



# Inequality in Youth Justice: A Call for Global Action

Youth Justice

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[journals.sagepub.com/home/yjj](https://journals.sagepub.com/home/yjj)**Yannick van den Brink**

Inequality is one of the most fundamental and urgent challenges in the field of youth justice. Children from ethnic minorities, children with a low socioeconomic status, children with disabilities and – more generally – boys (compared to girls) are vastly overrepresented in many youth justice systems worldwide, particularly in youth prisons and detention centres (Nowak, 2019). Evidence suggests that this overrepresentation is fueled by inequalities in law enforcement and youth justice decision-making practices (Van den Brink et al., 2022). Especially in the United States, there is a vast body of research on racial disparities in youth justice decision-making, providing evidence that racial minority children – particularly Black boys – are more likely to be arrested, charged, remanded and sentenced to custody than their White peers in similar circumstances (Delone and Delone, 2017; Kurlychek and Johnson, 2019; Rodriguez, 2010; cf. Zane and Pupo, 2021). Also in European jurisdictions (e.g. England & Wales, the Netherlands), there is growing evidence that ethnic minority children, children with a low socioeconomic status and children with neurodiversity needs experience disadvantages at multiple stages of the youth justice process and are more likely to end up in custody (Van den Brink, 2022a; Webster, 2018). In Australia and Canada, research suggests that children from Indigenous communities are targeted disproportionately and treated more harshly by the justice system (Jackson, 2015; McGrath, 2016). Furthermore, inequality in youth justice practices is not a phenomenon that is exclusive to the Global North. Although less data and research are available, racial or ethnic inequalities in youth justice practices have also been reported in the Global South, for example in Brazil (Rezende Melo, 2022). This is also true for socioeconomic inequalities in youth justice practices, which have been studied and found in, for instance, India (Ali and Ganguly, 2022), Ghana (Ame, 2019) and Mexico (Azaola, 2018). Overall, notwithstanding the limitations of the available data and research (or the lack thereof) and the profound – historical, cultural, social, legal and institutional – differences between jurisdictions and their youth justice systems, it is clear that inequalities in the administration of youth justice are a global issue of concern.

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The identified inequalities in youth justice decision-making are seemingly at odds with the principle of non-discrimination under Article 2 of the UN Convention on the Rights of the Child (CRC). The principle of non-discrimination is recognized by the UN Committee on the Rights of the Child (2003: para. 12) as one of the CRC's 'general principles' and aims to guarantee 'equal access of children to [all their] rights', including the rights laid down in Articles 40 and 37 CRC that are particularly relevant to youth justice (Van den Brink, 2022b). In essence, non-discrimination and equality are two sides of the same coin. Equality refers to the positive dimension of promoting children's equal protection and exercise of rights, while non-discrimination refers to the negative absence of discrimination, prohibiting 'treating similar situations differently without an objective justification' to prevent unlawful impairments to children's equal protection and exercise of rights (Arnardóttir, 2003: 6–8; Besson, 2005: 434–435; Van den Brink, 2022b). The UN Committee on the Rights of the Child (2003) makes clear that the principle of equality and non-discrimination does not entail the identical treatment of all children. Instead, the Committee urges States to actively seek to identify 'individual children and groups of children for whom the recognition and realization of their rights may require special measures' (UN Committee on the Rights of the Child, 2003: para. 12). Equality is, thus, inherently connected to the concept of diversity. Pursuing the equal recognition and *realization* of rights requires moving beyond a one-size-fits-all approach by acknowledging the diversity of children's circumstances, capacities and needs, which should be taken into account in youth justice responses to offending by children (Van den Brink, 2022b).

Equality in the context of youth justice entails first of all that children in conflict with the law – regardless of their race, ethnicity, gender, disability, socioeconomic or other status – are equally entitled to a youth justice response which is appropriate to their well-being and proportionate to their circumstances and the offence (Art. 40 (4) CRC). This requires equal access to suitable diversion programmes (Art. 40 (3) (b) CRC) and community-based interventions (Art. 40 (4) CRC), to ensure for all children that deprivation of liberty is used only as a last resort and for the shortest appropriate period of time (Art. 37(b) CRC). Equality in youth justice also requires the equal realization of the child's right to a fair trial (Art. 40 (2) CRC), including their right to effectively participate in the youth justice process (see also Art. 12 CRC). This calls for establishing child-appropriate procedures with sufficient due process safeguards for all children but also requires a tailored approach, taking into account the individual child's age, evolving capacities, neurodiversity needs and language skills. Furthermore, equality in youth justice demands that children who are subject to youth justice interventions are given equal opportunities – if necessary by means of treatment, assistance and guidance – to successfully reintegrate and assume a constructive role in society (art. 40 (1) CRC), which ultimately also benefits public safety. This, too, requires a tailored approach when making decisions about imposing suitable youth justice interventions, taking into account the child's circumstances, evolving capacities, needs and interests, without disregarding the proportionality and fair trial requirements.

The aforementioned evidence of significant and widespread racial, ethnic, socioeconomic and other inequalities in youth justice processes, however, suggests that the normative ideal of equal youth justice under the CRC does not reflect the lived realities of many

justice system-involved children. The reality is that often the most vulnerable and marginalized children struggle with effectively exercising their fair trial rights and end up in custody disproportionately. As a result, children who are already socially disadvantaged are most exposed to the potentially harmful implications of youth justice system contact, including the detrimental impact of deprivation of liberty (Goldson and Kilkelly, 2013) and the stigma of criminal accusation and conviction (Van 't Zand-Kurtovic, 2017). This can have far-reaching negative effects on these children's wellbeing, long-term health and future opportunities in education and the labour market, which imposes additional barriers to obtaining a constructive role in society (cf. Arts. 40 (1) and (4) CRC) and ultimately reinforces and deepens societal inequality (Laub, 2018; Webster, 2018).

Therefore, there is an urgent and global need to develop and implement principled and evidence-based strategies to address and tackle inequalities in youth justice practices. In some jurisdictions, policies aimed at reducing youth justice inequalities have been implemented, but a comprehensive, rights-based global strategy is still absent. Developing and implementing such a strategy calls for (1) more data and knowledge on the prevalence and nature of inequalities and their underlying sources and mechanisms and (2) more awareness of, and guidance on, the meaning and implications of the principle of equality in youth justice internationally.

First, effectively addressing inequalities in youth justice processes requires sufficient data and solid research-informed knowledge on the issue. Systematic data-collection tools are key to identify structural inequalities in youth justice decisions and to monitor reform. In the United States, for example, systematic data collection on racial or ethnic disparities is an integral part of their federal youth justice policy (OJJDP, 2019). Ideally, data collection and analyses do not just focus on identifying inequalities associated with defendants' race, ethnicity, gender or socioeconomic status in isolation but also shed light on possible intersections of disadvantage, for instance, being minority ethnic and poor (Kurlychek and Johnson, 2019; cf. Hurtado, 2017). Many countries, however, still lack systematic data collection on (in)equality in their youth justice policies (Webster, 2018), even though the UN Committee on the Rights of the Child (2019: paras. 113–114, 2022: para. 10) urges States to do so.<sup>1</sup> Moreover, there is a need for innovative, multidisciplinary, cross-national research into how inequalities in youth justice practices are produced and sustained. This question is still strikingly underexplored in scholarly research (cf. Lynch, 2019; Ulmer, 2019; Van den Brink, 2022a). Capturing underlying sources and mechanisms of inequality in youth justice decisions through research requires deploying a broad lens, looking beyond a single decision point in the youth justice process and beyond the youth justice system itself. Indeed, inequalities might permeate multiple subsequent decisions across the youth justice process (Kurlychek and Johnson, 2019) and are often inherently connected to wider and structural societal inequalities and to children's experienced disadvantages in interlocking systems, such as the educational system and child welfare system (Dowd, 2018). Cross-national comparative research designs could particularly contribute to developing a global strategy, as those studies could generate knowledge on potential 'system-independent' and 'system-specific' mechanisms of inequality in youth justice practices (Van den Brink and Lanskey, 2024). Importantly, more research should focus on understudied jurisdictions, particularly in the Global South, including those with plural justice systems and

Indigenous customary justice practices (cf. Sowatey and Pinkrah, 2022). Moreover, it is crucial that research projects also actively involve children with lived experience in the justice system – in a child-appropriate manner – to learn from their views and experiences (cf. UN Committee on the Rights of the Child, 2019, para. 115).

Second, more awareness of, and guidance on, the meaning and implications of the principle of equality and non-discrimination under the CRC at the international level could help prioritize and inform strategies to address inequalities in youth justice processes at the domestic and local levels. The UN Committee on the Rights of the Child could play a leading role in this. The Committee recognizes the principle of equality and non-discrimination under Article 2 CRC as one of the ‘general principles’ of the CRC but has so far not issued a separate General Comment on this provision. In its General Comment No. 24 on children’s rights in youth justice, the UN Committee on the Rights of the Child (2019: para. 40) emphasizes that ‘safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress’ but provides little guidance as to what this means and how this could be achieved. A General Comment specifically devoted to Article 2 CRC, which clearly outlines the scope, meaning and implications of this provision and provides recommendations for its effective implementation in different areas of children’s rights, including youth justice, would be timely and welcome (Van den Brink, 2022b). The drafting of such a General Comment also ties in with the UN Sustainable Development Goals, particularly No. 16, on promoting just, peaceful and inclusive societies, with equal access to justice (target 16.3), inclusive and participatory decision-making (target 16.7) and non-discriminatory laws and policies (target 16.b) as key pillars.

In conclusion, the evidence of persistent and widespread inequalities in youth justice practices across the globe is overwhelming and highly concerning. The reported inequalities – along the lines of race, ethnicity, socioeconomic status, disability and gender – fundamentally contravene the core principles and objectives of a rights-based youth justice system under the CRC and ultimately undermine the rule of law and the legitimacy of youth justice institutions worldwide. This calls for urgent and collaborative action by youth justice scholars, policymakers, practitioners and advocates globally, to protect the fundamental rights, wellbeing and future life chances of the most disadvantaged and vulnerable children in the justice system.

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## Note

1. A complexity is that in many European jurisdictions, for historical reasons, collecting data on race and ethnicity is largely prohibited (or at least very strictly regulated) by law and perceived as a form of discrimination in itself (Webster, 2018). This view, however, is increasingly challenged by scholars who argue these data are necessary to identify and address racial or ethnic disparities in youth justice (e.g. Boon et al., 2019). Alternatively, proxies for race and ethnicity could be used in data collection (see Webster, 2018).

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