: Children’s Rights in Juvenile Justice, ¶77, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007).

45. See, e.g., G.A. Res. 67/152, ¶20, (Dec. 20, 2012).

46. See, e.g., Inter-Am. Comm’n H.R., Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas*, ¶363, OEA/Ser.L/V/II Doc. 78 (July 13, 2011), <http://www.cidh.org/pdf%20files/JuvenileJusticecover.pdf>; *Mendoza et al. v. Argentina*, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶ 154 (May 14, 2013).

47. See *Juvenile Life Without Parole in Pennsylvania*, Juvenile Life Center, <http://jlc.org/current-initiatives/promoting-fairness-courts/juvenile-life-without-parole/jlwop-pennsylvania>.

48. See *Policy Brief: Juvenile Life Without Parole: An Overview*, The Sentencing Project (2016), http://sentencingproject.org/doc/publications/jj_Juvenile_Life_Without_Parole.pdf.

49. Jo Becker, *Abolishing Sentences of Life Without Parole for Juvenile Offenders*, in *CAMPAIGNING FOR JUSTICE: HUMAN RIGHTS ADVOCACY IN PRACTICE* 222, 234-35 (2013); *Challenging Juvenile Life Without Parole*, *supra* note 43 at 12-13, 15-16.

has successfully resulted in laws that allow those serving JLWOP to request new sentencing hearings (before the Supreme Court weighed in), and require parole boards to give special consideration to the role that youth played in particular crimes.⁵⁰

U.S. lawyers also continually invoke human rights standards and recommendations, as well as comparative practice and foreign law in litigation at the Supreme Court level.⁵¹

In 2010, the Supreme Court issued a decision in *Graham v. Florida*, prohibiting the use of JLWOP for juveniles convicted of non-homicide crimes.⁵² The majority opinion in *Graham* indicates that global practice influenced the Court, stating that JLWOP has been “rejected the world over.”⁵³ The decision further acknowledged the “longstanding practice” of the Court looking “beyond our Nation’s borders for support for its independent conclusion” on whether a punishment is cruel and unusual,⁵⁴ and that in this instance, “the overwhelming weight of international opinion against life without parole for non-homicide offenses committed by juveniles provides respected and significant confirmation for our own conclusions.”⁵⁵ Two years later in *Miller v. Alabama*, the Court struck down the use of mandatory JLWOP sentences (application of JLWOP with no individualized determination).⁵⁶ While human rights are not explicitly referenced in the *Miller* decision, it is likely that the global context influenced the Court.⁵⁷

In the three years following *Miller*, a dozen states took action on JLWOP, either to abolish the sentence completely, or to restrict the cases where the sentence can be applied.⁵⁸ In 2012, Pennsylvania law was amended and the current sentencing scheme provides for graduated sentences depending on a range of individual and case-specific factors, and JLWOP may still be applied.⁵⁹ As a result of the Juvenile Law Center’s advocacy, the U.S. Supreme Court ruled in *Montgomery v. Louisiana* in January 2016 that states, including Pennsylvania, are required to extend parole eligibility to juvenile offenders that received mandatory JLWOP sentences pre-*Miller*.⁶⁰

50. *Challenging Juvenile Life Without Parole*, *supra* note 43 at 16; 60 S.B. 9, 2011-2012 Leg., Reg. Sess. (Cal. 2012), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB9; 61 S.B. 260, 2013-2014 Leg., Reg. Sess. (Cal. 2013), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB260.

51. Brief for Amnesty International, et al., as Amici Curiae in Support of Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010), (Nos. 08-7412, 08-7621); Brief for the American Association of Jewish Lawyers and Jurists, et al. in Support of Petitioner, *Graham v. Florida*, 560 U.S. 48 (2010), (Nos. 08-7412, 08-7621).

52. *Graham*, 560 U.S. at 48.

53. *Id.* at 80.

54. *Id.*

55. *Id.* at 81 (quoting *Roper v. Simmons*, 543 U.S. 551, 572 (2005)) (internal quotations omitted). Not all members of the Supreme Court agreed that on the relevance of international and comparative law and practice. See *id.* at 114 n.12 (Thomas, J., dissenting) (“I confine to a footnote the Court’s discussion of foreign laws and sentencing practices because past opinions explain at length why such factors are irrelevant to the meaning of our Constitution or the Court’s discernment of any longstanding tradition in this Nation.” (internal citations omitted)). This perspective was presented in briefs in *Miller* and *Graham* that argued against consideration of international and foreign law and that JLWOP sentences do not violate U.S. treaty obligations. See *Challenging Juvenile Life Without Parole*, *supra* note 43 at 6.

56. *Miller v. Alabama*, 132 U.S. 2455 (2012).

57. See, e.g., Brief for Amnesty International, et al., as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647);

58. See *Facts and Infographics about Life Without Parole for Children*, Campaign for the Fair Sentencing of Youth, <http://fairsentencingofyouth.org/what-is-jlwop/>; See also, *Miller v. Alabama: One Year Later*, Juvenile Justice Information Exchange, <http://jjie.org/miller-v-alabama-one-year-later/104775/>.

59. 18 Pa. Cons. Stat. §1102.1 (2016), <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.011..HTM>.

60. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016) (holding *Miller* retroactive).

Prior to the *Miller* and *Graham* decisions, human rights lawyers and advocates made appeals to the international community to draw attention to the ways that JLWOP sentences are out of step with international law. As a result of this ongoing advocacy, U.N. bodies have condemned the use of JLWOP as a violation of rights for children,⁶¹ and a potential form of cruel, inhuman, or degrading treatment or punishment.⁶² They have also noted the disproportionate use of JLWOP in communities of color is incompatible with guarantees to equality before the law, calling on the U.S. to eliminate the practice.⁶³ Despite the fact that human rights treaty standards and recommendations are not enforceable in U.S. courts, foreign and international law and practice have informed state litigation, including in Pennsylvania, California, and Massachusetts.⁶⁴

In 2013, the highest court in Massachusetts cited to foreign and international law in a decision that held *Miller* retroactive and found that JLWOP violates the state constitution's prohibition on cruel or unusual punishment. The majority affirmed, "we join a world community that has broadly condemned such punishment for juveniles," and recalled John Adams' recognition that "we belong to an international community that tinkers toward a more perfect government by learning from the successes and failures of our own structures and those of other nations."⁶⁵

Lawyers have also taken the challenge against JLWOP to the Inter-American Commission on Human Rights. In 2006, before the Supreme Court issued its decisions in this area, lawyers representing juvenile offenders serving JLWOP sentences in Michigan filed a case challenging state law, which provided that a child as young as fourteen could be tried and imprisoned in an adult facility for life, without any individualized assessment. The Petitioners in *Henry Hill v. United States* allege that JLWOP violates the right of the child to special protection, as well as the right to be free from cruel, inhuman, or unusual punishment, and to humane treatment and due process. The case also challenges Petitioners' conditions of detention as violations of their right to education and right to rehabilitation.⁶⁶

The case is still pending, but has offered a platform for coalition-building, media attention, and the inclusion of voices of impacted individuals. Advocates used a 2014 public hearing on the case to highlight concerns about JLWOP among a range of decision-makers, including a Congressman and a retired Michigan Judge. Legal and advocacy organizations worked in concert with law firms to submit amicus briefs that distill the relevant international standards, highlight the disparate im-

61. The U.N. Committee, which monitors countries' implementation of the ICCPR has emphasized that sentencing children to life without parole does not comply with the Covenant which guarantees rights for children, and called on the U.S. to abolish the sentence. U.N. Human Rights Comm., Concluding Observations on the Fourth Periodic Report of the United States of America, ¶23, U.N. Doc. CCPR/C/USA/CO/4 (2014).

62. U.N. Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, ¶34, U.N. Doc. CAT/C/USA/CO/2 (2006) (noting JLWOP could constitute a violation of article 16 of the Convention Against Torture).

63. U.N. Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶21, U.N. Doc. CERD/C/USA/CO/6 (2008).

64. See, e.g., Brief of Amnesty International, et al. as Amici Curiae in Support of Defendant-Appellant, *California v. Gutierrez*, No. B227606 (Cal. Sept. 18, 2013), 2013 WL 5613545; Amicus Curiae Brief on Behalf of American Civil Liberties Union of Massachusetts et al., *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 466 Mass. 655 (Mass. 2013) (No. SJC-11453), 2013 WL 4737395; Brief of Appellant, *Pennsylvania v. Wiggins*, 43 A.3d 517 (Pa. Super. 2011) (No. 639 MDA 2011), 2011 WL 7076675.

65. *Diatchenko*, 466 Mass. 655 (Mass. 2013) (internal citations omitted).

66. See Brief of Petitioners, *Henry Hill et al. v. United States*, Case 12.866, Inter-Am. Comm'n H.R. (Sept. 4, 2012),

pact of JLWOP, and describe the larger context of juvenile sentencing in the U.S.⁶⁷ It is hoped that the Commission's final decision will serve as an additional advocacy tool for addressing juvenile sentences.

Situation of Unaccompanied Minors, Refugees, and Immigrant Detention

The principle of the best interests of the child features prominently in both international and domestic law on juvenile incarceration, and it extends to the detention of minors in immigration proceedings, complementing the rights to liberty, security of person, due process and access to justice, as well as protections from interference in family life, which extend to all individuals subject to immigration detention. While the federal government maintains exclusive control over immigration enforcement through its plenary powers, it contracts with state and county jails that house the vast majority of immigrants subject to detention, sharing oversight authority and obligations to ensure conditions of detention, and detention itself, meet human rights standards. Pennsylvania is home to four county-operated prisons and jails that contract with the federal government to house immigrant detainees charged with civil immigration violations,⁶⁸ in addition to the Berks County Residential Center, one of just three facilities in the country contracted by the Department of Homeland Security to hold unaccompanied minors and families in immigration proceedings.

Pennsylvania recently exercised its oversight authority when the State Department of Human Services asserted its intent not to renew the Berks County Residential Center's license to operate "as a child residential facility."⁶⁹ While Pennsylvania did not rely explicitly on human rights language or law, the decision to revoke Berks' license follows a longstanding human rights campaign challenging immigrant detention before the Inter-American Human Rights Commission and the United Nations, led by human rights lawyers working in collaboration with local and national immigration attorneys.

The treatment of children in immigration proceedings was first brought before the Inter-American Commission in a 2007 hearing, during which advocates highlighted how the U.S. system of incarceration for unaccompanied minors and families that follows a penal model of incarceration violates human rights standards.⁷⁰ Advocates requested the Commission conduct a site visit to those centers housing unaccompanied minors and families to allow for an independent assessment of their situation, and the U.S. granted the Commission an invitation for a visit.⁷¹

In the decade since, a broad-based coalition of advocates has engaged in ongoing advocacy before the Commission, using the hearing process to bring attention to the

67. *Challenging Juvenile Life Without Parole*, *supra* note 43 at 10.

68. See Detention Watch Network, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Detention Center Abuse: Immigration Detention Transparency Human Rights Project* October 2015 Report, <http://immigrantjustice.org/sites/immigrantjustice.org/files/images/T%26HR%20Standards%20list2.pdf>.

69. Renée Feltz, *Only family detention center outside Texas may shut after license revoked*, THE GUARDIAN, January 29, 2016, <http://www.theguardian.com/us-news/2016/jan/29/immigration-family-detention-center-pennsylvania-shut-down-license-revoked>.

70. See Human Rights Situation of Migrant Workers, Refugee Children and Other Vulnerable Groups in the United States, 130th Period of Sessions, Inter-American Commission on Human Rights (October 12, 2007).

71. Inter-American Commission on Human Rights, Press Release No. 54.07, IACHR Concludes its 130th Regular Sessions, <http://www.cidh.org/Comunicados/English/2007/54.07eng.htm>.

range of rights implicated, particularly in the detention context.⁷² Those hearings and additional site visits by the Commission to border states and detention facilities have resulted in two in-depth reports from the Commission, one addressing immigrant detention and due process in the U.S.,⁷³ and the other addressing the situation of unaccompanied minors and family detention.⁷⁴ Both reports stress that international human rights norms mandate that detention for civil immigration violations be carried out only as a matter of last resort,⁷⁵ and only with rigorous policies and practices that safeguard due process,⁷⁶ recognize the rights to personal liberty⁷⁷ and to family life,⁷⁸ and guarantee access to justice,⁷⁹ as well as the ability to seek and receive asylum.⁸⁰ Where children are involved, the Commission has stressed the United States apply the principle of the best interests of the child in all actions related to detention and immigration relief, emphasizing that child asylum-seekers should never be detained.⁸¹

Debates on immigration enforcement and policy extend beyond detention. They carry over into multiple areas within state and local jurisdiction, such as the issuance of drivers' licenses,⁸² access to health care, right to a safe workplace, and access to justice.⁸³ A recent resolution passed by Philadelphia's City Council seeking an end to immigration raids specifically noted: that "The City of Philadelphia embraces international standards respecting the rights of refugees and asylum seekers," and urged the federal government to "respect and uphold the rights of refugees and asylum seekers."⁸⁴ Moving forward, human rights standards offer an important touchstone for laws, policies, and practices that ensure dignity, due process, and access to justice for all, regardless of migration status.

72. See Due process problems in the application of policies on immigrant detention and deportation in the United States, 133rd Period of Sessions, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (October 28, 2008); Immigrant Detention and Deportation Policies in the United States, 134th Period of Sessions, Inter-American Commission on Human Rights (March 20, 2009); Human Rights Situation of Migrant and Refugee Children and Families in the United States, 153rd Period of Sessions, Inter-American Commission on Human Rights (October 27, 2014).

73. Inter-American Commission on Human Rights, Report on Immigration in the United States: Detention and Due Process (2011), <http://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf>.

74. Inter-American Commission on Human Rights, Refugees and Migrants in the United States: Families and Unaccompanied Children (2015), <http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>.

75. IACHR 2011 Report, *supra* n. 73, pp. 11-33, noting children asylum seekers should never be detained, per standards set by the United Nations High Commissioner for Refugees. *Id.*, at 19.

76. American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1 at 17. Art. 25; ICCPR, Art. 9.

77. AM.DECL., Art 26; ICCPR, Art. 9.

78. AM.DECL., Art. 6; UDHR, Art. 16.

79. ICCPR, Art. 2.

80. AM. DECL., Art. 27.

81. IACHR 2015 Report, *supra* n. 76, pp. 32-35.

82. See Media Mobilizing Project, *et al.*, *Submission to UN Human Rights Committee, Denial of Driver's Licenses to Undocumented Immigrants as a Barrier to Human Rights in the United States* (2012), <http://www.ushrnetwork.org/resources-media/denial-drivers-licenses-undocumented-immigrants-barrier-human-rights-united-states#overlay-context=resources-media/human-rights-violations-against-immigrant-worker-civil-labor-human-rights-defenders>.

83. See, e.g., *IACHR Hearing on Lack of Workplace Protections*, American Civil Liberties Union, <https://www.aclu.org/cases/iachr-hearing-lack-workplace-protection-undocumented-workers>.

84. CITY OF PHILADELPHIA, A Council Resolution Urging the President of the United States to establish a comprehensive national policy regarding our undocumented immigrants that seeks to preserve and protect families that have fled to this country from situations of widespread violence and depravation and to also prevent future deportation raids that tear apart our communities, Res. No. 160085 (Jan. 28, 2016).

CONCLUSION

The use of human rights principles and mechanisms has led social justice advocates, lawyers, and policymakers to reframe a range of local issues, and develop innovative solutions. This is true not only in the examples of gender equality, criminal justice, and immigration, discussed here, but also in areas such as housing and access to water in a number of jurisdictions across the country.

Through increased fluency in international human rights principles, lawyers are shaping new strategies to approach the challenges that confront Pennsylvania and its municipalities. The developments taking place at home, in our state and across the country, can inspire our work and contribute to ongoing efforts to advance universal human rights norms as understood and experienced at the local level.